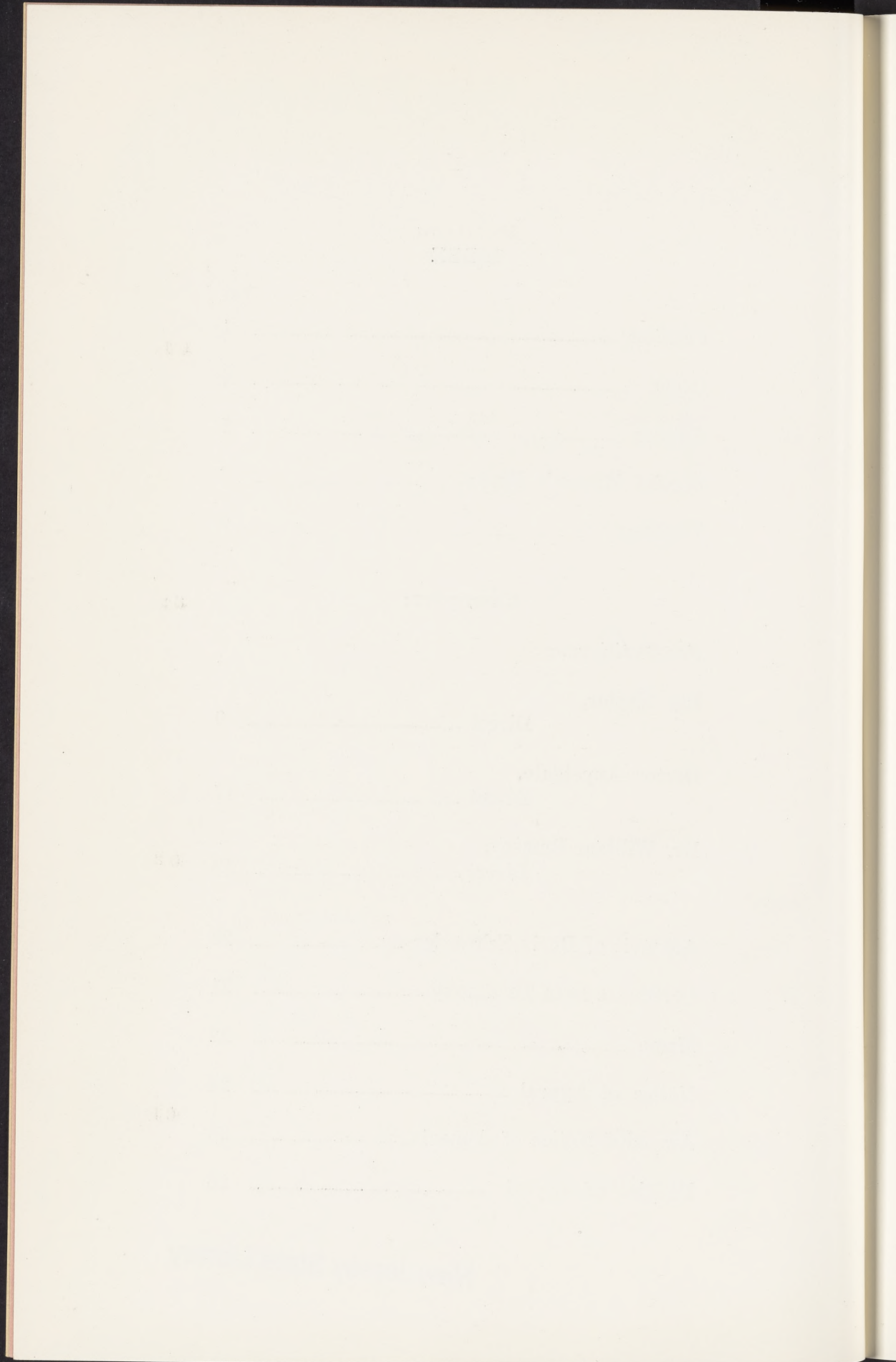


## INDEX

	Page
Petition .....	1
Order .....	4
Answer .....	5
Special Master's Report .....	6
Testimony .....	9
TESTIMONY :	
<i>For Petitioner :</i>	
Ely Naylor, Direct .....	9
Doctor Appelgate, Direct .....	17
Dr. William Ramsey, Direct .....	19
Affidavit of Doris Schroeder .....	20
Certificate as to Testimony .....	21
Memo .....	22
Notice of Appeal .....	24
Amended Notice of Appeal .....	25
Petition of Appeal .....	26



**Petition.**

*On Petition for Nullity.*

Filed

IN CHANCERY OF NEW JERSEY.

10

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Between

ELY NAYLOR,

Petitioner,

and

GERTRUDE NAYLOR,

Defendant.

20

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

The petition of Ely Naylor of Marlboro, in  
the County of Monmouth, and State of New  
Jersey, respectfully shows:

1. On the 26th day of June, nineteen hundred  
and ten, a form of ceremony of marriage took  
place between your petitioner and Gertrude Nay-  
lor, the defendant in this suit, at Coltsneck, in  
the State of New Jersey, the said ceremony hav-  
ing been performed by a Minister of the Gospel.

30

2. At the time of said marriage, defendant was  
incapable of consenting thereto, being then a  
lunatic, and of unsound mind, and bereft of rea-  
son to truly comprehend the nature of the mar-  
riage contract, and deprived of the will to give  
intelligent consent thereto, Petitioner was ignor-  
ant of defendant's said incapacity, at the time

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*Petition.*

10 of the said marriage, and was not made cognizant thereof until afterwards; to wit, in or about the year of 1918, when the irrational and incoherent actions of the defendant caused the petitioner to have the defendant undergo a medical examination as a result of which defendant was declared insane, and was confined to the insane asylum at Trenton, New Jersey. Defendant has never been capable of ratifying the said marriage by reason of her insanity and incapacity of continuing ever since said marriage, and said marriage has not been, in any wise, ratified.

20 3. Petitioner and defendant Gertrude Naylor, are bona fide residents of the State of New Jersey at the time of the commencement of this action, residing at Marlboro, in the County of Monmouth, New Jersey.

4. The following child was born of the marriage aforesaid: Bertha, a girl, age 11 years.

30 5. Your petitioner prays that the said pretended marriage between your petitioner and the said defendant may be declared by the decree of this Honorable Court to be null and void for the cause aforesaid, pursuant to the statute in such case made and provided; and that your petitioner may have such further relief as shall be just.

And your petitioner will ever pray, &c.

40 JACOB S. KARKUS,  
Solicitor for and of  
Counsel with Petitioner.

*Petition.*

State of New Jersey,  
County of Middlesex,—ss:

Ely Naylor being duly sworn, according to law 10  
upon his oath, deposes and says that he is the  
petitioner in the foregoing petition; and that his  
said petition is not made by any collusion be-  
tween him and the defendant, but in truth and  
good faith, for the causes set forth in the peti-  
tion.

Subscribed and sworn to  
before me this 28th day of  
May, 1929. 20

ELY NAYLOR.

WM. MICHAELSON,  
Notary Public of N. J.

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**Order.***On Petition for Nullity.*

Filed

10

IN CHANCERY OF NEW JERSEY.

---

 Between

ELY NAYLOR,

Petitioner,

and

GERTRUDE NAYLOR,

Defendant.

20

This matter being opened to the Court by Jacob S. Karkus Solicitor for the Petitioner for the appointment of counsel for the Guardian ad Litem of the defendant in this cause,

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It is on this 5th day of July 1929 ORDERED that Thomas L. Hanson, Esq. be appointed Solicitor for the Guardian ad Litem of the defendant to make whatever just and equitable defense the Defendant may have in the action, if upon due investigation he shall find that there is such.

E. R. WALKER,  
Chancellor.

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**Answer.***On Petition for Nullity.*

Filed

IN CHANCERY OF NEW JERSEY.

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 Between:

ELY NAYLOR,

Petitioner,

and

GERTRUDE NAYLOR,

Defendant.

20

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

In pursuance to an order made in the above entitled cause on the 5th day of July, 1929, under which order I was appointed solicitor for the guardian ad litem of Gertrude Naylor, the above named defendant, I desire to report that upon due investigation, I verily believe there is no just or equitable defense which can be interposed on behalf of the said Gertrude Naylor in the above entitled cause.

30

THOMAS L. HANSON,  
Solicitor of guardian ad litem  
for Gertrude Naylor, defendant.

40

**Special Master's Report.***On Petition for Nullity.*

Filed

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IN CHANCERY OF NEW JERSEY.

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 Between

ELY NAYLOR,

Petitioner,

and

GERTRUDE NAYLOR,

20

Defendant.

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In pursuance of an order of this Court made in the above entitled cause, bearing date the 27th day of August, 1929, whereby it was referred to me, the subscriber, one of the Special Masters to ascertain and report as to the truth of the allegations of the petition and my opinion thereon; and that I do return, together with my report and as part thereof, the deposition and other evidence as might be taken before me in

30 In pursuance of the said order.

I do respectfully report that I have been attended by Jacob S. Karkus, Esq., Solicitor for the petitioner, and have taken the depositions of witnesses produced before me, and have examined into the matter referred to me.

40 And I find and report that a certain form of marriage was performed between the petitioner and the defendant at Colts Neck in the County

*Special Master's Report.*

of Monmouth, State of New Jersey, on the 26th day of June, 1910 by the Reverend C. Van B. W. Erhardt, Pastor of the Reformed Church at said Colts Neck, as alleged in the petitioner's petition.

10

And I find and report that at the time of the said marriage and ever since the defendant was mentally incapable of consenting thereto, being then a lunatic, and of unsound mind, and bereft of sufficient reason to truly comprehend the nature of the marriage contract and deprived of the will to give intelligent consent thereto; and I find that the petitioner was ignorant of defendant's said incapacity, at the time of the said marriage and was not made cognizant thereof until afterwards, to wit: in or about the year 1918 when the irrational and incoherent actions of the defendant caused the petitioner to have the defendant undergo a medical examination as a result of which the defendant was declared insane and was confined in the State Hospital for the Insane at Trenton, N. J. Defendant has never been capable of ratifying the said marriage by reason of her insanity and incapacity, continuing ever since the said marriage, and said marriage has not been in any way ratified.

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And I find and report, regarding the residence of the petitioner, that it is proved to my satisfaction that the petitioner and defendant were bona fide residents of the State of New Jersey at the time of the commencement of this action, the petitioner residing at Marlboro in the County of Monmouth and the defendant being confined in the said Hospital at Trenton, N. J.

40

*Special Master's Report.*

And I find and report that there was born of the marriage one child, Bertha, a girl of about eleven years of age.

10 All of which will more fully appear by the depositions of the witnesses taken before me and annexed to this, my report, and returned herewith.

And I do further report, that I am of the opinion that all the material facts charged in the petition are true and that a decree of nullity should be made by reason of the defendant's mental incapacity to consent to the said marriage, pursuant to the prayer of the petition.

20 I do further recommend that the said child Bertha be committed to the care and custody of the petitioner.

Respectfully submitted this 31st day of Jan. 1930.

CHARLES C. HOMMANN.

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**Special Master's Report.***On Petition for Divorce.—Testimony.*

IN CHANCERY OF NEW JERSEY.

10

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 Between

ELY NAYLOR,

Petitioner,

and

GERTRUDE NAYLOR,

Defendant.

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ELY NAYLOR, the petitioner, being duly sworn according to law, upon his oath, deposes and says:

I am the petitioner in this case and Gertrude Naylor, the defendant is my wife. We were married on June 26th, 1910. We were married at Colts Neck near Freehold, New Jersey. I forget who the minister was that married us. Certificate offered from Bureau of Vital Statistics and marked in evidence, P-1. I knew my wife two years before I married her. She was from Englishtown. I was from Monmouth County. She was eighteen years old when I married her. I used to go out with her once or twice a month before we were married. My visits to her house would be for a couple of hours. We would go to the movies or go riding. She never had very much to say. She was very quiet. She never talked very much. When I would indulge in a

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*Testimony of Ely Naylor—For Petitioner.*

conversation with her she didn't want to talk  
 much. We were out riding and I asked her about  
 getting married. She said she didn't care. We  
 10 got married. None of the members of her fam-  
 ily or my family were present when we were  
 married. She did not have any trousseau pre-  
 pared. She didn't take any interest in the fact  
 that she was married. After the marriage cere-  
 mony was performed we went to live at my  
 fathers house at Marlborough, Monmouth Coun-  
 ty, N. J. She never acted as a wife should. She  
 would never get up mornings until ten or eleven  
 o'clock., and then most times she would eat her  
 20 breakfast and go back to bed. She was not very  
 neat about herself. She never kept her hair  
 combed and didn't care how she looked. She  
 never prepared meals. She never wanted to have  
 anybody to see her. If we had company she  
 would never act respectable. We lived for about  
 eight months at my fathers house. She would  
 stay upstairs by herself all morning and then  
 sometimes in the afternoon she would go to see  
 her mother, who lived about two miles away from  
 30 where we were living with my father and mother.  
 I worked on the farm. When I came home at  
 noon nothing would be ready for me and many  
 times I prepared it myself. She would be in bed.  
 After living at my fathers house for about eight  
 months I farmed a place near Englishtown. I  
 stayed with my wife in the same room at my  
 fathers house. She never used any endearing  
 terms toward me. She never seemed to realize  
 that she was married. She never seemed to have  
 40 any love for me. She never showed it. Some-  
 times she would go to see her mother once or

*Testimony of Ely Naylor—For Petitioner.*

twice a day. When I lived with my father she would go to see her mother once a day. After I farmed a place of our own she would have a dirty neck and dirty face and hands. She never kept herself very clean. When we went to live by ourselves her conduct didn't change. She never got my breakfast. She never would buy any clothes for herself. I often took her to town with me. We would go in a shoe store. She would pick out fourteen or more pair of shoes and try them on and then wouldn't want any of them. She wouldn't buy anything to wear until I insisted that she buy clothes. I bought her dresses. I would buy clothes for her because she would not buy them for herself. She never talked about the baby that was expected. She would never have any conversation with me about the child. When I would talk about it she would change the conversation. I was nineteen years old when I married my wife. She was the first girl that I ever had. The child was born in Marlborough, Monmouth County. My wife was confined at the house. The child was born on July 30th, 1917. It was a girl. My wife showed no regard for the child. My wife did not even regard giving the child a name. The lady that took care of her suggested a name, and that is the name we gave the child. I had a woman take care of the child. Her name was Mary Coons. She is dead and buried. She cared for the child for about two months. My wife would not look after the child. She would not wash or clothe her. My wife would not fix the milk. She never boiled the milk for the baby. She gave the

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*Testimony of Ely Naylor—For Petitioner.*

baby sour milk one night, and after I tasted it I had to throw it away. After the birth of the child, about three months after, I called two doctors in. Dr. Applegate and Dr. Reynolds of Freehold. As the result of the doctors consultation my wife was committed to the State Hospital at Trenton. She was there at the hospital for nine months. After nine months I went and brought her home. I brought her home for the child's sake. The first time that I knew that she was insane was when she was committed to the hospital at Trenton. I often visited her. There was no improvement in her condition. When I took her back with me we went to live at our place at Englishtown. Her actions were the same. No interest in the child, the home or me. There was nothing wrong beside her mental sickness. She never took any medicine. If anybody came to the house to see me she would take a pencil and paper and make believe she was writing something. She would then put the paper away in an album we had. On many occasions I went to the Album and tried to read the writing. I never could make any sense out of it. Before my wife was committed the second time to the State Hospital she had been home five or six years. During that time I never had anything to do with her. She never acted as a wife. Then she went to the hospital again. We were in Englishtown one day, and she went from house to house asking if she could board. I took her to the doctor. That was on May 24th, 1926, that she was committed to the

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*Testimony of Adele Mount—For Petitioner.*

hospital. When the doctor came to the house for her the second time she was found wandering in the meadow. In the swamps in back of the house. She was trying to hide. She would go to see her mother and then when she would come back she would talk of nothing but her brother and his sweetheart. I would try to talk to her about something different, and she would start over again and talk about her brother. After she was committed to the hospital after the child was born, my sister Caroline Claytown of Englishtown took care of the baby. I never could talk to my wife about our relationship. She acted as if she did not understand. I have been living in New Jersey all my life. She is still in the asylum. I didn't bring this action for annulment before because I thought she would get better and act different. The child resides with me. I keep her myself. My sister made all the clothes for the baby. My wife never made anything for the baby.

Q. By the Master.

Have any previous proceedings been had between you and your wife respecting this marriage, its dissolution or her maintenance as your wife?

A. No.

ADELE MOUNT, a witness produced on the part of the petitioner, being duly sworn according to law upon her oath deposes and says:

I am the sister of Ely Naylor, the petitioner in this case. I knew Gertrude Naylor, his wife. I am older than my brother. I am married and

*Testimony of Adele Mount—For Petitioner.*

I live at Trenton, New Jersey. Prior to Gertrude's marriage to my brother I knew her about two years. My brother brought her to my sisters house one day. That was the first  
10 time I met her. After I met her she didn't have anything to say. I thought that it was because she was young and bashful. She never mentioned anything to me about getting married. After that my brother married her. I came to my mother's house one day and they were living there with my mother and father. I would go to my mother's house about every other week. I would go down around noon and  
20 then I would back at night. During my visits I would see Gertrude. She never had anything much to say. Sometimes when I was there she would cry. I would try to comfort her and would ask her what she was crying about, but she could never tell me. I would ask her to come and see me for a week. She would sit and brood. I would ask her what she was thinking about. She never acted as if she was glad or sorry to see me or anybody. She was en-  
30 tirely indifferent. She never helped my mother get dinner. I thought because she was living there she should help, but I would help prepare the meal. She never made any effort to do anything. She was not very neat about herself. Sometimes her hair would hang down, and I would tell her to fix it. She would say that it is good enough. Then I would comb and fix it for her, and after awhile she would have it down again. She never kept her appearance neat.  
40 She never bought anything for herself. She never prepared any clothes for her baby. I made

*Testimony of Adele Mount—For Petitioner.*

her baby clothes for her. When the baby was about five months old I was visiting my mother and Gertrude had the baby in the basket one day without a stitch of clothes on. This was about the middle of September. I knew she had clothes for it, because I had made them for her. I would ask her for the clothes, and then I would dress the baby. During Gertrude's pregnancy I never spoke to her about it. She never showed any love for the baby. She wouldn't care if the flies were biting it. I often told her she should have a netting around the basket so the flies could not crawl on the baby. She would say that it was all right. I would tell her that I would help her clean the house. I would tell her we would clean the windows. She would say let Ely do it when he came home. One time I wanted to help her clean, she started to cry and made quite a fuss. I scrubbed the paint myself. She never spoke of her husband. She never gave him credit for anything. Shortly after they were married I was at my mother's house one day, and Gertrude was upstairs. She was standing on the ledge of the window, going to jump out, when my mother and myself hollered at her and told her to go down. She didn't jump but went back into the room and locked herself in. I would say that she was insane at the time of her marriage. I would often tell my mother that I didn't think the girl was right. I was not present at the marriage. I have known my brother all of his life. He has lived for the last five years in Englishtown. He was born and raised there.

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*Testimony of Dr. George Goff Reynolds—For  
Petitioner.*

DR. GEORGE GOFF REYNOLDS, a witness produced  
on the part of the petitioner, being duly sworn,  
10 according to law, upon his oath deposes and  
says that:

I reside at Freehold, New Jersey. I am a  
practicing physician at Freehold, N. J. I have  
been practicing for twenty one years. I gradu-  
ated in 1906 from the University of Buffalo.  
I have been practicing thirteen years last July.  
I am acquainted with Gertrude Naylor, wife of  
Ely Naylor. I have known Gertrude Naylor for  
20 about a period of ten years. I knew Mrs. Nay-  
lor's family. I knew her mother and brothers  
but I never knew her father. The first time I  
was called to see Mrs. Naylor was for the  
purpose of making an examination of lunacy for  
her commitment to the State Hospital for the  
Insane. She was at the State Hospital for some  
time, and after her return home I saw her at my  
office on different occasions. When I was first  
30 called to the home to see her she was suffering  
from insanity. Dr. Cotton classified it as  
Dementia Precox. I was called to the house, and  
I found Mrs. Naylor out in the swamp in back  
of the house. We had some difficulty in getting  
her into the house. From her actions and con-  
duct and her demeanor I can say that she could  
not at any time prior to her marriage been able  
to understand the nature of her marriage cere-  
mony. I would say that she had been suffering  
40 for some time. She has delusions. Her tonsils  
were removed and her teeth attended to, but

*Testimony of Doctor Applegate—For Petitioner.*

there was no improvement from it. She has depressive insanity. Depressed condition of the system. I remember prior to her marriage to Naylor that her mother came to my office with her on different occasions and complained of her acting peculiar. It was then that I concluded from my examination of Mrs. Naylor that she was not of a sound mind. The condition of insanity in the defendant was prior to her marriage. She was nineteen years of age when she married Naylor. Naylor brought her to my office on time when she was pregnant. She was reluctant to see me. She acted very strange. Different than a woman under those conditions should act. I concluded then too that she was not of sound mind. When her baby was born she couldn't take care of the child. Her condition will be progressive. It may apparently improve. From my knowledge of her mother and father and her surroundings and from my contact with them, and from my visit to her home and from observations I made of her she didn't take any interest in the child before and after its birth. It seems that at the time of the marriage she did not understand its nature and did not know the full import of marriage. In her condition she was unable to understand the nature of the contract which she was entering into.

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DOCTOR APPELEGATE, a witness produced on the part of the petitioner, being duly sworn according to law upon his oath deposes and says:

*Testimony of Doctor Applegate—For Petitioner.*

I am a practicing physician since 1869. I graduated from the University of Pennsylvania. I have offices in Englishtown, N. J. Monmouth County. I am acquainted with both parties.

10 Gertrude Naylor and Ely Naylor. I knew Gertrude Naylor a life time. I visited her home once in two or three months. I was one of the physicians that signed her certificate of commitment to the insane institution. Dr. Reynolds of Freehold, N. J., signed the commitment too. They lived about two miles from my place. The husband and wife lived near me. Mrs. Naylor, before she married, lived with her mother, about

20 two miles away. About two years ago she was received in the insane institution. From my knowledge of Mrs. Naylor, the defendant in this case, and her family, I can intelligently state to you that her mental condition was the same before her marriage as it was after her marriage, and as at the time of her commitment. I knew the mother of the defendant. I knew Mrs. Scoby, the mother of the defendant, a long time. When I called at the Scoby house I saw

30 Gertrude Naylor in the house on different occasions. Mrs. Scoby, the mother of the defendant, Gertrude Naylor had peculiarities. There was a lacking of mentality I can't express. I knew the father. Mentally he was alright, but he was a drunkard. Taking into consideration Mrs. Naylor's present condition in her incarceration in the hospital for the insane her general conduct and her demeanor I can say as

40 a medical expert that the defendant could not at any time have been able to understand the nature of the marriage ceremony, its obligations and duties. Her condition has grown worse.

*Testimony of Dr. William Ramsey—For  
Petitioner.*

DR. WILLIAM RAMSEY, a witness produced on the part of the petitioner, being duly sworn according to law, upon his oath deposes and says: 10

I am a practicing physician in the State of New Jersey and have been for the last twenty-two years. I am a graduate of Columbia University of New York. I am connected with the Perth Amboy City Hospital and three Industrial hospitals in the City of Perth Amboy. I was connected with the Nervous Disease Department of Manhattan Eye and Ear Hospital. I was the physician in charge of the Baltimore City Insane Hospital under control of John Hopkins University. From the testimony I have heard, Mrs. Naylor is mentally defective and has been for a number of years. During and previous to her marriage Mrs. Naylor could not have judged the seriousness of the new life she was entering into. 20

Q. By Jacob Karkus, Attorney for petitioner.

Dr. Ramsey, in the case of a woman at the age of this defendant, with the medical history of herself and of the other members of her family as testified to by the witnesses, taking into consideration the fact of her incarceration in the Insane Asylum, her general conduct and demeanor as brought out by evidence, can you give an opinion as a medical expert as to whether the defendant could at any time since her first manifestation of insanity have recovered to a sufficient degree to be able to understand and comprehend the nature of the marriage 30 40

*Affidavit of Doris Schroeder.*

ceremony, the purpose of marriage, and the obligations and duties incident to the marriage relation.

10 A. No, I think not.

**Affidavit of Doris Schroeder.**

IN CHANCERY OF NEW JERSEY.

*On Petition for Divorce.—Testimony.*


---

Between

ELY NAYLOR,

Petitioner,

20

and

GERTRUDE NAYLOR,

Defendant.

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State of New Jersey,  
County of Middlesex,—ss.:

30 DORIS SCHROEDER, being duly sworn according to law upon her oath deposes and says, that she was the stenographer employed by the Master in the above-entitled cause to take down the testimony of the petitioner and his witnesses on the hearing before the special master by the order of reference heretofore made by the Chancellor, and that she did faithfully and truly take stenographically and reproduce in typewriting the testimony given to the best of her skill and ability.

DORIS SCHROEDER.

40 Sworn and subscribed to before  
me this third day of September, 1929.

PETER CLAUSEN,  
Notary Public of N. J.

**Certificate as to Testimony.***On Petition for Divorce.*

IN CHANCERY OF NEW JERSEY.

10

---

 Between

ELY NAYLOR,

Petitioner,

and

GERTRUDE NAYLOR,

Defendant.

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I, CHARLES C. HOMMANN, one of the special masters of the Court of Chancery of New Jersey, do hereby certify that the testimony in the above stated cause was taken by Doris Shroeder a stenographer selected by me, who was first sworn by me faithfully and truly to take stenographically and to produce in manuscript or type-writing the testimony given; that the depositions were taken in my immediate presence and hearing by said stenographer, so sworn, and I believe that they accurately state the evidence given.

30

CHARLES C. HOMMANN,  
Special Master.

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**Memo.**

Filed—September 16, 1930.

## IN CHANCERY OF NEW JERSEY.

10

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 Between

ELY NAYLOR,

Petitioner,

and

GERTRUDE NAYLOR,

Defendant.
 

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20 Petition filed in this cause seeks decree of Nullity for the reason of defendant's mental incapacity to consent to marriage.

The testimony of the petitioner is that the marriage ceremony was performed June 26th, 1910 at Colts Neck, near Freehold, New Jersey; that he knew his wife two years before he married her and that she was eighteen years of age when she was married.

30 The petitioner further testifies "I used to go out" with her once or twice a month before we were married. My visits "to her house would be for a couple of hours. We would go to the "movies or go riding. She never had very much to say. She was "very quiet. She never talked much. When I would indulge in a "conversation with her she didn't want to talk very much. We were "out riding and I asked her about getting married. She said she "didn't care. We got married. None of the members of her "family or my family were present when we

40 were married. She did "not have any trousseau prepared. She didn't take any interest "in

*Memo.*

the fact that she was married. After the marriage ceremony "was performed we went to live at my fathers house at Marlborough, "Monmouth County, New Jersey. She never acted as a wife should," "etc.,"

10

Petitioner with full knowledge of what he now describes as mental weakness entered into marriage with the defendant, went to live with her, and consummated the marriage, a child born. The mental condition of defendant according to the depositions became more and more pronounced until it was necessary to detain her in an asylum, and petitioner attempts now to develop a cause of action based upon defendant's mental incapacity to contract a marriage, and introduce expert testimony to aid him in his efforts to terminate his marriage.

20

It is quite apparent that no fraud was used to induce petitioner to marry defendant, and it is likewise quite apparent that petitioner was well aware of the mental weakness of defendant prior to the performance of the marriage ceremony as he comments upon defendant's general conduct and actions previous to the marriage, and also immediately subsequent thereto, the knowledge that he had, at least testifies he had, places him in a position that he is not entitled to the relief he seeks.

30

A decree of dismissal will be advised.

WM. B. KNIGHT,  
Advisory Master.

Dated Aug. 28, 1930.

40

**Notice of Appeal.***On Petition for Divorce.*

Filed—December 29, 1930.

10

IN CHANCERY OF NEW JERSEY.

---

 Between

ELY NAYLOR,

Petitioner-Appellant,

and

20

GERTRUDE NAYLOR,

Defendant-Respondent.

The petitioner hereby appeals from a decree of dismissal, which was entered in this Court in the above entitled cause on the sixteenth day of September, 1930, which adjudges and decrees that the petitioner be denied a decree of nullity

30 for the reason of defendant's mental incapacity to consent to marriage.

JACOB S. KARKUS,  
Solicitor for and of Counsel  
with petitioner-appellant

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

40

JACOB S. KARKUS,  
Solicitor for and counsel  
with petitioner-appellant.

**Amended Notice of Appeal.***On Petition for Nullity.*

Filed—January 20, 1931.

IN CHANCERY OF NEW JERSEY.

10

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 Between

ELY NAYLOR,

Petitioner-Appellant,

and

GERTRUDE NAYLOR,

Defendant-Respondent.

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The petitioner hereby appeals from a decree of dismissal in the above entitled cause, made by the Chancellor with the advise of William B. Knight, Advisory Master, on the 16th day of September, 1930, which adjudges and decrees that the petitioner be denied a decree of nullity for the reason of defendant's mental incapacity to consent to marriage.

30

JACOB S. KARKUS,  
Solicitor for and of counsel  
with petitioner-appellant.

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

JACOB S. KARKUS,  
Solicitor for and of counsel  
with petitioner-appellant.

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**Petition of Appeal.**

*On Petition for Nullity.  
On Appeal from Chancery.*

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Filed—January 14, 1931.

NEW JERSEY COURT  
OF ERRORS AND APPEALS.

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Between

ELY NAYLOR,

Petitioner-Appellant,

20

and

GERTRUDE NAYLOR,

Defendant-Respondent.

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To the Honorable, THE COURT OF ERRORS AND APPEALS, in the last resort in all causes:

30 The petition of Ely Naylor, appellant, shows that:

1. Your petitioner finds himself aggrieved by a decree of dismissal made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the 16th day of September, 1930, in that said decree recites and adjudges that your petitioner has not sustained the allegations of his petition, and is not entitled to the relief prayed; and decreed that  
40 petitioner's said petition be dismissed.

*Petition of Appeal.*

2. Your petitioner appeals from the said decree and from every part thereof on the ground that the same is erroneous, and that the Chancellor should have found and adjudged that the several allegations of petitioner's petition had been proved, and that the respondent was mentally incapable of contracting marriage, and should have ordered, adjudged and decreed that the marriage between the petitioner and the respondent be annulled, and that petitioner should have the other relief prayed for in and by said petition. 10

Your petitioner therefore prays that said decree may be reversed, rescinded and for nothing holden, and that he may have such further relief as shall be just. 20

JACOB S. KARKUS,  
Solicitor of petitioner.

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**NEW JERSEY COURT OF ERRORS  
AND APPEALS**

*On Petition for Nullity.—On Appeal  
From Chancery.*

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Between

ELY NAYLOR,

Petitioner-Appellant,

and

GERTRUDE NAYLOR,

Defendant—Respondent.

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**BRIEF FOR PETITIONER.**

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**Facts.**

This is a proceeding for a decree of nullity of marriage on the ground of the incapacity of the defendant to consent. The petitioner and the defendant were married on June 26, 1910. A child, now eleven years old, was born of the marriage.

The defendant has been incarcerated in the State Hospital for the Insane at Trenton, N. J., since 1918.

Petitioner contends that the defendant was not, at the time of the marriage or at any time since, capable of comprehending the nature of the marriage contract, and that petitioner was ignorant of this fact at the time of the marriage ceremony.

The special master recommended a decree in favor of the petitioner. The advisory master advised a decree of dismissal. Petitioner now appeals to this court for a reversal of the decree of dismissal.

### **Argument.**

#### **POINT ONE.**

**The testimony establishes all the elements required by the Statute for a Degree of Nullity.**

Chapter 65 of the Laws of 1928 is as follows:

“Causes for decrees of nullity. Decrees of nullity of marriage may be rendered in cases when: \* \* \* \* Incapacity to consent. The parties or either of them was, at the time of the marriage, incapable of consenting thereto and the marriage has not been subsequently ratified; provided, that where the party capable of consent is the applicant such party shall have been ignorant of the other’s incapacity at the time of the marriage, and shall not have confirmed the marriage subsequently to the other party regaining capacity.”

The testimony abounds in proof of the inferior mentality of the defendant's family, of her own great mental inferiority, for a long time previous to her marriage to the petitioner and subsequent thereto until the point of development into the acute condition which made her incarceration in an insane asylum imperative. The testimony of the petitioner and his sister, as to the eccentricities and peculiar conduct of the defendant, (State of Case, pages 9, 10, 11, 12, 13, 14 and 15) just before and just after the marriage, in themselves, admittedly would have minor weight in proving the defendant's mental incapacity to enter into the marriage relation at that time, were it not for the great illumination cast upon the situation by the after developments; but these after developments superimposed upon the foundation of the symptoms which the defendant showed before her marriage are, it is contended, ample and sufficient, from which the three medical experts could fairly and constructively determine the degree of mental capacity or incapacity of the defendant from the beginning of her known medical history until the present time.

State of Case, page 18, Testimony of Dr. Applegate:

“From my knowledge of Mrs. Naylor, the defendant in this case, and her family, I can intelligently state to you that her mental condition was the same before her marriage as it was after her marriage and at the time of her commitment.”

“Taking into consideration Mrs. Naylor's present condition, and her incarceration in the hospital for the insane, her

general conduct and her demeanor, I can say, as a medical expert, that the defendant could not, at any time, have been able to understand the nature of the marriage ceremony, its obligations and duties. Her condition has grown worse.”

State of Case, page 19, Testimony of Dr. Ramsay:

“From the testimony I have heard, Mrs. Naylor is mentally defective and has been for a number of years. During and previous to her marriage, Mrs. Naylor could not have judged the seriousness of the new life she was entering into.”

State of Case, page 12, testimony of Dr. Reynolds:

“I knew Mrs. Naylor's family.” Page 13, S. C. From my knowledge of her mother and father and her surroundings and from my contact with them, and from my visits to her home and from observations I made of her she didn't take any interest in the child before and after its birth. It seems that at the time of the marriage she did not understand its nature and did not know the full import of marriage. In her condition she was unable to understand the nature of the contract which she was entering into.”

The statute requires the following elements:  
(1) That the parties or either of them was at the time of the marriage incapable of consenting

thereto; (2) that the marriage has not been subsequently ratified. From the testimony above considered, it is clear that the defendant was not, at the time of the marriage, capable of consenting thereto, and since, at no time after the marriage, it was possible for her, according to the opinions of the physicians, to have had a lucid interval, she could clearly never, therefore, have ratified the contract. For, if the defendant never had, in the legal conception, a competent mind, her mind and her petitioner's could never have met in agreement and consequently there could never have been either a contract of marriage or a ratification thereof.

*Kern vs. Kern*, 51 N. J. Equity, at page 574:

“Every valid contract requires the concurrence of two or more persons, each of sufficient mental capacity to give an intelligent consent thereto. This requisite applies as well to matrimonial, as to commercial and property contracts.”

*Buffum vs. Buffum*, 86 N. J. Equity, at page 119:

“In a suit to annul a marriage under the Divorce Act of 1907 (P. L. 1907 p. 474, section 1 subsection 4), authorizing annulment when either of the parties was, at the time of marriage, incapable of consenting and the marriage has not subsequently been ratified, evidence that defendant was of unsound mind at the time of marriage held sufficient to warrant the annulment.”

But there is a proviso to the statute and this proviso denies the right to a decree of nullity if the elements contained therein exist. There are two exceptions: (1) When the party capable of consent is the applicant, such party shall have been ignorant of the other's incapacity at the time of the marriage; (2) that he shall not have confirmed the marriage subsequently to the other's regaining capacity.

The advisory master, in his memorandum, in this case, stresses the fact that the petitioner had knowledge, was aware of the mental weakness of the defendant prior to the performance of the marriage ceremony, and that this knowledge places him in such a position that he is not entitled to the relief he seeks. Counsel for petitioner respectfully submit that the construction of the learned advisory master is not necessitated by the facts as brought out in the testimony. The things which the petitioner testified to as having been within his knowledge before the marriage ceremony and until the time when it became necessary to take steps to incarcerate the defendant in an asylum for the insane (State of Case, page 22—Memorandum of advisory master) were not sufficient in themselves to imply mental incapacity sufficient to warrant a decree of nullity. It was only when the condition of the defendant developed to the acute stage that the petitioner had sufficient information for him to realize the true state of the defendant's mentality. Suppose that this petitioner came before the court asking for a decree of nullity of marriage on the evidence which he had before the marriage ceremony and immediately thereafter, without the weight of

the knowledge of the subsequent violence of the defendant and without the weight of the expert medical testimony, would this court, upon such evidence, affirm a decree for nullity of marriage? As was said by the court in *Crosby v. Wells*, 73 N. J. Law, at page 807:

“Knowledge is the receiving of a mental impression, the state of being aware.”

A reconstruction, from the testimony, of the reasonably probable mental impressions of the petitioner during those early years will be helpful in arriving at the degree of his knowledge. What must have been his mental impression in all probability? That the woman he was courting was reticent, perhaps bashful; that she did not show a keen anxiety to be married; that after the marriage she was careless of her household duties and indifferent to his affections and her duties as a wife. These early links in the chain of circumstances create a mental impression of a woman of small intellect and cold emotions and general indifference to social refinements, but they can, by no stretch of the imagination, *when standing alone and by themselves*, create a picture of insanity. It is only when the *additional* facts of the *subsequent* developments are brought into the picture that this early information of the petitioner assumes the proportions of knowledge. These bits of information alone were insufficient to make the petitioner *aware* of the real mental condition of the defendant.

As was said in *Van Raalte v. Harrington*, 101 Mo. 611; 49 L. R. A., at page 333:

“It is one thing to say knowledge may be inferred from facts and circumstances, sufficient to put a person upon inquiry\* \* \* \* it is a different thing to say such circumstances, are, as a matter of law, knowledge.”

From the above it is respectfully submitted that the petitioner was ignorant of defendant's incapacity at the time of the marriage.

As to the second exception in the proviso contained in the statute, obviously the petitioner could not have confirmed the marriage subsequent to the defendant's regaining capacity since the testimony shows that the defendant never did regain capacity at any time.

The learned advisory master in his memorandum (State of Case, page 22) says:

“It is quite apparent that no fraud was used to induce petitioner to marry defendant \* \* \* \*”

It is respectfully submitted that the question of fraud at the time of the marriage is quite immaterial.

As Chancellor Walker said in *Daniels vs. Margolies*, 95 N. J. Equity, at page 11:

“Besides, insanity cannot be said to be fraud. It is want of capacity \* \* \* \* capacity to consent, in the absence of which the law declares the marriage to be invalid.”

Counsel respectfully submit that the evidence does not warrant the conclusion of the advisory master (State of Case, page 22):

“that petitioner was well aware of the mental weakness of defendant prior to the performance of the marriage ceremony.”

As has been argued above, the petitioner's perceptions at that time were insufficient to make him *aware* of the mental infirmity of the defendant.

### POINT TWO.

**The consummation of the marriage and the birth of issue does not abrogate the right of the Petitioner to a Decree of Nullity.**

*Daniels vs. Margolies*, 95 N. J. Equity, 9:

“1. At the time of their marriage the defendant was a lunatic and of unsound mind, and incapable of consenting thereto; the petitioner was ignorant of such incapacity and was not made cognizant thereof until afterwards and did not ratify the marriage after such discovery. \* \* \* Held, that petitioner was entitled to a decree annulling the marriage, notwithstanding consummation and the birth of issue.

2. Such issue is legitimate under Comp. Stat. p. 2021, Sec. 1, subdiv. 6.”

In *Davis vs. Davis*, 90 N. J. Equity, 158, the court said:

“Vice-Chancellor Lane in *Davis v. Davis*, supra, where the husband was afflicted with a contagious disease which he concealed from his wife during the six months they lived together (until discovery by the wife of the existence of the disease), notwithstanding that there was consummation of the marriage and a child born, granted annulment.”

Under the decisions therefore, the fact that there was a consummation of the marriage and issue born, is no bar, of itself, to a decree of nullity of marriage nor does it affect the legitimacy of the issue.

### **Conclusion.**

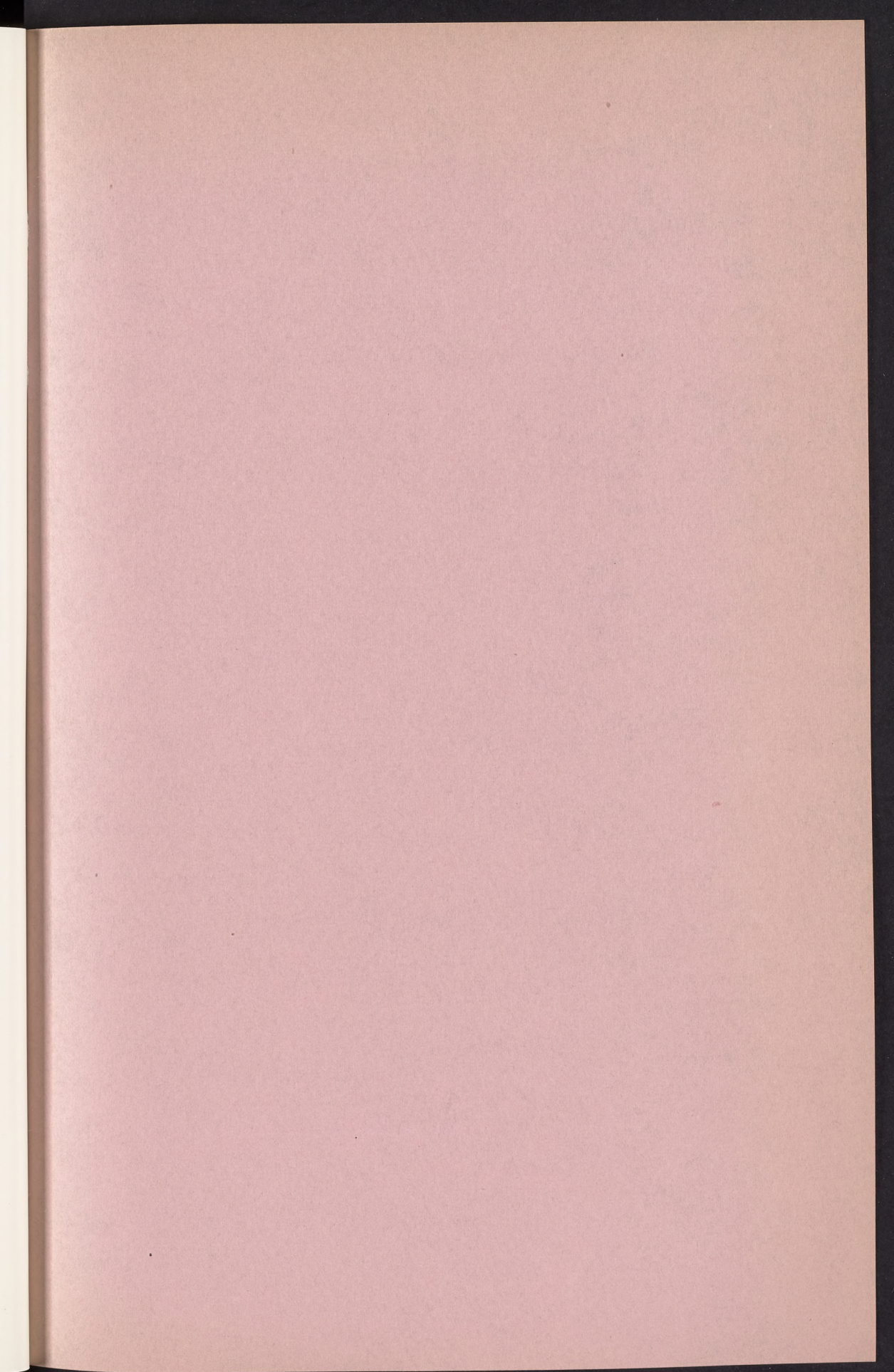
It is, therefore, respectfully contended that the defendant was before the marriage and ever since mentally incapable of understanding the nature of a marriage contract; that the petitioner was not aware of that condition at the time of the marriage; that the marriage has not been subsequently ratified.

For these reasons, it is respectfully submitted that the decree of dismissal should be reversed, and a decree of nullity granted.

Respectfully submitted,

JACOB S. KARKUS,  
Solicitor for Petitioner.

*AND OF COUNSEL WITH PETITIONER*



"Vice-Chancelier Laroche in *Theris v. Dacie*, supra, where the husband was afflicted with a contagious disease which he contracted from his wife during the six months they lived together (until discovery by the wife of the existence of the disease), not, notwithstanding that there was consummation of the marriage and a child born, granted annulment."

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Jacob S. Kourus,  
Solicitor for Petitioner.  
*App. of Counsel with Petitioner.*