INDEX

	Page
Bill of Complaint	1
Affidavit of Lillian E. Pfender	5
Answer	8
Petition for Divorce	16
Answer and Counter-claim	22
Answering Affidavit of Carl D. Pfender	32
Affidavit of Ida B. Conklin	38
Affidavit of George P. Dougherty	40
Order Denying Alimony	43
Answer to Counter-claim	45
Order Consolidating Actions	47
Decree Nisi	48
Conclusions of Vice-Chancellor	51
Order for Counsel Fee	55
Notice of Appeal	56
Petition of Appeal	57

TESTIMONY.

For Petitioner.

Carl D. Pfender,		
	direct examination	60, 75
	cross "	83
	re-direct "	106
	re-cross "	107
George Henckel,		
	direct examination	69
	cross "	74
William McKenney,		
	direct examination	108
	cross "	110
	re-direct "	113
Dr. George Pryor Dougherty,		
	direct examination	113
	cross "	126
	re-direct "	130
	re-cross "	131

PAGE

Mrs. Ida Conklin,
direct examination 132
cross " 138

For Defendant.

David Berner,
direct examination 145
Dr. Christopher Beling,
direct examination 147
cross " 151
re-direct " 152
Harold Simandl,
direct examination 154
cross " 156
Dr. Harold J. Harris,
direct examination 157
cross " 160
re-direct " 161
James Ross,
direct examination 162
cross " 164
James Ross (for Petitioner),
direct examination 165
cross " 166
Dr. Walter S. Washington,
direct examination 167
cross " 169
re-direct " 170
re-cross " 171
Rev. E. S. Carson,
direct examination 172
cross " 173
Frances E. Price,
direct examination 174
cross " 177
Levi W. Halsey,
direct examination 177
cross " 178

PAGE

Lillian E. Pfender,
direct examination 179
cross " 222
re-direct " 233
re-cross " 234

Petitioner's Rebuttal.

Raphael De Santis,
direct examination 234
cross " 237
Helen Pfender,
direct examination 241
cross " 242
William E. Reeves,
direct examination 244
Carl D. Pfender,
direct examination 246
cross " 246

EXHIBITS.

		Off'd	P't'd
D. 1.	Photograph	85	
D. 2	for Identification. Letter—May ——	94	251
D. 2.	Envelope and Letter—June 29, 1926	202	254
D. 3.	Envelope and Letter—June 28, 1926 .....96, 203		256
D. 4.	Envelope and Letter—July 15, 1926 .....96, 203		257
D. 5.	Envelope and Letter—June 30, 1926 .....96, 203		258
D. 6.	Envelope and Letter—July 6, 1926 .....96, 203		259
D. 7.	Envelope and Letter—July 7, 1926 .....96, 203		260
D. 8.	Envelope and Letter—July 12, 1926 .....96, 203		261

		Off'd	P't'd
D. 9.	Envelope and Letter—July 12, 1926	96, 203	262
D. 10.	Envelope and Letter—July 13, 1926	96, 203	263
D. 11.	Envelope and Letter—July 26, 1926	96, 203	264
D. 12.	Envelope and Letter—July 19, 1926	96, 203	266
D. 13.	Envelope and Letter—July 20, 1926	96, 203	268
D. 14.	Envelope and Letter—July 21, 1926	96, 203	269
D. 15.	Envelope and Letter—July 22, 1926	96, 203	270
D. 17.	Envelope and Letter—July 28, 1926	96, 203	271
D. 18.	Envelope and Letter—August 2, 1926	96, 203	272
D. 19.	Envelope and Letter—August 3, 1926	96, 203	274
D. 20.	Letter—Dr. Hawkes to Dr. Hauser	97	276
D. 21.	Letter—Dr. Holland to Mrs. C. D. Pfender	97	276
C. 42.	Envelope and Letter—Mrs. Conklin to Mrs. Pfender		277
D. 36.	Check for Two Thousand Dollars	104, 202	281
D. 27.	Letter, August 4, 1926	202	
D. 41.			281

INDEX ON RE-HEARING

	Page
Order to Show Cause	282
Petition and Affidavits	284-299
Petition of Lillian E. Pfender	284
Affidavit of Lillian E. Pfender	286
Affidavit of Robert J. Foster	290
Affidavit of Michael J. Harley	295
Affidavit of Josephine Sullivan	297
Affidavit of Josephine A. Foster	298

TESTIMONY.

Witnesses for Defendant, Lillian E. Pfender.

James Christy,		
	direct examination	301
	cross "	306
	further direct "	307
	cross "	317
	(recalled) direct "	387
	cross "	388
Jules Sindaz,		
	direct examination	322
	cross "	323
John McPartland,		
	direct examination	324
	cross "	332
	further direct "	343
	(recalled) further direct examination	595
	cross "	596
Robert J. Foster,		
	direct examination	343
	cross "	354
	further direct "	372
	(recalled) direct "	388
	further direct "	565
	cross "	568

New Jersey State Library

PAGE

Michael Hurley,
direct examination 374
cross " 378
further direct " 383
further cross " 384
Mrs. Lillian E. Pfender,
direct examination 384
(recalled) direct " 597
cross " 598
Josephine A. Foster,
direct examination 389
cross " 391

Witnesses for Petitioner, Carl D. Pfender.

Rev. George P. Dougherty,
direct examination 392
cross " 393
further direct " 399
Carl D. Pfender,
direct examination 399
cross " 416
re-direct " 478
further cross " 479
Mrs. Minnie Hass,
direct examination 480
cross " 482
Charles A. Hull,
direct examination 494
cross " 499
re-direct " 526
Miss Leona F. Hass,
direct examination 527
cross " 533
further direct " 564
Norbert A. McKenna,
direct examination 573
cross " 576

	Page
Conclusions of Vice-Chancellor	601
Order and Final Decree	619
Notice of Appeal	623
Petition of Appeal	625
Answer to Petition of Appeal	628

Exhibits On Re-Hearing.

		Off'd	P't'd
D. 1.	Moving pictures	323	
D. 1.	Motion pictures	326	follow page 647
D. 2.	Photograph	329	
D. 3.	Photograph	329	
D. 4.	Sketch	354	
D. 5.	Sketch (Tuxedo)	354	
D. 4.	Yellow Diagram	372	
D. 6.	Photograph	373	follow page 647
D. 6.	Floor Plan	378	
D. 7.	Original Application of Carl D. Pfender for Automobile License 1927-1928	392	632
D. 8.	Renewal Application of Carl D. Pfender for Automobile License 1928-1929	392	640
D. 8.	Renewal Application of Leona F. Hass for Automobile License 1928-1929	392	636
D. 9.	Original Application of Leona F. Hass for Automobile License 1927-1928	392	643

		Off'd	P't'd
P. 1.	Photograph	413	follow page 647
P. 2.	Photograph	414	
P. 3.	Photograph	414	
P. 4.	Photograph	415	
P. 10.	Time Table	480	
D. 4.	Photograph	567	
D. 5.	Photograph	568	
P. 14.	Sketch	575	
D. 8.	Photograph	584	
D. 1.	December 11, 1928 Affidavit of John C. Reuter	594	630

BILL OF COMPLAINT.

Filed December 13, 1926.

In Chancery of New Jersey

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

The complainant, Lillian E. Pfender, of Glen Ridge, Essex County, New Jersey, respectfully shows that:

1. On May 15, 1902, she was lawfully married to her present husband, Carl Depew Pfender, at Grace Episcopal Church, in the City of Plainfield, Union County, New Jersey, by the Rev. Dr. E. M. Rodman, a minister of the Gospel.

2. After her said marriage complainant and defendant, her said husband, went to reside at Montclair, Essex County, New Jersey, and subsequently went to reside at 364 Ridgewood avenue, Glen Ridge, Essex County, New Jersey, where they have resided for about seven years. Complainant and defendant have cohabited together from the time of said marriage and during the past seven years, until the abandonment by the defendant of the complainant, as hereinafter set forth, at 364 Ridgewood avenue, Glen Ridge, New Jersey.

3. No children have been born to complainant and her said husband as the fruit of said marriage.

4. From the time of her marriage complainant has never received any money for her own personal use, until about the year 1923, when defendant gave her $10.00 per month to spend for

herself. Defendant, however, paid for what clothes he permitted complainant to buy, all of which purchases were subject to his approval, from time to time, he stating to the complainant that she did not need any money. In May, 1926, defendant promised to pay complainant $100.00 per month if complainant would go to Lake Champlain and there superintend the construction of a summer home which defendant was building, and complainant did go to Lake Champlain and did receive $100.00 per month during the months of May, June and July, 1926, when complainant returned to Glen Ridge.

5. On October 1, 1926, defendant, without any justifiable cause, abandoned complainant and separated himself from her and refused and neglected, and still refuses and neglects to maintain and provide for her.

6. Complainant is now dependent entirely upon her husband for support. She has no money and she is unable to work.

7. Defendant is possesed of a large amount of real and personal property. He is the owner of the house at 364 Ridgewood avenue, Glen Ridge, N. J., in which complainant is living at the present time, worth over $100,000; he is the owner of property at Westport, Lake Champlain, N. Y., which, up to this time, complainant is informed and believes, and therefore charges, has cost $50,000 and is yet unfinished; he is the owner of a one-third interest of the estate of his mother, the late Eliza Depew Pfender, his undivided share amounting, as complainant is informed and believes, and therefore charges, to more than $35,000; he is a partner, and has a one-third interest in the partnership conduct-

ing business under the firm name and style of H. P. McKinney & Co., at 80 Fifth avenue, New York, N. Y., and complainant is informed and believes, and therefore charges, that the business conducted by the said partnership is that of a wholesale woolen commission merchants, and that the income of the defendant from the said business is not less than $150,000 per year, and is more than the said amount, and complainant is informed and believes, and therefore charges, is upwards of $300,000 per year.

Up to the time of his desertion of complainant, defendant employed three servants in the house at Glen Ridge, at a cost of not less than $400 per month, a laundress at a cost of not less than $50.00 per month; a gardener at a cost of $150 per month, and a cook and butler at a total of $200 per month; that he owns and maintains two Cadillac automobiles and a horse for his own use, and complainant is informed and believes, and therefore charges, that defendant has paid in the maintenance of his home and servants, as hereinabove set forth, between $55,000 and $100,000 each year. Complainant is not able to state exactly the amount of defendant's income, but says that he is amply able to earn $300,000 per year by his personal attention to his business, and is abundantly able to maintain and support her in a manner suitable to their position.

Complainant is without adequate remedy at law and therefore prays:

1. That Carl Depew Pfender, who is the defendant in this suit, may answer this bill of complaint, and each statement therein made.

2. That the defendant may be ordered and decreed to provide such suitable support and maintenance to be paid and provided by him, or made out of his property, for complainant, and for such times as the nature of the case and the circumstances of the parties render suitable and proper.

3. That said defendant may be compelled to give reasonable security for such maintenance and allowance, and to pay the same from time to time, under the compulsory orders of this court, as provided by the statute.

4. In case the defendant cannot be found in this State to be served with process, that his estate, property and effects in this State may be sequestered to compel his appearance and performance of any decree as shall seem fit to your Honor.

5. That defendant may be required to pay complainant a proper amount for counsel fees, and that she may have such further equity as to your Honor shall seem meet.

6. That a writ of subpoena may issue commanding the said defendant to answer this bill of complaint and to abide by such decree as this court may make in the premises.

MERRITT LANE,
Solicitor for and of Counsel with
Complainant.

Bill of Complaint—Affidavit of Lillian E. Pfender.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

LILLIAN E. PFENDER, of full age, being duly sworn according to law, on her oath deposes and says:

I have read the foregoing bill of complaint and know the contents thereof, and the same is true to my knowledge except as to the matters that are therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

I further say that:

On May 15, 1902, I was lawfully married to my present husband, Carl Depew Pfender, at Grace Episcopal Church in the City of Plainfield, Union County, New Jersey, by the Rev. Dr. E. M. Rodman, a minister of the Gospel.

After the said marriage my husband and I went to reside at Montclair, Essex County, New Jersey, and subsequently went to reside at 364 Ridgewood avenue, Glen Ridge, Essex County, New Jersey, where we have resided for about 7 years, and have cohabited together, from the time of said marriage and during the past 7 years, until the abandonment of me by my said husband as hereinafter set forth.

No children have been born to me and my said husband as the fruit of said marriage.

From the time of my marriage I have never received any money for my own personal use, until about the year 1923, when my husband, the defendant, gave me $10.00 per month to spend for myself. My husband, however, paid for what clothes he permitted me to buy, all of which purchases were always subject to his approval, he stating that I did not need any money. In May, 1926, my husband promised to pay me

$100 per month if I would go to Lake Champlain and there superintend the construction of a summer home which he is building. I went to Lake Champlain and did receive $100 per month during the months of May, June and July, 1926, when I returned to Glen Ridge.

On October 1st, 1926, my husband, without any justifiable cause, abandoned me and separated himself from me and refused and neglected, and still refuses and neglects to maintain and provide for me.

I am now dependent entirely upon my husband for support. I have no money and I am unable to work.

My husband is possessed of a large amount of real and personal property. He is the owner of a house at 364 Ridgewood avenue, Glen Ridge, New Jersey, in which I am living at present, worth over $100,000; he is the owner of property at Westport, Lake Champlain, N. Y., which up to this time, I am informed and believe, and therefore charge, has cost $50,000 and is not yet finished; he is the owner of a one-third interest in the estate of his mother, the late Eliza Depew Pfender, his undivided share amounting, as I am informed and believe, and therefore charge, to more than $35,000; he has a one-third interest in a partnership, conducting business under the firm name and style of H. P. McKinney & Co., at 80 Fifth avenue, N. Y., and I am informed and believe, and therefore charge, that the business conducted by the said partnership is that of wholesale woolen commission merchants, and that the income of my husband, from the said business is not less than $150,000 per year, and is more than said amount, and I

am informed and believe, and therefore charge, it is upwards of $300,000 per year.

Up to the time of his desertion of me, my husband employed three servants in the house at Glen Ridge, at a cost of not less than $400 per month, a laundress at a cost of not less than $50 per month, a gardener at a cost of $150 per month, and a cook and butler at a total of $200 per month; he owns and maintains two Cadillac automobiles and a horse for his own use, and I am informed and believe, and therefore charge, that my husband has paid, in the maintenance of the home and servants, as hereinabove set forth, upwards of $55,000 and $100,000 each year. I am not able to state exactly the amount of my husband's income, but I know that he is amply able to earn $300,000 per year by his personal attention to his business, and is abundantly able to maintain and support me in a manner suitable to our position.

The charges which I have made against my husband in the bill of complaint filed in this case are true and I have made said charges and filed said bill in truth and good faith and without collusion.

LILLIAN E. PFENDER.

Subscribed and sworn to before
me this 13th day of December,
1926.

ELIZABETH COONS,
Notary Public of New Jersey.

ANSWER

Filed July 15, 1927.

IN CHANCERY OF NEW JERSEY.

Between	
LILLIAN E. PFENDER, *Complainant,*	*On Bill, &c.*
and	*Answer.*
CARL DEPEW PFENDER, *Defendant.*	

The defendant, answering the bill of complaint, says that:

1. He admits the allegations contained in paragraph one of the bill of complaint.

2. He admits the allegations contained in paragraph two of the bill of complaint.

3. He admits the allegations contained in paragraph three of the bill of complaint.

4. He denies the allegations contained in paragraph four of the bill of complaint, and further states that he has at all times provided amply for the complainant according to his means, and has provided her with a most comfortable home. Defendant says that he had the title to both the Glen Ridge house and the Lake Champlain house placed in the names of both the complainant and defendant, as tenants by the entirety, and that he has permitted the complainant to pledge his credit at stores and purchase everything that she reasonably required. Defendant states that it is untrue that in May,

1926, he promised to pay complainant $100.00 per month to go to Lake Champlain and superintend the construction of a summer home. Complainant well knows that the home was as much hers as defendant's, title being in their joint names. It is true as alleged in paragraph four of the complaint, that complainant received $100.00 from defendant in May, June and July, and defendant also gave complainant $100.00 in August, but she fails to mention this.

In September, the defendant for the reasons later to be alleged, was obliged to leave the house at Glen Ridge. At that time, there was several hundred dollars in her bank account and this sum was entirely drawn by the complainant. In addition to that, the defendant, although he has been advised that he is under no legal obligation to maintain or support the complainant under the circumstances, has voluntarily made ample payment to her.

5. He denies the allegations contained in paragraph five of the bill of complaint.

6. He denies the allegations contained in paragraph six of the bill of complaint.

7. The defendant denies that he is the owner of the Glen Ridge or Lake Champlain properties, but states that the true facts are as hereinabove alleged. The Glen Ridge property is worth approximately $70,000.00, and the Lake Champlain property is worth approximately $25,000.00. Defendant denies that he is the owner of a one-third interest in the estate of his mother, but states that he is the owner of a one-sixth interest. His share is worth not $35,000, as is stated by complainant, but approximately $10,000.00.

This estate produced no income for some time and in fact this defendant was obliged to expend several thousand dollars in maintaining and keeping up properties which produced little income and there is now owed to him from his brothers and sisters, as their shares of expenditures made by defendant on his mother's estate, the sum of approximately $9,500.00.

Further answering, the defendant says that he has not a one-third interest in the partnership business of H. P. McKinney & Co., but he has a nineteen per cent. interest in ninety-two per cent. of said partnership, an eight per cent. deduction being first made in favor of certain old employees, and the balance of ninety-two per cent. is divisible among the partners, of which the defendant has a nineteen per cent. interest. Defendant further answering, says that the statements made by complainant as to his income are as grotesque and ridiculous as most of the other statements and charges of the complainant in recent years. The drawing account of the defendant is $12,500.00 a year. Anything drawn in excess of that is by agreement between the partners. The business, which is that of woolen commission merchants, varies broadly from year to year in profit. Defendant's earnings in the last few years have of necessity been reinvested back into the business, so as to build up defendant's interest. Without exact data at hand, defendant says that the variations in the last six years have been from a minimum of $20,000 to a maximum of $75,000 a year.

Defendant further says that he did in 1926 exhaust his account, having expended nearly $50,000 in the building of the Lake Champlain home, running of the Glen Ridge home, expense

and maintenance of himself and family and money loaned to the son of complainant.

The complainant well knows that statements in paragraph seven as to the expense of running the home are absurdly exaggerated. At times there have been two servants in the house and a gardener outside. The entire expense for servants inside have never exceeded $180.00 a month. The expense of a laundress has never exceeded $30.00 a month and for the last eight months, the laundry was entirely taken out of the house. The gardener has been hired at an expense varying from $120.00 to $150.00 a month.

The defendant, further answering the bill of complaint, says that for the past two and a half or three years, the complainant has treated the defendant with extreme cruelty. She has adopted a course of nagging, fault-finding, bickering, haranguing and as times went on her attitude toward the defendant seemed to become one of malicious hatred, scorn, contempt and brutal cruelty. In the spring of 1924, in a taxicab in New York, going to a ferry after an occasion on which the complainant had discharged her doctor at a hospital in New York, she, without any cause or provocation whatever, struck the defendant severely in the face with her fists, causing him much pain and agony. The last year and a half, the complainant has continuously made unfounded and unjust charges and accusations against this defendant. On innumerable occasions she has made statements to this defendant and to many friends and associates, charging the defendant with infidelity on frequent occasions at numberless places. It has been for some time the custom of the defendant to take exercise in the early mornings on horse-

back through the parks and roads in the vicinity of Glen Ridge. Sometime before September, 1926, the complainant commenced to continuously repeat charges that the defendant had been meeting women on these rides; had been intimate with them and unfaithful to her, and that he had been unfaithful to her and intimate with employees. All of these charges are base, groundless and without a shred of foundation.

The complainant, for many months before the 1st of October, 1926, and since then, has continuously charged that the defendant was mentally incompetent; that he was insane and she has, by interviews with his partners; by talks with his friends and associates in every way possible endeavored to break up his business, to destroy his peace of mind and happiness and to injure him in every way.

Some weeks before the 1st of October, 1926, the complainant secured revolvers with which she threatened to kill the defendant. These threats were repeated and one morning, just before the 1st of October, 1926, complainant stated to defendant that she had stood over him with a revolver while he had slept and that she did not know why she had not shot him. The threats to kill the defendant were made by the complainant to others and by them repeated to the defendant. For some days before leaving the house, the defendant, before retiring, locked, bolted and barred his door and moved his bed to a part of the room where the complainant would not be likely to expect it to be, with the thought that if she shot through the panel of the door, he might thereby escape with his life.

Answer.

Complainant's course of conduct continued with increased brutality and relentlessness. Her bitterness, without any cause therefor, became more and more manifest and on the 1st of October, 1926, the defendant, whose health had been greatly impaired by the cruelty of the complainant towards him, fearing that the complainant might carry out her threat and kill him if he should continue to reside there with the complainant, left the Glen Ridge house and the complainant.

Complainant has a son by a former marriage, a man of twenty-nine years of age. This son was strong and able-bodied but seemed unwilling to work if he could get this defendant to support him and for a considerable period of time, defendant did support him and maintain and provide for him; and gave him spending money. Some months ago, at the request of the complainant and her said son, the defendant advanced a considerable sum of money to the said son in order that he might purchase a farm in New York State, which farm, defendant is informed, was purchased by said son of complainant. Defendant at all times, feeling sorry for the child of his wife, did everything within his power to make life comfortable and agreeable for him. Nevertheless, complainant has so poisoned the mind of the said son against the defendant, that he very recently wrote to a friend of this defendant a threatening, abusive letter in which, among other things, he threatened to shoot the defendant.

Defendant has, for some two years and a half, continuously sought to alienate all of the defendant's friends and relatives; she has ordered them out of the house, insulted them, refused

to let them in when they called and has in every possible way sought to destroy this defendant's happiness of mind, until the condition became so unendurable that defendant on or about the 1st of October, refused longer to endure it.

Further answering, the defendant says that it is untrue that this defendant has permitted the complainant to be without funds or in need. Before the filing of this bill, complainant has continuously been represented by counsel in this State, which counsel were continuously in touch with defendant's counsel. From the 1st of October, 1926, until the 11th of December, the Glen Ridge property has been unoccupied and has been in charge of caretakers, the complainant during that time, as defendant was informed, being in Atlantic City. Defendant, voluntarily, and without prejudice, offered to complainant's counsel to permit both the Glen Ridge and New York preperties to be sold and one-half the proceeds belong to the complainant, absolutely, having same placed in a trust fund subject to her disposal, and the defendant voluntarily and without prejudice having been advised that he was under no legal necessity of providing for his wife under the circumstances of this case, offered to provide additional funds sufficient to permit the complainant to live in perfect comfort and ease during her natural lifetime. It was while this offer was pending and unaccepted that complainant left her second attorney because of his refusal to have the defendant adjudicated insane. While this offer was not replied to—either accepted or refused, the bill in the present case was without notice to this defendant filed.

Since these proceedings have been under way the commission woolen business has undergone

a serious change. Certain mills have closed down. Business has been much curtailed. Losses on accounts have increased and it is impossible to predict the future of business, except that it may be asserted with confidence that the earnings of the former years will be very greatly and materially reduced in the current year. In the year 1926 the defendant was compelled to exhaust earnings for the purpose of carrying the expenditures incident to the New York and New Jersey properties in which complainant has a joint interest.

Defendant prays that the bill may be dismissed.

LUM, TAMBLYN & COLYER,
Solicitors for Defendant.

Service of the within answer is hereby acknowledged this 8th day of July, 1927, as of time.

MERRITT LANE,
Solicitor for Complainant.

PETITION FOR DIVORCE.

Filed April 6, 1927.

IN CHANCERY OF NEW JERSEY.

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

The petition of Carl D. Pfender, of the Borough of Glen Ridge, in the County of Essex and State of New Jersey, respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to his present wife, Lillian E. Pfender, the defendant in this suit, on the 15th day of May, 1902, by the Rev. Dr. E. M. Rodman, a minister of the gospel, at Grace Episcopal Church, in the City of Plainfield, Union County, New Jersey.

2. Your petitioner and the defendant lived together as hereinafter stated, from the date of their marriage until the 1st day of October, 1926, when he was compelled to separate from her finally because of her extreme cruelty to him as hereinafter set forth.

3. Almost from the beginning of his married life, your petitioner has suffered from the violent and ungovernable temper of his wife. These attacks, together with the use of threats to kill your petitioner continued at intervals until they culminated in the instances now particularly described.

4. Immediately after the marriage of your petitioner to his wife, she showed a great dislike and bitterness to all of petitioner's relatives and friends, so that eventually her constant nagging, fault-finding, haranguing and insulting di-

rected toward petitioner and his relatives estranged them from him.

5. In June of 1914, upon your petitioner's returning from a two-day fishing trip to Greenwood Lake, he found his wife in a very menacing rage, and upon his returning to the house after putting his car in the garage, found all the windows and doors locked to prevent his entering, and he was compelled to spend the night in the garage, and from that time on, the defendant freqently locked your petitioner out of his room and out of the house, with absolutely no reason whatsoever for so doing.

6. In May of 1923, your petitioner, whose health at that time was poor, planned to go on a short fishing trip to Maine, which greatly incensed the defendant and she became so uncontrollably angry and abusive that she tore up petitioner's fishing licenses and only agreed to permit petitioner to go after he promised to take her abroad upon his return, which he did.

7. In the spring of 1924, defendant's attitude and treatment toward your petitioner became aggravated and in May of 1924, in a taxi going to a ferryboat after an occasion on which the defendant had without cause discharged and rudely insulted a doctor who had been attending her for a great many years, she, without any cause or provocation whatever struck your petitioner severely in the face with her fists, causing him much pain and agony.

8. Throughout the late spring and early summer of 1924, defendant's treatment toward your petitioner continued the same, and during a week-end spent by your petitioner and defend-

ant over the 4th of July at Westport, New York, she became greatly enraged and violent toward petitioner and insisted that he leave the house immediately with the servants, and she compelled him to leave that very day and return to the city.

9. During the winter of 1924, defendant continued to treat your petitioner cruelly, and without any regard and consideration for him. At Christmas of that year, when petitioner's sister visited them, defendant insulted and abused her and so violently swore at her and himself and the entire family that petitioner's sister was compelled to leave the house. From that time on, defendant's conduct became more cruel and domineering; she continuously made slurring remarks concerning your petitioner to friends, relatives and business associates; she sought to alienate all petitioner's friends and relatives, ordered them out of the house, insulted them, refused to let them in when they called and in every possible way sought to destroy your petitioner's peace, health and happiness of mind.

10. In the early spring of 1925, defendant adopted a course of conduct toward your petitioner in which she persisted and her attitude seemed to become one of malicious hatred, scorn and contempt, and she would, when she became more than ordinarily abusive, lock him out of his sleeping quarters. On one occasion she locked your petitioner out of a room leading to his sleeping quarters, and he was thereupon compelled to push the panel out of the door in order to gain access to his room, whereupon defendant became violently enraged, abused petitioner and he was greatly in fear that she would do him some bodily injury.

Petition for Divorce.

11. Some time about September of 1925, and for some time before then, defendant unjustly accused petitioner of infidelity and charged him with meeting women while taking his usual morning exercise on horseback through the parks and roads in the vicinity of Glen Ridge, all of which was absolutely untrue and made without a shred of basis. Defendant also continued in these baseless accusations and also charged that the petitioner was mentally incompetent; that he was insane, and she has, by interviews with his partner, by talks with his friends and associates in every way possible endeavored to break up his business, to destroy his peace of mind and happiness, to break his health and to injure him in every way.

12. Some weeks before the 1st of October, 1926, the defendant secured revolvers with which she threatened to kill the petitioner. These threats were repeated and were also made by the defendant to others and by them repeated to the petitioner. Coupled with these threats to take petitioner's life, her brutality and relentlessness increased and for some days prior to September 30th and on that day, defendant's infamous abuse reached such a height, that petitioner, whose health had been greatly impaired by the cruelty of the defendant toward him, became alarmed and in fear that if he continued to reside at his home in Glen Ridge with the defendant, that she would carry out her repeated threats and kill him, or do him severe bodily injury, whereupon he left his home and went to live with his friends at Glen Ridge, New Jersey, on October 1st, 1926, where he has since then been residing.

Petition for Divorce.

13. Your petitioner has not lived with the defendant since the date last before mentioned but has resided with friends at Glen Ridge, New Jersey.

14. Petitioner and defendant were *bona fide* residents of the State of New Jersey when this cause of action arose, and they have ever since continued to be *bona fide* residents of this State, down to the time of the commencement of this action, residing at Montclair, Plainfield, Ridgewood and Glen Ridge, New Jersey.

15. No children were born of the marriage aforesaid.

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

And your petitioner will ever pray, etc.

LUM, TAMBLYN & COLYER,
Solicitors for Petitioner.

Petition for Divorce.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } *ss.*

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

CARL D. PFENDER.

Sworn and subscribed to before
me this 5th day of April,
1927.

ELEANOR LOWENSTEIN,
An Attorney-at-Law of New Jersey.

ANSWER AND COUNTER-CLAIM.

Filed May 5, 1927.

IN CHANCERY OF NEW JERSEY.

Between CARL D. PFENDER, *Petitioner,* and LILLIAN E. PFENDER, *Defendant.*	*On Petition for Divorce.* *Answer and Counter-claim.*

THE ANSWER OF THE DEFENDANT, LILLIAN E. PFENDER.

The defendant, Lillian E. Pfender, answering the petition, says that:

1. She admits paragraph 1.

2. She admits the allegation in paragraph 2 that she lived with petitioner from the date of the said marriage until October 1, 1926, and denies the other allegations in paragraph 2.

3. She denies paragraph 3.

4. She denies paragraph 4.

5. She denies paragraph 5.

6. She denies paragraph 6.

7. She denies paragraph 7.

8. She denies paragraph 8, and says that the servants referred to were two Japanese servants and that they refused to carry out the defendant's directions to have a fire in the kitchen in order that there might be hot water for defend-

ant to bathe in; that she notified her husband, the petitioner, of their refusal to obey her orders, and with his consent she informed the servants that they would have to leave the following Monday; thereupon they left immediately and insisted upon petitioner returning to Glen Ridge in order that they might get their clothing. She denies each and every allegation in paragraph 8.

9. She denies each and every allegation in paragraph 9.

10. She denies paragraph 10, but says that during the month of September, 1926, when petitioner threatened to do bodily harm to defendant, and had struck defendant in the face with his fist, and scratched her face with his finger nails, defendant did flee to her room for safety and shut and locked the door between her and petitioner, and thereupon petitioner broke down the door and came into her room and continued to threaten to do bodily injury to defendant, and defendant further says that on another night in the said month of September, said petitioner again threatened to do bodily injury to defendant and because of his threats and his attempts to strike defendant she fled to her room and closed and locked the door between her and petitioner, whereupon petitioner again broke down the door and entered the room of defendant and continued to threaten to choke her and to strike her.

11. She denies paragraph 11, and says that the facts respecting the matters set forth in said paragraph 11 are as follows: In August, 1925, when defendant and petitioner were spending the summer months at their summer home at

Westport, N. Y., petitioner came to Westport from New York, where he had been during the week, on a night train, arriving at Westport at 5:30 o'clock Saturday morning, and almost immediately after his arrival went fishing, and on his return was very angry and began to curse and swear at defendant, and to say that he was sorry that he had started building a house at Westport for the reason that when it was finished he would have as much money sunk in it as in the home of defendant and petitioner at Glen Ridge; that he found that he could have purchased a house in Vermont for a very small amount of money; petitioner's abusive treatment of defendant continued all day, and in the evening on retiring to their room, defendant asked petitioner to tell her the reason for his treatment of her, saying that she could not understand why he should be so cold and cruel and abusive to her, when during his absence he had written her many affectionate letters, and asked whether anything had happened to come between petitioner and defendant; that petitioner thereupon stated to defendant that he had fallen in love with a woman whom he named; that he had been paying attention to this woman for upwards of six years; that he had been meeting her in Jersey City and taking her to drive in the evenings in defendant's automobile; that all that persons were looking for in these times was a good time without responsibilities; that he had hugged and kissed the woman in question; but that there had been no sexual relations between them as yet; and defendant thereupon said to petitioner that she could not understand such conduct on his part; that he was apparently a religious man, and that she could not account

for such conduct; that he must be crazy to have done such a thing, if it were true. Defendant says that she does not know whether the statements made by her said husband, are true, and that she does not believe that they were true, but does believe that the statements were made by the petitioner merely to offend defendant and to be cruel to her. She denies that she ever said that petitioner was insane, and denies that during interviews with his partner and talks with his friends and associates, she in any manner endeavored to break up his business or to destroy his peace of mind and happiness, or break his health, or injure him in any way. Defendant says as a result of petitioner's insistance that he was in love with the woman whom he named, as hereinabove set forth, she did write a letter on August 19, 1926, to an employee of petitioner, asking such employee to talk with the young woman with whom petitioner told defendant he was in love, and to use her good influence in behalf of defendant; to say to her that defendant and petitioner had been married and lived together for twenty-four and a half years; that defendant loved petitioner and that she did not want anything to come into their lives and break up their happiness. On August 27, 1926, petitioner returned home at Glen Ridge from business in New York and inquired of defendant whether she had written to his business associate, and defendant replied that she had not; petitioner told her that he had had a talk with his business associate and he advised him to "go home and straighten out matters with your wife" so that we would be 100 per cent. good in his business again, and petitioner told the defendant that he intended to do this. Defendant

says that she has no knowledge of the truth of the matters told her by the petitioner.

12. She denies each and every allegation in paragraph 12, except as follows:

Petitioner kept in the house, a revolver which was owned by defendant's son. The revolver was kept loaded in a cabinet in the front hall, and had been there for many years, after burglars had attempted to enter the home. Defendant's son intended leaving for his farm and taking his revolver with him, and thereupon defendant spoke to petitioner and asked if it would not be wise to purchase a revolver to have same in the house, as there had been numerous robberies in the neighborhood of defendant's home in Glen Ridge. Petitioner told defendant to purchase a revolver if she wished and defendant thereupon on September 10, 1926, purchased a revolver which she kept in a drawer of a table beside her bed from September 14th to September 17th, when she gave it to the gardener who lived in the garage upon the premises. Petitioner was frequently away from home on business trips from three to five days at a time, and defendant was frequently at home alone when the servants went out. She admits that petitioner left home on October 1, 1926, since which time he has lived separate and apart from her.

13. She admits that petitioner has not lived with defendant since October 1, 1926, but has no knowledge of petitioner's present place of residence.

14. She admits paragraph 14.

15. She admits paragraph 15.

Answer and Counter-claim.

16. Petitioner has condoned said supposed acts of cruelty, in that, with knowledge, he did continue matrimonial cohabitation with defendant until September 26, 1926, when he separated himself from her and slept in a separate room until October 1, 1926, when he left, and that during such cohabitation and ever since, this defendant has treated said petitioner with conjugal kindness.

COUNTER-CLAIM.

And the defendant by way of counter-claim against the petitioner, says that:

1. She repeats the allegations of the answer.

2. After the marriage of defendant and petitioner they cohabited together from the date of the said marriage down to September 26, 1926. From the date of said marriage until about the month of March, 1926, petitioner treated defendant with great kindness and affection, but in the month of March, 1926, petitioner began a course of cruel and abusive treatment toward defendant, addressing profane and indecent language to defendant, and when defendant was sick, in the month of March, 1926, in her home in Glen Ridge, New Jersey, when defendant had no servants in the house, petitioner refused to bring food or drink or medicine to defendant, although petitioner knew that defendant was sick and was under the care of a physician, saying to defendant that he had no time to wait on her, that his business was of more importance. Defendant continued to be sick for upwards of a month, during the whole of which time petitioner treated her with great cruelty, refusing to bring her food and drink, refusing to furnish proper nurses,

and refusing to employ servants in the house, so that defendant was obliged to secure her own food, going down the stairs, although she was too ill to be out of bed.

While defendant was sick in bed petitioner requested her to execute an instrument, conveying to him, or to his nominee, her interest in the property purchased at Westport, New York, owned by petitioner and defendant, and her interest in the property owned by petitioner and defendant in Glen Ridge, New Jersey, and also any interest which the defendant had, or might have, in the estate of petitioner's mother. The properties at Westport and Glen Ridge are owned, as defendant is informed and believes, and therefore charges, by defendant and petitioner jointly. Petitioner stated to defendant that his reason for asking her to do this was that he did not wish any of defendant's property to pass to her relatives on her death. Defendant informed petitioner that she did not think it was right for petitioner to ask her to execute such an instrument, and thereupon petitioner became angry and abusive to defendant and cursed and swore at her and called her indecent names.

During the entire month of March, 1926, during which time defendant was sick as hereinabove set forth, said petitioner brought defendant food only three times, and during the entire balance of the month defendant was obliged to prepare her own food, without the aid of any servant or nurse, and was left lying in the house alone during the entire day and many of the nights. Petitioner's treatment of defendant continued to be abusive; he continued cursing and swearing at her and addressing vile and indecent language

to her until defendant was able to get out of bed and go about her usual duties about the house.

3. From the time of her marriage, defendant has never received any money for her own personal use, until about the year 1923, when petitioner gave her $10.00 per month to spend for herself. Petitioner, however, paid for what clothes he permitted defendant to buy, all of which purchases were subject to his approval, from time to time, he stating to the defendant that she did not need any money. In May, 1926, petitioner promised to pay defendant $100 per month if she would go to Westport and superintend the construction of the summer home which petitioner was building, and defendant did go to Westport and did receive $100 per month during the months of May, June and July, 1926, when defendant returned to Glen Ridge. During the month of May, 1926, when defendant had returned from Westport, N. Y., after the erection of the summer home had begun, petitioner's treatment of her became very kind and he resumed cohabitation with her, and except for occasional outbursts of temper on the part of the petitioner his treatment of her continued to be kind until the 7th of August, 1926, when petitioner informed defendant that he was in love with another woman, as alleged in paragraph 11 of the answer, all of the allegations of which paragraph defendant here repeats.

4. Petitioner continued to be cruel and abusive to defendant, saying that defendant was insane and that she had imagined all of the things that petitioner had told her respecting his love for another woman, as hereinabove set

forth. During one or two of the outbursts of temper on the part of petitioner against the defendant, petitioner broke down the door to defendant's bedroom where she had fled for safety from his attacks, as alleged in paragraph 10 of the answer, all of the allegations of which paragraph defendant here repeats.

5. At 10 o'clock on the night of October 1, 1926, petitioner attempted to cause defendant to be arrested and committed to a lunatic asylum. Petitioner came to the house in company with four or five men, and sought to enter the house, and to take defendant to an asylum, but defendont, in fear of her life, refused to open the door. Defendant, in fear of her life and safety, concealed herself in the house and in the home of friends, and on October 11, 1926, petitioner again attempted to cause her arrest and commitment to an insane asylum, and defendant was obliged to conceal herself in order to escape from being committed to an asylum.

6. Defendant returned to her home in Glen Ridge on December 12, 1926, and has continued to reside there ever since.

7. Defendant says that petitioner has been guilty of extreme cruelty against the defendant as hereabove in this counter-claim alleged, the last acts of cruelty complained of having been committed by said petitioner on October 11, 1926, and October 1st, 1926, being more than six months prior to the filing of this answer and counter-claim.

Defendant prays that the petition of the petitioner against defendant may be dismissed;

That the marriage between defendant and petitioner may be dissolved for the causes aforesaid, according to the statute in such case made and provided;

That the petitioner may be decreed to provide suitable support and maintenance to be paid and provided by him, or made out of his property for the defendant, and for such times as the nature of the case and the circumstances of the parties render suitable and proper; and that the defendant may have such other and further relief as may be just.

MERRITT LANE,
Solicitor for Defendant.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } *ss.*

LILLIAN E. PFENDER, of full age, being duly sworn according to law, on her oath deposes and says:

I am the defendant-counter-claimant named in the foregoing answer and counter-claim. Said counter-claim is not made by me by any collusion between me and the said petitioner, but in truth and good faith for the causes set forth in the said counter-claim.

LILLIAN E. PFENDER.

Sworn and subscribed to before
me this 5th day of May, 1927.

ELIZABETH A. COONS,
Notary Public of New Jersey.

ANSWERING AFFIDAVITS.

Filed July 15, 1927.

IN CHANCERY OF NEW JERSEY.

Between

LILLIAN E. PFENDER,
Complainant,

and

CARL D. PFENDER,
Defendant.

On Bill, etc.

Answering Affidavit.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

CARL D. PFENDER, of full age, being duly sworn according to law, on his oath deposes and says that he is the petitioner in a suit filed in this court seeking absolute divorce from his wife Lillian E. Pfender; that he is the defendant in two suits instituted by the said Lillian E. Pfender in this court against him, one seeking separate maintenance and the other seeking by counter-claim absolute divorce. Said Carl D. Pfender further says that he has filed an answer denying all of the charges of cruelty made against him by his wife and that he has an abundance of witnesses ready and prepared to prove the truth of all of the charges set forth by him in his petition heretofore filed.

Deponent further says that the statements made by said Lillian E. Pfender as to his property and income are grotesque and absurd exaggerations. Deponent is a partner in the firm of H. P. McKenny & Co., commission woolen mer-

chants; that eight (8) per cent. of the interest in the partnership is held by certain old employees; that the balance of 92% is divisible among the partners and deponent has 19% of said 92%.

Deponent further says that his drawing account is and for several years has been the sum of $12,500.00 a year and that anything drawn in excess of that during the year can be had only by mutual agreement between the parties. The business, which is that of woolen commission merchants, varies broadly from year to year in profit. Preceding the last year, for some few years, business conditions were very favorable and deponent was able to draw at the end of each year substantial sums as against his interest. This was used in the purchase of land and the building at Glen Ridge and building the Westport house, the title to both of which was placed in the joint names of deponent and his said wife, although she contributed nothing whatever thereto. Deponent's wife desired every possible luxury, and in the hope of peace and with the vain thought that he might satisfy her, deponent was encouraged to plans of living beyond his financial position. The expenditures made by him on the Glen Ridge house and land are upwards of $100,000.00. The expenditures made on the Westport summer home are in excess of $30,000.00, and approximately $5,000.00 more will be needed to complete it and make it livable.

Deponent further says that said Lillian E. Pfender has interviewed deponent's partner, several of his social and business friends and has, in every way possible, endeavored to ruin his business and destroy the possibility of his making a livelihood. She has charged him with adul-

tery. She has charged him with brutality. She has on repeated occasions threatened to kill deponent. She has had revolvers for that purpose and has made statements to several witnesses that she wished deponent was dead and that she intended to shoot him.

In the hope of avoiding litigation and of securing peace of mind, which would enable him to do his share in the business, deponent has made every reasonable effort to appease the inordinate demands of the said Lillian E. Pfender with the several different attorneys with whom she has been in touch since October 1st of last year. Deponent believes that the said Lillian E. Pfender is inspired by the desire to destroy his business and ruin his health if possible.

The drafts made upon deponent's financial resources have been such that it has been impossible for him to accumulate anything of consequence, with the exception of the real estate above mentioned and his interest in the partnership, which is essential of preservation if he is to continue in the business. Deponent has no stock or bonds or securities whatsoever held by himself or held by any other in trust for him. He inherited an interest in an estate from his mother, his share thereof being worth approximately $10,000.00. The estate produced little income for some time and the expense of maintaining and keeping up the properties has been such that deponent has been compelled to advance money therefor and is owed by his brothers and sisters approximately $9,500.00 as their share of advancements for said expenditures made by deponent.

Business in the woolen line at the present time is in a very serious condition. This is well known

to anyone or easily ascertainable by any one in touch with that line. Prices are lower than for some time and the new season opening in July indicates further decreasing prices. Most concerns in deponent's line of business, as well as the woolen mills, are at the present time losing money. Several mills are running only part time; others are shut down. Even running part time, a heavy stock is accumulating, causing heavy charges for insurance and storage. Stock goods at the present time are selling at a discount of from 10% to as high as 40% in some instances, which still further reduce both the amount of sales and income. Deponent does not control the business and his profits are not available beyond the $12,500.00 salary and drawing account until business for the year has been closed and all accounts collected. Goods are sold on terms of four months, with dating in some instances that make accounts fall due nearly seven months after date of the bill. Deponent's capital is now less than it should be. A few years ago it was up to 22%. Since then it has been reduced on account of withdrawals which he has made in an effort to try to satisfy his wife's demands. No one can now see the end of the present slump in deponent's business. They anticipate increased losses from failures. It is significant and indicative of the times that the American Woolen Company just passed and omitted its last dividend.

All of this has made it highly advisable that expenses should be curtailed and deponent has, through his counsel, requested each of the several lawyers retained by his wife since last October to co-operate in working out a plan for the sale of the Glen Ridge property and the Westport

property. Deponent believes that his wife has been advised to this course, but has obstinately refused to accept the advice given to her. She is now occupying alone the large house at No. 364 Ridgewood avenue, Glen Ridge,

Deponent has paid or must pay as a result of complainant's occupancy and attitude:

Taxes for the year 1927	$1,987.02
Assessment for re-surfacing road	55.48
Gardener at $35.00 a week	1,820.00
Insurance on house, furniture, garage, burglary, etc.	268.03
Insurance on automobiles	240.48
Upkeep (estimated)	500.00
Coal—house and garage, approximately	500.00
Interest at 6% on $70,000—amount property should bring (investment in it is over $100,000.00)	4,200.00
Total	$9,571.01

Westport house:

Taxes	$ 214.33
Insurance	84.00
Interest on $36,048.80 spent on house, land, etc.	2,162.92
Grand total	$12,032.26

Deponent has proposed that both properties should be sold and agreed to permit one-half of the net proceeds to be made over to his wife, but this has been refused and such offer and all other offers have now been withdrawn by deponent because he is convinced that his wife's desire is to harass, vex and annoy him and ruin his business and health if possible.

Answering Affidavit of Carl D. Pfender.

Deponent has made most generous offers in the hope of avoiding the necessity of the course he must now pursue. He has voluntarily paid his wife $125.00 a week in addition to covering all of the expenses above outlined and permitting her to occupy the Ridgewood avenue house, in addition to which he has paid monthly telephone bills, gas and electric light bills, water bills, plumbing, automobile expenses, etc., for his wife and was so doing at the time she filed in this court her bill charging that he was refusing to maintain and provide for her.

It is on the basis of this that deponent requests and urges that no order be made against him at this time either as to counsel fees or alimony or separate maintenance. Deponent's suit against his wife charging cruelty is set down for trial before Vice-Chancellor Berry November 23, 1927. If deponent should fail before that time in the performance of any of the financial duties and responsibilities now being carried out by him deponent feels that it would be time for his wife to take the position she is now asserting. At the present time deponent is paying, directly and indirectly for his wife far more than he is advised she is legally entitled to and deponent feels that in equity consideration should and will be given to the fact that instead of accumulating considerable funds from his own earnings for the past few years deponent has actually cut into his proportion of the partnership and has put everything into properties, joint title to which has been placed in the names of his wife and himself, and which, in the event of deponent's death, would go entirely to deponent's said wife.

(Signed) CARL D. PFENDER.

Affidavit of Ida B. Conklin.

Subscribed and sworn to before me
this 8th day of July, 1927.

CHARLES T. LANDMESSER,
A Master in Chancery of New Jersey.

Filed July 15, 1927.

IN CHANCERY OF NEW JERSEY.

Between LILLIAN E. PFENDER, *Complainant,* *and* CARL DEPEW PFENDER, *Defendant.*	*On Bill, etc.* *Affidavit.*

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

IDA B. CONKLIN, of full age, being duly sworn according to law, on her oath deposes and says that she was a housekeeper in the employ of Mr. and Mrs. Pfender at Ridgewood avenue, Glen Ridge, N. J., in the year 1926. At that time Mrs. Pfender made various accusations against her husband, saying that he was trying to poison her and that he had tried to take her out on a lake and drown her. She said that he was crazy and that he was intimate with other women, naming times and places. She told deponent that her husband had spent thousands of dollars on other women, that he regularly gave one of them large sums of money and diamonds and that she

had proof of this. She told deponent all of this several times and said that this would be another Hall-Mills case; that she had a revolver and that she had given it to the gardener, but that she had had the gardener bring it into the house again. Deponent heard her tell the gardener to say that she had given him the gun the day after she had shown it to the minister, Mr. Dougherty, although she did not give it to the gardener for at least two weeks after that time.

Deponent had a friend die suddenly, and on telling Mrs. Pfender about it she said, "I wish to God it had been Mr. Pfender." She told deponent that she was praying that Mr. Pfender might be killed by the cars or an auto.

Mrs. Pfender left the house in October. Deponent remained as caretaker in charge of the house until Sunday, the 12th of December, when Mrs. Pfender returned. Deponent greeted her as usual. She gave deponent a shove, called her a "dirty liar." She said she didn't wish deponent to speak to her and that deponent could not stay in her house after what deponent had done and deponent left that day.

Deponent further says that she has always observed that Mr. Pfender treated his wife with kindness and consideration, had a beautiful home and deponent never saw anything to occasion the attitude shown by Mrs. Pfender against her husband.

(Signed) IDA B. CONKLIN.

Subscribed and sworn to before me
this 8th day of July, 1927.

J. W. WILEY,
Notary Public of N. J.

Affidavit of George P. Dougherty.

Filed July 15, 1927.

IN CHANCERY OF NEW JERSEY.

Between	
LILLIAN E. PFENDER, *Complainant,*	*On Bill, etc.*
and	*Affidavit.*
CARL DEPEW PFENDER, *Defendant.*	

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } *ss.*

GEORGE P. DOUGHERTY, of full age, being duly sworn according to law, on his oath deposes and says that he well knows Lillian E. Pfender, the complainant, and Carl D. Pfender, the defendant in the above-entitled action.

Deponent further says that he has been the pastor of the said Carl D. Pfender for some considerable time and that the said Carl D. Pfender is a man of fine standing and excellent repute in the community in which he lives and to deponent's personal knowledge is a man of fine sense of honor, excellent moral character and integrity of soul.

Deponent further says that for some time he had observed extreme jealousy on behalf of the said Lillian E. Pfender. The jealousy was extended toward anyone with whom her husband came in contact in any way. It was an unreasonable, malign and sinister jealousy—one that could not be reached by reason.

Deponent further says that he observed various incidents in which the unreasonable and un-

wise conduct of the said Lillian E. Pfender caused her husband extreme anguish of mind and he observed the gradual undermining of the health of the said Carl D. Pfender. Many incidents might be narrated at length as to all of this, but it culminated, so far as deponent was concerned, in September, 1926, at which time the said Lillian E. Pfender stated to deponent that her husband was in the habit of meeting women while he was out horseback riding in parks in the morning, that he had been unfaithful to her and that she intended to kill him and she at that time showed deponent a revolver that she had for that purpose. Deponent took the revolver from her and still has it. Deponent attempted to reason with her but by his attempt merely exasperated her the more. Deponent informed Mr. Pfender of this interview and he then told deponent of his wife's threats upon his life, of the fact that he had been moving his bed at nights so that if she shot through the door he might save his life and that the condition had then grown so intolerable that he was afraid to live longer with his said wife and within a very few weeks after he had separated from her deponent observed a great change in his appearance and a great gain and improvement in his state of health.

The attitude of the said Lilliam E. Pfender toward her husband, as indicated in her interviews with deponent, was one of jealousy, antagonism, resentment and bitterness and deponent feels sure that it would have been both unwise and unsafe for the said Carl D. Pfender to have longer attempted to live in the same house with his said wife.

Deponent further says that he has never seen greater violence of temper and more complete antagonism than was shown on more than one occasion in his presence by Mrs. Pfender toward and against her husband.

Deponent has always found Mr. Pfender to be of a quiet and peaceful disposition, a gentleman and very easy to get along with. Incidents and details to verify this deponent can give at full length when and if desired.

Subscribed and sworn to before me
this day of July, 1927.

ORDER DENYING ALIMONY.

Filed July 28, 1927.

63/629.

IN CHANCERY OF NEW JERSEY.

Between	*On Petition for Divorce.*
CARL D. PFENDER, *Petitioner,*	*On Petition for Alimony.*
and	
LILLIAN E. PFENDER, *Defendant.*	*Order Denying Alimony.*

This matter coming on to be heard in the presence of Ralph E. Lum, Esq., of counsel with the petitioner, Carl D. Pfender, and Merritt Lane, Esq., of counsel with the defendant, Lillian E. Pfender, and upon reading the petition of the defendant wherein and among other things she prays for alimony *pendente lite* and counsel fees in this cause and upon reading the pleadings and affidavits filed in this cause and in the cause of action instituted in this court by the defendant against the petitioner herein and the arguments of the respective counsel having been heard, and it appearing that the petitioner has been and is now paying to the defendant the sum of one hundred and twenty-five dollars ($125.) each week and that defendant is now occupying the home standing in the joint names of the parties hereto, and it further appearing to the Court that the said application for further alimony and counsel fees should be denied:

It is on this 28th day of July, A. D. 1927, ORDERED that the petitioner, Carl D. Pfender,

continue to pay to the defendant, Lillian E. Pfender, the said sum of one hundred and twenty-five dollars ($125.) per week and permit the said defendant to occupy the home standing in the joint names of the parties hereto for her support and maintenance until the termination of this suit.

And It Is Further Ordered that the application of the defendant herein for further alimony *pendente lite* is hereby denied and the application for counsel fees is hereby reserved, with leave to renew same prior to final hearing.

Respectfully advised,

Maja Leon Berry,
V.-C.

ANSWER TO COUNTER-CLAIM.

Filed November 19, 1927.

IN CHANCERY OF NEW JERSEY.

Between CARL D. PFENDER, *Petitioner,* *and* LILLIAN E. PFENDER, *Defendant.*	*On Petition for Divorce.* *Answer to Counter-claim.*

The petitioner, Carl D. Pfender, answering the counter-claim, says that:

1. He repeats the allegations of the petition as to paragraph 1.

2. He denies so much of paragraph 2 as states that he at any time treated the defendant cruelly and abusively, or used any profane and indecent language to defendant, but states that he has always treated her considerately and kindly, and he further denies that he ever at any time when defendant was ill neglected her or refused to provide her with every available means for her comfort and convenience, and further states that he has always done everything within his power to make her comfortable during her illnesses and at all times has treated her with kindness and consideration and has sought to exert every possible means to add to her comfort.

Petitioner denies that he at any time cursed and swore at defendant or called her indecent names, and particularly denies that he failed to provide her with proper care whenever she was

ill, but states and repeats that he has at all times treated defendant with consideration and when she has been ill has obtained for her expert medical care and attention, but defendant by her treatment of her physician antagonized them and met all efforts of kindness and consideration on the part of the petitioner with abuse and cruelty on her part.

3. Petitioner denies that he at any time inadequately supported defendant, but states that he at all times amply provided for her, and repeats that he has at all times treated her with kindness. Petitioner denies that he at any time informed defendant that he was in love with another woman or that he made any such statement to her, but says that defendant frequently accused him, falsely and unjustifiably, of seeing other women, and going with them.

4. Petitioner denies the allegations in paragraph 4 and states that he was compelled to break down the door to defendant's bedroom only to reach his own sleeping quarters, out of which defendant in one of her violent and ungovernable rages, without any basis therefor, had locked the petitioner so that he was unable to go to bed that night.

5. Petitioner denies the allegations in paragraph 5.

6. Petitioner admits paragraph 6.

7. Petitioner denies paragraph 7 and repeats the allegations in his petition, stating that defendant's cruel and inhuman treatment toward him destroyed his health and her continued threats to shoot him injured his nervous system so completely that to protect himself he was compelled to leave on October 1st, 1926.

LUM, TAMBLYN & COLYER,
Solicitors for Petitioner.

ORDER.

63/629.

IN CHANCERY OF NEW JERSEY.

Between	
CARL DEPEW PFENDER, *Petitioner,*	*On Petition, &c.*
and	*Order.*
LILLIAN E. PFENDER, *Defendant.*	

It is on this 10th day of May, 1927, ORDERED that the above-entitled cause be consolidated with and tried with the cause of action heretofore brought by the above-named Lillian E. Pfender as complainant, against the said Carl Depew Pfender as defendant, by the filing of the bill of complaint on December 13th, 1926, and the answer thereto filed by the said Carl Depew Pfender, July 15th, 1927.

C.

Respectfully advised,

V.-C.

We consent to the entering of the above-entitled order.

LUM, TAMBLYN & COLYER,
Solicitors for Defendant.

DECREE NISI.

Filed January 10, 1928.

IN CHANCERY OF NEW JERSEY.

Between CARL D. PFENDER, *Petitioner,* and LILLIAN E. PFENDER, *Defendant.*	*On Petition for Divorce.* *Decree Nisi.*

This cause coming on to be heard in the presence of Lum, Tamblyn & Colyer, Esqs., of counsel with the petitioner, and Merritt Lane, Esq., of counsel with the defendant, on petition, answer and oral proofs taken in open court; whereupon, and upon duly considering the arguments of counsel; from all of which it now appears satisfactorily to the Chancellor, that the petitioner and defendant were lawfully joined in the bonds of matrimony on or about the 15th day of May, 1902, and that the defendant has been guilty of extreme cruelty toward the petitioner as alleged in the petition; and that at the time the cause of action for divorce for the said extreme cruelty arose the petitioner and defendant were *bona fide* residents of this State, and have continued so to be down to the time of the commencement of this action; and that the petitioner and defendant have for the two years next preceding the commencement of this action been *bona fide* residents of this State, and it further appearing that jurisdiction herein has been acquired by personal service of process upon the

Decree Nisi.

defendant within this State, and it further appearing that the defendant has withdrawn the counter-claim heretofore filed herein,

It is thereupon, on this tenth day of January, nineteen hundred and twenty-eight, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, that the defendant's counter-claim and bill for separate maintenance be, and the same are hereby dismissed, and it is further ordered, adjudged and decreed, and the said Chancellor by virtue of the power and authority of this court, and of the acts of the Legislature in such case made and provided, doth hereby order, adjudge and decree that the said petitioner, Carl D. Pfender, and the said defendant, Lillian D. Pfender, be divorced from the bond of matrimony for the cause aforesaid, and the said parties, and each of them, be freed and discharged from the obligations thereof, unless sufficient cause be shown to the Court why this decree should not be made absolute within three months from the date hereof.

E. R. WALKER,
C.

Respectfully advised,

MAJA LEON BERRY,
V.-C.

Decree Nisi.

I, THOMAS BARBER, Clerk of the Court of Chancery of the State of New Jersey, the same being a Court of Record, do hereby certify that the foregoing is a true copy of the Decree Nisi in the cause wherein Carl D. Pfender, is petitioner, and Lillian E. Pfender, is defendant, now on the files of my office.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed the seal of said Court, at Trenton, this 2nd day of March, A. D. nineteen hundred and twenty-eight.

THOMAS BARBER,
Clerk.

(SEAL)

CONCLUSIONS OF VICE-CHANCELLOR.

Filed January 11, 1928.

IN CHANCERY OF NEW JERSEY.

Between	*On Petition for Divorce.*
CARL D. PFENDER, *Petitioner,*	*On Final Hearing.*
and	*Conclusions.*
LILLIAN E. PFENDER, *Defendant.*	*Not to Be Printed in Any Report.*

Ralph E. Lum, Esq., for petitioner.

Merritt Lane, Esq., for defendant.

BERRY, *V.-C.*

This is a petition for divorce on the ground of extreme cruelty.

The defendant, in December, 1926, filed a bill for separate maintenance on the ground of desertion. In April, 1927, the petition in this cause was filed and the defendant filed a counter-claim for divorce on the ground of extreme cruelty. The two suits were then consolidated. At the final hearing the defendant withdrew her counter-claim, with the understanding that the facts therein alleged were urged as a defense to the petition.

At the conclusion of the hearing I announced privately to counsel that I was of the opinion that the petitioner had sustained his petition and was entitled to a decree. Counsel for defendant requested permission to submit a brief in his

client's behalf, particularly on the question of condonation. That brief has now been submitted and considered, but I am "of the same opinion stilll."

It is unnecessary for me to review in detail the evidence on which I have reached my conclusion. Numerous acts of cruelty on the part of the defendant wife toward the husband were alleged in the petition, some of which found little support in the evidence submitted and some of which I considered to have been maintained, but which standing alone and without the event which culminated in the separation of the parties on October 21, 1926, I did not consider as sufficient justification for the abandonment of the defendant by the petitioner. Coupled with that event, however, I find that the petitioner has made out a case which entitles him to the relief sought. The event to which I refer is detailed in the following short resume of the facts leading up to the separation: Some months before the parties separated the defendant had become insanely jealous of her husband, rightly or wrongly it is unnecessary for me to decide, as in neither event would the culminating act to which I have referred have been justified. It is appropriate for me to say, however, that there is no evidence of any infidelity on the part of the petitioner and this was not charged except by innuendo in the remarks of counsel and the defendant expressly stated that she never thought or believed the petitioner had been untrue to her. I agree with the petitioner's conclusion on this point. Her jealous attitude manifested itself in various ways, so that living together by these parties was an intolerable existence. The intercession of the rector of the church of which the parties

were members, was sought by one or both, it does not matter which, with a view to affecting a reconciliation. He interviewed both parties on several occasions and as I view it, found the husband, the petitioner, entirely tractable and willing to forgive and forget. The defendant's jealousy, however, prevented her from receiving the pastor's suggestions in the spirit of compromise and good-will which in my judgment should have controlled her attitude and the intermediary's efforts came to naught. At one of the interviews which the rector had with the defendant she told him that she had purchased a revolver for the purpose of killing her husband, and that she had on one occasion stood by the side of the bed in which her husband was sleeping with a loaded revolver in her hand, intending to shoot petitioner, but that her heart had failed her and she had reconsidered her proposed action because the thought of taking a human life was repugnant to her. She exhibited this instrument of death, with a box of cartridges, to the rector, and later he obtained it from the gardener, to whom the defendant had given it, and produced it at the trial. This and another formidable looking weapon of the same type which she had and which was obtained from the defendant by a physician who later examined her, were offered in evidence and marked as exhibits at the trial. The pastor informed the petitioner of these facts and advised him that for his personal safety it would be wise for him to leave his home, which he accordingly did, and took up his abode at the rectory with his pastor, where he resided for a long time. The testimony of Dr. Dougherty the rector, with reference to this episode cannot be doubted and I place the greatest reliance in

it. His story is amply corroborated. There was also testimony indicating the purchase by the defendant of at least one other revolver subsequent to the separation. I think, under these circumstances, the petitioner was justified in fearing for his life so long as he remained under the same roof with the defendant and that his abandonment of the defendant was fully justified.

The defendant's attitude on the witness stand was not such as to command the full confidence of the Court and I do not consider many of her denials and much of her testimony worthy of belief. It was claimed that all acts of cruelty on her part testified to, including the revolver episode, were condoned. The only testimony indicating any such condonation was that of the defendant and that I do not believe. The petitioner's testimony and attendant circumstances more than overcome the testimony of the defendant on this point.

After the separation the petitioner had the defendant examined by two very reputable physicians of the City of Newark for the purpose, evidently, of determining her sanity. This fact is seized upon by the defense as an act of cruelty on the part of the husband, but in my judgment the proceeding was fully justified and prompted by the best of motives.

I will advise a decree for divorce for the petitioner.

Decided January 6, 1928.

ORDER.

Filed January 24, 1928.

IN CHANCERY OF NEW JERSEY.

Between CARL D. PFENDER, *Petitioner,* *and* LILLIAN E. PFENDER, *Defendant.*	*On Petition for Divorce.* *Order.*

This matter being opened to the Court by Eugene Blankenhorn, of counsel with defendant, and in the presence of Ralph E. Lum, of counsel with petitioner, it is on this 24th day of January, 1928, ordered that the petitioner pay to the defendant as counsel fee one thousand dollars.

C.

Respectfully advised,

MAJA LEON BERRY,
V.-C.

NOTICE OF APPEAL.

Filed April 7, 1928.

IN CHANCERY OF NEW JERSEY.

Between	
CARL D. PFENDER, *Petitioner,*	*On Petition for Divorce.*
and	*Notice of Appeal.*
LILLIAN E. PFENDER, *Defendant.*	

The defendant hereby appeals from the whole and every part of the decree *nisi* and decree dismissing counter-claim made herein, on or about the 10th day of January, 1928, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, upon the advice of the Honorable Maja Leon Berry, Vice-Chancellor, to the Court of Errors and Appeals in the last resort in all causes.

MERRITT LANE,
Solicitor and of Counsel with Defendant.

Dated: April 5th, 1928.

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

MERRITT LANE,
Of Counsel with Defendant.

PETITION OF APPEAL.

Filed April , 1928.

New Jersey Court of Errors and Appeals

Between	*On Petition.*
CARL D. PFENDER, *Petitioner-Respondent,*	*On Appeal from Chancery.*
and	
LILLIAN E. PFENDER, *Defendant-Appellant.*	*Petition of Appeal.*

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

The humble petition of Lillian E. Pfender, the appellant in the above-entitled cause, respectfully shows that your petitioner finds herself aggrieved by a decree *nisi* made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, upon the advice of the Honorable Maja Leon Berry, bearing date the 10th day of January, 1928, wherein the said Carl D. Pfender was petitioner and the said Lillian E. Pfender defendant, in this respect, to wit, that the said decree orders, adjudges and decrees that the petitioner, Carl D. Pfender, and the defendant, Lillian E. Pfender, be divorced from the bonds of matrimony for the cause of extreme cruelty as alleged in the petition, and that the said parties and each of them be freed and discharged from the obligations thereof unless sufficient cause be shown to the Court why said decree should not be made absolute within three months from the date hereof, and insofar

as the said decree orders, adjudges and decrees that the defendant's counter-claim for separate maintenance be dismissed, and your petitioner humbly appeals from said decree which adjudges as aforesaid upon the ground that the same is erroneous, for that the proofs before the Court did not warrant the finding by the Court that defendant-appellant was guilty of extreme cruelty as charged in the petition, and that the proofs before the Court required the Court to grant a decree to defendant-appellant for separate maintenance.

Your petitioner, therefore, prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

MERRITT LANE,
Solicitor of Appellant.

MERRITT LANE,
Of Counsel for Appellant.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between

CARL D. PFENDER,
Petitioner,

and

LILLIAN E. PFENDER,
Defendant.

Transcript of testimony taken in the above-entitled cause before Hon. Maja Leon Berry, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, on Wednesday, November 23, 1927, at 10 A. M.

Appearances:

Mr. Ralph E. Lum for the petitioner.

Mr. Merritt Lane, by Mr. D. Eugene Blankenhorn, for defendant.

Mr. Blankenhorn: The counter-claim for divorce is withdrawn, but the statements contained therein so far as they relate to the acts of cruelty complained of by the husband, we desire to stand, for the purpose of denial of the complaint in the petition.

In the summer, your Honor signed an order continuing the arrangement voluntarily made by the husband, but reserving the question of counsel fee, and granting permission to move before final hearing for a counsel fee.

I wish to make that motion now, in order to be in time. I don't want to pass that by.

The Court: Did I say make a motion before final hearing?

Mr. Blankenhorn: Yes, before final hearing.

The Court: I will hear the application later.

CARL D. PFENDER, petitioner, sworn.

Direct examination by Mr. Lum.

Q You are the complainant in this case? A I am.

Q Your wife's name? A Lillian E. Pfender.

Q When, where and by whom were you married? A On May 15, 1902, in Plainfield, New Jersey, by the Rev. E. M. Rodman.

Q He was a minister of the gospel? A He was an Episcopal minister.

Q And for the last ten years in what State have you lived? A New Jersey.

Q Continuously? A Yes.

Q At what place? A In Montclair, in Plainfield, in Ridgewood, going back to these places at various times, and in Glen Ridge finally, in April, 1920, when I moved there from Ridgewood.

Q Did you build a house there? A No, I bought a house, No. 364 Ridgewood.

Q By whom is that occupied now? A Mrs. Pfender.

Q When did you last reside there? A The 1st of October, 1926.

Q Sometime after your marriage what, if any, change arose in your wife's treatment of you? A She began to find fault with me; at times got very angry and made things very unhappy for me from time to time.

Q What was her attitude toward the members of your family, starting sometime after the marriage? A She didn't seem to like them at all;

at times when we were together, for a holiday or some other occasion, there would be trouble, disputes, and very often the family was ordered out of the house, or obliged, on account of the treatment, to leave.

Q Do you recall any incident of pictures of your mother and aunt in 1912? A Yes, about that year I had pictures on my chifforobe of my mother and aunt, and I came home one day and found them torn up in pieces on the bureau.

Q Do you recall a fishing trip to Greenwood Lake, which resulted in trouble? A Yes, in 1914, the first year that I had bought a car, I planned a trip with one of the men at the store, with whom I had taken several trips before, and we were going there for two days on a fishing trip. I was to meet him at the Erie station, in Montclair, in the car. He came up from Forest Hill, where he lived, and at the last moment his wife and two children, about five and six years old, or seven and eight, wanted to come along, so he brought them in the train, and when they got off he asked me if I objected to their going. I said, "Certainly not, there is plenty of room." So we went up together. On the way back, the second day—we went up on Friday and came back Sunday, as I recall it—we came down Bloomfield avenue, and our house was on Mountain avenue, right near there, and Mrs. Pfender happened to be sitting on the side porch and saw us coming down the side avenue in the car, as I went down to Forest Hill to take them home, and when I got back to the house she was furious, and I tried to explain the circumstances just as I have to you here, and she wouldn't listen to it. I went out to the car to get my things out, and the doors were locked and the windows, and I

finally had to put up in the garage for several hours, and later in the evening I was—the doors were opened and I was allowed to come in. Then two or three days after that occurrence I had gone to ask for my fishing rod—it was one that I prized very much, and she handed me the pieces—
10 broken up in about that length (indicating)—

Q Indicating about a foot and a half? A Yes—saying, "There is your fishing rod."

Q At a later time did the framing of your mother's and aunt's picture come up? A Yes, my sister had given me enlarged photographs of my mother and aunt, in round frames, for Christmas presents, and for a little while they were out, and then finally they were put away and she said she didn't want them around, so I put them
20 away in a closet.

Q Do you remember a Maine fishing trip in 1923? A Yes, in 1923 I planned a fishing trip for two weeks with this same man I had gone fishing with.

Q What was your condition of health at the time? A I was pretty well run down; I had been working pretty hard and I felt that I needed it; it was something I had always wanted to do, and this opportunity arose, and he was going,
30 and I said, "I will see if I can arrange it." So I proposed the proposition to Mrs. Pfender and she didn't want me to go. Finally she agreed, and then almost every night when I would come home there would be some different story, "No, you cannot go, I won't be left here alone," and all that, and so finally I had to tell this man, I said, "I don't know that I can go at all; things are so at home that I don't believe I can get away." The thing came to a pretty definite head on Decoration Day. There was a great dispute
40

there, after I had made all my plans to go finally, and I remember I left the house and was away for several hours walking, trying to calm myself. Then I came back. I had a fishing license from New York State, because I fished occasionally in the streams of New York—trout fishing early in the season, and a Maine fishing license. I got home one day, just before I was going, and I found the two fishing licenses torn up in small bits and lying on my bureau. I spoke to her about it, and she said, "I did it; that is all. I don't want you to go." So I had to—finally she said, "Well, all right, if you go I am going somewhere, too. If you let me go to Europe with my son, take a trip to Europe, you can go on this fishing trip." I said, "All right, if you want to go you can go; I will arrange it when I come back." So I had to buy a new fishing license for Maine, and I sent the pieces by mail to Maine—up in Maine, wherever it was, the capital, and when I got back from this trip I bought a new license at the same place, William Mills & Sons, on Park Place, in New York. I found a record of the check for the amount of this fishing license.

Q And have you an entry? A I have an entry in my stub check book there.

Q Which was made at the time? A Which I made on my return August 1st, after my trip to Europe.

Q Will you explain about the trip to Europe? A Just before I was about to return, a few days before from Maine, I got a telegram relayed into the camp—I was about sixty miles from the nearest telegraph station at Greenville—a message that there was a telegram for me, so when I got back in the evening from my fishing trip, I telephoned and I received over the wire a tele-

gram to this effect: "If you do not arrange for me to get the money at once for our trip, I will leave you and never come back." Signed Lillian E. Pfender. So I telephoned—I said, "I will give an answer to that"; so I telephoned that I would be home in a few days and would arrange everything satisfactorily. I returned on the 17th of June, I think it was. When I got home, I found that she and her son had had their usual falling out.

Mr. Blankenhorn: I object to that.

The Court: Strike that out.

A (Continuing.) I found out that she and her son had had a disagreement as to going. I understood it was because the son wanted to lay out certain routes, and she wanted other routes, and that it was all off, and then she said, "Well, how foolish you have been not to arrange to go to Europe with me." "Well," I said, "If I can; I may be able to arrange it; since you have set your heart on it," I said, "I will see what I can do." So I went to my—

Q Did you arrange it? A I arranged it. When I got to my office I found out that my wife had gone to the bank with a blank check that I had left two or three years before, when I was away on a short business trip, and she had filled in this check for $2,000, and presented it at my bank. I didn't have $2,000 in the bank. The bank wouldn't cash a check like that, anyway, without some inquiry, and the bank called up my partner, Mr. H. B. McKenney, and asked if it was all right to honor the check.

Mr. Lum: Never mind going into that.

Q Did you have any conversation with your wife about that check? A Prior to that?

Q About the check after that; what did you say to her about the check? A I simply told her what I had found out, and I was surprised that she had done such a thing.

Q What did she say? A She said, "I was going to get the money; you didn't leave me the money and I was going to get the money."

Q Coming down to 1924, do you remember a taxicab incident? A Yes, in 1924, May I believe it was, Mrs. Pfender was not well, and her doctor, who had been our physician for twenty years or more, recommended a specialist, and in order to be near his office where she could get treatments, she stayed at the New Western Hotel, and she was there for two or three days, and then she complained to me—I used to go up to see her every night, and sometimes during the day, and finally she complained that she couldn't stand the treatments, and she was in great pain, and she wanted to see her doctor. So I called her doctor in, and he said, "All right, I will see what I can do for you."

Mr. Lum: We are not interested in anything except the taxicab incident.

A (Continuing.) The doctor took her to a nursery, a child's hospital, that night, and provided her with a day nurse and night nurse, so she would be comfortable, and the next morning when I got to the hospital she was all dressed with her things ready to go, and I had a message before I had gone into her room, that the doctor wanted to speak to me, and he telephoned me and said he had been discharged and insulted—

The Court: Don't tell what someone told you. If it was told you in your wife's presence, or repeated by her, you can testify to it.

Q Did you tell your wife what your doctor had told you? What did you say to your wife? A "The doctor said that he had been discharged."

Q You told her that? A Yes; he had told me that he had been discharged. She found fault with my having spoken with the doctor at all. I got a taxicab and started down to the Twenty-third street ferry, and on the way down and became violently angry and hit me in the face with her fist as hard as she could.

Q Was it painful? A Yes, it was. She used her full force.

Q You say she became violently angry; can you tell us what aroused the anger; was it your talk with the doctor or what? A It might have been the talk with the doctor, or the fact that she objected to staying there. I cannot tell you what the cause was, but I know she took it out on me.

Q Did you say or do anything to incite this abuse? A Absolutely no.

Q In the late spring or early summer of 1924 how was her treatment towards you? And going on up to Westport. A In 1924, we had a cottage in Westport, New York, and over the Fourth of July I was there. I had ordered a new boat and an engine which I knew nothing about, and we planned to go out. Mr. Dougherty was there at the time with his family, and he knew about these engines, so I asked him and some of his boys to go out with me so I could learn about the boat. When we came back, Mrs. Pfender was

very angry about it, and she said she had been neglected and hadn't been asked to go, and that started trouble, which ended the next day, finding fault with the servants, and compelling me to take them down to New York that day in the train. Nothing must do but I must go with them, and she called them all kind of names; they were Japanese; they had been very good, and doing everything for her, I am sure, as they did at home, and she stayed there two or three days. I didn't hear a word from her, and Mr. Dougherty sent me a telegram, which I didn't receive, stating that—

Mr. Blankenhorn: I object.

Mr. Lum: You cannot tell what someone else did.

Q Then what did you do? A On receipt of the telegram I went to Westport, and I knew that she was on a train, from the telegram, coming down, so I stopped a couple of minutes to see her at Saratoga, and I went on up to Westport. I got there and got things together and slept in the cottage, and started the next morning, and drove the car down with the things that were left, and got there that same evening.

Q Did you have any conversation with her at Saratoga? A I asked her what was the matter, and she said she didn't want to stay there any longer.

Q Was she angry? A She seemed to be fairly calm.

Q Had she before that made any threats about what she would do with the boat at Westport? A She hadn't said anything to me about the boat; she was very angry just because of the boat incident.

Q Do you know whether there was any incident in connection with Mr. Henkel? A Mr. Henkel? Yes.

Q Will you tell us what you said to your wife about it, not what Mr. Henkel said to you? You cannot tell what Mr. Henkel said to you unless your wife was present; but you can tell anything Mr. Henkel said to you, that you repeated to your wife. A Nobody told me about that incident at the time, because they didn't want to cause me any more trouble than I was in.

Mr. Blankenhorn: I ask that that be stricken out.

The Court: Strike it out.

Q Do you remember later in that year, near Christmas time, an incident in connection with your sister, in 1924? A Yes; my sister was invited to the house for Christmas a few days, and we went to the theatre the day after Christmas together, and Mrs. Pfender became very angry at something or other, I don't know what, and that evening when we got home—

(At this point the witness was withdrawn from the stand.)

Mr. Lum: I have a witness here from the East Orange High School. May I call him out of order?

The Court: Yes.

GEORGE HENCKEL, sworn for petitioner.

Direct examination by Mr. Lum.

Q Where do you live? A East Orange.
Q What is your position? A Teacher.
Q Where? A East Orange High School.
Q Were you at Westport in July, 1925? A Yes, sir.
Q 1924? A Also in 1924.
Q Do you recall an incident at the Pfender place at that time? A Very well, indeed.
Q Will you please tell us, in your own way, what you recall of it? A The occasion was near the Fourth of July—as a matter of fact, it was on the Fourth of July. The Pfender cottage was adjoining my own; we had planned with the other cottagers, to have a little ceremony on the morning of the Fourth of July, in which all the cottagers entered very heartily, Mrs. Pfender as well as the rest. It was a ceremony, raising the flag on the morning of July Fourth, and she entered into it very heartily, as did all the rest of the people there, and we had a real gloriously time that morning. In the afternoon, I don't know what transpired, excepting that we had house guests at the time, and later in the afternoon they came to the Inn and said—

Mr. Blankenhorn: I object.
The Court: Objection sustained.

Q You just tell what you observed yourself or heard. A I observed nothing then, sir.
Q Continue then. You cannot tell, under our rule, what someone else told you, unless Mrs. Pfender was present. A No, she was not; I know nothing of what occurred at all, excepting

this—it may have been the next morning, or the following morning after that, I cannot recall, but at any rate, we missed our people next door; we hadn't seen them for some time, and I spoke to Mrs. Henckel about it—

Q What did you do? A I spoke to Mrs. Henckel—

The Court: Strike it out.

Q What did you say? A I told her to do something.

Q Do you know what she did? A Yes, she went over to the Pfender cottage, to see if there was anyone there.

Q And did you later go over, as a result of what she told you? A I did later.

Q And as a result of what she told you? A Absolutely.

Q What did you find when you got there? A I couldn't find anything except a woman inside who was very bitter against someone.

Mr. Blankenhorn: I object.

Q Who was the woman? A Presumably it must have been Mrs. Pfender; there was no one else there.

Mr. Blankenhorn: I object.

Mr. Lum: We are not concerned with anybody else. If it was Mrs. Pfender, I will be glad to hear what occurred; but if it wasn't Mrs. Pfender, if she was not there—

The Witness: It was Mrs. Pfender.

Q And no one else? A No, sir.

Q Tell us what took place there. A Mrs. Henckel went over to speak with her; she absolutely refused to speak with anybody.

Mr. Blackenhorn: I object.

Mr. Lum: You cannot tell what anyone else did, excepting just yourself.

Q When you went over to the house then, what happened? A I spoke to no one and could not speak to her; I will have to just skip over it, then.

Q All right, if you will. A It must have been then a day or so later that I went over there, and I am not at liberty to state the steps through which we traversed at all?

Q You went over? A Yes.

Q What did you find? A I found, speaking for myself, I saw Mrs. Pfender, spoke to her.

Q What took place and what was said? A She refused to allow me to come into the house at first; she was sitting on the front porch at the time, very angry, very angry; she spoke to me and said, "You cannot come in." I spoke to her quietly, and then finally she said, "Well, come in." She said, "Will you help me to get some of these things out?" She said that the whole night before, she had been up all night before packing all her stuff up. Personally I don't see how she could have done it, but she did do it. Then she asked me if I would look after the checking of these things. She asked me if I would get her tickets down on the train, and gave me the money to get her tickets, which I did. She said she was going over to that train, if she had to walk. I said it would not be necessary for her to do that, because I would be glad to take her over myself, which I did, to-

gether with the rest of the baggage that she had. When she was in the house she asked me to go upstairs for a moment; I went upstairs with her there. She said, "I am not without protection here, I can take care of myself," and she opened the drawer and took out a revolver. I was concerned about that for a moment, because she was still in a very agitated frame of mind. She said, "I can take care of myself," and I asked her, I said, "Let me see that a moment, won't you?" She said, "No." I said, "Let me take it just a moment," and she handed it over to me, and I immediately broke it and found it was fully loaded. I ejected the shells—took them all out; she said, "Give my gun back." I had no right to keep it from her, so I returned it to her, but I kept the shells. I think it was either thirty-two or thirty-eight calibre revolver. They had had a boat. The boat had been brought up there, and she said to me, "You can see that Man-of-War out there," she said, "I was going to burn that boat," but she had been fearful of it for fear that in the covering it with kerosene, she might set fire to herself, and that is the only thing that persuaded her from doing it.

Mr. Blankenhorn: Did she say that?

The Court: I understand he is telling the Court what she told him.

The Witness: What she told me.

In addition to that, she said that she had been ill, and the trip up and down—it was rather a long hill, perhaps 150 to 200 yards or more, that she had to go down, and rather steep to come up, and she said that might be too much for her, she didn't know whether she could do it or not. Then coming

back. I took her in the car and took her over to the station, and at the station she appeared perfectly calm; she quieted down and spoke with the attendants around the depot, and I saw her on the train, apparently in a very calm attitude of mind.

Q Did she tell you what was the exciting cause of this rage that she was in? A No, sir.

Q Are you connected with either of the parties by relationship or in any other way? A No, sir, not at all.

Q When was the last time you saw her? Do you still live up at Westport? A I do not live at Westport.

Q Do you go there in the summer? A Yes.

Q Have they been there the last couple of years? A Not the last two summers.

Q You kept up your association with them since then? A Never have had at any time.

Q Will you tell the Court what you observed during the summers of 1924 and 1925, and any other time before, if you knew Mr. Pfender, as to the type of man and kind of man that he was, his disposition and nature? A We always thought a very great deal of Mr. Pfender; never known him at any time but what he has always acted the part of a perfect gentleman, and quiet, willing to assist in any way that he possibly could everybody that was there, and thought of very highly; by not only the cottagers there, but by the people in the village.

Q Did you ever observe any evidence of profanity on his part? A Absolutely not.

George Henckel, cross.

Cross examination by Mr. Blankenhorn.

Q But you didn't think highly of Mrs. Pfender? A Absolutely; we always thought highly of her.

Q You thought very highly of her, too? A Absolutely.

Q And this incident that you spoke of, July 5th or 6th, was the only time you ever saw her angry? A That is the only time I ever saw her angry.

Q And the room where she had this revolver and said she could protect herself, what room was that? A That was upstairs in the—it was one of her own rooms there.

Q Was it a bedroom? A Yes.

Q A bed in it? A It had all been dismantled preparatory to leaving.

Q Double bed? A Yes, nothing but double beds in the cottages.

Q You don't know whether that gun was Mr. Pfender's gun? A I could not say.

Q You had never seen it before? A No, sir.

Q And she said she could protect herself? A Yes.

Q When just prior to that incident had you last seen Mr. Pfender? A The year before, when he had been up to Westport.

Q You had seen him on the 4th of July? A You mean just prior to this incident?

Q Yes. A I had seen him that morning, I think; it must have been the morning of July 4th, because he was there with the rest of the cottagers.

Q You didn't notice any estranged relations between him and Mrs. Pfender? A No, because

everybody was entering heartily into that occasion.

Q At the time that she said she wanted to burn up the boat, at the time she showed you this revolver, Mr. Pfender wasn't there? A No, sir.

Q Didn't you ask Mrs. Pfender where her husband was? A No, sir; why should I?

Q But you didn't? A No, sir; it was no concern of ours.

Q Did you see the servants? A No, sir; there were none there.

Q And she was all alone in the house? A She had been alone the previous night.

Q How do you know that? A She said so.

Q She had been alone all the previous night? A Yes; we were concerned about her, because we didn't know whether she had any food in the house or she didn't have any food in the house.

Q Did you know where her husband was? A No; why should I?

CARL D. PFENDER, recalled for further

Direct examination by Mr. Lum.

(Last question and answer repeated.)

A (Continuing.)—in the evening, Mrs. Pfender became violently angry and talked very unkindly to my sister and of my family and myself, and my sister took exception to it, and she finally when I told her not to say anything, she went upstairs to her room.

Q Who? A My sister went upstairs to her room, and did not undress, as she told me later—

Mr. Blankenhorn: I object.

Mr. Lum: Never mind that.

A (Continuing.)—she went upstairs, and the next morning when I got up, she had gone and had left a little note saying she had left early in the morning.

Q On these occasions when your sister was there, was she there uninvited or by invitation? A Always by invitation of either my wife or myself.

Q Coming down to 1925, do you recall an occasion in connection with the locking of your sleeping quarters? A Yes.

Q Tell us about that. A Mrs. Pfender became angry at something or other and went in the room and locked the door. This room where she slept led to the sleeping porch, where I slept, and I told her that if she did not open the door so I could get into my sleeping quarters, that I would break the door down, and she refused, so I pressed against the panel, and the center panel of the door came out, and I went in.

Q Did you use any offensive language toward her, or did you threaten her at that time? A Absolutely no.

Q Coming on down now to a later time, what was her treatment of you and her attitude toward you, quite continuously, as time went on; did it get better or worse? A It got worse.

Q In what respect? A She found more fault all the time with me and made things very uncomfortable and unpleasant. She would say that she overheard remarks about my personal appearance; that she had heard people criticise my ears; said that she had heard in the church, where I was a vestryman at that time, and some

of the vestrymen when they would see me, would hold their hands up to their ears this way and waggle them, and say that I looked like a donkey. She many times wanted me to have an operation on my ears, because of my appearance, and said my mother didn't know how to take care of me, or I would never have had such big ears, and she wanted me to change my name, because it was a German name, and spell it the English way, because she was English.

Q Did you ever conceal anything from your wife, or did you always tell her of all your goings and doings? A I always told her everything.

Q And did she make accusations against you in reference to your conduct with others? A Yes.

Q Did you at the time have a horse? A I did.

Q Did you go horseback riding in the morning? A I did.

Q Where? A In the Essex County Park, in Montclair.

Q Did she make any accusations against you in reference to that? A Yes.

Q About when? A It was in the spring of 1926, she accused me of riding in the park with women; said that she had hired a detective to follow me, and went into great detail as to how she accomplished the fact, and that he had followed me, he rode a horse himself; he saw me meeting women up there, and said that I was doing it constantly.

Q As a matter of fact, did you ever? A Never, but once, that I recall, did I ride with a woman in the park, and that was an occasion when a certain woman, a young girl she was, came up when I was riding with two other men;

these other men knew her much better than I did; I simply rode along with the other man and she went ahead with the other one of the two.

Q When your wife spoke to you, did you tell her that? A I did.

Q Did you tell her that on no other occasion had you met any other woman? A I did.

Q Did that appease her, or did she continue the accusations? A She continued the accusations; she didn't believe it, and she had proof of it from the fact that she had heard.

Q She complains in her papers of your having told her of your having been driving with a young lady and of having taken dinner or lunch with someone who was employed in your office? A I did.

Q You informed her? A I did.

Q —of every time you were ever with anybody? A Yes.

Q She said that you said that you were invited with someone else; did you ever tell her that? A Absolutely no.

Q Were you ever invited with anybody else? A No.

Q Coming down, now, to later in 1926: do you recall any incident of Easter Sunday? A Yes, on Easter Sunday I ordered her a bunch of violets from the florist, and when they came on Easter morning, she refused to wear them, because she wanted some other kind of flowers.

Q And was your wedding anniversary May 15th? A Yes; our wedding anniversary I ordered a box of her favorite roses from the same florist, and when I got home that evening, the box was lying below the front steps unopened, where she had thrown them.

Mr. Blankenhorn: I ask that that be stricken out, unless he knows.

Q How did you know that she had thrown it there? A I cannot tell, but it was delivered to the door and there was no one else in the house to receive it. The florist wouldn't have thrown it down ten feet from the doorway.

The Court: You don't know of your own knowledge who threw it there?

The Witness: No; I know that it was there.

Q In that same May, 1926, was there another incident of your being locked out of your room? A Yes.

Q When was that? A I was locked out of the room, or she made an attempt to lock me out of the room, and I pushed the door in; I put my foot in it before she could get it locked, and she tried to push me out. My hand just touched her in trying to force me out, and she immediately jumped to the telephone, which was three feet away from the door, and called up the police station and said, "This is Mrs. Pfender; I want you to know that my husband has struck me, and I want you to know about it."

Q Did you strike her? A I did not.

Q Coming on down that season, into August, what was her attitude toward you and her treatment of you continuously? A In August she became very much worked up. It was after I had this episode about this young woman, and she persistently nagged me and found fault with me and wanted me to bring a meeting around between this young person and herself and myself so she could settle the matter.

The Court: What episode are you referring to?

The Witness: In August, 1926; it was after I had told her and admitted that I had gone with this young woman, one of the employees in our office, and I told her that I had been to dinner with her several times, and that I had on a warm evening, when we had been working at the store, I had taken her on a ride. All of these places were the most public places, where other people were around.

Q And as a result of this, what did she do in August, 1926? A She constantly raved at me, and annoyed me and kept after me, and finally she told me that she had stood over me with a revolver when I was asleep, and that it was her intention of killing me, but she decided finally not to. Things got so very bad, my health began to break, I couldn't sleep; I was nervous; I went into another room to sleep; I locked all the doors, and there were two beds in this room and I slept in the first one; I was afraid that she might shoot me through the door.

Mr. Blankenhorn: I object to this.

Mr. Lum: I think it is extremely important.

The Court: The objection is overruled.

A (Continuing.) I changed the position of the bed for fear that she might shoot me through the door, and I did that each night as long as I continued to live in the house after that.

Q Do you know whether there were any revolvers in the house? A Yes, there were.

Q Did you ever buy or own a revolver in your life? A Never did I own a revolver in my life, except one that was bought at her earnest solicitation after I repeatedly told her that I did not want a revolver in the house.

Q When was that? A That was, I should say, around 1921 or thereabouts, and that revolver was bought with the express purpose of giving it to the gardener.

Q Was it given to the gardener? A It was given to the gardener, and he had it. I never owned a revolver of my own in my life.

Q In September, 1926, did her conduct toward you and her treatment of you have any effect upon your health? A Yes, I was so nervous and I had lost weight; I was in such a condition that I couldn't sleep; I don't think I was ever in such a condition.

Q Was there any other cause whatever for your condition, mentally and physically, except the treatment of your wife? A No, absolutely not.

Q When did you leave the house? A October 1, 1926, I think was the exact date.

Q A few weeks thereafter, what, if any, change occurred in your general condition of health and mental state? A I began to gain weight right away, and today I am at least ten pounds heavier than I was in my best condition ever since my marriage.

Q You cannot tell what was said in answering this, but will you tell me whether you were informed by others of conversations that they had had with your wife? A Yes.

Q And as a result of that did you have a conference with me as your attorney? A I did.

Carl D. Pfender, further direct.

Q Were you advised to do anything with reference to an examination of your wife?

Mr. Blankenhorn: I object as immaterial.

Mr. Lum: They set up in their papers that there was an attempt to railroad this woman to an insane asylum. I think under the pleadings it is admissible.

Mr. Blankenhorn: Fix the time.

A I was advised.

Q Fix the time. A During October, 1926.

Q As a result of the advice which you received, did you consult any doctor? A Yes.

Q Who? A Dr. Washington and Dr. Beling.

Q And do you know whether they made an examination of your wife? A Yes, they saw Mrs. Pfender several times.

Q Were you at that time trying to have your wife adjudicated insane? A Absolutely no.

Q Your wife was represented by what counsel at that time? A I think it was Mr. Goodell, Edwin B. Goodell, of Montclair.

Q Will you tell us whether or not you made any offer to pay expenses if your wife went to a sanitarium?

Mr. Blankenhorn: I object; that is not binding on this woman. I think it is immaterial.

The Court: I think that is a little far-fetched.

Q Were you guided by the advice of the doctors in your treatment and conduct? A Yes.

Q Did you yourself, or did you know of any men coming up to the house, as alleged in the

papers, in an attempt to have your wife taken away at night? A Absolutely not.

Q Do you know of any such incident? A No, sir.

Q Or have anything to do with it, directly or indirectly? A No, no attempt was ever made to take her away by force.

Q Was there at any time anything that you could have done, that you did not do, to make for peace and harmony in the household? A No.

Q Will you tell us whether or not it was possible for you to have gone on beyond the time that you did, under the conditions? A I went the limit; I couldn't continue it further.

Q Were there any children born of this marriage? A No.

Cross examination by Mr. Blankenhorn.

Q Do I understand that this condition of claiming and accusing you of going out with women dated back several years? A No, the accusation that I was going out with a woman in the park was only in 1926.

Q September of 1926? A No, it was in the spring of 1926.

Q And this very episode with this young woman that you took out riding and to dinners and so on, when did you tell that to Mrs. Pfender first? A In Westport, in August.

Q And that was the first she knew of it? A The first she knew of that particular incident, yes.

Q There were several—were there several incidents? A Within a few weeks, yes, right then at that time; I admitted that to her and told her.

Q You told her that this had been going on for some time? A I told her that on four or five, possibly six occasions, I had gone to dinner with this person.

Q She had been asking you, had she not, what was the difficulty between you? A What was the difficulty between us?

Q Yes, she had been asking you that? A Not that I recall; she wanted to know what was the trouble in the spring.

Q And just out of a clear sky you said to her that you had been going out with this young woman? A She accused me of it. She said that she had had people follow me and had seen me going out; that I had stayed out all night on various occasions, and she wanted to know about it.

Q And she told you, did she not, that the automobile was out of the garage at night? A Yes, she told me that.

Q And she wanted to know about that? A She said she had me checked up on the gasoline that I was using, and that I had been out all night many nights.

Q And she asked you about that and then you told her you had been out with this young lady? A I told her about the few occurrences.

Q And she became greatly excited? A Yes; she had other cause for excitement, though, at the same time.

Q What was it in May of 1926, that made you propose to her that you separate? A She wanted to know if I wouldn't make a settlement on her so that she could run the house and stay there, and said, "You can go out."

Q She wanted you to give her $100 a month, didn't she, for pin money or house money? A

No, she wanted me to give her a certain sum; I think it was $100, and I said, "All right, I will give you $100 for your own use."

Q Are you sure you said that? A Yes.

Q And you had been giving her $10 a month up to that time? A In cash, yes.

Q And she had said that that wasn't enough; wasn't that so? A Yes, she seemed to want to get all the money she could out of me at all times.

Q She worked very hard, didn't she, with this housework? A If she did, it was her own fault; I provided her with plenty of money and with servants which she couldn't keep.

Q I show you a photograph and ask you if that is a photograph of the house at Glen Ridge? A It is.

Q This portion of the house that is nearest, on the second floor, is that the sleeping porch which you have referred to? A Yes.

Q And is that one complete room across the whole house? A Yes, from this point over here (indicating), it is one room.

(Photograph shown witness is marked Exhibit D. 1 for identification.)

Q So the only way you can get into that is from the bedroom? A Yes, from the bedroom.

Q And it was into that sleeping porch that you wanted to go to sleep this night when you broke the door down? A Yes.

Q When at any other time had you slept in the other bedrooms in the house? A On occasions when I had trouble with Mrs. Pfender. Very often I would have to make my own bed

where I could and sleep there, when she was locked in the room.

Q There were guest rooms, were there not? A There were other rooms, but my sleeping porch was my particular place where I slept. I slept even in the winter time there, as long as I could.

Q And on this particular occasion that you have referred to, she had had a quarrel with you about something, and she had run into her room and locked the door? A Yes.

Q She didn't threaten to kill you that night? A No.

Q And you were not afraid that she was going to kill you, were you? A No, I was not.

Q You broke right into the door, right in through the door? A I had had so many occasions when I was locked out of my bedroom, for no cause whatsoever, that I made up my mind it was time for me to assert my rights.

Q And so you broke into that room; there is a room adjoining that, isn't there, into a bathroom or some other room, and from that into this place where she keeps her pets? A Yes, there is another front room.

Q And a door leading out of her bedroom? A A door leading from her bedroom into the bathroom, which connects with the other front room.

Q Do you remember a time when that door was broken down? A Which door?

Q The door either from her room into the bathroom, or from the bathroom into the room where the pets were kept? A No, it never was.

Q Do you remember a time when you placed her in there after a quarrel? A No.

Q Never did that? A No, I never placed her anywhere.

Q There was a quarrel, was there not, that night that you spoke of, when your sister was there, this Christmas time? A There was no quarrel except what my wife picked; nothing had been done by either of us to cause any quarrel.

Q That is to say you were talking quietly and she came in? A Yes.

Q Your sister's name is Helen? A Yes.

Q Did that anger on the part of your wife continue after that time toward your sister? A Yes.

Q So that her name was never mentioned between you? A I never mentioned my sister's name or any of my family's name, when I could avoid it.

Q Never wrote to your wife about her? A I possibly have, yes.

Q Even though she was very angry at your sister and wouldn't allow her to come around, still you wrote to your wife about her? A She would get over these spells and then we would make up again, but I kept them apart as much as I could.

Q Then she did make up with your sister? A Yes, she would make up with me, she would make up with anybody after she got over these fits.

Q You don't think she is insane, do you? A No; I am not an expert on that subject; I cannot tell you.

Q But you had Dr. Beling and Dr. Washington sign a certificate of some kind, did you not? A They may have issued some certificate.

Q Don't you know that they did, Mr. Pfender? A They showed me some kind of a thing.

Q Don't you know that it was adjudging your wife insane? A No, I don't know that.

Mr. Blankenhorn: I call for the production of the paper.

Mr. Lum: I have not got it; it is in the hands of the doctor. Dr. Washington and Dr. Beling are both available, and can give you their opinion; it never was filed.

Mr. Blankenhorn: Will you state what the paper was, Mr. Lum?

Mr. Lum: I cannot tell you; I don't recall it. At any rate, they signed; it was their opinion that the woman was not mentally competent, in my judgment; I don't recall the detail. They have it; you can call for it.

Mr. Blankenhorn: And providing for her commitment?

Mr. Lum: No, nothing filed.

Q Didn't you go up to the house that night, of October first? A I don't recall.

The Court: What year?

Mr. Blankenhorn: 1926.

The Witness: I don't recall whether I did or not?

The Court: One other date. You said that in the summer at Westport you told your wife about this occasion when you had been out to dinner with some other woman; was that the summer during which all this trouble occurred, about which you have testified.

The Witness: It occurred in 1926.

Mr. Lum: That wasn't the one Mr. Henckel testified to; that was in 1924; and there were other occasions in 1925.

The Witness: This was in 1926.

Q As I understand it, the date when you told your wife was August 7, 1926, at Westport? A It was about that time, I should say.

Q About the ninth you closed the place at Westport and came home; is that correct? A About that time.

Q And Mr. Ross, the architect of the Westport House, was present? A He was.

Q You just told your wife in the bedroom upstairs of these affairs? A Yes.

Q And then you came downstairs? A Yes, probably; I don't remember.

Q And Mrs. Pfender was crying, wasn't she? A Yes, I believe she was.

Q And she told Mr. Ross what she was crying about? A She spoke to him, I imagine; I don't recall what she said.

Q And didn't you say that the affair hadn't gone very far? A I don't recall saying any such thing.

Q Didn't you say to Mr. Ross that there wasn't anything wrong in your taking this woman out to a restaurant and so on, and to public places? A I possibly did.

Q And didn't he tell Mrs. Pfender that he would pack her things for her? A I don't recall that he did, but he did assist us.

Q And he came home with you, didn't he? A He drove home.

Q Mrs. Pfender was ill immediately after you told her that and called a doctor? A She called a doctor, as I recall it, yes.

Q Dr. Hughes, of Westport? A I think it was Dr. Hughes. Yes, it was Dr. Hughes.

Q And she fell, didn't she, striking her head against the bedpost? A I don't recall that.

Q But you do recall that she was in bed and had to have a doctor? A She was lying there on the bed, yes.

Q Did she faint at any time during this trouble between August 7th and August 9th? A Yes, she was—I don't know whether she fainted; she was lying there on the bed, I know.

Q Who called the doctor? A I did, or Mr. Ross, I don't recall which.

Q She didn't know what was going on, did she? A I am sure I don't know.

Q And then you drove home by automobile? A Yes.

Q Three hundred miles in one day? A Yes.

Q Although your wife was sick? A My wife wanted us to keep going; she didn't want to stop; she didn't want to stop for dinner; I insisted.

Q She wanted to get home? A Yes.

Q When she got home did she call a doctor? A No, not that I recall.

Q You continued to live with her right up to the first of October, didn't you? A Yes.

Q And you occupied the bedroom with her? A At times, I did yes.

Q And it is a fact, isn't it, that you had sexual intercourse with her up to September, 1927-1926? A I am sure I don't recall the date. I don't think it was as late as that; it couldn't have been as late as that.

Q But at any rate, it was after you had returned from Westport? A Yes.

Q You received letters from Mrs. Pfender during the time that she was at Westport in 1926

prior to your arrival there, at or about the seventh of August, did you? A Yes.

Q Have you those letters with you? A No, I haven't.

Q What became of them? A Probably they were destroyed.

Q What did you do with them? A I probably tore them up. If there were any left at home, I was unable to find them when I went back into the house.

Q Did you look for them? A I looked for letters and I couldn't find them.

Q Why? A I don't know why; I suppose they might have been taken. I don't remember even that I had the letters. I probably wouldn't have the letters at home, anyway, because they were addressed at the store.

Q You don't know whether you looked for the letters? A No, I don't know that I had any special reason for looking for letters.

Q But you did look for your wife's letters to you? A No, I couldn't say I did; I don't remember that there were any there. I don't think one letter was directed to anywhere but the store that I received.

Q When you say "store," you mean your place of business? A Yes.

Q What business is that? A Woolens.

Q Wollen broker? A Commission merchant.

Q You answered her letters pretty regularly, didn't you? A Yes.

Q These times when you occupied separate bedrooms, when do you recall was the first time that you occupied a separate bedroom? A I don't recall when it was; many times.

Q Was it as far back as May, 1926? A I slept in the sleeping porch very steadily, all the

time. She was not able to sleep out there, because it was too much air there; she slept inside, even in the summer. She would complain very often when she went out there, on a warm night, that she felt the air too much, and would go in.

Q You occupied the guest room, didn't you, at times? A At times I did.

Q And you roped the door so no one could get in? A I did after she told me—

Q Aside from that you can. A Yes, the catch wouldn't work that night, so I roped it as well as I could.

Q She never pointed a gun at you and tried to shoot you? A No, not that I know of.

Q There were at least four times, then, when you broke into her room, weren't there? A I don't recall of but two, which I mentioned; once I broke into her room; once I put my foot in, so she couldn't lock me out of the room.

Q That was the time she telephoned for the police? A Yes.

Q Did the police come? A No, they didn't pay any attention to her.

Q Tell me how far the telephone is from the door of the bedroom? A I should say it was about three feet. When the door is open this way (indicating), it is within a foot or two—within a foot of the telephone table, a little telephone table there.

Q You were just trying to go in to go to sleep; do you recall whether it was at night or not? A I think it was. That was my only object to get in; it may have been during the day; I cannot tell you that.

Q But when she took up the telephone, didn't she say she would call the police if you didn't

stop? A No, she said, "Give me the police headquarters."

Q And then didn't you knock the phone out of her hand? A I absolutely did not.

Q You didn't do anything to try to prevent her from calling the police? A No, sir. The only thing I said, "Don't do it; what is the use of making public—making public anything of this sort?" I may have said that; I cannot recall.

Q When was it that this first affected your health? A When she began to be unusually—

Q I mean the year? A 1926.

Q Not before that time? A Not to the extent that it had during that year, because things started early in the spring, and one thing led to another.

Q As a matter of fact you wanted her to sell the Glen Ridge house and get out and you would then give her an income and make her independent? A No.

Q Isn't that so? A No, it is not so.

The Witness: May I add something to that?

Mr. Blankenhorn: No.

Q I show you these sheets of paper and ask you if that is not in your handwriting? A Yes, it is.

Q Did you write that to Mrs. Pfender in May, 1926? A I don't know what the date was; I wrote sometime around that.

Q Let me call your attention to this statement, and see if this doesn't refresh your recollection:

"In your note of May 22 you say that all this trouble could have been avoided if you had given me a private allowance of $100 a month."

Doesn't that refresh your recollection as to the date when that was written? A Yes, I should say it was about that time, because it was in May that I started to give her the $100 a month.

Q Do you still say that you didn't want her at that time to separate from you and take $6,000 a year? A Absolutely no; she suggested that she might continue right in the house there, and I said that it was a very expensive proposition to keep that house running.

(Letter just referred to marked Exhibit D. 2 for identification.)

Q This was a note which you had written to her after a quarrel that you had had with her? A It was a note that I had written after she had written something to me.

Q You haven't the note she wrote to you? A No, whatever was left in the house was gone; I found nothing there when I went back.

Q How did you deliver this to her? A I handed it to her probably; I had a duplicate copy of it, which disappeared.

Q When did you begin to build the cottage at Westport? A I think it was probably about sometime in April, as soon as the weather permitted in that section.

Q Of 1926? A 1926.

Q You stopped work on that house in May, did you not? A I did.

Q Why did you do that? A Because she accused me of meeting with this woman in the spring, and had persisted in claiming that I was unfaithful to her, and the episode about the roses and violets at Easter, and all of that. She didn't seem to me to want me to have the horse at all,

to have that recreation; it was the only recreation that I had.

Q Did you know this young lady that you rode with that morning? A I know who she was, yes.

Q Then after that ride you came home and told her about it? A No, there was no occasion for me to tell her about it.

Q How did she find it out? A She accused me of riding with women in the park and having had a detective to follow me to prove that I was doing it, and I said, "I have been absolutely with no women, with the exception of this," and I stated the circumstances.

Q And when was it that you ordered the work at the Westport house to be begun again? A I don't recall; I should say it was along in June sometime.

Q And she was to go up there and be there while the work was going on? A Yes, that is what she wanted to do. I had engaged a cottage the first of the season, along in February, a cottage that belonged to my cousin.

Q She went to Westport? A Yes.

Q She didn't make any accusations against you by letter to you, did she, during that time that she was at Westport? A Not that I know of, no, sir.

Q And everything was lovely between you? A Apparently so.

Q You wrote her almost every day, didn't you? A I wrote her very often.

Q I want to show you these letters, Mr. Pfender, if you will look them over.

Mr. Lum: You may offer them in evidence. I know his handwriting.

(Letters offered and marked Exhibits D. 3 to D. 19, inclusive.)

Q When you told her at Westport about this young woman, didn't she say that she couldn't understand how you could have written her such loving letters, and to have been going about with someone else? A Probably she did; she used to say those things.

Q Why did you want her to go to the hospital that you have referred to? A When was that, please.

Q At the time she discharged her doctor and she had this quarrel with you in the taxicab? A She demanded that I call the doctor; she was in great pain at the New Western Hotel, so I did, and he came there, and he recommended that she go to this hospital where he could see what he could do for her. It wasn't at my suggestion at all. I did it entirely at her suggestion.

Q Her health was delicate, wasn't it? A She complained of some sort of a sciatic trouble.

Q It had been so for some time, hadn't it? A She complained a great deal; always has complained a great deal.

Q And you were very solicitous about her health? A I always had been, and spent fortunes on doctors, gladly.

Q Isn't it a fact that just prior to your leaving the house she had had a physical examination? A Prior to what time?

Q In August or September, 1926 A Had a physical examination.

Q Yes. A I don't really recall.

Q Don't you recall her showing you this letter from Dr. Houser, and this letter to Dr. Houser from Dr. Hawks? A I don't recall

that these were shown to me; they may have been; I don't recall it.

Mr. Blankenhorn: I ask to have them marked for identification.

(Marked Exhibits D. 20 and 21 for identification.)

The Witness: My recollection is that I didn't know that she had been to these doctors, until I got the bills, which I had to pay for. I know I got the bills from Dr. Hawks and Dr. Houser.

Q Didn't you want her to have some other examination at this time, September, 1926? A I don't recall it at all, except that I felt that she wasn't right and that I wanted to get the best advice that I could, and it was on the advice that I got from my attorney, that Dr. Beling and Dr. Washington tried to—see her.

Q At whose advice was it that you left the house? A My attorney and my friends, when they knew the circumstances, said, "You cannot continue as you are now; you are a wreck; you are just going to pieces if you don't get out of it."

Q Did you tell them that you were still suffering from insomnia? A I told them that I couldn't sleep on account of the condition in the house. Nobody need to be told that; they could see the condition I was in.

Q Did you tell your friends, your attorney who advised you to leave, did you tell them the cause of your mother's death? A No, I had no occasion to tell them.

Q Will you tell us what was the cause of your mother's death? A She had an operation on her eye by Dr. Shepard, of New York City,

and from some careless handling, evidently she got an infection.

Q Where did she die? A She died in Bloomingdale. This infection affected her mind so that she was taken there.

Q She was out of her mind? A I think she was.

Q You didn't tell them that? A I don't know as I had any occasion to tell them that.

Q You told them that your wife was quarrelsome and was accusing you of all these things and you didn't tell them that? A I didn't tell them that, probably. I don't see why I should tell them such a thing. What did that have to do with my wife?

Q You didn't tell them that in August, at Westport, 1926, you had confessed to your wife that you had been going out with a young woman; you didn't tell that? A Friends?

Q Yes. A I certainly did.

Q You did tell them that your wife was ill as a result of that, and had to call a doctor? A No; you mean at Westport?

Q Yes. A I probably mentioned the fact; I probably told them the whole circumstances; there was no reason to keep it secret.

Q And they advised you to leave? A They advised me to leave, after my life had been threatened and I had to move my bed to keep out of the way, and when my health broke down from the nagging and constant friction in the house that I couldn't stand it any longer.

Q Are these friends here to testify for you today?

Mr. Lum: You will hear from them.

A Yes, I have some friends here.

Q Will you name the ones that you told?

Mr. Lum: I object. We are not concerned with the husband's insanity.

The Court: I see no reason why the question which is asked is not permissible, especially in view of the testimony which preceded it.

Mr. Lum: I have no objection to it. I simply make the objection to keep it within the issue. I have no objection to anything in this case.

A I told my partners, three of them, and I spoke to Mr. Dougherty.

Q Is he the rector of your church? A He is.

Q Is that all? A I don't recall that I had any occasion to speak to anyone else; I had so few friends left.

Q Mr. Pfender, you never spoke to anyone else besides the persons you have named, and Mr. Ralph Lum? A I don't recall any other names; I may have spoken to other people, but I don't recall that I did.

Q So that when you left the house on October first, you had made up your mind not to return? A Absolutely no; I wouldn't say that.

Q That was the day that you didn't return? A That was the day that I didn't return, because things had gotten so bad that I couldn't see any future; I had been through so many years of this thing, that it got worse and worse as time went in; I was simply at my wit's end. I tried to live peaceably for years, but did not succeed.

Q Did it affect your health before 1926? A My health was such that I never was really well;

I tell you when I got out of this I immediately started to pick up.

Q Isn't it a fact that in May, 1926, your health was better than it had been for some years previous? A I should say that it was.

Q Don't you know that it was? A I don't recall that it was any different from my usual condition; I was under a constant strain with conditions at home.

Q Don't you remember that you went to the Life Extension Institute for examination? A Yes, sir; I had been going to them for years.

Q I show you the report of the Life Extension Institute, dated June 21, 1922, and ask you if you didn't have an examination at that time, and if that isn't the report of that examination? A I frankly tell you that I had examinations from year to year for several years. This, I presume, is a copy of it; it may be the original.

Q Won't you look at it and tell me if it is? A I cannot tell you whether it is or not; I suppose it is; it is similar to one that I had received; that is dated June or July, 1922.

Mr. Blankenhorn: I offer this for identification.

(Marked Exhibit D. 22 for identification.)

Q I show you another report of the same Institute, dated January 24, 1923, and ask you if you didn't receive that, and if that wasn't the report of an examination which you had? A I received similar reports.

Mr. Blankenhorn: I offer that for identification.

(Marked Exhibit D. 23 for identification.)

Mr. Lum: Mark them all.

(Similar reports marked Exhibits D. 23 to D. 35, inclusive, for identification.)

Q After you received this report in 1922, in June, you went to a physician, didn't you? A I don't recall; I had been to Dr. Holland, I don't recall the year; possibly that was the year.

Q Just read this Exhibit D. 27 for identification, the first paragraph, and see if that does not refresh your recollection, that your health was greatly improved at that time? A It is just the usual form that these people issue. I have given up their examination of late, because they are stereotype examinations.

Q You think these were just stereotype? A Yes.

Q But you continued them right up to the year 1925, didn't you? A I did.

Q In fact, right up to 1926? A I don't remember the last date; I know I haven't had one this year.

Q The last date I have here is April 19, 1926. A That was for an examination in 1925, and that was a urine examination that came quarterly during the year. It is not very well thought of by the average physician.

Q The last general examination you had was August 4, 1925, or thereabouts? A I imagine so.

Q And at that time you were in very good condition as far as any organic condition was concerned? A Yes, but I was thin and nervous.

Q You are not fat now? A No, never will be, Thank God.

Q When in 1924, at Christmas time, your sister was in the house at Glen Ridge, wasn't the

trouble over the fact that the piano man hadn't fixed the piano? A I don't recall any such incident.

Q Don't you recall going to the theatre? A Certainly, I mentioned it in my testimony.

Q And you and your wife and sister went together? A Yes.

Q Isn't it a fact that you and your sister went to New York and your wife followed on a later train? A Not that I recall. As far as I recall, we went together. I absolutely would be willing to swear that such a thing wasn't the case. We went together, as far as I remember.

Q What was the trouble that your wife had with your sister? A That was in 1924?

Q Yes. A I don't recall any other; I kept them apart as much as I could. For years back I kept my family away from my home as much as I possibly could. In fact, to such an extent that they complained because they never saw me.

Q But you considered it a matter of good policy to keep them away? A I certainly did, because every time we got together there was trouble.

Q But they continued to send you gifts and send your wife gifts? A They kept up the show of good fellowship for my sake.

Q At the time of this difficulty, didn't Mrs. Pfender take exception to your sister talking with you about her when she wasn't present? A Probably she did.

Q Wasn't that the cause of the quarrel? A I don't know at this time, but that is a very customary thing, to accuse me.

Q That is, she didn't want your sister to talk about her when she wasn't present? A I

don't think such a thing ever occurred, because I don't recall my sister ever talked against my wife or about my wife on any occasion.

Q That is what Mrs. Pfender thought? A Possibly she thought that many many times, without any cause.

Q Didn't your sister want to come to stay with you? A No, I never would have allowed it if she had any such thought.

Q After this Maine fishing trip, you did go to Europe? A We did.

Q I show you a statement showing your personal account—three pages which purport to show your personal account, and ask you what that is? A Those were the conditions of business on those dates.

Q Isn't that the condition of your personal account with your firm?

Mr. Lum: I purposely didn't go into any of this so as not to take up the Vice-Chancellor's time. The matter of finances can be taken before Mr. Bindseil as Master. You can go into that; all the books will be put at your disposal. I thought there was no use of my taking the Court's time on that. I didn't touch it purposely, and you will be given full opportunity to inspect the books.

Mr. Blankenhorn: It appears by the letters that the difficulty was principally financial difficulties between these people and the complaint that the defendant had spent his whole income and all of his money. I want to show by this statement that that isn't the fact.

Mr. Lum: We haven't attempted to prove any of that, so I don't think you need defend it, unless it is charged.

The Court: There isn't any proof of it.

Q I show you a check dated June 14, 1923, and ask you if that is the check that you referred to as having been given by you to your wife? A Yes, I believe it is.

Q And will you indicate on that check what are the portions of it that were written in by you? A My signature only. This is all Mrs. Pfender's handwriting. I always put the number on my check, when I know what the number will be. All of this (indicating) is her handwriting. This (indicating) is mine, the signature, and the only thing on there that I wrote.

(Check offered in evidence and marked Exhibit D. 36 for identification.)

Q At the time she presented that, you were in Maine? A I was.

Q Did you afterwards give her $2,000 to go to Europe? A No, I did not; I arranged all the matters myself.

Q Do I understand that you assert that because of Mrs. Pfender's treatment of you back in 1914, your health was impaired in 1926? A I don't state that; I simply said that I was under constant strain in my domestic relations and it kept me constantly nervous and under an unusual strain.

Q Was that the fact when you lived in Ridgewood? A It was the fact all through my married life.

Q Mr. Dougherty came to your house in Glen Ridge before you left, didn't he? A He did.

Q Why did he come there?

Mr. Lum: Mr. Dougherty is here and is going on the witness stand, and you can go into every detail of this. I promise to have him back after recess. I simply make that as a suggestion to you, so if you wish you can avoid duplication.

The Court: Answer the question.

A He came at Mrs. Pfender's request.

Q Because you were going to leave? A Absolutely not.

Q Did you hear her telephone for him to come? A No, I didn't know that he was there until he appeared.

Q Weren't you present when she told Mr. Dougherty that you were going to leave her? A I don't recall that she told him that; I don't think I was; if she told him that, I wasn't present; I don't recall it.

Q Did you hear any conversation between her and Mr. Dougherty? A I heard no conversation until I was called in. I think they had a conversation out on the lawn, because they came in the house together.

Q And then did she talk with him in front of you? A Yes, she talked to him.

Q In your presence? A In the living room.

Q And didn't she tell him that you were going to leave her and that she wanted Mr. Dougherty to do something to stop you from going? A She may have told him that; I cannot recall.

Q What did she do immediately after talking with you and Mr. Dougherty? A I don't recall that she did anything.

Q Didn't she go upstairs and leave you talking with Mr. Dougherty? A Yes, I think she did, now that you recall it.

Q And didn't you then tell Mr. Dougherty that she was insane? A No; absolutely not.

Q Do you know of any conversation of Mr. Dougherty with her in your presence after that? A I don't think there were any conversations with me present after that; I don't recall any.

RECESS.

Q Did you ever sign a request to two physicians or any person to have your wife committed for observation or for insanity? A I signed something that I was requested to sign; I don't know what it was.

Q You don't know what it was? A No, it was some paper that these doctors wanted me to sign.

Q That had to do with her commitment for insanity? A I don't know that it was for commitment.

Q Didn't you swear to it? A Swear to what?

Q To the paper you signed. A I don't recall that at all; I may have; I don't recall it.

Re-direct examination by Mr. Lum.

Q Had you been out all night with any woman at any time since you were married? A No, never in my whole life.

Q Have you ever been unfaithful to your marriage vows at any time? A Never.

Q Did you ever state to your wife that you had? A Never.

Q Did you inform her that you had not? A I did.

Carl D. Pfender, re-cross.

Q Has there ever been any intimacy whatever with this young lady who was encountered in the park on one occasion? A Never.

Q Have you ever seen her since or continued any intimacy? A No, sir.

Q One other incident that perhaps I should touch on. Do you recall picking up some nurse or servant one time in an automobile? A Yes.

Q About when was that? A It was probably about 1918, I should say, just after the war.

Q Where? A In Ridgewood, New Jersey.

Q And what, very briefly, was the incident? A I was going down town one night on an errand and had to go to Paterson, and I saw this nurse who had been in the house taking care of Mrs. Pfender there, and I knew she lived in Paterson, and I asked her if she wanted to get in and go with me, and she said yes. She was a middle-aged woman, considerably older than I was so she got in and went down to Paterson with me, and when I came back I told Mrs. Pfender of it, and she said, "I don't see how you could do such a thing."

Q Did she speak of it or refer to it again; did that incident come up again? A I don't recall that it did after the thing was over.

Re-cross examination by Mr. Blankenhorn.

Q 1918, that was at the time you were living in Ridgewood? A Yes.

Q And you were doing a good deal of charitable work there at Camp Merritt? A I?

Q Yes. A I never did any charitable work in Camp Merritt.

Q Didn't you give the camp electric fans for the huts? A I did.

Mr. Lum: I object as not cross examination in any way.

The Court: That is not cross examination.

Q Your relations with Mrs. Pfender in Ridgewood were very cordial, weren't they? A At times they were the same as they have been from the very beginning.

Q And your relations with her at that time were the same as they have been all through your married life? A They have been more or less unpleasant all through my married life.

Q That isn't the question. I say they were the same then as they have been all through your married life? A Materially the same until the end of the period.

Q Isn't it a fact that the quarrel in the taxicab arose because Mrs. Pfender thought you were having her kept in a hospital for observation as to her sanity? A I cannot see how it could be.

Q Didn't she say so? A I don't remember whether she said it or not.

Q Didn't she tell you that she didn't need two nurses just because she had a pain in her back? A She may have said that, I don't recall.

WILLIAM McKENNEY, sworn for petitioner.

Direct examination by Mr. Lum.

Q You have been associated with Mr. Pfender in business for some years? A Sixteen years about.

Q Do you know Mrs. Pfender? A I don't know Mrs. Pfender very well.

Q You met her? A I have met her.

Q Will you tell us briefly during this period that you have known Mr. Pfender what you can say as to his character and temperament as a gentleman, and so forth? A I should say that Mr. Pfender was a very conservative type of man, and absolute gentleman in every way, very gentle and peaceable.

Q Is he a profane or violent man? A Absolutely not.

Q And briefly, did you observe whether in the spring and summer of 1926 he seemed under considerable strain or not? A Yes, he was under a decided strain.

Q How did it manifest itself to you? A He was very nervous at the office; when he would come from his home he was very upset in the morning; it would take him some time to get down to his normal manner.

Q Did it interfere with his work or not? A Seriously.

Q After October, 1926, did you notice any change in his work and appearance and demeanor? A Mr. Pfender has been a different man since then, I might say.

Q How has that been observable, briefly? A He is more his natural calm self, the way he was after he seemed to gain his composure before this time.

Q Has that or has that not been reflected in his work? A Very much so.

Q Do you recall in August, 1926, a conversation with Mrs. Pfender? A I do.

Q And do you recall whether she said anything about her husband's unfaithfulness in stay-

ing out all night? A She said that Mr. Pfender was—the trouble with Mr. Pfender was that he was a sport and that he was going around with women, and he had stayed out all night with one young woman from our office.

Q And had you ever in your sixteen years observed any tendency whatever toward a sporty life with him? A Quite the contrary.

Q And did you inform Mrs. Pfender of your confidence in him? A I told Mrs. Pfender that her remark would impress any of Mr. Pfender's friends as being ridiculous.

Cross examination by Mr. Blankenhorn.

Q When did you tell her that? A When I was talking with Mrs. Pfender on Fifth avenue.

Q Went there by appointment with her? A No, Mrs. Pfender called me up at the office from the cigar store on the corner of Fourteenth street and Fifth avenue, and asked me to meet her.

Q This was after they had been up to Westport that summer? A I presume so.

Q Don't you know? A I know they had been to Westport that summer; this was in August.

Q Didn't Mrs. Pfender tell you that her husband had confessed to her his infatuation for a young woman in the office? A No.

Q Would you say she didn't tell you that? A I am quite sure that she did not.

Q And didn't she ask you to see what you could do to break it off? A She asked me to do what I could for them, and I suggested a meeting between them.

Q For whom? A For Mrs. Pfender and Mr. Pfender.

Q And you suggested a meeting where? A At the Hotel Brevoort.

Q For what purpose? A For them to talk over their difficulties.

Q What did she say the difficulties were? A She said the difficulties were that Mr. Pfender was a man that was running around with women, and he wouldn't give her any money.

Q And she didn't mention the young woman in the office? A She mentioned the young woman in the office.

Q What did she say about her? A She said that Mr. Pfender had stayed out all night with her.

Q And didn't tell you that he had confessed to her in Westport? A Absolutely not.

Q Then did that conference take place? A I think it did.

Q Where? A At the Hotel Brevoort.

Q Wasn't the young lady to be there? A No, the young lady was not to be there. Mrs. Pfender wanted to come up to the office and see the young lady and proposed—she wanted the young lady discharged, and I told Mrs. Pfender that that was none of her business.

Q Did you attend the conference at the Brevoort? A I did.

Q Didn't Mrs. Pfender make a statement to you there that she wanted her husband to stop going around with that girl? A She made the statement that he had been out with her all night, yes.

Q Didn't she say that he had been going with her for years? A I don't recall that.

Q You never visited the Pfenders in any of their homes? A Yes, Mrs. McKenney called on Mr. and Mrs. Pfender one time.

Q And when? A It was previous to that; I don't just recall the date; we were going to a wedding in Montclair.

Q A year or two years ago? A I cannot say.

Q You noticed nothing wrong between them? A I did notice that the relationship was a little bit strained, and when we first arrived Mrs. Pfender opened the door and to relieve the situation, I suggested that we look at Mr. Pfender's garden; I had never seen his garden.

Q To relieve what situation? A The strained relationship I felt in the air.

Q You just felt it? A Yes, decidedly.

Q Nothing was said? A No.

Q And that is the only time you have visited them in their home? A Yes.

Re-direct examination by Mr. Lum.

Q I don't want details; you are familiar with the financial end of the business? A Yes.

Q And has there been a change for the better or worse this year? A Much for the worse.

Q And is the net result of the year likely to show a profit for the partners or a loss? A Probably a loss.

Q And it may be a substantial one? A I think so.

Q Mr. Pfender's drawing account a year is what, if you know? A It is a little over a thousand dollars a month.

Q $12,500 being exactly it? A About; I don't know the exact figures.

Q And can anything beyond that at any time be taken without the consent of the other partners? A No, sir.

Q And his interest is nineteen per cent. of ninety-two per cent.? A Yes.

Mr. Blankenhorn: I understand you are not going into the financial situation?

Mr. Lum: No; I wanted to give the Court—

The Court: It opens the door, if you insist on it.

Mr. Lum: If he wants to. My reason for this testimony was to give you a general picture of whether you were dealing with people of limited or large means. I will make a statement that it is not to be binding upon you until your further examination. We will then give you the fullest opportunity for any examination you desire.

Mr. Blankenhorn: I don't want to go into the capabilities at this time.

The Court: You may reserve it.

DR. GEORGE PRYOR DOUGHERTY, sworn for petitioner.

Direct examination by Mr. Lum.

Q Mr. Dougherty, what is your profession or calling? A Clergyman.

Q Where? A Christ Church, Bloomfield and Glen Ridge.

Q And do you know Mr. and Mrs. Pfender? A Very well, indeed.

Q Have you been friends of both of them for some years? A For seven years.

Q Will you tell us somewhat as to the character and disposition and nature of Mr. Pfender? A Mr. Pfender, I found him to be always

a genteel type and exceedingly good natured, easy to be entreated.

Q Was he a man of generous or mean nature in disposition? A Very generous disposition.

Q What have you observed as to his brutality and profanity at any time on his part? A I have never seen the slightest evidence of either brutality or profanity.

Q What was his standing in the community in which he lived? A Very high standing, much respected by the people who knew him.

Q During the last few years, particularly 1926, what did you observe in reference to the relations in the Pfender home becoming more or less strained? A I noticed that they were becoming much more strained.

Q How was that observable? A Mrs. Pfender called me one evening—

Q About when? A The latter part of September, 1926.

Q Tell us what took place. A I, at her request, went to their residence on Ridgewood avenue, and Mrs. Pfender met me on the front lawn, and we stood there for quite a good while —I should say close to an hour, while she was telling me of Mr. Pfender's immorality and brutality—alleged immorality and brutality, and after she had talked to me with a considerable time in this strain, I said that if that was the type of man he was, I must talk to him about it, and I went thereupon into the house and spoke to Mr. Pfender. He seemed to be much dejected. I asked Mrs. Pfender if—we had probably one or two minutes' conversation of a confused sort, one person saying something and another person, without continuity, and I asked her if she would mind excusing us, as I wanted to say to Mr.

Pfender things that might be embarrassing if said in front of a third party, and she thereupon left the room. I asked Mr. Pfender to take a walk with me, so that there would be no possibility of our being overheard while I talked to him. We took a walk and I told him—

Mr. Blankenhorn: I object to anything that you told him that his wife said.

The Court: I assume that he is going to say that he told him what his wife said.

The Witness: That is exactly it.

The Court: If that is your intention, you may proceed.

A (Continuing.) I told Mr. Pfender as far as I could, word for word, what Mrs. Pfender had told me, and had signified my intention of doing that in Mrs. Pfender's presence before we left the house, or before she left us in that conversation. I think it was well understood by both just what was taking place. At the conclusion of my telling Mr. Pfender what Mrs. Pfender had said, he seemed to be in a very, very greatly disturbed state of mind. I after that called on Mrs. Pfender a number of times in succession. If I transgress the technicalities of your rules, you will tell me. I had a very great desire to be the friend of both parties; I had a real affection, and still have, for both Mr. and Mrs. Pfender, and felt that possibly I might be of some use in quieting down what was evidently an intolerable disturbed situation. My conversation with Mrs. Pfender—I left her in a less violent attitude toward Mr. Pfender. In my conversation with Mr. Pfender I urged him to a tolerant attitude toward Mrs. Pfender, and my

intention was to get each one of them in a good frame of mind toward the other and see if there were not some possibility of a reconcilation. Mrs. Pfender was in a state of—I hesitate to use the word "hatred"—violent dislike of Mr. Pfender at that time. Shall I say what she said to me?

Q Please do so. A She said that he had been running around with some woman; said that she was an employee of his; wanted very much to have an interview arranged with this young woman. I said that I would speak to Mr. Pfender about that, and did speak to Mr. Pfender about that. He then told me what was testified to here, as to his having been out to dinner on a few occasions and taking this girl for an automobile ride or two. I left Mrs. Pfender when there seemed to be no possibility of reconciliation. The situation seemed to have gone to an intolerable state. I urged Mrs. Pfender to consult the best lawyer that she could find and have Mr. Pfender do the same thing, and see if there couldn't be some kind of an amicable adjustment made between them; if they couldn't live together, to live apart, for Mrs. Pfender said that she would not live with him. Mr. Pfender had said that he couldn't live with her any more, and I urged each one of them to consult the best lawyer they could find, and see if there couldn't be some amicable and private adjustment made. Mr. Pfender agreed to that; Mrs. Pfender did not agree to that. She said on one occasion that she didn't want anything to do with Mr. Pfender and didn't want any of his money; on another occasion, that she thought he ought to pay, and pay well. She said he had always been a very good man, and she couldn't understand

why he had changed so, and during one of these interviews, she told me of the incident of having stood over him with a revolver.

Q Tell us, please, just what she said about that. A She said on one occasion she had taken a revolver and stood—I have forgotten whether she said stood over him or near him, and had thought of killing him, but the thought of taking life was repugnant to her, and she had decided not to. She said, "I want to show you something," and I had an idea of what was coming, and my idea was correct, it was a Colt 32.

Q Have you it? A I have it not; you have it for me.

(At this point a package was handed to the witness by Mr. Lum.)

The Witness: That is the Colt 32.

Q Is this the gun? A That is the gun and package it was in.

Q Has it been out of your possession from that time until this until it was brought here? A Yes.

Q When? A I didn't get it on that occasion; it was in her keeping, I suppose, for some time, and strange as it may seem, I cannot recall the exact circumstances under which this particular revolver came into my possession.

Q Did you get more than one revolver? A Yes, I have another one.

Q In connection with this familiar affair? A Yes, I have another one; it looks like a larger brother.

Q Can you remember where this one came from? A Yes, Dr. Beling gave it to me.

Q Did Dr. Beling tell you where he got it from? A Yes.

Q Did he tell you where he got it from? A Yes.

Q And where had Dr. Beling been before he came to see you? A At the Pfender house.

Q Have these guns been in your possession ever since? A Yes.

Mr. Lum: I ask to have this Colt 32, the one in the box, marked.

Mr. Blankenhorn: I object to that as incompetent and immaterial and not binding on this defendant, any testimony as to how this came into his possession.

(Marked Exhibit C. 1.)

Q Is this the revolver that Mrs. Pfender showed to you? A Yes.

Mr. Blankenhorn: He said he couldn't recall how this came into his possession.

Q On the first occasion when you saw the revolver that I have offered in evidence, tell us all that took place. A If I knew what you were after, I would tell you. Mrs. Pfender brought this revolver in a package, in a box, tied up with this white tape, opened it and showed it to me. When she was coming into the room, I knowing that she was going for a revolver, had a more or less musing thought as to whether she was going to use it on me or not, and I took it, looked at it, broke it to see if it was loaded.

Q Was it loaded? A No.

Q Go ahead. A There was a box of bullets.

Q Cartridges? A Cartridges in the package with the revolver. I looked at it and examined it and handed it back to her. She tied it

up in the package and held it in her hand, in her lap, during the rest of the conversation, and still had it when I bade her adieu.

The Court: You said that as introductory to this revolver being shown to you, Mrs. Pfender said, "Wait a minute, I have something I want to show to you." Did she tell you anything else about the revolver except what you have recited?

The Witness: She said that she had been tempted on a great many occasions to shoot Mr. Pfender, and it was in the midst of that conversation that she said, "Wait a minute, I have something to show you." Does that answer your question?

The Court: Yes.

Q Have you any recollection of when the revolver came back to you again, whether it came from the gardener or Mr. Pfender? A It came through the gardener.

Q Two or three days later or within a day or two later? A I cannot recall that; it was a very short time later.

Q How long after Mr. Pfender left the house, which was the 1st of October, 1926, did you come into possession of the large revolver here? A I imagine it was ten days.

Q The matter of Dr. Beling coming there, did you know of that? A Yes.

Q And Dr. Washington also? A Yes.

Q Was it for the purpose of an examination? A Yes.

Q Were you familiar with the attitude of Mr. Pfender at that time? A Yes.

Q Was it a desire to railroad his wife to an insane asylum or to have her taken care of according to the very best possible way in which it could be done?

Mr. Blankenhorn: I object as improper and immaterial.

The Court: Objection sustained; it is not for this witness to characterize the attitude on a question of that kind. He may tell what was done and what was said indicating the attitude, and it is for the Court to determine what that attitude was.

Q Did you observe the effect of this general situation during the year 1926 upon Mr. Pfender's health? A Yes.

Q What was the effect upon his health, if anything? A Absolutely deleterious.

Q How was that observable? A He was thinner and very nervous.

Q Could you tell whether or not he was under apprehension? A I could; he certainly was.

Q And after the change came the 1st of October, did you then have any occasion to observe his general health and appearance? A Yes.

Q He lived there with you for some time? A Yes.

Q What did you observe as to that? A I observed a very definite and almost immediate improvement in his health.

Q How did that appear? A He seemed to gain in health and quieted down.

Q You were in touch with these two doctors, Dr. Washington and Dr. Beling? A Yes.

Q Do you know of any men coming up to Mrs. Pfender's house at any time to take her away to an insane asylum? A No.

Q Did you ever hear directly or indirectly of any such thing? A No.

Q At all times during the examination and the question as to what course had best be adopted, you were in touch with both Mr. and Mrs. Pfender? A Yes.

Q Will you say as to whether or not Mrs. Pfender was of a jealous disposition? A Very, a very jealous disposition.

Q Was it a general or a specific and particular jealousy? A A general jealousy.

Q Will you tell us how it manifested itself as you observed it?

Mr. Blankenhorn: During what time?

Q During the last few months particularly. A The spring and summer of 1926 I understand you refer to.

Q Yes; I will come back to a few instances later. A She spoke in very bitter terms of Mr. Pfender's relation to an employee, a young woman employed in his office, spoke very violently.

Q Will you tell us of any specific charge she made against him? A I think I can give her exact words.

Q Please do so. A "Mr. Pfender's office is way back in the back part of the building; she is in there a great deal and no one can tell what goes on, and I have my suspicions."

Q Those were her words? A Those are as near as I can recall almost exactly her words.

Q Did she say anything about hotels? A I don't recall that.

Q Go ahead, anything else you recall that she said about it. A She spoke of his riding with women up in the park, and told him she had had him watched.

Q Did you know of his riding in the park? A Yes.

Q Did you inform Mrs. Pfender what you knew about that? A Yes.

Q What did you tell her? A I told her that he rode practically always to my knowledge either alone or with one or two male companions.

Q And did that seem to change her attitude? A Not the slightest.

Q Did you attempt to reason with her as to the nature of Mr. Pfender and the fact that he was a good man? A Yes.

Q Were you able to reach her reason or change her attitude toward him in the slightest?

Mr. Blankenhorn: It is all subsequent.

Mr. Lum: This is all in the summer of 1926?

The Witness: I so understand it.

Q Will you tell us whether or not Mr. Pfender informed you as to how he arranged his bed at that time? A He did.

Q Will you tell us whether or not this jealousy extended towards anyone else than this one employee? Did you ever observe anything with reference to others, male or female? A Yes.

Q Briefly tell us what you observed. A That Mrs. Pfender told Mr. Pfender of the incident in the church of people making fun of him.

Q Had you ever observed that in the slightest? A No, not in the slightest; perfectly imaginary.

Q What was the attitude of the church toward him? A Very highly respected. It was purely imaginary, and what started—if this is irrelevant, stop me—what started my rather amused idea of the jealousy was when my wife invited Mr. Pfender to take a ride in the park with her one day and he refused with so much embarrassment.

Q Were you up at Westport in any summer? A Yes.

Q Do you recall any incidents up there in your home? A Very well, the summer that you have referred to; 1924, I think it was.

Q Tell us what you know about the occasion; what happened? A On about the fourth of July Mr. Pfender asked me concerning an outboard motor that he had for a small boat, and seemed to be in doubt as to how to work the thing, and I told him that I could show him, and one of us—I have forgotten which one—suggested that it might be a good thing if we asked Mrs. Pfender to go with us, as it would be the first ride in the boat, as there was some talk of it being a fishing boat, as he bought it with that idea. We asked her to go with us and she said she would rather not, but in the most gracious and genial way—I don't know whether this is relevant or not, but Mrs. Pfender had been most kind and generous and perfectly lovely to us, who were living near neighbors to them, and indeed we were their guests, for Mr. and Mrs. Pfender had given us the rent of the cottage for that summer, and I went with, I think, one of my young men's sons and Mr. Pfender, to try out the motor. The next morning Mr. Pfender, Mrs. Dougherty and myself went fishing early before breakfast—I imagine it was half-past four or

quarter-of-five in the morning. When we came back—Mr. Pfender having told us that he must be back for an eight o'clock breakfast—I cleaned some of the fish that we caught and took one of them over to the back door, Mr. Pfender's back door, and Mr. Pfender was there and said he didn't want it, and he said it in such fashion that I knew he was a very different type of person from what he had been for three-quarters of an hour before, evidently very much wrought up about something. That evening I noticed that there seemed to be nobody about the Pfender cottage and remarked that the place looked deserted. The next morning there was no one about, but there were papers—brown papers over all the windows, making the house look like a place that had been boarded up or closed up for the season. I went over to the house and knocked on the door and got no response. I went to the back of the house and knocked at the door and there was no response, and it was that evening or the next evening that I saw the big collie dog, and so realized that there must be someone there, and finding that Mrs. Pfender was in the house alone, I, if it was permitted, could say what people told me, I could tell you how I found that out.

Mr. Lum: No.

A (Continuing.) On finding that Mrs. Pfender was in the house alone, I sent Mr. Pfender a telegram—I didn't know whether he knew that the servants had gone or not; I felt very anxious that she should be alone in the house. I sent him a telegram stating that there appeared to be no servants and that Mrs. Pfender was alone.

I thought that. In reply to that a telegram came and I supposed it was in reply to my telegram, but the telegram was addressed to Mr. Pfender's cousin, Adolph Pfender, and then I discovered that Mrs. Pfender was leaving for home, Glen Ridge, and Mr. Henckel gave me—stating that he didn't know what to do with them, five or six 45-cartridges, and I took them and threw them in Lake Champlain, probably the safest place for them. Mrs. Pfender left for Glen Ridge, as Mr. Henckel said a little while ago, and Mr. Adolph Pfender, the cousin, sent the telegram that I wrote to Mr. Pfender, Mr. Carl Pfender, telling him that Mrs. Pfender had gone and that he had better try to meet her on the train, and I sent that telegram myself so as to catch him on his train coming north and he could meet Mrs. Pfender at Saratoga going south. My only interest then was to help out both parties in what seemed to be a very terrible situation.

Q Did Mrs. Pfender come back again that summer? A He came back the next day.

Q I mean Mrs. Pfender. A She did not, so far as my knowledge goes, no.

Q One question I omitted to ask. When Mrs. Pfender showed you this revolver, did she tell you whether or not she bought it, and if so, for what use? A She said she had bought it to shoot Mr. Pfender with.

Q Did she or did she not say anything to you at that time as to whether or not she thought she could stand it any longer? A She said she couldn't stand it any longer. Those are not her words, but that the situation had gotten to be utterly intolerable.

Q Do you know of anything that Mr. Pfender could have done at the time that he did not do, either by word or action? A I do not.

Cross examination by Mr. Blankenhorn.

Q You don't know why he left Westport on that day, do you? A I certainly do, but not legally.

Q You don't know why he was upset after you came there with the fish, of your own knowledge? A Not of my own knowledge, no.

Q You are Mrs. Pfender's rector, are you not? A Yes.

Q And you went to the house solely because she sent for you? A Absolutely.

Q And that was the first time you knew of any difficulty between these parties? A No. That was not the first time I knew of any difficulty.

Q When was the first time? A Oh, I cannot be accurate as to it; probably two years, two and a half years before that.

Q And how did that manifest itself? A I received a very violent and insulting post card from Mrs. Pfender to one of the guilds in the church.

Q Have you the post card? A No, I tore it up.

Q Mrs. Pfender has contributed largely, has she not, to the work of the church? A Yes.

Q Financially? A Yes.

Q And for the past two years has been a very devout woman? A The past two years?

Q Yes. A I haven't seen her since the summer of 1926.

Q For the two years prior to that? A Oh, yes.

Q She attended church regularly? A Yes, fairly so.

Q And to all outward appearances she was a good Christian woman? A Unquestionably.

Q You know that she has a son, don't you? A Yes.

Q You know that he served in the World War? A Only as I know lots of other things, from hearsay.

Q That he was on a submarine chaser? A From hearsay I know that.

Q And don't you know that this is his gun, referring to the larger revolver that has been offered in evidence? A No.

Q You made an affidavit in this case? A Yes, I think I did.

Q To be used on one of the preliminary motions? A I understand so.

Q You said in that affidavit, "Deponent further says that he observed various incidents in which the unreasonableness and unwise conduct of the said Lillian E. Pfender caused her husband extreme anguish of mind, and he observed the gradual undermining of health of the said Carl D. Pfender. Many incidents might be narrated at length as to all of this, but it culminated, so far as deponent was concerned, in September, 1926, at which time the said Lillian E. Pfender stated to deponent that her husband was in the habit of meeting women while he was out horseback riding in parks in the morning, that he had been unfaithful to her and that she intended to kill him, and she at that time showed deponent a revolver that she had for that purpose. Deponent took the revolver from her and still has it." That is not true, is it? A That is technically incorrect. I did not take that revolver at that time.

Q You got that from Raphael, the gardener? A Yes, that is correct.

Q Is this affidavit wrong in any other respect? A No.

Q And this malign and sinister jealousy that you refer to, what did you mean by that? A I meant just what I have stated here. I have tried to boil down into the testimony of a few words the result of a number of days of very violent conversation.

Q And you thought that it was malign and sinister for this woman to be jealous of her husband, who had confessed to her an infatuation for a young woman?

Mr. Lum: I object to that; there is no evidence whatsoever of any such thing.

The Court: Objection overruled.

Q Do you consider it malign and sinister for Mrs. Pfender to be jealous of a young woman whom her husband told her he had been taking out to dinner on at least six different occasions? A Yes, I do.

Q You think that a married woman in love with her husband should not object to that? A I certainly do not.

Q I show you Exhibit D. 6 for identification, which is a letter in the handwriting of Mr. Pfender, and ask you to read the sentence that has been underscored. A I read that.

Q Read it out loud. State whether having read that, it is now your opinion that Mr. Pfender was not profane. A I see nothing profane there; I don't know what it means.

Q Do you see anything improper in that? A I will read the sentence out loud; I don't know

what it means. (Reading) "It is most unfortunate that we had that dirty little B Margaret," but I don't know what that means. I have no idea.

Q Have no idea? A None whatever.

Q When you went over there on this September morning, didn't Mrs. Pfender tell you that her husband was going to leave her? A It was not in the morning; it was at night.

Q September night, then. A To the best of my recollection, there was no hint at that time that Mr. Pfender was leaving.

Q Didn't she tell you that she wanted you to do something to stop him from going? A Not as far as I can recall, she did not.

Q You knew he was going? A I did not.

Q When did you first find that out? A It was several days after that. In fact, Mr. Pfender had apparently no intention of going at that time.

Q And she just wanted you to reason with him with respect to this young woman? A She did not want me to reason with him.

Q What was the purpose, then? A Apparently the purpose was to tell me of Mr. Pfender's brutality and infidelity, with the idea of arranging a meeting between Mrs. Pfender and this young woman. When I proposed that I see Mr. Pfender, Mrs. Pfender thought—

Q For what purpose, Mr. Dougherty? A To talk over this matter of the conversation with Mrs. Pfender I had just had.

Q And to try to break up the relations between this young woman and her husband? A There was no statement of any such thing.

Q You said that that was what it was for? A No, I didn't.

Q You just thought that she wanted to go and talk to this young woman, is that right? A You cannot put words in my mouth, sir.

Q I am asking you. A Mrs. Pfender talked with me at great length, and after she had told me of her suspicions and Mr. Pfender's brutality, I said, "If that is the case, I must talk with him," purposely not stating any reason why I was going to talk with him, for I did not believe Mrs. Pfender.

Q What did you understand that meeting between Mrs. Pfender and this young woman was to be had for? A I couldn't for the life of me see the faintest imaginable sense in it.

Q Mr. Pfender went to live with you? A At my invitation.

Q How long after the time when you were called to the house by Mrs. Pfender? A I cannot give the exact time, a matter of ten days or two weeks. It was after our consultation with an attorney and after a consultation with Dr. Beling and Dr. Washington.

Q You attended those consultations? A Some of them.

Q And you urged Mr. Pfender to leave his wife? A I did.

Re-direct examination by Mr. Lum.

Q In your judgment would it have been safe for him to have continued to live with her?

Objected to. Objection overruled.

Mr. Blankenhorn: He hasn't qualified as a physician.

The Court: He doesn't need to.

A No, it would not.

Dr. George Pryor Dougherty, re-cross.

Re-cross examination by Mr. Blankenhorn.

Q Why do you say that, Mr. Dougherty; why wouldn't it have been safe for him to stay there? A For two reasons; the first being that he was so worried that his health was breaking; the second reason, that Mrs. Pfender was so wrought up at the time, that I was afraid she would shoot him with this revolver.

Q This revolver was not loaded and it was tied up in a box, wasn't it? A It was tied with a tape in the box, and there is a package of bullets alongside, in it.

Q But is wasn't loaded? A No.

Q Did you know that Mr. Pfender had broken down the door into her room? A He told me.

Q You still thought that he was afraid of her? A If my wife locked me out of the house, I would break down any door in it.

Q Will you answer the question? A I did.

Q You thought he was afraid of her? A No, not because he broke down the door.

Q You didn't think he was afraid she was going to shoot him? A Yes.

Q You did think that? A Yes.

Q At the time he broke down the door and went into her room? A I don't know that.

Q That would indicate to you fear of being shot, would it? A Possibly he wasn't afraid at that instant.

Q Did he tell you how many times he broke down the door? A He told me of two occasions, one when he had broken a panel out of the door when he was locked out, and once when he put his foot against the door. Those are the only two occasions he told me about.

Q He didn't tell you about any others? A No.

Q You didn't go into the matter of the condition of Mr. Pfender's health with any physician, did you? A Mr. Pfender's health?

Q Yes. A No.

Q You didn't know whether he was suffering in any way from any cause other than his trouble with his wife that might lead to this decline in his health? A No, I didn't know that.

Q And didn't inquire? A No.

The Court: You offered the pistol?

Mr. Lum: Yes.

The Court: It may now be admitted, the first one, in the box. The second one is not in evidence, and hasn't been offered.

MRS. IDA CONKLIN, sworn for petitioner.

Direct examination by Mr. Lum.

Q Where do you live, Mrs. Conklin? A I live at 65 Union street, Montclair.

Q Do you know Mrs. Pfender and Mr. Pfender? A Yes.

Q How did you come to know them? A Well, going there as a housekeeper.

Q When were you the housekeeper? A I went there the twenty-second of June, 1926.

Q That was at the Ridgewood avenue house? A Yes.

Q And while you were there, did Mrs. Pfender have any talks with you about her husband? A Yes, a good many.

Q You were there from June, 1926, until what time? A December the twelfth, I think.

Q 1926? A I think—not long before Christmas.

Q In October did Mr. Pfender live there or leave? A I think it was about that time.

Q How long did Mrs. Pfender stay there after Mr. Pfender left? A I should think about a week or ten days; I have no record of it and of course I cannot tell a story.

Q After Mrs. Pfender went did you continue to stay in the house? A Yes, I stayed there up until in December.

Q And then what happened; Mrs. Pfender came back? A Yes.

Q And—? A Turned me out.

Q During this time that you were there between June and October, what, if anything, did Mrs. Pfender say to you about poison? A She said that she thought that Mr. Pfender was trying to poison her, as he had had different bottles of things, and that he would get a bottle and then he would put part of it in another bottle and fix it up for her and want her to take it, instead of taking out of the whole bottle.

Q What did you say when she told you that Mr. Pfender was trying to poison her? A I always tried to pacify her and talk to her just as nice as I could, because I couldn't believe it.

Q What, if anything, did she say about Mr. Pfender having tried to drown her? A She wouldn't go out on the lake with him, because she thought he was going to drown her up at Westport.

Q Did she say that to you on more than one occasion? A Oh, yes.

Q What did she say to you about his state of mind? A She thought he was crazy.

Q Did she tell you that more than once? A Yes.

Q Will you tell us whether or not she said anything to you about other women? A Yes, she told me that he was going with other women, and that he had one that he had been going with, that he had been giving her $2,500 a month for two years and four months, and that she had proof of it.

Q What else did she say to you as to where he had taken this woman? A She told me he was taking her to hotels and places and told me where, but I kept no account of those things; I cannot remember, but in New York and different places.

Q You cannot remember the names of the hotels? A No.

Q Can you remember what she said to you about these hotels? Give us her words, as to why he went there. A Well, he went there with a girl and stayed with her that night.

Q Did she say that to you on more than one occasion? A Yes, a great many times.

Q Will you tell us whether or not she referred to any other law case of prominence that was in the papers? A She said that several times, that this would end in the Hall-Mills case.

Q Will you tell us whether or not she spoke of a revolver? A Of course, I saw the revolvers, and I saw one she gave Raphael.

Q Do you recognize this— (Witness shown revolver.) Don't hesitate to say so, if you don't recognize this—as the revolver which you saw at the house (C. 1)? A The small one is the one she gave Raphael.

Q Do you know when she gave it to Raphael? A I should think it was perhaps two weeks after she showed it to Mr. Dougherty, because I will tell you the way I remember; she tried to

find out by me and to tell Raphael when she gave it to him, and I said that I couldn't remember the date, but it was when some men were cleaning house and I thought they were cleaning the big dining-room the day that Mr. Dougherty was there. I knew the day Mr. Dougherty was there, and they were in the reception room the day that she showed Mr. Dougherty that new revolver. I took the revolver when it came from New York, or wherever it came from, I took it.

Q To whom was it addressed when it came? A To Mrs. Pfender.

Q What did you do with it? A I gave it to her, of course.

Q About when was that? A I cannot tell.

Q A few months after you came? A Oh, yes. I cannot remember; of course, they went up to Westport for a while after I went there.

Q When reference to the time that Mr. Pfender left the house, about how long after that, as near as you can fix it, was it that Mrs. Pfender gave this revolver, C. 1, to Raphael, the gardener? A I can't say just as to the—

Q A day or a week? A It was more than a day; three or four at least.

Q This large revolver, do you remember seeing that? A Just once.

Q Where did you see it then? A I think that she brought it downstairs, and I am not certain whether it was upstairs in the hall or down in the hall.

Q But it was in one of the halls, upstairs or downstairs? A Yes.

Q And did she ever refer to this revolver to you? A She said that one that she had, and I think that is one, the large one was Will's.

Q That is, her son's? A Yes.

Mr. Lum: I ask to have this marked for identification as Will's, the son's.

(Marked Exhibit C. 2 for identification.)

Q Do you remember whether you had a friend who suddenly died? A Yes, sir.

Q About when was that? A I cannot remember the date. Mr. Wiley, up on Albany Road, Montclair.

Q Was it in the summer of 1926? A Yes. I can get the date, but I cannot just remember.

Q Did you speak of the incident to Mrs. Pfender, the death of your friend? A I told Mrs. Pfender about it; I wanted to go up there; we had been friends for years.

Q What, if anything, did she say to you when you told her of the death of this friend? A She said she wished to God that it had been Mr. Pfender.

Q And at that time did she say anything else to you about cars or automobiles? A She told me that, of course, several times.

Q What? A That she prayed to God that Mr. Pfender would be killed by an automobile or a train.

Q How did Mr. Pfender act in the house; was he violent or otherwise? A I never saw a lovelier man in his home than Mr. Pfender.

Q Was that so at all times? A All times.

Q How about his abusing his wife and using profanity towards her? A Never, not in my hearing or presence.

Q When you were there in December, Mrs. Pfender, who had been away from the middle of October, came back, you say? A Yes.

Q What happened when she came back? A I had been in the hall to phone and she came

down the stairs, and she hadn't come out to the kitchen to see me, which she used to do, and I said, "How do you do, Mrs. Pfender?" She followed me right through the little hall and took both hands and just shoved me right into the kitchen. She said, "You dirty liar, don't you speak to me; I don't want anything to do with you. If it hadn't been for your black lies, I would never have left my home."

Q Did you know what she referred to at all? A No, sir; how could I?

Q Had you up to that time told Mrs. Pfender any of those things that she had told you? A I may—

Mr. Blankenhorn: I object to that.

Q Did she know of that? A Not that I know of. I don't know how she could; she was never home; I had never seen her nor heard from her.

Q Up to this time had you had any trouble with Mrs. Pfender? A Never.

Q Did you know of any reason whatsoever for her treatment of you when she came back? A No, sir.

Q You did leave the next day? A I left the next night.

Q And your clothes were sent out to the garage and brought to you later? A Yes, she came out and she demanded all the keys of me and claimed that I had been going out and in the front door and doing things I shouldn't; I said I hadn't. I gave her all the keys, except to my door, and that I didn't. It was in my bag in my clothes press up on the third floor.

New Jersey State Library

Q You did give it to her later? A She went up there and got my bag and went through my things and found the key and took it.

Q And you left that night? A I left that night.

Q Have you ever had any contact with her again? A Never.

Q Or with Mr. Pfender until you met him here? A No, sir.

Cross examination by Mr. Blankenhorn.

Q When was it that she called you a liar? A The day that I left there.

Q That was in December, 1926? A Yes.

Q She came there with a lawyer, didn't she? A There was a gentleman and a lawyer with her.

Q Do you know who they were? A I do not.

Q Didn't she ask you where her husband was? A He did; she didn't.

Q What did you say? A The lawyer came right out in the kitchen, or came in the solarium and came around, and he came in the kitchen and he asked me if I knew where Mr. Pfender was, and I said I did not, and I did not know.

Q You did know? A No, to this day I don't know.

Q Didn't you know he was living with Mr. Dougherty? A No.

Q Didn't you have Mr. Dougherty's telephone number so that you could get him in case Mrs. Pfender came home? A Nobody ever told me that, but in case I wanted to say anything to Mr. Pfender about the house or what was done, I should call Mr. Dougherty, and Mr. Dougherty would inform him; that was all.

Q Didn't Mrs. Pfender ask you where she could get in touch with her husband? A No, sir.

Q Didn't the lawyer ask you? A The lawyer asked me. He didn't ask me where I could get in touch with him; he asked me where Mr. Pfender was, I said, "I don't know." He said, "Do you know where I could find him?" I said, "I do not," neither I did.

Q Look at this little white slip of paper; that is your handwriting, isn't it? A Yes.

Q And isn't that Mr. Dougherty's telephone number? A Yes.

Q And didn't you have that in the kitchen when Mrs. Pfender asked you, or rather when the lawyer asked you? A I had Mr. Dougherty's address.

Q And you didn't tell Mrs. Pfender that she could get in touch with Mr. Pfender by calling Mr. Dougherty? A I didn't have to tell that man.

Q And you didn't tell him when he asked you? A It wasn't any of my business.

Q But he asked you to tell him? A He did.

Q And you didn't tell him? A No, sir; I didn't.

The Court: Let us have no misunderstanding. She said he did not ask her where or how he could get in touch with Mr. Pfender. He asked her where Mr. Pfender was.

Q Didn't the lawyer ask you where he could get in touch with Mr. Pfender? A No, sir; he did not.

Q But notwithstanding the fact that he asked you where Mr. Pfender was, you did not tell

him that he could get in touch with him by calling Mr. Dougherty, did you? A I didn't.

Q Although Mr. Pfender had given you instructions that he could be reached through Mr. Dougherty? A If I had any business with him, but that was none of my business.

Q This was none of your business? A No, sir.

Q Look at this letter, Mrs. Conklin, is that your handwriting? A Yes.

Q Did you send that letter to Mrs. Pfender? A I probably did; I wrote her when she was up at Westport.

Q Exhibit D. 42. A There isn't anything in that; just a loving letter.

Q And a respectful one? A Yes, Mrs. Pfender and I were the best of friends.

Q You warned her, in fact, the night she left the house, that they were going to get her, didn't you? A Well, I didn't know.

Q Didn't you tell her not to let the men in, that they were going to put her away? A No, I didn't tell her not to let any men in.

Q Did you tell her they were going to put her away?

Objected to. Objection sustained.

A No.

Q What did you tell her? A When.

Q That night, the night of October 1st? A What night was that, October 1st?

Q Do you remember the night that something happened, as a result of which Mrs. Pfender left for Atlantic City the next day? A When some people came there in the evening?

Q That is right. A Yes.

and those thing continually, I got very tired of the inharmony.

Q Between them? A Of her talking to me all the time when he wasn't there; she never said anything to me when he was there.

Q When he was there, everything was lovely? A Yes.

Q They went out in the garden together and played croquet? A I never saw that.

Q Didn't you know that they did that during that summer? A No, they never did.

Q Did you know Mrs. Price? A There was one lady came in there one time to call.

Q She lives next door? A I think so; that is all I ever saw.

Q Were you there when she came into the house? A I went to the door.

Q Was Mr. Pfender there? A I don't think so. It was in the middle of the day, because I had to keep lunch for a long time for Mrs. Pfender was so long.

Q You knew, didn't you, that some papers had been signed with respect to Mrs. Pfender's sanity? A I don't know that I knew of any papers.

Q What did you know about that? A I knew that those physicians were coming there, and had been there once or twice, Dr. Beling and another physician, and of course, Mr. Pfender never said anything, but she told me sometime that they were examining Mr. Pfender.

Q You were trying to help her to keep this quiet that you spoke of in October? A No, I was trying to help her.

Q She told you to turn out the lights so no one would know you were there? A Yes, sure; I always did anything she told me to.

Q You had told her that the men were coming? A I said possibly that is why, she said that they wanted her to go to some private rest home and see if she couldn't be benefited, and I said perhaps that they were coming then.

Q Had you talked to Mr. Pfender about that? A No, sir, Mr. Pfender never spoke to me of any of this business.

Q Did you see who it was that came? A No, I did not. I was on the third floor, up to my room.

Q Getting ready to go? A Yes.

Q And Mrs. Pfender was getting ready to go, was she? A I couldn't say; I wasn't there.

Q You know she had her bag packed? A Yes, I know she was doing that.

Q You knew that she had a rope ready to go down from the roof? A No.

Q You didn't know that? A No.

Q Is there a fire escape on the house? A No, I never saw any.

Q Do you know of times when Mr. Pfender occupied some room other than Mrs. Pfender's room, the sleeping porch? A Mr. Pfender, I guess, always slept out on the sleeping porch until a short time before he went away.

Q How long was that? A I cannot just say.

Q Two or three days? A Several days; I cannot say how many, because I cannot remember, and kept no record of it.

Q Mrs. Pfender complained of the girl in Mr. Pfender's office, is that right? A Yes, I think she thought she was in the office.

Q And she told you that Mr. Pfender had told her about her, didn't she? A No.

Q She didn't tell you that? A No.

Mr. Lum: We rest.

Q What did you tell her? A I said—she had been denying this, and she was afraid that they were coming, and I said, maybe that was who was coming.

Q And she was in great fear, wasn't she? A Yes.

Q And she ran upstairs? A She told me to go upstairs; she told me to put out every light in the house and go upstairs.

Q So that they would think there was no one there? A Yes.

Q Did you go up? A I went upstairs, yes, and got ready to leave.

Q To leave? A Yes.

Q You were going to leave? A I was going to leave.

Q Why were you going to leave? A I didn't want to stay under the circumstances.

Q Under what circumstances? A Well, all the talk that she talked to me all the time.

Q There was a great deal of trouble between her and her husband? A I didn't get very much of it.

Q Mrs. Conklin, you knew, didn't you, that the door had been broken down of her bedroom? A I don't know anything about it, only what she told me.

Q But you saw the evidence of it there, didn't you? A There was never anything of that kind happened while I was living there.

Q You were there between June and December, 1926? A From the 22nd of June until December, but I don't know—if anything of that kind was done when I was there, I didn't know it.

Q Didn't you see Raphael mending the door? A I saw Raphael one time with some little

nails fixing the lock and little molding up and down the side.

Q The molding on the door? A Yes. He was putting some little nails in it.

Q Didn't Mrs. Pfender tell you that he had broken down the door? A She told me he had lots of times, but I didn't know it was so.

Q When did she tell you? A She told me different times, but as I say, I didn't—I—that is a fact, I didn't know that anything like that happened, while I was there.

Q You heard quarrels between Mr. Pfender and Mrs. Pfender? A Very little.

Q But you heard them? A I heard some.

Q And Mr. Pfender got greatly excited, didn't he? A Indeed, I never heard Mr. Pfender say one word in my life, only that I heard him one night trying to get her to unlock the door so he could go through to his bedroom. "And he said if she didn't open the door, he would knock it down." A Never.

Q What did he say? A He didn't say anything else, but just in the kindest tones; I heard him say one night, when they were having words in the hall about Will, "This is pretty late in the day for you to be taking your mother's part."

Q Will did take his mother's part? A That is the only thing that I ever heard said.

Q And Mr. Pfender took exception to Will's taking his mother's part? A I don't know; that is all I heard. But that is the most I ever heard Mr. Pfender ever say; I never heard any conversation to speak of between Mr. and Mrs. Pfender.

Q Then what were the circumstances that made you want to leave the house? A It was her talking so much to me about Mr. Pfender

DAVID BERNER, sworn for defendant.

Direct examination by Mr. Blankenhorn.

Q Are you a practising physician? A Yes.
Q Practising where? A Atlantic City.
Q Will you state your general qualifications? A I do general practice, connected with the—physician to the Atlantic County Asylum for probably twelve or fifteen years, and have been doing mental examination for over twenty years.
Q Do you know Mrs. Pfender? A I met her once.
Q Did you see her in October, 1926? A No.
Q When did you see her? A November 26, 1926.
Q Where did you see her? A In my office.
Q What did you do? A She was sent there by one of our Atlantic City attorneys, Mr. Hedges, for me to make a mental examination of her, which I did, and made my report to him.
Q What did you find? A I reported to him that in my judgment she was not—

Mr. Lum: I object; I don't see the importance of this; there is no pleading in this case that she is insane.

The Court: I was wondering what the purpose was.

Mr. Blankenhorn: If there is no justification for a man trying to commit his wife for insanity, it seems to me that that is pretty close to extreme cruelty, and that she was justified in being in the condition of mind that she was in.

The Court: If you will put it on that may cut both ways.
ground I will accept it; that is a sword which

Mr. Blankenhorn: I realize that.

The Court: I will receive it. If she is perfectly sane, then she is perfectly responsible for everything she has done, and certainly no man can be expected to live with a woman who has threatened to shoot him all the time. I don't say that she is doing that, but I do say that the evidence as it stands now would indicate a very excited frame of mind, to say the least. If she is sane, she is responsible for it.

Mr. Blankenhorn: I appreciate that.

The Court: That is the reason I say it is a two-edged sword.

Mr. Blankenhorn: It is a fact that two physicians have certified that, and the petitioner has requested her confinement.

The Court: That may be, but there is no proof here of that fact, and the petitioner has not offered that.

Mr. Blankenhorn: I withdraw the witness.

SECOND DAY.

Continuation of testimony taken in the above-entitled cause before Hon. Maja Leon Berry, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, on Wednesday, December 21, 1927, at 10 A. M.

Appearances:

Mr. Ralph E. Lum for the petitioner.

Mr. Merritt Lane, by Mr. D. Eugene Blankenhorn, for defendant.

DR. CHRISTOPHER C. BELING, sworn for defendant.

Direct examination by Mr. Blankenhorn.

Q Dr. Beling, you are a physician practicing in the County of Essex?

Mr. Lum: I admit Dr. Beling's qualifications.

Q Do you know Mrs. Pfender? A Yes.

Q Have you brought with you a certificate or a statement or paper of any sort calling for the commitment of Mrs. Pfender to the New Jersey State Hospital at Greystone Park? A I have not.

Q Did you make an examination of Mrs. Pfender? A I did.

Q Will you state when? A I saw Mrs. Pfender on October 1, 1926, and October 5th, I believe. I saw her on two occasions.

Q At whose request? A At the request of Mr. Pfender and Mr. Pfender and Mr. Lum.

Q For what purpose? A To make an examination of her.

Q Examination as to what? A I was told that she was very nervous, intensely emotional; that she was jealous, that she had been armed with a revolver, and that her mental condition was in question.

The Court: You were asked to make a mental examination?

The Witness: Yes.

Q And did you request Mr. Pfender to sign any paper? A I did not.

Q Do you know that he did sign— A I do not.

Q —a paper? A I do not.

Q I show you a blank printed form. A I am familiar with these forms.

Mr. Blankenhorn: I ask to have it marked for identification.

The Witness: I only made about 5,000 of them.

The Court: The Court is somewhat familiar with them also, having been county justice for a good many years.

(Marked Exhibit D. 1 for identification, December 21, 1927.)

Q There is a blank form of application in this for some person interested in the patient to sign, is there not? A Yes.

Q And that is on page what? A Page 1.

Q It concludes on page 2? A Yes.

Q Did Mr. Pfender sign such an application? A No, sir, not to my knowledge.

Q I call your attention to his testimony, in which Mr. Pfender testified that he had signed

some paper that he had been requested to sign, or words to that effect; did you see that paper? A I didn't see any paper that he signed. He didn't sign it in my presence, as far as my recollection of it goes. If he signed a paper, I don't know that he signed a paper; I didn't see him sign a paper, and I have no recollection of his signing a paper in my office.

The Court: Mr. Blankenhorn, my recollection of that testimony is that he in the first place said that he did not sign any application, but he didn't know what it was, but he wouldn't say that it was an application for commitment.

Mr. Blankenhorn: I think his words are, "I signed some paper that they asked me to sign; I don't know what it was."

The Court: It is very obvious this gentleman doesn't know anything about it.

Q Who, if anybody, made an examination of Mrs. Pfender with you at the time you made the examination? A Dr. Walter S. Washington.

Q And do you know whether he signed any certificate such as appears in this Exhibit D. 1 for identification today? A No, sir.

The Court: You don't know whether he did or not?

The Witness: I don't know whether he did or did not.

Q Well, was it your purpose to sign such a certificate and have Mrs. Pfender committed? A It wasn't my purpose, but we had been considering that question.

Q Who? A Dr. Washington and myself; we had spoken about it and spoken to Mr. Lum about it; we even might have spoken to Mr. Pfender about it.

Q Anyone else? A Not that I know of.

Q Did you go to the house of Mrs. Pfender on the evening of October 1, 1926? A I did.

Q Who was with you? Dr. Washington and Reverend Dougherty? A Yes, I think the three of us went there that night, and we went there because I had previously arranged with Mrs. Pfender to try to bring about a reconciliation between Mrs. Pfender and Mr. Pfender, and try to smooth out her difficulties, and when we went there we found the door locked and the place dark, and I believe that, not being allowed admission, we went away. That is my recollection of it.

Q Why did Dr. Washington go along? A That is my recollection; I wouldn't be sure that Dr. Washington was there, but that is my recollection, because Dr. Washington was with me. I have so many cases that I cannot recall this—I must be frank about it—but I do recall the incident of going there, and also seeing Mrs. Pfender the next day, and she apologized to me for it; she said she was sorry, but she was advised by somebody not to allow anybody in, because she might be railroaded.

Q Did she say who that person was? A No; that is all she said to me, that she might be railroaded, and she talked a great deal; I cannot recall all that she said, but I can recall some of the things, and I have a record of some of the things she said, because I took them down. That I can testify to very clearly.

Q Why did you take them down? A Because that is my usual custom to make notes on cases. I make notes on every case.

The Court: What is it you are trying to show, that this physician made an examination for the purpose of committing Mrs. Pfender to the State Hospital, if her condition warranted?

Mr. Blankenhorn: Yes, sir, and that he signed such a paper.

The Court: I don't know what other construction you could place on an examination of this kind. If he went there to make a mental examination, obviously, that was the purpose of it.

Cross examination by Mr. Lum.

Q Did you or did you not advise Mr. Pfender as to whether it would be safe for him to continue to live with his wife? A I told him not to go in there, because I was afraid that she might do some harm.

Q Why did you have that feeling? A Because she had some revolvers.

Q How did you know? A Because, first of all, she denied that she had a revolver, that she had given it to the gardener, and then subsequently she gave me the revolver, and I turned the revolver over—

Q To whom? A I think—

Q To Reverend Dougherty? A Yes. When she had told me that she hadn't had the revolver, and then that she produced a revolver, then I was very much afraid that she might do some harm, and she had notions that her husband was not treating her right.

Dr. Christopher C. Beling, re-direct.

Q When Mr. Pfender took this matter up with you, was his attitude one of bitterness and hostility, or of consideration for his wife? A I think he tried to do the best he could, as far as I know.

Q Did you advise her with reference to a sanitarium and a rest? A I certainly did.

Q What did you advise her? A I asked her to go to Dr. Prout's Sanitarium, Summit. I tried my very best to try to induce her to take a rest somewhere, to go away, that she would quiet herself and get her nerves in shape. She was very much upset.

Q Was the effort of her husband to railroad her to an insane asylum, or have her receive the best sanitation and consideration possible to the end that her health might be restored? A I cannot—

Mr. Blankenhorn: I object.

The Court: Sustained; it is too leading.

Q What was the statement of the husband with reference to railroading her, if any? A I don't know; as far as I know, he didn't reveal any such thing to me. I know that he wanted the best done for his wife that could be done.

Q Did he tell you that? A Yes.

Re-direct examination by Mr. Blankenhorn.

Q Did he tell you that he had confessed to her that he had taken a young woman out to dinner while she was at Westport, and had taken the young woman driving on five or six occasions? A He told me something like that. He told me that he had told his wife that he had taken somebody out, simply to satisfy her, because she

was after him all the time, and he thought that that perhaps might satisfy her, and he also told me that he recognized how foolish she had been.

Q Did he tell you that that was the truth, and that he had in fact taken the young woman out? A He did go out with some woman, I think if I recollect rightly, but I don't remember the circumstances, but he said that he had taken someone out to dinner once, or something like that.

Q And didn't she tell you that he had confessed that to her at Westport? A She told me that and a great many other things.

Q Didn't she say that she couldn't understand how that was, that he could do such a thing, after writing such loving letters to her? A Yes, I believe she said something along those lines. She was full of complaints about her husband.

Q And didn't she try to get her husband to stop going with the young woman? A She had these ideas that her husband—she was obsessed about her husband.

Q Didn't she ask you to try to get him to stop? A Yes, she thought that she loved her husband and that she would be glad to have him give up all these things.

Q And did her husband, in your presence, promise her that he would stop? A No, sir.

Q Did you advise him to? A I tried to find out from him and all I found out was that incident; he said that he had tried always to do the best he could for her, but that she was unreasonable.

Q But he never promised in your presence that he wouldn't go with that woman any more? A No, I didn't have the opportunity that night;

we were going there to bring about a reconciliation.

Q Was Mr. Pfender with you that night? A Yes, I took Mr. Pfender with me.

Q Outside? A Outside, Mr. Pfender and Dr. Dougherty and I think Dr. Washington.

HAROLD SIMANDL, sworn for defendant.

Direct examination by Mr. Blankenhorn.

Q Mr. Simandl, are you a counsellor-at-law of this State? A I am.

Q Do you know Mrs. Pfender? A I do.

Q Do you know Mr. Carl Pfender? A No, I do not.

Q Did you represent Mrs. Pfender at any time? A I did, I believe in November and December, 1926; I think that is about the time; I don't exactly know how long, but somewhere around November, 1926.

Q I show you Exhibit D. 1 for identification, today, and ask you whether you at any time saw such a paper signed by any physician for the commitment of Mrs. Pfender to the State Hospital at Greystone Park? A I wouldn't want to say that I saw a commitment to the State Hospital at Greystone Park; I saw what purported to be a commitment to some institution; I didn't know just exactly what institution, because I didn't get a full opportunity to see what was written entirely inside of the document. The circumstances of what happened I can tell you.

Q Do you know by whom it was signed? A One of the persons who signed that document was Dr. Washington.

Q Can you state what the circumstances were, as near as you remember? A I didn't get an opportunity to fully read it; I got what you might call a flash of the paper, that is all. The most opportunity that I had was to see that it was in reference to Mrs. Pfender and it was signed by Dr. Washington; that is all I saw of the paper.

Q Will you state the circumstances under which you saw it? A Mr. Lum represented Mr. Pfender and he invited me to his office to discuss various features of the case. Mr. Lum was very sincerely impressed with what he thought was his side of the situation. In order to impress me—I am not giving you the conversation, because I don't know whether it is relevant or not—in order to impress me, he was in a little office in his suite—his own room, I believe it is, in the suite in the Firemen's Building, and there was a little iron safe in the corner, and he went to this safe, and he picked out this paper, which I recognized to be similar to the papers that are generally used in the Juvenile Court for a commitment under the 1918 act, commitment of an insane person, and on the front of it was Lillian Pfender, and inside was the name of Dr. Washington and another doctor, whose signatures I could not recognize, and Mr. Lum said at that time—he said—I did observe this, too; I observed that ten days had elapsed from the making of the paper, and the date that he showed it to me. I said, "You will have to get another examination in any event," and he said, "Why, if we wanted to use this paper, we could have," and then we went on along the same conversation with respect to the property, and so forth, that we were discussing

at the time, but there was a commitment there under what I term the 1918 act.

Q Did you say anything about that to Mrs. Pfender? A Yes.

Q What and when? A I had a conference at our office and I suggested that she be examined.

Q For what? A Determine whether she was or was not mentally balanced. And I brought Dr. Dowd to my office to examine her, and he examined her in my presence, and I wrote Mr. Lum a letter, a copy of which I have here, in which I stated, I believe, that I had had her examined. Yes, on November 19, 1926, I wrote a letter to Mr. Lum, and in that letter I stated, "I have had Mrs. Pfender examined and have been assured that the woman is absolutely sane."

Q Did you tell her of this commitment having been signed? A I did, yes.

Cross examination by Mr. Lum.

Q Do you recall that the discussion was with reference to the fact that Mrs. Pfender was the joint owner of the property at Glen Ridge and in New York State? A That was part of the discussion, yes.

Q And the question as to the advisability of establishing a trust fund, rather than her having funds unlimitedly in her hands? A That was one of the things that were discussed, too, Mr. Lum.

Q I told you that certain doctors had considered that her case required very close watching, at one time? A You told me that a doctor in New York, as well as some doctors here, had come to that determination, yes, sir.

Q And considered that it would be very unwise for her husband to attempt to live with her? A I believe you said that, yes.

Q I told you about the revolvers? A Yes, you did; you told me that, yes, sir.

DR. HAROLD J. HARRIS, sworn for defendant.

Direct examination by Mr. Blankenhorn.

Q Dr. Harris, are you a physician? A I am.

Q Practising where? A In Westport, New York.

Q How long have you been practising? A About six and one-half years.

Q Where were you graduated? A In Albany, New York.

Q State generally your qualifications. A Simply that I have my degree of M. D. and my usual qualifications.

Q Graduate of what college? A Albany College.

Q Licensed to practice in New York State? A I am.

Q Do you know Mrs. Pfender? A I do.

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

Q Do you know a Mr. Ross? A I am quite certain I have met a Mr. Ross.

Q Do you see him in the court room? A No, I wouldn't recognize him.

Q He is the gentleman on the back seat. A Yes, I think I do recognize Mr. Ross.

Q Did you attend Mrs. Pfender in August, 1926? A I did.

Q And in July, 1926? A Yes.

Q What did you treat her for in July, if anything? A A fractured rib in July.

Q When again did you see her? A In August.

Q Have you a record of your visit there? A Yes, I have.

Q Was that made at the time of the visit? A Yes, that was made at the time.

Q When did you visit her in August? A On the eighth of August, 1926.

Q Do you recall what day of the week it was? A It was Sunday; that I have just checked up, to be sure; I just put the date down.

Q What was her condition? A When I came, her condition wasn't clear to me; she was in a state, I should say, semi-conscious, but it was apparent from reflexes that were present that she was not completely unconscious, and after several attempts to elicit answers to my questions, I succeeded and got a story which made me realize that the condition was a nervous attack.

Q While you were examining her, was Mr. Pfender there? A As I recall it, Mr. Pfender was in and out of the room; he was in the building, yes.

Q And was Mr. Ross also there? A I think Mr. Ross came into the room; that I wouldn't say for certain. I know he was in the building, too; I think in the next room.

Q Did you say anything to Mrs. Pfender, speak to her? A Oh, yes, I attempted to find out what the cause of the condition was, of course.

Q What did you find out? A I found—in the first place, I had a great deal of difficulty eliciting any story; I found she was very reticent about talking about it. I explained to her that

I couldn't possibly make a diagnosis and do anything for her unless she would co-operate with me and tell me what the situation was. In other words, what she had on her mind and worrying her.

Q Did she tell you? A Yes, finally.

Q What did she say?

Mr. Lum: I object, unless Mr. Pfender was present.

Objection sustained.

Q Was Mr. Pfender present? A Mr. Pfender was not present throughout the whole conversation; he was in and out of the room.

Q Did you talk to Mr. Pfender about the conversation? A Yes, briefly.

Q Did you tell him what Mrs. Pfender told you? A Yes.

Q Now, will you state what it was that you told Mr. Pfender that Mrs. Pfender had told you? A Why, essentially that her condition at that time—what Mrs. Pfender told me was that—

Mr. Lum: What you told Mr. Pfender.

Mr. Blankenhorn: Just a moment. I wish to ask a question now.

Q What did Mrs. Pfender tell you?

Mr. Lum: I object.

The Court: His testimony is not clear that he told Mr. Pfender everything that Mrs. Pfender told him. You asked him what he told Mr. Pfender that Mrs. Pfender told him.

Q What is it, doctor, that you told Mr. Pfender that Mrs. Pfender told you? A Why, my recollection of that is that I told Mr. Pfender that Mrs. Pfender had said that she was very much upset because of the revelations that he had made to her, either in the night or the night before or early that morning; I am not certain which.

Q Did you say what the revelations were? A I told him that the revelations had to do with an affair with some woman.

Q What did he say? A As I recall it, Mr. Pfender simply replied that the situation was exaggerated; that it wasn't as bad as it seemed, or words to that effect. Naturally, this is a year and some months ago.

Q Did you determine the cause for Mrs. Pfender's condition? A I thought that was sufficient, because I felt that the nervous shock of a sudden revelation of that nature was quite sufficient cause.

Cross examination by Mr. Lum.

Q Did she show you a letter which she had received from her son at that time? A Not that I can recall.

Q Did she speak of it? A She mentioned her son, but I don't recall any letter.

Q Do you recall that she told you that she had just heard from her son at that particular time, and that he had just got a woman in trouble and she was going to have a baby? A I don't recall that she said she had just heard from her son.

Q Wasn't that subject discussed between you? A The fact was mentioned that her son was in some difficulty.

Q And that the difficulty had reference to an affair with a woman? A Yes.

Q And that that caused great excitement to her? A I am not sure that it had.

Q Was she of a neurotic type? A Yes.

Q Highly hysterical? A Highly nervous.

Q Have you treated her on other occasions? A Only this.

Q You were not called in a year or two before when she had had trouble? A I have no record. The office nurse looked up the record. I may have seen her, but I don't recall it.

Q Did you know Mr. Pfender up there? A Yes.

Q Do you know the type of man he was? A Yes.

Q And met him frequently?

Mr. Blankenhorn: I object as not cross examination. I have no objection if he wishes to make him his own witness.

Re-direct examination by Mr. Blankenhorn.

Q Would you say that it was the combination of the two events that caused her condition, or was one sufficient? A I think it was quite sufficient. The event that was uppermost in her mind was the discussion of Mr. Pfender's activity.

Q The revelation as to the woman? A Yes, that seemed sufficient.

The Court: Might either or both have been sufficient?

The Witness: I should say so.

JAMES ROSS, sworn for defendant.

Direct examination by Mr. Blankenhorn.

Q What is your profession, Mr. Ross? A An architect.

Q Are you acquainted with Mr. Pfender and with Mrs. Pfender? A Yes.

Q Did you visit them in August of 1926? A Yes.

Q Where? A Westport.

Q Were you there on August 7th? A Yes, August 7th.

Q Do you recall an incident occurring between Mr. Pfender and his wife on that day? A What do you mean by an incident?

Q This revelation that Dr. Harris has referred to. A Yes, I remember such an occurrence.

Q What first brought that to your attention? Who told you about it first? A Mrs. Pfender.

Q And where was Mr. Pfender when she told you about it? A In the room.

Q Present when the conversation was had between you and Mrs. Pfender? A I believe so.

Q What was the conversation; what did she tell you? A Well, I don't remember; they had been upstairs and both came down together, as I remember it, and both had made some statement to me. Mrs. Pfender said that she had received a letter in reference to some relation that Mr. Pfender had had with some other lady, and she had threatened to return home and bring suit for a divorce; and there was also something in the letter in reference to her son.

Q Did she tell you that Mr. Pfender had confessed to her? A Yes, she said that Mr. Pfender had confessed certain things to her.

Q Did she say what they were? A She said that he had admitted going out in an auto to restaurants and probably to theatres, but I have no recollection any more definitely than that.

Q And did Mr. Pfender reply to that? A I think Mr. Pfender had admitted certain statements that Mrs. Pfender had made.

Q In your presence? A Yes, with reference to the young woman.

Q With reference to the young woman? A Yes.

Q And then what happened? I mean, did you stay there? A Yes, I was there that night and the next day, and Mrs. Pfender had threatened to bring proceedings for divorce, and I urged her to give serious consideration to that, and Mr. Pfender also. And then they went upstairs again, and after a while Mr. Pfender came down and said that Mrs. Pfender had fainted, and wished to know what I would advise to do. I said that he should try to get a doctor, and he did—went out and got a doctor.

Q But the doctor didn't come until the next day, did he, Mr. Ross? A I am not certain as to what day this was. My impression was that this occurrence took place on Saturday. We had been out at the building in the morning, both Mr. Pfender and Mrs. Pfender and I, and then they returned and I went out to the grounds in the afternoon alone, expecting that they were coming out later. I thought that was Saturday, and my impression was that I returned afterwards, and Mr. Pfender and I went out to dinner, as Mrs. Pfender, he said, was indisposed, and my impression was that this occurrence all had taken place on Saturday, but it may have been on Sunday that this development had taken place, be-

cause I am not sure when—I thought it was the following day. I thought it was on Sunday that we returned to the city.

Q Did you return to the city? A Yes, by auto, the three of us. I thought it was Sunday, but it may have been Monday; I am not sure of that.

Q Do you know how long Mrs. Pfender was unconscious when she fainted? A Mr. Pfender had come down a couple of times, I should think fifteen or twenty minutes had elapsed between the times that he had come downstairs, and he came down once and said something to me about the condition of affairs, and then came down later and said that Mrs. Pfender had fainted, and he went out and got a doctor, but whether that was Saturday or Sunday, I have no recollection.

Q You helped them back? A Yes.

Q You all came home together? A Yes, and I thought that was on Sunday, but I am not sure.

Cross examination by Mr. Lum.

Q The letter that you spoke of was a letter from the son to the mother? A I have no recollection; she said that she had received a letter revealing conditions with reference to her son and in reference to Mr. Pfender.

Q She spoke at the same time of the fact of her son having gotten some woman in trouble? A Yes.

Q Mr. Blankenhorn used, as he has constantly used in this case all through, the word "confession"; was there at any time an occasion when Mr. Pfender admitted or confessed any wrongdoing, any immorality or anything of the kind? A I told Mrs. Pfender that I thought her im-

pressions must have been wrong in reference to that, because Mr. Pfender had been working so long with me over the plans and everything, that I thought the impression must have been misconstrued.

The Court: That isn't an answer to the question. The question is, did he confess any immorality or any wrong?

The Witness: No; he distinctly said that night that there was no wrong action at all on his part, and that he would be very willing, if Mrs. Pfender would not bring this suit for divorce, to break off all relations with the young lady.

Q And did he not say that he had merely taken dinner with her and an automobile ride to public places where there were many other people? A That is as I understood it.

Q Was there any question whatever of his, in your presence or at any time, admitting any wrongdoing or immorality whatever? A No; he said distinctly that night that there was no wrongdoing.

Mr. Lum: May I make this witness my own witness as to one feature which is not cross examination?

Direct examination by Mr. Lum.

Q You have known Mr. Pfender for some time? A Yes, for over twenty years.

Q And worked in connection with various plans? A Yes.

Q The property at Westport was taken in the name of both husband and wife jointly? A I have no knowledge of that; that is not definitely.

Q Did you ever at any time observe any unkindness or cruelty on the part of Mr. Pfender toward his wife? A Never.

Q By word or action? A Never; always very considerate and courteous in their relations in my presence.

Q What type of man was Mr. Pfender, a brute or kind and considerate man? A I should say very kind and considerate in his treatment of all persons that he came in contact with, as far as I observed.

Cross examination by Mr. Blankenhorn.

Q Would you say the same about Mrs. Pfender's conduct toward her husband? A As far as I observed, always courteous in their relations with each other, except on this occasion at Westport.

Q Didn't Mr. Pfender say that this thing hadn't gone very far, this affair with this woman? A He said that there was nothing serious in the relation; nothing wrong in their relationship.

Q But he did say that he had kissed her? A I have no knowledge of that, no. I have no recollection that he admitted such a thing as that.

Q Didn't Mrs. Pfender say that he had admitted it to her? A I don't know; I don't remember. Mrs. Pfender made various statements, but I don't remember anything definitely except as to the auto riding and the theatre and restaurants. She may have made such a statement.

Q And didn't say that he might have kissed her but that that wasn't wrong? A I don't know whether he made such a statement or whether she made the statement to me.

Q That statement might have been made? A It might have been made.

Q There at Westport? A Yes, but I have no recollection of it.

Q Did he say that he had put his arms around her? A Not that I remember. Mrs. Pfender had made various statements about what Mr. Pfender admitted, I think, but what those statements were I have no recollection beyond those three items.

DR. WALTER S. WASHINGTON, sworn for defendant.

Direct examination by Mr. Blankenhorn.

Q Doctor, you are a practicing physician in this county? A Yes.

Mr. Blankenhorn: Will you admit his qualifications?

Mr. Lum: Yes, sir.

Q Do you know Mrs. Pfender? A I met her once.

Q This lady here (indicating)? A Yes. I wouldn't know it was the same woman.

Q Do you know Mr. Carl D. Pfender? A I met him once or twice; I wouldn't know him if I saw him now.

Q Did you make an examination of Mrs. Pfender in order to determine her mental condition? A Yes.

Q At whose request? A I cannot say that I remember now at whose request it was. It may have been Dr. Beling's; I really don't remember.

Q It has been testified, Dr. Washington, by Mr. Harold Simandl that he saw a commitment

similar to the commitment papers that are used in the Domestic Relations Court for the commitment of insane patients to the State Hospital and that that had been signed by you. That is, a commitment for Mrs. Lillian E. Pfender, or papers similar to such a commitment, on the front of which was Lillian E. Pfender's name, and a certificate signed by you. Have you a recollection of such a paper? A I have not, and I wouldn't believe it unless I saw it.

The Court: Have you any recollection of ever having signed such a paper?

The Witness: None whatever.

The Court: You said you made an examination?

The Witness: I made an examination.

The Court: Do you recall having made a certificate after that examination?

The Witness: I did not. I am positive that I didn't; I should have to see the paper before I would admit it. I don't have the slightest recollection. In fact, my remembrances of the circumstances would lead me to believe that I couldn't possibly have made out a paper.

Q But the other physician who made the examination was Dr. Beling? A Yes.

Q Did Mr. Pfender sign any paper for you? A No; he did not.

Q At your suggestion? A No, none whatever; nothing to do with it.

The Court: Doctor, after you had made the examination of Mrs. Pfender, did you

think it was such a case as would warrant you in signing such a certificate?

The Witness: I think it would.

Cross examination by Mr. Lum.

Q Doctor, you came in touch with Mr. Pfender at that time? A Yes.

Q You heard of the revolvers, and so forth? A Yes.

Q And threats to shoot and kill the husband? A Yes.

Q Was all that was done there a matter of precaution in the matter of examination, and so forth, to be prepared for emergency, or was it an effort of a man to railroad a wife into an insane asylum? A It was an effort to find out what her mental condition was.

Q What was his attitude; one of consideration or otherwise? A I don't remember very much about it; he was not vindictive or anything of that character in the matter.

Q Do you remember whether the matter of encouraging the wife to go to a sanitarium for change and rest came up for consideration? A Yes, I remember that it did at some time. You see, I saw her with Dr. Beling one afternoon at her home, and some time after that he wanted to see her again and go over the case again, and we went up one evening and we were not allowed to enter the house, and we didn't see her.

Q Do you know from her statements to you whether she considered her husband guilty of adultery and immorality? A She connected his name with some young woman that I think was in his office.

Q And do you remember whether she made the statement that he had spent the night with

her and taken her to a hotel? A No; I don't recall it, no.

Re-direct examination by Mr. Blankenhorn.

Q Did you question Mr. Pfender as to the truth of those allegations? A Which?

Q The allegations as to his conduct with the young woman. A I don't remember as I did.

Q Did you know—did Mrs. Pfender tell you that he had told her while they were at Westport that he had taken this young woman out riding and to restaurants on five or six different occasions? A No, I don't remember that; I remember that he did say—yes, I think he said himself that he had been out, but he only mentioned—my recollection is—one time.

Q But did she tell you? A I think she did.

Q And you spoke to Mr. Pfender about it? A Yes, and he admitted that he had been out with this young woman, but I don't remember more than once.

Q And wasn't that the cause of the great excitement on Mrs. Pfender's part? A I don't know that there was one cause more than another; she was very considerably excited; very voluble and very talkative about a good many subjects. I cannot tell you now, without consulting my report that I made at the time; I don't remember.

Q Did you make a report at that time? A No, I didn't make any report, but I took notes. But I understood the matter was disposed of. I was surprised when you spoke of having made out papers, because I supposed the matter was disposed of. I never heard anything more about it; I never saw Mrs. Pfender again and never saw him again.

Dr. Walter S. Washington, re-cross.

Q Was your first visit prior to September 28, 1926? A I think it was, but I am not positive; I thing it was, though, Mr. Blankenhorn

Q You remember the night that you went there and couldn't get in? A Yes, I remember that.

Q That I understood was the night of October 1, 1926? A Yes.

Q How long before that was it? A I don't remember that.

Q How long before that was it? A I don't remember that; not very long.

Q It was a Sunday that you had seen her, wasn't it? A No; I saw her at her home?

Q Yes. A No; I think it was on the afternoon of a week day, I think so. I could tell that by looking at my books.

Q Did you question Mr. Pfender as to his sexual relations with his wife; that is, as to whether he was having sexual relations with his wife? A I don't think so; I don't remember.

Q Wouldn't that have some bearing upon her condition and his? A It would have some bearing on the relations with each other, of course.

Q As to her mental condition? A Oh, her mental—no, I don't know that it would.

Re-cross examination by Mr. Lum.

Q Have you a recollection of Mrs. Pfender speaking herself of revolvers? A Yes.

Q And of a threat to shoot her husband? A Yes.

Q Did you ever come in touch with me in connection with this case, directly or indirectly, report to me or send me any papers, or see me in connection with it? A I don't think so.

REV. E. S. CARSON, sworn for defendant.

Direct examination by Mr. Blankenhorn.

Q You are rector of what church? A Christ Church, Ridgewood, New Jersey.

Q Do you know Mrs. Pfender? A I do.

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

Q How long have you known them? A About eleven years.

Q Have you known them intimately? A More intimately in the first four of those eleven years, from 1916 to 1920; they were parishioners of mine in Christ Church, Ridgewood.

Q What would you say as to Mrs. Pfender's attitude toward her husband and Mr. Pfender's attitude toward his wife? A During the period that I intimately knew them, that is, when they were parishioners of mine, I would say that their relations then were splendid, fine, between husband and wife; I wouldn't ask for anything better.

Q Did you ever hear Mrs. Pfender threaten her husband with any bodily harm? A Never.

Q Did you ever hear her complain of his conduct? A No.

Q Did you ever hear her complain of his personal appearance? A During those four years that they were parishioners of mine?

Q During any time that you knew them? A Never.

Q And what would you say of Mr. Pfender's attitude toward his wife? A During that time, so far as I could see, he was treating his wife properly.

Q After they left Ridgewood did you come in contact with them? A Not in their home,

but only in public functions, like at the Bishop's reception, affairs of that kind, but not in their own home.

Q How frequently did you see Mr. and Mrs. Pfender? A At least once a year; about once a year.

Q Did you visit them in the Glen Ridge home? A No. They were transferred from my parish to the parish in Glen Ridge and of course they were no longer parishioners of mine.

Q And after they left, did you keep up your acquaintance with them? A Only by these visits that were made there at public functions; of course, I didn't visit them in their own home.

Q When was the last you saw of them? A About two years ago.

Q That is to say in 1925? A About 1925.

Q And where was that? A That was at a public function here in Newark.

Q Can you give us the date? A I think it was in the fall of 1925, at the Diocesan House, at a reception which was being held there.

Q Would that have been in December? A No, it wasn't as late as that; it was at one of our general conventions. It would have been in November, because our convention is in October.

Q Did you notice any strained relations between Mr. and Mrs. Pfender? A None whatever at that time.

Cross examination by Mr. Lum.

Q At the time Mr. Pfender moved away, you wanted him as one of your vestrymen, did you not? A No, I did not.

Q Didn't you speak to him about that? A Never, sir.

Q You are sure of that? A I am very sure of that, sir. In what way did I make that statement? In writing?

Q No, didn't you speak to Mr. Pfender about becoming one of your vestrymen? A He couldn't become one of mine after he left the parish.

Q I mean while he was there, just before they moved away? A No, sir.

Q You had a very high regard for him? A I had a high regard for him then.

Q You considered him a fine Christian gentleman? A At that time, yes.

Q Nothing that you had even seen of him has caused you to change your mind a hair's breadth, has it, sir? A I don't know what has happened, sir, since he left.

Q Nothing that you have ever seen, is my question, has caused you to change that view? A Not that I have seen.

FRANCES E. PRICE, sworn for defendant.

Direct examination by Mr. Blankenhorn.

Q Mrs. Price, where do you live? A I live in the home on Ridgewood avenue next to the Pfenders' home.

Q Do you know Mr. and Mrs. Pfender? A I know Mr. and Mrs. Pfender.

Q How long have you lived there? A About six years.

Q And you have known them all that time? A Yes.

Q Have you visited in their home? A I have been in their home many times.

Q Can you tell me when was the last time that you were in their home? A I have been in their home many times, and I have been in their garden; they have a very beautiful home and a very beautiful garden, and Mrs. Pfender has always been exceedingly interested in her home and in her garden and in her pets, and I have been in the home and I have visited with her across our hedge. I have seen Mr. and Mrs. Pfender many times in their garden together; I have seen them play croquet.

Q You say you saw Mr. and Mrs. Pfender often in the garden? A Yes.

Q Did Mrs. Pfender ever complain to you or say anything to you about her husband?

Mr. Lum: In his presence. If not in his presence, I object.

The Witness: Not in his presence.

Mr. Lum: I object.

Mr. Blankenhorn: The allegation is that this woman was maligning him among his friends, that he had no friends.

The Court: There has been no testimony to the effect that she ever said anything to this witness. The objection is sustained.

Q When was the last time, Mrs. Price, that you were in the home of Mr. and Mrs. Pfender when Mr. Pfender was there? A I should judge it was about two years ago. Now, at Christmas time, I went in late in the afternoon to call on Mrs. Pfender, and Mr. Pfender's sister, Miss Pfender, was there, and I had a very pleasant call, and we were chatting. I had never met Miss Pfender before, and I was introduced to her, and before I—

Mr. Lum: Was Mr. Pfender present?

The Witness: Mr. Pfender came home while I was there.

Q Where were you when Mr. Pfender came home? A I was in their living room.

Q And did you see Mr. Pfender greet his wife at the door? A Mrs. Pfender left the room to greet Mr. Pfender when he came into the hall.

Q Did you see them? A I cannot say that I saw them, but I saw them together when they entered the room; I judge she went to the door to greet him; she left the room.

Q Then came into the room together? A Yes, they came into the room together.

Q What was his attitude toward her at that time and her attitude toward him? A Very natural; she said, "Carl, here is Mrs. Price, will you come and meet her?" And he did.

Q And was Miss Helen Pfender there? A Miss Pfender was there.

Mr. Blankenhorn: I understand your Honor will not permit me to examine the witness as to statements made out of Mr. Pfender's presence?

The Court: Statements concerning what?

Mr. Blankenhorn: Complaints made about her husband.

The Court: No. Suppose you should ask me; I would say no. What difference does that make, if she never did say anything to me about it? That is what you want to prove, that she never told this woman anything derogatory of Mr. Pfender's character. I don't care if she never did.

Cross examination by Mr. Lum.

Q You at all times saw Mr. Pfender always treat his wife with kindness and consideration whenever you saw them together? A I never saw them together, only across the hedge.

Q But whenever you did, your testimony is that he always treated her kindly and considerately? A They apparently were very natural in their relations to each other.

LEVI W. HALSEY, sworn for defendant.

Direct examination by Mr. Blankenhorn.

Q Dr. Halsey, are you a practicing physician in this State? A Yes.

Q Licensed to practice by the State? A Yes, sir.

Q And practicing where? A Montclair.

Q How long have you been practicing? A In Montclair thirty-five years.

Q Do you know Mrs. Lillian Pfender? A I do.

Q Do you know Mr. Carl Pfender? A I do.

Q Did you visit Mrs. Pfender professionally at any time in the year 1926? A I did, in March.

Q In March, 1926, what for? A Attack of grippe.

Q How many times did you visit her, and over what period? A I have the dates here, copied from my ledger: March 12, 13, 14, 15, 16, 17, 18, 19, 20, 22.

Q When you went there who let you in the house? A No one.

Q How did you get in? A Sometimes the door was open. I would find the door open when I—once I went there and couldn't get in and I went away and came back, and the door was opened the second time.

Q You rang the bell and no one answered the bell? A No, no answer.

Q When you went back, how did you get in? A The door was open then.

Q Was there another time when you were unable to get in? A One other time I could not get in; I walked around back of the house; the gardener was working back there and he told me to go up the back way, which I did.

Q Do you see the gardener here, in the next to the last row? A I don't believe I would recognize him.

Q Did you see any one there in the house taking care of Mrs. Pfender? A No.

Q So far as you know, she was there alone? A As far as I could see, yes.

Q You never saw any other person there than the gardener? A Her husband was home at times when I called.

Q That would be at what time of the day? A I don't recall; some of those visits were made on Sundays, when he was home, and I remember of seeing him on several occasions.

Q But outside of Mr. Pfender and outside of the gardener, did you ever see anyone else? A No.

Cross examination by Mr. Lum.

Q Do you recall one evening when Mr. Pfender was speaking to you, just before you went to see Mrs. Pfender and Mrs. Pfender said, "He is talking about me behind my back,"

or words to that effect? Do you recall that incident? A I do not.

Q Doctor, Mrs. Pfender was confined to her bed for about four days? A About ten days.

Q To her bed? A Yes.

Q Do you know where her son was? A No.

Q Do you know whether he was employed at the time or not? A No.

Q You never saw him there? A No.

Q Did you ever see her sister there at any time? A No.

Q Did you know she has a sister in this vicinity? A No, I did not.

Q You saw no friends or associates or acquaintances of hers at the house at any time you were there on any of those visits? A Other than her husband.

Q No one else excepting her husband? A No.

Q When he was there, will you say whether he treated her with kindness and consideration? A Yes, as far as I observed.

Q You observed nothing to the contrary? A No.

LILLIAN E. PFENDER, defendant, sworn.

Direct examination by Mr. Blankenhorn.

Q Mrs. Pfender, when were you married to Mr. Pfender? A 1902.

Q Whereabouts? A In Plainfield, New Jersey, at Grace Episcopal Church.

Q Where did you live after that? A We lived in New York and we lived in Montclair.

Q How soon after your marriage did you move to Montclair? A Right away.

Q How long did you live there? A We lived there a year and a half, and then we went to New York City and took an apartment for six months, and then we came back to Montclair again.

Q When did you go to Ridgewood? A I think in 1908 or 1909, and we were there one year and then we went back to our home on Mountain avenue, Montclair.

Q And then did you go back to Ridgewood? A No, when we sold our house in 1914, I think it was, in Montclair, we went the year the war broke out in Europe, and that is the year we sold the house, and we went to Ridgewood to live then, and I believe we lived there up to 1920, the spring of 1920, when we moved to Glen Ridge, New Jersey, in April; I think it was April 26, 1920, that we moved to Glen Ridge.

Q And lived there ever since? A We have lived there ever since, right up to the present time.

Q That is the house you are occupying now? A At the present time, yes.

Q And while you were in Ridgewood, did you know Mr. Carson? A I did.

Q Did you attend his church? A I did.

Q And your husband? A Yes.

Q You have no children of this marriage, have you? A No.

Q You have a son of a former marriage? A Yes.

Q In 1912, did you know of Mr. Pfender having taken some neighbors on a fishing trip? A I knew that he went away with a salesman in his business. He told me he did, but I don't know

of it personally, because I didn't see the man come or go.

Q You didn't quarrel with him about that? A Never.

Q Did you break a fishing rod belonging to your husband? A Never.

Q Did you ever say to him, offering him a short piece of fishing rod, "There is your fishing rod"? A Never.

Q Did you ever object to having the pictures of his mother and sister or his relatives about the house? A Never; I loved them all; they were very nice to me.

Q There were some photographs of his relatives, were there? A Yes, on the wall, before the room was decorated. We decorated it just before we sold it. My husband thought it would be a good idea to decorate and have everything look pretty and nice and we could sell it more easily, because it was an expensive house, and it would look more attractive, and when the new decorations were on, he said, "Don't tack up the wall with small pictures." My son had done it so much, and around our mantlepiece we had all these little photographs of my son when he was a baby and as he grew up, to the age of eight years old, and were tacked along, under a large picture of his mother and aunt were both sides, and he said, "I don't want the walls tacked up with little pictures," and he was very angry when my son started to put up pictures on the new wallpaper in his room, so he took the pictures and put them on the shelf of his closet, where he kept his hats and such things, and I have never seen those pictures from that day to this. What he did with them, I don't know.

Q Do you remember 1923, when your husband went to Maine on a fishing trip? A I do.

Q Did you tear up his fishing license? A I did not.

Q Do you know how it came to be torn? A Yes, I do.

Q Will you state how it was? A He came home— May I state the trip we had planned?

Q Had you planned a trip? A We had planned a trip to Washington.

Q What was the event? A We were all packed, ready to leave the next morning, and found it was the anniversary of our wedding, May 15, and he couldn't get away on the fifteenth, and this was just two or three days before the first of June, and he said it was more convenient for him to get away then, and he said that would be "my anniversary present to you, in addition to what I have given you." We were all packed up, ready to go. He came home from business in a very excited mood. I had been at him to go to a specialist to see about his health. He couldn't sleep, and hadn't slept for a number of years. He suffered from insomnia. And I made him go to see this Dr. Holland, on East 40th street—I have forgotten the number—maybe thirty East 40th, I think that is the number; I may be mistaken in the number, but that is the street anyway, and he came home and told me—he was in a frightfully excited condition; he couldn't stand still; he walked back and forth, nervously taking things out of his pocket and tearing them up, and he walked back and forth through our front rooms, all the way across from his sleeping porch, through my room, through the bathroom and through the sewing room then—where I keep my pets now—and I was sitting hemming curtains at the machine, and he came finally and sat down; I said, "What is the matter today?" He said, "I went to see Dr. Holland,

as you wanted me to, and he tells me I am in a very serious state of health and he won't answer for the consequences unless I go away immediately and leave business; that I must get away from business; that it is affecting me so much so that I cannot sleep, and that he won't answer for the consequences. He said I must go out more, I must play golf every day," and he said, "I hate it;i t is an old man's game; I don't want to do it," and he said, "I must take up horseback riding." I said, "that would be perfectly lovely; you get a beautiful horse and you will get attached to it; I am fond of animals, and you will learn to love it, and it is wonderful exercise. I think it is the best thing in the world." And I was all attention, because I loved him very dearly. That is the reason I wanted him to go to a physician, and had tried for years to get him to go, and he told me then, he said, "I am in such a nervous condition that I have got to get away at once." I said, "Well, that is good; now we will have a nice long vacation." He said, "I don't intend to go away with you." He said, "I am going to do as I please in the future," and I said, "Well, as long as you go and get away from business, I don't care where you go; you need to get away; you are at the grind all the time. Your nose is at the grindstone, and it is killing you; I would much rather you would have less money and take care of yourself." He said, "I decided to take a trip to Maine," and I said, "Well, that is fine. But," I said, "I did count on this trip so much." I said, "I have been wanting to go away for years and you wouldn't take me anywhere. You won't take me to theatres, you won't take me to concerts, you won't allow me to join the clubs; you said all

they want is money, that is all every one is after." And it was the same in the church affairs; he wouldn't let me join.

Q Now, about this license, how did that get torn? A He came and sat down and he took things out of his pocket, put them on the machine, and he went on, and the argument started about his going. I said, "Can't you take me with you?" He said, "They don't take women up there," and I said, "Well, I would love to go. I would stay in the place, and I could stay and paint and I could do some fancy work or something while you go out in the boat," and he said, "No, they don't take women up there," and I said, "Well, I am sorry; I am awfully disappointed," and I cried, and he commenced—he was very nervous and he got to swearing at me, and he commenced taking the things out of his pocket and putting them on the machine, and he was tearing them up. He started and he walked up through the rooms—they all connected—and he started in through this way, back and forth, and there was a stream of papers that he had nervously torn all the time. He went downstairs and he went out in the grounds, and I looked out to see where he was, and he was walking up and down.

Q Where was the license? A I didn't know that they were licenses at the time, but I went in the guest room to look out the back room, and there were pink and green and yellow pieces of paper on the floor.

Q What did you do with them? A I picked them up and put them on the bureau. I said, "I don't know what they are," but I was curious, and just then he came in and up the stairs and went into that room, so I went in at my sewing

again, and I tossed them on the bureau; I made up my mind when I did it, that I would piece them together and see what they were.

Q Never mind that. A I went back to the sewing machine and started hemming things, and he came in terribly excited again, and went over the same rigmarole about getting away. I said, "Carl, I want to go away on a vacation; I need to go; we both need a change." I said, "I would like to take a trip to Europe or to California." He said, "I cannot get away from my business to go with you, and he said, if you want to go, you can go anywhere. You don't have to take into consideration the money," he said, "I have got plenty."

Q Do you know what became of the license? A That license disappeared completely from view.

Q You never saw it after that? A No, I went in to look to see if they were there, and they were gone.

Q Did Mr. Pfender go to Maine on a fishing trip? A He did the next day, the first of June.

Q What did you do? A I cried.

Q Was there an arrangement about your going on a trip? A Yes. I said, "I would like to go to Europe"; I said, "I would like to have the money now."

Q When was that? A That was the day before the first of June, 30th or 31st of May.

Q Was that when he was tearing up the papers? A Yes.

Q Did he say you could go to Europe? A Yes. He said, "You can go anywhere you want."

Q What was the arrangement made about money? A He said—he wrote out a check and signed it there and he said, "You can fill it in

for any amount which you need to pay for your expenses and clothing and so forth."

Q I show you Exhibit D. 36 for identification, and ask you if that is the check? A Yes, that is the check; this is his writing.

Q Did you attempt to cash this check? A I did; I went to the bank, the same bank, the Bank of the Manhattan, and presented it at the window, and they asked me to identify myself, which I did.

Q Can you tell what of the handwriting in that check is yours and what part of it is Mr. Pfender's? A It is all mine but the signature.

Q What about the date? A He told me to date it. I dated that myself. I wrote all this, the date and the amount, and he signed it only; he left a signed check, you understand, for me to fill in.

Q Was there any statement as to how much you were to draw? A I said I would want between two and three thousand dollars, and I only made it out for two thousand.

Q This was to cover the expenses of yourself and anyone else? A He said he couldn't go with me, couldn't get away, and I would have to take Will with me to Europe.

Q When you tried to cash that check, where was Mr. Pfender? A He was away in Maine, in the Rangeley Lakes, in Maine.

Q Did you send him a telegram saying, "If you don't arrange for me to get the money, I will leave you and never come back"? A I never remember any such telegram.

Q Would you say you did or did not send it? A I did not, because I don't remember any such thing.

Q Do you remember in 1924 when you went to a hospital in New York? A Yes, I do.

Q And had you been sick? A Yes, I had been suffering with neuritis and sciatica.

Q Who was your physician at that time? A Dr. Young—J. Van Dorn Young.

Q Who took you to the hospital? A My husband.

Q What was your purpose in going? A Just for an examination, to see what was the matter with my hip and back.

Q A physical examination? A A physical examination.

Q When you got there did you see your doctor? A No, he was not there, and they showed me to a private room.

Q Did you finally see the doctor? A I saw him the next morning.

Q Did you see the doctor in the morning? A I did.

Q What did you say to him with reference to your staying there in the hospital? A I said I didn't understand that I was to stay there for a week under observation; I said, "I came here for an examination only. I expected you to bring another specialist to examine my back, to see if there was anything the matter with the hip and back."

Q Is that all you said to him? A That is all.

Q Did you tell him you were going home? A I said, "The nurse said I am to remain in bed, and I understand there is a day and night nurse engaged to take care of me." I said, "It is perfectly absurd; I feel perfectly well, with the exception of this pain in my hip and back," and I said, "I refuse absolutely to go to bed and

stay there a week under observation." I said, "You have treated me for some time and you know very well when I tell you I have this pain that I know what I am talking about."

Q Is that the substance of what you told him? A Yes.

Q And you told him you were going home? A Yes; said, "The nurse said it was to be a surgical operation, and," I said, "there will be no operations on me."

Q Did you send for your husband? A My husband was there.

Q He called a taxi, did he? A No, he didn't. While he paid the bill, he told me, to save time, to go out and call one, and I called one, and put my baggage in, which was only a bag.

Q Did your husband go with you in the taxi to the ferry? A Yes.

Q On that trip did you strike your husband? A I never did.

Q Or hit him in the face with your hand? A Absolutely no.

Q Have any trouble with him at all? A None whatsoever.

Q Any complaint about your having insulted the doctor? A No, none at all. The only remark was, he said, "I think you will regret not having this operation." I said, "There will be no more operations."

Q Do you remember in July, 1924, going to Westport, New York? A Yes, I do.

Q What was your physical condition then? A I had had this sciatic trouble and I had been very ill in bed for about six weeks or so.

Q And what sort of a place it is that you were going to in Westport? A It is just a camp, a rough camp, where the cracks are

through the floors and the wind blows through and the skunks get under and make it almost impossible to exist in the place.

Q What about the water in the house, the water supply? A The water supply is very hard, sticky water.

Mr. Lum: To save time, because it is apparent the witness will not give a direct answer, there is no issue, that I know of, as to the house being inadequate.

The Court: I don't understand that there is any issue of that sort raised anywhere, particularly in view of the testimony.

Mr. Blankenhorn: There is testimony as to trouble between husband and wife at Westport at this time—the month of July; the testimony about destroying a boat, and testimony about Mr. Pfender having left, and a quarrel; I am going to explain that.

The Court: Make it as short as possible.

Mr. Blankenhorn: I will hold her down as much as I possibly can.

Q What was the condition of the water supply in the house? How did you get hot water? A We had to fire up all the time and keep a wood fire; the range in the kitchen was a wood range, and it had to be kept up constantly to heat the small boiler.

Q What servant did you have? A A Japanese couple.

Q Had you brought them with you from Glen Ridge? A Yes.

Q Was there any objection on their part to the place? A Yes; they didn't like it.

Q Why not? A Because of the inconveniences, and the awfully hot fire that they had to keep in the kitchen, in order to have dish water, to wash dishes.

Q What about the bathing? A And the same for the bathroom; it was a very small boiler, and we kept it going constantly in order to have any hot water, and they refused to keep it going on account of the intense heat; it was in July.

Q When did Mr. Pfender come up? A Friday night, on the night train or boat, and arrived there between half-past five and six in the morning, I think, Saturday morning.

Q And what happened then with reference to these servants? A I had written him previously that the servants refused to keep the fire going and there was no hot water for the baths that were necessary; I had sciatica and couldn't bathe in the icy cold spring water, and he said, "Well, I told you how independent they were; they wouldn't even give me a pitcher of hot water in the morning."

Q What did he say? A He said, "Discharge them," and I said, "Why, I cannot do that and be left alone up here in this place and not well."

Q Then what happened? A I did what he requested. He went out fishing and I told them that Mr. Pfender said that they could leave on Monday and they said instead of that they would leave at once, on Saturday, which made it rather inconvenient, because Mr. Pfender was to stay there over Sunday.

Q When Mr. Pfender came back did they tell him that they were leaving? A Yes, they were all packed and the baggage on the back porch, and said, "We are going now."

Q What did he say? A He came in and was awfully mad, and he swore, of course, and he said, "I have got to take these d— Japs back to the house so they can get their clothes."

Q There was no trouble with you about it, was there? A No.

Q Between you and Pfender? A No; he kissed me goodby, and he said, "Dear, I am sorry to leave you alone, because I know you are not well, and I will try and get help and send them up to you."

Q What day of the month was that? A That was on a Saturday; I don't know whether that was the Fourth of July or not.

Q Had this Fourth of July celebration that Mr. Henckel spoke about, been held? A Yes.

Q It had been held? A Well, Mr. Pfender wasn't there at the celebration, I remember that distinctly. I don't think he was there.

Q And then he left with the servants? A Yes; they had to leave then, in order to drive home and get home in time.

Q Why did Mr. Pfender go with them? A He went with them to take them home, so they could get their clothing out of the Glen Ridge house.

Q And when did you next see Mr. Pfender? A I next saw him when I was on the way home, on Monday or Tuesday of the next week.

Q Did you have a gun up at Westport? A I never had a gun there, and I never saw one there.

Q Did you ever know that there was one there? A No, positively never saw one in the camp.

Q Do you know about Mr. Henckel coming to the door and trying to get in? A He simply knocked and I wasn't dressed; it was very warm,

and I was heating water to bathe a dog, who had been sprayed with a skunk. I spoke to him through the crack of the door, and said, "I am sorry I cannot let you in; the dog has been sprayed with a skunk and I am heating water."

Q Is that the only reason you wouldn't let him in? A I was in a bathrobe; I couldn't let him in.

Q Did you see Mr. Henckel later? A Yes, the next day—I had already spoken to his wife at the back door and told her I was going home, and was all packed to go, and would he please go to the farm and telephone from Brown's farm for a conveyance to come and take me and my baggage to town.

Q Did he do that? A Yes, he did, and they came there at noon and he drove me personally to the train.

Q Did you ever threaten or ever say you were going to burn Mr. Pfender's boat? A I never did.

Q Did you have any conversation with Mrs. Henckel about that boat? A Yes; she came to me on the front porch while I was sitting there waiting for the time to come to take the train; I was all packed up, ready to go, at nine o'clock, and between that and one o'clock, the time I took the train, she sat there talking to me, and she said, "Mrs. Pfender, it is not safe to leave that beautiful boat down there on the shore. Mr. Pfender left it there, and Mr. Henckel took it in; we were afraid it would be washed out in the bay, which is five miles wide." She said, "People last year came and built fires on the beach and toasted corn there, and they are apt to go up there and do the same thing, and there are two oil cans standing near the boat, not far from

the boat, where Mr. Pfender left it," and she said, "If anyone should build a fire there, the dry leaves and twigs would set fire to the boat, and the boat would be burned up." I said, "I don't care anything about it; I cannot bother about it, because I am not able to go up and down this mountain."

Q How far was it down to the shore? A It is very hard to judge distance, but it is quite a long distance down. I should say about a thousand or fifteen hundred yards from the cottage. I should think so, and then, very steep, and I wasn't well at the time; I couldn't pull the boat in; it is a sixteen-foot boat.

Q Do you remember seeing your husband on the train? A Yes, at Saratoga, when I was on the way down, there was a train coming up and I was amazed to see him coming in the car, and he was waving at me pleasantly; he sat down and kissed me and put his arms around me; he said, "I am awfully sorry about it; I am on the way up and only have a minute." He said, "Where are the animals?" I said, "In the baggage car." He said, "I am going on up." He had to hurry, because he only had a minute to spare.

Q He went to return with the luggage? A Yes—he didn't return with the luggage; he put a few things in, but the luggage went home by express, with the exception of a few cases I took with me.

Q Do you remember the Christmas of 1924, at the time when Mr. Pfender's sister was visiting? A Yes. She came and visited us for ten days over the holidays.

Q Do you remember having a quarrel with your husband? A Well, I cannot say I had a

quarrel with him—yes, I distinctly understand the unpleasant situation you have reference to.

Q Will you tell us about that? A Yes; I left my husband in the evening and his sister sitting in the sun parlor talking, and I went upstairs for something—I don't know what; it might have been a handkerchief or something I needed, some little thing, because I was right back.

Q Did you overhear your husband and his sister talking? A Yes.

Q And what was it that you overheard? A She said, "It is Lillian's fault; it is Lillian's fault"; repeated it twice.

Q Then what did you do? A I stepped in the room; I said, "What is Lillian's fault?" and said, "I don't like the idea they won't tell me," and I said, "Well, you have been talking about me evidently very loud; I overheard," and I said, "I don't think it is nice to talk behind my back; if you have anything to say, say it right to my face," and she said to her brother, "Do you mean to let her talk to me like that and insult me?" And he got up and he said, "G— d—, go to H—"; he ran after me and chased me out in the hall and struck me in the hall.

Q Where? A He struck me in the lower chest, but I ran upstairs; struck me with his fist and scratched my face from this side, on my ear, with his finger nail, and I had a white line there for a week where I put on antiseptic powder to heal it.

Q Where did you go? A I ran up to my room, and he after me, and I went in and just got the door closed and slammed it and locked it, and he came up after me and he called me vile names and threw himself against the door three

times, knocked this one solid panel out of the door, and came in there, and he rushed at me, and choked me and banked me up against the wall and bruised my shoulders very badly, so that the bruise showed there for two weeks after, and he said he would finish me, he would kill me, and I ran through the bathroom into the pet's room, and shut that door, and he smashed the panel out of that door, and I hid in the closet while he was picking up the pieces, and I ran up to the maid's room upstairs, and I slept in the southwest room that night, on the outside of this bed, with a steamer rug over me.

Q Do you know where he slept? A He went tearing around the house looking for me, but I was so frightened I stayed up there.

Q Did you use the telephone at that time? A Yes, I tried to get it, but I didn't succeed; he knocked it out of my hand.

Q When he burst the door open? A I was just at the telephone and I was going to call the police station, and he got in so quick that he took it away from me. I wouldn't have telephoned, only he came in and took it away from me.

Q Was the door repaired the next day? A He fixed it up with some fine nails himself that night, and the next morning he told me to tell Raphael to come in and repair it.

Q Did he repair the door? A He did, but he wanted a carpenter to do it. I said Mr. Pfender wouldn't have a carpenter.

Q Did he repair the door to the pets' room, too? A He did.

Q Was that broken? A No, but the panel was loose, the panel hung by the corner.

Q Did Miss Pfender leave the next morning? A When I went down to breakfast I saw someone had eaten, and it was her place. She had evidently a cup of coffee and toast.

Q Was she there? A She was not.

Q Has she returned to that house and visited you since that time? A She has.

Q Very often? A Quite often, for dinners and lunches and over Sundays.

Q Visited you personally? A Yes.

Q Has she given you gifts? A She has, and I have her.

Q You knew Mr. Pfender's mother quite well? A I did; I thought a great deal of her.

Q And did you visit her in her last illness? A I did.

Q And where was that? A That was at Bloomingdale State Insane Asylum at White Plains, New York State.

Q Was that just shortly before she died? A All the time she was there we visited her at different intervals, and I saw her just before she died.

Q Was that at Bloomingdale? A Yes, at Bloomingdale.

Q At the Insane Asylum? A Yes, and she was absolutely out of her mind.

Q Was the door ever broken down again by Mr. Pfender into your bedroom? A It was. Our bedroom door was broken down four different times.

Q Was the first in 1924, the episode that you have referred to? A Yes, that was the night his sister was there; she heard him smash it.

Q When was the next time that the door was broken down? A The week after we arrived

from Westport, New York; that was between the 10th of August and the 14th of August, 1926.

Q And when after that? A It was broken down twice that week and once the first week in September; it was four times altogether.

Q Was it each time broken down by your husband? A By my husband, when he was in a temper.

Q Did you ever make fun of Mr. Pfender's personal appearance? A Never.

Q Did you ever say that had his mother taken proper care of him his ears wouldn't have stuck out so? A Never.

Q Or many other comments on his personal appearance, to him or anybody else? A Never.

Q Did he ever make any comments to you about his personal appearance? A Yes, he did.

Q And when was that? A He said that people on the train had made remarks about his being such a homely man; a young man had made remarks about his ears, that he looked like a donkey, and when they got off at Jersey City one time when we were on the train going into the City, these young men got off and they made a noise like a donkey and waved their hands at their ears.

Q He felt rather badly? A Yes, he felt very badly and I felt very sorry for him, because I was very fond of my husband.

Q Did you say anything to him about it? A I did; I said, "You know you are very sensitive about that matter, and that could easily be remedied by going to Woodbury, the face specialist." I said, "it would be a simple operation and would remove the trouble, and you would never have any remarks passed about it."

Q That was after he had spoken to you about it? A Yes.

Q Did you ever accuse him of riding in the park with young women? A I never did.

Q What is the fact about that? A He told me in the spring, as near as I can remember, when it was fit to ride up there in the Reservation—in the spring of 1926—he told me that his friend took him to ride in the Orange Reservation, where a lot of girls, shop girls came from Newark and rode pack horses there, and they had a good time with them, and they admired his horse Prince very much.

Q Did you ever make any complaint to him about that? A No, sir, but it hurt me very much to think that he was doing such things.

Q Did you tell him so? A Yes, I did, and I cried.

Q Did you on Easter of 1926, or at any other time, throw out the flowers that he had brought you? A Never.

Q Had you received a box of flowers from him? A At what time?

Q Easter, 1926? A A box of flowers?

Q Yes. A I do not remember.

Q Do you remember ever receiving a box of flowers from him? A I remember finding a box of flowers on the settee in the hall on my wedding anniversary, May 15th.

Q 1926? A Yes, but I don't know who put them there, but I found it on the seat in the hall.

Q Was that the first you knew they were there? A Yes.

Q What did you do with the flowers? A I put them in water and put them on the dinner table.

Q Say anything to him? A I said, "That was very lovely of you to get the flowers for me." He said he was glad I was pleased with them.

Q In May, 1926, did you lock your husband out of the room? A Yes, I did, because he threatened to strike me.

Q Where were you when he threatened to strike you? A I was downstairs in the living-room.

Q What was that about? A Why, that was over money.

Q What was it about the money? A Well, for the last three years that we lived together, he only gave me $10 a month, and I objected to such a small amount; it was very embarrassing to me to have such a little allowance, and I asked to have it increased, and he said that all I wanted was money, money, money.

Q And all you had had was ten dollars a month? A For the last three years we lived together, after that summer.

Q Prior to that time had he given you any money at all? A Never. He said that I had charge accounts and that was sufficient for all my needs. He didn't give me any spending money; he wouldn't do it. He didn't see why I needed it, he said.

Q Had you been sick in March of 1926? A I was.

Q What was the trouble? A I had the grippe and I was very ill; I was really ill for five weeks all told.

Q And was that the time when Mr. Halsey attended you? A Yes.

Q Were there any servants in the house? A There were none at that time.

Q And when was it before that there were servants in the house? A The week before I was taken ill.

Q Why did they leave? A I really cannot tell you; I don't know. I think we had a Swiss couple that were very incompetent, and we had to discharge them.

Q Did you speak to Mr. Pfender about it? A He knew it. He couldn't stand the cooking.

Q When you were sick, was there anyone to take care of you? A There was no one.

Q How did you get your meals? A I had to get up as I felt like it, and I fixed Boullion soups and crackers and bread and rolls.

Q Did your husband wait on you? A No.

Q Why? A Because he refused to. He got angry that week because I refused to sign all rights to the real estate there in Glen Ridge and in New York State.

Q Had he made a request of you to sign deeds? A Yes.

Q And did he actually bring the deeds to you? A He had some papers there and came and asked me to sign them and I refused; I said it is not—

Q Where were you at the time? A I was in bed sick and I had a temperature of 104.

Q It was at that time he asked you to sign? A He did.

Q Didn't he get your breakfast when he got up in the morning? A No, he did not.

Q Was your son in the house? A My son was looking for work and he got odd jobs to do in New York, and he couldn't do that and take care of me, because he left on a very early train, between 6 and 7 o'clock in the morning, and he thought it was Mr. Pfender's business to take

care of his sick wife or get someone to take care of her.

Q Did Mr. Pfender get your breakfast or dinner? A No, he did not. Only three times during that month, after he got something to eat then he brought me something from a restaurant in Montclair, where they were going for their meals.

Q How did the doctor get in to see you? A When I heard the car come in the driveway, I would get up and put on my wrapper and come down and take the night latch off the door so that he could get in, and then I would go back upstairs; sometimes he met me in the hall on the way up. I was very sick then—

Q Did you ask your husband to get someone to help you? A I asked him to get a nurse and I also asked him to get help; he said if I wanted them—he called me a dreadful name and told me if I wanted help or a nurse I could get up and go out and get it myself.

Q Was that after you had refused to sign a deed? A Yes, from that time he was very ugly to me.

Q I show you Exhibit D. 2 for identification, and ask you when you received it? A Those were in May; those were after my illness. I was ill in March, and this was in May.

Q Where did you get those papers? A He argued with me—

Q Where did you get them? A He put them under my door.

Q Do you know of a duplicate copy of this? A I do not.

Q This was left under your door? A Yes.

Q Did you reply to this letter? A I just spoke to him when I saw him; that is all.

Mr. Blakenhorn: I offer these in evidence.

(Marked Exhibit D. 2.)

Mr. Blankenhorn: I also offer in evidence the check which was marked Exhibit D. 36 for identification.

(Marked Exhibit D. 36.)

Q This incident in May of 1926, when Mr. Pfender broke down the door, was that before or after you had received the letter that has just been offered in evidence? A I call them notes.

Q These notes D. 2? A There are several notes that were put under the door at different times; they are not all one note; several, I think.

Q When was it with reference to your receiving these notes that the door was broken down? A Well, the doors were not broken down then; they were broken down in August and September. He threatened to break them down if I didn't unlock the door. I locked the door because I couldn't stand his shaking me and putting his fist in my face, and I said, "Please write the notes and put them under my door."

Q That was May, 1926? A Yes.

Q Did you go to Westport that summer? A Yes, I did, June 25, 1926, we drove up. Let me see—did we drive up? I don't know whether we drove up or went on the train.

Q While you were at Westport, Mrs. Pfender, did you receive those letters from your husband? A Yes, they are all from him; I received them all.

Q Did you also receive this letter dated August 4, 1926? A Yes, I did.

Mr. Blankenhorn: I offer that in evidence.

(Marked Exhibit D. 27.)

Mr. Blankenhorn: I wish to offer all these exhibits in evidence, heretofore marked Exhibit D. 3 to D. 19 for identification.

(Marked Exhibits D. 3 to D. 19.)

Q Mr. Pfender was not at Westport during the whole of that summer, was he? A No; he only came up for week-ends; usually from Friday night until Sunday night.

Q Was there a time when he made an admission to you respecting a young woman? A Yes.

Q That was on the evening of August 7th? A A Saturday evening.

Q Where were you? A I was upstairs in my bedroom, while he was shaving.

Q Tell me what you asked him; what brought about the admission? A He had cursed and sworn at me that afternoon and acted so hateful at me and had been when no one was around, I said, "Well, when I left home, I thought you would treat me decently if I came up here;" I could not understand why he should treat me like that. I had lovely meals for him when he came up, and I went up to his room, I said, "Carl"— this was in the evening, I should say between 7 and 8 o'clock, and I said to him, "Now, Carl, I want you to tell me the truth; you haven't been treating me right for some time, and you are writing lovely letters; why do you curse and swear at me when you come up and treat me in this manner? I cannot understand. You don't want to take me anywhere or do anything for me, and I cannot endure this loneliness up there." I said, "I want you to tell me the truth; is there

another woman in the case?'' And he hesitated a moment, and he said, ''Yes, there is another, Lillian.''

Q What else did he say? A I said well it was a shock to me. I said, ''How long has this been going on?'' And then he was very nervous and he didn't hardly know what to say. He was taken by surprise, and he said that it had been going on for five weeks only, first; and then he stretched it eight months, and then he said he had been interested in her for eight years.

Q What did he say had happened? A He said he had met her at Jersey City in the car evenings and taken her out riding on the Jersey City Boulevard until very late, and didn't get home until late in the morning, and he had hugged her and kissed her and taken her to dinners and luncheons, and he had bought her all kinds of presents, naming the last two, which was some kind of scarf, at Christmas time, and a wrist watch.

Q Did he say who the young woman was? A Yes.

Q And was she an employee in his office? A He said she was employed in another department over which he had no control, but I found out afterwards—

Q When he told you that, who was at the Westport house? A Mr. James Ross; he was downstairs in the living-room; the house was just a shell.

Q What did you do when your husband told you this? A I said, ''Well, I am going to pack up and go home; I will not stay here and finish the house; there is no use in it.'' I went down immediately and told Mr. Ross the same thing; I said—

Mr. Lum: I object.

Q You went down and spoke to Mr. Ross, did you? A Yes.

Q Did your husband come downstairs? A When he was through shaving, he came down.

Q Did you and Mr. Pfender and Mr. Ross talk about this matter? A Yes; I stated the whole matter to Mr. Ross.

Q In Mr. Pfender's presence? A Yes, just exactly what Mr. Pfender told me.

Q Is that what you did? Just tell the Court. A Yes, just exactly the same story.

Q What did Mr. Pfender say? A Well, he said he was very nervous, and he tried to slide out of it.

Q Tell us what he said? A He admitted only that he had been going with her for five weeks, at first.

Q I am talking about when you had come downstairs and was talking in Mr. Ross's presence. A In Mr. Ross's presence, he admitted that he had only been going with the girl five weeks, taking her for rides on the Jersey City Boulevard and to theatres and restaurants; he had only hugged and kissed her, and that there were no sexual relations. He said that right before Mr. Ross. He said there had been no sexual relations as yet. He said, "I have never had anything to do with any other woman sexually."

Q Did you ever at any time, then or after that occurrence or prior to that time, engage a detective to watch your husband? A Engage a detective? Never.

Q Did you ever tell him that you had engaged a detective to watch him? A I never did.

Q Did you say anything at that time about being divorced from your husband? A I said, "I am going home to Glen Ridge, I will not finish this house, and I want you to make an appointment with Miss Hass, the young girl in your office, and I want to talk with her and see how far this matter has gone." We made an appointment to meet at the Hotel Brevoort.

Q But you went to bed ill? A Yes, I sat up all night and packed up all my things and I started to lay down at half-past four the next morning, which was Sunday morning, and I either tripped on the rug or I fainted dead away, I was so upset. I was excited; I didn't eat any dinner that night; I sent Mr. Ross and Mr. Pfender out, and I hadn't had a mouthful since that Saturday morning, and I was very faint for the lack of food and excitement. The shock of hearing about my husband being fond of another woman was terrible to me, because I thought the world of him, and I fainted, and I must have struck my head against the iron projection on the trunk or the bed.

Q Did you see Dr. Harris? A Yes, I saw him Sunday morning.

Q Can you tell about the time? A I should say it was around 9 o'clock.

Q And do you know how long you had been ill? A I cannot say, I must have been unconscious for some time.

Q Did you tell Dr. Harris? A I told him that I had fainted or fallen or I had hurt myself or something; I didn't know what had happened to me. When a person faints, they don't know what happens.

Q Did he ask you what the trouble was? A Yes, he said "this is not an ordinary faint,

Mrs. Pfender''; he said, ''You have been up and around and doing your work in spite of your fractured rib that I have been treating you for,'' and he said, ''I cannot understand this. Now, I want you to tell me,'' and I didn't want to tell him. I said, ''No, I don't want to tell you.'' I said, ''I would prefer not to; it is a private matter.'' He finally said, ''I cannot help you properly unless you explain the situation, then I will know what to do. This is not an ordinary faint; it is like a total collapse.'' I said, ''What makes you think so?'' He said, ''Mrs. Pfender, haven't you had a shock of some kind?'' And I admitted I had, and he said, ''What is the nature of the shock?'' Mr. Pfender was coming in and out of the room and standing alongside of my bed, probably for ten or fifteen minutes at a time, then he would go in the hall and speak to Mr. Ross, and go downstairs and speak to him.

Q Did you after that go home? A Yes, the next day.

Q Drive all the way home? A Yes, all the way home.

Q Did you ever tell Mr. Dougherty that you had at one time stood alongside of your husband while he was asleep, and contemplated killing him, and then killing yourself? A Never.

Q Did you ever stand alongside of your husband while he was asleep and contemplate killing him? A I never did, absolutely.

Q You got back home about what time? A We arrived home at 12 o'clock that same day.

Q August 8th? A No, August 9th.

Q At Glen Ridge? A Monday night.

Q Was anything further said or done after this talk with your husband? A Yes, he argued all that night until 4 o'clock in the morning, and

he took a bath and went to bed and got up and went into the city with Mr. Ross the next morning. Mr. Ross, the architect, rode home all the way with us.

Q Where did Mr. Pfender sleep that night? A Right in the bedroom with me; we have twin beds; he didn't sleep any. He didn't go to bed until half-past four and he got up at half-past six.

Q Did you talk with Mr. Pfender about this affair? A I did. We made the appointment to meet at the Hotel Brevoort.

Q With whom did you make that appointment? A With Miss Hass, in his office.

Q Did you do that directly yourself? A No, my husband went in and said, "I will speak to her and talk to her."

Q He said that to you? A Yes, "and I will bring her to meet you at the Brevoort Hotel at noon."

Q Did you ever meet her at the Brevoort Hotel? A She didn't materialize.

Q She didn't come there? A No.

Q Did you ever speak to Mr. McKenney about this matter? A He came there in place of her.

Q Did you speak to Mr. McKenney? A Yes, I said, "I cannot understand why you are here."

Q Did you say anything to Mr. McKenney in the presence of your husband about this affair between your husband and Miss Hass? A I did.

Q What did you say? A I stated what he told me.

Q Did you make any request of Mr. McKenney? A No, I did not.

Q Mr. McKenney came to keep the appointment that you understood was made with the

young woman? A Yes, between Miss Hass, Mr. Pfender and I.

Q Did you talk with your husband after that about this affair? A Yes, every night when he came home, he broached the subject from the moment he arrived home.

Q Did he come home every night? A Yes; sometimes to dinner, and sometimes he would telephone he wouldn't be there for dinner, and came later.

Q Was there a time finally when you quarrelled about it? A He quarrelled about it every night; I said that I wanted to meet her, and he said he didn't want us to meet; he said there was nothing to it, one day, and the next day, he said he couldn't give her up. One day he said he made up his mind to be happy and live happy with me, and give her up, and the next day, he couldn't do it; and the request I made was, "If you will agree to give her up, discharge her from your employ and put her out of your life entirely, I will forget the matter entirely, and we will go on and live together happily," but he didn't do it; he kept bringing the matter up.

Q When was the last time you said that to him? A Many times.

Q When was the last? A The last time—it came up every night, Mr. Blankenhorn.

Q Did you have a quarrel with him about it? A He quarreled every night about the matter, because I wouldn't—I just simply couldn't get over it; he quarrelled because I cried; he found me crying at night; he would come into the room; he couldn't sleep, and he walked around through the house and back and forth nights, because he suffered from insomnia for years, and he came in and lay down and put his hand on

my pillow and my face, to see if it was wet, and when he found it was, he knew I was awake, and he said, "You don't need to sham that you are asleep, because I know that you are awake," and he would start in arguing about this matter, and one night he said, "This is all nonsense; I don't care anything about this girl." He said, "You and I have lived together so long," he said, "we cannot get along without one another." He said, "Now, Lillian, I think you can get over this crying, if I go upstairs; it is very warm in here. I will go upstairs and get the bed from the spare room and put it out alongside of me in the porch." He went up and got the iron porch bed—

Q Do you remember when that was? A Yes, that was the first week in September—and he put up the bed—helped me make up the bed, and made me sleep there. I said, "I will take cold out here, and I am afraid of getting more neuritis."

Q That was out on the sleeping porch? A Yes; he said, "I will close some of the windows." He said, "Your place is right alongside of me, right here," and instead of sleeping in the bed alongside of me, he slept right in the little bed with me that night that he made up, and he came in every night and lay down alongside of me and said he couldn't sleep. He went from room to room, wandered around, and came and lay down beside me and put his arms around me and kissed me and said, "I am sorry; I am sorry."

Q When was it that you saw Dr. Washington and Dr. Beling? A It was the last week in September; I think it was on a Thursday afternoon, between four and five.

Q How long was that before Mr. Pfender left? A It was a Thursday before he left—no, that was a week before.

Q About a week before? A I should say that was the third of September. To be absolutely correct, it was the third week in September, because he left a week later, on the first of October.

Q When was the last time that Mr. Pfender broke down the door of the bedroom? A The first week in September.

Q That was the last time? A Yes; he broke it down twice the week after we got home from the mountains, in August, you understand, which was between the tenth and fifteenth of August.

Q And each time you had gone there to get away from him for what reason? A He wanted to strike me because I insisted that he should discharge this girl from his employ. I wanted to read downstairs and he wanted me to come up to bed. I said, "I am sick and tired"—he would start the argument about the girl; I said, "When you are ready to give this girl up and discharge her from your employ, then I am ready to listen to you and be reasonable about the matter; but until then I refuse to go up with you."

Q As a matter of fact— A But he did come to me and kiss me and lay alongside of me every night on the bed, in spite of all the fusses and made me kiss him.

Q Did you have sexual intercourse with him? A I did; he forced me to.

Q And that continued up to what time? A It was up to two or three days before he left, and those two or three days he slept in the guest room, and when I went in there and kissed him good-bye in the morning, I saw the door handles roped, and I said, "What have you roped

those for?'' He said, ''Until I get over this—'' I said, ''What do you mean?'' He said, ''Until I get over this''—I don't like to say it; shall I say it?

Mr. Blankenhorn: No, never mind.

Q Did he tell you he was afraid you were going to shoot him? A No, he knew that I never attempted to.

Q Did you have any revolvers in the house? A Well, my husband had for two years—for several years.

Q Do you remember the two revolvers that were offered in evidence here in this case? A Yes.

Q Do you remember the larger one? A It belonged to my son, and my husband kept it under his pillow for five or six years, from the time we had an attempted robbery in our house; he kept it under his pillow, for protection, loaded.

Q Did you after your husband had left find a loaded revolver in his room? A In the bottom chiffonier drawer, when I was cleaning out the dresser.

Q Is that one of the revolvers offered here? A I think it was before he left the house.

Q (Last question repeated.) A Possibly I found it, and I gave it to Dr. Beling; when he asked if there is a gun in the house, I said, ''Yes, up in the store room.'' I had taken it up with my son's things, when my son left, in August. He said, ''Mother, I have asked father for that gun, and he said he don't know where it is.''

Q You are referring to which of the guns; which of the two guns did you give to Dr. Beling? A I gave my son's gun to him. There was no other in the house.

Q Is that the large one? A Yes; there was no other in the house.

Q Did you tell Dr. Beling who owned that gun? A I said "my son owns it and Mr. Pfender kept it under his pillow for five or six years, from the time we had this attempted robbery."

Q Did you know that? A I knew it, but I didn't know where it was. He told my son he didn't know where it was, when he wanted to take it away when he left.

Q Where did you find the gun to give to Dr. Beling? A In the bottom chiffonier drawer of Mr. Pfender's.

Q You put it up in the store room? A When I found it after the house cleaning was over, I put it up with Will's things, in the store room, as he requested me.

Q Had your son been in the military service during the war? A Yes.

Q What was he? A First, at the Plattsburg Training Camp, and then later on got into the naval reserve and he served twenty-six months in foreign service, in foreign waters, off the coast of Canada, and convoying toward the high seas back and forth.

Q The smaller of these two guns, did you have that? A I haven't seen the gun; how can I say? I would like to see it.

Q Is that the gun that belonged to your son (witness shown gun)? A It looks like it.

Q Being the larger one? A Yes.

Q I show you the smaller of the two guns. A Yes, it looks like the gun that I bought for protection.

Q When did you buy that? A I bought that on September 19, 1926, because there were burglars operating in the neighborhood.

Q Did your husband know it? A I told him I was going to get it; I had diamonds and two chests of silver, and I wasn't going to have burglars break in and take anything.

Q Do you know Mr. Dougherty? A Yes.

Q He is your minister? A Yes.

Q Did you send for him after you came from Westport? A I told him about it one evening.

Q You told him about the admission your husband had made? A Yes; he told me to go back and let him talk to him, and he talked with him two and one-half hours.

Q In your house? A Yes, in the living-room, whispering.

Q Did Mr. Dougherty ask you if you had a gun in the house? A No, not that night. The next day he came over.

Q He asked you if you had a gun? A Yes, and I made no secret of it; why should I?

Q What did you tell him? A I told him I did; I bought it for protection. He wanted to know what kind of a gun it was.

Q Did you go and get it? A I did. He said, "I hope it is a safe one." "It most certainly is; I asked them to give me the best they had."

Q When you showed it to him, was it wrapped up? A It was in a box—the box it came in; a little box, as I remember it.

Q In this box? A I suppose that is it.

Q Was it tied up? A Yes, with a white ribbon.

Q Was it loaded? A No, it was not.

Q And after Mr. Dougherty looked at it, what did he say? A He said, "It is a very fine one."

Q Did he give it back to you? A Yes.

Q What did you do with it? A I put it back in the box.

Q What did you finally do with it? A I gave it to the gardener.

Q Do you know what he did with it? A I do not.

Q Did you ever see it again until it had been produced here in court? A Never.

Q Is that the only gun you have ever had in the house? A I guess so.

Q Were there in fact burglaries in that neighborhood? A There were; there were two.

Q Had the gardener asked you for firearms? A Yes, he had.

Q Had he had a revolver before you gave him this? A He didn't have a revolver, but he said when he went to Italy, that they took it away from him.

Q Then you gave him this? A I gave him this.

Q When was the first time you saw Dr. Beling and Dr. Washington? A I think it was the third week in September, on a Thursday.

Q Can you give the exact day when you last had sexual intercourse with Mr. Pfender? A Well, he slept in the guest room for two or three days before he left; he left on October first. I think it was on September 28th.

Q Were there any quarrels between you after that time, about September 28th until the first of October? A No; he kissed me good-bye each morning when he went to business, and when he came home; things were apparently very quiet then.

Q You thought the thing had subsided? A Yes, I remember standing alongside of him, at the radio, and he put his arms around me, and I kissed him, as he often did; we were very affectionate to one another.

Q On the first of October did he come home that night? A No, he didn't come home that night for dinner. The doctors had called up the day before, making an appointment to come that morning at eleven o'clock, and they didn't keep the appointment.

Q What doctors? A Dr. Beling; he said that he was going to come with Dr. Washington to see me, and wanted to know if I wouldn't see him.

Q What did you say? A I didn't see any reason—I said, "I cannot understand why I should see you, but it is perfectly all right; if you want to come, I will see you."

Q And they didn't come? A No, they didn't come.

Q When did they come? A They didn't come until about ten o'clock, or quarter-past, in the evening; it was very dark.

Q Had you retired? A No, I had not.

Q Was there someone in the house with you? A Yes.

Q Who? A Mrs. Conklin, a cook and general houseworker.

Q Had she made any statement to you with respect to the doctor? A She had told me three days before that my husband said that I was absolutely insane, and that he was going to try to get me into an insane asylum, and she said, "Of course, he has been telling me right along mornings when he goes out that he is in love with this girl."

Q That is what she told you? A Yes, "He said when he gets you in an insane asylum, he is going to have a grand time with his Peaches."

Q When they came into the driveway, who told you they were coming? A Mr. Pfender is shaking his head at me—

Q Never mind that. (Last question repeated.) A The gardener came in and told me, because the housekeeper had previously told me they were coming.

Q The gardener told you they were coming? A Yes.

Q What was the housekeeper's name? A Mrs. Conklin.

Q And where was she when they came there? A She was in the kitchen.

Q What happened when they came to the door? A When they came to the door, they rang the bell, of course, and she told me previously about this, that they were coming, and not for a good purpose, and told me—

Q Did you go to the door? A She said, "What will I do?"

Mr. Lum: I object.

The Court: Never mind the conversation.

Q Did you go to the door? A I didn't go to the door immediately, no; I told her not to go.

The Court: You have answered the question.

The Witness: I went to the door.

Q Whom did you see? A I opened the door; I put on the outside light, so I could see who was there through the burglar bolt, and that left an aperture as wide as that (indicating), and I saw Dr. Beling and Dr. Washington and Mr. Pfender, and I went to the side window and looked out, and Mr. Dougherty was in the car and some woman in the back seat, and another

man standing there; there were five men and some woman altogether.

Q How many cars? A All I saw in the driveway; there may have been one outside, but I didn't see that; it was very dark, and I put on these lights; that is how I saw them.

Q You didn't let them in? A I did not; I said to Dr. Beling—

Q Was Mr. Pfender present? A Yes, he was right there, right up close to the door, and Dr. Washington right along close beside, he was standing here (indicating).

Mr. Lum: Go ahead.

A (Continuing) And Dr. Beling said, "Well, Mrs. Pfender we couldn't get here when I said we would." He said "We have been out to dinner and we didn't get through in time," and I said, "Well, I am very sorry; I cannot see you at this late hour of the night." I said, "I am all alone now. Had you come at eleven o'clock, when you said you would, I would have had someone here with me, but I have no one with me now," and the housekeeper had gone up to her room—was on the way up there.

Q Did they leave then? A Yes, they did; they walked along the terrace, and I went and pulled the curtain up and watched them; I saw them get in the car and everything.

Q Has Mr. Pfender keys to the house? A Yes.

Q Did he ever come there again, to your knowledge? A When I was out in the garden Mrs. Conklin told me—

Mr. Lum: I object.

A (Continuing) When I was out in the garden, he came and went up to his room and locked the door and packed up his things and took them away in the minister's suitcase that belonged on the back of his car; I went and looked in the car and wondered whose car it was, and saw it was ours, and looked in, and there was Mr. Dougherty's three black suitcases that he keeps on the back of his car, in the car, and Mr. Pfender's bag in there, and they were packed with clothing, but I didn't see Mr. Pfender.

Q What was the last time that you saw Mr. Pfender? A The last time I saw him was when he was backing the car out of the driveway with all his clothes, and he was looking up like this (indicating) at the house. That was the last time I ever saw him.

Q Did you keep the place locked after that against his getting in? A Just ordinary locks, but in January I had someone break in.

Q You don't know who it was? A No. The door was open at the head of the stairs and they broke in and broke open the closet door in my bedroom, and broke open my suitcase.

The Court: Just answer the question.

The Witness: I am sorry. It is hard for me. I am trying to do the best I can.

Q Did you engage counsel? A I had; just previous to that I had gone to the bank and asked for a lawyer.

Recess.

Q When you gave this revolver to Mr. Dougherty, did you say you had bought that to kill Mr. Pfender with? A I certainly did not.

Q Did you ever tell Mrs. Conklin that you thought Mr. Pfender was trying to poison you? A Never.

Q Did you ever tell her that he had tried to drown you? A No. Drown me?

Q Where did you go right after the first of October, 1926? A The first of October, 1926? I was home that week.

Q How long did you stay? A I stayed until the eighth of October.

Q During that time did Mr. Pfender come home? A No, he did not.

Q Did you have any communication from him? A None at all.

Q Did you have any communication from anyone on behalf of your husband? A None.

Q Where did you go then? A I went to my lawyers and to Atlantic City.

Q How long did you stay in Atlantic City? A Nine weeks.

Q Then you came back? A I came back to my present home.

Q Was anyone with you? A I was alone.

Q When you came to the house? A Oh, no; when I came to the house, the lawyer that I had interviewed in Atlantic City, Mr. Edison Hedges, brought me back from Atlantic City on a Sunday, on the twelfth of December, 1926.

Q You went right to your home? A Right to my home.

Q Did you find Mrs. Conklin there? A Yes.

Q Did you ask her for your husband? A The lawyer asked where he could get Mr. Pfender, and she said she did not know.

Q I show you this Exhibit D. 41 for identification, and ask you where you found that. A I found it right on the dresser in the kitchen,

where Mrs. Conklin must have left it. It is her handwriting, and the notes and the telephone numbers and everything. Mr. Dougherty's telephone number is on there, in her handwriting, where he can be found.

Mr. Blankenhorn: I offer this in evidence.

Mr. Lum: No objection.

(Marked Exhibit D. 37.)

Q Did you try to get in touch with your husband? A Yes. He said, "How do you think you can find him?" I said, "Call up Mr. Dougherty, I am told that he is living with Mr. Dougherty."

Mr. Lum: I object. I don't see the relevancy; it is after the cause of action had arisen, if there was any, and he has never come back. We admit he has never come back.

Q Did this revelation that was made to you in Westport, on August 7th, have any effect on your health? A It certainly did; it was—

Q What effect did it have? A Why, it was a nervous shock and so upset me terribly, so that I cried a great deal.

Q And did that continue after you got home? A Yes, it did.

Q And did it continue while Mr. Pfender was living with you? A Yes.

Q And has it had any effect on your health since? A Yes.

Q Since Mr. Pfender left the house? A Yes.

Mr. Lum: I object to this; there is no cross complaint.

The Court: She has answered the question.

Cross examination by Mr. Lum.

Q Mrs. Pfender, you didn't believe this statement of your husband of any misconduct with any woman, did you? A I believed all that he told me.

Q You didn't believe it, did you? A I certainly did.

Q Do you remember in your preadings filed in this case saying that you did not believe them? A Well, I believed only what he told me.

Q Didn't you say in the papers that you did not believe what he told you, but that he only said it for the purpose of being cruel to you? A In the first place.

Mr. Blankenhorn: The papers speak for themselves. I submit that that is not the statement in the papers.

The Court: The papers will show. If Mr. Lum asks a question not warranted by the papers, it is improper, but I wouldn't expect him to do that. If there is no foundation for it, then the question is unwarranted.

Q On page 3 of the answer and counter-claim, did you not say: "Defendant says that she does not know whether the statements made by her said husband are true, and that she does not believe that they were true, but does believe that the statements were made by petitioner merely to offend the defendant and to be cruel to her."

Mr. Blankenhorn: I object to that on the ground that this is the pleading.

The Court: The objection is overruled.

A At first, I couldn't believe my ears when he told me. I said I think—

Q When you filed your answer in this case, which was the fifth of May, 1927, did you then believe that the statements about your husband's relations with other women were true? A He told me things and I had no reason but to believe what he told me.

Q In May, when you said you didn't believe they were true. A I said I think he must be crazy to have done such a thing; I couldn't believe it, in the beginning; but later on, I did; I had reason to believe it was true.

Q If in May you said you did believe they were true, then they couldn't have affected your health at that time? A It was just at the time.

Q Just after May you began to believe they were true? A May when?

Q May, 1927, is what I mean. A You see you have gotten the dates twisted.

The Court: The question is, Mrs. Pfender, whether in May, 1926—

Mr. Lum: Seven.

The Court: —1927, you believed what your husband had told you about his relations with this other woman.

The Witness: I tell you honestly and truly I didn't actually believe it; I was in doubt because I didn't have any actual evidence, but I had to believe what he told me. That is what I mean to convey; that is the way I mean it.

Q Do you recall that in the presence of Mr. Ross your husband said that there had been no misconduct, that he had not kissed and had not hugged this woman, and had merely been to public places with her, where there were many other people? A No, I did not understand any such statement.

Q You have had no trouble with Mr. Ross, have you? A No.

Q You know of no reason why he should testify to that effect, if it were not true? A No.

Q Did you ever have any trouble with Mr. Henckel? A No.

Q Do you know why he should testify what he testified, that you would burn the boat? A I don't know of any reason myself, unless it was their personal dislike.

Q Do you know why he should have any personal dislike of you? A Because I am English and he is German, and he is decidedly pro-German.

Q You think he might have come here and committed perjury because of that? A I don't want to make any particular statement like that.

Q You heard this statement? A I did.

Q That you had a revolver? A Yes.

Q And that he broke it and took the cartridges out? A Yes.

Q And that is all false? A Absolutely.

Q You know of no reason why he should come here and testify to that fact in this court? A I don't know of any reason, but he did so.

Q Do you know of any reason why Mr. Dougherty should come here, and your rector, and testify falsely? A I cannot say.

Q You did hear him testify that you threatened to kill your husband? A Yes, but it was not true.

Q As a matter of fact, you told the gardener, Raphael, that you wished your husband was dead; you told him that in September, 1926? A Never did.

Q Never did. How many guns did you have there? A How many guns?

Q Yes. A I never had but one, and I only had that 36.

Q Why did you only have that 36? A Because I gave it to the gardener.

Q Why did you give it to him? A I thought if we had burglars, he could use it better than I could. I never used one in my life.

Q You knew he had one? A No.

Q Didn't you go outside and ask for his gun? A No.

Q And didn't he refuse to give it to you? A No.

Q And didn't you thereafter give him a gun and say you want him to remember that you gave him this at a certain date, and mentioning another day? A No.

Q When was the last time you ordered any guns? A I don't remember.

Q Please search your memory; you have ordered so many that you cannot remember the last one? A Well, I don't know.

Q Please tell the Court the last gun you ordered. Why do you hesitate? A I am wondering if you mean the one that I bought in September, the tenth.

Q Of the present year? A No; I didn't buy any on September 10th of this present year.

Q I asked you about the last one; I want you to tell us the date of the last one you ordered. A I thought you meant—

Q No, you didn't, and I didn't. A I did; I bought one the last week in October.

Q Of the present year? A Yes.

Q Bought it from the Hudson Sporting Goods Company? A I did.

Q Sent them a money order to pay for it, didn't you? A I did. $28.

Q $28.75, wasn't it? A $28.

Q And how many guns have you ordered between September, 1926, and November, 1927? A September, 1926, and November, 1927?

Q Yes, how many others besides this one? A I ordered one on September 10, 1926, and I ordered the other, I think it was about the 31st of October, 1927.

Q None in between? A No.

Q Mrs. Pfender, the deed to the Glen Ridge property and to the New York property are both in your name as well as Mr. Pfender's? A I think they are.

Q You never contributed anything towards them in any way, in the way of money? A No.

Q You knew, of course, that those deeds were in your name? A Yes.

Q Why, when you filed your affidavits in this court, asking for money, did you state that Mr. Pfender owned both those properties and not mention anything whatever as to your being as much owner as he? A Well, I had no financial means and I didn't think that I figured in it.

Q You knew that you figured in the property just as much as he did, didn't you? A No, I wasn't sure of that, and I haven't been convinced yet quite about it.

Q You mean to say your lawyer hasn't told you that your interest is as great in those properties as his? A I don't think he has put it

that way. I think he realized that if—the way Mr. Pfender said to me, he said, "I fixed this—

Q Did none of your series of counsel advise you that you were as much the owner of those properties as Mr. Pfender? Answer the question yes or no. A I don't think they did.

Q Did you ask them? A I don't think there was any question about the property, that it ever came up; I don't recall it coming up.

Q You mean to say that you told your lawyers that got up these papers that Mr. Pfender alone owned this property, without inquiring whether you owned them? A They asked if it was entirely in Mr. Pfender's name; I said, "No, Mr. Pfender told me it was half in his name and half in mine."

Q You don't know how the lawyers after that came to say that it was entirely his, and not mentioning you? A I didn't have the money to keep it up, so I supposed I didn't figure in it much.

Q You didn't realize that although it was half your property, he was carrying all the expenses? A He always paid my expenses, and so I never had anything to pay.

Q You say that in March you were ill and neglected. Your sister was living close to you at the time? A Yes.

Q How close? A She was living in Montclair.

Q And did you phone to her or send for her to come to you? A No, I did not.

Q You son was at that time in the vicinty, was he not? A My son was working every day in New York City.

Q Returning at night? A Yes, and returned late. His hours were very long; he left early in the morning and returned late at night.

Q Your son's job wasn't a very important one? A He thought so.

Q He was practically supported during all of your married life by Mr. Pfender? A Up to the time he went into the service, he thought he was his son. He said, "I will bring him up as my son."

Q Did he support him almost entirely? A He did, as his own child. He said when he married me, that he was going to adopt him and bring him up as his own child, and Will always looked upon him as his own father, and thought he had the rights of a parent, and said so.

Q He loaned him a couple of thousand dollars just a little while before— A He did that to make him leave the house.

Q In 1926? A Yes, he made him sign an agreement that he will, and I haven't been able to find the agreement.

Q You didn't ask your son to stay and take care of you during this March illness? A Whenever he was there, he did.

Q You had a telephone right at hand? A Yes.

Q You telephoned for servants? A But I was too ill to do anything.

Q If you were well enough to go downstairs and get some food you would be well enough to take the telephone and telephone for a nurse, wouldn't you? A I didn't know where to get a nurse, and when you are ill you don't reason like you do when you are well.

Q The matter of the deeds that you say Mr. Pfender presented to you, did he ever present a deed to you to sign? A I cannot say it was a deed, but he brought these papers to me and said he wanted me to sign away my rights to the

house, and I was lying in bed, and I didn't sit up so I could look at the papers.

Q So you never saw any deeds that he ever presented? A I don't know what they were; they were papers about the property.

Q Did he tell you that the expenses of the house, through the heavy taxes, and so forth, under the conditions of business, were very severe, and it would be advisable for you to move into a smaller place, and does not the letter offered today discuss that, a six or seven-room house? A Yes. That was at the time, but he contradicted himself afterwards, and he said that was all nonsense; he was just angry at the time. He said, "What I say when I am angry is different from when I am all right."

Q You spoke of his mother being in the insane asylum. You did that to intimate that you think he is a little insane himself?

Objected to.

Objection sustained.

Q What was the purpose of your testifying as to his mother being in an insane asylum? A I didn't testify to it.

Mr. Lum: I withdraw that.

Q Mrs. Pfender, who notified or informed the Japanese servants that they should leave? A Mr. Pfender was very angry.

Q Who informed the Japanese servants they should leave? A He wanted them discharged, and told them himself at the table.

Q You are sure of that, are you? A Yes, he was standing in the dining-room and he told

them; I also went out and spoke to them. We both spoke to them; we were both there together.

Q Do you remember in the papers you mentioned that you told them to go, but didn't mention the fact that he told them to go? A He was right there with me at the time; he stood right alongside of me. They wouldn't take my orders, or do what I wanted them to do. I had even written to him about them, and if he would produce my letters, the whole thing would come out in the letters.

Q When did you first see a lawyer in connection with your affairs in 1926? A I went to them to make a will.

Q What date? A I should say it was around Labor Day.

Q 1926? A Yes.

Q You went to Mr. Goodell? A Yes.

Q And he made a will? A Yes.

Q And you discussed with him also your affairs at home, did you not? A I did.

Q And Mr. Pfender? A Yes.

Q And you were in touch with lawyers from that time continuously until this time? A I wouldn't say continuously.

Q There was a joint bank account, was there not, in September, which you had the right to sign? A There was no joint bank account.

Q A bank account in which you had money? A The money that I had I had saved up a little bit at a time for years.

Q There were several hundred dollars in that? A Yes.

Q From this $10 a month which he gave you, you had saved several hundred? A I didn't save all that from that. He decided not to build the house in May and countermanded the order

with Mr. Ross not to build, and then later he changed his mind.

Q How many hundred dollars did you have in the bank when you left Mr. Pfender? A When I left Mr. Pfender?

Q Yes, or when he left you. A I don't just remember.

Q Several hundred dollars? A I got it during the summer when he told me if I would go up to Westport he would give me $100 a month, if I would go and superintend the building of this house.

Q The question is the amount, not how you got it. There were several hundred dollars? A I may have had five or six hundred dollars.

Q After Mr. Goodell came Mr. Simandl? A Yes.

Q And after him came Mr. Hedges? A Yes.

Q And after Mr. Hedges came Mr. Lane? A Yes.

Q Ever have any others in the meantime? A Do you mean that sarcastically?

Q Did you? A No, I didn't have any others.

Q This doctor in New York, Dr. Young, after you left the hospital that time, you never saw him again, did you? A I never did.

Q And he never treated you from that time on? A No.

Q And you say that there was no trouble at all in the taxicab? A No.

Q You were not angry? A No, I wasn't.

Q Mrs. Pfender, you never accused Mr. Pfender of meeting women in the park? A No.

Q And never charged to anybody the fact that he had been out all night with a woman? A Never.

Q Never charged him with being unfaithful at any time? A No, never.

Q To any one? A Never in my life.

Q You didn't believe that he had been? A No.

Q And you remained very fond of him at all times up to the very end? A I was.

Q And the incident of this woman, that kept coming up during September continuously, didn't it? A It came up every night from the time he reached home.

Q You remember that if his train was late a few minutes, you immediately as soon as he came in charged that he had been out with "that woman?" A No.

Q Never did? A No.

Q Do you remember an incident in which the train was late and you said you had called up the station and they said the train wasn't late, and you said that he had been out with "that woman?" A No.

Q Nothing like that? A No, sir.

Q Do you mean to say to this court that your husband had ever forced you to sexual intercourse? A He did; he forced himself upon me many times.

Q Against your will? A Yes.

Q And why were you unwilling to have intercourse with him? A Because he had been ugly with me and insulting and used bad language to me.

Q And then after that he would force you against your will? A Yes.

Q And that continued right up to the very end? A He was agreeable sometimes; he would get over his anger; it didn't last all the time. He would get in a fearful rage.

Q The last time he had intercourse, did he force you? A No.

Q And you have no recollection as to when the last time was? A I have; it was September 28.

Re-direct examination by Mr. Blankenhorn.

Q There was a time when you telephoned about a train to the depot? A Yes, once.

Q And what did you telephone for? A There had been a fearful storm and they said that the train—he telephoned that the trains were out of commission and that he wouldn't be able to get home that night.

Q And you did telephone? A I telephoned to find out if it was so; that was the only time, and they said the trains were all running on schedule time.

Q You told him that when he came home? A I did.

Q Did he tell you why he had telephoned? A Yes; he said, "I might as well admit it; I was out with Miss Hass."

Q This other revolver that you purchased was after Mr. Pfender had left you? A Yes.

Q Have you it now? A I have not.

Q Why did you buy that? A I bought it because of the actions of my gardener on the place. He had tried to intimidate me and threaten me; he had grabbed and insulted me at the back door and had made advances to me several times, that frightened me.

Q So you bought this revolver? A Yes. These advances were made in July, and from July along to October, and on the 19th of October he told me he had seen Mr. Pfender, and

he said that Mr. Pfender was going to give him a thousand dollars, and he would tell all kinds of lies about me. He said, "Mr. Pfender asked me if I had seen your lawyer. I said, 'No, I saw one last year, but not this one.' "

Q Is that the only reason you got that revolver? A I bought it because he tried to grab me and insult me.

Q That is the only reason? A I was in terror of my life. He is a very strong man, and a brute.

Re-cross examination by Mr. Lum.

Q That gardener is still there on the place? A He is.

Q You haven't had that gun in some weeks, have you? A I haven't had it—

Q You brought that gardener to court here, either by subpoena or otherwise, every day this case has been on, haven't you? A Mr. Blankenhorn can tell you more about that than I can.

Mr. Blankenhorn: I subpoenaed him. We rest.

RAPHAEL De SANTIS, sworn in rebuttal, for petitioner.

Direct examination by Mr. Lum.

Q You are the gardener on the Pfender place? A Yes.

Q Mrs. Pfender is living there at the house? A Yes.

Q You are on the place now? A Yes.

Q And have been continuously for months, and have been for some time last past? A Yes.

Q Did you ever take hold of Mrs. Pfender or attempt to intimidate her or take advantage of her? A No.

Q Did you ever touch her at any time? A No, no, never.

Q Did she ever claim that you insulted her? A No.

Q Did you ever have any trouble with her? A No.

Q Raphael, did you have a gun in September of last year? A Yes.

Q Your own gun? A Yes.

Q Do you remember Mr. Pfender speaking to you about a gun? A Yes, one day; he come and got it.

Q By "he" you mean she? A She, and he told me, he said, "Raphael, I want your gun."

Q When you say "he," you are speaking—say Mr. and Mrs. Pfender? A Mrs. Pfender, he come and see me.

Mr. Lum: "He," that means man; "he" means man. You had better say "Mrs. Pfender."

The Court: We understand it.

A He come and say, he told me he want my gun. I say, "Mrs. Pfender, what do you want my gun for?" He say, "I want it." I said, "Mr. Pfender, he said so I give my gun." He said, "I don't want you to say anything to Mr. Pfender." I say, "I cannot give it to you; I want it myself. I need it myself." He say, "Well, never mind, we want a new one. Don't say anything to Mr. Pfender." I say, "Yes, ma'am, that is none of

my business to say anything." Then the next day he come out again in the garden and he say, "Raphael, I got a gun. I buy a new one yesterday." I say, "How much you pay?" He say he pay twenty dollars and some change, which I don't remember. That is what he say.

Q Did you ever see the gun that Mrs. Pfender bought? A Yes, he let me see up in the house.

Q How much later did she give you that gun after she first told you she bought it? A The first time, two or three days before he go away to Atlantic City.

Q Two or three days before she went to Atlantic City? A Yes, the first time. He come to me in the morning, he want me to bring it back in the house. Then the last time he come in to see me, the last time he left the house for Atlantic City. He said, "Keep this gun but don't give it to anybody." Then when he was in Atlantic City, he write me a letter and say, "Raphael, you please—"

Mr. Blankenhorn: I object, unless the letter is here.

Q Have you got the letter? A He told me to burn it up. I have someone to read it to me, because I don't read English. He said, "Raphael, please make a box, put gun inside, bring it in the garden, dig a hole in the garden and bury it up in the ground," and then someone read the letter for me. He was to burn it up, no keep it, and I did it.

Q Do you remember her saying anything to you about her husband? A Yes.

Q What, if anything, did she say to you? A He come out in the garden and he say, "I wish

Mr. Pfender he is dead, or someone kill him, because he fuss me in the house."

Q When did she say that to you? A About September, 1926.

Cross examination by Mr. Blankenhorn.

Q You wrote to Mrs. Pfender when she was in Atlantic City? A Yes, I did, but some little boy do it for me.

Q I show you letter dated November 28, 1927, and ask you if you didn't send that letter to her? A Who send it?

Q You. A I did; I say—

Mr. Lum: I object.

The Court: It can only be evidential if it is on contradiction of the testimony unless brought to the attention of the petitioner. As the matter stands, I will sustain the objection.

Mr. Blankenhorn: May I have it marked for identification?

The Court: Yes; you may offer it in evidence if you show it is pertinent.

The Witness: The little boy write for me; I don't know.

Q You told the little boy what to write for you? A I told him something; sometimes he make a mistake; I don't know.

Q You think he wrote something on his own initiative? A Maybe.

Q You knew there had been a great deal of trouble between Mr. Pfender and his wife, didn't you? A I don't know much, because I work outside.

Q You knew that the door to the bedroom that Mrs. Pfender occupied had been broken down three or four times, didn't you? A I never saw Mr. Pfender break the door.

Q I didn't ask you whether you saw Mr. Pfender break the door; I said you knew that the door had been broken? A The nails got loose and I put some more nail in.

Q You nailed it up? A Yes, I did.

Q Four times? A No.

Q How many? A Two times.

Q Two times in September? A No, one time in September.

Q What year? A 1926.

Q That is the year that Mr. Pfender left? A Yes.

Q That is the year he left? A Yes—no, he was home. Mr. Pfender was home; he wasn't away.

Q When did he leave? A October 1st or 2nd.

Q 1926? A 1926.

Q When did you go to Europe? A The 11th of January, 1927.

Q And when did you come back? A The 1st of May, 1927.

Q Is it your son that wrote these letters? A No, a little boy.

Q What little boy? A Some little boy, born in this country. He is an Italian. I have no son here; I have on the other side.

Q Didn't you say this to Mrs. Pfender, in the letter to her, or didn't you instruct this boy to write on November 1, 1926: "Dear Mrs. Pfender, last Saturday Mr. Pfender came over to see Mrs. Conklin and he told her that in case you came home she should call him up right away, and I was downstairs and I heard him talk-

ing to her. Mrs. Pfender was not come home." Did you tell him to say that? A I don't remember, but maybe I say; I don't know.

Q Did you tell him to say that? A What I told someone I don't know.

Q And did you say this to Mrs. Pfender: "Mr. Pfender came over to see me and he asked me about the gun, so I told him that I wouldn't give it to nobody; maybe he will send me away for not giving it to him. He was awfully mad. I think Mrs. Conklin told him about it, because she was there when you gave it to me. Last Saturday I saw Mr. Pfender come in the kitchen and started in talking to Mrs. Conklin for about two hours." Did you say that to her? A I never write such a letter myself.

Q Did you tell the boy to write that to Mrs. Pfender? A Is my name on there? Yes.

Q Yes. A I don't remember.

Q Did Mr. Pfender come and ask you about the gun? A Yes, Mr. Pfender and Mr. Dougherty.

Q And they asked you to tell them when you got the gun? A Yes, I told him about it. I said, "He give it to me yesterday before he go away."

Q Then did you give the gun to Mr. Dougherty? A No, I give it to Mr. Pfender just a few days before I go to the other side—my home.

Q When you came back you went back to work for Mrs. Pfender? A I worked in the same place, yes.

Q And Mr. Pfender pays you? A Mr. Pfender did pay me always.

Q Have you left your employ; have you left there, or working there yet? A I work there yet.

Q Hasn't Mrs. Pfender always locked the door so you couldn't get in the house lately? A Yes.

Q When did she start doing that? A She start after the other day—after the 23rd and 24th, he locked every door; he take my key last week, so I couldn't get in the house to water the plants.

Q Wasn't she afraid of you? A It must be; I don't know.

Q That has been so ever since she had that gun, hasn't it? A Yes.

Q Who told you that she had bought that from the New York sporting goods store? A The gun?

Q Yes. A Mrs. Pfender told me.

Q You told that to Mr. Pfender? A No, I never did.

Q Didn't you tell Mr. Pfender? A No.

Q Whom did you tell that to? A Yes, I told him; I told Mr. Pfender.

Q You went and told Mr. Pfender that Mrs. Pfender had a gun; is that right? A Yes, I told him this.

Q You had been telling Mr. Pfender everything that was going on there at the house since the last hearing? A No, I told him some things.

Q Everything that he wanted to know, is that right? A He asked me.

Q Did you go and tell him voluntarily? A Mr. Pfender write me sometimes how is everything on the place?

Q So that you repaired this bedroom door once in 1926 and once a year before that? A I don't remember the first time.

Q There was a time sometime before September? A Sometime the strips are loose on both

sides. Maybe the heat make it loose, and I put on some more nails.

Q You did that?

The Court: Twice, he said.

HELEN PFENDER, sworn in rebuttal for petitioner.

Direct examination by Mr. Lum.

Q Miss Pfender, have you ever had any trouble with Mrs. Pfender, your sister-in-law? A Only on our short invited visits there at various times.

Q In December, 1924, do you remember being there at the house? A Yes.

Q Were you and your brother talking about her behind her back? A I don't remember a word.

Q Were you talking about her behind her back? A No.

Q Do you remember your brother using vile and profane language to her on that occasion? A I never heard such a thing from him.

Q Did you hear him break down any doors or use violence of any kind? A No; I heard noises that night.

Q Tell us what you did hear, if anything? A Well, it was around bedtime and Mrs. Pfender went up to her room, and Mr. Pfender tried to get in and she wouldn't let him, and he said, "I want to get in." He had no place to sleep; I was in the guest room and he was in his room, and he said to me, "Go back in the room and don't take any part," so I did. I heard a noise

and with that the servants came down, so I went out in the hall a moment, and two Jap servants, and I told them to go back, take no part in it whatever. They wanted to defend him.

Q Why do you say "defend him"? What was going on? A They heard this noise, and they heard talking; I don't know what was said in the room.

Q Who was doing the talking, Mr. or Mrs. Pfender? A She was doing the talking, but I didn't know what was said.

Q Was she angry or not? A Yes, seemed to be.

Q Very angry? A Yes.

Q Did you hear anything else? A No.

Cross examination by Mr. Blankenhorn.

Q Mrs. Pfender had gone into her room and was talking there behind the closed door? A Yes.

Q What defense would Mr. Pfender require?

The Court: You said a moment ago that the Japs wanted to defend him. Mr. Blankenhorn wants to know—

The Witness: They heard him say that he wanted to get in the room, and she wouldn't let him.

Q Did you see him break down the door? A No.

Q You know the door was broken down? A I do.

Q That was in 1925? A 1924.

Q You have been to the house since then? A To one or two meals, but not to stay.

Helen Pfender, cross.

Q You were there at Christmas in 1925, weren't you? A For Christmas dinner in the evening; I went there for a short time.

Q Mrs. Pfender had simply gotten up, there had been no quarrel, there had been no words between you and her, or between Mr. Pfender and her; she had just gone up to her room and locked the door? A I don't know; there was friction; I don't know what was going on; I didn't try to find out.

Q Didn't you hear them talking? A I did not; I never tried to hear what was said.

Q Didn't she say that you were talking behind her back? A She said so, but it is a mistake; I was not.

Q Isn't that what caused the quarrel? That is to say, didn't she come into the room and say— A I don't remember her saying it.

Q Didn't she say that if you have anything to say, say it to my face? A I don't remember one word of it.

Q Then there was no quarrel at all? A No, not with me.

Q There were other bedrooms in that house, weren't there? A They were all occupied, yes.

Q Just one guest room? A Yes.

Q And no other bedrooms? A Not furnished, except the one the boy had—Will.

Q Was he there? A Yes.

Q You are sure that he was there? A Of course.

Q Did he come out and see the door broken down? A I don't know where he was just then, but we had all been together that afternoon to a matinee, and I had gone on ahead with Will. They came later.

Q You say Mr. and Mrs. Pfender came later? A Yes; I don't know whether they were together or not; I think not, because she was ahead of us at the matinee, and my brother came in later; I don't know whether they met; I don't know anything about that.

WILLIAM E. REEVES, sworn in rebuttal for petitioner.

Direct examination by Mr. Lum.

Q This is your handwriting, that envelope and the letter (witness shown letter and envelope)? A Yes, that is mine.

Q You wrote this letter to Mr. Dougherty? A Yes.

Mr. Lum: I offer it in evidence.

(Marked Exhibit C. 17.)

Q About the time it bears date and was mailed—it seems to be November 22, 1926? A That is right.

Q And in that letter you remember making the statement—

Mr. Blankenhorn: I object to any statement made in this letter by this witness, to any person.

The Court: I don't know who the witness is nor what the purpose is.

Mr. Lum: The son of the defendant, brought up as a son in the family.

Q The question is, did you in this letter write to Mr. Dougherty—

The Court: Don't read the letter. How can it be evidential unless it was brought to the attention of the defendant herself?

Q Did you discuss this letter with your mother? A No, I wrote that letter of my own accord.

Q Didn't you speak of it to your mother? A No.

Q She didn't know of it? A Not that I know of.

Q Was there any other reason why you threatened to shoot—

Mr. Blankenhorn: I object.

The Court: Strike it out.

Q Did you ever talk to your mother about shooting Mr. Pfender? A Never did in my life.

Q Did she ever speak to you about it? A No, she never said such a thing.

Q How did you come to gratuitously and voluntarily threaten to shoot him?

Mr. Blankenhorn: I object.

The Court: Strike it out; there is no evidence that he did.

CARL D. PFENDER, recalled in rebuttal.

Direct examination by Mr. Lum.

Q Mr. Pfender, after you had information of your wife's threat to shoot you, did you ever have intercourse with her? A Positively not.

Q Up until the condition became unbearable, did you continue your relations with her? A Yes.

Q And that was up to about what time? A I should say between Labor Day and the middle of September.

Q And up to that time had you heard of her threats to shoot you, or had she told you—

Mr. Blankenhorn: What year?

Mr. Lum: 1926.

Q —or had she told you of standing outside your room threatening to shoot you? A No.

Q After she told you that did you ever live with her again as her husband? A No.

Q Did you at any time ever force your wife to have intercourse with you? A Absolutely no.

Q In September, 1926, did you on an occasion when the train was late, tell your wife that you had been out with any woman? A I absolutely did not. She accused me of it, and I absolutely denied it. The facts were exactly as I stated them to her.

Cross examination by Mr. Blankenhorn.

Q Mr. Pfender, the only person who ever told you of a threat on your wife's part to kill you was Mr. Dougherty, is that correct? A No. I

believe Mrs. Conklin told me the same story; I am not positively clear of that.

Q I think you should be clear, Mr. Pfender, if you will try to recall, and state whether or not Mrs. Conklin did tell you. A Mrs. Conklin made statements that she wished that I was dead; wished that someone would shoot me; that I would be run over by an automobile or a train.

Q And when was that? A That was sometime prior to the time I left.

Q How long before? A I should say it was just after Labor Day.

Q In the early part of September? A Yes, sometime after Labor Day; I say I don't know whether—

Q You left at the last of September, didn't you? A Yes; it must have been sometime during September.

Q How long prior to the time you left? A I cannot state how long it was.

Q When was it Mr. Dougherty told you? A It was the time—I cannot recall the dates; it was the time after which I had no further relations with Mrs. Pfender—sexual relations. I cannot tell you the date. I had no reason to recall dates; I was simply trying to straighten out my affairs.

Q That is as near as you can come to fixing the time when you were first told that she was going to kill you? A It was sometime between Labor Day and the time I ceased relations with her; I cannot tell you the date.

Q But you told me at the last hearing that you had had relations with her in September? A Yes.

Q This last time you went into the room by force, that is breaking open the door, or what-

ever it was that happened, you slept in the room, didn't you? A No, not that I recall.

Q Where did you sleep? A I slept in the other room.

Q In the porch, just outside of Mrs. Pfender's room? A Yes, probably.

Q The only entrance to the porch was through Mrs. Pfender's room? A Yes.

Q And you were still suffering from loss of sleep, were you not; that is, inability to sleep? A I was. I was constantly annoyed one way or another by my wife's actions.

Q You walked up and down in the room, did you? A No, I was glad enough to have been able to sleep, if I could have had the opportunity and be left alone. It was a constant nagging at the time.

Q She didn't nag you when you were sleeping with the doors roped in the other room? A When I slept in there with the doors roped was after I had learned that she had revolvers in the house, and that she had threatened to shoot me.

Q That was in September then? A It was sometime during September.

Q And have you discussed this testimony and this point with anyone since the last hearing? A No, I have not; I have had no occasion to.

Q Didn't you lie down on the bed with Mrs. Pfender frequently as late as September, 1926? A Not to the best of my recollection.

Q And try to sleep? A No.

Q And try to calm her down? A I did during September, but not as late in the month as that. We went to Westport on Labor Day and I tried my best right along—

Q You went to Westport after the 7th of August, 1926? A Yes.

Q With her? A Yes; I tried my best up to the last to smooth things out and do everything I could.

Q When they told you that she had threatened to shoot you, did you ask her about it? A No; of course, I didn't.

Q Why not? A Why should I?

Q To find out if it was true. A Why should I believe her over someone else?

Q You would believe Mrs. Conklin, the servant— A I would believe Mr. Dougherty or Mrs. Conklin, yes.

Q You would believe Mrs. Conklin, the servant in the house, sooner than the woman you had been married to for thirty years?

Mr. Lum: I object to that.

The Court: There is no such testimony. I will permit the question, if you want to ask it, but it doesn't mean a thing, because the servant did not tell him, on his own testimony, that his wife had attempted or had said that she wanted to kill him. There is no use of trying to put words in his mouth.

Mr. Blankenhorn: I didn't intend to. I will withdraw the question. I understood he had testified to that.

The Court: He said that she had told her that she hoped that he would be run over by an automobile or be hit with a train or somebody would kill him, but not that she herself intended to kill him or wanted to kill him.

Mr. Blankenhorn: I beg your Honor's pardon; I didn't so understand it.

Q Then the only person who told you of a threat on the part of your wife to kill you was Mr. Dougherty? A Possibly the doctor had said that he had some such conversation. I cannot positively say, but it would be enough if Mr. Dougherty told me that.

Q But in any event you did not ask your wife? A I did not.

Mr. Blankenhorn: I wish to offer in evidence the reports that I had marked for identification.

Mr. Lum: No objection.

The Court: They will be given the same numbers.

Mr. Blankenhorn: I think there is a photograph, and possibly one or two other things that have been marked for identification; I would like to offer those.

Mr. Lum: No objection.

The Court: You may present any argument in a brief; I will not dispose of it now, because I have not read or examined any of the exhibits. If there were no exhibits in this case which I had to examine, I would be prepared to dispose of it immediately. I think in fairness to all parties, that I should examine those exhibits.

Exhibits.

(Letter.)

Exhibit D. 2, Identification.

May —
#1

Lillian

In your note of May 22nd you state that "all this trouble might have been avoided if you had given me the private allowance of $100 a month that you asked for last Sunday." If that were all that was wrong in the situation it would be very easy to remedy, for after all what is $100 a month to the thousands of dollars a year I have spent each for years and gotten nothing but work and worry and no happiness out of the

#2

home.

It is about time you realized that on your health depends your happiness and mine too. I have been at you for several years to take treatments and get yourself well before it was too late but you persist in neglecting yourself to try to keep this big house going, and you have not been successful. After a hard trying day at business I have come home night after night with dread and foreboding of trouble as I unlatched the door

#3

and left the next morning with a comparatively light heart as I closed the door of this cursed house and left the troubles behind for a few hours. It is cursed just as Mrs. F. said, there is no doubt about it.

Now you still persist in keeping it and refuse to sell, and in so doing you are making sure of losing any chance of happiness that is left. I

deny that I have been unreasonable and have not given you time to secure help if they can be had. The house work could have been left

#4

for two or three days at a time if necessary and the trip to the city would not have been any harder for you than the care of this big house.

You seem to think that you are the only one who has nerves, but you seem to forget that I am at a nervous tension all day long at the store and then have to come home and live with nervous wrecks, and have to listen to all the household troubles usually even before I have had a chance

#5

to get my dinner.

Yes I have changed and I have had good cause to change and I feel as if I had aged ten years in the last year. If your home and your own stubborn ways mean more to you than any thing else in life, keep right on as you are going.

I will not do anything in the house, pay the bills or have anything to do with the running and management of the place inside or outside any more than you have to do in my business in N. Y. There is enough there to keep me occupied without any other cares and worries.

Regarding Westport, if you want to try it out for a season in the cottage that I have paid the rent for and see how you like it, being alone during the week from Sunday night to Saturday morning, at the end of the season if it is a success I will then consider building a simple comfortable comparatively inexpensive bungalow or cottage for summer use.

Exhibits.

I will not however under any consider go ahead this season with a building of any kind in Westport. I will have to have your assurance after a full seasons trial that you will occupy it after it is built.

I will have to know not later than Sunday night what your decision is for if you will not occupy the cottage I must notify Will at once, as it may not be too late for him to rent it to someone else and the girl will also have to be notified so that I will not have to throw away any more money on Westport.

It has come to the point now where you will have to decide what is to be done. I cannot and will not continue to live the way I have for a long time. You seem to care more for your home, your garden and your pets than you do for me or my comfort and happiness and if this is the case, the sooner we settle matters the better. There is as much to be said on my side as on yours. You have always wanted to travel and see the world and it is impossible for me to get away for any length of time. It is not a case of my throwing you on the world without means to live and be comfortable. This home represents an actual cash investment of $90,000 at the least and the furniture at least $40,000 and if it comes to a break you would have an income of 4 to 5,000 from the proceeds of the sale and I would try to make a settlement that would assure you an income of at least $6,000 a year or $500 a month which would make you independent for life.

If we sell the house, we could store furniture and you could go to Cal. or travel were you wished for a while and get a good rest or take treatments and recover your health. Then later

we could try an apartment for a time and if not satisfactory, we could consider a small house of 6 or 7 rooms such as all people both rich & poor are coming to. You know it is the only sensible thing to do to sell this big place which has gotten on my nerves so that I cannot stand it. It will probably take a year or more to sell it, and now is the time to start.

If you insist in keeping it and I allow you $1,000 a month, you will have to pay all the running expenses of the house, taxes coal light gas water provisions repairs replacements, household supplies furnishings etc and all the help both inside & outside hire and fire the help and keep the place running in a proper manner so that there is some pleasure comfort and happiness to be gotten out of it. You pay for clothes—and all other expenses yourself.

Exhibit D. 2.

(Envelope.)

Addressed to
Mrs. C. D. Pfender
Westport
New York.
Essex Co.
Dated June 29, 1926.

(Letter.)

June 29—1926

Dear Lilly,

I could not find the kind of dust mop that you wanted at Wanamakers or McCreery so sent the best I could get from McCreerys. About the glass straws they come in clear glass stems with

Light Blue, Dark blue and red tops, the tops come in ball shape, strawberry or small spoon. They also come with the stems and tops in the same colors, Light Blue, Dark Blue and Red. Please let me know what style, shape & color you prefer.

About the wicker trays—square trays are 2.50 Round trays with places for the six glasses & the pitcher in the centre are $8.00. The one I preferred was round with a handle like a basket, and was made with places for the six glasses at one side and the pitcher just set in the centre. It was easy to get at the pitcher in this style & very hard to get it out in the other style. It was finished in white enamel and I thought it was the best and most suitable in shape & color of the lot. Shall I order it.

I left all my auto keys in the lock of the car at Mr. Lotts garage. You might telephone him so he take good care not to lose them. I will not need them until I get to Westport next Saturday. I expect to reach the house early, that is about 5 to 5:30 Standard time (Westport time) so I can get some bait & get my engine started as early in the day as possible. How can I get in without disturbing you.

I got home at 6:20 last night and Mrs. C. had a nice dinner ready, and then I dressed & rode from about 7:30 to 9 o'clock. Tonight I may go over to see Helen as she goes away next Tuesday.

We have had delightful weather, but quite warm. Hope you are rested and enjoying yourself to the utmost. It seems strange to see polly's empty cage and no canaries in the porch or cats around. The old lady picked some roses & put them in the hall, dining room & living room.

Exhibits.

I told Raffael to send to-morrow some peas, spinach & lettuce, so be on the lookout for them at the post office.

Good bye dear, with lots of love from Carl.

Exhibit D. 3.

(Envelope)

Addressed to
Mrs. C D Pfender
Westport
New York

Essex Co
Dated June 28, 1926.

(Letter)

Dear Lilly,

Arrived safely, had a rushing day at biz and have to hurry to get my train so I can get a ride after dinner.

Will you let me know about the Battery as per enclosed slip

Hope you have gotten rested and will enjoy yourself.

Love from
Carl

Exhibits.

Exhibit D. 4.

(Envelope)

Addressed to
Mrs. C. D. Pfender
Westport
New York

On Lake Champlain.
Dated July 15, 1926.

(Letter)

7-15-1926
9.40 A. M.

Dear Lilly,

Your letter recd also glasses— Thanks for sending them. Glad to learn from your letter that things are better and hope they will go all right from now on.

How is your rib? Hope it has stopped bothering you. Keep up the heat treatments. Will try to get your little dress from the cleaners and bring it up Sat A. M. Have had some rain, yesterday was cold today cool and cloudy. Rained last night but got in a horse-back ride between drops. Pruse is fine and as sweet & gentle as ever. Will mail at once so you get it Friday AM. Lot of love

from Carl.

Exhibits.

Exhibit D. 5.

(Envelope)

Addressed to
Mrs. C D Pfender
Westport
New York.
Essex Co.
Dated June 30, 1926.

Dear Lilly, 6/30/26
Please ask Mr. Richards to deliver the battery to the cottage so it is there when I get to Westport Sat A. M.
I will look into the radio for the Mountains
I will try to find the velvet flowers & send or bring them to you.
Glad you like the cottage etc—
Better get your sister to go to Dr Harris 2 doors below the cottage & be examined dont take a chance if she is not well.
Lots of love—In haste Carl

Exhibits.

Exhibit D. 6.

(Envelope)

Addressed to
Mrs. C. D. Pfender
Westport
New York.

Dated July 6/26

(Letter)

July 6—1926.

Dear Lilly,

I reached the station without getting wet and had a fairly comfortable trip to N. Y. There were so many Sections and so many Cars on each section that we were almost an hour late in getting to the station. N Y City & Brooklyn are now tied up with a car & subway strike to make matters worse in handling the crowds.

It rained a little here early today and has been rather heavy & close this P. M. I phoned McCreery's and the only thing they have in a white round tray is one with places for the glasses in a semicircle and the pitcher sets in the centre of the semi-circle (diagram) or they have this shaped tray in white (diagram) with a handle.

What do you want me to do. Shall I try to get a round tray like the one you have there in white some where else.

Please let me know at once.

Hope you will rest up and stop working all the time and will be able to get some one to cook & clean for you

Good bye dear with love from

Carl

Exhibits.

Exhibit D. 7.

(Envelope)

Addressed to
Mrs. C. D. Pfender
Westport
New York.

Essex Co.
Dated July 7, 1926.

(Letter)

July 7th 1926

Dear Lilly,

I found a tray at Wanamakers at $7.50 that had places for 6 glasses around the outside of the tray and a place for pitcher in centre in white enamel, glass bottom—creton under the glass. looks like this (diagram) Handle comes up from centre, not edges, as in one you have and look nice and the handle I think is stronger places in the centre It is better than one at McCreerys that I described yesterday in my letter. Let me know which you want and the McCreery tray can go back & Wanamakers can be sent up.

I will try to send your big shade hat up to you in a box you have the trimming I think you said.

I enclose a circular about a radio that lists at Wanamakers for $350. It is complete & the most up to date on the market. No batteries, just plug into an electric light socket. Has six tubes & is very powerful. Needs an outside aerial which could easily be put up by local electrician It requires alternating current Not direct current Please ask Mr. Mallory the electrician if they have alternating current in Westport Mr.

Mallory is the electricial & has our Contract. Just telephone & ask for his house & he can tell you in a minute if it is Alternating Current in Westport. I can get the Set for $298 complete through one of our salesmen It is very neat looking as you can see from the enclosed picture Has Western Electric Horn & is the last word in radios.

I sent up 3 lbs of Sun flower seed today from Wanamakers for Polly. Nice day today but warm on the street.

Good bye dear with lots of love & kisses from

Carl

GAROD RADIO FOLDER ENCLOSED.

Exhibit D. 8.

(Envelope)

Addressed to

Mrs. C. D. Pfender
Westport
New York

On Lake Champlain.
Dated July 12/26

(Letter)

7/12/26

Dear Lilly

I left my glasses either on the bureau or in one of the pockets of My vest coat or trousers. The coat & vest hang under the curtain near the Steamer trunk & the trousers on the opposite side near the cats dishes. Please mail them to me. Wonderful morning clear & cool. Hope you rested well.

In haste love from

Carl

Exhibits.

Exhibit D. 9.

(Envelope)

Addressed to
Mrs. C. D. Pfender
Westport
New York

On Lake Champlain.
Dated July 12/26

Dear Lilly,

I ordered 100 napkins (paper) to be sent up from Wanamakers (90c for a 100)

About a radio—I find that I can get one that has been very well recommended to me by two of the salesmen at the Store, who have them. I can get this six tube Set for $113 complete (except aerial which will have to be put up outside by local electrician) plus $28 for a 25 Cycle Charger. What do you say about my ordering one of them to be sent up.

Cool & pleasant here today— Hope it has been the same there.

Must close with love from

Carl

7/12/26.

Exhibits.

Exhibit D. 10.

(Envelope)

Addressed to
Mrs. C. D. Pfender
Westport
New York.

Dated July 13, 1926.

(Letter)

Mr Richards May know of some one whom you can get. Ask him & tell him what you said to Margaret so he knows the truth if he hears about it.

July 13—1926

Dear Lilly,

Yours of the 12th recd. I am awfully sorry you are having so much trouble with the help etc. It is most unfortunate that we took that dirty little B— Margaret but what could you know about how things were going to turn out. Shall I speak to Mrs Conklin about coming up. I will try & keep the place dusted up and as clean as possible or do you want me to see Blanche Mack and see if she has no steady place & would like to come to you. I saw other colored people in town I will do anything I can to straighten out things if you will let me know what you want me to do.

Don't let any statements that your sister Makes about being injured in the auto accident or anything else she says worry you. If she makes any claims I have insurance to cover it, but dont let her know anything about it. After all my trouble with Ruth, getting the suit case & phoning her and asking her to let me know about her

Exhibits.

plans last week by Tuesday July 6th at the latest I have not heard a word from her. Of course it is all off anyway. Now I returned the suit case today & got credit for it Don't worry dear everything will come out all right. I hope you have used your heat treatment and are feeling much improved.

Goodbye with lots of love from

Carl

Exhibit D. 11.

(Envelope)

Addressed to
Mrs. C. D. Pfender
Westport.
New York.

Essex Co.
Dated July 26, 1926.

(Letter)

July 26—1926.

Dear Peaches,

I stopped at Lord & Taylors & returned the dress and ordered two white slips plain hemstitched, silk size 40. to be sent direct to you. I then went to McCreery's and had them send a blue dress same color as the one I returned and a Wisteria or Orchid, both in the same design as the one in yellow that you kept. They did not have a white one so I had them send up another white silk dress at $19.75 which I hope you will like. If, when I come up next week you need anything else or you write me in time I will try to get it for you. If any of the three dresses

have to go back you might keep them and I will return them next Monday when I come back from the City, unless you return them by mail and insure them. I hope however they are just what you want, I thought that you would look very nice in them. They are all washable When you ordered the cake can from Wanamaker's did you give them the charge address in Glen Ridge as well as the Westport address. If not that might cause delay.

We had a nice brisk walk to the station last night, made it in about 22 minutes and could have made in in shorter time if necesary. Why dont you go to the circus that is to be in town this week also go to the movies to help pass the time. It must be delightful there today with the Sun shining on the lake & mountains. And the beautiful clear cool atmosphere. It is cool & pleasant here today and I hope it will last for a while as our line opens Monday and it is bigger than ever. I expect you will fine it very interesting to watch the house progress from now on, as it will take shape quite quickly now & you can get a good idea how the completed building will look. Good bye dear with lots of love from

Carl.

Exhibits.

Exhibit D. 12.

(Envelope)

Mrs. C. D. Pfender
Westport
New York.

Essex Co.
Dated July 19, 1926.

July 19— 1926

Dear Lilly,

I ordered a cane with a rubber tip for you to be sent direct from Wanamaker's also tape— white sewing silk & orchid sewing silk. If not the right shade I will change it next week. I enclose copy of letter I wrote to Miss McCarthy. Also to Mr Dudley about a survey & map of cutting lot. I had a very good sleep last night on the train. It was cool & pleasant. Had extra blanket toward morning. Today has been clear & fine.

Will you please call up Mr. Adams tomorrow & follow him up on the lumber for the house Mr Ross also wrote him about it. Hope you are feeling better after a good nights rest in the delightfully cool mountain air.

Hope to be able to take a ride tonight if not too tired after dinner.

Good bye with lots of love from

Carl.

Exhibits.

July 19, 1926.

Mr. Robert B. Dudley,
Elizabethtown, N. Y.

My dear Mr. Dudley:—

As I recall it, the surveyor who surveyed the lot for Miss McCarthy was to survey the Cutting lot and stake it out and give me a map of the two properties When I was looking at the lot yesterday, I did not discover any stakes in the Cutting lot. If this has not been done, will you please speak to the surveyor about it.

Very truly yours,

CDP,AD

July 19, 1926.

Miss M. J. McCarthy,
Beech Hill Inn,
Westport, N. Y.

My dear Miss McCarthy.—

In reply to yours of July 15th., it would be perfectly satisfactory for you to move the boat house next winter on the ice.

When I was up there this week end, I noticed how very plainly the dead poplars near my south line showed against the sky, with all the other trees green. I was wondering whether you were going to have your men cut these down for fire wood, I think you will agree with me that it would greatly improve your property as well as mine. Everything else looks so well kept and green that it makes these dead trees stand out very plainly.

Yours truly,

DICT.C.D.PFENDER.

Exhibits.

Exhibit D. 13.

(Envelope)

Addressed to
Mrs. C. D. Pfender
Westport
New York

Dated July 20, 1926.

(Letter.)

7/20/26

Dear Lilly.

I told Raffael not to send any more big packages of vegetables, but to make them not more than half as large as before. I also did up the cloths bag that I found in my closet and asked him to send it also my mail.

I recd, a reply to my letter to the lumber brokers in Plattsburg but nothing definite, only that they were tracing the car & hoped it would be delivered by this time. Have you phoned Mr. Adams about it?

It has been quite warm today and rather sultry. I suppose it has been fine & cool in the mountains. No letter recd today. Hope you have rested & taken care of yourself and used your heater (Thermolite) that the doctor so kindly lent you. It was very nice of him.

Good bye dear with lots of love from Carl.

Exhibits.

Exhibit D. 14.

(Envelope.)

Addressed to
Mrs. C. D. Pfender
Westport
New York.

Essex Co.
Dated July 21, 1926.

(Letter.)

July 21—1926

Dear Peaches,

Your letter recd this A. M. It is surely hot here today and I am glad it is no worse than 88 in Westport, for I know that you can keep cool on one of the porches and the nights will be cool anyway. Why dont you go to the movies some night. It will help pass the time. Polly must be a lot of company to you anyway. He is certainly entertaining. Mr Ross has gotten at Giroux & Adams by letter and I hope things will soon start to move. How delightful & cool it will be in the new house with windows & doors all around and way up on the mountainside out in the open.

Good bye dearest With lots of love from Carl.

You forgot to sign your letter.

Exhibits.

Exhibit D. 15.

(Envelope.)

Mrs. C. D. Pfender
Westport
New York

Essex Co.
Dated July 22, 1926.

(Letter.)

July 22—1926 10:50 A. M.

Dear Peaches,

Glad to know lumber has come Mr. Ross also got word and expects to be up this week end. I will invite him to stay with us if it is O. K. for you, as I suppose it will be.

You are fortunate to have a delightful breeze as you say. Here what breeze we have is hot and heavy.

I will go out this Noon to McCreery's & Lord & Taylors & try to get you 2 or 3 dresses for everyday wear—voile or linen or tub silk size 40. Dont know what luck I will have but I will try it anyway. I will mail this at once in hopes that you will get it before I arrive Sat. A. M.

Good bye dear with lot of love from Carl.

Exhibits.

Exhibit D. 17.

(Envelope.)

Addressed to
Mrs. C. D. Pfender
Westport
New York.

Essex Co.
Dated July 28, 1926.

(Letter.)

July 28—1926.

Dear Peaches,

Your letter recd. I immediately called Mr. Ross on phone and read your letter to him & he said he understood what you wanted & would write G. & Adams tonight. I also sent him your little sketches by boy. The two windows are already framed and sheathed on the outside and he suggested leaving them as they were for the present, as he thought they would not be objectionable as they are. The partition will not be put up, so that you will have one big closet instead of two smaller ones and if you want one window instead of two it can be changed and one large window made, the next time he goes up. His objection was that your delivery people would pass through your closet instead of having it prviate, but I said I did not think that would matter. He will leave the door nearest the front just as you indicated on your drawing. He has also sent the builder's a sketch of the change & indicated the extra dresser in the kitchen that you wanted. Now is the time to make changes not later I will measure our ice box at home. I sent up the Brown blanket cover by mail.

Exhibits.

Were the dresses O K? I have plenty of covers at home.

Sorry you were upset in your tummy but you must be careful not to overeat, especially when it is hot. Our grind has started in earnest. 2 mill men today, some tomorrow line opens next week, so I will be busy for some weeks to come. Hope I have answered all your questions & gotten all the changes you wanted as you wanted them. I will try to bring up a set of plans for you to have.

Good bye dear with lots of love & kisses from

Carl.

Exhibit D. 18.

(Envelope.)

Addressed to

Mrs. C. D. Pfender
Westport
New York

Essex Co.
Dated Aug. 2, 1926.

(Letter.)

Aug 2—1926

My dear little Wifey,

This has been some day—hot heavy & humid. Stopped at L & T & retd slips Could get no others in your size & kind so went to McCreery's & got a nice silk one at $7.95 & 2 Philipino's at 2.95 but had to get both in the same design. Only ones they had except cheap ones at $1.95. Retd blue dresses Ordered 3 lbs sunflower seeds 1 lb Eng. Canary seed & 1 lb reg canary seed sent from Wanamakers. Your card of the 29th recd

this A. M. & will try to get you two short white nainsook petticoats & a pair of white silk gloves tomorrow. You said nothing about these when I was in Westport.

I met Mr. Ross at Jackson's mantel store this P. M. & we selected the mantels you wanted. $155. for L. R. $135 for D R and $88 for bedroom. Saw the plain mantles and they were very well proportioned and I think you will like them. The carved wood (not composition) ornaments will be applied as you wanted them They will be a great addition to the rooms.

I tried to remember all the things I had to do but as you probably discovered I left all my memos and little books & bills somewhere at the house, so will you please mail them to me at once if you have not already done so. I am trying to finish this letter before I leave to go home with Charlie for the night & so you receive it by tomorrow night if poss. I have just mailed a money order for $50 to your sister. Do you think a portable phonograph at $35 or $50 would be all right or one with a regular built in sound box & a cover over it at $75. which is not portable. The $75 one is somewhat like our small one that we gave away during the War only with a cover & a built in sound box or horn with slats in front. It come in walnut mahogany or oak I believe. The portable ones come in a case & close up & can be carried with a handle.

I hated to leave you last night and left just time enough to make the train by walking fast. If the train had been on time I would have had about 3 minutes to spare, but it was 15 minutes late. I did my shopping before going to the store & hope the slips will be O K if not I will change them for you. I got the best quality silk slip

they had. As I think of the designs for the electric fixtures I think they are very artistic and beautiful and will make the rooms very handsome & attractive. The lanterns are great & all so different in shape & design. We will have to take that matter up with Mr. Ross when he is up this week end. Hope it has been pleasant & cool today & that you got a good rest last night out on your sleeping porch. It was fairly comfortable in the sleeper after the train started & I had to pull up the blanket after a while. No more news tonight. I will try to get a list of Victor records & mail up to you tomorrow & if possible pictures of the phonographs also. Make your selections of some records from the catalogue when it comes. Good bye Sweetheart. With lots of love & hugs & kiss from your loving husband, Carl.

Exhibit D. 19.

(Envelope.)

Addressed to
Mr. C. D. Pfender
Westport
New York
Essex Co.
Dated Aug. 3, 1926.

(Letter.)

Aug 3—1926.

Dear Sweetheart,

It has been a corker here today hot as the dickens, but a breeze this P. M. that helps some. I sent a pair of white silk gloves $1.50 size 7½ from Wanamakers today. Could not get the

nainsook petticoats at Wanamaker's & did not have the time or energy to go uptown for them.

I enclose a circular showing one of the new phonographs at $85. Also am sending under separate cover a large catalogue of records. They told me that the Victor people would have a newer model out in a month or two at $95 that would be better than the $85 one, but this sounded very good & if you want it I will give it to you for your birthday.

Charlie & I went to the Country Club for Dinner last night & ate on the porch, from there we took a ride to get cool & stopped at the Ramapo Riding Club to see the ring etc. There wasn't a sole there, not even a groom about, but lots of horses in the stalls. We then went to a little log cabin fishing club near Hohokus for a while and then home & to bed & were up at 6 A. M. shaved & had a bath & then drove in to N. Y. had breakfast at Mr. Child's Restaurant & to the store.

Hope it has been cool & pleasant at Westport and everything is going along all right. I will have to list & deliver the laundry & bring the clean wash home & sort it, see Prince & give him some carrots from the graden & try to sleep out on the porch with all the windows open. Judge said it was terrible in Glen Ridge last night.

Good bye dearest for today. Will write again tomorrow. Line is open & will be busy from now on for some time. It always comes when it is hottest.

With lots of love & kisses from Carl.

Exhibits.

Exhibit D. 20.

E. M. Hawkes, M. D.
11 East 48th St.
New York

Sept 27, 1926.

Dear Dr. Hauser—

Mrs. Pfender external genetial organis are normal. There is a history of removal of a tube for ectopic gestation but as far as palpation goes the internals organs also are normal.

From the examination I would say there should be no impairment of the sexual function and she says there is none.

Thank you for referring her

E M Hawks

Exhibit D. 21.

Dr. Arthur L. Holland
30 East 40th Street
New York

September
Twentyninth
1 9 2 6

My dear Mrs. Pfender:

Regarding the results of the examinations two days ago, I have the following to report:

The head, neck, heart and lungs were normal in every respect.

The blood pressure was 144-88 and the pulse regular with the rate of 72.

Examination of the abdomen revealed nothing abnormal and there was no tenderness. All of the nerves seem to be intact and the muscular system seemed to be normal.

The weight was 138 pounds.

Examination of the urine showed no abnormalities.

The blood hemoglobin was 88%, which was a normal figure. Blood chemical examinations made the 10th of May, 1926, were as follows: Uric acid, normal; blood sugar normal; non protein nitrogen, normal.

The examinations of the stomach and intestine in February 1925 showed nothing unusual under fluroscopic Xray screen examination.

I feel entirely safe in concluding that your physical condition is satisfactory in every way.

Sincerely yours,
Louis A. Hauserg
Associate.

Mrs. C. D. Pfender,
364 Ridgewood Avenue,
Glen Ridge, New Jersey.

Exhibit C. 42.

(Envelope)

Mrs. C. D. Pfender
Westport on Lake Champlain
Essex Co. New York

(Letter)

I have to get two and three qts of milk a day as your Son drinks so much is that all right?

Wednesday Night

Dear Mrs Pfender—I was intending to write—to you last Thursday night, but the lights went out and I waited a long time for them to come on—Was tired and went to bed—I was glad to get your nice letter and received the card yesterday I know it must be very pleasant and restful

there I was sorry to hear that you had fallen—Hope you may be better by this time—Mr Pfender said to me last night I think you ought to go out and spend the day somewhere, it will do you good and I will get my dinner in N. Y. Now that was very kind of Him and I think I will some day next week for the neice I told you off an Husband are comeing to my sister this Saturday. To be here a week I think I will have them stay with me Sunday night if they can— It was nice that Mr Pfender could be with you for His birthday—I wish you could tell me of some thing that he likes. I realize that there is such a sameness in my cooking—As he does not eat Beef or Pork. It is hard even to have a change—I am trying to do the best I can with everything—your son is here most of the time and it makes it very hard for me getting the meals all at different times and try and keep the other work all up—I work all of the time seldome have a minute during the day—I have made quite a lot of Jelly and Jam—Made a little Red Ras—Jam yesterday had to to save them. Last Saturday night my sister and daughter and little Bittie came down brought things for a picnic supper and ice cream. We ate it in my nice little dining room—After my sister phoned about it I asked the gardner if it would be all right to eat it out where that seat and little table is, as we would not eat until about eight oclock and I did not think any one would see us—He said no he was sure you would not like it so I said it is all perfectly all right and he said he did not want any one to even walk around again excepting I could I asked him if my sister had ever touched any thing he said no—Well it made us feel very bad but I can assure

you that no one will ever walk around again—
We had enjoyed it going down to the lily pond
and around up the garden walk had never steped
off a walk—I did love to see the things growing
in the garden, the only thing I ever did in dif-
ferent times I picked off one pea pod and ate
the peas brought the pod up and put it in the
garbage, and my sister said she did the same—
Never thinking it any harm—but we are never to
old to learn and I will try to know my place
hereafter—I hope you will tell me if I have done
anything wrong. It has been very hot here
yesterday and today—We had one of the worst
storms here last Sunday afternoon, it started
to get dark about five oclock, I went every
where and had every window closed I was alone
it thundered and lighteninged and rained and
hailed some for three hours—it seemed a long
time to me here alone but I wrote these long
letters Well I hope that your new house is grow-
ing fast—and that you may be able to enjoy it
many years with best wishes from

Mrs Conklin good night

Now please tell me any thing that you wish me
to do or not to do I shall not be offended I
would rather know what you think—

Thursday night

Dear Mrs Pfender—I thought you might like to
hear from me so am sending this by Mr P—
I am getting along fairly well—doing the best I
can I work nearly all of the time—havent been
farther than the Lily Pond once—Your son did
not come home until Saturday night has been
home for breakfast and have dinner at one nearly
every day, today just ate a light lunch and said

he was going down in Jersey—I asked Mr. P— if he was willing that my sister and daughter come down and stay over the week end he said yes your son picked the dish pan nearly full of currants yesterday and he did not know how he striped them off and it will be very hard to look them over I told my sister, she said you leave them right alone I will come down tomorrow and make the jelly—it will be some work she was pleased to come it would be like going to the country for them and she said she would bring some clams and celery and make clam chowder— now every thing will be all right. Not one thing will be disturbed or any furnishings taken do not worry about any thing. I have made some strawberry jam my way—am making a little more—I hope that you are having a good rest for you had so much to think off— A letter came from one of my sisters in Virginia, the day you left warning me to come at once, she was sick and one of the daughters wanted to come to Columbia College for the summer school I wrote her at once she has written me since she is better and they found help and Helen came to N Y, yesterday—I hope that you may be able to read this. My pen is so poor—it is now after nine so think I will say good night— Any thing you wish me to do you can tell Mr Pfender Kindly

from Mrs. Conklin

Exhibits.

Exhibit D. 36.

No..... New York June 14th 1923
BANK OF THE MANHATTAN COMPANY 1-2
31 Union Square
Pay to Mrs. Carl D. Pfender or order
Two thousand dollars. ——————Dollars
$2000.00 Carl D. Pfender

Exhibit D. 41.

Hairdresser Bloomfield
2223 W Phone
Mrs. John Lohse
2008-R
26 Clinton Road Glen Ridge N. J.
Dougherty 96 Bloomfield
Lace—Beads
Slip Pattern

New Jersey State Library

ORDER TO SHOW CAUSE.

Filed July 3rd, 1928.

IN CHANCERY OF NEW JERSEY.

Between LILLIAN E. PFENDER, *Complainant,* *and* CARL D. PFENDER, *Defendant.*	*On Bill for Maintenance.*
Between CARL D. PFENDER, *Petitioner,* *and* LILLIAN E. PFENDER, *Defendant.*	*On Petition for Divorce.*

This matter being opened to the Court by Eugene Blankenhorn, for Merritt Lane, of counsel with Lillian E. Pfender and on reading and filing the petition of Lillian E. Pfender and the affidavits thereto annexed,

It is on this third day of July, 1928, ORDERED that the above-named Carl D. Pfender show cause before this court at the Chancery Chambers in the City of Newark, on Tuesday, the fourth day of September, 1928, why an order should not be made in the above-entitled causes re-opening the same for further hearing, and setting aside the decree *nisi* made in the above-entitled cause between Carl D. Pfender as petitioner and Lillian E. Pfender as defendant on petition for di-

vorce, and why an order should not be made for the payment of alimony from the date of said decree *nisi* until the further order of the court;

And it is further ordered that in the meantime and until the further order of this court all proceedings in this court in either of the above-entitled causes be and the same hereby are stayed;

And it is further ordered that a copy of the petition of said Lillian E. Pfender and of the affidavits thereto annexed and of this order, certified by her solicitor to be true copies be served upon the said Carl D. Pfender either within or without the State of New Jersey by personal service thereof upon him or by service thereof upon his solicitors within five days from the date hereof.

E. R. WALKER,

C.

Respectfully advised,

MALCOLM A. BUCHANAN,

V.-C.

PETITION AND AFFIDAVITS.

Filed July 3, 1928.

IN CHANCERY OF NEW JERSEY.

Between LILLIAN E. PFENDER, *Complainant-Appellant,* *and* CARL D. PFENDER, *Defendant-Respondent.*	*On Bill for Separate Maintenance.*
Between CARL D. PFENDER, *Petitioner-Respondent,* *and* LILLIAN E. PFENDER, *Defendant-Appellant.*	*On Husband's Petition for Divorce.* *Petition.*

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

The petition of Lillian E. Pfender respectfully shows to this Court:

1. On December 13, 1926, she filed her bill of complaint against her husband in this court for separate maintenance, and on July 15, 1927, her said husband filed his answer thereto.

2. On April 6, 1927, the said Carl D. Pfender, defendant in the above-entitled cause, filed his petition for divorce against her, praying for divorce on the ground of extreme cruelty, and on May 5, 1927, petitioner filed her answer and counterclaim thereto.

3. The said causes were consolidated and tried together, final hearings having been had on November 23, and December 21, 1927, and on January 10, 1928, a decree *nisi* was entered in the suit of petitioner's husband against her in favor of the said Carl D. Pfender, granting a divorce against the said above-named petitioner, Lillian E. Pfender, upon the ground of extreme cruelty. On April 5, 1928, petitioner appealed to the Court of Errors and Appeals from said decree, and the said appeal is now pending and undetermined, and no final decree has been entered.

4. Petitioner charges that at the time of the hearings above mentioned, and continuously from on or about October 15, 1927, down to date, including June 30, 1928, the said Carl D. Pfender committed adultery with Leona Hass at an apartment situate at 911 Walton avenue, Borough of the Bronx, City and State of New York, and particularly the said Carl D. Pfender committed adultery with the said Leona Hass in a bungalow situate at Truesdale Lake, near South Salem, on June 29 and June 30, 1928.

5. Petitioner charges that the said decree *nisi* in said suit for divorce was obtained by the said Carl D. Pfender through fraud committed in the trial of said cause and perjury committed by the said Carl D. Pfender at the hearings, and that the said Carl D. Pfender at the time of the hearings was guilty of contempt of this court.

6. Petitioner is presenting her petition to the Court of Errors and Appeals for similar relief in this cause.

Petitioner, therefore, prays that the decree *nisi* granted in the said cause may be set aside; that

the said causes may be reopened and petitioner permitted to present proofs of the said adultery and mis-conduct of the said Carl D. Pfender, and that the said Carl D. Pfender may be punished for contempt of this court committed at the said hearings, and that the order made in said cause for maintenance pending the final hearing may be reaffirmed, and that she may have maintenance from the date of the said decree *nisi* until the further order of this court, and such other relief as to this court may seem proper.

MERRITT LANE,
Solicitor for and of Counsel
with Petitioner.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.:*

LILLIAN E. PFENDER, of full age, being duly sworn according to law, upon her oath deposes and says:

I am the petitioner in the foregoing petition named. I have read the petition and know the contents thereof and the same is true to the best of my knowledge, information and belief.

I filed my bill for separate maintenance against my husband December 13, 1926, and on July 15, 1927, my said husband answered the said bill, and later, on April 6, 1927, my said husband filed a petition for divorce against me on the ground of extreme cruelty, which petition I answered. The said causes were consolidated and hearings had thereon November 23, 1927, and December 21, 1927, and after said hearings and on January 10, 1928, a decree *nisi* was signed in

said cause, granting my said husband a divorce against me upon the ground of extreme cruelty.

During the progress of said case, Rev. George Pryor Dougherty made an affidavit which was filed in said cause, in which he alleged that my said husband was a man of fine standing and excellent repute in the community in which he lives, and to said deponent's personal knowledge was a man of fine sense of honor, excellent moral character and integrity of soul. In said affidavit he also swore as follows:

> "Many incidents might be narrated at length as to all of this, but it culminated, so far as deponent was concerned in September, 1926, at which time the said Lillian E. Pfender stated to deponent that her husband was in the habit of meeting women while he was out horseback riding in parks in the morning, that he had been unfaithful to her and that she intended to kill him, and she at that time showed deponent a revolver that she had for that purpose. Deponent took the revolver from her and still has it."

The said Rev. Dr. Dougherty admitted in his testimony at the hearing that the statement contained in the affidavit was technically untrue but that the revolver had been given by me to the gardener and by the gardener later given to Dr. Dougherty.

Paragraph 11 of my husband's petition for divorce contains the following statement:

> "Sometime about September of 1925 and for some time before then, defendant unjustly accused petitioner of infidelity and charged him with meeting women while taking his usual morning exercise on horseback through

the parks and roads in the vicinity of Glen Ridge, all of which was absolutely untrue and made without a shred of basis. Defendant also continued these baseless accusations and also charged that the petitioner was mentally incompetent, etc.''

At the time of the hearing, I am informed and therefore charge, that my husband was living with Leona Hass, a young woman formerly employed in his office and concerning whom my husband made a confession to me on or about August 7, 1926, that he had committed adultery with her. As a result of said confession, I became unconscious and remained so for upwards of twelve hours. My said husband, upon the trial, denied that he had confessed having committed adultery with the young woman, but admitted that he had made a confession to me as a result of which I had fainted and remained unconscious all night, and that the confession concerned a young woman with whom he said he had driven at night after working hard in the office all day and that everything was perfectly proper between them and that he had gone only to the most public places.

At the time of making said testimony, my husband was living with the said woman, who is Leona Haas, at 911 Walton avenue, Borough of the Bronx, New York City, and he has resided with the said Leona Hass at said address since on or about October 15, 1927, where they occupied apartment 4-C and have lived continuously from that date down to June 29, 1928, when, at 7:30 o'clock P. M. my husband and the said Leona Haas, took from the above-mentioned apartment a victrola and provisions and other furniture and went to a bungalow situate at Truesdale Lake, near South Salem, Westchester County, New

York, consisting on the first floor of two bedrooms and living room, dining room and kitchen.

At 5:45 A. M. on June 30, 1928, I passed the said bungalow in a machine in company with Robert J. Foster, Michael Harley, John McPartland and Josephine A. Foster, and observed that all of the windows of the bungalow were closed. Mr. Harley got out of the automobile and went to the garage which is under the bungalow. He returned and stated that Mr. Pfender's automobile was in the garage and that Mr. Pfender was in the house. As we turned back to go to the Justice of the Peace, we saw that one window had been opened between the time we passed the house and turned back.

I drove to the office of Justice of the Peace Joseph A. Webster, where I made a complaint against my husband, charging him with having committed adultery, and a warrant was issued and delivered to Robert J. Foster, who left me at the office of the Justice of the Peace. About 8 o'clock, Captain Foster, Mr. McPartland, Mr. Harley and Constable Hull returned to the office of the Justice of the Peace with my husband, Carl D. Pfender, and there my said husband was arraigned on the charge and waived examination and was held in bail for appearance before a higher court. I then went back to the bungalow and there saw the young woman. She is the same young woman whom I know as Leona Haas, who at one time was employed by my husband in his office. I saw her in 1926 at the Breevort Hotel, 9th street and Fifth avenue, New York City, and again I saw her at another time outside of the office of my husband as a number of the clerks were leaving. I also saw the said Leona Haas at a horse show in Newark, where I was in

company with my husband. She was also the same young woman whom I saw coming out of the apartment house at 911 Walton avenue, Bronx, N. Y., during the month of June, 1928, in company with my husband.

While I was waiting at the office of the Justice of the Peace, I heard my husband in conversation over the telephone with a person whom he addressed as Ralph Lum. I heard my husband say: "Foster's Detective Bureau, of New York City, have got me up here under arrest," and then he answered some questions. Then he said, "Yes, Mrs. Pfender is here with a young lady companion." Then he said, "Another one of those trumped up charges— They have nothing on me—all they got was, I was alone in the bungalow with this young woman but the windows were open."

LILLIAN E. PFENDER.

Sworn and subscribed to before
me this 2nd day of July, 1928.

THOS. H. HAGGERTY,
Notary Public of New Jersey.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } *ss.:*

ROBERT J. FOSTER, of full age, being duly sworn according to law, on his oath deposes and says:

I am the proprietor of Foster's Industrial and Detective Bureau with offices at No. 33 West 42nd street, New York City, and Louisville, Kentucky, and I reside in the City of Newark, Essex County, aforesaid.

Affidavit of Robert J. Foster.

In the early part of May, 1928, I was engaged by Mrs. Lillian E. Pfender to make an investigation with reference to the truth or falsity of certain information that had reached her respecting the conduct of her husband, Carl D. Pfender. I made a thorough investigation, both personally and with the aid of employees in my detective agency. I learned that since on or about October 15, 1927, the said Carl D. Pfender occupied apartment 4-C in an apartment house situate at 911 Walton avenue, Borough of the Bronx, New York City, and that he resided there with Miss Leona F. Hass, Mrs. Minnie Hass and Thelma Ackeman, a girl of nine years of age, and that he was known in said apartment as Mr. Hass. The apartment consists of four rooms, one bedroom, one dining room, one living room and a kitchen. In the month of December, 1927, the said Carl D. Pfender applied for and received a license to operate a motor vehicle in the State of New York, and upon making the application, gave as his address 911 Walton avenue, New York City. Since October 1, 1927, and down to the present time, the said Carl D. Pfender has kept his automobile stored in a garage situate on East 162 street known as the Stadium Garage. I personally have watched the entrance to the apartment known as 911 Walton avenue for upwards of five weeks last past, and I have seen Carl D. Pfender, whom I know, and Leona Hass, whom I know, enter the said apartment house at night, and I have personally seen the said Carl D. Pfender and the said Leona Hass leave the said apartment house at hours ranging from 7:30 A. M. to 9:30 A. M. during the week days, and at other hours later in the day on week-ends, Saturdays, Sundays and the like.

On Monday, June 11, 1928, I saw Mrs. Minnie Hass come out of the apartment, 911 Walton avenue, at about 7:40 o'clock A. M., and about 10 minutes later, the child above referred to came out. Mr. Pfender came out one hour later. I caused motion photographs to be taken of each of the above-named parties as they came out of the apartment and have the same ready to be exhibited to the Court.

On Wednesday, June 13, 1928, at 7:40 o'clock A. M. I again saw Minnie Hass come out of the apartment, and Thelma Ackeman came out at 8:00 o'clock A. M. Carl D. Pfender came out at 9:10 A. M. On numerous other occasions, I have seen Minnie Hass and Thelma Ackerman come out of the said apartment house, and an hour or so later I have seen the said Carl D. Pfender come out, and sometimes the said Leona Hass come out with him or come out alone.

On June 30, 1928, I went in company with John McPartland, Michael Harley, Mrs. Lillian E. Pfender, Miss Josephine A. Foster and Miss Josephine Sullivan to a bungalow situate at Truesdale Lake, near South Salem, Westchester County, N. Y., which I had been informed by a Mrs. Hager, an agent on the property, that a Mrs. Hass had rented Captain Bouquet's cottage consisting of five small rooms, informing me that only two persons were to occupy the cottage.

When we drove past the house, I particularly noticed that all of the windows on the first floor were closed, but later as the automobile turned around and left the lake, one of the windows had been opened, and I assumed that someone was within. Mr. Harley went to the garage, which is under the bungalow, and returned telling me that Mr. Carl D. Pfender's automobile was in

the garage. We then went to the office of the Justice of the Peace, Joseph A. Webster, at Lewisboro, and returned later in company with Constable Hull of Westchester County with a warrant for the arrest of the said Carl D. Pfender on the charge of adultery made against him by Mrs. Pfender. Constable Hull demanded admission to the house, and Mr. Pfender came to the window in his pajamas, having no other clothing on, and then unlocked the door and let us in. We all went in and I went immediately to the bedrooms which open off of the living room. Both bedroom doors were open. One bedroom had a double bed in which I saw Leona Hass lying completely undressed, clad in a night-gown, and the bed appeared to have been occupied by another person. The bed in the small room was a single bed and had not been occupied, and Mr. Pfender's clothes were lying on top of the bed. Constable Hull told Carl D. Pfender that he was under arrest and must accompany him to the office of the Justice of the Peace. Mr. Pfender went into the vacant bedroom where the clothing was and started to dress. Leona Hass called out, "Carl, dear, what are those men going to do to you?" Mr. Pfender said, "Oh, that is all right, dear. It is another one of those trumped-up charges and Lum will fix it up all right." He asked what he was charged with, and when told it was adultery, said, "You are going to have some time proving it, the windows were open." Just before we left, he went into the bedroom of Leona Hass. Leona Hass had gotten up and put on a kimono. He kissed her good-bye and told her not to worry and came away with us, leaving the Hass woman in the cottage crying. I personally examined the whole

cottage, and I know that there was no other person in the cottage at the time we entered and during the time we were there. At the office of the Justice of the Peace, Mr. Pfender in a telephone conversation with a person whom I understood to be his attorney, stated, "I was alone in the cottage with this young woman, but it was perfectly all right, the windows were open."

I caused motion pictures to be taken of the said Carl D. Pfender, the said Leona Hass, the said Minnie Hass and the said Thelma Ackerman on different days in the mornings of each day, having personally seen the said Carl D. Pfender, and the said Leona Hass, Minnie Hass and Thelma Ackerman in the act of leaving the apartment house at the time the motion pictures were being taken, and I have the films of said motion pictures, and I am ready to produce the same in court. The motion pictures were taken by me at times when I know that the Minnie Hass and Thelma Ackerman left the apartment, leaving the said Carl D. Pfender and Leona Hass in the apartment alone unchaperoned, and for periods of time lasting for upwards of one hour or more.

ROBERT J. FOSTER.

Subscribed and sworn to before
me this 2nd day of July, 1928.

THOS. H. HAGGERTY,
Notary Pulic of N. J.

Affidavit of Michael J. Harley.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } *ss.:*

MICHAEL J. HARLEY, of full age, being duly sworn according to law, on his oath deposes and says:

I reside at 33 West 42nd street, in the City and State of New York. I am acquainted with Robert J. Foster and with Mrs. Lillian E. Pfender. On the morning of Saturday, June 30, 1928, at about 2:15 A. M., I drove Robert J. Foster, Lillian E. Pfender, John McPartland, Josephine Sullivan and Josephine A. Foster in my automobile to South Salem, Westchester County, New York, to a bungalow in South Salem where I was directed to drive by the said Robert J. Foster. Before I left New York, and for several days prior to June 30, 1928, I had stored my car in the Stadium Garage, where a car bearing the license No. 3C-98-06, which I was informed belonged to Carl D. Pfender, was stored. On the morning of June 28, 1928, I saw Mr. Pfender take the car out of the garage.

On June 30, 1928, after I had driven into the yard of the bungalow indicated to me by Captain Foster, I stopped my car and got out and went into the garage underneath the bungalow, and saw Mr. Pfender's car in the garage. The car in question is an old Cadillac car bearing the license No. 3C-98-06. I then returned to my automobile and drove to Lewisboro where Mrs. Pfender, Captain Foster and I went before Justice of the Peace, Joseph A. Webster. Mrs. Pfender made a complaint before the Justice of the Peace against her husband on a charge of adultery, and the Justice of the Peace issued a warrant and handed it for service to Captain Foster, to give to Constable Charles Hull. I then drove Mr.

Foster and Mr. McPartland to the residence of Charles Hull, and Captain Foster delivered the warrant to him. Mrs. Pfender, Miss Sullivan and Miss Foster remained at the house of the Justice of the Peace. In company with myself, Captain Foster, John McPartland and Charles Hull then went to the bungalow above mentioned and rapped on the door. Carl D. Pfender came to a window clad only in pajamas. Constable Hull asked him if he was Carl D. Pfender, to which he replied that he was. Mr. Hull then said that he wanted him, and thereupon Mr. Pfender opened the door and let us in. The bungalow consisted on the first floor of two bedrooms, a living room and a kitchenette, the bedrooms opening off of the living room. I saw a woman in bed, and I also saw in the second bedroom that the bed had not been occupied, and that a man's clothing had been thrown on the bed. The woman said to Mr. Pfender, "Carl, dear, what are these men doing here?" Pfender then said, "Oh, it is another one of those trumped-up charges." I went out and got the car, and shortly afterwards, after Mr. Pfender had gotten dressed, Mr. Pfender, Captain Foster, Mr. McPartland and Constable Hull and I returned to the home of the Justice of the Peace. I then took Mrs. Pfender, Miss Sullivan and Miss Foster back to the bungalow and we were admitted to bungalow by a young woman, whom I understand was Miss Leona Hass. Mrs. Pfender said to Miss Hass, "I am Mrs. Carl D. Pfender. I have come here for the sole purpose of identifying you." We all entered the house. Mrs. Pfender looked into both bedrooms. We then returned to the home of the Justice of the Peace, and eventually to New York City.

Affidavit of Josephine Sullivan.

I am not an employee of Robert J. Foster, but I have been acquainted with him for many years and went on this trip because he asked me if I would furnish him with an automobile to make the trip.

MICHAEL J. HARLEY.

Subscribed and sworn to before
me this 2nd day of July, 1928.

THOS. H. HAGGERTY,
Notary Public of N. J.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } *ss.:*

JOSEPHINE SULLIVAN, of full age, being duly sworn according to law, on her oath deposes and says:

On the morning of Saturday, June 30, 1928, I went in company with Robert J. Foster, Mr. Harley, Mr. McPartland, Josephine Foster and Lillian E. Pfender in an automobile driven by Mr. Harley to a bungalow at South Salem, Westchester County, New York. We arrived at the bungalow at 6 o'clock in the morning, and Mr. Harley left the car for a minute to go to the garage which was under the bungalow, and he returned saying that Mr. Carl D. Pfender's car was in the garage. We then went to the home of the Justice of the Peace, Joseph A. Webster, situate in Lewisboro, where Mrs. Pfender made a complaint against her husband, Carl D. Pfender, before the said Justice of the Peace, of adultery. The Justice of the Peace issued a warrant and gave it to Captain Foster. At about 8 o'clock in the morning, Captain Foster, Constable Hull, Mr. Harley and Mr. McPartland returned to the home of the Justice of the Peace

with Carl D. Pfender. While proceedings were going on before the Justice of the Peace, Mrs. Pfender and I and Miss Foster were taken by Mr. Harley to the bungalow where Mrs. Pfender stated to the young woman who was in the bungalow that she was Mrs. Carl D. Pfender and had come to the bungalow for the sole purpose of identifying her. The woman in the bungalow is the same person whom I have seen coming out of the apartment situate at 911 Walton avenue.

JOSEPHINE SULLIVAN.

Subscribed and sworn to before
me this 2nd day of July, 1928.

THOS. H. HAGGERTY,
Notary Public of N. J.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } *ss.:*

JOSEPHINE A. FOSTER, of full age, being duly sworn according to law, on her oath deposes and says:

I am a secretary of the Robert J. Foster Detective Agency. On Saturday, June 30, 1928, at 2 o'clock A. M., I drove in an automobile with Robert J. Foster, Lillian E. Pfender, Josephine Sullivan, John McPartland and Michael Harley to South Salem, Westchester County, New York. We were driven to a house indicated by Robert J. Foster. A short distance from the house, Mr. Harley got out and looked in the garage and returned saying that Mr. Carl D. Pfender's car was in the garage. We then went to the home of the Justice of the Peace, Joseph A. Webster, in Lewisboro, New York. While there, Mrs. Pfender made a complaint, before Justice of the Peace

Webster of adultery, against her husband, and the Justice of the Peace issued a warrant which he gave to Robert J. Foster. Captain Foster and Messrs. McPartland and Harley left and returned at about 8 o'clock in the morning with Carl D. Pfender and Constable Hull, and the said Carl D. Pfender was arraigned before the Justice of the Peace and held in bail. As he walked in in the presence of his wife, he said, "A nice party." The Justice of the Peace asked Mr. Pfender if he was Carl D Pfender, and he replied that he was. I then left with Mrs. Pfender and Miss Sullivan and Mr. Harley and we went to the bungalow first above mentioned, where we were admitted to the bungalow by the young woman whom I have seen in company with the said Carl D. Pfender in front of the apartment known as 911 Walton avenue. Mrs. Pfender said to the young woman, "I am Mrs. Carl D. Pfender. I have come here for the sole purpose of identifying you." I then returned with Mrs. Pfender, Miss Sullivan and Mr. Harley back to the Justice of the Peace, and then to New York.

The young woman whom I saw in the bungalow at South Salem is the same young woman I saw on June 23, 1928, in company with the said Carl D. Pfender in front of the apartment at 911 Walton avenue, where she was engaged in touching up with paint the automobile which I have seen both Mr. Carl D. Pfender and the girl in question use.

JOSEPHINE A. FOSTER.

Subscribed and sworn to before
me this 2nd day of July, 1928.

THOS. H. HAGGERTY,
Notary Public of N. J.

Testimony.

IN CHANCERY OF NEW JERSEY.

Between

CARL D. PFENDER,
Petitioner,

and

LILLIAN E. PFENDER,
Defendant.

Transcript of stenographer's notes in the above-entitled cause, taken before Honorable MAJA LEON BERRY, a Vice-Chancellor of the State of New Jersey, at his chambers, Industrial Building, Newark, New Jersey, on Friday, November 16, 1928.

Appearances:

Messrs. Lum, Tamblyn & Colyer, Ralph E. Lum, Esq., of counsel, solicitors for the petitioner, Carl D. Pfender.

Merritt Lane, Esq., and D. Eugene Blankenhorn, Esq., solicitors for the defendant, Mrs. Lillian E. Pfender.

Mr. Lane: The application here is to open a decree made by this court for divorce granted to the husband as against the wife on two grounds, one, the commission of a matrimonial offense by the husband subsequent to the hearing before your Honor and before final decree had been entered; and two, because of perjury committed before your Honor at the time of the trial. The petitioner then swore that he was a resident and inhabitant of the State of New Jersey, whereas, in matter of fact, he was residing in the State of New York in the same family in which the

young lady who is mentioned in the case by name was residing.

JAMES CHRISTY, a witness called in behalf of the defendant, Mrs. Lillian E. Pfender, being first duly sworn according to law, on his oath testified as follows:

Direct examination by Mr. Lane.

Q Where do you live? A 64 North Ninth street, Newark.

Q And at the present time by whom are you employed? A Captain Foster.

Q And in October of 1927 where were you employed? A 911 Walton avenue, Bronx, New York.

Q And what is 911 Walton avenue, Bronx? A An apartment house consisting of 58 families, with two wings, a north and a south wing.

Q Has it a name? A Normandy Manor.

Q What was your employment there? A Elevator operator.

Q When did you take that employment? A September 15, 1927.

Q At that time were you in the employ of Captain Foster? A No, sir.

The Court: Who is Captain Foster?

Mr. Lane: It will develop, Vice-Chancellor, that he is the detective who has been employed in this case.

Q Had you prior to that time been employed by Captain Foster? A No, sir.

Q Did you have any knowledge of Captain Foster at that time? A No, sir.

Q How old are you? A 23 years.

Q What had been your employment up to September, 1927, generally? A Elevator operator.

Q Had you ever done any detective work? A No, sir.

Q When did you meet Captain Foster? A May, 1928.

Q Did you know Apartment 4-C? A Yes.

Q Will you describe it? A Four-room apartment with living room, kitchen, dining room and chamber and bathroom.

Q And who were occupying Apartment 4-C in October of 1927? A A family known as Hass and listed—they were listed under Hass.

Q When did the Hass family come to that apartment? A To the best of my knowledge on or about the 15th of October.

Q Fifteenth of what? A October, 1927.

Q Who constituted the family? A Mrs. Minnie Hass, Miss Leona F. Hass, Mr. Hass, and Thelma Ackerman.

Q The lady whom you have called Mrs. Minnie Hass, do you see her in the court room? A Yes, sir.

Q Will you point her out? A The lady who stands up (indicating).

Q That lady is Mrs. Minnie Hass? A Yes.

Q Do you see the lady in the court room whom you knew as Leona Hass? A Yes, sir.

Q Will you point her out? A She is on the left-hand side of Mr. Pfender.

Q Do you see Thelma Ackerman in the court room?

Mr. Lane: I will ask those who are asked to be identified not to stand up until the witness identifies them.

A No.

Q What was Thelma Ackerman, a woman or girl? A A little girl.

Q How old? A About nine years of age.

Q Do you see in the court room the man you have called Mr. Hass? A Yes.

Q Will you point him out? A Sitting between the two ladies (indicating the petitioner, Mr. Pfender)

Mr. Lane: Is that conceded, that the man is Mr. Pfender?

Mr. Lum: Yes.

Q How long did he reside in the apartment? A To my knowledge, from October 15th—from on or about October 15, 1927 to August 15, 1928, when I left employment up there.

Q Did the family change during that time at all? A Yes, sir, Mr. Pfender was not seen there from June 29th until up to the date of my leaving, August 15th.

Q He was not seen there since June 29, 1928? A Yes, sir.

Q From October 15th, 1927 up until June 29, 1928, how often did you see the man, Pfender? A Every day.

The Court: June 29, 1928?

The Witness: June 29, 1928.

Q You said you saw Mr. Pfender there every day. When did you first know that the name of this man was Mr. Pfender? A I was told by Captain Foster in May, 1928.

Q And from the time they went into the apartment in October, 1927 until May, 1928, you

had no knowledge that he was other than Mr. Hass? A No, sir.

Q How often did you see the lady known as Leona Hass at the apartment? A Practically every day.

Q Was there any period of time between October, 1927 and June, 1928 when either Mr. Pfender or the lady, Leona Hass, were away from the apartment for any considerable period of time? A Yes, there was a period in June, 1928.

Q I mean until June, 1928? A Not to my knowledge, no.

Q Did you observe during the time the family lived there and you too were there, whether the man whom you knew as Mr. Hass and Miss Hass went out at all? A Yes, sir.

Q Will you tell us what you observed with respect to that? A Usually they went out in the morning between seven and eight o'clock and returned at night about six P. M. together.

Q And then did you see them go out in the evening at all? A Yes, they often went out in the evening between seven and eight, returning at night between eleven and twelve.

Q And when they came in at eleven and twelve at night, where did they go? A Apartment 4-C.

Q Did they go out again until the next morning? A No, sir.

Q How often did you observe them go out that way? A Two or three times a week.

Q What were your hours? A When I worked days I was on from 8 A. M. in the morning until 6 P. M. and nights from 6 P. M. until 8 P. M.

Q Did you see whether or not the man whom you knew as Mr. Hass had an automobile? A Yes, sir.

Q When did you first observe his having an automobile? A I noticed he had an automobile in the month of October, but I paid no particular attention to it.

Q Did you notice what the license of the car was? A Yes, I will have to refer to my memorandum for that.

Q When was your memorandum made? A From May, 1928, on.

Q And was made from the car—did you take the license number from the car itself? A Yes.

Q And then when did you make the memorandum in connection with your looking at the car? A Immediately after.

Q Will you refer to that memorandum and tell me what the license number of the car was?

The Court: Was the hearing November 23rd?

Mr. Blankenhorn: November 23rd and December 24th. The first day was November 23.

Mr. Pfender: (who stands up) 3-C-9806.

Q The car that you observed in May of 1928, was that the same car that you had seen there before then? A Yes, sir.

Q In May, 1928, when you had an interview with Captain Foster, did you after that time watch these people? A Yes, sir.

Q And did you make a memorandum after that time as to when you saw them go out and the like of that? A Yes, sir.

Q When was that memorandum made in connection with what you saw? A Immediately after.

Q Have you that memorandum? A Yes.

James Christy, cross.

Q Will you refer to that memorandum for the purpose of refreshing your recollection as to dates and tell me what you saw from May, 1928 on? A Yes.

Q You made no memorandum before that? A No, sir.

Thursday, May 17: Hass and young woman came in at 6 P. M. and went out at 8 P. M. Came back 2:30 A. M. Both wore evening dress.

Saturday, 19th May: Hass and young woman came in at 6:15 P. M. went out 7:15 P. M., came back at 12 midnight. Mrs. Minnie Hass and child went out at 8 P. M. came back at 12:20 A. M. Thelma was dancing at the Concourse Plaza—

The Court: Read that memorandum again, everything on that particular day, Saturday—

Mr. Lum: May I examine this memorandum?

Cross examination by Mr. Lum.

Q When was this memorandum made? A Immediately after seeing these people.

Q And in your own handwriting? A Yes.

Q And made at the Concourse Plaza? A No, sir.

Q I see you have written here that Thelma was dancing at the Concourse Plaza. You did not know that? A I was told so.

Q Then this that you have written here is what you were told? A No, sir, I have written here what I know.

James Christy, further direct.

Q You have that she was dancing at the Concourse Plaza? A With the exception of knowing positively that she was dancing at the Concourse Plaza, I did not see her down there.

Q Why did you write it then? A Because I was told so and I thought it would be of some use.

Q Who told you that? A The elevator operator on the car.

Q What is his name? A Andrew T. White.

Q He knew that you were employed by the Foster people? A No, sir, he didn't.

The Court: Obviously he cannot testify to what someone else told him. You may testify to what you saw.

The Witness: These dates I can positively testify to.

The Court: You cannot testify to her having danced at the Concourse Plaza because you know nothing about it except what someone has told you. You may tell me what you saw, not what someone else has told you.

Mr. Lum: I think I have no objection to this being put right in evidence as though he had testified to it, which will save time.

The Court: I prefer to hear it.

Mr. Lane: I have not seen this memorandum myself. I do not know what is on it.

Further direct examination by Mr. Lane.

Q When you refer to these dates be careful only to tell us what you yourself know of your own knowledge? A Yes, sir.

Q Not what someone else told you. A Yes, sir.

The Court: Begin with that date again.

The Witness: Saturday, 19th May: Hass and young woman came in at 6:15 P. M. went out at 7:15 P. M. came back at 12 o'clock midnight.

Mrs. Minnie Hass and child went out at 8 P. M. and came back at 12:20 A. M.

Q That is the same date? A Yes, sir, 20 after 12 the following morning, 20 minutes after midnight.

Sunday, 20th May: Mrs. Minnie Hass and child came in at 8:40 P. M.

Monday, 21st May: Hass and young woman went out at 2 P. M. and came home at 6 P. M. Whole family went out at 8 P. M. Mrs. Minnie Hass and child came back at 9 P. M. Hass and young woman came back at 9:30 P. M.

Tuesday, 22nd May: Hass and young woman went out at 8 A. M. Whole family went out at 8 P. M. Old woman and child returned at 11:20 P. M. Hass and young woman returned at 11:25 P. M.

Wednesday, 23rd May: Hass and young woman went out at 8 A. M.

Thursday, 24th May:—

Q You did not see them come in? A No.
Q You were off that day? A Yes.

Thursday, 24th May: Hass and young woman went out at 8 A. M. Thelma went

to school at 8:10 A. M., came back at 3:45 P. M. She told me—

Q Don't tell what anyone told you.

Friday, 25th May: I did not see Hass or young woman this morning. Thelma came in from school at 3:45. Thelma, Hass and the young woman came in together at 5:55 P. M.

Saturday, 26th May: I did not see either Hass or young woman this morning. Mrs. Minnie Hass came in at 12: 45 P. M. A letter came for Miss L. Hass.

Sunday, May 27th: Whole family all went out together at 2:15 P. M. I did not see them after that.

Monday, 28th May: Hass and young woman went out together at 8 A. M.

Tuesday, 29th May: Hass and young woman went out at 8 A. M. came back 6 P. M.

Wednesday, 30th May: Old woman, young woman and child came in at 10:40 P. M. Hass came in 11 P. M.

Thursday, 31st May: Old woman went out 8 A. M. Miss Leona Hass received letter from New York Edison. Minnie Hass went out 7:45 P. M. Hass went out 7:50 P. M. Thelma came in 8 P. M. Mr. Hass and Minnie Hass came in at 10:30 P. M.

Friday, June 1st: Hass and young woman came in 10:20 P. M. Old woman and child came in 11:45 P. M.

Saturday, June 2nd: Old woman went out 7:45 A. M. Old woman and child went out 7:20 P. M. Hass and young woman went

out 7:40 P. M. and came in together 11:30 P.M. Old woman and child came in 10:35 P. M.

Sunday, June 3rd: Old woman went out 8 A. M. Young woman and child came in at 11:30. Hass came in 12 midnight. Old woman came in at 1 A. M.

Monday, June 4th: Hass and young woman came in tonight 12: 15 A. M.

Tuesday, June 5th: Old woman came in 8:45 with Thelma. Hass and young woman came in 11:10 P. M.

Wednesday, June 6th: Didn't see anyone go out, but Miss Leona F. Hass received letter from Cosmopolitan Bank, 803 Prospect avenue, Bronx.

Thursday, June 7th. Old woman went out 7:45 A. M. Thelma came in at 3 P. M. Hass came in 5:45 P. M.

Friday, June 8th: Letter came addressed to Carl D. Pfender. Old woman went out 7:45 A. M. Hass went out 8:20 A. M. Young woman went out 9:20 A. M. Young woman, Thelma and a baby came in at 3:10 P. M. Young woman and baby went out again at 4:30 P. M.

Q Did you observe who that letter was from that came to Mr. Pfender? A Yes.

Q Who? A 1745 First avenue, New York City.

Q Did it have any title as to what it was? A From the Bureau of Motor Vehicles.

Q Go on?

Saturday, June 9th: Old woman went out 7:45 A. M. Hass came in at 12 noon without a hat. Old woman came in 1 P. M.

Sunday, June 10th: I did not see any of them at all.

Monday, June 11th: Old woman went out 7:20 A. M., came in about 5:30 P. M.

Tuesday, June 12th: Old woman went out 7:40 A. M. Hass went out 8:05 A. M. Young woman went out 9:15 A. M., came back with baby about 2:30 P. M. Thelma came in at 3 P. M.

The Court: Who do you mean by the baby, the nine-year-old child?

The Witness: No.

The Court: There was a baby in addition?

The Witness: A baby in addition. I referred to the young girl as Thelma.

The Court: You did not mention the baby as having been an occupant of the house or apartment when you first told us who lived there.

The Witness: This baby did not live there.

A (Continuing.) Thelma came in at 3 P. M. and was in the hall about 4:20 P. M. A letter came about 4 P. M. for Mrs. Minnie Hass from McKenna & Richardson, South Salem, Westchester County, N. Y.

Wednesday, June 13th: Old woman went out at 7:40 A. M. Thelma went out 8 A. M. Hass went out 9:10 A. M. Old woman came in at 6:10 P. M. and went out again at 7 P. M. Hass came in at 9:15 P. M.

Thursday, June 14th: Old woman came in at 7:15 P. M. Hass came in 6:40 P. M.

Friday, June 15th: Old woman went out 7:45 A. M. Old woman, young woman and child came in 9:45 P. M.

Saturday, June 16th: Old woman went out 7:45 A. M. and came in with the child at 10:10 P. M.

Sunday, June 17th: Young woman went out at 6:45 P. M. Old woman, young woman and child came in at 8:40 P. M.

Monday, June 18th: Old woman and child went out at 7:45 A. M.

Tuesday, June 19th: Old woman went out at 7:45 A. M. Thelma went out at 8 A. M. Old woman, young woman and Thelma came in together at 6:15 P. M. A letter addressed to Leona F. Hass came from the Absar Realty Company.

Thursday, June 21st: Thelma went to school at 8 A. M. Leona went out 10 A. M. Thelma went out to play at 3:45 P. M. Hass came in 5:45 P. M. Leona came in a few minutes later.

Friday, June 22nd: Old woman went out 7:45 A. M. Thelma went to school at 8 A. M. and Leona and Thelma went out 3:15 P. M. and came back a few minutes later. Hass came in 5:30 P. M.

Saturday, June 23rd: Old woman went out 7:45 A. M. Whole family went out 3:30 P. M.

Sunday, June 24th: Old woman came in at 10:40 A. M. Whole family, including Leona, sister and baby went out about 2 P. M.

Monday, June 25th: Old woman went out at 7:45 A. M. Hass came in 5:35 P. M. Leona came in 5:40 P. M. Old woman came in 6:10 P. M.

Tuesday, June 26th: Old woman went out at 7:45 A. M. Hass went out at 9:05 A. M. Leona came in 1:20 P. M. and went out again 1:35 P. M.

Wednesday, June 27th: Hass and Leona went out 7:20 A. M. Both came back 12:45 A. M. Thelma went to school 7:45 A. M.

Thursday, June 28th: Saw Hass at 5:45 P. M. at 161st opposite subway and carrying a suit case. He was going home. Hass and Leona came in at 8:45 P. M. and stayed for the night. Minnie Hass came in at 6:15 P. M.

Sunday, July 1st: Whole family came in 7 P. M. Saw them all come in again 10:10 P. M.

Wednesday, July 4th: Minnie Hass, Leona and Thelma came home tonight.

Q When you used the term "whole family" there after the 29th of June, to whom did you refer after the 29th of June by the "whole family"? A I mean Mrs. Minnie Hass, Miss Leona Hass and Miss Ackerman.

Q You did not see Mr. Hass or Pfender at that house after the 29th of June? A Yes—I didn't see him after the 29th.

Q Never mind that then. You were then in the employ of the apartment, as I understand, up to the 15th day of August? A Yes.

Q About the 15th day of August, were you approached by anybody for the purpose of—and asked to sign an affidavit? A Yes.

Q Who were the persons—who did the persons represent themselves to be? A I didn't know who they represented themselves to be. I didn't know who they were.

Q And did you deliver the statement to the persons who asked you to? A Yes.

Mr. Lane: I call for the production of that statement.

Mr. Lum: I refuse to produce it at this time. I intend to cross examine on it. You may have it after I have completed the examination, but not before.

Mr. Lane: I think I have a right to call for the paper, if the paper is in the court room.

The Court: Has notice been served for it?

Mr. Lum: No, sir.

Mr. Lane: But it is in the court room.

The Court: If it is in the court room it may be produced, but you may not use it until after the cross examination.

Q Will you tell me what took place between the persons who asked you to sign that paper and yourself?

Mr. Lum: I object, unless the persons are identified. The agency has not been established.

Mr. Lane: The agency has been established by the fact that counsel has the paper.

The Court: I will admit it. That should be one reason, but that is not the reason I am admitting it. That is sufficient reason.

The reason I am admitting it is because it is called for, or some attempt is made to get a statement from this man, for what purpose I don't know, and if it is not connected with the defendant in this application, it does not hurt and will be ruled out later.

A Yes, they asked me what I knew about the Hass family and also if I had seen a closed van outside the door, taking motion pictures.

Q What did you tell them? A I said, no, I had not seen motion pictures being taken.

Q Did they ask you anything else? A That is all at that time.

Q Did you at that time sign any statement? A No, sir.

Q Did you subsequently see the same people? A Yes, a few days later.

Q And what was the conversation between you and them then? A They had a typewritten statement for me to sign, and on reading it over there was a sentence in the statement stating that I didn't know Pfender either as Hass or Pfender. I questioned the statement and said that I had known Pfender as Mr. Hass, and he said "Nobody told you that he was Mr. Hass" and I said, "No." Then he said, inasmuch as that statement is correct—and I signed that statement because if I had not signed that statement I felt I would have lost my job.

Q Had you been instructed by Captain Foster to stay on the job as long as you could? A Yes, sir.

Q After this statement was signed by you, did you report it to Captain Foster? A I reported it immediately to the office of Captain Foster and I was instructed to hand in my resignation and get a letter of reference, which I did.

Q You then left the apartment? A Yes.

Q Did you observe, during the time that you were there, how Mr. Hass and Leona conducted themselves? A Yes, sir.

Q Will you tell us what you did and what you saw? A Saw what I took for signs of affection —such as helping Miss Leona Hass up and down stairs and opening doors—

Q Did you observe or hear how they spoke to one another? A No, sir.

Q Did you observe any difference between the way in which Mr. Hass treated Mrs. Hass, that is the older lady, and the way in which he conducted himself toward Leona? A Yes.

Q How early did you observe that difference? A I observed that difference from early in my stay in the house there.

Q And what was it that caused it to make any impression upon you? A What caused it to make an impression upon me was that when Mr. Pfender was in the company of Mrs. Minnie Hass and Leona F. Hass, I did not see the same attention paid to Mrs. Minnie Hass as he did to the daughter, Miss Leona Hass.

Q Why, how did that make any impression on you? A It was so marked.

Q Whose husband was he supposed to be?

Mr. Lum: I object to that.

Q Which one of these ladies did you think was Mrs. Hass? A Mrs. Minnie Hass.

The Court: He spoke of Leona as the daughter. I don't know whether you heard it or not, but I assume that is what he meant.

James Christy, cross.

Q Did that difference in the method of treatment continue right down to the end? A Yes, sir.

The Court: In reference to the affidavit, the production of which you called for, I don't want to be misunderstood on that. If you want to introduce that as your evidence you may, but if you merely want it for the purpose of examining this witness, you cannot have it.

Mr. Lane: What I intended to do—

Mr: Lum: It will go in.

Mr. Lane: I think I have accomplished my purpose for the production of the paper, which was in fact to introduce the paper in evidence, and at the time of introducing it, explain it, and I think I had a right to do it.

The Court: I did not so understand that.

Mr. Lane: I have accomplished my object up to this time.

The Court: I do not want to be misunderstood. I recognize your right to introduce it as a part of your case, but I didn't think that was your object when you asked for it.

Mr. Lane: I would have had to if it had been produced.

Cross examination by Mr. Lum.

Q When did you first take employment with Mr. Foster? A May, 1928.

Q How much did you receive from him? By the day or week, what were you paid? A I received a weekly salary.

Q How much? A $30 a week.

Q And at that time you were accepting your full wage from your employer? A Yes, sir.

Q Did you inform your employer of that added work that you were donig? A Certainly not.

Q How much were you paid by the apartment a week? A I was paid $80 per month by the apartment.

Q A little less than $20 a week? A Yes.

Q For all the work of running the elevator and everything in connection with that? A Yes.

Q And it seemed to you perfectly proper to take $30 a week from Mr. Foster for using your eyes as you would have done anyway? A Yes, it seemed to me perfectly proper.

Q You are Scotch? A Absolutely.

Q How long have you been in this country? A Two years.

Q Did you ever have anything in particular to do with the people in apartment 4-C? A No, sir.

Q Did your elevator serve that apartment? A My elevator did not serve that apartment, but on various occasions I ran that elevator.

Q When did you first know who the man there was? A On or about the 15th of October. You mean, when I first knew him as Pfender?

Q Yes. A May, 1928.

Q And when did you first know who he was at all? A The first month he was in the apartment house.

Q Who did you know him as then? A Hass.

Q Did you know the man—know who he was? A I knew him from going up and down in the elevator.

Q On August 7, 1928, did you know who the man was? A Yes.

Q Did you ever inquire about August 7th? A No, sir.

Q You have told us of every bit of affection that you ever observed between these people? A Yes.

Q You had this conversation with Mr. White about Thelma dancing and made a note of that because you thought it would help the case, is that right? A Yes.

Q You were anxious to see everything you could see and get every bit of evidence you possibly could get? A Yes.

Q And watching as you did, being paid $10 a week more than you were paid for all your work in the apartment, you saw nothing excepting the man help the lady in the elevator or out of the elevator and up or down the stairs, is that correct? A Yes.

Q You have seen the motion pictures? A Yes.

Q And you know that they show nothing of affection whatsoever, didn't you? A Yes, sir.

Q What part of the apartment did your elevator serve? A The north wing.

Q And their apartment, 4-C, was where? A On the south wing.

Q Now, you did not notice anything in particular in October, did you? A Nothing particular in October.

Q Nor in November? A I noticed the man was living there. Pfender was living there.

Q How often in November, 1927, did you see Mr. Pfender at the apartment? A I saw Pfender there practically every day in the month of November.

Q You are sure of that, sir? A Yes.

Q How much of the time? A In the morning between seven and eight A. M. and at night about six P. M.

Q Practically every day in November, 1927? A Yes.

Q And from the 15th of October, 1927 you noticed him there practically every morning and every night? A Yes.

Q And in December the same thing? A Yes.

Q There was no difference in his occupancy between, say, February, 1928 and November, 1927, was there? A No, sir.

Q He was there you noticed it, just exactly the same? A Yes.

Q You didn't notice him at all there in November, 1927? A Yes, sir; I did.

Q How many times? A Practically every day.

Q I show you a signature, do you recognize it? A Yes.

Q That is your affidavit? A Yes.

Q It is the affidavit sworn to before an officer of the law, was it not? A I was not sworn.

Q You were not sworn? A I was not sworn.

Q Do you know Abraham A. Miller, notary public? A No.

Q Never saw him? A I seen in the beginning the two men; I saw the one man in the court room just now, the other I do not see.

Q But no man had you swear to this paper? A No, sir; that statement was typewritten when it was brought to me.

Q And after you signed someone else didn't sign it, that same paper? A Oh, certainly, that paper was signed after I signed it.

Q By whom? A Probably a notary public.

Q You mean the notary public signed it after having you swear to it? A I didn't swear, the same as I swore in this court room this morning.

Q You mean, you didn't put your hand on a book? A Yes.

Q Were you not asked if you sworn to the contents of this affidavit? A The statement was handed to me.

Q I asked you this question: Were you not asked if you swore to this statement? A No, sir.

Q Sure of that? A Positive.

Q Just as sure of that as you are that you saw this man there practically every day in November, 1927? A Yes.

Q Whether you call it an affidavit or statement, you did sign a paper in which you state that you knew the occupants of apartment 4-C by sight, but had never had anything particular to do with them because your elevator did not serve that apartment. You signed that? A Yes.

Q And you stated that "I never knew who the man was, nor did I inquire." You said that? A Yes.

Q "I never knew him as Mr. Hass and I never knew him as Mr. Pfender." You said that, didn't you? A Yes, because I was told that that was correct to say so, because I had never been told that he was Mr. Hass.

Witness excused.

JULES SINDAZ, a witness called in behalf of the defendant, Mrs. Pfender, being first duly sworn according to law, on his oath testified as follows:

Direct examination by Mr. Blankenhorn.

Q What is your occupation? A Motion picture. I am employed by the Caroval Film Company, 350 Madison avenue, New York City.

Q Did you take any motion pictures in June? A I did, sir.

Q And will you state the dates and state where and when you took them? A On June 11th I photographed some motion pictures from the third story window at the Concourse Plaza Hotel overlooking the apartment house, 911 Walton avenue. June 13th, 15th and 19th I photographed the entrance of 911 Walton avenue from a moving van with a concealed camera inside of the moving van.

Q Who was with you on those days? A Mr. McPartland.

Q Have you the negative with you? A I have, sir.

Q And from that negative did you take a positive? A Yes.

Q Have you that here in court? A Yes.

Q And on the positive have you indicated the date and the place of taking the pictures? A Yes.

Q Is there any exception as to that—

Mr. Lum: We don't care.

Q As to the date on the picture? A Except there is one date wrong, and we didn't take any pictures at all.

Jules Sindaz, cross.

Q Did you put the year? A With the exception of the year. There is no date of the year on the film, but it was 1928.

Q Are these the negatives and positives of these moving pictures? A Yes.

Mr. Blankenhorn: I offer these in evidence.

Mr. Lum: No objection.

(Marked Exhibit D. 1.)

Cross examination by Mr. Lum.

Q You were there yourself? A Yes.

Q And without going into detail, these pictures simply show pictures of different individuals going in and coming out of the apartment? A Yes.

Q In the ordinary way, as anybody else went in and out in the whole vicinity? A Yes.

Q Are you prepared to project these pictures here now? A I am sorry.

The Court: You cannot do it in this light?

The Witness: I can make provision for it by pulling down the shades.

The Court: If it becomes necessary you may do so.

JOHN McPARTLAND, called as a witness for the petitioner, having first been duly sworn, testified as follows:

Direct examination by Mr. Lane.

Q What is your occupation? A Employed by Captain Foster.

Q Where do you live? A 348 West 47th street, New York City.

Q Do you know Mr. Carl D. Pfender? A I do.

Q Do you know who he is—you don't know him personally? A No, I know him.

Q Do you know Miss Minnie Hass? A I do.

Q And Miss Lillian Hass? A I do.

Q Do you see them in the court room? A I do.

Q When did you first see Mr. Pfender? A I have got some notes here that I would like to refer to for the date.

Q When did you make the notes? A Right afterwards.

Q At the time you saw him? A Right after.

Q Will you refer to the notes for the purpose of refreshing your recollection, and state when you first saw him? A April 24, 1928.

Q Where did you see him? A 911 Walton avenue.

Q Anyone with him? A He was alone that day.

Q When did you next see him? A April 26th.

Q And where? A 911 Walton avenue.

Q Give the rest of the dates. A April 27th, April 30th, May 2nd, May 4th.

Q Up to that time did you see him in company with Miss Lillian Hass? A I did.

Q When? A April 27th, April 30th, May 2nd, May 4th.

Q What happened on the 2nd of May? A Mr. Pfender came out of 911 Walton avenue and walked east to his car, that was parked opposite the Stadium Garage; drove over to Walton avenue, cleaned his car. Miss Hass came out and both entered and he drove south on 161st street and then west.

Q Miss Hass came out of where? A 911 Walton avenue.

Q Where is the Stadium Garage with relation to 911 Walton avenue? A It is east about two blocks of Sheridan avenue on 162nd street.

Q Where is it in relation to the Concerd Plaza Hotel? A One block east.

Q That is, it is behind the hotel? A Yes.

Q Do you know Jules Sindaz, the last witness on the stand? A Yes.

Q Did you accompany him, or were you with him, on June 11th, 13th, 14th, 15th, 19th and 28th? A I was.

Q Just state what you did? A On June 11th I was in a hotel room with him when he was taking pictures of the room. On June 13th I was in the covered wagon, June 14th, 15th and 19th in the covered wagon.

Q Where was the wagon stationed? A Stationed on Walton avenue, northeast corner, just a little past the corner.

Q With respect to 911 Walton avenue, where is it? A Just diagonally across; not quite opposite—just a little bit north.

Q From the entrance? A Yes.

Q Did you see Mr. Pfender and Miss Lillian Hass and Mrs. Minnie Hass on those days when the photographs were taken? A I did.

Q I show you a photograph and ask you if you saw that taken? A I saw that taken; yes, sir.

Q Is that one of the motion pictures—a print from one of the motion pictures? A It is.

Q And do you know who the persons are in the picture? A Miss Lillian Hass and Mr. Pfender.

Q Do you know the date when that was taken? A That was taken on the 15th of June, 1928.

Mr. Lum: This is a cut out of the picture, I have no objection to it.

The Court: I don't see any reason why it should not be marked.

Mr. Lum: We have the whole thing here, and I thought that would be much more satisfactory.

(Marked Exhibit D. 1.)

Q Did you examine the negatives and the positive made from the film after it was made? A I did.

Q Did you have anything to do with marking or indicating the date or the time and place when these photographs were taken, the motion pictures, were taken? A Yes, the detail.

Q And have you seen the projection of the positive? A I have.

Q And do they correctly represent the scene that you saw photographed? A They do.

Q When next after the 19th of June did you see Mr. Pfender and Miss Hass, or both of them? A On the 29th of June.

John McPartland, direct.

Q Were you familiar with this automobile that has been mentioned? A I was.

Q Did you see Mr. Pfender drive it? A I did.

Q See Miss Hass drive it? A I did.

Mr. Lum: Please don't lead.

Q What happened on the 29th of June? A Late in the afternoon I saw the car parked on the north side of 161st street, opposite 911 Walton avenue. I saw Mr. Pfender come down and take an umbrella out of the car and go into the house 911. He came out a little later and he drove south on Walton avenue and then west. I lost sight of the car. I then went from the hotel to see if I could locate the car. It was on the south side of 161st street at Sweets Bros.' filling station up on skids, or something, being greased. I went back to the hotel and later saw Mr. Pfender come, drive the car around, face it south in front of the side entrance of 911 Walton avenue. I then saw Mr. Pfender, Miss Lillian Hass and Mrs. Hass and little Thelma Ackerman, come out from the side entrance carrying some packages, also assisted by some of the employees of the apartment house. When they were almost packed—there was something in there that looked like a Victrola. Not being satisfied, I went downstairs and saw it. Just at that time Mr. Pfender and Miss Lillian Hass were driving east to 161st street, and they turned up the Concourse. Mrs. Minnie Hass, Thelma Arkerman, walked west on 161st street to the subway and took a downtown train. I came back to the hotel, discussed it with Capt. Foster, and he decided that—

Q Never mind. When did you next see Pfender and Leona Hass? A On the morning of the 30th.

Q Where? A South Salem.

Q How did you get there? A By automobile.

Q Tell us about that. A In company with Mr. Harley, who drove the automobile, we picked up Mrs. Pfender and Capt. Foster, Miss Josephine Foster and Miss Sullivan, and we drove up to South Salem, arriving there about 6:40 or 6:45.

Q What date was this? A On the morning of the 30th of June, 1928. We drove past the house, turned right, and went down some little distance. Mr. Harley then left the car, came back in a few minutes and entered the car and we drove to Judge Webster's house, where Mrs. Pfender swore out a warrant for Mr. Pfender's arrest on the charge of adultery. Judge Webster then handed Capt. Foster two warrants to give to Constable Hull. Capt. Foster gave them to him. He got up and got dressed and said he didn't know where to find Mr. Pfender. Capt. Foster said he would show him, and we returned back to the cottage, where Constable Hull rapped on the door.

Q I show you a photograph and ask you if that fairly represents or is a photograph of the cottage that you refer to. (Witness shown photograph.) A Yes.

Q It is on the shore of a lake, is it not? A Yes.

Q The door that you are looking at, is that on the shore of the lake? A No, that is on the other side.

Mr. Lane: I offer that in evidence.

(Marked Exhibit D. 2 for petitioner.)

Q I show you another photograph of what appears to be the same cottage, and ask you what that is? A That is the side, the left side as you face the kitchen door.

Mr. Lane: I offer that in evidence.

(Marked Exhibit D. 3 for defendant Mrs. Pfender.)

Q What happened? A Constable Hull rapped on the door, and in about two minutes Mr. Pfender came to the door in his pajamas, and he asked what the trouble was.

Q Which window did he come to? Can you indicate it in the photograph, and mark it with an "A"? A Yes. (Marked as requested.)

Q Suppose you mark the door that was knocked on, "B." A Yes.

(Witness does as requested.)

Q Mr. Pfender came to the window? A Came to the window, and he asked what the trouble was. Constable Hull asked him if he was Carl D. Pfender; he said, "yes." He said, "I have a warrant for your arrest." He then came around and opened the door, and we followed Constable Hull in.

Q Who did? A Capt. Foster, myself and Mr. Hull.

Q What did you do? A Mr. Pfender asked Constable Hull what the warrant was for. He told him for adultery. He said, "You'll have a hard time proving that."

Q What did you see when you went in the house. A I went through the kitchen, I was in the living room. I looked into a little room on my left and I saw a bed and a dresser on this side of the wall (indicating).

Q A single bed or double bed, A A single bed.

Q Can you indicate on this photograph, Exhibit D. 2, where the bed stood? A The bed ran down from this window here (indicating). The end of it was here (indicating).

The Court: Window "A."

Q And it ran which way? A It ran that way.

The Court: Toward the back of the house?

The Witness: Toward the side of the house. I think that is the back of the back of the house.

Q What was the size of that bed? A Single bed, about 6 foot, I imagine.

Q And what was the appearance of it? A It was made up with men's clothes lying on the top of it.

Q Could you see whether there was a pillow or not? A I didn't notice a pillow.

Q Do you know the color of the cover? A It was dark.

Q What next did you do? A I heard a young lady's voice, which proved to be Miss Hass call out; she said, "Carl, what are these men doing here?"

Q Did you see her? A Not at that time.

Q Did you see her afterwards? A Yes.

Q Where? A In the double bed in the next bedroom.

Q What was the condition of that bed? A Well, she was lying in it, and as I stood at the bottom, she was on the right-hand side and covered up with clothes, and looked to me as though someone had occupied the other side.

Mr. Lum. I object to that.

The Court. I think he may testify to what he saw. The objection is overruled.

Q Then what happened? A Mr. Pfender was getting dressed.

Q Where? A In the little room that I explained first. He then came out to ask Capt. Foster—he said, "Who are you?" Capt. Foster said—told him, and he said the same to me and the same to Mr. Hurley.

Q Then what happened? A Well, he got dressed and I came out a little ahead, before he was fully dressed, and we all came out in the automobile and went down to Judge Webster's, except Miss Hass, she stayed behind.

Q Were there any other beds in the house besides the ones you have described? A I didn't see any. To be truthful, I didn't look in any other room.

Q What happened up at Judge Webster's? A Well, at Judge Webster's, he suggested bail, and one thing and another, and finally agreed to that, and Mr. Pfender made some 'phone calls.

Q Did you hear the conversation between Mr. Pfender and Foster? A That was about the proceedings as we were going out.

Q State what that conversation was. A Mr. Pfender said to Capt. Foster, "You will

have a hard job proving this." I don't know the exact words, but along that line. Capt. Foster said something about "Do you understand the law of evidence?" He said, "You have been all night in this cottage with this young woman," and he said, "You two have been living up at 911 Walton avenue," and Mr. Pfender said, "I have to live some place."

Cross examination by Mr. Lum.

Q You are employed by the Foster Detective Agency? A Yes.

Q Receiving how much money? A $300.

Q You started to watch this apartment the first time when? A April 24, 1927.

Q And that is the first time you came in touch with this case? A Yes.

Q And you have told us all that you ever observed as to the actions or conduct of these parties during the entire time you watched? A No, except a little later on, not later, but before that one day, they were in the Hotel Concourse Plaza, came out after having lunch or something, and they drove west, and stood in front of the house, and Miss Hass, she started to paint the front of the machine, and then the back, and from the distance I was in the hotel I couldn't tell what she was painting. I saw Mr. Pfender remove a scarf from her neck and put it in the car.

Q That is during all the time you watched, the extreme that you saw in the way of affection and demonstration? A That is the extreme.

Q On this date in June you and Foster and the rest of the party left in an automobile to go up to New York State, started what time? A

I should say I left around 2 o'clock and picked the others up about 2.30.

Q Where did you pick them up? A Down at a hotel in 34th street—I think the McAlpin.

Q They had been notified to be there? A Yes.

Q Then you proceeded immediately up to the lake? A Yes.

Q And that is a distance of about 50 miles? A I don't just know; I should imagine that.

Q You arrived about what time? A A quarter to six, or twenty minutes of.

Q It was in the neighborhood of half-past five? A Yes, around that.

Q You were of course very much interested in what was doing in that cottage, were you not? A Yes.

Q You saw Mr. Pfender's car in the garage? A No, I didn't see that.

Q It was reported to you that it was in the garage? A Yes.

Q And if these parties were guilty of misconduct, you of course wanted to get all that evidence? A Yes.

Q And it was just breaking day, wasn't it? A Yes; it was dark.

Q This was about the longest day of the year, wasn't it, the 30th of June? A Around that.

Q And it was extremely quiet around there? A Very quiet.

Q Nobody stirring? A No.

Q No traffic? A No.

Q How many were there—there was Mrs. Pfender? A Mrs. Pfender.

Q And Mr. Foster? A Yes.

Q And you? A Yes.

Q And Hurley? A Yes.

Q And Miss Foster, the secretary? A Yes; and Miss Sullivan.

Q You were all there for the purpose of obtaining evidence of adultery, if you could obtain it? A Yes.

Q That is what you went there for? A Yes.

Q Where did the automobile go as you came up to this house—where did you stop? A When we first came to the house—

Q Yes. A —we went past the side, and there is a side road to the right; we went down quite a distance, I should say four or five hundred yards, out of sight of the house.

Q You observed the house as you went by? A Yes.

Q Everything was absolutely quiet there? A Yes.

Q You observed that there were no shades in any of the windows? A I didn't take particular notice of that.

Q What, sir—do you mean you didn't notice whether there were shades in the house? A No.

Q Did you observe that it was a bungalow? A Yes.

Q You knew that whoever was in there had to be on the ground floor, didn't you? A No, I did not.

Q Did you see any second floor to the house? A I saw a window up there, an attic.

Q You knew that in a bungalow the bedrooms are usually downstairs? A Yes.

Q And did you give no thought to that at the time? A No, sir.

Q Not a bit? A No.

Q Didn't Mr. Foster? A He said nothing to me about it.

Q You knew he had received about $10,000 for this particular job, didn't you? A Yes; that included—

Q And didn't it occur to you to ask him why he didn't get out of the car? A That $10,000 included expenses. He didn't receive that himself.

Q I understand. It didn't occur to you that a detective who had received even a small part of that, with or without expenses, would normally get out of an automobile at that time and place? A I didn't give that any thought.

Q And he didn't either? A I don't know.

Q Was this the first job you appeared on? A No.

Q Why didn't you get out of the car? A Why should I get out?

Q Any of you—all of you? A Well, one man got out.

Q Where did he go? A He went back towards the bungalow.

Q Who was he? A Mr. Hurley.

Q And when Hurley came back, after going towards the bungalow, none of you thought it was advisable to get out of the car, did you? A No.

Q He reported what he had seen there, didn't he? A Yes.

Q And after he reported, after he came back, what he had seen, you decided that you had better not surround the bungalow, or any of you get out of the car, didn't you? A There was no decision made except to go to Judge Webster and get a warrant.

Q You knew that if adultery was being committed there, the first break of day being light on the ground, would be the easiest chance in

the world to catch these people? A I didn't give it any thought.

Q Oh, now—do you mean that? A Absolutely.

Q You were a detective? A Yes.

Q Had driven through the dark night to get there to catch these people in adultery? A Yes.

Q And, being there, didn't it occur to you to go to the window and look in? A It didn't.

Q How do you account for that singular slip of memory—was it a slip of memory? A No; it was just the decision was made to go and get the warrant without going to the window.

Q You are a detective in New York? A Yes.

Q And you know the law of New York with reference to adultery? A Yes.

Q You know that the evidence of eye-witnesses is far the most important evidence, don't you? A It would be more important, but this I believe was important.

Q But if you knew this was important, why did you disregard that which you knew was more important? A I have no reason for that.

Q So you have no reason? A No.

Q The reason, sir, was what was told you by the man who came back, the scout that had been sent out to go down to the bungalow, the reason was that he told you, wasn't it? A The only thing he told us, the car was in the garage; that was all.

Q Did you ask him where Mr. Pfender was? A No.

Q Why not? A No reason for not asking.

Q There was every reason in the world to ask him, wasn't there? A There was evidence enough that he was in the bungalow.

Q You didn't think the car had committed adultery? A No.

Q Why were you more interested in the car than you were in the man? A Because we knew that he was there then.

Q You knew he had been down in Walton avenue, didn't you? A Yes.

Q You had had detectives, you had hired the boy on the elevator, you had had moving picture men concealed, and you didn't have the first scrap of evidence, did you? A Not of adultery; no, sir.

Q Nor of anything whatsoever except what would ordinarily appear as between a gentleman —a respectable gentleman, and a respectable lady, did you—you didn't have anything other than that? A They were respectable.

Q Apparently respectable under all circumstances, having failed during all that time to get one scintilla of evidence, of crime or guilt, why, being at daylight outside of a bungalow in the condition in which this picture shows it, did you not go look in the window? A I can explain that, instead of that it was decided to go back and get the warrant.

Q And it was decided because you knew he was in his own room sound asleep—that is why it was decided? A No, sir; we knew nothing of the kind, that is, I didn't.

Q This picture is a good representation of the bungalow, isn't it? A Yes.

Q Presents the situation as it was on that day? A Yes.

Q You can see with half an eye, that there isn't any shade in any window, can't you? A I see that now.

Q And you didn't see it at the time? A I didn't take notice.

Q Wouldn't it have interested you to know whether if a man and woman were in that building, they were concealed, or whether everything was open, even if you were not a detective wouldn't that occur to you as a matter of curiosity? A It didn't.

Q And a man standing on the ground could look right straight in any of these windows all around the house, couldn't he? A No, sir; I don't believe you could. You would have to be up close to this window. Let me explain—that window is above your eyesight. You have got to kind of lift yourself up to see.

Q The road slopes up from this building? A Yes.

Q Isn't it a fact that you can stand right in the road 100 feet away from that window and look straight in it? A No.

Q You mean to swear to that? A Yes; I couldn't.

Q Have you tried to? A I had to get up pretty close to look in, and it was much less than 100 feet.

Q How many feet was it? A Right close to it.

Q As you go down to the building, you go down a grade? A Yes; and it evens off. You go down and it evens off.

Q As you stand off on the road, you are higher than that window, are you not? A Oh, yes.

Q You say you arrived there about half-past five? A Between that and quarter to six.

Q You remember swearing in the proceedings on the charge of adultery in New York City? A Yes.

Q What time did you say you arrived at Truesdale Lake when you swore there? A I think the same time, about 5:45.

Q Didn't you swear you arrived there about 7 o'clock in the morning? A No, sir.

Q Sure of it? A Absolutely, because we had been down to the Judge's house before that.

Q Do you recall I asked you—do you recall being sworn in that proceeding before the Justice of the Peace? A Yes.

Q Do you recall being asked the question, "You arrived at Truesdale Lake at what time?" Do you remember being asked that question? A Yes.

Q And answering, "Before 7 in the morning"? A I am positive that wasn't my answer.

Q Michael Harley, he was the scout that went out? A Yes.

Q Did you hear Mr. Foster say anything to him before he left? A Yes.

Q What did he say to him? A He said to go up and see if the car was in the garage.

Q That is all he told him? A Yes.

Q Did he tell him to look in any of the windows? A No.

Q Did he tell him to be careful not to look in any of the windows? A I didn't hear him say that.

Q And you didn't volunteer anything? A No, sir.

Q How long were you there in front of the house? A The first visit, you mean?

Q Yes. A We didn't stay long; just drove slowly past it.

Q You kept on driving? A Slowly. We might have stood for a moment there.

Q You were swearing to everything you knew when you were before the Justice of the Peace, weren't you? A Everything I remember; yes, sir.

Q And you didn't remember to tell there, where you were trying to make out a case of adultery, that when you looked in this young woman's room it looked as though someone else had been in the bed, did you? A Counsellor, I ask questions.

Q My question, if you please—answer it. When you were swearing up there before the Justice, you didn't say that you observed that the young woman's bed was mussed as though someone else was in it? A I am pretty sure I did, yes.

Q You are pretty sure you did? A Absolutely.

Q As a matter of fact, wasn't she covered up? A Yes.

Q And did she have on her night clothes? A I cannot say she was covered up.

Q You of course, when you spoke of someone else having occupied the bed, all you mean is that someone's head perhaps had been on both pillows? A It may have been that.

Q You have yourself, I presume, slept in a double bed with two pillows? A Yes.

Q And had your head on them at night when no one else was in that bed with you? A Yes.

Q When you spoke of the appearance of someone else being in the bed, all you meant was that both pillows apparently had had a head on them? A As though both places were occupied, yes.

Q Did you go into Mr. Pfender's room? A No, sir; I stood just in the doorway and looked in.

Q What was in the room? A A bed, a single bed, fully made; some men's clothes on it. Up against the wall at the foot of the bed was a dresser and a looking glass above it.

Q That is all you observed? A That is all I observed except a stairway leading to the basement.

Q And you didn't observe any built-in stairs? A There was a stairway going up to the attic.

Q Where did you stand when you looked in his room? A Right at the door.

Q And from standing— A No, I was in— I had my shoulder in the door that way (indicating).

Q You remember testifying before the Justice of the Peace about that? A Yes, sir.

Q You didn't have your shoulder in when you were before the Justice? A I did say that, yes.

Q There was a stenographer taking testimony, wasn't there? A Yes.

Q And you are sure that you testified before the Justice of the Peace, that you had your shoulder in the room? A Yes.

Q You cannot see with your shoulder? A No; but I can reach in further to see with my eyes.

Q You had your eyes in, too? A Yes.

Q You think you swore to that before the justice? A I think I did. I am pretty sure I did.

Q When you passed on this morning in question the first time, did you observe the windows? A Yes, sir.

Q Sure you did? A Yes.

Q Do you know whether they were open or not? A I didn't see any open.

Q Do you recollect having any recollection about that? A Yes; I didn't see any windows open.

Q Do you remember before the justice being asked the question, "You didn't know whether

it was open or not? A Really, I do not recollect. I do not remember seeing it open, no." Do you recall that? A I didn't see it open.

Q You remember swearing that you didn't recollect, when you were before the justice? A Yes; I didn't recollect seeing it open; that is right.

Q (By the Court.) Will you describe to me the interior of this house so far as you saw it? A We came in from the back up a couple of steps and into a little kitchen; you walk through the kitchen, there is a living room, and on this side of the living room.

Q (By the Court.) On the right? A On the left as you stand there, you turn this way (indicating) to a bedroom. As you come in here (indicating), the door here (indicating) turns in. There is a bedroom, a door this way (indicating), an entrance to the bedroom is that way (indicating), and then right across here (indicating), is an entrance to the bedroom running that way (indicating). Just those three rooms. I didn't take notice to the other two, or whatever was there.

Q What was there in the living room? A Just some mission furniture and packages that seemed just to have been brought in.

Q (By the Court.) Was there a single bed in the living room or in another room? A No; it was in the bedroom. The bedroom that comes in this way (indicating) and runs that way (indicating).

Q (By the Court.) Where was the stairway; in the bedroom where the single bed was? A Yes.

Q (By the Court.) You didn't go on the second floor? A No, I did not.

Robert J. Foster, direct.

Q (By the Court.) Was anyone else in the house so far as you observed besides Mr. Pfender and Miss Hass? A I didn't see anybody.

Q (By the Court.) Did you make any inquiries? A No, sir.

Q (By the Court.) Did you see anybody else in the house? A No, sir.

Further direct examination by Mr. Lane.

Q Did you hear Mr. Pfender make any statement at Judge Webster's house with respect to who were in the house?

Mr. Lum: You need not go into that. There is no question but there was no one else in the house. It is admitted that no one was in the house except Mr. Pfender and Miss Hass.

ROBERT J. FOSTER, called as a witness on behalf of the defendant, Mrs. Pfender, having first been duly sworn, testified as follows:

Examination by Mr. Lane.

Q Where do you live? A 59 North 11th street, Newark, New Jersey.

Q What is your business? A Private detective.

Q What is your concern known as? A Foster Industrial and Detective Bureau of New York City, with a branch office in Louisville, Kentruck.

Q How long have you been engaged in that business? A As a private detective work and police work for close to twenty-five years.

Q Do you know Mrs. Lillian E. Pfender? A I do.

Q Were you employed by her? A I was.

Q About when? A I was retained in May last—last May.

Q In 1928? A Yes.

Q Did you do anything, or have you any knowledge of the matter personally, up until the 30th of June, 1928? A Except reports.

Q Then you have no personal knowledge up to June, 1928? A Except of having seen Mr. Pfender and Leona Hass and Mrs. Hass going in and out of the apartment.

Q Now we come down to the 30th of June, 1928. Tell us from the beginning what you did. A After midnight we were met by Mr. Hurley and Mr. McPartland at the McAlpin Hotel.

Q New York? A New York City.

Q What did you do? A We drove to South Salem, and is called the lake, and when we had passed the cottage, wherein we later discovered Carl D. Pfender, I directed Mr. Hurley to go to the garage of the cottage and there find out if the car was in the garage. He came back and reported to me that the car was in the garage. We then went to the Justice of the Peace Webster at Louisboro, aroused him from his slumbers, and Mrs. Lillian E. Pfender swore out a warrant for the arrest of her husband, Carl D. Pfender, charging him with adultery in this cottage with one Leona Hass.

Q When you got to the house the first time, what time was it, about? A It was between 5:30 and 5:45.

Q Did you observe when you passed the house what the condition of the windows was? A The windows were closed.

Q Which windows did you see? A The windows in front of the cottage facing the road.

Q That is window marked "A"? A And the windows on the left.

Q That is all the windows? A The windows in the front and windows on the left.

Q On the left as you face the house? A Yes.

Q Or as you face the back of the house? A Yes.

Q Did you observe whether there were window shades or curtains for windows? A No, I did not.

Q How long did you stay in the vicinity of the house at the time? A A very short time—long enough to allow Mr. Hurley to leave the car and cross on the grass to this garage and return.

Q Was it light at the time? A Yes.

Q After you got the warrant for the arrest, what did you do? A I went to the residence of Constable Hull and delivered the warrant to him. He said he did not know where Pfender was at. I told him we would show him. We then proceeded to the cottage.

Q Who preceded first? A Myself, Constable Hull, Mr. Hurley and McPartland. Constable Hull knocked on the door. I stationed myself on the south wing of the building. McPartland on the north wing; Mr. Hurley standing with Constable Hull. After I would say about two minutes there was no response to Constable Hull's knock, so I knocked. About a minute afterwards Mr. Pfender came to the window and opened it, and asked Constable Hull what he wanted.

Q Which window? A The window on the left of the kitchen as you come from the road.

Q Identify it on this picture, Exhibit D. 2; is it the window that has the "A" under it? A The window which has the "A" under it.

Q Go ahead; tell us what happened. A We got inside the living room. I stepped into the bedroom of Leona Hass.

Q That is where Leona Hass was? A Where she was at.

Q What did you see there? A I saw Leona Hass in bed.

Q What kind of a bed was that? A It was a double bed.

Q Where is the window of that room as appearing upon Exhibit D. 2? A The window of that room is here (indicating).

Mr. Lane: That I will mark with an "X."

The Court: The window is on the side, but the room is front and on that corner?

Mr. Lum: I have pictures of the interior.

Q On Exhibit D. 3, that window appears as the furthest to the left in the photograph, as you face the photograph? A Yes.

Q And the window as you face the right in the photograph Exhibit D. 3—is that in the other bedroom? A That is in the spare bedroom.

Q Where the single bed was? A Unoccupied.

Q Did you observe what condition the bed was in? In the first place, what kind of a bed was it? A It was a double bed, either a dark walnut or mahogany, I don't know which. It was a dark wooden bed.

Q Did you observe what condition the bed was in? A Well, the bed appeared to have been occupied by two persons.

Q Was Miss Leona Hass awake at that time? A She was.

Q Did she say anything? A No; not a thing.

Q Was she in the bed? A In the bed.

Q Did you observe how she was dressed, or could you see? A She was in her negligee, that is, covered up, part of the negligee exposed.

Q How long did you stay in the room? A I would say possibly just long enough to step inside and observe the condition of the room and the bed.

Q Did you see the condition of the other bedroom? A I did.

Q What condition was that in? In the first place, what furniture was there in there? A I noticed from where I was at, a bed in front of the window and dresser, and Mr. Pfender's clothes on the bed at the foot of the bed.

Q Did you observe whether that bed had been slept in or not? A I observed the bed, and saw that it had not been slept in.

Q What indicated that it had not been slept in? A Because the cover was there, a dark cover, and was in proper shape, no pillow, and the clothes of Mr. Pfender were resting on the foot of the bed.

Q How far across the window, if at all, on Exhibit D. 2, did that bed come? How was the bed located with respect to that window? A I would say it was about a margin of a foot or a foot and a half to two feet in the window where the end of the bed was and the jamb of the window.

Q In the first place let me ask you, how was the bed located with respect to the window, and the door—was the top of the bed— A The top

of the bed was at the back of the house here (indicating); the left of the house.

Q Did the bed face the window, or was it set parallel with the window? A It was parallel with the window.

Q With the headboard up against the side of the house? A Yes.

Q The foot of the bed extending? A Beyond the center of this French window.

Q Do you know how big a bed that is? A I would say it was between six and seven feet.

Q (By the Court.) In length, you mean? A Yes; a single bed.

Q Have you been to that house since the 20th of June? A I have.

Q When were you there? A I was there on the 9th, last Friday.

Q With whom? A With Mr. Blankenhorn and Mr. Hurley and Mr. McPartland.

Q And did you at that time make certain measurements? A I did.

Q In connection with the others, or with the others? A I did.

Q Did you go there again? A I did.

Q What day? A On last Monday, the 12th.

Q Were those measurements that were made reduced to paper? A It was.

Q In your presence? A In my presence.

Q And are you familiar with the measurements that were made? A I am.

Q I show you a sketch, what purports to be a sketch, and ask you when you saw that sketch? A This sketch was made by Mr. Blankenhorn on my information as to measurements.

Q Was it made at the time? A Yes.

Q Does that sketch accurately represent the measurements that were taken down at the time? A It does.

Q Did you get inside the house at the time? A No.

Q How did you get the measurements which appear there on the inside? A By measurements from the outside.

Q And you made it by measurement from the outside. Could you see into the house? A I could.

Q Using your sketch as illustrative of your testimony, will you tell me whether that represents the floor plan of that bungalow? A Substantially, yes, with the exception that that front—

Q Wait. I will come to that exception in a moment. And does the floor plan as laid down in this sketch accord with your recollection of the conditions which were existing at the time you were there on the 30th of June. Now you may point out any difference. A There is a difference.

Q Where is the difference? A The difference is that a door from the spare bedroom opens today to the right and blocks when open—blocks the view into the room occupied by Leona Hass. In other words, if standing in the spare room as we testified to as we see, you could not with the present door on, as it is today, see inside Leona Hass' room except possibly for a foot or two.

Q The door into the room which you call Leona Hass' room, is that the door which I am about to mark "A"? A Yes, sir.

Q The door which was into the bedroom, which you saw had the single bed, with Mr. Pfender's clothes on, is that the door I now mark "B"? A Yes.

Q At the time you made your entry in the house on the 30th of June, did the door swing

as the door "B" appears upon this plan now to swing? A No.

Q How did it swing? A The door swung inwards.

Q Did it swing as appears upon a sketch which I show you, entitled—contained in a book called the "Tuxedo"? A Yes.

Q And that is the door I am marking now on this sketch in the book, "B"? A Yes.

Q And does that sketch in the book accurately represent the ground plan of that bungalow as it was upon the night of June 30th? A Substantially so.

Q And particularly with reference to the swinging of the doors? A Particularly with reference to the swinging of the door.

Q When did you get that ground plan in your possession, or have any knowledge of that ground plan? A Mr. McKenna gave me this when we were returning to New York, after we had made this (indicating).

Q After you had made the examination which resulted in the sketch on the yellow paper? A Yes.

Q On what date? A On the 12th day of this month—12th day of November.

Q Did you have any information at all until after you had made the sketch on the yellow paper, that there was in existence any such ground plan as appears in this book? A No.

Q Did you realize when you made your examination, the result of which appears upon the yellow sheet, that the doors had been changed, that one door had been changed? A I did.

Q On this yellow sheet you have indicated distances along the outside of the house, with respect—from point to point, as appears upon

this sketch. Are those distances accurately represented on this sketch? A Yes.

Q On this sketch you have also drawn in a bed, or what is delineated a bed, in the room which you say contained the single bed upon which Mr. Pfender's clothes were. Does that measurement accurately represent that which you saw through the window and checked up? A Yes.

Q And does that accurately show the location of that bed with respect to the window and the distance that the bed extends across the window? A Yes.

Q You have also located a bed in a room which you said was Miss Leona Hass' room. Do the measurements of that bed show what you could see through the house? A It does.

Q And are they correct? A They are.

Q After you saw Mr. Pfender and Miss Hass as you stated, what happened? A Mr. Pfender went into the spare room to dress.

Q How was he attired? A In his pajamas.

Q At that time, was anything said? A Miss Hass called out, "Carl, dear, what are these men going to do to you?" Mr. Pfender replied, or words to the effect, that it was a trumped-up charge and that Mr. Lum would look after that, or words to that effect. I think he then said to me something about we would have quite a time proving the charge of adultery.

Q Did he give any reason why you would have a hard time proving a charge of adultery? A He said the windows were open.

Q Were the windows open? A At that time the window was open in the little room—the spare room, which he had opened when Constable Hull knocked on the door.

Q Was that window open before Constable Hull had knocked on the door? A No.

Q What did you do then? A We waited on the inside of the door of the living room until Mr. Pfender was dressed and then we proceeded, that is, Constable Hull went out, and before he left Mr. Hurley went up to get his car ready and Mr. McPartland stepped out, Mr. Hull stepped out, and Mr. Pfender was ready and he went to the door and he kissed her good-bye.

Q What was her condition at that time? A She was in a state of hysterics, crying.

Q That is, Miss Hass? A Miss Hass, yes.

Q Do you know where the bathroom of that house was—did you see the bathroom? A The bathroom was on the right of the fireplace in the living room.

Q Is that where it is shown upon this sketch marked "bathroom" on the yellow paper? A Yes.

Q Did Mr. Pfender go into the bathroom before he left? A He went in there to make his toilet before he left.

Q Did Miss Hass go in? A She did; she left her room and went and followed him into the bathroom.

Q Could you hear what they said? A I did not.

Q Was the door closed or not? A The door was closed.

Q You went back to the Justice of the Peace? A Yes.

Q Did you hear any telephone conversation of Mr. Pfender at that time? A I did.

Q What did you hear him say? A He said he wanted to reach his attorney, and get their advice before he would do anything, that he had

never done anything without the advice of his counsel. He finally reached Mr. Lum, so he said, and he said over the 'phone that he was under arrest up there, and caught by the Foster agency, but there was nothing wrong, he was alone with this young woman there, but the windows was open.

Q Was anything said about what the opening of the windows had to do with it? A No.

Q And after making that statement over the 'phone in the presence of these people, what occurred? A Judge Webster told him he evidently needed an attorney.

Q Did you know of any occasions before this episode in June, 1928, at which Miss Hass and Mr. Pfender were alone in the apartment at 911 Walton avenue? A I could not swear to that.

Q Why was it, Mr. Foster, that you did not attempt to see into this, or go around the house and try to see into the windows, as to what was going on, when you were first at the lake? A In the first place we are just private detectives and have no power of arrest. I did not want to risk discovery, and the birds fly from the nest, before they were caught with the goods.

Q Did you go through the whole house to see if there were any other in the house except Mr. Pfender and Miss Hass? A I did not go through the entire house—

Mr. Lum: There were none. We have admitted it on the record.

Q Were there any other beds in the house except the ones you saw and described? A To my knowledge, no.

Robert J. Foster, cross.

Q Were there any other beds on that floor? A No, sir.

Mr. Lane: I offer the sketch on the yellow paper as illustrative of the witness' testimony, and I offer the sketch on the book called the Tuxedo as illustrative of the witness' testimony.

(Marked Exhibits D. 4 and D. 5 for defendant Mrs. Pfender.)

Cross examination by Mr. Lum.

Q Your connection with this case started when? A My present connection with the case started in May.

Q You received reports from time to time from your operators? A In this particular case, as I have a practice in several other cases.

Q Never mind that. In this case, when did you receive your first report? A Verbal report from Mr. McPartland.

Q When did you receive the first one? A After I returned from the South from Kentucky in May.

Q Your office had been in touch with the matter before that? A Mr. McPartland had charge of it, sir.

Q And he reported to you everything that he had seen and discovered, in May? A No, he didn't report fully to me, because I didn't return from—

Q After you returned? A Yes.

Q He then reported to you fully? A Yes.

Q You knew of the pictures that had been taken? A There had been no pictures at that time.

Q I didn't say at that time. Any time—you knew the pictures had been taken? A Yes.

Q And you were aware of everything that had developed in this case, were you not? A Yes.

Q And you knew that there wasn't the first trace of anything, save such as would accord with the conduct between a refined gentleman and a lady? A In answer to your question, sir, I will say that I knew there had been a divorce proceeding—

Q Never mind; I am speaking of what you knew as to what had been reported to you of the conduct of this gentleman and this lady; you knew about it, didn't you? A I am answering you, sir.

The Court: Answer the question.

The Witness: Yes.

Q And from all that was reported to you, which was in substance what has been developed here in court today, wasn't it? A Yes.

Q The men told the truth here today, of what they discovered, as you understand it? A Yes.

Q According to that there had never been a trace of any conduct save as would accord with the conduct of a respectable lady and a respectable gentleman—yes or no. A I cannot agree with you there, sir.

Q All right, then—the answer is no? A No.

Q What was it that you didn't think accorded with the conduct such as would be expected between a gentleman and lady? A This man was a married man, he had not yet

received a divorce; he was living over in an apartment with a woman who had been mentioned as co-respondent in the case.

Q Who told you she was mentioned as the co-respondent? A Mrs. Pfender.

Q Oh, Mrs. Pfender told you. Didn't you ever see the record? A I did not read the complete record.

Q Then Mrs. Pfender told you that she had been named as a co-respondent?

Mr. Lane: I submit that, having asked the question what induced this man to think that the conduct wasn't proper, he is entitled to answer it. You take one part—

Q What else—give it all. A My impression of a married man living in a four-room apartment, a man in his position, and allowing an elderly woman to go to work and living there in the apartment with a former employee of his office whom he had confessed he had been intimate with, to his wife.

Q Who told you that? A Mrs. Pfender.

Q Did you read the record in this case? A I did not.

.Q Get it out—it was available to you? A I took my client's word.

Q Then your impression was not from anything reported from your men, or from anything you saw yourself, but from what Mrs. Pfender told you—that is it? A My impression was from the fact that this man was a married man and was living in this apartment with this woman, a woman who had been mentioned before several times by his wife before the Court proceeding, and who his wife had stated he had confessed that he had been intimate with.

Q Did you know that according to the record his wife had sworn to no such thing? A No.

Q Did you know that she hadn't been named as co-respondent at all? A I didn't know anything about it except from what Mrs. Pfender told me.

Q From all that you observed, or your men observed, there wasn't one trace of conduct, any acts of his toward her or toward him which was subject to the slightest criticism, that is true? A No.

Q Knowing that, and you were interested of course in securing evidence, were you not? A Always interested in securing justice.

Q And in the attempt to secure justice you had received for expenses and services from this lady about $10,000, hadn't you? A Yes.

Q And having watched up until this date in June you hadn't obtained any evidence for her, had you, evidence of misconduct? A Evidence obtained before June 29th showed that—

Q That he was living there? A That in October, November and December and January, up until the 29th, he was living at this apartment.

Q I am asking you about misconduct. You didn't have any evidence to tell me of misconduct when you went up there on the 29th? A I am answering you, sir.

Q Did you or didn't you?

The Court: What do you mean by misconduct?

Mr. Lum: Of any affection demonstrated between the parties, any evidence of guilt, any evidence of crime, did you have any?

The Witness: I would ask the attorney if he means misconduct, and I will answer.

Mr. Lum: That is a satisfactory answer to me.

Q When you arrived there at dawn, you had quite a little army or company with you, didn't you? A I had possibly five or six.

Q You mean you don't know whether you had five or six, possibly five or six? A I had myself, Mr. Hurley, Mr. McPartland, my sister, Josephine A. Foster, and Mrs. Pfender.

Q And you have testified in this same matter in an attempt to have this man convicted of adultery, haven't you? A Sir?

Q You have testified in this same matter in an attempt to have this man convicted of adultery? A I have testified in a hearing at a magistrate's court in Westchester County.

Q You have made an affidavit both in this court and in the Court of Errors and Appeals in this matter? A Yes.

Q There isn't any need for you now to count up on your fingers as to whether there were five or six persons there? A I always like to accommodate the examining counsel as near as I possibly can.

Q You counted on your fingers one at a time for the purpose of accommodating me? A Yes.

Q Why was it accommodating me? A To give you accuracy.

Q Do you desire to be very accurate? A I try to be.

Q And you have been a police captain in your time, haven't you? A Yes.

Q And you of course understand that anyone in New York may hold another for a crime committed in his presence? A Yes.

Q So that you knew that all you had to do was to go to the window of the bungalow with

this army of yours, one or two at every window, and catch these people in the position of crime, didn't you? A Pardon me, counsel, I will say that if the crime is a felony, then any citizen has a perfect right to make the arrest.

Q Or has in the case of adultery, hasn't he? A I could not swear to that.

Q Will you tell this Court that you have never broken into a room or hotel or building to take someone in adultery that you were sure was committing it? A I have broken in the rooms when I have found them registered as man and wife in hotels, yes.

Q You knew that the automobile was there? A Yes.

Q And you knew that they were not man and wife, didn't you? A Yes.

Q And you knew they were in the building? A Yes.

Q And yet you never went to a window and never peeked? A No.

Q Didn't have your men look? A No.

Q You knew from what you had formerly understood about these people, that you would get twice the evidence if you did that? A I knew from what I saw of these people that if we went to the Judge and got a warrant we would find them in the condition in which we did find them.

Q The man wasn't held for adultery, was he, in New York?

Mr. Lane: I object.

The Court: Objection sustained.

Q You knew that if with that little army of witnesses you had seen these people in the same

bed, there was no escape here or elswhere, didn't you? A I would not instruct my men to go to those windows and be a peeping Tom without the sanction of the Court.

Q I see—it was a high sense of ethics that you didn't want to be a peeping Tom—that is what kept you away? A Coupled with that is the fact that I wanted to be within the law.

Q You mean that you went there to catch these people in adultery? A Yes.

Q At dawn, the crack of dawn, you were there with six people including yourself? A Yes.

Q And you wanted to look to see whether the automobile was there? A Yes.

Q You had peeked at the automobile, but you wouldn't peek on the individuals? A We did not want to do anything that would be contrary to law.

Q If you had found these people in adultery, you were perfectly justified in peeping, weren't you? A To a certain extent yes.

Q To an entire extent, isn't it? A I would say to a certain extent.

Q Why do you limit it? A I want to say in the first place the windows, from these bedrooms, that such could not be seen through from the ground, from the garage.

Q Is that the reason for not looking in the windows? You could look into them? A That is one of the reasons. Another reason was I did not want to take any chance of disturbing them, and putting them wise to the fact that we were there.

Q You mean as a detective you tell me that if you go to a place where you can look into every window, that is a good ground for not looking into any window? A Yes.

Q You knew perfectly well that if you broke into the house and found them in adultery, you had enough people so that the birds couldn't fly from the nest, didn't you? A I could not break into the house.

Q My question is as to whether you didn't know that if you found them in adultery there were enough of your people there so that they couldn't fly from the nest—you knew that? A Yes.

Q So when you told the Court that that was the reason that you didn't go, you were falsifying? A Oh, no.

Q Then how do you explain it? A I have properly explained it to you, sir, that one of the main reasons was that I didn't want to give these people any chance to get away from us, and that I didn't want them to get wise to the fact that there was anyone around there.

Q You just told me that you knew that the crowd that you had there, they couldn't get away. A Sure, but I didn't want to take any chance.

Q What chance were you taking if they couldn't get away, and you say they couldn't? A If they had presence of mind and they had had knowledge of the fact that we were there, Mr. Pfender could have got this woman out of the cottage.

Q With six people there? A Yes.

Q How? Go up the chimney? A There were not six people when we made the raid.

Q Never mind—I am talking about daylight, dawn, when six of you were there. A When six of us were there, we were not at the cottage; we were quite a distance from the cottage, and only one man at the cottage.

Q Nothing in the world to stop the six of you being at the cottage, was there? A Nothing in the world to stop it, but I preferred to have an officer of the law with us.

Q You sent a scout out, however, first? A Yes.

Q And he came back and reported to you what he saw before you went to the justice? A He reported that he saw Pfender's car in the garage.

Q Coming now to the time when you had got the officer of the law with you? A Yes.

Q You came up then, you were not afraid of the birds getting out of the nest then, were you? A I was never afraid of them getting out of the nest if it was properly looked after.

Q Why did you tell the Court that that is what you were afraid of, on direct examination? A I told the Court I did not want to give them a warning that there was someone in the neighborhood.

Q That wasn't true when you had the justice with you? A No.

Q When you came with the justice, did you go to the window before you knocked? A No, I went to—

Q All right. When you came with the justice you didn't go to any window, but you knocked on the door? A We didn't come with the justice; we came with the constable.

Q That is my mistake—when you came with the constable you didn't peek in the windows; you desired not to be a peeping Tom then? A No, I did not peep in the window.

Q That was just because you considered you would be a peeping Tom, I presume? A We had a warrant, and that was sufficient.

Q You were very particular, you say, to notice the condition of the various beds after you got in the house, weren't you? A Yes.

Q The constable was with you, wasn't he? A Yes.

Q You knew that detectives' evidence, according to the decided cases, does not stand as the very highest in courts of law, don't you? A I don't agree with your statement.

Q Did you ask the constable to observe the condition of the beds? A I did not.

Q It was a rather important thing, wasn't it, if the bed wasn't slept in—if Pfender's bed wasn't slept in, that was an important fact? A I had my own people there to look after that.

Q They were well paid, weren't they? A No, paid for the work.

Q You had a man right there on the ground who wasn't paid a cent, who was indifferent, who was honest, an officer of the law, and you didn't ask him to observe the bed, did you? A No, sir.

Q You didn't call Mr. Pfender's attention or Miss Hass' attention, and say, "Ha, ha, that bed hasn't been slept in," did you? A No.

Q And you didn't say a word about it? A No.

Q You want this Court to believe, that after these people knew that they had been charged with adultery, that there was an officer there with a warrant, that he went over and called her dear and kissed her—you want the Court to believe that? Is it true? A Pardon me; I will answer your question. I don't wish the Court, as far as I am personally concerned, to believe anything except the facts as presented pro and con on both sides, and put his own interpretation on the evidence.

Q You heard your other man, McPartland, testify to what Miss Hass said, didn't you? A I did.

Q You heard him say it this morning? A Yes.

Q You didn't hear him say the word "dear," did you, in court—yes or no? A Yes.

Q You did hear him use the word "dear" this morning? A No, he said "Carl."

Q And not "Carl, dear"? A No.

Q You heard him say that, didn't you? A Yes.

Q You knew that Hurley said that he didn't hear any "dear" used?

Mr. Lane: I object to that.

Mr. Lum: Strike it out.

Q You didn't hear Mr. McPartland testify to having seen any kissing, did you? A Mr. McPartland was outside.

Q You didn't call it to anyone's attention at the time, did you? A No.

Q And you alone, of all those there, saw these people do the kissing then, did you? A Yes.

Q You knew that none of the facts and none of the reports after all these thousands of times had brought back any evidence of any kissing, did you? A No.

Q You did know that there wasn't any report of any kissing in any of your reports, didn't you? A Yes.

Q You didn't call the officer of the law or justice's attention to that significant thing, did you, at the time? A What time do you refer to?

Q I'm glad you are able to smile under this. What is there that makes you smile in this examination? A Sir?

Q What makes you smile in this examination? A I am trying to be congenial with you, sir.

Q When you were armed with this officer of the law, you didn't go up to any window when you came up to the house and didn't have any of your men up to any window? A No.

Q That was because you knew what you would find if you do go? A No.

Q Why do you smile again—was there any other reason why you didn't look in the window? A Your question is enough to make anybody smile.

Q You mean the idea of suggesting that because a detective who wanted to discover a situation, would look in a window that was right in front of his eye, rather than knocking on the door, than alarm the occupants— A We had a constable with us and he had a warrant.

Q And the constable was an excellent witness to have observed the condition of the beds, and whether those people were in the same room, wasn't he? A He probably was.

Q The best possible witness, wasn't he? A Possibly so.

Q And you didn't use him for that purpose, did you? A We didn't use him.

Q Tell the Court why you didn't, if you will. A You will have to ask the counsel that matter.

Q Was counsel there? A The counsel is handling this matter; I am not handling it.

Q Was the counsel there that morning? A No.

Q Then you were the one who was in charge of obtaining of the evidence? A I was the one that was in charge of the raid.

Q Why didn't you raid, then? A Because I wanted an officer of the law to do it.

Q You had an officer of the law there; why didn't you have him raid? A He walked in with the warrant.

Q He had a warrant charging this man with a crime? A Yes.

Q And he knocked on the door? A Yes.

Q You approved of that? A Yes.

Q Of course, that would give the criminals an opportunity to get out of the same bed, wouldn't it? A Yes.

Q They would hurry immediately out of the same bed? A Yes.

Q And you would want to see them in the bed, wouldn't you? A I would like to have done it if it was possible.

Q Why wouldn't it be possible? A There was a barrier between us, like door.

Q What was the barrier between your eyes and that window marked "A" on that picture? A It would be impossible to see in there.

Q You mean to tell this Court it would be impossible from the ground to see into that room "A"? A You can see just inside of it, but no further.

Q That was all you needed to do, was to see just inside?

Mr. Lane: I object to that. It is the other room and the other part of the house that they were in; not that room.

The Court: I assume that Mr. Lum is intending to show that Mr. Pfender was in this room.

Q If you looked in there and saw no man in the room, that would be an important fact? A That fact; no, sir.

Q If you had six people, your secretary, Miss Sullivan, Mrs. Pfender, an officer of the law, the driver, your detective and yourself, to testify, that they each peeked over in that room and Mr. Pfender was not there, it would be a very important piece of evidence? A No, sir; the fact that they were there in the house alone all night with locked doors, with nobody else present, was sufficient for me.

Q You knew that that was all in the world you were going to get? A I didn't know that.

Q You did know that, didn't you? A I didn't know that.

Q You had received word from your scout, who let you know that that was the fact, hadn't you? A No; I received word from my scout that the car was in the garage.

Q Won't you please tell me why you were so interested in the car and so little interested in these people? You didn't think the car would commit adultery? A No; I wanted to make sure he was there.

Q You knew he was there, didn't you? A I wanted to make sure he was there with the car.

Q Were you not a little bit worried for fear that these people on the 30th of June with the windows shut all night long might be smothered? A It was rather a stormy night.

Q It had been a tremendously stormy night? A Very cold.

Q Very stormy? A Yes.

Q And not a window open? A As regards that, when we first went around the lake I did not observe any windows open.

Q And did you look carefully? A As we circled I glanced, passing swiftly; I glanced at the front part of the house where the machine is, and

as we crossed the bridge—a kind of a road, I saw the end of the house towards the garage. That is, going the first time; I did not see any windows open.

Q Did you notice any blinds on the house? A No.

Q Any shades? A No.

Q There were shutters on the outside of the house? A Yes.

Q You noticed that particularly? A You couldn't help but notice them, because some of them were swinging; I think one was half-way open.

Q Did you notice the shades particularly? A No.

Q You noticed that the blinds were not closed, didn't you? A I didn't know that.

Q Now, with this justice of the peace with you, I mean this constable, with you, you came up, without having looked in any window, and went to the door and knocked—that is right? A We drove up in the machine.

Q Did you knock? A We did not walk; we drove up and came down the side of a hill facing the door.

Q Did you drive up to the front door in the car? A We drove up in front of the door.

Q Right in the yard? A No; we drove on a driveway.

Q Into the yard? A I am not positive about that.

Q You don't know whether you drove into the yard? A I don't think so.

Q When you got out you walked to the car? A We walked down the slope of the hill.

Q And went directly to the door? A Yes.

Q And knocked on the door? A Constable Hull did.

Q You didn't knock on the door? A Afterwards.

Q How long afterwards? A About two minutes.

Q You mean Constable Hull knocked on the door, and two minutes elapsed and nothing happened? A Yes.

Q And then you came and knocked on the door? A Yes.

Q And heard some scurrying inside? A No; Mr. Pfender came to the window and opened the window and asked what was wanted.

Q Was it two or five minutes between? A It seemed like five minutes, but I don't think it was more than two or three, perhaps.

Q Do you remember testifying before the justice it was five minutes? A I might have said it seemed like five minutes, or it was five minutes.

Q You think that neither you nor the constable nor anyone else during the five minutes looked in any window? A No.

Q And at the end of five minutes Mr. Pfender came to the window alongside of the door? A Yes.

Q He was told there was a charge of adultery? A He opened the window, and he was asked if his name was Carl D. Pfender, and he said "yes," and he was told—the constable told him that he had a warrant for his arrest, and nothing was said about adultery until he got inside.

Q Inside, he said they would have a hard time proving it? A He told me personally that we would have a hard time proving it.

Q From the very first instant he affirmed his absolute innocence? A Yes.

Q So that you knew that at the time he was going to the justice, he was insisting that he was a righteous man and hadn't committed any crime—you knew that? A He said that he had not committed adultery, sir.

Q And after that knowledge, with the constable there, you didn't ask him to step in Pfender's room and observe the condition of the bed? A I don't recollect.

Q You didn't take Pfender in and say, "Look at that bed—who slept there?" A No.

Q Will you explain why you didn't do any such thing? A I was quite satisfied with the evidence already, sir.

Q In other words, you knew that you didn't have any evidence whatsoever except the naked fact that these two people were in the house that night—that is all you had? A I had—if my judgment is poor, I cannot help it; but my judgment at that time was that I had concrete evidence of intent and opportunity.

Q What was the intent? A To commit adultery.

Q Where was the intent? A There he was, with a woman.

Q That was opportunity. A And nobody else, behind locked doors.

Q That was opportunity; where was the intent? A His confession to his wife on previous occasions that he had been intimate with this woman.

Q You knew that after all of that record there had been a decree against her, didn't you —you knew that Mr. Pfender had a decree here, didn't you? A I did.

Q Then you were not relying on that at all, were you? A No.

Q Were you in the house between the day and morning of the arrest and the day you went with Mr. Blankenhorn last week or so? A Yes.

Q When? A On the 9th and the 12th of—

Q Of what month? A This month.

Q But up until November you hadn't been? A No.

Q When was the door changed? A I cannot tell when the door was changed, but I was informed that Leona Hass and Mr. Pfender and the mother and Thelma Ackerman, the child, who lived in the apartment 4-D, 911 Walton—

Q I asked you about the change of door. A The door was changed between the time of the raid and arrest and November 9th.

Q Do you recognize that picture as a picture of the interior of the house (witness shown picture)? A Yes.

Q And the door marked "A" at the bottom, the doorway leads into what room? A It leads into the kitchen, the kitchen and hallway.

Q And the door marked "B"? A The door marked "B" I never saw before until last Thursday or last Friday.

Q When you saw it, was it in the same position, and opened the same way, as that picture? A No. When I saw it Friday it was over—this room that I found Leona Hass in bed in was closed and this door here was flush with the door leading into that bedroom, so that we could not have seen, Constable Hull and myself or anybody else, into that room, if that door had been on there.

Q You know Constable Hull said he didn't see—

Mr. Lane: I object.

Mr. Lum: Never mind about that, then.

Robert J. Foster, further direct.

Q You have been in touch with the agents who rented this house and the people who managed it? A Yes.

Q And have you inquired from them as to when this door was changed? A We tried to get in there and they refused us.

Q You haven't found out who changed it and when? A We wanted to make that examination.

Further direct examination by Mr. Lane.

Q When did Miss Hass start to cry and to become hysterical? A After we had stepped out of the room.

Q Did she continue hysterical and crying up to the time you left? A She was assured by Mr. Pfender that everything would be all right, and not to worry.

Q I show you again Exhibit D. 2, and ask you whether a man standing, at ordinary height, under that window, can see into that window? A He can, but not farther than—if he were close up to the window he could see, but not any further back.

Q What do you mean—not further back? A If they were within two or three feet of the window.

Q Do you know how far that window goes from the ground? A The base of the window I should say about four feet.

Mr. Lane: I offer this yellow diagram in evidence.

(Marked Exhibit D. 4.)

Q Did you ever measure it? A No.

Robert J. Foster, further direct.

Q Comparing Exhibit D. 2 with Exhibit D. 3, does Exhibit D. 3 show the slope in the ground? A It does.

Q Underneath the window it appears upon D. 2 as "A"? A Yes.

Q The ground does not come up to the woodwork or sash, does it? A No.

Q You told Mr. Lum that this photograph, which has not been marked for identification—

Mr. Lum: I will put it in evidence.

Q —that you had never seen the door. What door? A The door on this bedroom.

Q That is the door "F"? A Yes.

Q That is the door opening outward? A The door opening into the living room.

Q You never had seen that until— A Last Friday, the 12th.

Q There was no door on there, or did the door swing the other way? A The door swung to the left.

Q It swung the other way? A Yes.

Q That is the door that was changed, as you say? A Yes.

Mr. Lane: I ask that Mr. Lum's photograph be marked.

(Photograph produced by Mr. Lum marked Exhibit D. for Mrs. Pfender.)

MICHAEL HURLEY, called as a witness for defendant Mrs. Pfender, having first been duly sworn, testified as follows:

Q Where do you live? A 1005 Sixth avenue, New York City.

Q What is your business? A Working for Capt. Foster.

Q How long have you been working for Capt. Foster? A Off and on for 12 years.

Q Are you in his regular employ? A Not steady.

Q Do you remember the 30th day of June, 1928? A Yes.

Q Will you tell me what happened on that day? A We started from New York City at 2:30 A. M. to go to South Salem.

Q Who were in the party? A Capt. Foster, myself, Mrs. Pfender, Miss Josephine Foster, Miss Sullivan, Mr. McPartland.

Q What time did you get to South Salem? A About 5:45.

Q What did you do when you got there? A We arrived at this cottage at Truesdale Lake and I was instructed to go over to the garage underneath the cottage and see if a car, license number so and so, 3C-9806, was there in the garage.

Q Did you go and see? A Yes.

Q What did you find? A The car was there.

Q Did you go back and report that? A Yes.

Q Then what happened? A We then drove to the Justice of the Peace, where Mrs. Pfender swore out a warrant for Carl D. Pfender's arrest.

Q Then what did you do? A We drove from there to Constable Hull's residence.

Q Then? A From there we went back to the cottage.

Q Who were in the party going back to the cottage? A Capt. Foster and myself, Mr. McPartland and Constable Hull.

Q And about what time was it that you got back to the cottage? A About 6:45, around there.

Q And what did you do? A Went down to the door and Constable Hull knocked on the door and there was no answer for a few minutes, and Capt. Foster knocked on the door and Mr. Pfender appeared at the window.

Q How was he clothed? A Pajamas.

Q Go on. A Constable Hull asked him if he was Carl D. Pfender, and he said "Yes." He told him he had a warrant for his arrest, please open the door, which he did.

Q Did you observe or see whether Mr. Pfender opened the window, or whether the window was open? A He opened the window.

Q It was closed before he opened it? A Yes.

Q Did you go into the house yourself? A Yes.

Q Who else went into the house? A All four of us.

Q What did you see—tell us what you saw? A I walked in through the little kitchen to the living room. I saw a lady in bed, a bedroom right off the living room. I also looked into another little spare room where Mr. Pfender was getting dressed.

Q Did you see in the room where the lady was, could you see what kind of a bed that was? A It was a double bed—a large bed.

Q Could you see how the lady was dressed? A She was in bed, underneath the covers.

Q Did she say anything at that time when you looked in? A No, not just right away.

Q When you looked in the other bedroom, what was the condition of the bed in that—just tell what kind of a bed was it? A It was a small single bed.

Q And what was its condition? A Well, it was covered over with dark covering and it had not been used.

Q Did you see anything lying on it? A Mr. Pfender was getting dressed; he had his clothes thrown over the bed as far as I could see.

Q Was there any difficulty in your seeing into both of these rooms? A No.

Q Did you hear Miss Hass say anything to Mr. Pfender at all? A Yes.

Q What did you hear? A She said, "Carl, dear, what are these men doing here?" And he answered from the other room not to worry, Mr. Lum would take care of this.

Q What was her condition—this lady? A I then walked up—

Q Did you see whether she was crying, or could you see what her condition was? A Not in my time. After I seen her in the room and looked over the rooms I walked out to get the car and turn back and got back to the Justice of the Peace.

Q And from there you went back to the Justice's house? A Yes.

Q Did you return to that bungalow again that same day? A Yes.

Q When—how soon after? A I was instructed to drive Mrs. Pfender and the other two ladies back to the bungalow.

Q When you got to the bungalow, did you go in? A Yes.

Q How did you get in? A I knocked on the door and the young lady let us in.

Q What happened then? A Mrs. Pfender spoke to her and said that she was Mrs. Carl D. Pfender and she came for the purpose of identifying her to make sure that she was the lady that she had heard about and had a scene with her husband on several occasions previous to that.

Q What did Miss Hass say? A Well, I don't know exactly the words she said. She admitted—

Q Did you go into the house then? A Yes.

Q Did Mrs. Pfender go over the house? A She just looked around, and walked right out again.

Q How long were you there? A Not more than a minute and a half or two minutes.

Q Did you see whether Mrs. Pfender looked into the bedroom? A I noticed her looking around all over.

The Court: How long after the arrest was that?

The Witness: Immediately after the arrest.

Q Where was Mr. Pfender at that time? A He was over in Judge Webster's residence.

Q Did you know where the car with the license No. 3C-9806 was stored for the days preceding June 30, 1928? A Yes.

Q Where? A In the Stadium Garage.

Q Where is that? A Right behind the Congress Plaza Hotel.

Q For how many days did you know that that car was stored there? A About 10 or 12 days.

Michael Hurley, cross.

Q Did you get a floor plan of 911 Walton avenue? A Yes.

Q Where did you get that plan from? A From the renting agents.

Q And did you get in one of the rooms, similar to C-4, I think it is? A I was in 3-C.

Q Is that a similar apartment in that same location as C-4? A Right underneath it.

Q You could get into C-4? A I didn't ask to.

Q I show you this floor plan and ask you whether this is the floor plan of that apartment which you obtained, and whether the apartment which I have marked "X" is the floor plan of C-3, the one directly underneath C-4. A Yes, that is exactly the same apartment.

Q And that is the way you saw the apartment laid out? A Yes.

Mr. Lane: I offer that in evidence.

(Marked Exhibit D. 6.)

Cross examination by Mr. Lum.

Q When did you first get in touch with this case at all? A About June 15, 1928.

Q Where do you reside? A 1005 Sixth avenue, New York City.

Q Where did you reside on the 2nd of July last? A The same address.

Q Do you remember stating that you resided at 33 West 42nd street, New York City? A That is the office number.

Q Did you state you resided there? A I gave the office address.

Q That is Foster's number? A Yes.

Q And you were employed by him at that time? A Yes.

Michael Hurley, cross.

Q And you went right up there to the lake on the 30th of June? A Yes.

Q That was about 2:15? A Yes.

Q Got there just about 5? A Yes.

Q It rained very severely during the night—very heavy storm, hadn't there been? A It didn't rain, I don't think it rained, it was quite a cold night.

Q It hadn't rained, you think—you don't remember that? A No, it didn't rain.

Q You are sure it didn't rain? A Yes.

Q Quite sure it didn't rain? A No.

Q You recall about the words that you heard Miss Hass use, when she called from one room to the other? A Yes.

Q Were there shades on the windows at the house? A Yes.

Q Shades down? A No, they were not down.

Q Were they up? A Yes.

Q You are sure there were shades on the windows? A Yes.

Q All the windows? A I didn't take any particular notice if there was shades on all the windows.

Q You noticed the door into the bedroom where Mr. Pfender's clothes were? A Yes.

Q Did the door open in or out? A The door opened in.

Q That is, into the living room? A No; into the bedroom.

Q Did you notice any built-in stairs in that room? A No, I didn't.

Q You have been up there since? A Yes.

Q Recently? A Yes.

Q Still furnished the same way? A Yes.

Q And did you notice the single bed and the dresser? A Yes.

Q You noticed the space between the single bed and the dresser? A Yes.

Q How much was the space between it? A About three feet.

Q You are quite sure three feet? A About three feet, I imagine.

Q Measure three feet for us, will you? A (Witness does as requested).

The Court: I would say that is two and a half feet.

Q You think there was as much room as indicated there between the dresser and the foot of the single bed? A About that much space.

Q You noticed it particularly, did you; and was there any room between the dresser and the other side? A One side was against the bed.

Q Was there any space against the wall? A The dresser is up against the wall.

Q No—into the corner? A In the corner, yes.

Q And when the dresser was in the corner and the bed had its head against the other side, you think there was about two and a half feet between them? A Yes, about.

Q You are the scout that went out to see the automobile there, did you? A Yes.

Q And it was light enough to see the automobile? A Yes.

Q No trouble telling the number? A No.

Q Why were you more interested in the automobile than you were in the people who were in the house? A I was just instructed what to do.

Q You were instructed not to look in the house? A No; I was asked to go to the garage and see if the car was there—that was my instructions.

Q No one else got out of the car? A No.

Q Everyone else sat right straight in the car? A Yes.

Q You had already been past the bungalow? A Yes.

Q And gone up and around the lake? A Yes.

Q And turned around and came back? A No; the car still remained over there quite a distance away while I walked back.

Q And then you went off and got the warrant? A Yes.

Q There were six people in the car when you got out to go look for Mr. Pfender's automobile, weren't there? A Yes.

Q Did six people go to Mr. Webster's house? A Yes.

Q All? A All.

Q And all stayed there? A Yes.

Q And all went to get the constable? A Four of us went to the constable's house.

Q Where did the rest go? A They remained in Judge Webster's home.

Q And then you came back with the constable? A Yes.

Q Do you remember when the constable knocked on the door? A Yes.

Q You think it was how long before anybody was seen inside of the house after that knock? A It wasn't very long—about two and a half to three minutes.

Q You all just stood there and waited while the two and a half or three minutes went by, did you? A Yes.

Q Anybody look in any window? A We were looking for someone to come to the window, or come to the door, or something like that.

Q But you didn't go to a window to look for anybody? A You didn't have to go to them; I was standing right in front of the house.

Q But you didn't, although you were right in front of the house, you didn't? A I didn't have to.

Q You didn't? A No.

Q Did you call the attention of the constable to the condition of Mr. Pfender's bed? A No, I didn't.

Q Did you comment on her calling him—ever speak of that to anybody? A No.

Q Did you speak of it to Mr. McPartland? A No.

Q He was right alongside of you and heard all the words used? A I cannot say whether he was right alongside of me; I didn't remain there very long.

Q Do you know why he should have heard her say, "Carl," and you heard "Carl, dear" —do you understand that? A No.

Q Did you see her throw her arms around him and kiss him affectionately? A No.

Q You didn't see any kissing? A No.

Q And when you came back later with Mrs. Pfender, do you remember saying to Miss Hass, "Has your husband come back yet?" A No.

Q You didn't hear her say that to her? A No.

Q And didn't she say, "If you mean Mr. Pfender, he has not"? A No.

Q Didn't some such conversation take place? A I don't remember them words.

Q You say that you stopped the car on the road around the corner? A Yes.

Q And then you didn't of course drive into the yard? A No.

Michael Hurley, further direct.

Q Do you remember in this affidavit which was sworn to on the 2nd day of July before Thomas H. Haggerty, a notary public connected with Mr. Lane's office? A Yes.

Q Stating, second paragraph: "On June 30, 1928, after I had driven into the yard of the bungalow, indicated to me by Capt. Foster, I stopped my car." Is it a fact you did drive into the yard? A There is only one roadway.

Q I ask you now whether you drove into the yard or not. A No, I didn't drive into the yard.

Q Why did you swear that you did in this affidavit which was filed in this court? A I stopped right at the roadway to the garage.

Q My question is something different. My question is, why did you in your affidavit on the 2nd of July swear to the fact that you drove into the yard? A The moment when I stopped at the driveway, I was in the yard.

Q Then you were in the yard? A Yes.

Q Why did you tell me a moment ago that you were not in the yard? A There is no yard there. It is just a driveway into the garage.

Q So there wasn't any yard there at all? A No.

Q How close were you to the bungalow when you got out? A When I got out of the car?

Q Yes. A The first time?

Q Yes. A I was away several hundred feet.

Further direct examination by Mr. Lane.

Q Did you take particular notice of the doors into these rooms at all—into these two bedrooms? A Not at that time.

Q Was there any difficulty in your seeing into both bedrooms? A No; no difficulty at all.

Further cross examination by Mr. Lum.

Q Did you actually go into the room? A Yes.

Q You went into Mr. Pfender's room? A No, to the door. I went into the room where the young lady was.

Q But you didn't go into the room where the single bed was? A I didn't have to. I just looked in from the living room.

Q You noticed that the bed was perfectly smooth? A Yes.

Q Hadn't been mussed in any way? A No.

Q Did you call that to the attention of Mr. Pfender? A No.

Q Talk to him about it? A No.

Q Did you call it to the attention of Constable Hull? A No.

Q Why did you keep it a secret? A I didn't think it necessary to say anything about it.

Q It was a very important thing, a very important part of evidence, if it happened to be true? A Capt. Foster took charge of that.

Q It was a very important bit of evidence if it had happened to be true? A I don't know about that. Capt. Foster was taking charge of all that.

MRS. LILLIAN E. PFENDER, called as a witness in her own behalf, having first been duly sworn, testified as follows:

Direct examination by Mr. Lane.

Q Were you at South Salem on June 30, 1928? A I was.

Q And did you go up there with Capt. Foster? A I did.

Q Were you in the car when it went to the bungalow the first time? A I was.

Q Did you notice the windows of the bungalow as to whether they were open or closed? A They were closed, passing.

Q Did you return to the car and to the Justice of the Peace and swear out a warrant? A I did.

Q After that warrant was sworn out, where did you stay? A I remained there for a while, and then Mr. Hurley drove me down to the cottage to identify Miss Hass.

Q Did you remain at the cottage until the— A The hearing was over.

Q Did you remain at the Justice of the Peace until the men came back with your husband? A Yes.

Q Then you went down with Mr. Hurley and who else? A And Miss Foster and Miss Josephine Sullivan and Mr. Hurley.

Q To the house? A To the bungalow.

Q And when you got to the bungalow, what did you do? A Mr. Hurley knocked on the door, and a voice said "Come in," and then they all waited for me to go in, so I went in and I saw her standing in the living room, Miss Haas, and I walked right to her and I stood off at this corner of the table; she was at the other side of the table, and I stood off one side like this (indicating), near the bedroom. My back was then to the bedroom; and I said to her, "I am Mrs. Carl D. Pfender. I came here for the sole purpose of identifying you," and I turned and looked in the rooms, as I had been instructed to keep my eyes open and see every-

thing, and all the doors were open, with the exception of one, and that was partly open, of the little room; and I pushed it open and I saw a single bed up across the front of that room. There was no pillow on it, and it had a dark cover. I cannot just describe the cover, it has gone out of my mind. I was very upset at the time. I looked in the double room and saw the bed had been made up, because two hours had passed from the first visit to that place, and my visit.

Q When you say the bed had been made up, you mean in the big room? A Yes; it was a double bed, and it was over toward the corner overlooking the lake and the driveway.

Q Could you see from the living room into both of those rooms? A I did.

Q Was there anything to obstruct your view? A Nothing whatsoever.

Q Did you observe the door into the small room particularly, or didn't you? A The door into the small room is the one that was partly closed, and I pushed it open, and I did it with my left hand. I turned around this way (indicating), as I was going out, and I pushed it and looked in.

Q Did you push it partly? A I pushed it and it turned in to the left against the wall, the same as the door in the double bedroom.

Q This lady that you saw at that house at that time, is she the same lady to whom you referred in your testimony before the Vice-Chancellor on the main case, as the one to whom, or with respect to whom, your husband confessed to you in August of 1926? A She is the same woman; she is sitting in the court-room alongside of my husband now.

James Christy, recalled, direct.

Q In the month of June of 1928, did you see this lady and your husband in New York?

Mr. Lane: I have only one more question.

The Court: Calm yourself, madam, so that Mr. Lane can ask you the question.

The Witness: Excuse me; I cannot help it.

Q Mrs. Pfender— A Yes, sir.

Q In the month of June, did you see your husband in New York with this lady, in the month of June, 1928, this year? A Yes, I did.

Q Where? A I saw him at the Congress— when I was stopping at the Congress Plaza Hotel I saw him going and coming from 911 Walton avenue.

Mr. Lum: No cross examination.

Mr. Lane: I want to recall Mr. Christy.

JAMES CHRISTY, heretofore sworn, recalled on behalf of defendant, Mrs. Pfender.

Direct examination by Mr. Lane.

Q Was the name of Hass posted in any part of the apartment that you were elevator operator in, at 911 Walton avenue? A It was listed in the elevator, in the southern wing of the house, it was listed; a list of the tenants was in the elevator.

Q How was it listed? A Hass; and underneath, Ackerman.

Q Was there any listing of Pfender? A No, no listing of Pfender.

Robert J. Foster, recalled, direct.

Q Was it also listed in the letterbox? A We had no letterbox; the mail is all delivered inside.

Q When did that name first appear in the elevator, do you know? A About the time they occupied the apartment.

Q Which was about, as I understand your testimony, the 15th of October, 1927? A Yes.

Cross examination by Mr. Lum.

Q Then, the only names on the letterbox or in the elevator were Hass and Ackerman? A Yes.

Q Just that? A Yes.

Q Not either Mr. or Mrs.? A Hass and Ackerman.

Mr. Lane: There never was a Pfender listed there?

The Witness: No.

Mr. Lane: I want to recall Captain Foster for one moment.

CAPTAIN ROBERT J. FOSTER, recalled for further

Direct examination by Mr. Lane.

Q At the time Miss Hass went into the bathroom, as you testified, how was she dressed? A In a kimono.

JOSEPHINE A. FOSTER, called as a witness on behalf of defendant, Mrs. Pfender, having first been duly sworn, testified as follows:

Direct examination by Mr. Lane.

Q Where do you live? A I live 59 North 11th street, Newark, New Jersey.

Q What is your relation to Robert J. Foster? A I am his sister.

Q And do you occupy any position with the detective agency? A I am secretary.

Q Were you in the automobile from New York to South Salem on June 30, 1928? A I was.

Q And you went to the house the first time with the whole party? A I did.

Q And then returned to the Justice of the Peace? A I did.

Q And then where did you go? A Then I accompanied Mrs.—

Q Did you stay there? A I stayed at the Justice of the Peace while Captain Foster, Mr. McPartland and Mr. Hurley and the constable went to the cottage, and then when they came back with Mr. Pfender, and Mr. Pfender wanted to do some telephoning, we stopped at the Justice of the Peace house, and during that time Mr. Hurley came and brought Mrs. Pfender, Miss Josephine Sullivan and myself to the cottage, where Mr. Hurley knocked and we remained until we heard a voice say, "Come in," so we went into the cottage. Mrs. Pfender said, "I am Mrs. Carl D. Pfender, I have come here for the sole purpose of identifying you," and there was nothing more said, and she just looked around, but she didn't go into the bedrooms, but looked.

Q Into both rooms? A Into both.

Q Did you yourself look into both? A I did not. I just remained standing in the sitting room there. I did not go into any bedroom whatsoever.

Q You saw Mrs. Pfender look? A I did.

Q Had you ever seen the young lady who was in the house, before? A I saw Miss Leona Hass and Mrs. Minnie Hass and Mr. Pfender and Thelma Ackerman on June 23rd at about 1:55, I think it was. I saw the car No. 3C-9806 standing near a police booth, and I happened to look around and I saw Mr. Pfender and Mrs. Minnie Hass and Thelma Ackerman and Leona Hass crossing the street. It looked as if they were coming from the Congress Plaza Hotel. They stood a little while there talking. Mr. Pfender offered to take Mrs. Minnie Hass and all of them in the car. Mrs. Minnie Hass declined and said she would walk, and the little girl also walked; but Miss Leona Hass got into the car with Mr. Pfender. They turned the car and drove over to 911 Walton avenue. There the four of them met and chatted for a while on the sidewalk. Mrs. Minnie Hass went upstairs, Thelma Ackerman remaining, playing ball on the sidewalk, and Miss Leona Hass started painting the car, touching it up here and there, with a half-pint tin of paint. During this time Mr. Pfender removed Miss Leona's scarf from her neck and placed it in the car. While she was doing the painting he remained standing there with his hands in his pockets, making suggestions now and then. It was around twenty minutes that they worked like that. They all then went to—Mr. Pfender and Miss Leona Hass and Thelma then went into 911 Walton avenue, Thelma carrying the fur piece which Mr. Pfender had placed in the car. Mr. Pfender carried a package; Miss Leona Hass

carried some magazines or books, I don't know which, and after they had remained there until about, I think it was 3:40, or somewhere around that, and then the four of them got into the car and drove away. That is all I have seen.

Cross examination by Mr. Lum.

Q This morning in June you remember being there at dawn? A Yes.

Q And did you go back to the house again or stay up at the justice's house? A I stayed at the justice's house until Mr. Hurley took me with Mrs. Pfender to the cottage.

Q And that was a couple of hours later? A Yes.

Q Did you look inside and see that both beds were made up? A No, sir. I never put my foot in the bedroom.

Mr. Lane: Is Miss Sullivan here?

Mr. Lum: I don't think she is.

Mr. Lane: Counsel have agreed that this statement of the Stadium Garage may be taken in place of the evidence produced from somebody from the Stadium Garage. The statement is to the effect that this is to certify that Carl D. Pfender, of No. 911 Walton avenue, New York, stored his Cadillac sedan, License No. 3C-9806 in this garage from October 1st, 1927, to June 29th, 1928. The Stadium Garage is at 162nd street and Sheridan avenue, one block east of the Concourse.

Mr. Lum: I will give you the original.

Mr. Lane: I offer it in evidence, certified copies of applications for automobile license of Carl D. Pfender. Application was sworn

to December 29, 1927, giving the residence as 911 Walton avenue, New York City.

(Marked Exhibit D. 7 for Mrs. Pfender.)

Application sworn to June 6, 1928, giving the address the same place.

(Marked Exhibit D. 8 for defendant, Mrs. Pfender.)

Application of Leona F. Hass, sworn to June 11, 1927, giving address as 2537 Grand Concourse.

(Marked Exhibit D. 8 for defendant, Mrs. Pfender.)

Application of Leona Hass, sworn to June 6, 1928, giving the address as 911 Walton avenue, New York City.

(Marked Exhibit D. 9-A for defendant, Mrs. Pfender.)

The business address in each application of both Miss Hass and Mr. Pfender is given as 80 Fifth avenue, New York City.

Mr. Lane We rest.

REV. GEORGE P. DOUGHERTY, called as a witness for petitioner, Carl D. Pfender, having first been duly sworn, testified as follows:

Direct examination by Mr. Lum.

Q I believe you know Mr. and Mrs. Carl D. Pfender? A Yes.

Q Did Mr. Pfender ever live at your home? A Yes.

Q Where was that? A 74 Park avenue, Glen Ridge.

Q And from what time to what time? A From, I don't remember the exact time, but sometime in September or October.

Q 1927? A 1927, until near the first of the year, sometime in the holidays.

Q How many nights during the week, say, in October, November and December, 1927, was he away from your home? A Oh, maybe one night; some nights it might have been two weeks. I didn't keep any account of it. He was there most nights.

Q Where was his clothing? A At our house.

Q Was there any question whatsoever as to that being his residence at that time? A No.

Q What day was he usually away? A Sunday.

Q And did you know at all why that was? A He told me that it was because he was a little embarrassed about the trouble that he was having in his family, and didn't want to run into a lot of Glen Ridge people.

Q And he left your residence, then, the first of 1928, early part of 1928? A I think it was during the holidays.

Q Before the beginning of the year? A At the end of December.

Cross examination by Mr. Lane.

Q Did you know he was going? A What did you say?

Q Did you know he was going before he went? A Yes.

Q When did he tell you he was going? A I don't remember.

Q How soon after he went? A I don't remember.

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Q Can't you give some approximate time? A No.

Q How do you remember, then, so definitely, that he lived at your house between September and December? A I resided there, too.

Q I know you did; and you resided there at the time he told you when he was going to leave? A Yes.

Q Why can't you remember the one if you remember the other? A I think it is obvious.

Q Well, I don't. A It is not easy for me to remember a date.

Q No; but you have remembered the precise date. A No.

Q You have given an approximation with respect to when he left, but you cannot remember as to when he told you he was going to leave. What makes you remember the one and not the other? A There isn't any answer to that kind of a question.

Q I know there isn't. I am wondering why you remember the one and not the other? Can't you answer? A I have answered it. I remember no exact date at all.

Q What fixed it so definitely in your mind, or, rather, inexactly in your mind, that it was during the Christmas holidays that he left? A The fact that my boys came home from college, and Mr. Pfender said that he thought it would be well if he gave us the extra room, when the boys were coming home from college.

Q When the boys were home from college, when was that? A I don't remember the exact date; it was for the holidays that year.

Q Approximately how long before the holidays? A I don't remember; a day or two.

Q Then why didn't you tell me when I asked you the question as to when he told you he was going to leave, that it was a day or two before he left when your boys came home? A Because I don't recollect what it was. A day or two before he left.

Q Was it when the boys came home from college? A I don't remember whether he told me a week or two days or ten days, before he was going to leave.

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

Q Did you ask him where he was going? A No.

Q Had you no interest in asking him where he was going? A No.

Q He had been living there with you for three months? A Practically.

Q You had been a witness in his divorce case? A Yes.

Q And he said he was going to leave you, but you did not ask him, or he didn't tell you, where he was going? A No, sir.

Q And you had no idea as to where he was going? A No.

Q You didn't take enough interest in it to even ask him where he was going? A No.

Q Although you were his very close personal friend then? A I thought I was a close personal friend.

Q Did you in fact know where he went? A No, I did not.

Q When did you first know where his residence was after he left you? A Today.

Q You never knew it until today? A No.

Q Have you been in communication with him since? A Yes.

Q Regularly? A No.

Q How often between December, 1927, and the present time, have you been in communication with Mr. Pfender? A I had two or three letters from him and replied to them.

Q Have you seen him personally? A Yes.

Q How often have you seen him personally? A I think twice.

Q When? A I don't remember the dates.

Q And on neither of those occasions did you think to ask him where he was living, or how he was getting along? A I asked him how he was getting along, but not where he was living.

Q What did he reply when you asked him how he was getting along? A I don't remember, except the fact that everything was all right.

Q But you never thought of asking him where he was living during this time? A No.

Q And he apparently never thought of telling you? A Apparently not.

Q Who constituted your household besides Mr. Pfender, when Mr. Pfender was living with you? A My wife and a maid, and when the boys were home from school, my boys.

Q How many bedrooms did you have? A I will have to count. There are five bedrooms without the maid's room.

Q Which one of the bedrooms did Mr. Pfender occupy? A A room that had previously been occupied by my father-in-law, in the back of the house.

Q And it was before that a storeroom? A It was a storeroom when the boys were away. When the boys were home it was the room occupied by my oldest son.

Q And your oldest son attended what college? A Williams.

Q And when did he go to college in the fall of 1927—what date? A Sometime in the early part of September.

Q And when did he return next after that? A I don't remember whether he came back for any holiday between that and the first of the year or not. I think not, because he was playing on the football team.

Q Was Mr. Pfender at your house for Christmas? A He was there part of Christmas day. I don't remember whether he was there for the day previous and afterwards at night or not. He was there for part of the day.

Q Was he living there? A Yes.

Q Was he there for New Year's, at your house? A No. I don't remember. I don't think he was.

Q So you don't remember whether he was or whether he wasn't? A No; we don't make very much of New Year's as a holiday in our house.

Q You cannot recollect whether he left before night on Christmas, or not? A No, I don't remember.

Q But you do remember, as I understand you, that he was actually living at your house on Christmas? A We considered that he was still living there. It was about that time that he left. If you expect me to answer accurately as to dates, I am sorry to disappoint you, but I cannot do it.

Q Was he at your house during this time that he was living with you, on Sundays? A I think not.

Q He never suggested where he went on Sundays? A No.

Q He stated that he wouldn't stay on Sundays at your house because he didn't want to

meet the Glen Ridge people, but he never suggested what he was doing with his time during the day? A On one or two occasions he mentioned having been with a partner who lived somewhere, I think, up around Hohokus, riding. They said they went up there riding horseback.

Q While he was living with you, did he take his meals at your house? A Usually breakfast and dinner.

Q What time did he usually get home at dinner—get to your house at dinner? A 6 o'clock. We had dinner at 6:30, and he was usually there in time for dinner.

Q He never expressed any disinclination or fear of meeting Glen Ridge people in the evenings? A Yes, he usually was very careful not to go taking walks where he would be likely to meet Glen Ridge people in the evening. If we had guests in the household, he would invariably retire to his room.

Q He of course didn't pay you anything for living at your house? A No.

Q Did you know where Mr. Pfender kept his automobile? A No, I did not. He kept it for some time, little while, at a garage within a block of our house.

Q When did he remove the automobile from the garage about a block from your house? A I don't know that; I don't remember.

Q Do you know where he took it? A No. My understanding was that he took it to New York.

Q So that he continued to live with you and he continued to be at your house practically every single night, but he took his automobile away from Glen Ridge and took it to New York, is that right? A That was my understanding.

Q Did he say why he wanted his automobile in New York when he was living in New Jersey? A No, sir.

Q And no suggestion as to why he should take his automobile, as he did, to the Stadium Garage at 162nd street and Sheridan avenue on October 1, 1927, while still continuing to live in Glen Ridge in your house? A No, I don't recall that he did.

Further direct examination by Mr. Lum.

Q Do you remember when Mr. and Mrs. Pfender broke up housekeeping and separated? A Yes.

Q And where did Mr. Pfender go then to make his home? A At my house.

Q Was that in September, 1927, or September of 1926? A That I think was September of 1926.

Q So that he had his home with you for a year and three months instead of three months? A Yes.

The Court: I want to ask counsel a question. Mr. Dougherty is here, my recollection of the testimony at the main trial was to the effect, that at that time, at the time of the hearing, Mr. Pfender was residing with Dr. Dougherty.

Mr. Lum: That is correct.

The Court: Is there any question about that whatever?

Mr. Lane: That is the impression we get from the testimony.

Mr. Lum: Is there any question about that, Dr. Dougherty?

The Witness: No.

CARL D. PFENDER, petitioner, sworn.

Direct examination by Mr. Lum.

Q When did you first meet Miss Hass? A When she was employed at our office, in 1920.

Q And how long had she been employed there? A She was employed there about eight years, from 1920 on.

Q What were her duties? A She was in charge of the stock desk and orders.

Q In 1923—when did you first go out with her at all? A In 1926.

Q In 1923, where and with whom were you living? A I was living with Mrs. Pfender at Glen Ridge.

Q Generally, what was your domestic life? A Very unhappy.

Q Do you remember the fishing incident that was described in the former trial? A I do.

Q To what person in the office was this domestic trouble known at that time, as near as you can remember? A It was known to the man I went to Maine with, Mr. Shorto. It was known to Mr. Smith, who resided in Glen Ridge. I have known him for twenty years or more. It was known to my stenographer—two stenographers, in fact, and my general unhappy condition was known generally through the office. Miss Hass knew it and some of the other clerks.

Q In 1925, what was your domestic life? A It began to get worse.

Q Do you remember a talk with your wife about Ayres and Bryant? A Yes.

Q Briefly, what was the conversation? A She said that Mr. Bryant—she had overheard Mr. Bryant say that he was glad that he was

getting off the Vestry; that he didn't want to have anything to do with anything that that "pig," Pfender, was in, and she said that Mr. Ayres and the other vestrymen, when they would see me coming into the church would hold their hands up to their ears and wiggle them like a donkey, and bray, and say that was a good description of me.

Q In the first half of 1926 what was your domestic life? A It was very much strained.

Q Do you remember the horseback riding incidents? A Yes.

Q Were you accused of meeting women? A Yes, Mrs. Pfender accused me of riding in the park with women, and said that she had hired detectives to follow me and seen me.

Q Had you been riding? A Absolutely no, with the exception of one instance, which I quoted in the former trial; then I was with two other men.

Q And was there any conversation with your wife about separation? A Yes.

Q Briefly, what was that, fixing the date? A She suggested sometime in May, that I allow her to continue to live in the house with her pets, and she thought she had sufficient means to keep up the house and live by herself, and that I could go elsewhere and live.

Q By the way, has that house been sold? A Yes.

Q How much was it sold for? A It was sold for eighty-five thousand dollars.

Q How much was given to Mrs. Pfender? A Mrs. Pfender got forty-five thousand dollars and I got—

Q The rest? A The rest. I paid all the taxes and all expenses.

Q Did she have any other means to have you followed, except that, that you know of? A Not that I know of, except that I had paid her weekly up to the—

Q Ever have any money or property of her own? A Never.

Q During this period what friends did you have? A I had none but Mr. and Mrs. Dougherty and my associates at the store.

Q What occupations did you have, if any, besides your business, at that time? A I had no occupation or no recreation but my horse. I used to ride horseback occasionally, but very seldom. I couldn't get away from business at the time.

Q On this occasion in 1926, when you went out with Miss Hass, where was your wife? A Westport, New York.

Q And where did you go on that occasion with Miss Hass? A I went to dinner with her about twice or three times, and I went to a theatre once or twice.

Q Did you meet her mother? A I did.

Q When and where? A The first time I remember meeting her mother was about the first or second of July, when I walked up Fifth avenue with her and met her mother in Forty-seventh street.

Q And were you at that time in love with her?

The Court: What year?

The Witness: 1926.

Q Were you at that time in love with her? A Absolutely no.

Q Did you commit adultery with her? A Absolutely no.

Q Did you at any time on any occasion, or have you ever committed adultery with her? A Absolutely not.

Q Do you remember the conversation with your wife about Miss Hass in August, 1926? A I do.

Q Where did that conversation take place? A Westport, New York.

Q Did you at that time make any confession of misconduct with her? A Absolutely no.

Q After this conversation, when did you next see Miss Hass? A It was sometime, I should say, along the last of October or first of November, 1926; that is, except at the office, where I saw her daily.

Q When did you separate, you and your wife? A October 1, 1926.

Q And it was under the circumstances that you related in the former trial? A Yes.

Q And when you left in October, 1926, where did you live? A With Mr. Dougherty, in Glen Ridge, and Mrs. Dougherty.

Q How long did you continue to live with them? A About fifteen months.

Q Until what time? A Until during the holidays of 1927.

Q Did you have any other residence during that time? A No other residence.

Q During that time did you see Miss Hass? A Yes.

Q How frequently? A Possibly a couple of times a week, maybe three times a week.

Q And with whom? A Sometimes with her alone, sometimes with a little girl, sometimes with Mrs. Hass, and sometimes with all of them.

Q Whom do you mean by the little girl? A Little Thelma Ackerman.

Q Who is she? A She is a little girl that Mrs. Hass is taking care of since she was one year old. Her mother is dead. Mrs. Hass has kept her at her own expense for nine years. Her father don't want her, and she has kept her.

Q As time went on, did you become more interested in Miss Hass? A Yes, I admired her character, and had the very highest regard for her and her mother.

Q Did you ever come to love her? A Yes, I did.

Q When, as near as you can tell us? A I should say it was the latter part of 1927 that I realized that I had a very deep—

Q Did you speak to her about it? A No, sir, I didn't.

Q When did you? A Sometime in 1928, I suppose it was along in January or February, I told her that I had—

Q Before that did you have a conversation with Mrs. Hass and Miss Hass about rooming with them? A Yes, I did.

Q Did you have any home at the time? A No home at all, except Dougherty's.

Q Did the Doughertys entertain? A Yes, being pubilc people, they naturally had a great deal of company coming and going.

Q Did you think it was at all times comfortable for them to have you there, or were they accommodating you? A No, I think it was rather uncomfortable, under the circumstances, to say the least.

Q What arrangements were made with Mrs. Hass about your quarters? A I arranged with Mrs. Hass that we would take an apartment, a joint apartment, and that there would be a room

reserved for me there on nights that I went to the theatre and was late, or wherever we went, I would not have to go way back to New Jersey; so that arrangement was completed.

Q When did they move to the Walton avenue apartment? A I think it was sometime in October, or about the first of October.

Q In October, November or December, how many times a week were you at this apartment? A Possibly twice a week on an average, maybe a little oftener, but that was a good average, I should say.

Q What part of the apartment did you occupy? A I occupied the room facing the west, I believe it is—yes.

Q And did you later go there to live? A Yes, I did.

Q When did you go there to live? A During the holidays.

Q Just before the first of January, 1928? A Probably it was just before the first of the year.

The Court: 1927?

Mr. Lum: 1927.

The Witness: Yes, 1927.

Q December, 1927, and January, 1928, is that the time you went there? A Yes.

Q How much was the rent of the apartment? A One hundred and fifteen dollars.

Q And how much had they been paying for an apartment before they took a larger one to accommodate you? A Fifty-five.

Q How much did you pay toward the new apartment? A I paid the difference.

Q What was done for you after you went to live there? Did you get your meals? A After I permanently lived there?

Q Yes. A Yes, my meals were provided, and my laundry and I had the use of the telephone and other conveniences of the home.

Q Did you pay for that? A Yes, I did.

Q How much? A I paid thirty dollars first and then I increased it to thirty-five dollars a week.

Q How were you known there at the apartment? A I was known as Mr. Pfender.

Q Were you ever known as Mr. Hass or referred to as Mr. Hass? A No, never.

Q Did you ever hear of such a thing until these charges were made? A No, I never did.

Q To whom did you give instructions as to your mail? A The elevator man, known as "Pat" White; Andrew White was his correct name.

Q What instruction did you give? A I notified him that my name was Carl D. Pfender. As I recall it, I gave him a slip of paper. I said, "I am expecting mail, among other things, and automobile license; I wish you would see that it is delivered to me at Mrs. Hass' apartment."

Q Was there anything secretive or concealed about your friendship for Miss Hass? A Absolutely none.

Q Did you ever speak to her about some closer arrangement? A Not until—I said after, in January, 1928, that I had a real regard for her, I loved her, and when I secured my decree, I would like her to remember that I was going to ask her to marry me, if she would.

Q Was that after the first decree had been made in the cause? A Yes.

Q Had you ever spoken to her before? A No.

Q Do you know whether she reciprocated your regard? A I think she had a regard for me, yes. I think so.

Q Do you remember a cottage at South Salem? A Yes.

Q When was that taken? A It was taken sometime—I think the first of June; the last of May or first of June, 1928.

Q Who hired that cottage? A Mrs. Hass.

Q Were all the people at Walton avenue to go up there? A Yes.

Q You expected to be there for the summer? A Yes.

Q Do you recall the night of June 30? A June 29?

Q Yes. A I do, very well.

Q Tell us when the car left Walton avenue. A Eight o'clock.

Q And what was in it? A Household goods, Victrola, bedding, some pots and pans, which were necessary to augment the things at the cottage, at the bungalow.

Q The cottage was rented furnished? A Yes, but there are always some things that you will need.

Q Was there any room in the back seat when these things were in? A No, it was filled up.

Q Were any arrangements made as to anyone else going? A Mrs. Hass and the little girl were going with us.

Q How were they going to go up? A They were going away in this car, and when they found the car was filled, Mrs. Hass said, "I cannot go with you; I will follow later in the train."

Q What train was she to take? A The train that left 125th street shortly after nine o'clock.

Q And where was that to take her to? A Katonah, which is about nine miles from the bungalow.

Q How was she to get from the station to the cottage? A If she couldn't get a taxicab—it was usually possible to get a taxicab from Katonah to the lake, the cost was two dollars—she was to telephone us when she got to Katonah, and we were to come down to Katonah to meet her.

Q You and Miss Hass arrived at the cottage? A Yes.

Q What was the weather? A It was very stormy; it was blowing and raining, and as I recall, it was an electrical storm along that time.

Q Did that storm come up after you left, while you were on the way? A Yes, it started shortly after we left the apartment 911 Walton avenue, and increased and got worse.

Q After you got to the cottage did you hear from anyone by telephone? A Yes; Mrs. Hass telephoned about eleven o'clock and inquired whether we had gotten there safely, and her daughter answered the telephone, and she said, "Yes, we got here safely. Where are you?" She said, "I am in New York City, at the apartment; it has been storming here very hard, and I am not coming up tonight."

Q Where did you spend the night? A I spent the night in the cottage.

Q In what room? A In the small room with a single bed.

Q Where did Miss Hass spend the night? A In the double room, in the double bed.

Q Were you in her room at all that night? A I was not after she said "Good night" and retired, but I was in and out during the time we were unpacking.

Q Was she in your bed or you in her bed at all that night? A Absolutely no.

Q Did you have the slightest idea in the world when you left New York that you two were to be alone in the cottage that night? A No, or I never would have stayed there.

Q Had you before that ever been alone with her at Walton avenue? A There had been times during the evenings, of course. I have never been alone with her all night or for any length of time.

Q Did you have any hesitancy with being with her alone or she with you? A No, I did not.

Q Did she at that time intend to become your future wife, if she could? A I think she did.

Q Had you spoken to her about it? A Yes, I had.

Q After you once went to bed, were you ever in Miss Hass' room during that night? A No, never.

Q Or she is yours? A Never.

Q Did you muss up the pillow on her bed? A I did not.

Q Where did you sleep? A I slept in the little room with the single bed, with the staircase leading up to the attic, and door leading down to the cellar.

Q I show you a photograph; do you recognize that? A Yes, very well.

Q What is it? A Photograph of the room where I spent the night of June 29 and 30.

Q Was the room in the same general condition as to furniture on that night as is shown in this picture? A Yes.

Q Where was this picture taken from? A I should say it was taken from here (indicating); I was there when the photograph was taken.

Q Over by the staircase? A There is a landing right here (indicating), which made it possible for the man to take the photograph.

Q Indicating the general location marked by an X? A Yes, it was at the foot of the staircase, over here; there is a landing six inches high there; or possibly he took it from here (indicating); either there or here (indicating).

Q In the general location marked X? A Yes.

Q Now, will you tell the Court what is the space between the foot of that bed and the dresser? A I should say it is not over ten inches at the most.

Q And is the dresser completely against the wall? A It is in the corner.

Q It couldn't be shoved any further away? A No.

Q What is the maximum distance between the two pieces of furniture, about ten inches? A Yes.

Q You remember the knock on the door in the morning of June 30? A I was awakened by something, some noise, I imagine it was knocking, and by footsteps outside of my window. My window was within a few feet of the gravel walk.

Q Where were you at the time of the knock? A I was in my bed, under the covers.

Q Is that the bed shown in this picture? A Yes.

Q What did you do? A I sat up in bed and looked out the window.

Q Was the window shut or open? A It was open.

Q Is it your habit to sleep in a room with window shut? A Hardly, when I have for years slept in a sleeping porch, with sixteen windows, I don't think I could sleep in a closed room.

Q What happened after the knock? A I sat up in bed, and I looked out and I saw a man who I afterwards found was Constable Hull, and he asked if I was Carl D. Pfender, and I said, "Yes." He said in substance, "Come out here; I want to speak with you." So I put on my slippers and walked out through the kitchen to the back door and opened it, and he said, "You are under arrest." I said, "What is the charge?" He said, "Adultery." I said, "There is no foundation for it," as I recollect, or something to that effect.

Q What did he say? A He came in then; he said, "Well, get dressed; you have to go down to the judge's."

Q Were you awake when the knock came? A I was dozing at the time.

Q Where were you? A I was in my bed.

Q Where was your bed located with reference to the front window as shown in the picture, or otherwise? A The window shown facing the road; it was right up to it, just as close as it could be gotten.

Q Who came with Mr. Hull? A Two men, one who I afterwards found out was Foster, and the other McPartland.

Q Where were they while you were dressing? A They were standing, as I recall it, in the kitchen, or the entrance to the kitchen, or right near the living room.

Q Where did you dress? A In my room.

Q Were your clothes there? A They were.

Q Were they over the bed? A No; they were over a chair, where I always put my clothes.

Q Where were these men while you were in the bathroom? A I cannot say, but I presume

they were in the kitchen. Constable Hull was there with them, and they were waiting.

Q Did you see either of them in your room at any time? A No, I did not.

Q Did Mr. Foster follow you in your room any time while he was in the house? A Absolutely not, not as I recall.

Q Do you know of his being in your room at all? A No.

Q Did you have any conversation with Miss Hass while they were in the house? A The only conversation I had was when she called out to me from her room, and said, "Carl, what is the matter?" I said, "They have arrested me on a trumped-up charged; it will be all right; don't worry," or words to that effect.

Q Did you address any endearing terms to her? A I did not.

Q Did you kiss her or otherwise caress her? A I did not.

Q Is this photograph which I show you a good representation of the house? A It is.

Q And where is the front road with reference to the picture as you face it? A It sets up here, at a decided angle.

Q From the road, can one look directly into the house? A Yes.

Q Were there shades at any of the windows that night in question? A There wasn't a shade in any room of the house at any window, not even the bathroom.

Q And was it possible to look directly into the room from the ground? A Yes, it was, with the exception of the high room.

Q At the rear? A At the rear.

Q Were there two windows in your room? A Yes.

Q Was it possible for one to look into both of them from the ground? A Yes, I should say it was.

Q Where was the room in this picture that Miss Hass occupied? A It is back around this corner (indicating); it is directly back of this room.

Q Around from the left, as you face the picture? A Yes.

Mr. Lum: I will ask to have that picture marked.

(Marked Exhibit P. 1.)

Q This picture shows someone sitting at the window in this house; was there someone there when this picture was taken? A Yes.

Q How far was the camera away from the house when that picture was taken? A I think, if I am not mistaken, two exposures were taken; one quite close, and one higher on the road. You can see from any place there, it is a very low window.

Q I show you the picture of a close-up; is that one you recognize? A Yes.

Q Then the picture, Exhibit P. 1, was taken from some distance? A Yes, that was taken up on the hill.

Q And the picture taken up from the hill shows a person sitting in the room which you occupied? A Yes.

Q This photograph that I have now shown you, is a picture of what? A Picture of the bungalow.

Q From what position? A That was taken close up, I should judge.

Q From the front? A From the right side of the house.

Mr. Lum: I ask that that be marked in evidence.

(Marked Exhibit P. 2.)

I also offer in evidence the picture of the interior of the room which Mr. Pfender says he occupied.

(Marked Exhibit P. 3.)

Q Will you indicate where you sat when you looked out of the window? A I sat on my bed—I sat right up in my bed and looked right out of the window.

Q Did you get out of your bed at all to go to the window? A No, I did not; I couldn't have gotten to the window without sitting up in bed, or pulling the bed out.

Q Did you open the window, or was it already open? A The window was already open.

Q I show you another interior view; do you recognize it? A I do.

Q And it is a picture of what? A The living room.

Q Was that a good representation of the condition as it existed on the night in question? A Very good.

Q Which door leads into the room which you occupied? A This one marked "B."

Q Can you see from the living room into that room which you occupied? A You can only just see one little corner of the bed.

Q Will you please tell me what it is that blocks the view? Is it the door? A It is a built-in-stairway with a door, which you see here (indicating) leading down to the cellar, as you

go around through the room, past the bed, a space of three feet or so between the bed and staircase as it goes up, and go upstairs to the open attic upstairs.

Q Something has been said about a door being changed. Did you ever know of a door being changed? A No, it is news to me.

Q Is the view blocked by the door, or would it make a bit of difference to the view whether the door went in or out? A It wouldn't make any difference; the staircase shuts off the view anyway.

Q I show you a picture of another interior. Do you recognize that? A Yes, that is the other bedroom.

Q The room which was occupied by whom on the night in question? A By Miss Hass.

Q Is it a fair representation of the condition as it was at the time? A It is.

Mr. Lum: I offer that in evidence.

(Marked Exhibit P. 4.)

Q I notice a cot up beside the double bed; for whom was that? A That was the cot which the little girl occupied when we were up there in June overnight, once before we moved up there permanently.

Q How were the rooms lighted? A Lighted by electricity.

Q Your automobile, when did it go to New York? A In the beginning?

Q Yes. A When I took it from Jersey; it was sometime during 1927.

Q As near as you can fix it, towards the end, or when? A It was possibly around the middle

of the year, I should say; I don't exactly remember.

Q And when did you take out your license to drive in New York? A I think it was in December; late in December, 1927.

Q Did you intend at that time to make your residence in New York? A Yes, I did.

Q You at that time made the arrangements with Mrs. Hass as to your living there? A Yes.

Q Will you tell me whether Mrs. Hass was always considered by you an eminently respectable woman? A Absolutely; I had the highest respect and regard for her.

Q Will you tell us about your regard and respect for Miss Hass? A I had the highest respect and regard for her.

Cross examination by Mr. Lane.

Q As I understand it, this apartment was taken over in New York by Mrs. Hass? A Yes.

Q After the agreement was made by you, that you should contribute partly to the expense; is that right? A That is right.

Q And that agreement was made by you about when? A Sometime along the last of September, I should say, 1927.

Q And how long before they moved into the apartment in October of 1927? A Just a few days.

Q And you intended at that time to go and live with them? A I intended after the case had come up in New Jersey to do so, yes.

Q You intended to live with them? A That was my intention.

Q When you arranged to pay a part of the expense? A Right.

Q And you knew that that was your intention? A Of course, I knew.

Q When you testified before the Court here in your case, as late as December 21, 1927? A Why, of course, it was my intention, after the case was settled; certainly, it was.

Q And the only reason why you did not actually go over there and live there before was— A Because I was going to stay here until the case had come up before Vice-Chancellor Berry.

Q Why? A Because that was my intention.

Q Why? A I had no reason for doing anything else. If the case had not come up, I would have continued to live with Mr. Dougherty.

Q Why was it that you refrained from going over to occupy the apartment over in New York, the expense of which you had agreed to pay from October 1st, 1927? A Why?

Q Yes; why? A There was no reason why I shouldn't.

Q You told me why; you said because of the case pending over here. I asked why. A Because if the case had not been settled, I plainly stated that I would have stayed where I was, with Mr. Dougherty, because I considered that it was the proper thing for me to be a resident of New Jersey until the case was settled.

Q You were advised at that time by Mr. Lum, your counsel, were you not? A Why, certainly.

Q Did he advise you that it was necessary for you to be a resident of New Jersey to prosecute your suit? A He said he preferred that I stay here until—

Q Did he tell you that? A I don't think it was necessary. I don't remember that he did, but he may have.

Q Was it because you could upon the stand here testify that you were living with Dr. Dougherty, so as to disclaim any responsibility or any connection with the Hasses? A No, it was not.

Q Then what else was it? A For no reason whatsoever. I was perfectly willing to acknowledge right now that I was with Mrs. Hass and Miss Hass prior to that.

Q Then why was it that you refrained while this case was pending here, from going to New York and assuming, or taking the place that you had already paid for? A I had not paid for it; I had agreed to pay.

Q You had agreed to pay? A Yes, I had agreed to pay for a room.

Q You did in fact pay for that room from October 1, 1926? A Yes; I always live up to my agreement.

Q You had paid for a room in New York, and you say you didn't go over and occupy it because this case was pending here? A I did not occupy it permanently. I did at times occupy the room.

Q Then, during the time this case was pending, you were living over in New York in that apartment? A I was there occasionally during that period.

Q Staying over night? A Yes.

Q And getting your meals there? A Possibly; I don't remember that.

Q And from what period of time was it that you began to stay there, on some occasions at least, over night? A Sometime in October.

Q What time? A I cannot recall the exact date.

Q About the middle of October? A Possibly the first of October; possibly middle of October.

Q You stayed there weekdays and stayed there Sundays? A Occasionally I stayed there weekdays when I went out to the theatre with Mrs. and Miss Hass.

Q You stayed there Sundays? A Occasionally.

Q And what difference did you make in your manner of living after you had stopped testifying before the Vice-Chancellor here? A No difference. No change in my mode of living at all, except that I permanently went to live at 911 Walton avenue, and so gave that as my permanent address.

Q But what physical change did you make; what change did you make in the physical thing you did? A I removed my clothes from New Jersey to 911 Walton avenue.

Q So the difference is that before you testified here in court, you permitted your clothes to remain in Dr. Dougherty's house, and after you stopped testifying here, you took your clothes—all of them, away from Dr. Dougherty's? A Naturally, I would want them where I was going to live permanently.

Q Is that right? A Yes.

Q You took your car over to New York on October 1st, the record shows. A Yes.

Q And why did you take that on October 1st? A Because I wanted the car where I could use it when I wanted it.

Q You had use for it in New Jersey until October 1st? A No, it was in the garage most of the time.

Q Why didn't you remove it before October 1st? A I had no occasion to.

Q The removal of the car on October 1st was coincident with and dependent upon Mrs. and

Miss Hass moving into the apartment on Walton avenue? A No; because I testified, a little while ago, that I took it over before October 1st, if you please.

Q You took it up to the Stadium Garage before October 1st? A No, not to the Stadium Garage, but I had it in the city before that.

Q Where did you have it? A I had it in another garage.

Q Where? A Also on the Concourse.

Q Where? A I think it was called the Poe Garage.

Q How long had you had it there? A Two or three months, probably; I don't recall exactly.

Q Where was that garage with respect to the place at which the Hasses were living? I mean prior to their moving to Walton avenue. A It was within a few blocks.

Q How long had you had your car in a garage over in New York within two blocks of the place that the Hasses were living in before they moved to Walton avenue? A I said two or three months, probably. I don't recall exactly; there was no occasion to recall the exact time.

Q So that you took your car from New Jersey, and took it to a garage within two blocks of where the Hasses were living, about June or July, 1927; is that right? A I should say about that.

Q And kept it there until the Hasses moved to Walton avenue, and then you moved your car to the new garage, because it was nearer to that apartment; is that right? A Yes.

Q Did you stay at the Hass apartment before they moved to Walton avenue, over night, on occasions? A Occasionally, yes.

Q And spend Sundays there also? A Occasionally.

Q How many rooms were in that apartment? A Two rooms and kitchenette.

Q How many people were occupying those two rooms and kitchenette when you stayed there over night? A There were three people; sometimes four people.

Q This other place where you stayed over night at the Hass apartment was 2537 Grand Concourse, wasn't it? A Yes.

Q When was it that you began to stay over night at the Hass apartment? A I don't recall when it was; possibly sometime in the early summer of 1927.

Q How many nights would you stay over there during June, July and August of 1927? A I don't recall. I stayed over whenever I had occasion to.

Q What do you mean by "having occasion to"? A When I was in the city late, instead of going home—it took me two hours to come home —I would stay over after the theatre.

Q And in that apartment were you, Miss Hass, Mrs. Hass and the Ackerman child? A Yes; at times the little girl was away.

Q Do you recall where the Hasses lived prior to going to Grand Concourse—2537 Grand Concourse? A Yes, I do.

Q Where? A They lived at 152nd street.

Q Did you go there and stay all night, too? A Absolutely no.

Q So the first time you stayed over night was in the summer of 1927? A Right.

Q Had you begun to love Miss Hass by that time? A No; I should say that I did not. I was attracted to her, as I would to anybody who is pleasing.

Q When did you become attracted to her in the sense of love? A I have already testified to that.

Q I know, but I ask you again. A It was the latter part of 1927 I felt that feeling for her.

Q Before this case was tried before the Court? A Why, certainly.

Q Before the case was tried before the Court? A Yes.

Q About how long before this case came up before the Court did you feel love and affection toward Miss Hass? A I cannot state exactly.

Q Some little time? A I should say it was around the latter part of 1927, just as I have formerly stated.

Q And that love has begun to get stronger as time goes along? A Yes, it has.

Q Is increasing in intensity; you have kissed her? A I have, surely.

Q You have had your arms around her? A Yes.

Q And been affectionate with her? A To that extent, yes.

Q And when was it that you first kissed her and put your arms around her and treated her affectionately in that way? A I cannot state that.

Q Before the case was tried here before the Court? A Probably, yes.

Q And of course, that has become stronger and your desire to be affectionate with her has become stronger as time goes on, is that right? A Naturally, yes, but I am an honorable man.

Q What? A I am an honorable man.

Q You knew what you were doing when you stayed in the house up at the lake, didn't you, with respect to the reputation of this girl? A No, I did not; I had no—

Q How old are you? A I am fifty-three.

Q And you mean to sit there and tell me that you didn't realize what you were doing to the reputation of this single girl with you, an undivorced man, sleeping in a bungalow alone all night? A I had no other choice under the circumstances.

Q I didn't ask you that. A I hadn't the least idea of any wrong. Miss Hass is a lady, and I hope I am a gentleman.

Q Will you answer my question: You didn't have any idea of what you might do to the reputation of that girl? Yes or no. A No, I didn't have any such idea that it would hurt anybody's reputation.

Q How old is this girl? A Twenty-five.

Q You think that a twenty-five year old girl's reputation isn't affected by the fact that she goes and sleeps in a bungalow, such as this, alone all night, with a fifty-three year old married man? You mean that? A I did, under the circumstances.

Q I am not asking you "under any circumstances" whatever they may be, and don't you know that situation is worse, when the parties are in fact engaged? A They are engaged?

Q You asked her to marry you? A I beg your pardon; I did not ask her to marry me.

Q You never did? A Prior to the trial.

Q Prior to June 30th you had asked her to marry you? A Yes; I testified to that.

Q And she said that she would marry you; is that right? A She gave me to understand that she would.

Q When you were divorced? A Yes.

Q And yet, with those conditions existing, you tell me that you had no thought in your mind that her reputation might be affected by your

staying there all night with her in that bungalow alone? You mean it? A I never had any thought of any wrong.

Q Or any harm coming to her after? A I certainly did not.

Q Didn't you know that her reputation would be affected—

Mr. Lum: Don't let him stop you.

Mr. Lane: Just a moment.

Mr. Lum: I object to the interruption.

The Court: Proceed with your question, Mr. Lane.

Q She has called you "Dear" upon many occasions? A Without doubt.

Q You have called her "Dear" upon many occasions? A Without doubt.

Q And this was a rather dramatic occasion up there on June 30th, wasn't it, people coming into the house with a warrant for your arrest? A It proved to be very.

Q It was, wasn't it? A It certainly was.

Q And she was hysterical and crying? A Not that I saw.

Q She took it calmly? A She took it, considering everything, very calmly. I did not see her the least hysterical.

Q How did she act; did she take it calmly, or did she not? A She took it very calmly.

Q Did she cry at all? A She might have cried slightly; it was slightly noticeable.

Q You tried to comfort her? A I did not, except—

Q Why not? A Except to tell her that it was all right, that I would be back shortly.

Q You realized, of course, when these people came into this house, that the reputation of this girl was going to suffer? A My conscience was perfectly clear.

Q Mr. Pfender, I am not asking about your conscience; I am asking about your intellect, not your conscience. You realized, did you not, when these people came in there, that this girl's reputation was going to suffer? A Of course, when I saw the kind of people that came in there, I knew right away that there was—

Q And yet, you loving this girl, never attempted to comfort her; is that right? A I did not attempt to comfort her, except with words.

Q Except with words; didn't you say, at least, "Dear, this is all right?" A No, I did not use those terms at all. I simply said, "It is all right; don't worry; I will be back shortly."

Q It would have been perfectly natural for you to have used those terms? A It certainly would have been.

Q But in this high state of affairs, you never used them? A I did not.

Q You started from New York that night when? A About eight o'clock.

Q And as I understand it, you went alone with this lady because there was no room in the back seat for anybody else? A Correct.

Q Did anybody suggest that Mrs. Hass should go with you? A There was no room for Mrs. Hass.

Q But there was, if you left Miss Hass out? Anybody suggest that in this effort to get these things up to the lake, some lady might be taken whose reputation wasn't likely to be so affected as the reputation of this young girl? A I had no reason to assume—

Q Mrs. Hass was married, wasn't she?

Mr. Lum: I object to the form of the question. It is misleading.

Mr. Lane: I am assuming that a lady's reputation, who is married, would not be so much affected as a young girl.

The Court: You may assume what you want about that, but the assumption is not binding on the Court.

Q Did anybody suggest that Mrs. Hass, who had been married at least, should have gone with you, instead of Miss Hass? A That never came into my head, or anybody's, as far as I know.

Q You wouldn't have gone that night with Miss Hass alone, if you hadn't expected the others to join you? A No, I would not.

Q Why not? A Because I would not have taken any such chance.

Q What chance? A Chance of having detectives paid for the business, which I afterwards found out—paid to falsely testify, as they have done in this case, to what happened. I have learned a great deal about the world since June 29th.

Q Let us get back to where we started. You wouldn't have, as a matter of fact, have gone with this young girl, if you hadn't expected Mrs. Hass to join you later? A Probably I wouldn't; I might have, at that. I cannot say.

Q In other words, you would have been perfectly content to take this young girl deliberately intending to remain in this bungalow alone with her all night long, is that right? A I might have.

Q Notwithstanding the fact that you knew that in the case before this Court your wife has

said that the trouble between you was, at least in part, due to the fact that you admitted your intimacy with this girl?

Mr. Lum: I object; there is no such record, and there was no such testimony.

Mr. Lane: I beg your pardon, that is Mrs. Pfender's testimony.

The Court: That depends on what you mean by the word "intimacy." The word "intimacy" was used in the record, however, but not perhaps in the general acceptation of that term. It was, however, testified to, both by this witness and by Mrs. Pfender, that he had confessed to having been out with Miss Hass on several occasions.

Mr. Lum: Yes, friendship; but not intimacy.

The Court: I understand the testimony.

(Last question repeated.)

A I had no hesitation at the time at all.

Q You knew that fact, didn't you? A What fact?

Q That your wife had testified that the trouble, in part at least, was due to your admission of an intimacy with this girl? A Possibly I did.

Q That you had kissed and hugged her, and that you made that admission to her in August of 1926, at Westport? A I don't recall that I did.

Q You don't remember that? A I don't recall.

The Court: I don't remember, Vice-Chancellor Lane, that the admission went to that extent.

Mr. Lane: I think it went further, Vice-Chancellor.

The Court: I wish you would point out to me what you rest that question on. My recollection is that he said he had been out with her to dinner several times, and on one occasion he had her out riding in an automobile.

Mr. Lum: And there had been nothing wrong?

Mr. Lane: No.

The Court: I have been hunting through this state of the case which was used in the Court of Errors and Appeals, all day for this testimony. The recollection which I have just expressed is that which I have after examining the record. I may not have run across what you have in mind.

Mr. Lane: I am referring to Mrs. Pfender's testimony. I am not referring to what this witness said.

The Court: I was referring to Mr. Pfender's.

Mr. Lane: Your Honor is right about Mr. Pfender's admission. My question is predicated upon his knowledge as to what Mrs. Pfender had said.

The Court: The question is all right, if that is what she testified to.

Mr. Lane: Her testimony is on page 203 of the record. Mrs. Lillian Pfender testified, she said:

"Now, Carl, I want you to tell me the truth; you haven't been treating me right for some time, and you are writing lovely letters; why do you curse and swear at me

when you come up and treat me in this manner? I cannot understand. You don't want to take me anywhere or do anything for me and I cannot endure this loneliness up there.'' ''I said, 'I want you to tell me the truth; is there another woman in the case?' And he hesitated a moment, and he said, 'Yes, there is another, Lillian.'

Q What else did he say? A I said well it was a shock to me. I said, 'How long has this been going on?' And then he was very nervous and he didn't hardly know what to say. He was taken by surprise, and he said that it had been going on for five weeks only, first; and then he stretched it eight months, and then he said he had been interested in her for eight years.

Q What did he say had happened? A He said he had met her at Jersey City in the car evenings and taken her out riding on the Jersey City boulevard until very late, and didn't get home until late in the morning, and he had hugged her and kissed her and taken her to dinners and luncheons, and he had bought her all kinds of presents, naming the last two, which was some kind of scarf, at Christmas time, and a wrist watch.''

The Court: All right; you are right; I am wrong.

Q You knew that your wife had said that, didn't you? A I knew that she had said that, and many other things.

Q What did you in fact tell your wife in August, 1926? A She told me that she had had a letter from her son, and that he had gotten a

young woman in trouble, and she said, "That is bad enough, but he has written me that you are going out nights with the automobile and he has checked up on the garage and the gasoline that you use, and there must be something serious. Will you tell me—if you tell me it will go no further, I won't say anything more about it, and that will be the end of it." So I said, "I have no objection to telling you; yes, I did; I have been out. I have been out two or three times to dinner, and once or twice to the theatre, and once or twice when I went out to dinner, it was in the car." I said, "Aside from that, there is nothing wrong. I have done nothing wrong; there are no relations between us, other than are perfectly proper."

Q And it was then that she fainted? A Something happened to her.

Q Something happened to her that she became unconscious, or apparently so? A Yes, apparently so.

Q And that is all you told her? A Yes, that was all there was to tell her, that I recollect.

Q Is that all you told her? A As far as I can remember, that is absolutely all I told her.

Q You didn't say anything about kissing the girl? A I did not.

Q Nor did your wife? A Oh, my wife probably did.

Q What did she say? A I cannot recall what she said, but she accused me of everything under the calendar.

Q Did she accuse you of kissing and hugging the girl? A She accused me of more than that.

Q Did she accuse you of kissing and hugging the girl? A She probably did.

Q Did she? A Yes, without doubt she did.

Q What did you say? A I denied it.

Q How often during June, July and August of 1926 had you been out with this young lady? A I had been out with her only from the first part of July to, I think it was the fifth or sixth of August—that was the period I have testified to already, that it was probably not more than four or five times.

Q Where did you go? A I told you that I went to dinner and to the theatre.

Q How many times a week? A If it was four or five times during a period of four weeks, it was about an average of once a week.

Q After the theatre where did you go? A I sent Miss Hass, or if her mother was with her, home in a taxicab, and I went over to New Jersey.

Q During all that period of time you were writing your wife letters, weren't you? A Yes.

Q And you were addressing her in very affectionate terms, weren't you? A I believe my testimony—

Q I don't care about your testimony. A Yes, I was.

Q You were calling her "Dear Peaches"? A Yes.

Q You were calling her "My darling Wife"? A Probably; I don't remember.

Q You were sending her "lots of love from Carl"? A Probably.

Q And she was in Westport and you were in New York? A I was in Glen Ridge.

Q And during the time that you were writing her these loving letters, you were going out with this young lady at night? A As I have stated, yes.

Q Why? A The same as I would go out with any congenial person when I was alone. I went

in perfectly public places and I didn't consider it wrong in the least.

Q Did you feel any interest in this young lady at that time? A No interest except the general friendship, interest in, or attraction for any congenial person.

Q You had, as I understood you to say to Mr. Lum—you were living unhappily with your wife? A I certainly was.

Q During the summer of 1926, when you were writing these letters to her? A Yes.

Q You were still unhappy with her? A I certainly was.

Q The letter didn't express, then, your real feeling? A I have learned to be diplomatic.

Q Did they express your feeling, or didn't they? A No.

Q They didn't express your real feeling? A No.

Q They were written, then, for the purpose of fooling your wife, is that right? A It was to keep peace in the family.

Q For the purpose of fooling your wife? A To keep peace in the family.

Q Was it for the purpose of fooling your wife? A It was for the purpose of keeping peace in the family.

Q By fooling your wife? A By that method, or whatever you wish to term it.

Q And during the time that you were writing these loving letters, which did not express your real feeling toward your wife, you were going out with this young lady? A To the extent I have already stated.

Q And you went to the young lady, do I understand it, for sympathy? A No.

Q For what, then? A For companionship.

Q What? A For companionship.

Q Sympathy, because of your matrimonial troubles, is that right? A I said for companionship.

Q What kind of companionship? A Someone to go to dinner with, someone to go to the theatre with.

Q And that episode in August of 1926 was the second time that you and your wife had some discussion with respect to this young lady, wasn't it? A No, sir; it was not. It was the first.

Q Sure of that? A Absolutely.

Q Are you sure that Miss Hass' name was not mentioned in the spring of 1926? A No, positively, it was not.

Q Did Mrs. Pfender, when she talked to you in August of 1926, at Westport, mention Miss Hass by name? A No, she did not.

Q Did she refer to her in such a way as to indicate that she (Mrs. Pfender) knew who the lady was? A No, she did not. I volunteered the information.

Q She didn't know who the lady was? A She didn't know that there was anybody.

Q She said she did? A Yes, but that didn't mean anything to me.

Q And what was your reply to her when she said, "What do you mean?" or "How can you write these loving letters to me, and at the same time do this thing?" A I don't recall what her reply was.

Q Didn't you make any reply to it? A Without doubt I did, but I cannot recall my words.

Q You remember the letters which you had written her in the spring of 1926? A I remember when they were shown here to me.

Q You remember them now? A I remember them now, because I remember them being called to my attention at the time of the trial, yes.

Q You remember that those letters, which were written in the spring of 1926, had no love and affection in them at all? A Do you mean letters, or do you mean memoranda?

Q I don't know whether memoranda or letters; they were written by you. A There were some memoranda that I wrote her in answer to those that she wrote to me. It was impossible to talk with her, and that was my only method in answering her suggestions made in those memoranda.

Q These letters, or memoranda, or whatever you may call them, sent by you for her perusal, in the spring of 1926, did not contain any love and affection whatever, did they? A I don't recall that they did; there was no occasion to at that time.

Q And they were none of them addressed "My darling wife" or "My dear wife" or "Dear Peaches," were they? A No, I don't think that they were, any more than hers to me were.

Q You recall that in the letter or memorandum of May, 1926, which is addressed "Lillian," you advised your wife that you have changed, and that you, in effect, insist that you live separately; you remember that? A That I insisted that we live separately?

Q Yes. A As I recall it, Mrs. Pfender suggested and insisted that I leave her in the home with her pets and provide her with sufficient money to live in this big, expensive house alone, and I go elsewhere.

Q Now, will you tell me why it was that the tone of your memoranda or letters—your

letters, rather, or the memoranda, to your wife, changed from the spring of 1926 to what they were in the summer of 1926; those in the spring of 1926 containing not a single word of love and affection, and those in the summer of 1926, when you were in New York, and she was at Westport, contained all kinds of expressions of love and affection? Why the change? A I had made up my mind to make one last attempt to live with Mrs. Pfender. I had started this home; I had stopped it with her statement that she wanted me to leave her and let her live where she was; then I made one last attempt and I said, "I will go on with the house if you want me to, and we will see whether the thing will be satisfactory or not. If it is, all right. If it is not, I will make this attempt." And I went the limit in trying on my part to make her feel happy and satisfied that I was going to do my best.

Q So that the letters, which I understand were written in the summer of 1926, were written as part of your last attempt? A Yes.

Q They were? A Yes.

Q And while those letters were written as a part of your last attempt, letters which falsely expressed what you thought, didn't actually represent your feelings at all. As a part of your effort did you still go out with this lady and tell your wife about it in August? A I did, as I had stated.

Q And that was a part of your last attempt? A Things were in such a condition that I didn't consider that I had any further reason to make any attempt.

Q And when you said that you had no idea at all that your wife would be— A I knew that she had accused me so many times falsely, that

anything that she—she has plainly stated to me that she had me followed, and people had written anonymous letters; she had done everything under the sun to try to make it appear that she knew something against me. There was nothing.

Q And so you continued right straight along up to the time that you left your wife in October, I think, of 1926, and during all the progress of this case, not only to go out with this lady in the way in which you had, but to go out with her much oftener, and your love increasing in intensity as time went on; is that right? A Yes.

Q And during the time of the trial in this case before this court, you were going out with her to a much greater extent than you had been going out with her in October of 1926; that is right, isn't it? A Yes; I have told you that.

Q As I understand it, you left on the night of June 29, at eight o'clock, for South Salem, which is about fifty miles away? A Right.

Q And Mrs. Hass said that she would go on the train that left the Grand Central when? A As I recall it, sometime around nine o'clock, 125th street, I believe.

Q Do you know how long it takes to run from the Grand Central to Katonah? A It depends on whether it is an express or local; anywhere from an hour and a quarter to an hour and three-quarters and two hours, I should say. I only travelled on the train two or three times.

Q Did you know what time the train actually was to leave the Grand Central that she was to take? A I knew it was about nine o'clock.

Q As I understand it, when she got to Katonah, if she couldn't get a taxicab to carry her—how many miles? A About nine miles.

Q —she was then going to telephone the cottage to have you come over and get her? A Right.

Q Was there any suggestion that by the time that she got to Katonah you might not be anywhere near the cottage? A We allowed three hours and over.

Q How long did it take you to go from New York to the cottage? A About two hours.

Q So that you got to the cottage about ten o'clock? A No, it was later; it was storming very heavily.

Q How long did it take? A Between half-past ten and eleven. I don't recall exactly.

Q When did this storm start? A Very shortly after we left the apartment.

Q Where were you when the storm started? A I cannot recall exactly; it was probably somewhere on the Bronx Parkway.

Q How long did the storm continue? A It continued until late in the evening. It was storming when I retired, at one o'clock.

Q Was it a rainstorm? A It was raining and blowing.

Q Was it raining from the time you left the apartment, about eight o'clock, until the time you retired for bed—which was when? A One o'clock, about.

Q Was it storming in the morning? A I don't recall that it was.

Q When you got to the bungalow what did you do? A I drove the car down the hill and into the garage, and then we started to unpack the things and bring them up the stairway. We did that instead of bringing them in through the doorway, because it was raining very hard.

Q Telephone installed? A Yes.

Q When? A The telephone had been installed prior to that because we had been there one night—overnight, and had been there several times up and back.

Q Who were there overnight, that night? A Mrs. Hass, Miss Hass, the little girl and myself.

Q When was that? A That was sometime in June. I cannot say exactly; it was over a Saturday afternoon to Sunday afternoon; over Saturday night.

Q Who was paying the expense of the bungalow? A I paid the rent of the bungalow

Q When did you take the bungalow? A The bungalow was taken, I believe, the first part of June, 1928.

Q Where did you get your dinner that night? A Which night?

Q The night of June 30. A I think we got it at the apartment. June 29, you mean?

Q June 29. Don't you remember? A I remember, yes; but you don't.

Q Where did you get your dinner that night? A You asked me, of June 30.

Q June 29. A That is right; I corrected it. June 29th we had our dinner at the apartment.

Q And when you got to the bungalow what did you do after you unpacked your things? A I have already stated—after we unpacked the things, they were put in various places; we had personal clothing, some of which I hung in my room; there was only one small closet; and the bed linen, and towels and such things, were put in their proper place. The drawers in my dresser were used for some of the extra linen.

Q And then what did you do? A The beds were all made up.

Q Then what did you do? A After what?

Q After you had put the things away. A After the things were put away, it was about one o'clock. I then went to my room and Miss Hass went to her room, and we were both fully dressed, with the exception that I had my coat off—it was a very warm evening in June; and from the time I left Miss Hass and she went into her room fully clothed, I did not see her until the following morning, and did not speak with her, had no communication whatsoever with her.

Q Kiss each other good-night? A Yes.

Q Kiss each other when you got to the cottage, when you went into the house? A No.

Q Kiss each other at all before you said good-night? A Not that I recall.

Q Put your arms around her at that time? A Not that I recollect.

Q Very much in love with her, weren't you? A I stated that I had the highest love and regard for her.

Q When was it that you first heard that Mrs. Hass wasn't going to go up? A When we got the telephone message, shortly after eleven o'clock.

Q What did you say? A I wasn't on the telephone.

Q What did Miss Hass say? A She said, as I recall it, "Aren't you coming up?" to her mother; she said, "No, it is storming too hard here, I will not come up."

Q What else did she say—Mrs. Hass? A I simply know it from hearsay, because I could only hear one end of the conversation. Then, as I recall it, Miss Hass said, "Then we will come down." Mrs. Hass said, "Don't be foolish; I wouldn't think of having you come down in

this terrible storm. You stay there, and I will be up tomorrow."

Q What else was said over the telephone? A I don't recall anything else.

Q After Miss Hass put the telephone down, what was said? A Nothing at all. That was the statement, and we went right ahead without any thought of any wrong, and unpacked the things.

Q Didn't somebody suggest why it was that Miss Hass had said, "Then we will come right down"? A Nobody suggested it.

Q Wasn't there any talk about that; wasn't there any talk between you two about staying alone there in that house? A I have told you what the conversation was. We had Mrs. Hass' confidence that it was all right, and we simply stayed.

Q I am not talking about Mrs. Hass. A There was no conversation aside from what I have already stated.

Q So that Miss Hass said, "We will be right down," because Mrs. Hass wasn't coming up, and not a single word other than that was said? A Not that I recall.

Q Did Miss Hass say why it was that she had suggested that you come down that night, instead of staying there? A She didn't say anything further, that I recall.

Q Did you have any thoughts in your mind about it? A I had Mrs. Hass' repeated conversation that it was all right for us to stay, and that ended it, so far as I was concerned.

Q You thought the O.K. of Mrs. Hass made it all right? A I don't see any reason why it shouldn't. It would be a low kind of a dog that would take advantage of the confidence of

a mother in the man that her daughter was with. I don't think I have the reputation of being that kind of a man.

Q You thought it was perfectly proper that you should stay there—because some people might have evil minds? A I know people have evil minds.

Q You knew they had evil minds? A Yes; I know it now.

Q But you didn't know it then, after living fifty-three years in this world? A Such a thing never entered my mind; I never had any occasion to think that there were such people in the world.

Q Notwithstanding all that your wife had accused you of for two solid years, you thought there were no such people in the world? A I knew they were all false.

Q You were perfectly willing to expose this girl to what awful minds might say about the girl you loved? A I told you I had no thought. The fact that I loved the girl was sufficient for me. I had no thought of leaving her there in that lonely place and going anywhere else, or risking a trip down to the city at night.

Q What reason was there for not taking a train? A It was storming very hard; it would have been way in the morning. If some of the detectives had been following me, it would be a pretty story then.

Q What was the nearest hotel? A It was an old-fashioned thing, two and a half miles away.

Q There was a hotel to which you could have gone alone, or Miss Hass? A Yes, but that never entered my head to do such a thing.

Q It never entered your head? A No.

Q After Mrs. Hass had said that you shouldn't drive right down, it never entered your head; you just sacrificed yourself to that extent, rather than sleeping in an old-fashioned thing; you never thought of that? A No, I never did.

Q Look at Exhibit D. 6; will you tell me what it is that you say prevents you from seeing any part of the interior of that room; that is, sufficient of the interior? A A built-in staircase.

Q I don't care about going downstairs. As I understand it, this projection that appears, is inside of that doorway? A Yes.

Q You say that a person standing at that doorway, assuming that door was off now, couldn't see three-fourths, at least, of the bed inside that room? A No, they couldn't.

Q Do you know how many inches that staircase comes out from the wall? A I don't know.

Q Have you measured? A I haven't.

Q Have you made any test? A No, I have not.

Q Then how can you say that you can't see? A Because I know that the position of it shows only a corner of the bed.

Q Have you made any test? A I have been there several times.

Q Have you made any test for that particular purpose of seeing whether if the door is off— A I have seen the photograph. I have been there; I have a very clear picture of the whole interior of the bungalow.

Q When were you last there? A Sometime in July or August, I believe, when I went with my lawyer.

Q With whom? A I don't remember whether it was Mr. Bovier or his attorney.

Q Who were in the party? A I think at the time Mrs. Hass was with us. I know at one time she was.

Q Who else? A I don't recall; there were three of us.

Q Can't you recall some of the others that were there? A I think it was Mrs. Hass and Mr. Bovier at one time, and I think again Mrs. Hass was with us, or Mr. Bovier's partner was with us, and once I know I was there with Mr. Bovier's partner and the photographer who took these photographs.

Q When were these photographs taken? A In July, this year.

Q You were there with Constable Hull? A Yes.

Q On one occasion; that was when? A That was either in July or August; I think it was in July.

Q How did you come to go there with Constable Hull? A I went there with him so that I could recall the circumstances.

Q Who put you in communication with Constable Hull to go up to that place? A It was the natural thing for anybody; I thought about it; my lawyers thought of it immediately that there was a disinterested witness.

Q I ask you who, which one? A I did, for one.

Q Who was the lawyer who told you, or put you in contact with Constable Hull? A It was through my attorney, Mr. Bovier, that I got in touch with him.

Q Who was present; who approached Constable Hull? A I don't know, except possibly it was Mr. Davis.

Q Who is Mr. Davis? A He was my attorney for the case in Westchester County.

Q Were you in touch with the prosecutor's office of Westchester? A Personally, no.

Q Through your counsel? A Yes.

Q Was it through your counsel, through the prosecutor's office of Westchester, that you got Constable Hull to come down there to this place? A It might have been.

Q Was it? A I cannot state; I didn't have any—

Q You know; what about that conference? A I suggested immediately that Constable Hull was a good witness in the case, disinterested.

Q I ask you whether it wasn't through the prosecutor's office, through counsel, with his influence with the prosecutor's office, that you got in touch with Constable Hull? A I stated it was through Mr. Davis, that my attorney got in touch with Mr. Hull.

Q Through the prosecutor's office? A No, not through the prosecutor's office.

Q Through whom? A Through Mr. Davis.

Q Whom did Mr. Davis see? A I don't know who Mr. Davis saw, I wasn't there.

Q How many times were you down there, or was Constable Hull down there at this place? A Once, as far as I can remember.

Q When he was down at the place, who was there? A I think Mr. Bovier was there.

Q Anybody else? A I don't recall that anybody else was there on that occasion.

Q Mr. Davis, your counsel in New York, the man you refer to, was the former prosecutor of Westchester? A I believe he was; he occupied that position.

Q The state's attorney, or district attorney of Westchester, isn't it? A I believe he is; that is what I understood.

Q When did you retain him? A The first part of July.

Q How soon after you retained him was it that you got in touch with Constable Hull? A I cannot tell you; I personally did not get in touch with him.

Q When was it you had this meeting with Constable Hull? A I cannot recall the exact date.

Q When was it that you engaged this bungalow? A I have already stated it was—I personally did not engage it—it was engaged the first part of June, 1928, as I recall it.

Q Have you been to the bungalow to stay since the thirtieth of June? A The thirtieth of June? Yes. I stayed, I think, until the afternoon of the third or fourth, I guess it was; I spent two other nights, I think, there, and I came down on the Fourth of July, and I have not been there since, except when I was with my attorney.

Q Who stayed at the house during those nights, July 1, 2 and 3? A Mrs. Hass, Miss Hass and family.

Q When did Mrs. Hass come up? A She came up, as I recall it—we went down the thirtieth; we didn't stay there at all; we immediately went down as soon as we could get ready.

Q Then when did you come back? A I think it was probably Saturday afternoon, I don't recall; I think the Fourth of July was on Wednesday.

Q How did you come down that day? A In my car.

Q Who went? A I have stated that Mrs. Hass and Miss Hass and Thelma were there.

Q Did you all go up together this time? A Yes, we did.

Q What time did you get to the bungalow then? A I don't recall; I have no occasion to recall it.

Q And did all of you stay there then until over the Fourth of July? A Yes.

Q How did you sleep in this bungalow while you were all there? A I slept in my room in the single bed; Mrs. Hass, Miss Hass and the little girl occupied the big room, which contains a double bed and a single cot, as the picture shows.

Q When you slept in the apartment at 911 Walton avenue, Bronx, how were the sleeping arrangements there? Take this diagram, Exhibit D. 6. A I will indicate it for you. This room, marked "living room," was occupied by Mrs. Hass, Miss Hass and the little girl; a day bed and a double bed here (indicating); this (indicating) is the foyer hall, and kitchen; the dining room was the largest room in the house, as you see, and was used as a living-room. This was my room here (indicating).

Q Room marked "Chamber?" A Yes.

Q When you stayed all night at the two-room apartment, at the Grand Concourse, how did you sleep? A I slept on the couch.

Q In one room, while the women slept in the other room? A There was a living-room and bedroom. I slept on a couch in the living-room, and they slept in the bedroom.

Q When you were not at the apartment before you moved there permanently, you stayed over night; I understand you slept that way.

When you were not there, how did the people sleep? Do you know? A Not being there, I cannot tell you.

Q Don't you know? Weren't you there often enough to know whether you discommoded them or not, or whether they left that vacant? A It was understood that that room was for my use.

Q So from the first time that they went to this apartment, that room was never occupied by anybody but you? A I cannot say.

Q It was supposed not to be? A Yes, but they had a right to use it.

Q The rooms in the Grand Concourse apartment, when you were not there, how did the parties occupy them? A When Mrs. Hass and Miss Hass were there, they occupied a double bed, I suppose; there was also a day bed there, where Thelma slept when she was there.

Q I understand that at the time that party came to that house, or to the bungalow, on the thirtieth of June, you were still asleep? A I was dozing in my bed.

Q Were you awakened by them or not? A As near as I can state, I was.

Q How? A I heard the footsteps, and I heard the knocking, and I sat up in my bed, as I have already stated.

Q You just sat up in bed? A I did, and looked out the window, the only way I could look out the window.

Q And you looked out of the window; whom did you see? A I saw Constable Hull.

Q See anybody else? A I don't recall that I did.

Q What did he say? A I have already stated this.

Q State it again. A He said, "Are you Carl D. Pfender?" I said, "Yes." He said, "I want to speak with you," so I put on my slippers and walked out of my room, in through the kitchen, and opened the door; he said, "You are under arrest." I said, "What is the charge?" He said, "Adultery." "Anything more, sir?"

Q Did you ask him what he wanted when you were at the window? A Oh, he said, "Come out here; I want to speak with you."

Q Did he say why, or what for? A No; I immediately got up, and went around to the door and opened it.

Q Did you wake Miss Hass up or say anything to her? A No, I did not speak with her.

Q Had you any idea as to what it was all about? A No, until I got out and they told me what the charge was.

Q Then did you say anything else to Miss Hass? A I only spoke to her when she spoke to me. She said—

Q How did she appear on the scene; what happened? A After she was dressed, she came out with a kimono on; she came out of the door. The men were all there in the kitchen.

Q When the men came into the house, was her door closed? A I don't recall that it was; probably not.

Q Was the door open? A Probably it was; I cannot state.

Q You were there. A Of course, I was there

Q Was her door open? A In to the living room; I came out and turned to my left, my back was to the door; I naturally wouldn't look and see if it was open

Q You had to pass through that living-room to go to the front door, didn't you? A I did not go to the front door; I went to the back door

Q You had to pass through the living-room? A Yes; my back was turned toward her room.

Q You didn't look when you turned around and walked back again; you didn't look to see whether her door was closed? A I don't recall if it was closed.

Q If it wasn't closed, you could look in? A I could look in and see the dresser only.

Q Of course, these people made some noise there? A They came in.

Q Didn't you see Miss Hass close her door before she went to bed? A No; I immediately went to my room.

Q So you don't know whether she closed her door during the night or not? A I don't know anything about that.

Q Did you close your door? A My door was open.

Q Your door was open all night long? A Yes.

Q So that so far as you know, at least, in this summer place neither of you closed your doors, which was the only thing you could do to give yourself a little privacy, at least? A No, there was complete privacy in both rooms, unless you went up to the door.

Q Both doors opened on the living room? A Yes.

Q And both doors were close together? A If you will take the trouble to look at the photographs, you can see exactly what—

Q Yes, I now see that one door opens practically into the other? A No, it does not; there is a space there.

Q How much of a space? A About three feet.

Q Where? A There is a space over here. There (indicating) is the door; I came out here.

Q I want to know where the space is between the doors. A I am wrong; it is only a small space.

Q It is not a space at all; they both practically open into each other? A Yes.

Q Right at the corner? A Yes.

Q Right into the living-room? A Yes.

Q So far as you know, both of you slept in that bungalow all night long with these doors open, is that right? A Yes.

Q And when you got up and walked into the—didn't you even think of closing your door? A No, of course I didn't; there wasn't a light in the house. You can undress in that house without your lights being on; I went into my room to undress, and got into my bed.

Q Why can you? A Because there wasn't a shade in the whole house.

Q Where there any other houses near? A There was a house to the west, just before you got to this house.

Q People whom you knew? A No.

Q People whom you expected to know? A Yes.

Q And people you would expect might know that you were staying all night in that bungalow with Miss Hass? A I know all about that; the windows were wide open, and the lights were on.

Q Did you tell Mr. Lum, when you had your telephone conversation with him, that you were alone in the house with Miss Hass, but that it was all right, that the windows were all open? A I certainly did. I don't recall that I said

that the windows were open; I told him that I was there alone.

Q Didn't you say that the windows were open? A I don't recall that there was any occasion to say that; it never entered my head to say anything about the windows.

Q You just said a few moments ago, in explaining how light it was, you said everything was open, and the windows were open. A Of course, they were.

Q And whether the windows were open or shut, did that have anything to do with whether adultery should be committed? A No, not with a bungalow with no shades, and where a person could look in, whether the windows were open or closed; it was wide open to anybody.

Q No person could look in through the window of the room in which Miss Hass was sleeping, could they, without a step ladder? A They could get up there if they wanted to. They would have to have something to step on.

Q (Last question repeated). That window of that room is over the garage, isn't it? A Yes.

Q And the garage is at least ten feet? A I presume it is.

Q And he would have to climb up a step-ladder ten feet to look into that window; no, more than that—fifteen feet, because he would have to go above the height of the garage—then from the foundation of the house up to the base of the window, wouldn't he? A Yes; I doubt whether Foster could do it.

Q I doubt it, too, and no one else could do it. A Yes, I could do it.

Q If you had a step ladder? A No, I could do it. I am agile, but you don't have to be, to climb up. You can stand at the driveway

and look right down into that room through the window.

Q You can look down in the window of the room in which Miss Hass was asleep? A Yes, you certainly can.

Q Take the room in which you were sleeping; have you measured to find out how far from the ground the base of the window is? A No, I have not measured it accurately.

Q Have you gone on the ground and stood underneath that window to see where the base of the window comes with reference to the height of your head? A Yes.

Q You know that the base of the window goes above the height of your head, don't you? A No, I do not.

Q How far does it? A I should say that it don't come up much above that (indicating), say my head. I could look plainly into the room.

Q The house is up there now in the same position it was, so far as that part is concerned? A Except for the changed door which you have stated.

Q So far as that part is concerned, the house is the same now? A Yes, unless you have changed it; I haven't.

Q As I understand it, you have made this test; is that right? A I have stood there and looked in.

Q I want to be sure about it. You say that if you walked up to that window, right up to the house, and stand against the house, that the base of the window only comes up to your shoulders; do you mean that? A I should say that was about right.

Q You have been there? A I have been there, but I don't testify to the exact inch.

Q You have been there and stood there for the purpose of finding out, haven't you? A I have stood on the path and looked in and could see the bed.

Q I didn't ask you that; I asked you how far the base of that window came above the ground, and you told me it only came up to your neck. A Approximately to my shoulder.

Q You have measured it by standing against it, is that right? A I haven't stood against it; it wasn't necessary; anybody can see from the sidewalk.

Q How high are you? A About five feet ten and one-half.

Q Do I also understand you to say that the bed in this room in which you slept—was the bed placed with the headboard flush with the wall, up against the wall? A As I recall it, absolutely up in the corner; it had to be, to get the dresser in and leave a very small space between.

Q Do I understand that the dresser, as shown in photograph P. 3, is in the same position as it was on June 30? A As far as I can recall, absolutely.

Q Was it? A Yes, it was in the corner when that photograph was taken.

Q Was it in the corner facing the way it does now? A Yes.

Q You are sure of that? A Yes.

Q Is there a way by which you can change it? A No, except that you put the bed where the bureau is and the bureau where the bed is.

Q Can't you turn that bureau around so that the short end comes between the bureau and bed? A You could, if you wanted to.

Q That would make considerable more space between the bed and the bureau, wouldn't it? A Yes.

Q Do you swear that that bureau was in the position that it is as shown in the photograph, or was it changed to show that there was the space? A It was absolutely in the corner and in the position that this photograph shows it.

Q I know that it was in the corner, but it was faced the way the photograph shows it, wasn't it? A It was faced the way the photograph shows it to face.

Q So that it didn't face the bed? A No, sir. The longest way was the longest way of the bed.

Q I show you photograph P. 1, was that a photograph taken by you, or your people? A If it is not, it is one similar to one taken; I cannot swear this is the exact photograph.

Q You remember taking— A I remember taking a photograph similar to this.

Q With someone sitting in the front window? A There is a figure there.

Q How is that figure sitting? A Sitting on the bed.

Q How? A With the head toward the corner and feet toward the foot of the bed. I believe the picture was taken—at the time that the picture was taken, I sat in that position.

Q The lady is sitting on the foot of the bed with her feet over between the bureau and the bed, isn't she? A I testified that I believe that was myself.

Q Which ever it was, is sitting that way? A The feet are toward the bed; the feet toward the foot of the bed, and the head toward the head of the bed.

Q The feet in that photograph are hanging over the end of the bed, between the bed and the bureau, are they not? A If this photograph was of me, it was when I was sitting completely on the bed in the position I was when Constable Hull talked to me through the window. If it is someone else, I cannot testify.

Q Wasn't there room between the bureau and the bed for somebody to sit on the foot of the bed, and have room for their feet between the bureau and the bed? A Not, and looking out in the position that I looked.

Q Looking out in the position that that figure seems to be looking out? A No, sir.

Q You said that you were not known at the apartment at any time as Mr. Hass? A I certainly did say so and it is the truth.

Q How were you known? A I was known as Mr. Pfender to anybody whom I had spoken to. I had given my record and the record of my name there.

Q Whom did you give it to? A To Pat White.

Q Who made the arrangement for the rental? A Mrs. Hass and Miss Hass.

Q Was any statement made to the rental agent as to your occupying the house? A Of course not; why should there be?

Q Did you talk to the superintendent of the building? A I was with Mrs. and Miss Hass when they made the arrangements.

Q Was there anything said about your occupying a part of the building? A Not that I recall.

Q You went there with Mrs. Hass; was Miss Hass there, too? A Yes, both of them.

Q Both of you went to the rental agents to make arrangements for the renting of the apartment? A I went to the apartment owner with them. I didn't make the final arrangements, nor was I there when the lease was signed or drawn.

Q You went there when arrangements were made? A I went there when they first looked at the apartment.

Q And was anything said as to who you were then? A No.

Q Nothing said? A No.

Q You walked into the rental agent's with Mrs. Hass and this young lady, and I understand Mrs. Hass did the talking; is that right? A I suppose she did.

Q Did she? A I suppose she did, and her daughter also. They probably both talked.

Q You just stood by? A Yes.

Q And nobody asked who you were? A No.

Q You didn't tell anybody who you were? A No.

Q You didn't assume for a moment that the rental agent of the property, under those circumstances, would take you for Mr. Hass; did you not assume that for a moment? A I didn't think it, because I have never gone as Mr. Hass, and why should I all of a sudden get the idea that someone would call me Mr. Hass?

Q You never thought that assumption might be drawn? A I certainly did not.

Q Did you guarantee the rent? A I did not.

Q How often did you go to the rental agents with Mrs. Hass? A I didn't go at all; I told you that I went and looked at the apartment.

Q And looked at the apartment before they went? A Just once; they completed all the

other arrangements; I had nothing to do with them.

Q Do you know where the arrangements were made or with whom they were completed? A I don't know where or with whom; it was probably with the agents of the building.

Q Who are they? A I don't know.

Q Did anybody in the apartment house, any of the employees of that apartment house, ever call you Mr. Pfender? A Yes.

Q Who? A Pat White. If he didn't he should have.

Q I didn't ask you that. A I don't know whether they called me that or not.

Q Did any one of those people ever call you Mr. Pfender? A I don't recall whether they did or not.

Q Did you do anything during the time that you were in the apartment which would be any different—or living in that apartment, which would be any different, as far as you can say, from what you would have done, if you, in fact, had been Mr. Hass? Any single thing. A I don't recall that I have done any. I was Mr. Pfender. I had given notice to the proper party that I was Mr. Pfender and that I expected my mail, and further than that, I saw no reason to go.

Q Did Mr. Dougherty know where you were living? A He stated that he didn't.

Q I didn't ask you that; I asked you whether he knew? A I didn't tell him.

Q Why didn't you tell him? A There was no occasion to. It wasn't any of his business.

Q He was a friend of yours? A Yes.

Q The nearest friend that you had? A Yes.

Q Testified here in the divorce case for you, a man upon whose advice you acted when you left your wife; that is right? A Right.

Q And you had been living with him for a year? A That is right, fifteen months.

Q You lived with him; you left him and you never suggested as to where you were going? A I told him I was going to the city to live.

Q No ordinary common talk between friends as to where you were going or what you were doing? A No. No occasion for it, that I could see.

Q Of course, you didn't conceal it from Dr. Dougherty because you didn't want it known that you were living over there? A I had no reason for concealing it any more than I did for telling it.

Q Did you after you went to live in the apartment over there in New York, ever visit the Doughertys? A I don't recall that I ever went to their house, but I visited with them in New York City, dinner and theatre.

Q How often? A Several times, after I left.

Q And you left him at what hour? A I left them around twelve o'clock—or about eleven, I should say, after the theatre got out, and returned to the Hass apartment.

Q Did Miss Hass ever go on any of those occasions? A Yes, Miss Hass was with us several times.

Q Mrs. Hass, Miss Hass, Dr. Dougherty and his wife and yourself? A Yes.

Q You all went to the theatre together over in New York? A Yes, theatre and dinner.

Q Did you go to the theatre together that way during the pendency of this suit? A No, I think it was after the first of January.

Q Do you know? A As far as I recall, I think it was during 1928 that we went together.

Q How many times did you and Dr. Dougherty and Miss Hass, yourself, and Dr. Dougherty's wife go to the theatre in New York? A Two or three times.

Q What was the latest time? A The last time? The last time we went was in June. We had planned another meeting, and the way I set the time is, that Dr. Dougherty's son was killed around the twentieth of June, and that was just a few days before this episode in South Salem, and we didn't go together after that. I wrote Mr. Dougherty immediately and told him of the circumstances; at least, I didn't give him any—

Q So Dr. Dougherty and his wife and Miss Hass and yourself, as late as a few days before the episode at South Salem, in June, went to the theatre together, and I suppose you left the Doughertys and took Miss Hass away? A Yes.

Q And that, as I understand it, there have been several occasions like that, extending, at least from the first of January, 1928, up to that time? A I said there were two or three ocasions.

Q And the earliest of them, you will not swear, was not during the pendency of this suit; will you? A I am very positive it wasn't; I have just stated it was during 1928.

Q And yet you never suggested to Dr. Dougherty where you were living? You mean that? A I do, positively, mean that I did not suggest it.

Q Dr. Dougherty never expressed any friendly curiosity as to where you were living? A He is too much of a gentleman to suggest such a thing.

Q And I suppose Dr. Dougherty knew that you were in love with Miss Hass? A I don't know how he would know it.

Q What? A I don't know how he would know it.

Q Was there any suggestion made as to why you and she were parties to this company? A I simply said when I invited them, "Would you like to go to the theatre with Miss Hass and I?" and they said, "Yes."

Q Anything said about your relations? A No. He knew that I had to have some companionship.

Q Have you and Miss Hass ever gone out in New Jersey anywhere together? A Yes.

Q Where? A When I went to Mr. Dougherty's home, when I got my clothing, I drove Miss Hass there, and I got my clothing, and then we drove back to the city.

Q When was that? A That was during the holidays of 1927.

Q And did you see Dr. Dougherty on that occasion? A Yes.

Q And did Miss Hass go into the house? A No, she didn't.

Q Did Dr. Dougherty see Miss Hass? A He did not at that time.

Q Where had you picked up Miss Hass on that occasion? I am not using it in an invidious sense; where did you get her? A I presume it was up at the apartment. The car was in the garage; I presume I had to go up there to get the car; it wouldn't come down of itself.

Q So you took Miss Hass over to the doctor's house, to get the clothes? A I took her to the town; I didn't take her in.

Q Did you take her to the house? A To near the house.

Q How near the house did you take her? A She stayed at the Library in Bloomfield.

Q While you went to— A While I went around the corner to Mr. Dougherty's house.

Q Why did she stay at the Library in Bloomfield? A Because I wouldn't, with all the publicity that had been given to the case, I would not impose anything on Mr. Dougherty more than I had in my presence.

Q So you left, in those early days, way back in October, 1927— A I beg your pardon; that was in the holidays.

Q Well, in the holidays, 1927, you left Miss Hass at the Library in Bloomfield, and didn't take her up to Dr. Dougherty's house because you didn't want to expose Mrs. Dougherty to trouble? A I said that I didn't want to have any unpleasantness; I didn't know who might be there. I wasn't going to go in myself and appear before their friends. There had been broadcasted all over this part of the country stories that were untrue and unpleasant about me, and I would not have made any more unpleasantness for anybody, through me.

Q Why did you bring Miss Hass over at all? A For company.

Q You couldn't even come and get your clothes from Dr. Dougherty's house without Miss Hass accompanying you for company; is that right? A I could have, but I didn't choose to.

Q You chose to take her as close as you could to the Dougherty house, or as close as you thought safe to the Dougherty house, put her out of the car, and let her wait for you? A I have stated what I have done.

Q Is that so? A I have stated exactly what I did.

Q And you loved her at the time? A I had very great affection for her, yes; which is why I didn't leave her in the cold car; I took her to a warm library.

Q Any other time when you took Miss Hass to New Jersey? A When she was ill in the spring, we all drove down to Lakewood and back again, on several occasions, when Miss Hass was down there.

Q Let us talk about the Lakewood episode, for a moment. Where was she staying in Lakewood? A Staying at a hotel, a rooming place.

Q Which hotel? A I forget the name of it; it is the only Gentile place there, I understand.

Q Which is— A I don't recall the name of it.

Q Who found it? A It was recommended to them by some friends of theirs.

Q Did you have anything to do with their going there and picking that hotel? A No, sir, I didn't have the least to do with it.

Q When was that? A In the spring, around March, 1928.

Q How long was she there? A She was there several weeks.

Q Alone? A She was there with the little girl part of the time, and when the little girl came back, a friend of hers was there with her.

Q Did you go down and visit her? A I went there, yes.

Q Did you stay there? A I stayed there over night.

Q Where? A I stayed in the same place, in another room, during the time Thelma was there, or this friend.

Q How long did you stay down there at the same place? A I don't know; I don't recall,

but more than twice. Mrs. Hass and the little girl were with me on all but one occasion, possibly on all occasions.

Q But you don't know the name of the place?

The Court: Was it Mrs. Seitz?

A Mrs. Levine kept it. There was a church on the corner, and it was on the opposite side, the second or third house on the right-hand side of Lakewood; there is a church on one corner; it is on the main street; I forget what it is called.

The Court: Hotel Ardmore?

The Witness: It is the Willis, I think, and it is Mrs. Levine who keeps it.

Q Any other occasions that you have taken Miss Hass out in New Jersey? A I don't recall any other occasions.

Q Have you had her up to the Glen Ridge house? A Absolutely no; never.

Q That Glen Ridge house stood in the name of yourself and wife at the time of the divorce proceedings? A Quite right.

Q Who bought the property? A I bought it.

Q You own it? A I paid for it.

Q I say you own it? A I owned it with Mrs. Pfender; you just stated that.

Q Do you own it now? A No, it has been sold.

Q Who bought it at the time you and your wife sold it? A We jointly owned it.

Q Who bought it? A I beg your pardon; Mr. Beard bought the house.

Carl D. Pfender, cross.

Q Didn't he hold it for you? A No.

Q Have you any interest in it? A Absolutely not.

Q Is he living in it? A I understand he is; I haven't been there to see.

IN CHANCERY OF NEW JERSEY.

Between

CARL D. PFENDER,
Petitioner,

and

LILLIAN E. PFENDER,
Defendant.

Transcript of stenographer's notes of further proceedings in the above-entitled cause before the Honorable MAJA LEON BERRY, a Vice-Chancellor of the State of New Jersey, at his chambers, Industrial Office Building, Newark, New Jersey, on Wednesday, the 28th day of November, 1928, at 10 A. M.

Appearances:

Messrs. Lum, Tamblyn & Colyer, Ralph E. Lum, Esq., of counsel, solicitors for the petitioner, Carl D. Pfender.

Merritt Lane, Esq., and D. Eugene Blankenhorn, Esq., solicitors for the defendant, Mrs. Lillian E. Pfender.

CARL D. PFENDER, recalled for further

Cross examination by Mr. Lane.

Q Mr. Pfender, this apartment that was occupied on the Concourse Plaza, I think it was, and which you described as a two-room apartment, what kind of a building was that in? A It was an apartment building.

Q Did it have a name? A Yes, I believe it did, but I don't remember what it was.

Q Was it a housekeeping apartment building or a building that you got your meals in the same place? A It was a place with a kitchenette, as I said before.

Q Was there meal service in the place or not? A Not that I know of.

Q You said that during the time that Miss Hass was in Lakewood you visited there and stayed overnight? A I did.

Q In the same place? A In the same house once, and once I had to go out to another place. Mrs. Hass and Thelma were there. We all three went out to another place. Miss Hass stayed in another house.

Q That was in March of 1928, wasn't it? A I don't recall whether it was March or April, about that time.

Q How often did you go down there? A Why, I think it was not more than three times.

Q How long a time did you spend at the place? A As I recall it, I went down once on a Friday night, and the other times, I think, I went down Saturday.

Q You went on a Friday night and stayed over until when? A Until Sunday afternoon.

Q And once you went down Saturday and stayed over until Sunday night? A Yes, I think that was about it; I don't recall positively.

Q Did you register? A I believe I did. I don't know whether there was a register in the house. It was a small place.

Q Do you recollect? A I don't recollect whether I registered or not, where I was introduced as Mr. Pfender. I may have registered and I may not; I don't recollect.

Q Do you know that there is a register in that place? A I am not positive of that. There may be. I am not sure; I don't recall.

Q Have you any recollection of registering at any time that you went down there? A I have no recollection, either one way or the other.

Q Is the proprietress of this house, Mrs. Levine, any relative of Miss Hass? A Not that I ever heard.

Q You never heard of any relationship? A No.

Q Do you know Dr. Bonynge of Ridgewood? A Yes, I certainly do.

Q How long have you known him? A I don't recall when I first went to Ridgewood. I think for a time he was Mrs. Pfender's physician.

Q Did you ever accompany Miss Hass to Dr. Bonynge's home in Ridgewood? A No, I never did.

Q At no time? A At no time.

Q Do you know whether Miss Hass knows Dr. Bonynge or not? A So far as I know she has never—

Q Heard of him? A Heard of him, and never saw him.

Q Have you visited Dr. Dougherty's house in Glen Ridge since January, 1928? A I don't recall whether I have or not.

Q Have you ever visited that house in Glen Ridge at any time accompanied by Miss Hass? A No.

Q At no time? A At no time.

Q How did your office know that you were unhappy in your home relationships? A They could very readily see the nervous condition I was in. My partner was a very close friend of mine. We lived in the same town for a long while and he knew of a good many occurrences.

Q You told him about it? A I told him about it, and a good many he knew of his own accord without having to be told.

Q How did Miss Hass know? A It was common property around the store.

Q How could it become common property—how did it get to become common property that you were unhappy in your home relationships? A To begin with, Mrs. Pfender was employed there before I married her. Of course, there were a lot of employees. There were some employees that have been there longer than I have, and it, of course, occasioned some talk, and probably that was one way it was known.

Q Miss Hass had not been there longer than you, had she? A No.

Q How did Miss Hass know; did you tell her? A I did not tell her.

Q Never? A I may have told her later on, yes; but in the beginning she knew the condition from conversations I suppose that people had around the store. There was no secret at all about my unhappy condition.

Q When did you tell her? A I don't recall when I told her.

Q Give us, if you can, approximately the time? A In 1923 she knew the very low condition I was in when I had promised several times to go to Maine with these salesmen whom I have mentioned before, and I had to change my mind several times. That was one of the times that she knew.

Q I asked you whether you told her? A I probably did at the time. I was very much upset about it.

Q I know, but she at that time had been employed by you for three years. She was 22 years old, and her position was what? A Her position was stock clerk and audit clerk.

Q You told your stock clerk and your audit clerk in 1923 about your unhappy condition at home? A I possibly did.

Q Why? A Because I was unhappy. It was known all around the store. It was common property.

Q Why tell it to a stock clerk and audit clerk, a female 22 years old? A I don't suppose you have ever told anything to anybody connected with you. It is a very common thing to do that.

Q Will you repeat the question please? (Question repeated.) A Because we were thrown together in our work just as I was with other people there.

Q What did you tell her? A I don't recall what I told her. I probably told her that I had planned to go away, but I had to change my mind, I could not go away because Mrs. Pfender would not agree to it after she had promised me that it would be all right.

Q Why did you think there was an explanation due from you to your stock clerk or audit clerk as to what you should do? A I don't know—I have no idea why I told her, except that a man when he has got things on his mind has got to tell it to somebody.

Q And you selected her to tell it to? A Yes, among others. She was not the only one I told it to.

Q What did she say to you about it? A I don't recall what she said, if anything.

Q Do you remember when you told—that was in 1923, did you continue telling her from time to time in 1924? A About what?

Q About the unhappy condition that you were in at home? A I don't recall whether I did or not.

Q Have no recollection on that? A No.

Q Did you tell her in 1927 about what had occurred at Westport? A In 1927?

Q 1927, I think it was—1926? A 1926—what had occurred in Westport? Of course, I told my partners, and my partners immediately told Miss Hass. I did not have to tell her.

Q Your partners told Miss Hass? A Why, certainly, Mrs. Pfender demanded that Miss Hass be discharged.

Q When did she demand that? A Right after this occurrence at Westport in 1926.

Q After you had told her that during the summer while she was at Westport that you had had Miss Hass out to dinner or lunch, or something of that kind? A Right.

Q And how did Mrs. Pfender communicate her request to your partners? A Why, as I recall, she wrote a letter to the head of our office.

Q Protesting? A Protesting; yes, sir.

Q And that was taken up between you, your partners and Miss Hass? A It was.

Q And it was determined to pay no attention to the protest of Mrs. Pfender? A Most certainly was.

Q And you informed Mrs. Pfender to that effect? A I don't know whether I informed her at all. In fact, I did not know until some time after that she had written this letter. She did not tell me anything about it.

Q Wasn't it taken up by you—weren't you informed by your partners that occurred? A Yes, I made the statement exactly as I have made it to Mrs. Pfender, about the occurrence to my partners.

Q Miss Hass was there? A Miss Hass was called in after, as I have stated.

Q The result was that you determined that Miss Hass should continue in any event? Is that right? A It was determined by my partners, yes. I had nothing to do about it.

Q You did not express any feeling one way or the other? A I did not have to express any feeling, they were so positive in their statement they were not going to have Miss Hass discharged on anything that Mrs. Pfender claimed because they knew the condition. They knew she was just to be made a scapegoat.

Q I did not get that last. A That she was to be made a scapegoat.

Q You continued to go out with Miss Hass? A No, I did not.

Q When was the next time you went out with Miss Hass? A I should say several weeks after I had permanently left my home.

Q How long after? A Why, I should say the last part of October, or the first part of November.

Q So that you refrained from going out with Miss Hass from this August episode in Westport until you left your house October 1st and then within a short space of time thereafter began to take Miss Hass out again; is that right? A It is. I told Mrs. Pfender that I would do everything I could to make her happy, and I tried to do everything I could for her. I did. I went the very limit. I kept my word absolutely. Mrs. Pfender broke her word when she gave it to me in Westport that if I would tell her the name and the circumstances, that she would not make any more trouble nor say another word about it. The very minute I told her she started at once to make things very unpleasant for everybody.

Q So first when she talked with you in Westport you denied going out at all with anybody? A I simply did not say anything to her. She kept on urging me. She said, "I know you have been out; I have got the proof," which she did not have, and I said, "I am perfectly willing to tell you," and I told her the facts, exactly as they were.

Q But you did not tell her the facts, as I understood it, until she promised you what? A She said when she started the conversation, "I know you have been going out with somebody, I have the proof. If you will tell me just how it is and all about it," she said, "I will never say another word about it, never. There will be nothing more said. That will be the end of that. There will be no more trouble about it. I won't say another word about it. I just want you to tell

me and I will be perfectly satisfied. I will not say another word."

Q That was in the latter part of August? A No, the first part of August.

Q When did you come home from Westport? A I think that occurred on a Saturday. I think we started home on a Monday or Tuesday, I am not sure which, Saturday or Sunday, I think, that occurred.

Q And within about forty-five days after that you left your wife? A I left my wife the first of October; yes, sir.

Q Yes, that is about forty-five days, at least, so that for forty-five days you refrained from going out with Miss Hass and immediately after you left your wife you started going out with her? A Not immediately.

Q Two weeks or three weeks? A I said four or five weeks.

Q Four or five weeks. Where did you take her the first time? A I don't recall. I don't recall where I took her.

Q You don't recall where you took her. Up to that time had you been up to Mrs. Hass' house where they lived? A No, I don't think I had.

Q Don't you know? A I don't remember.

Q Do you remember when you first met Mrs. Hass? A Why, yes.

Q Well, when? A I met her on 47th street the first time I walked uptown with Miss Hass.

Q When was that? A 1926. That was in 1926.

Q How did you come to meet her then? A I have been all over that in my testimony. I told you fully. I don't see why I should have to repeat it.

The Court: You answer the question unless the Court tells you not to.

Q (Question repeated.) A I was leaving the store one afternoon—one evening, after business hours, going down the elevator with Miss Hass and several other people, salesmen, and I mentioned the fact that I was going up to Westport and that I was going to walk up the avenue, and Miss Hass said to me, "I am going up the avenue, too," and one of the salesmen was going up a short distance, so I said I will walk along with you. So I did that and walked up there and met Mrs. Hass at 47th street, and I invited Mrs. Hass and Miss Hass to go to dinner with me. Mrs. Hass said, "No," she could not go, so Miss Hass and I went out to dinner, and then I left for the nine o'clock train, to Westport.

Q You say you met her at 47th street? A I met Mrs. Hass at 47th street.

Q Where on 47th street? A About the middle of the block. She was employed there at that time.

Q You went up intending to meet her at that place? A No, I went up with Miss Hass. She said, "I am going to walk uptown to meet my mother," and I said, "I will go up with you."

Q You were on your way to Westport? A I was going to take the nine o'clock train to Westport.

Q You invited them to go to dinner? A Yes.

Q And to the theatre? A No, I did not. I invited them to go to dinner.

Q Did you go to Westport? A I did.

Q After you had gone to dinner with Miss Hass? A After I had gone to dinner with Miss Hass.

Q When was the next time that you went out with her, do you remember? A I don't recall.

Q During that period of time did you go up to the place where she was living? A No, I did not, not that I recall.

Q And you cannot tell me when it was you first went up to the place where she was living? A No, I cannot recall.

Q When did you first see the child, Thelma Ackerman? A I had seen her several times in the store when she would come down there to meet Miss Hass.

Q When for the first time? A I cannot recall when it was, sometime during the period from 1920 on.

Q Do you say, Mr. Pfender, that the door of this bungalow has not been changed? A It had never been changed, to my knowledge, from the way it was when I first saw it.

Q Have you made any investigation since the last hearing? A I have not had any occasion to.

Q What? A I have never had any occasion to.

Q Do you know whether any such investigations have been made by your side? A I do not know whether such a thing has been done or not. It may have been. I cannot tell you. I am not running the case.

Q Did you have instructions or have you an agreement with the owners of that cottage not to let Mrs. Pfender's counsel in there? A No, absolutely not. I have had no conversation with them about it.

Q You don't know if it be the fact that that door at the present time and the casing on that door at the present time shows indication of a

change of that door from one side to the other? A I don't know at all.

Q Haven't any knowledge of that? A I have never investigated it since the statement was made here.

Q At the time this party came in on June 30th were there screens in the house? A Yes.

Q In the window of the bedroom that you were occupying? A In all the rooms.

Q Copper screens? A I believe they were copper, yes.

Q Painted or unpainted? A Unpainted, I believe, I don't know.

Q It was raining, as I understand it, when you went to bed? A I believe it was, yes, sir.

Q Do you know? A I am very positive it was storming hard all the evening.

Q That was about what hour? A About one o'clock.

Q Do you know at what time of the year it was that your wife went through the period of the menopause? A No, I don't.

Q Did you know at the time? A I did not know, no.

Q No knowledge of it at all? A No knowledge of that. She was constantly under the care of a doctor. She had so many operations of one kind or another that I did not keep track. I did not know when the period came on or not.

Q Did you give Miss Hass any presents? A I have already stated that I gave her a scarf and a wrist watch.

Q You told your wife of that in Westport? A I did.

Q When did you give her the scarf and the what? A Wrist watch.

Q When did you give her that? A I don't remember what Christmas it was. It was one Christmas. I think it was around 1925, probably, or 1924, I don't remember which it was.

Q 1924 or 1925? A I don't remember which it was. Sometime around there. Probably 1925. I don't remember.

Q Both presents together at the same Christmas? A I don't recall just when they were given.

Q Well, do you recall whether they were both given at the same time? A I don't think they were given at the same time. I don't recall. They may have been. I don't recall at all.

Q Why did you give her a scarf and a wrist watch? A Why, I don't know of any particular reasons why I should not. I have given other employees other presents, too.

Q Any other female employees scarfs and wrist watches? A I have given them presents.

Q Did you give them scarfs and wrist watches, anything like that, wearing apparel and adornment? A I don't know what I have given, but it is my custom to give my private secretaries, I have had two who worked for me at different times. I have always given them something.

Q Yes, but Miss Hass was not your private secretary. A No, but she was very closely connected with me in the work I was doing.

Q And you cannot give us any time that you gave it to her except that it was prior to the episode at Westport, at any rate? A Yes.

Q And you told your wife about that? A I told her about it at Westport, yes.

Q Did you give her any other presents? A No, not that I recall.

Q Have you since? A I have given her some small things since, nothing of value.

Q Was the wrist watch of value? A No.

Q She has an automobile, hasn't she? A No, not that I know of.

Q You don't know that she has an automobile? A I have never seen it, if she has.

Q You don't know that she has? A I don't know that she has an automobile, no.

Q You don't know whether or not she owns a Chevrolet car, or whether or not there is a Chevrolet car registered in her name? A I understand that Mrs. Hass had a car for a month or two this summer, but it did not belong to Miss Hass, so far as I know. I have seen the car just once, I believe.

Q Did you contribute anything toward the purchase price of that car? A I did not.

Q Did you know when it was bought? A I don't recall when it was bought.

Q Did you know at the time that it was in fact bought? A I heard a conversation that Mrs. Hass was going to get this small second-hand car to use during the period that she was expecting to be up to South Salem. She did not want to be up there without some kind of a conveyance.

Q When was that? A Sometime during the summer. I don't recall. I spent the summer in the city.

Q Was it after June 30th or before? A It was after June 30th.

Q Is Miss Hass now employed in the same place as you? A No, she is not.

Q When did she quit? A I should say about the 1st of June of this year.

Q What is she doing now? A At the present time she is not doing anything.

Q And has not been since the 1st of June? A No.

Q Now, the lease of the South Salem bungalow was taken in the name of Minnie Hass, wasn't it? A Right.

Q And paid for by you? A I paid the rent; yes, sir.

Q Why was it taken in her name? A Because it was her home. I paid that as my contribution toward the summer expenses.

Q That $1,000, wasn't it? A No, sir, it was $600.

Q Is Mrs. Hass employed? A She is.

Q As what? A She is an expert costumer.

Q And has been employed and was employed all during the year 1927 and 1928? A I believe so. I don't remember. There was a period when she was home taking care of the little girl after they moved to the Walton avenue apartment. She also does work at home.

Re-direct examination by Mr. Lum.

Q You spoke of a hotel being two and a half or three miles from the bungalow. Did you know that fact that rainy night of June or did you learn it since? A Why, I knew there was a little inn there. I did not know whether they accommodate travelers or not.

Q And about how far do you think it was from the bungalow? A I should imagine about two and a half miles.

Mr. Lane: By the way, one question, with the Court's permission.

Carl D. Pfender, further cross.

Further cross examination by Mr. Lane.

Q You have, during the summer, had your wife followed by detectives, haven't you? A Me?

Q Yes, you. A I have never followed her. I don't know where she has been living. I haven't any idea what she has been doing.

Q You never have had her followed by detectives? A Never, to my knowledge, has she been followed by a detective that I have employed.

Q Or detectives watching her? A Not that I ever heard of. Not in my life. It is news to me.

Q How did you ascertain where the furniture went out of the house when she moved it? A In two ways. The marshal telephoned me the night it was removed. It was removed in the middle of the night. He telephoned me and gave me the name of the concern, and Mr. Beard, who is now the owner of the property, telephoned me a day after, and said, "My son, who was going by the house late one night, saw the furniture being removed in the middle of the night." He said, "I can give you the name of the concern whose name was on the van." I said, "Thank you, Mr. Beard, but I have already gotten the information," so in those two ways I knew that the furniture had been removed.

Witness excused.

MRS. MINNIE HASS, a witness called in behalf of the petitioner, being first duly sworn according to law, on her oath testified as follows:

Direct examination by Mr. Lum.

Q Mrs. Hass, you are the mother of Miss Hass, who has been mentioned here? A I am.

Q Do you recall the night of the 29th of June, last summer? A I do.

Q Where did you expect to go that evening? A I expected to follow my daughter up as there was not room in the car.

Q Did you go up that night? A I did not.

Q What train had you planned to take? A From 125th street, around about 9:10, I think, the train was to leave.

Q Are you familiar with the New York Central time table (handing witness time table)? A I cannot see without my glasses.

Q But you are familiar with the time table? A I am, yes.

Q The train shown here leaves 125th street at 8:14 Standard time, that is 9:14, Daylight Saving time? A Daylight Savings time, yes.

Q And that is the train you expected to take? A Yes.

Q This train marked "A" on this time table? A Yes.

Mr. Lum: I offer this in evidence.
(Marked Exhibit P. 1.)

Q That train was due to arrive at what station? A At Katonah at 11:03.

Q How were you going from the station? A I was going to taxi.

Q Did you go that night? A It started in to thunder and lighten and I did not see how I was going to travel in a taxi on the road from Katonah to South Salem, to Truesdale Lake, South Salem.

Q What did you do then? A I waited until I thought my daughter had reached the bungalow and telephoned her. She said, "Mother, where are you?" I said, "I am still in the city." She said, "Why didn't you come up?" I said, "It was raining so hard I did not dare come up in the train and then take a taxi."

Q Was there any other reason whatever for your not going except the condition of the weather? A That was the only reason, the weather.

Q In the apartment at Walton avenue, you recall when Mr. Pfender came there? A I do.

Q When did he come there to live, about? A Around between Christmas and New Years.

Q Had he lived there before that time? A He stayed once in a while overnight.

Q But had he lived there, or had he any clothes there, or had any residence there before the holidays? A No.

Q Did you, at any time, observe any conduct whatever on his part with relation to your daughter? A I certainly did not, no, sir, I did not.

Q Will you tell us whether or not he always conducted himself as a gentleman? A Perfect gentleman, or I would not have let him stay.

Q You knew of the fact that when he was able to marry he hoped to ask your daughter to marry him? You understood that? A I understood so, yes.

Mrs. Minnie Hass, cross.

By Mr. Lane.

Q When did he first say so? A I don't quite recall the time.

Q Well, about? A I don't remember. It was sometime when the divorce proceedings were going on.

Q Sometime when the divorce proceedings were going on. Now, do you remember about how long before the divorce proceedings stopped?

Mr. Lum: They have not stopped, Mr. Lane.

Mr. Lane: Before the last hearing.

Mr. Lum: You have not said anything about the last hearing. It does not appear that she knows anything about the last hearing. I object to the question.

Mr. Lane: What do you mean, while the divorce proceedings were going on. I will withdraw the question.

The Witness: I knew Mr. Pfender was getting a divorce.

Q Yes. A He said after everything was clear he intended to marry my daughter.

Q You cannot place the time when you first knew that Mr. Pfender asked your—or expected to marry your daughter? A I cannot place the date, no.

Q Any better than that it was sometime during the time that the divorce proceedings were going on? A Yes.

Q Can you tell me how many months it was before June 30th? A June 30th, of what year?

Q 1928, this year? A I could not say.

Q Can you tell me whether it was before Christmas of last year? A No. I am very poor on memories of dates, I am sorry.

Q You knew that Mr. Pfender had kissed your daughter? A I have seen him kiss her, yes.

Q And you have seen him with his arms around her? A I have seen Mr. Pfender kiss her good-night or good-bye or something of that sort, but that is all.

Q You have seen him with his arms around her? A No, sir, I did not.

Q You never knew that? A I did not see it.

Q You expected it? A Well, naturally, I expected it, but I did not see it.

Q You expected it while these divorce proceedings were going on and Mr. Pfender was a married man? A Yes.

Q You knew on this date of June 29th that no matter what time you left, your daughter and Mr. Pfender would be alone in that house up there for some length of time, didn't you? A I did, yes, sir.

Q And you could see nothing improper in that? A No, sir, I did not. I trusted my daughter and Mr. Pfender.

Q But you knew that if other people knew that, things would be said, didn't you? A No, I don't know why they should be.

Q You had no idea that the reputation of your daughter would be in anywise affected by staying all night— A If I had, I would have told my daughter to drive through that storm, but I did not, and I certainly trusted my daughter.

Q I am not talking about your trusting your daughter. I am talking about the reputation of

your daughter? A What harm does that do, now?

Q I am trying to get at your state of mind. A My state of mind. I did not think at the time. I just told them to stay there or they probably would not have.

Q When you were a girl you lived in a time, didn't you— A Yes.

Q When it was a familiar subject of novels the young girl who desires a man to marry her to get him into a position as that he stays all night with her in some house and then he must marry her to save her reputation. You heard those stories, didn't you, in your youth? A I had heard those stories, yes, I have heard them, but that does not say anything wrong against any girl unless it is proven.

Q You knew that affected your daughter's, or might affect your daughter's reputation, didn't you? A I did not think or I would not have told them to stay there, because I knew, Mr. Lane, there would not be anything wrong. They did not have to go to the bungalow to do anything wrong if they wanted to, and they did not.

Q How long a time was it that they were in such a position as that they did not have to go to the bungalow to do anything wrong? A How long a time?

Q Yes. A I don't think anybody has to go up to a bungalow if they want to do wrong. When their mother tells them to stay there. God knows, I wish I had not, because all this trouble has come out of it. I am to blame for it.

Q What was the conversation between your daughter and yourself over the telephone that night? A She said, "Mother, where are you? Are you at the station?" I said, "No, I am still

down in New York. It rained so hard." She said, "Couldn't you make the train?" and I said, "It rained so hard I did not want to go in a taxi up from Katonah." I did not mind traveling on the train, but I did mind the taxi.

Q What else? A She said, "Will we come down?" and I said, "Certainly not, on a night like this, stay there."

Q That is all you said to your daughter's suggestion as to whether they should come down or not? A That is all I said. I said, "You would be crazy going out on a night like this, and coming back to town again."

Q What hour was that? A It was around eleven o'clock.

Q Did your daughter say as to why she suggested that they should come down again? A My daughter and I have never been separated overnight. That was the first time, unless when she was up at Lakewood, and so I knew that was one of the reasons she wanted to come down. She did not want to leave me alone.

Q So you thought that suggestion of your daughter that she should come down was due entirely to her desire that she should not leave you alone and not at all to a thought on the part of your daughter that in some way her reputation might be injured? A My daughter would have come down if I had said so, and I would not have cared if it was thundering and lightening, she would have come down if I had told her to, but I told her to stay. I am sorry I did.

Q I am not asking you that. I said your daughter's suggestion that she should come down that night when she found that you were unable to come up, was, you thought, due entirely to the desire of your daughter not to leave you alone? A Yes.

Q And had nothing to do with your daughter's fear as to the effect of the episode, if discovered, upon her reputation. That did not enter into it at all, is that right? A No, I don't think so.

Q Now, do you mean that? A I certainly do mean that. My daughter would not do wrong.

Q I am not talking about that. I am talking about the effect upon your daughter's reputation. A The only thing that my daughter needs to consider is my—about her reputation, so far as that goes.

Q How long have you known Mr. Pfender? A I have known Mr. Pfender—I have known of him since my daughter first worked for H. P. McKenna & Co.

Q How long have you known him? A I met Mr. Pfender, I think, in 1926, personally.

Q Where? A When I was coming home from work my daughter met me.

Q Yes, go on. A My daughter said Mr. Pfender walked up with her because he was to get a later train. He had time to waste. She was walking up to meet me.

Q Then what happened? A They suggested that I should go to dinner with them, but I could not.

Q And then? A And then I said she could go if she wanted to, and she went.

Q Why couldn't you go to dinner with them? A Because I was working at home at night and I had to go home to do some work.

Q You knew at that time Mr. Pfender was in difficulty with his wife? A There had been certain rumors amongst the girls that used to come to see us.

Q Then you knew it? A I knew it, yes.

Q And had your daughter talked to you about it? A Oftentimes they would speak about things that would happen at the office, yes.

Q You knew on this night in question that Mr. Pfender was on his way to Westport to rejoin his wife? A Yes.

Q And you thought it was a perfectly proper thing that on his way Mr. Pfender and your daughter should go out to dinner? A I could not see any harm in it.

Q You thought it was perfectly proper? A I did.

Q You did not go yourself because you had some work to do? A Yes.

Q That was the first time you had met Mr. Pfender? A Yes.

Q So that all you knew of him, except from what you had heard was the impression you got from him upon that first meeting, is that right? A Yes.

Q When was the next time you met Mr. Pfender? A It was late in the fall.

Q When? A I don't recall exactly the time.

Q Under what circumstances? A I believe, I don't remember whether he came to the house or whether I met him again coming home from work.

Q Did you know that your daughter was going out with Mr. Pfender during the month of August, 1928?

Mr. Lum: Just a moment, may it please the Court. I want to object to this. My direct examination covered a certain scope. This witness was not asked to go into this.

The daughter is here and will go on the stand and will be interrogated fully. I object to this as not within the scope of the direct examination.

The Court: Objection overruled. I think most anything is within the scope, in view of the question submitted to this witness, did she see anything wrong in the conduct of Mr. Pfender and her daughter.

A 1928?

Q 1926, I beg pardon. A I don't think she was. If she was, I don't recall it.

Q You haven't the least knowledge as to whether during the time that Mrs. Pfender was in Westport and Mr. Pfender was in Glen Ridge or New York, your daughter was going out with him? A I think there was only once or twice she had dinner with him.

Q Then you did know she was going out with him? A I don't recall how often or when or what. I don't know. I think it was once or twice she had dinner with him.

Q You knew the fact? A Yes.

Q You knew it at the time? A I knew at the time my daughter was going out with Mr. Pfender.

Q You knew at that time, or did you understand at that time that divorce proceedings were contemplated? A No.

Q So that Mr. Pfender at that time was living with his wife, although not in harmony. You knew that? A Yes.

Q No divorce proceedings were contemplated so far as you knew? A No.

Q So that this friendship between your daughter and Mr. Pfender could not amount to

anything, could it? A I did not see any harm in it—her going out to dinner with him when he had some time to waste in the city.

Q Did you ever go out with them during that month? A No.

Q Do you remember whether he came up to your house where you were living during that month? A No, he did not.

Q When did he first come to your house? A Late in the fall.

Q Well, do you know when he left his wife? A I believe it was around October or November, I don't know.

Q You knew the fact? A I knew the fact.

Q How long after that was it he came to see you at your house? A I don't quite remember.

Q Haven't the least idea? A I am sorry.

Q When was it that he agreed to pay part of the expenses of the apartment? A When we were looking for a new apartment. We had to take a year's lease on any apartment we took, so Mr. Pfender said that when everything is over he would probably take a room with us, and if I took this apartment he would pay the difference in the rent, and he would have one room.

Q When was that? A We took the apartment from the 1st of October.

Q When was this arrangement made? A Just shortly after, while we were looking for an apartment.

Q You and he went over to the apartment and looked at it? A We all did.

Q Why did Mr. Pfender, or what did he say with respect to why it was that he was to take a room in an apartment of yours? A He said

he was not going to live over in New Jersey any more, he would have to take a room in New York, and so I suggested he live with us.

Q Why did you desire to move? A Because the subway travel was too strong, too hard on me, going back and forth in the subway, and we came down further.

Q When was it that Mr. Pfender spent the first night in the apartment on the Concourse? A During the winter, I think.

Q What? A In the winter, I don't remember.

Q In the winter of 1926? A No.

Q Well, you were not in the Concourse in the winter of 1927? A We were up on the Concourse uptown in 1926 and 1927. 1927 and 1928 we lived at Walton avenue.

Q I appreciate that. You went to Walton avenue on the 1st of October. I am asking you when for the first time Mr. Pfender spent a night at the apartment on the Concourse. A During the winter.

Q During the winter? A Yes.

Q Then it must have been the winter of 1926 and 1927? A 1927, I think it was after—I don't remember.

Q You think it was in the— A I am trying.

Q He left his wife October 1, 1926. How long after that time, after the fact that he had left his wife was known to you, was it that he spent a night at the Concourse? A I don't know.

Q You don't know. Well, was it a month or a week? A After, it was long after that.

Q But it was during the winter? A During the winter.

Q Do you remember whether it was in June, 1927? A I have not the slightest idea. All I know, it was a miserable night and I asked him to stay, not to go over to Jersey. It was one or two nights.

Q That was a two-room apartment? A Two rooms and a kitchenette.

Q When was the next time after that, or how often after that—I withdraw the first question, did he spend the night at the Concourse? A I think he only spent three nights there.

Q Do you remember when the other occasions were, what the reasons for them were? A We had been to the theatre and it was late and I asked him to stay.

Q Each time that he stayed was when you had been to the theatre—he had been to the theatre with your daughter? A Yes.

Q Yes. A Both of us, we both went.

Q On each occasion that Mr. Pfender went out with your daughter during that winter— A Yes.

Q You both went with him? A Yes.

Q Did you go down to Lakewood at the time your daughter was ill in March, 1928? A I did.

Q You stayed in the same hotel with your daughter? A I did except one night there was not any room there and Mr. Pfender and I and Thelma went to another boarding house or rooming house, I don't know which it was.

Q How long has Thelma been with you? A Since she was a baby. Why bring in Thelma?

Q Yes. A Since Thelma was a little over a year old.

Q Where were you living at that time? A 152nd street. Her mother is dead. Her father does not want her.

Q Mrs. Hass, this child is no relation of yours, is she? A No, she is not, but I asked the grandmothers to take her and they said they would not, they could not be bothered. At first Mr. Ackerman paid board for the child. Then he lost his position and did not pay board. I had both children, a boy and a girl, then he stopped paying board and I have had her ever since.

Q And that was from the time that she was a year old? A No, he paid board for some time.

Q No, I mean you have had her since she was a year old? A Yes.

Q How did you come to take her? A A man in the house asked me whether I would take—

Mr. Lum: I object to this.

The Court: What has this got to do with it?

Mr. Lane: I will withdraw the question, if the Court please.

The Court: I am willing to allow you all the latitude that you are entitled to. I do not think there is any necessity of going into matters which are not germane to the issue.

Q Did Thelma go down to Lakewood at the time you went? A The child stayed down there for a week with my daughter.

Q How long was your daughter down there? A I believe three or four weeks. I cannot quite recall how long.

Q Did you know that Mr. Pfender went down there on week ends that you did not go? A Yes, I did.

Q You knew that? A Yes.

Q Is the proprietress of that house, Mrs. Levine, any relation of yours? A No, just recommended to us because my daughter was sick. The doctor advised her to go down there.

Q Before you lived in the Concourse you lived on 152nd street, didn't you? A Lived there fifteen years, yes.

Q During the time that you lived there did Mr. Pfender visit you? A He did not.

Q From there did you move to the Concourse, or did you move to an apartment on 162nd street? A Never lived on 162nd street. Moved up on the Concourse.

Q How many times, if you know, had you and your daughter and Thelma and Mr. Pfender gone up to the bungalow at South Salem before the night of June 29th? A We stayed there one night. We had been up there I think about three times. I could not recall just exactly.

Q I am talking now about before June 30th? A I know we stayed there a night, Saturday and Sunday over night, but I don't know how often we had been up there before that. I think maybe once or twice. I don't really know.

Q Do you know Dr. Dougherty? A The first time I met him was here in court.

Q You have never seen him before? A No.

Q You mean, when you say the first time you saw him was here in court, do you mean this hearing or the hearing that was before the Court before? A This hearing two weeks ago.

Witness excused.

CHARLES A. HULL, a witness called in behalf of the petitioner, being first duly sworn according to law, on his oath says:

Direct examination by Mr. Lum.

Q Where do you live? A South Salem.

Q New York? A Yes, sir.

Q What is your business? A I am a painter.

Q Who is the constable in that region? A I am the constable.

Q Do you recall the morning of June 30th? A Yes, sir

Q And do you remember Mr. Foster, who sits here, coming to your house? A Yes, sir.

Q About what time? A Half-past seven, about.

Q In the morning? A Yes, sir.

Q I believe he had a warrant with him? A Yes, sir, he had the original and a copy.

Q Did you go anywhere with him? A I went up to Lake Truesdale.

Q Did you know Mr. Pfender at that time? A No, I did not.

Q When you saw the warrant for him what did you say to Foster? A I said, I must look him up, I don't know the man.

Q What did he say? A He said that he would go with me, to get into the car and he would take me up.

Q Did you—you say you went down to the bungalow? A Yes.

Q What happened then? A Why, we went up in the car, drove up in front of the bungalow and they pointed him out, said he was down there in that house.

Q Who got out? A Well, I am quite sure that—I would not say that I got out first, but I think we all got out about together.

Q I don't mean who first, but who did get out? A I got out, Mr. Foster and another gentleman he had with him.

Q Did the driver get out? A I did not see the driver get out.

Q Did Mr. Foster make any suggestion about surrounding the house? A I don't think so.

Q Did he ask you to approach the windows or make any suggestion of that kind to you at all? A Not a thing.

Q You went to the house, tell us what happened? A I stepped up on the first step, and went to put my foot up on the second, and I saw Mr. Pfender, or I saw a man at the window.

Q I show you a photograph. Do you recognize this photograph, and have seen it before? A Yes, sir.

Q There is a letter "A", does that indicate the step? A That is the step.

The Court: What is the photograph marked?

Mr. Lum: I am referring to Exhibit P. 1.

Q In what window was the man? A Mr. Pfender was in the left-hand window.

Q That is the window marked "D" on the same photograph? A Yes.

Q Then what happened? A I spoke to Mr. Pfender, or the gentleman that was in the window, and asked him if he was Mr. Pfender, and he said "Yes." And I said, "Will you please come to the door, I would like to see you." He

got up and came to the door and opened the outside door, and there was a screen door between him and me. Then I asked him if he would please open the screen door, and he opened the screen door and I stepped up to him on the top step, and then—

Q In the meantime, where had Mr. Foster gone when you came up to the door? A When I came up to the door Mr. Foster went to my right, and the other gentleman went to my left at the corner of the house, and that is the first time I found out I had any officer or detective with me, because that is—

Q Mr. Foster was at the point marked "B" and the other man went to the point marked "C"? A Yes.

Q Did you knock on the door? A No, sir.

Q Did Mr. Foster wait from two to five minutes and then knock on the door? A No, sir.

Q After you went in, who else came in? A Mr. Foster followed me in.

Q Did the other man also come in? A Yes.

Q How was Mr. Pfender dressed? A Pajamas.

Q At the window, could you see whether he was standing or sitting? A He was sitting.

Q When you went in, what did you say to him —what did you say to Mr. Pfender? A After I had put him under arrest?

Q Yes. A He said, "What is the arrest for; what is the warrant for?" I said, "Adultery," and he said, "No foundation for it." I said, "You will have to dress and come with me."

Q Now, when Foster and the other man came in—by the way, were you there all the time that they were? A All the while.

Q Where did they go? A I followed Mr. Pfender in his dressing room, as I think it was, at that time where I saw him first.

Q How far into the room did you go? A I only went just over the threshold, just the sill, about a foot and a half.

Q Did either of the other men—were either men ahead of you or behind you? A No, they were behind me.

Q From the position in which you were while he was in that room dressing, what part of the room could you observe, or did you observe? A I observed, I think, only just a dresser.

Q Could you see a bed from the position in which you stood? A No.

Q Would it be possible for the other men behind you to see a bed? A I should say not.

Q Did Mr. Foster or the other man at any time ask you to go in and observe, for instance, that Mr. Pfender's bed was not mussed up? A No.

Q Did they call your attention to anything of the kind? A No.

Q Did they discuss it in any way while you were there? A No.

Q Did you see either of the men go into the room further than you in the position you have just described to us? A No.

Q I show you Exhibit D. 6. Do you recognize that? A Yes.

Q That is a picture of what? A That is the door of the kitchen.

Q Just a minute; the door of the kitchen is marked "A"? A Yes. That is the dressing room.

Q You mean marked "B"? A Yes.

Q By the way, did you observe whether the door opened in or out? A This one?

Q Yes. A No.

Q You are sure that is the position of the door as shown in this picture? A Yes.

Q Any question about it in your mind whatever? A No.

Q Now, the next door goes where? A Goes into the bedroom.

Q Did you find out later whether there was anyone in that bedroom? A Yes.

Q When did you first learn that? A When Mr. Pfender went in and dressed I pushed the door open and looked in.

Q What did you observe? A I saw a bed in there with a lady in it.

Q Go ahead? A Saw a lady in the middle of the bed on her back. The bed seemed to be alright otherwise, the covers were up around her, and I felt a little embarrassed and closed the door, that is, I did not close the door, I stepped away from it.

Q Did either of the other men go in at the time? A Mr. Foster, I think, looked in, and the other man.

Q What was said by her? A I heard the lady say, "What is this all about?" When I opened the door she said "What is this all about?" I suppose she spoke to me. I don't know who else she could speak to, because I was the first one.

Q What did you say? A I said nothing. I did not say anything, because I thought I had done wrong pushing the door open.

Q And later did you see her dressed? A What is that?

Charles A. Hull, cross.

Q Later, did you see her again up out of the bed? A I did.

Q You did? A Yes.

Q Where was she then? A She went by the kitchen toward the door of the bathroom, Mr. Pfender went in the bathroom.

Q Did she have a kimono on? A No, she was dressed.

Q Was she disturbed, was she crying or not? A I did not see any crying then.

Q Did you see her later when she was? A I saw her later when she went in to Mr. Pfender's dressing room as I went out; when he was getting ready to go she cried.

Q What was said? A She said something to Mr. Pfender. I don't know what is was. I heard one of the detectives say that we are not going to hurt him, or something to that effect, he is coming back.

Q What did she say? A She said this is one of those things that would make anyone feel bad.

Q Did you hear any terms of endearment during the conversation at all? A No.

Q Were you within hearing range at all times? A Yes.

Q Did you see any signs of affection? A No.

Cross examination by Mr. Lane.

Q What did you hear? A What did I hear?

Q Yes. A I did not hear anything between Mr. Pfender and the lady, because I could not understand what they did say.

Q You were right there? A I was right as close as I could get, the detectives were right at the door.

Q You did know that they were speaking together? A Yes, I saw them right there together, but I did not pay no attention to what they said. It was immaterial to me.

Q You were in the same room? A Yes.

Q Within how many feet of them? A Probably two or three.

Q You saw them talking? A I saw them talking, yes.

Q But you could not understand a word they said? A I did not understand a word they said.

Q Not a word? A No, not particularly, not any word.

Q I am not asking you anything particularly, I am asking you anything? A I did not understand what they said. I did not pay any attention to it. It was none of my business.

Q You were there making an arrest? A I was there to make an arrest. That was all I was concerned with. I did not know anything about what was going to happen afterwards.

Q The fact is, you were right there within a couple of feet of them, you saw them talking, and you could not distinguish a single word they said. Now is that right? A I imagine they were talking about—

Q I did not ask you for your imagination. I don't want your imagination. I want to know whether you could not hear distinctly a single word they said? A Not to repeat it.

Q Not to repeat it. You mean you don't remember what they said? A No.

Q Where were you when you first saw this man sitting in this window? A On the first step of the cottage.

Q What did you observe about it, you have got your foot on the first step now? A I looked in the window and saw him in it.

Q You hadn't looked at the window, had you? A I had not looked at it not until after I went in. I had my foot on the step.

Q You could not approach the house without looking at it, could you? A I did not pay no attention to it. I suppose he would come to the door when I knocked, but I did not have to knock.

Q As you approach this house you can see that window from some distance, can't you? A Oh, yes.

Q You could not help but have your eyes directed right toward it as you walk toward the door, can you? A Yes.

Q What did you see there, anything? A I saw Mr. Pfender. I think he raised up.

Q Did you see that? A I did not see him rise up, of course I would not have spoken to him if he had not been there.

Q I appreciate that. You did not see him rise up? A No, not when I spoke to him.

Q Although you approached the house straight toward that window, you did not see him until you happened to get on the first step? A No.

Q And then you saw him in the window? A The window, yes.

Q How close is the window? A The window, that was about ten or twelve feet from where I stood.

Q Ten or twelve feet from where you were? A Yes.

Q How close to the window was he? A Right close beside it when I saw him.

Q Close up against the window? A No, probably he may have a foot away from it, just as any one would.

Q Do you remember testifying before the magistrate in Westchester County, New York, in the matter of the People of the State of New York against Pfender? A Yes.

Q Do you remember your being asked there: "Q You say you could see Mr. Pfender sitting in the window when you went to the house? A Yes. Q Was he sitting flush up against the window or away from the window? A Away from the window. Q Was he sitting sidewise or facing it?"

Mr. Lum: The testimony reads, "A little ways from it."

Mr. Lane: Wait a minute.

Mr. Lum: That is the minutes. I think I should read—

Mr. Lane: Where is that record?

Mr. Lum: That is the record.

Mr. Lane: From whom?

Mr. Lum: The official stenographer.

Mr. Lane: I am reading from the record which I have in my hand. If the witness did not say so—

The Court: He may answer the question. The question is, did he say so? There is no attempt to prove that he did except by his own mouth.

Mr. Lum: I did not realize there were two records, your Honor. I have the official record, and that is not the way they read.

Mr. Lane: Neither of them are official.

The Court: I did not know there was any official stenographic record in a Justice of the Peace Court.

Mr. Lum: A Supreme Court stenographer took this one.

Mr. Lane: Yes, and a Supreme Court stenographer took this one, too. But the question is whether in this examination the following questions were put to him and he made the following answers:

"Q And you say you could see Mr. Pfender sitting in the window when you went to the house? A Yes.

Q Was he sitting flush up against the window or away from the window? A Away from the window.

Q Was he sitting sidewise or facing it? A He sat—well, sidewise, he would have to sit sidewise."

Q Were those questions put to you, and were those answers made by you? A Well, you mean, a little ways away from the window?

The Court: No, the question is, were you asked those questions and did you answer as indicated by the record?

The Witness: Yes, I did.

Q Now, have you that photograph that you used?

Mr. Lum: He used two. This is P. 1, and then he used one for Exhibit P. 6.

(Produces same.)

Charles A. Hull, cross.

Q I understand that you were inside of the room which is marked here "F"?

The Court: He said the one marked "B". It looked to me like an "F" this morning.

Mr. Lum: He called that "B".

The Court: I don't know which it was. It was the room which he called the "dressing room."

Q I understand you stepped in there over the sill about a foot and a half? A Yes, I did.

Q A foot and a half over the sill into the room, is that right? A Yes.

Q And you could not see a bed in there? A No, sir, I could not.

Q Look at the photograph and see whether from the position that you were in when that photograph was taken, just outside of the room into the hall, you cannot see the foot of a bed right through that door. Look. Can't you see the foot of a bed? A No.

Q You can't? What is this? (indicating). That black mark right underneath, what is it? A I cannot see it.

Q What is it you see in the photograph? A I can't see no bed.

Q What is it you see if it is not a bed? A Bureau. It is a bureau.

Q That is a bureau? A There was a bureau standing right there by the dresser.

Q Now look again.

Mr. Lum: I cannot see it any difference.

Q Look again. A Mr. Pfender stepped right up there at the end of the bureau and I could not see it because of his feet.

Q I am not asking you whether you could see because of his foot. The bureau was in the corner of the room. Just you look at that photograph— A Yes.

Q That is a bureau of ordinary size, is it not? A I should say so.

Q Look at the photograph at the foot of that door, and see if you do not see a mark there that comes up just about to the size of a bed, to the right, nor to the left? A I can't see it.

Q You were a foot and a half in, is that right? A Yes, over the sill.

Q Yes, over the sill.

The Court: Let me see that other photograph. What I was trying to determine is the location of that window, because the testimony is that the bed was right under the window.

Q Will you look at this photograph, Exhibit P. 6 in evidence, again, and look at the place that I have indicated there with a magnifying glass, and still tell me whether you do not recognize that as the foot of a bed? A No, I can't see nothing.

Q You cannot see anything? A I can't see no bed.

Q You can't see no bed? A I can't see no bed.

Q You see something, don't you? A It looks to me as though it was inside of the room, the walls, that is the way it looks to me. It does not look to me like a bed. It is a shadow.

Q Cast by what? A I don't know. I ain't a photographer.

Q You were right. It is the wall of a staircase. Whatever it is was about the width of an ordinary staircase, wasn't it? A Yes.

Q It was actually in fact 21 inches, wasn't it, about 21 inches, less than two feet, was not even the width of an ordinary staircase? A Wider than that.

Q Wider than 21 inches? A Yes, sir.

Q Sure of that? A Sure, there is no staircase in Westchester County less than three feet.

Q Our measurements show 21 inches, introduced in evidence here. Do you say this is wrong? A It must be, if it is a staircase.

Q Well, even assuming three feet, you tell me that you walked into that room a foot and a half and still could not see sufficient of that room to see a bed? A No, sir, I did not.

Q I did not ask you whether you did. You testified that you could not. A No, I could not.

Q So that it cannot be done? A No.

The Court: Did you say you saw a dresser?

The Witness: Yes, the dresser was down further.

Q How could you see the dresser if you did not see the bed? A The bed was just above—

The Court: Yes, the dresser was right at the foot of the bed.

The Witness: Mr. Pfender walked right up to the corner of the dresser. I suppose he saw me there.

Q How could you miss seeing the bed if you could see the dresser? Look at this photograph, Exhibit P. 3.

Mr. Lane: That is a copy not marked.

The Court: Look at this photograph, Exhibit P. 3. You can see the dresser in that, can't you?

The Witness: Yes.

The Court: When you saw the dresser you had to look toward the window, didn't you?

The Witness: Yes, but the bed comes down below the window.

The Court: Don't you see a bed there now?

The Witness: Yes, I see it now.

The Court: How can you see the dresser if you did not see the bed at the same time?

The Witness: Because he was right opposite the corner of the dresser, and I was also in the door opposite of him. His back was to me.

Q And all during the time, until the time you left the house, while you were there, you did not know that was a bedroom, is that right? A No, I did not know it. I thought it was a dressing room.

Q Nothing was said by anybody there to indicate that was the room in which Mr. Pfender slept? A No, sir.

Q So that when you went out of that house you did not know whether Mr. Pfender slept anywheres other than in the room in which this lady was, did you? A No, sir.

Q You did not know it? A No, sir.

Q There was nothing to indicate to you that he had not slept in that room where the lady was, was there? A No, sir.

Q And for all that you saw there at that time, he might just as well have been in the room in which the lady was as in the room in which it subsequently developed he says he was, is that right? A Why, yes.

Q Mr. Pfender did not say, "Here, I slept in this room," did he? A No, sir.

Q He knew you were an officer of the law? A Yes.

Q Mr. Pfender did not take you into that bedroom and say, "Here is my bed all mussed up. I slept here." Did he? A No.

Q He did not take you into the lady's room and point out to you that there was nothing in that to indicate that more than one person had slept in that bed, did he? A No, sir.

Q What did Mr. Pfender say that you heard? A All I understood him to say was when he asked me what the warrant was for.

Q That is the only word he said during all this? A That is the only word he said to me. I did not talk to him about anything.

Q Now, when you walked into this room, this dressing room as you thought it was, and went in a foot and a half, just what next did you do? A When I followed Mr. Pfender in, you mean?

Q When you first went there. When you went in a foot and a half and could not see the bed. A I walked up and opened the door where the lady was.

Q Leaving Mr. Pfender in that room? A Yes.

Q You left him there? A Yes.

Charles A. Hull, cross.

Q Just tell us how you did that thing, tell us every physical act you performed? A I opened that door, saw the lady.

Q What did you do before you opened the door and saw the lady? A Why, I backed out of there.

Q You backed out of there? A Then I opened the door where the lady was.

Q Then you turned right back and opened the door where the lady was? A Yes, I did.

Q You are sure about that. There is no question about it. That is what you did, is that right? A No question about that.

Q All you did is to back out, open the lady's door and look into the lady's room? A It was right there close.

Q You had no difficulty in doing it? A Not a bit.

Q You had no difficulty in backing out and pulling open the door of the lady's room? A Not pulling it, pushing it, I pushed it open.

Q Pushed it open? A That is right.

Q You did not close the door of the dressing room, did you? A No, I did not.

Q You did not have to close the door of the dressing room to open the door of the lady's room, did you? A No, sir, I stepped around it.

Q Stepped around it, is that right? A Yes.

Q You are sure of that? A Yes, I am sure of that.

Q Now, when you were before Judge Webster at this hearing you did not say anything about the way the lady in the bed was, in the middle of the bed, and so on, did you? A I did if they asked me.

Q Carry your mind back to that time and tell me whether you testified about that at all? A Yes, I did.

Q You did, you are sure of that? A I said she laid in bed.

Q That is all you said, wasn't it, that you saw a lady in bed? A That is all that was asked me, I suppose.

Q Was the lady dressed? A I could not see.

Q When did you next see her after you saw her in bed? A When she went by the kitchen door.

Q How long after you had seen her in bed? A About fifteen minutes. I did not see her come out of the bedroom. I saw her go by the kitchen as I stood in the door.

Q You did not hear her say anything. There was no conversation that she took part in? A She did not say anything. There was no one to say anything to.

Q How long did it take Mr. Pfender to dress? A I think about fifteen minutes.

Q He dressed in this dressing room? A Yes.

Q Did you knock on the door before you opened her door? A No, sir.

Q Her door was opened, wasn't it? A Just a little jar—an inch.

Q Well, it was open, wasn't it? A Unlatched, yes.

Q Opened so much that you did not have to knock; you did not even have to push the door open, did you, to look in? A Oh, yes.

Q When you came out did you lock the door, or latch it? A No, never touched it. I did not touch it, not to shut it.

Q You went in and pushed it open further, as I understand? A Yes, I went in and pushed it open, and then I left it just as it stood there.

Q You left it open? A Oh, yes.

Q When you came out of the lady's room, having opened the lady's door, you went out, you left the lady's door open, is that right? A Yes.

Q Was the door shut afterwards, do you know? A I did not see it.

Q You were right there in the living room, that door opened right out from that living room, and you did not notice whether the door was shut or not afterwards? A I did not notice.

Q You did not see the lady come out of the room when she got dressed and come out? A No, I did not.

Q You heard her, or saw her talk with Mr. Pfender from the bathroom. You saw the conversation there? A I heard her say something to him while he was in the bathroom. She did not go into the bathroom.

Q I know it. What was it you heard her say? A I could not understand. I was too far away from the door.

Q Up to that time she had not exhibited any crying or anything of that kind, had she? A No.

Q But she finally burst out crying, didn't she? A When Mr. Pfender went in his dressing room she followed him in—

Q Yes. A And I heard her crying. She said something, but I tell you I did not understand what she said. Mr. Foster then was ahead of me, just on the sill of the door where I stood previously. Maybe he knows what they said. I don't.

Q Now, after this night when was the first time that you saw Mr. Pfender?

The Court: Morning.

Mr. Lane: Morning. I beg your Honor's pardon.

Q After this morning, when was the next time you saw Mr. Pfender? A After his arrest.

Q After his arrest, after the hearing before Judge Webster. I am not talking about the last hearing, I was talking about the first one on the morning of that day? A Not for sometime after.

Q How long after? A I should think a couple of weeks.

Q How did you come to see him then? A He came up.

Q With whom? A That lawyer there (pointing), Mr. Bevier.

Q Then what did you do? A They asked me to go up to the house—the bungalow, with them, and I went with them.

Q Yes, and who were present when you went up to the bungalow? A Mr. Bevier and Mr. Pfender.

Q Mr. Pfender? A Yes, sir.

Q Go ahead, what happened? A Well, we went in and looked the bungalow over.

Q Well, you had already looked it over once. You had been there? A On the morning. I wanted to see whether I was mistaken about the dressing room or not.

Q Yes, go on. A I don't know whether I am yet or not. They might have put a bed in afterwards. I thought it was a dressing room that morning.

Q Go on, what did you do there at that house? A Saw Mr. Bevier, and I made—that is, he took a statement. He asked me some questions and I answered them. That is all.

Q Did he take it in writing, do you know? A Yes.

Q Did he take the statement in writing? A Yes, sir.

Q Have you got a copy of it? A Yes.

Q Where, now, here? A Yes.

Q Produce it. (Hands counsel statement.)

Mr. Lum: I ask to have that offered in evidence.

Mr. Lane: Just a minute. You will wait until I find out whether it is what the witness said it was.

Q Mr. Hull, you have produced a typewritten statement. That typewritten statement was not made at that time, was it? A Typewritten?

Q Yes. A No.

Q I ask you again whether he did not take your statement in writing at the time. Now, is that a fact or isn't it? Did he or didn't he do it? A He took my statement in writing.

Q I asked you whether you got that statement? A No, not in the original.

Q When did you get the typewritten statement of which you have produced a copy? A About a week after.

Q That was sent to you by Mr. Bevier, was it? A I don't know.

Q How could you get it? A I don't know whether it was he or Mr. Davis.

Q Who is Mr. Davis? A A lawyer, Lee Parsons Davis.

Q And an ex-prosecutor, ex-District Attorney of Westchester County? A Yes, used to be.

Q How long have you known him? A I don't know him only by name, and reading his cases.

Q So that you don't know whether this written statement — typewritten statement, was handed to you by Mr. Bevier or Mr. Davis? A No, I can't say.

Q Is it a copy of the thing that you dictated, or that was taken on the day? A Yes.

Q How do you know? A I know what I said. That is the same thing in the typewritten statement.

Q You have had that statement with you ever since the day it was handed to you about a week after this morning, is that right? A It has been on my desk. I did not pay any attention to it.

Q You have got it with you today? A Yes, brought it because I thought you would want it.

Q Did you think I would want it, or did you want to refresh your recollection by reading it? A No, sir, you don't have to refresh my recollection.

Q So that you thought when you put this in your pocket this morning and came here this morning and came here to court, you thought I might want it, is that the reason? A To be perfectly frank, yes, that is the real reason why I brought it. I thought you might want it.

Q You had this statement at the time you testified at the second hearing before Judge Webster, didn't you? A Yes.

Mr. Lane: I don't want the statement.

Mr. Lum: I think, having taken it, he is obliged to offer it.

The Court: That is the rule, Mr. Lum, but it is not the statement which the witness said it was.

Mr. Lum: Mr. Lane asked this man if he had a copy of it—

The Court: No.

Mr. Lum: I withdraw—

The Court: I want my recollection clearly on the record, that is, that the witness testified that at the time the statement was taken in writing of what he told your associate, Mr. Bevier, and that a copy was made of that statement then, and that he had that copy, and that is the copy which Mr. Lane asked for.

Mr. Lane: I suggest this, if the Court please. The rule is not quite as counsel has stated it. The rule is that if a paper is produced and counsel take it and looks at it, it must be admitted in evidence. I have not looked at this statement—not one word of it.

The Court: There has always been a controversy amongst lawyers as to just what that rule is, but the foundation for the rule, whatever it is, has long since disappeared. The rule is still in force, I believe, but without any reason whatever in my judgment.

Mr. Lum: May I ask to have it marked for identification?

(Marked Exhibit P. 16 for identification.)

Q Now, Mr. Hull, did you have your photographs present on this occasion when you had your conference at the bungalow? A Did I have what?

Q Your photographs? A No.

Q When was it at the request of counsel for the defendant, or counsel for Mr. Pfender, that you marked, or that there was marked on the

photograph which is known as Defendant's Exhibit A, in the proceeding before the justice in Westchester County—refresh your recollection—you recollect that there was a photograph produced at that second hearing and you recollect that it bore marks, and you recollect you put those marks on. I want to know when it was you put the marks on? A I know I put the marks on, but I could not tell whether I went up there the second time, or only once.

Q Well, you remember that the photograph which was produced— A I marked the photograph.

Q Yes, I know you did. You did not mark it in court, did you? A No.

Q You marked it before you came to court? A Yes.

Q Then when you took the stand as a witness you identified the marks you had previously made? A Yes.

Q When was it you made those marks? Who was present when you made the marks and where were you? A The lawyer, Mr. Bevier.

Q Where? A Opposite the bungalow.

Q When? A I don't know whether it was done the day I made the affidavit or whether I went up a second time, I could not say.

Q You remember testifying, or do you remember testifying before the justice, and the following questions being put to you and the following answers made by you:

> "Q Constable, the photograph you have in your hand has a mark on it placed there by you, the letter 'D'? A It has an 'A' under it.
>
> Q Will you indicate your mark? A That was made through a mistake. I made

that myself. It was made through a mistake.

Q What is it under it? A Supposed to be a 'D.'

Q Yes. A Well, it was a mistake. He wanted it. No, that is an 'A' and he wanted it a 'D.'

Q Who was he? A Mr. Bevier."

Q Who were present? A Mr. Pfender was in the house.

Q It was done up at the bungalow, wasn't it? A Yes.

Q Was Mr. Davis there? A No, sir.

Q Just Mr. Pfender and Mr. Bevier? A Yes.

Q Did Mr. Foster at the time you went into this dressing room as you call it, where was Foster? A Right behind me.

Q Was there anybody else there at the same time? A This other special detective, I think. I don't know his name.

Q And the three of you were congregated in front of this door? A Yes.

Q All together in a bunch, as it were? A Right there in a bunch, yes.

Q Did the three of you back out of the room at the same time and stand in front of the lady's door? A I stepped back and Mr. Foster stepped up.

Q Stepped up, how? A There was not room enough for two big fellows like us, to stand in the alley.

Q You stepped back and Foster stepped forward? A Mr. Foster stepped forward no further than I was.

Q Did you measure it with a foot rule? A No.

Q How do you know he did not step forward further than you did? A I am sure he did not.

Q You watched his steps to see how far he went in? A I certainly did watch him.

Q You are willing to testify here and now that he did not go in an inch further than you did? A I cannot testify to an inch.

Q You abandoned your position inside of the room and Foster took your position? A Yes.

Q If you moved your body forward a little bit you could look around the supposed obstruction, couldn't you? A I did not look around there.

Q I did not say you did. You could, couldn't you? A It was none of my business.

Q Could you? A If I had stepped in further.

Q You did not have to step any further in if you were a foot and a half in, all you had to do was to lean forward a bit, isn't that right? A If I had leaned forward, I suppose I could have seen, all right.

Q You were watching Foster so closely to see that he did not lean forward so that he could not see either? A I don't know that he saw the bed. I don't say he didn't.

Q I understood your testimony to be that he could not see the bed from where he was? A I won't say that he did not see the bed. I don't know whether he did or not.

Q You would not say that Foster and this other detective were not in such a position that they could have seen. You can't say whether they saw or not, can you. Is that right? A No, they couldn't see any more than I did.

Q So you recollect the fact now that they could not see any more than you did. Why do you say that? A I know they could not.

Q Although you told me a moment ago that you backed out and Foster took your place, you don't know whether Foster leaned forward or whether he did not, yet a moment ago you said Foster might have seen and you did not? A I don't think he seen the bed.

Q I did not ask you whether you don't think— A No.

Q You know he didn't, is that right? A No, I won't say that.

Q You have said it and said the reverse, now which is it? A He might have seen more than I did.

Q He might have seen more than you did. Why did you tell us, not once but thrice, that Foster could not see? A I don't see how he could see any better than I could.

Q Why did you tell us distinctly that he could not possibly have seen, which was the effect of your testimony? A I didn't say possibly, did I? I didn't say, could not possibly.

Q What do you think it means when you say that he could not have seen? Now you tell us that first in your direct examination, and then you tell us that Foster might have seen and then you come back and you state he could not have seen. Why do you come back to that? Anybody tell you to say that? A No.

Q Then why did you come back? A Nobody has told me to say a word about this case.

Q Why did you come back to it? A It is immaterial to me.

Q Why did you come back to it then? You cannot tell me, can you? A If he leaned forward of course, he might have seen in, but I don't know whether he leaned forward or not.

Q Then why are you positive he could not have seen? A If he did not go in further than I did, he could not have seen.

Q If he didn't? A If he didn't, yes, sir.

Q As I understand it, we have got you in the position where Foster is now in front of you and you are behind him, is that right? A Yes.

Q And the other detective is where? A He is right beside me as nearly as I can remember now.

Q And then Foster, as you have pointed out, is rather a large man? A Yes.

Q And so are you? A Yes.

Q Then as I understand it, you immediately backed out and you opened the girl's door, is that right? A Yes.

Q With Foster still standing in front of you? A Yes, sir.

Q That is right? A Yes.

Q Now you are sure of that? A Yes.

Q I find according to the photograph that the door of the man's room when opened closes the door of the girl's room, how did you do it? A What do you mean?

Q Just what I said? A I told you that the door opened and I stepped around it. Mr. Foster had all the chance in the world to step inside of the door as I stepped out in front of him the door was there and I pushed it open.

Q We have Foster and the other detective in effect over the sill, half in and out of that door, big men. The door was open, wasn't it? It had to be open to let them be there, didn't it? A Had to be—no, not fully open. I don't think it was fully open. I know it was not fully open.

Q An ordinary three foot door? A Yes, sir, it was not fully open.

Q It was not fully open, although Foster and another man were standing in it and you were standing right behind them? A They stood right out there in the room, there was room in between for that, between the bedroom door for me to stand there without getting pinched.

Q Room between what? A Between the other door.

Q Between the other door when that bedroom door is open? A I am sure of that.

Q You are sure now, just absolutely positive? Where is that photograph showing those two doors? You are sure of that, now? A Yes.

Q I want to refresh your recollection as to what was in there by looking at this photograph? A I should say it was eight inches from one casing to the other.

Q Take your mind back to those doors, as you look at them now, you say there is enough room for you to stand between the two without being squeezed? A If the other is not fully opened. I maintain it was only partially opened.

Q You say that one can be partially opened sufficient to permit you to back in around it, and still have Foster and the detective standing on the other side half way over the sill? A There would be room if they were standing, sort of sidewise.

Q Now, take a look at this photograph, Exhibit P. 6, and tell me how much room there is as appears from that photograph between the two casings? A About eight inches.

Q Now, Mr. Hull, please look at it? A Eight inches. That is an eight-inch casing.

Q Look at it. You think the space between those two casings is eight inches? A Yes, that is the way they build them.

Q You think this is? A Oh, yes, sure.

Q There is a space between these two doors when they are closed of eight inches? A Yes, when they are both closed, there would.

Q No, no, when one is opened and the other is closed? A That is the idea.

Q There is a space, you think, between the two of eight inches, is that right? A Yes, sir. This door came around to the other casing—the height of the other casing.

Q I am not talking about coming around to the height of the other casing—

The Court: That is between the jams. The jams are at right angles. You mean there is eight inches between the opening and the two jams.

Mr. Lane: That is not what I mean. The jams of these two doors come together just as close as they can be put, don't they?

The Witness: Where the hinge is?

Mr. Lane: Yes, the jams.

The Witness: No, sir, eight inches.

Q Well, do you mean eight inches from opening to opening? I am not talking about that? A I am talking from one hinge to the other.

Q Eight inches from one hinge to the other, so that you go around the corner and you would get eight inches? A Yes.

Q But one comes out at right angles to the other? A When one is opened—

Q I am not talking about that. I am talking about the door jams themselves, they come at right angles, one to the other? A Yes, leaving a space of eight inches.

Q Eight inches as between the hinges? A Yes, the jams—

The Court: Probably if you measure that hypothenuse correctly, you will find it is less than eight inches.

Q I show you a photograph which you may be able to identify, and you may not. Do you recognize that as the door—assuming that to be the door to the dressing room, the door the knob of which you see behind it, is the door to Miss Hass's room, and the door you see over there is the door going down to the cellar from the dressing room. Do you recognize those doors are about that location? A No.

Q You cannot recognize that? A I think they are hung the wrong way.

Q I think they are too. You think they are not hung the way they were when you were there. What makes you think that they are hung the wrong way? A Who took that photograph? That is a bad one.

Q It is. It was taken in the dark last week. As you saw those doors, were they hung the wrong way? A I did not see those doors. I never saw a cellar door, if you call that a cellar door.

Q You did not see the cellar door, and you were a foot and a half in the room which the cellar door opens into? A Is the cellar door under the staircase?

Q Yes, under the staircase. A I didn't know that.

Q So that you don't know that as you step into that room a foot and a half you can't help but touch the door leading down into the cellar. You didn't know that?

Mr. Lum: That is true, and there is no evidence that it is not the fact. I object to the statement.

The Court: The question is whether he knows.

Mr. Lum: I withdraw my objection.

Mr. Lane: I withdraw the question.

Q What is this thing that shows if it is not half of this three foot thing that you have been talking about? A In the room?

Q Yes. A It is a built in staircase.

Q Going up or down? A Going up. I suppose they are upstairs.

Q Isn't there a door to it? A I don't know about that.

Q You are right there? A It is around on the other end. You see it is under the staircase in the cellar. I suppose there is another staircase that goes upstairs.

Q Keep your mind right on this Exhibit D. 6, as you go into the room there is a projection. Do you see a three foot projection? What is that? A That is the staircase.

Q That is a staircase, closed in? A Yes, closed in.

Q It has a door to it, giving access to it? A Must be a door on the under side of it.

Q Hasn't it got a door on that side of it as you walk into the room? A Yes, must have. You say that goes down cellar, I did not know that.

Q I didn't ask you whether it goes down or goes up. There is a door right there as you walk in? A I did not notice one, I would not swear that there was a door.

Q So that you cannot say from the observation you made, although you went into this room a foot and a half, you cannot say whether there is a door to the right as you go into the room or not? A You mean, going down cellar?

Q Either down or up, I don't know? A No.

Q Do you know who took these photographs which have been offered, or that I have shown you? I show you Exhibit P. 2. On that photograph there is the words "Charles A. Hull" written in—

Mr. Lum: That was used by both.

Q Is that your handwriting? A Yes.

Q Was that put there at the time of the trial or before? A It was put there before that.

Q Where and when? A Up to his house.

Q Up to whose house? A Up to this one.

Q At the time you, Mr. Bevier and Mr. Pfender were up there? A Yes.

Q Do you know why that was put there? A Why it was put there?

Q The words "Charles A. Hull" is that in your handwriting? A Oh yes, I marked it.

Q It is in your handwriting, put on there at the time? A Yes, sir.

Q Did you know at the time you were up at the house whether the doors had been changed at any time? A No, sir.

Q You made no examination to determine that? A No.

Q Did you observe at the time you were at the house how the dresser in this room was facing in the dressing room, as you call it? A When I arrested him, or afterwards?

Charles A. Hull, re-direct.

Q At the time that you were in that house on that occasion? A It stood under this, the same as the bed, stood on the west side.

Q When did you first observe that? A On the morning that I got Mr. Pfender, I saw the dresser.

Q When you first went in? A Yes.

Q When you first went in? A Yes, there was a clock on the dresser.

Re-direct examination by Mr. Lum.

Q When you approached the house can you tell us whether or not the window was opened, the window on the left in which you saw Mr. Pfender later? A I don't think I could, I don't think I would say that it was open then, but it was open when I spoke to him.

Q But you did not see him open it? A I did not see him open it.

Q All you know is that when you first saw him you saw the window open? A Yes, the window was open.

Q Now, did you see Mr. Foster go any further into the room, did you see him put his head forward a tiny amount? A No.

Q Did he ask you to look into the room any further, or go in and look at the bed? A No.

Witness excused.

MISS LEONA F. HASS, sworn on behalf of petitioner Carl D. Pfender.

Direct examination by Mr. Lum.

Q Where do you live, Miss Hass? A 42 West 72nd street.

Q And you first took a position with H. T. McKinney & Co. when? A About the 1st of October, 1920.

Q And when did you first know of Mr. Pfender's domestic unhappiness? A Almost the first few weeks I was there.

Q How did you know of it? A Common gossip at the office.

Q And during 1925 and 1926, what was his appearance? A Very drawn, worried, and troubled.

Q Now, when did you first go out with Mr. Pfender? A I believe it was just the Friday before the 4th of July, in 1927—1926, rather.

Q What was the occasion? A I had been in the habit of meeting my mother up at 47th street. I walked up as a rule and I knew that Mr. Pfender was taking a later train from the Grand Central to meet Mrs. Pfender up at Westport, to spend the week-end up there, and he and a couple of other men were coming down the elevator with me, and knowing that he was going to—had a little time to wait, and would probably walk up to 42nd street where he would take the train, I suggested that he walk up with me, and Mr. Pfender and another gentleman and myself started walking up 5th avenue.

Q Who did you meet when you got there? A 47th street at 5th avenue I met my mother.

Q Do you know whether she was asked to go to dinner? A Yes; Mr. Pfender suggested that

my mother and I go to dinner, and when we met mother—when I introduced him to mother, he asked her to go to dinner with us and she refused.

Q And you went to dinner with him? A Yes; I did.

Q Between that and October 1, 1926, how often did you go out with him? A The first part of July I went out with him maybe three or four times, and that is all.

Q Where did you go then? A Just to dinner; and I believe on one occasion we went for an automobile ride.

Q Do you remember when the larger apartment was taken? A Yes; we took it in October, 1927.

Q And when did Mr. Pfender come to live at the apartment? A About the first of January, somewhere around there.

Q Before that time how often had he stayed at the apartment? A Oh, just a few times. I really don't know the number of times.

Q Is there any question of having his home, or that being his home, up until the 1st of January? A He may have had some clothes there, but that wasn't his permanent residence.

Q And on what occasions did he stay there? A When we would go to the theatre and it would be too late for him to take the trip all the way out to Glen Ridge, or if it should be stormy; it was only a few occasions.

Q And on every occasion when he stayed there up until he came there to live in January, who asked him to stay? A Mother did.

Q Up until this time had there been any particular familiarity between you and Mr. Pfender? A None at all.

Q And as time went on did he speak to you in such a way that you knew he had an interest in you? A Well, yes, a little.

Q About when was that? A In January of this year. He said that—

Q You say he came to live there about the holidays? A Yes.

Q And was he ever known there as Mr. Hass at all, that you ever heard? A No.

Q Ever hear any such question raised? A No.

Q How was he known there? A As Mr. Pfender. I gave a tip to the elevator man who was on at that time and told him that the family in the house was Hass, Ackerman and Pfender.

Q During the time that you were living there at the apartment, after he had come there to live, was there ever any misconduct whatever between you and him? A Absolutely none.

Q Did you commit adultery with him at any time or anywhere? A Certainly not.

Q Do you recall the night of June 29th? A I do.

Q And what was the plan as to going up that night? A We had planned to take the car, Mr. Pfender's car, and take as many things as we could get in the car, household linens and bed clothes and things of that sort, and we also put in the Victrola, and we were all going up together, but when we had everything in the car it was too crowded; mother and Thelma couldn't get in, so we had made arrangements that mother was to take a train, and Mr. Pfender and I were to proceed up to the lake and wait for mother there.

Q And what kind of a night was it after you left? First, was it raining when you left? A

No; it was cloudy before we left at 161st street, and we got up as far as the end of the Concourse, that is, two hundred and some street, when it started in to drizzle, so we kept right on going.

Q How did the night turn out? A A beastly night; rained and it thundered and there might have been an electric storm; I don't remember.

Q Were you able to make good time going up? A Fair.

Q What time did you arrive? A I should say it was around 10:30.

Q And still storming? A Yes.

Q Did you hear from your mother? A Yes.

Q How? A Mother telephoned. I don't remember what time it was.

Q A little while after you left? A A little while, yes.

Q What was the conversation? A She asked if we had arrived safely, and I said yes; and I asked her where she was. She said she was at New York, and I said "Well, aren't you coming?" She said, "No, the night was so bad that I decided not to come up, and take the chance of driving in from Katonah," so I suggested coming down, "Then I will be down." She said, "No, it is unsafe to come down on a night like this; stay there and I will be up in the morning."

Q Was there any thought in your mind as to any impropriety in doing that? A Certainly not.

Q Had you been alone with Mr. Pfender for parts of hours in the apartment before? A Yes.

Q Had he ever attempted to take any advantage of you in any way? A No.

Q Had he ever made any unfriendly approach—any attempt to take any advantage of you in any way? A No.

Q About what time did you retire that night? A I think it was half past one o'clock.

Q What had you been doing in the meantime? A Unpacking the things we had brought up and putting them in their places.

Q Where did you sleep? A In the large bedroom.

Q Was Mr. Pfender in that bed at all during that night? A In the bed—no.

Q What room did he occupy? A His room, the small room.

Q Were you in his room at all that night? A While unpacking I may have been.

Q But after he retired were you? A No.

Q The door to his bedroom, did it open in or out? A Opened out.

Q Did you ever know of any change being made in that door in its way of opening at any time while you were there? A There was a stipulation in the lease that nothing was to be changed, and of course—

Q Was anything changed whatever? A No.

Q Did you ever hear of that until you came in court here? A No.

Q What was the method of lighting the cottage? A Lots of electricity, electric lights.

Q Were there shades in the bungalow? A There wasn't any shades at all, not even on the bathroom window.

Q And was it possible to look in the ground windows of the apartment from the ground? A Yes.

Q Is the bungalow above the level of the road or below? A The road was much higher; we were down right near the lake.

Q Do you know whether one can look into those windows? A Yes; I have tried it.

Q And do you know that it can be done? A Yes.

Q When did you first—after you went to your room for the night, what was the first thing that attracted your attention? A I heard heavy walking of feet, and one man stuck his head in my room and said, "There is a woman in here," and it seemed like an endless string of men, before they finally stopped poking their heads into my room.

Q And did you have any conversation with any of them? A No.

Q And did you use any endearing terms at all on that occasion? A None at all.

Q Or were there any demonstration of affection between you and Mr. Pfender on that occasion? A All Mr. Pfender said to me was that he would be back as soon as he could, and that I wasn't to worry; that was all.

Q Was there any demonstration of affection between you? A No.

Q After they had left did a man come back to the house? A Yes.

Q Who was with him? A Three ladies in a car.

Q What did he say? A The man came down the road, as the screen door was the only door that was closed in the kitchen, and I was in the kitchen; the heavy door was open. I saw the car stop and this man came down. Just about as he got to the door, three ladies came out of the car and started walking down the roadway, and this man said, "Your husband will be back in a little while," so I said, "You mean Mr. Pfender, not my husband," and he said, "There are three ladies that want to see you." I asked him who they were, and he hesitated and avoided

the issue, and he said, "Three ladies want to see you." I said, "Please tell me who they are." And he said, "Mrs. Pfender." He mumbled something else, and by that time the three ladies had arrived at the door, and I held open the screen door and I asked them to come in, and as Mrs. Pfender was walking through from the screen door into the living room, through the kitchen, she said, "I am Mrs. Carl Pfender, and sent here for the sole purpose of identifying you." She turned to the man and said, "Did you do just as you were instructed?" And he said, "Yes"; and the three ladies that were with her did not step out of the kitchen at all. They were in the kitchen, and Mrs. Pfender was just on the sill. She just about stepped into the sleeping room, and she glanced around and said something about my being brazen and walked out.

Q Were you familiar with the linen that was used in all of the rooms on the bed? A Yes; I probably put it there.

Q Do you know what kind of a cover was on the bed in Mr. Pfender's room during the entire time? A Light blue and white stripes; ordinary bedcover, bedspread.

Q Was there at any time a dark cover on the bed? A We had no dark covers.

Cross examination by Mr. Lane.

Q You know as a fact that the door on that dressing room has never been changed? A To my knowledge it has not.

Q Have you looked at it for that purpose, to ascertain whether or not? A No, I haven't thought about it.

Q It hasn't been talked about since the last hearing? A Not since I heard about it.

Q How long did you occupy it? A What do you mean, how long?

Q How many times altogether did you live in it? Did you live there during the summer of 1928? A Yes.

Q So you were around the house all the time? A Yes; the time that we stayed there.

Q For how many months? A I believe it was about three; possibly three and a half or four weeks that we stayed there.

Q You knew that there was some question as to the ability of people to see into that room, in the manner in which they said they saw, didn't you? A I didn't know anybody said they saw anything.

Q You knew that they said in June before the justice in Westchester County that they had seen into that room, that dressing room, and saw the bed there—you knew that, didn't you? A Yes.

Q And you knew that the reply was that you couldn't see—you knew that, didn't you? A No; that reply was that they couldn't see.

Q Mr. Pfender said that you couldn't see through that—couldn't see from the door into the bedroom? A Yes.

Q You knew that? A Yes.

Q And you knew during that time—did you observe as to whether the door casing of that room does not show now evidence that the door has been changed? A To my knowledge, no.

Q You never looked at it? A No.

Q And never observed it? A No.

Q If it exists. When did Mr. Pfender personally tell you of his family difficulties? A The first time I heard about it was in August, 1926.

Q Is that the first time that he personally told you about it? A To my knowledge, yes.

Q How did you find out about it then? A It seemed that I was the one that had caused the trouble; that is the way I felt about it.

Q So you felt in August of 1926 that you were the one who caused the trouble? A Yes.

Q Caused the family difficulties? A No, not all of them; but at that particular time.

Q Part of them? A At that particular time I thought I was the one being most discussed.

Q When was it that he first told you about any family difficulties that he had at all? A I don't remember that Mr. Pfender had told me anything about his family difficulties prior to that.

Q Did he say nothing about his family difficulties when he took you out in July? A No, I don't think he did.

Q What did you talk about when you went out with this married man? A Business, theater.

Q When you first went out with him, did you know that he was going up to Westport? A Yes.

Q You knew he was on his way to see his wife? A Yes.

Q You went out to dinner with him where? A Restaurant on 49th street.

Q And in that conversation nothing was said about the way in which he was living with his wife, the trouble that they had had? A I knew that Mr. Pfender was unhappy, and I didn't broach the subject, and didn't venture to mention it, either, as far as I can remember.

Q And so far as you can remember, he said nothing about his troubles to you, personally, before that time? A Not that I can remember.

Q When was it that he gave you a scarf? A Oh, for Christmas one year.

Q Do you know what year? A Christmas of 1925.

Q And when did he give you a wrist watch? A The same time.

Q So that he gave you a scarf and a wrist watch at one time? A I don't remember whether they were both given to me on the same day; but it was about the same time.

Q For what? A Most of the men at the office did give me Christmas presents. I was a little surprised at receiving a wrist watch from Mr. Pfender, but the actual gift wasn't a surprise. I had never received one before.

Q And you never received two presents such as a wrist watch and a scarf? A No; but I think that was because we had had a very busy season. I had worked quite hard. I felt that that was the reason for it.

Q Mr. Pfender had a secretary? A Yes.

Q Or two? A One.

Q A girl? A Yes.

Q How old? A She is now about 33—34, I should say.

Q Didn't she get a wrist watch or scarf? A I don't remember what she got.

Q Don't you know from office gossip, if nothing else, if she got anything like that? A No.

Q Did Mr. Pfender give any intimation as to why it was that he had picked you out for that kind of a gift? A The only reason that I think of was, that I had spoiled my wrist watch, and I mentioned it. That was perhaps why he gave me a watch.

Q Did he give you any other presents before July, 1926? A No.

Q This suggestion that he should take you to dinner in July of 1926 for the first time came as a surprise to you? A Yes, rather.

Q Nothing preceded it that indicated that he would like to have dinner with you on an appropriate occasion? A No.

Q You had never been out with him at all before that? A Before that, no.

Q You had been over to the Montclair Horse Show before that? A I have never been in Montclair; I don't know where it is.

Q You don't know where it is? A Somewhere in New Jersey; that is all.

Q Have you been to any horse show in New Jersey? A No, never. I have been to a horse show.

Q And then after this first dinner in July, you had two or three more? A Yes.

Q What brought them about? A I don't know; just Mr. Pfender asked me and I accepted.

Q How many? A Possibly three or four.

Q Possibly three or four during July? A Yes.

Q No casual meetings led to them at that time; they were just appointments, weren't they? A Yes, at the office.

Q Did you go to the theater during that time with him? A I don't think so.

Q Have you any recollection of it? A No, I don't think I did go to the theater with him.

Q You knew his wife was in Westport? A I did.

Q You knew his married life was unhappy? A Yes.

Q Had you any idea that you might be getting yourself in trouble under those circum-

stances? A I didn't see any harm in going out to dinner with him.

Q Did he go to your house during that period of time? A What period?

Q July. A No.

Q Up to that time he had never visited your house? A No.

Q Now, you knew that Mrs. Pfender had requested the firm to dispense with your services, didn't you? A Yes.

Q And you knew that you were at that time at least a cause of the immediate trouble? A I felt that. I didn't know it, but I felt it.

Q Mr. Pfender said so, didn't he? A He said that I was brought up during the course of an argument.

Q You knew the occasion upon which Mr. Pfender left his wife on the first of October—you knew when he left? A I didn't know when he left until quite a while after that.

Q How long after? A Probably the last part of October or first part of November.

Q He didn't tell you that he had left his wife? A Not until then.

Q It wasn't office gossip? A No, not that time.

Q You didn't hear from him? A No.

Q That as a matter of fact he had left his wife? A No, I didn't.

Q How did you hear? A Mr. Pfender told me.

Q What did he tell you? A He told me that he had left Glen Ridge, or, rather, left his home in Glen Ridge and was living with a dominie, Mr. Dougherty.

Q And did he invite you to dinner then? A Yes, he did.

Q When he told you that? A Oh, considerable time after that I went out with him, probably weeks.

Q Then after that how frequently did you go out with him? A Two or three times a week, probably.

Q That would be commencing in October or November, 1926? A Yes.

Q And continuing right down January, February, March, April, May, June, July, August, September and October, 1927? A Yes.

Q That you were going out with him two or three times a week while this case was pending? A Yes.

Q Before the court—being tried before the court? A Yes.

Q You were here in the court room? A No.

Q At no time? A No.

Q And from October, 1927 to January, 1928, Mr. Pfender was coming to the apartment on Walton street, and stayed at the apartment on Walton street two or three times a week, didn't he? A I don't think it was two or three times a week.

Q Frequently? A Occasionally.

Q And you say it wasn't his permanent home? A Well, he had all his clothes at Glen Ridge.

Q He may have had some of his clothes in Walton avenue, did he not? A I don't know.

Q I thought you said he may have? A He probably did; I am not positive.

Q He was entitled to that room from the 1st of October, 1927, wasn't he? A Yes.

Q It was his room from that time, that is right? A Yes.

Q Recognized as his room from that time? A Yes.

Q And it was at that time, wasn't it, that you told the elevator man that the family would consist of those persons that you have referred to? A During that time—I don't know just when.

Q Well, in October? A I don't remember that time.

Q Can't you give us a little more definitely —wasn't it when you went in the apartment that you gave the elevator boy the information as to who the members of the family would be? A No, not immediately.

Q How soon after you went in the apartment before you gave that information as to who the family would be? A I think the occasion was when Mr. Pfender had his license changed, and he expected his license to be sent to that address. I told the elevator boy then. I think that was the occasion. I am not positive.

Q That was about the 8th or 9th of December? A Possibly; I don't remember. That is when he expected a letter.

Q Is that right? A I think so.

Q And that is how or what made you tell the elevator boy that if a letter came addressed to Carl D. Pfender to give it to you, wasn't it? A Yes.

Q And that is the only reason why, to wit, the expected letter which would be addressed to Carl D. Pfender, why you told the elevator boy anything about Carl D. Pfender? A I had no occasion to discuss it with the elevator boy.

Q And you hadn't discussed it with anybody else or given any information to anybody else, had you? A The superintendent knew that we were going to have a roomer.

Q How did the superintendent know that? A Incidentally, my mother told him.

Q How do you know he knew it? A I am not sure, but I think she told me so.

Q You think she told you? A Yes.

Q Why did you think it necessary, if that is so, to specifically tell the elevator boy in December, or when it was, when this license or letter was expected, that if a letter came for Carl D. Pfender it should be delivered at your apartment? A The apartment house had no register, and no other way except the elevator boy's knowledge as to who occupied the various apartments, and they left the mail and distributed it. The superintendent had nothing to do with that.

Q Did you attend at the time of the negotiations for this lease? A I did.

Q Just one moment on that. Wasn't there a register in the elevator giving the names of the tenants? A I never saw one, never heard of one. In fact, I am sure there wasn't one.

Q Then there was no register anywhere? A Not that I know of.

Q Did you attend at the time of the negotiations for the lease of this apartment? A Yes.

Q Did Mr. Pfender? A Yes.

Q What was said at that time? A You mean at the time the lease was signed?

Q Negotiated—before you actually signed it? A The arrangements were made that Mr. Pfender was to take a room, and we were to take a larger apartment which would enable him to have a room in our apartment, and we went and found this apartment at 911 Walton avenue, and decided that we would take it.

Q Who did you talk to about it? A The agent.

Q Did Mr. Pfender go with you? A He was there the first time when we decided upon taking the apartment.

Q That is what I mean, was he there the first time? A Yes.

Q What was said then between the agent and you and Mr. Pfender? A The agent showed us the apartment, we decided we would take it, and paid a deposit.

Q Did anybody say who was leasing? A We said we were Mrs. Hass and Miss Hass. I don't remember whether Mr. Pfender was introduced to the agent or not.

Q So that you were introduced as Miss Hass, Mrs. Hass, and Mr. Pfender was there apparently interested in the negotiation of this lease, but not introduced? A I didn't say he wasn't. I don't remember.

Q You remember the introduction of yourself and your mother? A Yes; mother and I did all the talking. We had to tell who we were.

Q But Mr. Pfender sat there while you were negotiating? A Yes. He didn't have anything to say except he liked or did not like the apartment.

Q Was he present at the time the lease was signed? A No.

Q Now, Mr. Pfender had, prior to the 1st of October, occupied and stayed over night at your home on the Concourse, a room? A Yes.

Q On several occasions? A A few; not many.

Q And it was to make adequate room for Mr. Pfender that you went from the Concourse to the Walton apartment, wasn't it? A One of the reasons.

Q That was the real reason, wasn't it? A No.

Q One of the reasons, then? A One of the reasons.

Q So that Mr. Pfender living with you had been discussed while you were living at the Concourse? A Possibly, yes.

Q And Mr. Pfender had upon occasion actually stayed there at the Concourse apartment? A Yes.

Q And was any reason given by Mr. Pfender to you as to why it was that he didn't immediately take his room in the Walton avenue apartment? A I don't think that he gave any particular reason, but I was under the impression that he would have to stay in New Jersey on account of the proceedings here; that was my understanding of it, although I don't remember anyone having told me so.

Q Now, coming back to this August, 1926, did you say you had been told that you were the cause of this trouble? A I wasn't told that I was the cause of the trouble.

Q But you had surmised that you were the cause of this trouble, but you didn't go out with Mr. Pfender until after he had left? A Not until after he had permanently left Mrs. Pfender.

Q Why not? A Other than the fact that he hadn't asked me. I had no desire to. I didn't want to come between them, as long as I felt that I was the cause of the trouble. I didn't want to continue to be the cause of the trouble between two people.

Q Did you tell Mr. Pfender that? A Probably I did; I don't remember.

Q Can't you remember whether you and Mr. Pfender didn't have some discussion on this question as to your being the cause of the trouble? A No; I don't remember.

Q But you say that probably you said that you wouldn't go out with him as long as he was

continuing to live with his wife, didn't you? A Yes.

Q Yes, if Mrs. Pfender was going to take that attitude about it?

Q And that is the effect of what you said, that so long as he was associating with his wife you wouldn't go out with him, isn't it? A Probably.

Q And within a period of 45 days after you told him that, he left his wife, and then you went out with him, didn't you? A I don't know about the days; but that is about—

Q And after he left his wife I suppose he came to you and said, "Now I have left my wife, you can go out with me again." Is that right? A No, not exactly.

Q In effect? A Not quite.

Q What is the difference between what he did say and that which I have suggested? A He didn't say just because he had left his wife that I might go out with him again.

Q But that is what you infer, isn't it? A Something of that sort.

Q You had said you wouldn't as long as he lived with his wife? A I didn't tell him that, I don't remember.

Q The effect of what you told him—that is the effect of it? A Possibly.

Q And didn't he say that it would perhaps be better that you did not go out with him until after he left his wife? A No, I don't think he did.

Q You were the person who took that position? A I think so.

Q Is that right? A I think so.

Q And after he did leave his wife, then you had no hesitancy in going out with him, although

he was not divorced, two or three times a week, had you? A No.

Q And having him stay at your mother's house over night? A Considerably after he left his wife he stayed there.

Q And finally taking him as a member of the family, while this divorce case was pending here in New Jersey? A Yes.

Q You were not in any fear then of getting into trouble, were you? A No.

Q And you had no hesitancy then in being one of the causes of the difficulty between the husband and the wife? A I knew then that I wasn't.

Q You assumed that because Mr. Pfender left his wife on the 1st of October, within 45 days after you had taken the position that you had, that you were mistaken in your view that you had been one of the causes of the trouble; is that right? A Yes; I knew then that I wasn't the cause of the trouble.

Q Now, had Mr. Pfender stayed all night at either the Concourse apartment or the Walton avenue apartment, when no one was in the house except you and he? A No.

Q So that the first time you stayed all night in the same house was at this bungalow? A Yes.

Q When was the suggestion made to rent the bungalow? A The first part of June, the first part of June after I had left H. P. McKinney & Co. My physician suggested that I go away.

Q And Mr. Pfender paid for the expense of the bungalow? A Yes, he did.

Q When was it that you went over to Glen Ridge to get the clothes of Mr. Pfender which he had left at Dr. Dougherty's? A I think it was—I didn't go to Glen Ridge, I went to Bloom-

field. I think it was the week between Christmas and New Year's.

Q Are you positive about that? A No, I am not, but I think so. I think that was the time.

Q Why did you go over? A To keep him company, driving over from New York to Jersey.

Q You stayed at the library while he went around to the house? A I did.

Q What time of the day was that? A It was in the evening, directly after dinner.

Q About what time did you go to Bloomfield? A I don't know; I don't know how long it takes to go from New York over to Bloomfield.

Q What time did you get home? A I don't remember.

Q Did you go right home? A Yes; directly home.

Q Did you ever go to Dr. Dougherty's house? A No.

Q You met Dr. Dougherty in New York? A Yes.

Q When, for the first time? A This spring I think was the first time.

Q About what time in the spring? A I really don't remember.

Q This year? A Yes, of this year—the spring of this year.

Q How did you come to meet him? A Mr. Pfender invited Mr. and Mrs. Dougherty and myself to dinner and theatre one evening.

Q And that was repeated three or four times? A I think twice.

Q And nothing was said during the course of the conversation, on either of those occasions, as to where Mr. Pfender was living? A No.

Q Did Mr. Pfender give you a Christmas present in 1927? A Yes.

Q What? A Perfume, a fountain pen and a little ring.

Q Has he given you other presents? A Yes.

Q Such presents as engaged people would exchange or receive? A I don't know.

Q Jewelry, or anything of that kind? A Yes, some; nothing of importance, though; nothing expensive.

Q When was the first time that he gave you a present after August, 1926? A Christmas, 1926.

Q And what was the present then? A 1926, I think he gave me perfume that year.

Q When did he first kiss you? A I don't remember the date.

Q What? A I don't remember the date.

Q I wouldn't expect to remember the date; do you remember about when? A Sometime in 1927, the latter part, I should say.

Q How early in 1927? A No, it wasn't early 1927.

Q I say, how early? A Fall of 1927—let me correct that.

Q October? A I don't remember the month.

Q November? A I don't remember the month.

Q You consider the fall as September, October, November, don't you? A Sometime around there, yes.

Q Before December, at any rate? A Yes.

Q I suppose you didn't allow him to kiss you until, or you expected, to marry him, when he got his divorce? A There wasn't anything to allow or not allow. It just never occurred.

Q He just happened to kiss you? A I don't know how those things happen. You are older than I am, you know.

Q I want to know how it happened in this particular instance, if I may. A No, I don't recall how it happened.

Q If it happened once, it was repeated, wasn't it? A Yes.

Q And increased in frequency? A Yes.

Q And when was it that he first put his arms around you? A I don't remember.

Q About the same time? A Possibly; I don't remember.

Q Did he tell you at that time that he loved? A No, I don't think so.

Q So that you didn't reject these advances? A No.

Q So that you accepted this from this married man, although his divorce suit was still pending in this court, and without his telling you that he loved you? A Well, a woman's intuition.

Q And without any understanding that you should be married? A I didn't see any harm in a man kissing me.

Q You did, didn't you? A Did what?

Q You did accept these attentions from this man under these circumstances? A Yes.

Q Without any suggestion of love and without any suggestion of marriage after the divorce? A I didn't have to have Mr. Pfender tell me that he loved me or liked me.

Q He indicated that? A Yes.

Q How soon? A I don't remember.

Q Before August, 1926? A No.

Q In August, 1926? A No.

Q Before he kissed you for the first time? A That was late in 1927. I knew that he liked me then.

Q And did you understand or have a feeling, if there was nothing said, that this conduct on his part meant that if he received his divorce, he would marry you? A That wasn't mentioned until after January, 1928.

Q When was that for the first time mentioned? A That Mr. Pfender had intentions of asking me to marry him?

Q Yes. A In about January, the first part of this year, somewhere around there.

Q 1928? A Yes.

Q It was some time after he had kissed you and thrown his arms around you and indicated that he had that kind of feeling for you, that he first spoke to you about marrying you when he got his divorce? A Yes; I believe so.

Q So that the first of the kissing, and so forth, must have been either in October or November, 1927, if the other was in January, 1928, must it not? A It was in the fall of 1927. I don't remember the month.

Q Now, wasn't it—can't you remember whether he kissed you, and so forth, before you took the apartment on August 1st at Walton avenue? A No, I don't remember just the particular time.

Q So that as your recollection now carries you back, it may have been before that? A No, it does not, exactly. As I recall it, it happened in the fall of 1927. I cannot go any further into detail than that.

Q You knew that this suit was pending in this court at that time? A I did.

Q Can you tell me about how long after this kissing began that you knew that the suit had

been concluded in this court, in the sense that the last hearing had been had before the Court? A I believe that occurred sometime in January.

Q No; I am trying to place now this kissing with reference to the last hearing—the last hearing in this court was on December 21, 1927. How long before that was it that he had kissed you? A I have already said I don't remember.

Q When he asked you to marry him if he obtained his decree—did he tell you whether he had gotten his decree nisi? A He didn't ask me to marry him; he hasn't yet.

Q How far has that gone? A He said that when all this was over that he intended to ask me to marry him. That is as far as he has gone.

Q When he made that statement did he tell you that he had his decree nisi, or was it before he obtained his decree nisi? A That was after, I think.

Q He had obtained his decree nisi? A When it was settled here in the court.

Q You went to Lakewood in the spring of 1928? A Yes.

Q You were down there for about a month? A Three months.

Q At Mrs. Levine's? A Yes.

Q Were you ill? A Yes, I was.

Q What was the matter? A General run-down condition, rheumatism.

Q You had left your employment when? A The last day of May, whether the 30th or 31st I don't remember. The last day of May, 1928; that was after I had been back from Lakewood.

Q This house that you lived in at Lakewood while you were there, Mr. Pfender came down and stayed in the same house? A One occasion,

yes, I believe he was there; possibly two; I don't remember. The first time that we went down there the room that I was to occupy was the only vacancy they had, and mother and Mr. Pfender and Thelma—I don't know about Thelma—went out to secure other places that Mr. Levine suggested, and got rooms there for that night.

Q Do you know whether there is a register in that house? A Yes; there is, as I have registered.

Q You have registered? A Yes.

Q Do you know whether or not Mr. Pfender ever registered? A No, I don't remember.

Q How long before the 29th of June was it determined that you should go up to the bungalow on the 29th; when was it first spoken of? A The 29th was set; that was the last day of school. Thelma would be through school then, but we had made arrangements for taking the cottage in the first part of June.

Q And you had made arrangements to drive up there sometime before the 29th? A Probably a day or so before; something like that—a few days.

Q Did anyone tell Thelma that Mrs. Hass was going up on Saturday? A Did anyone tell Thelma?

Q Yes, to your knowledge? A No, I don't remember. I wasn't here to tell her that.

Q You and Mr. Pfender went up on the 29th, which was Friday, wasn't it? A Yes.

Q In making arrangements for going up, do you remember anybody telling Thelma that Mrs. Hass and Thelma were to go up on Saturday? A No, I don't know of any such thing.

Q It was always assumed from the beginning that the four of you should go up together? A Yes.

Q With this material that was to be taken up? A Yes.

Q You never heard anything which would indicate that Thelma and Mrs. Hass were from the beginning assumed to come up on Saturday? A They were to go up with us. It was my thought at almost the last moment to put in the Victrola, which prevented them from coming up. I think I was responsible for that, the thought of taking it up there. Aside from that it was all understood that the four of us were to go up together.

Q So that it was all understood in the beginning that you were to take this material that you finally did take? A Yes, we were going to move all those things up with the possible exception of the Victrola.

Q With the possible exception of the Victrola? A Yes.

Q And you expected to come down the next Monday? A No.

Q When? A Our lease expired the 1st of October.

Q You expected to stay up there, that was your last trip? A Yes.

Q When did it become apparent in the course of the loading of this car that there wouldn't be room for Mrs. Hass and Thelma? A During the process of loading it.

Q And then what was said? A I don't remember; something to the effect that there wasn't room enough for mother and Thelma. Mother said that she would have Thelma's hair cut, anyway, and go to a barber, and have her hair cut, and would have that over, and she would follow up on the train.

Q Nothing said with respect to the propriety of you going up with Mr. Pfender? A No.

Q Under the circumstances? A No.

Q With the knowledge there was no one there except you? A No.

Q What time was it when you received this telephone message from your mother? A Oh, somewhere around 11, I should say.

Q She telephoned you? A Yes.

Q And told you that she was in New York? A Yes.

Q And that because of the storm she wouldn't come up? A Exactly.

Q What did you say? A You mean the entire conversation, or after that?

Q What did you say? A After mother said that on account of the storm she wouldn't be up?

Q Yes. A Then I said, "I will come down."

Q Why did you say that? A Mother and I have been very seldom separated from each other.

Q Is that the only reason? A That was, unconsciously. There was no other reason for my having said that other than the fact that it just meant that I would be separated from mother.

Q And nothing entered your head as an inducement for that remark, that there might be some impropriety of you and Mr. Pfender under the circumstances occupying that house that night? A It never occurred to me.

Q You are how old? A 25.

Q And he? A 53.

Q Married and a divorce suit in progress? A Yes.

Q And your remark "I will come down," was solely actuated by a feeling, that you didn't want

to be that night away from your mother, and not by the least thought in your mind that you might be putting yourself in an equivocal position? A That night or any other night I should have made such a suggestion, whether it was Mr. Pfender or a girl friend or anyone else; but such a thought never entered my head in regard to Mr. Pfender. I have never had any occasion to think in that way.

Q You had never heard in your 25 years of life the idea that it wasn't considered or might be disastrous to a girl's reputation, under certain circumstances, to stay that way with a married man? A Yes, I have heard of those things, of course, but it never entered my head.

Q That you were subjecting yourself under that kind of a position? A No, it didn't. Knowing Mr. Pfender I didn't think of any such thing.

Q And when you and Mr. Pfender, after you put the telephone down, or the telephone conversation stopped, no talk took place between you and Mr. Pfender upon that subject? A Are you asking me a question?

Q No talk took place between you and Mr. Pfender on that subject? A Yes; as I recall it I told him that my mother was still in New York, that she wasn't coming up, and that we were going to stay, or words to that effect.

Q And that is all? A I guess so.

Q Mr. Pfender didn't suggest that there might be some impropriety? A No, he didn't.

Q As I understand it you took up your time in putting these things away, and I suppose in the interval of putting them away he kissed you once or twice? A He did not.

Q He had before? A Before when?

Q Before that? A While we were up there?

Q No, not while you were up there, when you were somewhere else? A Yes.

Q And he had put his arms around you? A Undoubtedly.

Q While you were in your own house? A Yes.

Q And when he was visiting there during the course of the evening? A Probably.

Q Well, upon this occasion at this bungalow nothing like that occurred, although you were there for two hours? A No.

Q And nothing of that kind occurred going up in an automobile? A No.

Q He didn't kiss you all the way up? A Hardly, on a wet, rainy night, driving a car.

Q I ask you whether he did not. A He did not.

Q Was there any reason advanced or any statement made as to why he should not, being with you as he was for a period of six or seven hours before you went to bed, why he should not at least have kissed you once? A He did kiss me once when I kissed him good-night, but aside from that—

Q I am coming to that in a moment, why he didn't kiss you once before that. A I was busy unpacking, and I never thought of it, and I don't know what goes on in his mind.

Q It didn't happen, at any rate? A It did not happen.

Q Then you got ready for bed? A Yes.

Q And when was it with reference to your getting ready for bed that he kissed you good night? A Before I started undressing, before I had gone to my room.

Q He went in his room and you went in yours, and separated? A Yes.

Q Did you close your door? A While I was undressing, yes.

Q What? A While I was undressing, yes.

Q After you had undressed— A I opened my door just a little bit; just turned the knob so the door wouldn't be tightly closed.

Q Why that? A I don't know; no particular reason.

Q I can appreciate why you should have opened it wide so as to get some air or what-not, but why just taking it off the latch? A I didn't open the door very wide.

Q I know you didn't. You said, I understood, that you just took it off the latch? A Yes; it was just opened a little bit.

Q For what purpose? A No particular reason. I didn't attach any significance to it at the time.

Q No—it was an act performed by you. Was there any purpose in it? A Not that I know of.

Q You just did it? A Yes.

Q And did you see whether or not his door was closed? A No, I didn't.

Q After you had retired to bed, did you call out, "Good-night"? A I didn't say a word to him.

Q And the next thing that you knew was what? A Heavy tramping of feet through the cottage.

Q And then? A Some man stuck his head in the door and shouted, "There is a woman in here."

Q And then? A It seemed like an endless procession of men poking their heads in my room, before it finally stopped.

Q What did you do in the meantime? A I was dumb at the time; I was dazed—I didn't know what to do; and after it stopped I called out and said, I asked Mr. Pfender whether there was anything wrong, or words to that effect.

Q Did you say anything while these men looked in this room? A Not that I recall.

Q When this first man stuck his head in that room, did you say, "What do you want?" A I don't remember having said anything.

Q Did you say, "What do you want?" to any of this endless procession? A No, I don't think I did.

Q Who looked into your room? A I don't think I did.

Q Why not? A I was rather dazed.

Q You knew what they were after? A Certainly not.

Q Then why didn't you ask them what they were after? A I probably didn't think of it, being awakened out of a sound sleep in such a fashion.

Q One came in and then another came in and then another came in, three at least—that is so? A I didn't count them.

Q How many was in the actual procession? A I don't know; it seemed endless to me.

Q But you didn't ask any of these men what they wanted, although you had no knowledge as to what they wanted? A I may have; I don't remember having spoken to any of the men.

Q Then what did you do? A I got up and closed the door and proceeded to get dressed.

Q You proceeded to get dressed? A Yes.

Q Still without knowing what all these men were there for? A I called out to Mr. Pfender, called out what the trouble was, and he answered

me something about a charge. Of course, then I surmised what it might be.

Q What did he say? A I cannot understand; all I heard was "charge."

Q How long did it take you to dress? A Probably five minutes. It seemed like less than that to me.

Q Then what did you do? A I went outside into the living room, and there were two men standing in the kitchen and one in the living room, I think. There was one in the living room, two in the kitchen, leaning against the closet, and Mr. Pfender was in the bathroom, and I went to the bathroom door; it was closed, and remained so until he opened it, and I asked him what the trouble was. He said, "There is some trumped-up charge," or words to that effect, of adultery, and he came out then.

Q Yes? A And so I followed him and stood in the little hall leading into his room while he got his hat, and then some man, I don't know who he was, I don't remember who it was, said something to the effect not to worry, that everything would be all right, and Mr. Pfender made some such remark about it and they went out.

Q Did you cry? A I don't think I did. I don't remember. I probably did, but I don't remember having done so.

Q You don't remember crying when you went into Mr. Pfender's room just before they went away? A No, I don't remember having cried. Although lots of people had said so, but I don't remember having cried. I may have.

Q You don't remember Mr. Pfender saying, "Now, dear, it is all right," or something of that kind? A He didn't say, "Now, dear."

Q He had called you "dear" before? A Before when?

Q Before that night. A Yes.

Q Many times? A Occasionally, yes.

Q Wasn't that a familiar method of—or, rather, a familiar word to call you? What did he call you? A Not very familiar.

Q What did he call you? A By my name.

Q Without any prefix of "dear," or what-not? A Not always.

Q But when he did, what was it? A "Dear," I guess.

Q It wasn't an unusual thing for you to hear him call you "dear"? A No; not unusual.

Q But he didn't on this particular night? A Morning, no.

Q After he left and was taken away, you remained in the cottage? A Yes.

Q And then Mrs. Pfender came and you were perfectly cool and collected then while she was there? A Yes, I think so.

Q And after that did Mr. Pfender come back to the— A He did.

Q What time did he get back there then? A I haven't the slightest idea.

Q You don't remember? A No.

Q How long did he stay? A While he was gone I had prepared some sort of a breakfast, and we had a little something to eat and we proceeded down to New York.

Q And while he was gone you prepared breakfast, and then Mrs. Pfender came and then Mr. Pfender came back and you and he had breakfast together? A Yes, such as it was.

Q Then how long did you stay there together? A We got ready and left immediately.

Q After you had breakfast, you got ready, took the car and went where? A To New York.

Q To your mother's? A No; went to my sister's.

Q Where? A To my sister's.

Q Who lives where? A 152nd street.

Q After that time did Mr. Pfender ever stay at the apartment on Walton avenue? A No, he did not.

Q Where did you meet your mother that morning? A At my sister's.

Q You went to your sister's because your mother was there, didn't you? A No, because I telephoned my sister that we were coming down.

Q You are sure of that? A I stopped at Katonah coming down, telephoned my sister, because our telephone had been disconnected.

Q Your telephone, 911 Walton avenue, had been disconnected? A Yes.

Q Your telephone from the bungalow had not been disconnected, had it? A I probably didn't think of it until I got to Katonah.

Q It hadn't been disconnected, had it? A No, it had not.

Q And before you started from the bungalow you did not make any telephone call to your sister or anybody else in New York? A No.

Q Where did you make this telephone call to New York from Katonah? A A store there.

Q Which store—whose store? A I don't know; I don't remember.

Q Are you familiar with Katonah? A Slightly.

Q And you cannot tell me whose store it was that you made this telephone call from to New York? A No, I don't remember.

Q To what number was the telephone call? A Melrose 0290.

Q On the 30th of June about what hour? A I don't remember.

Q Was it in the afternoon? A No, it was in the morning, undoubtedly.

Q Before noontime? A Yes.

Q And from Katonah? A Yes.

Q No doubt of that? A Yes. No, I don't think there is any doubt about it.

Q And when you telephoned your sister, what did you find? A I told her to tell mother that we were coming down; that was all I said to her.

Q That you were coming down to your sister's? A Yes.

Q And your sister lived where? A 152nd street, No. 726.

Q Since that time has Mr. Pfender kissed you? A Yes.

Q And put his arms around you and called you "dear"? A Probably.

Q He has, hasn't he? A Undoubtedly, yes.

Q Did you at any time own an automobile? A No.

Q Was there one registered in your name? A No.

Q Was there one registered in your mother's name? A Yes.

Q A Chevrolet? A Yes.

Q You drove Mr. Pfender's car—you drive Mr. Pfender's car? A I did.

Q You have a license to drive? A I have.

Q You have driven that car since at least October of 1927, haven't you? A Yes.

Mr. Lum: From the room which you occupied on the night of June 29th in the bun-

galow, can one look in the window from the ground?

The Witness: Yes, from the road; I have tried to.

Q As I understand it, you can look in and see the interior of that end room, front end, assuming— A Yes, you can.

Q And see what there is inside? A I have tried it. Mother was lying down when we were staying up there that time.

Q From what portion of the road can that be done? A From the roadway that leads from the house, from the main road that runs along the lake.

Q About a place opposite the window of that room? A I don't quite understand.

Q At a place on that roadway about opposite the window? A It cannot be opposite.

Q Locate this place where you say you can see. A You have the photograph there where the main road is joined by the driveway, that leads down to the garage.

Q Is that the photograph (witness shown photograph)? A That would help a little.

Q If there is a better one, I would rather have a better one. A This is taken from this corner below. I mean, when you stand here (indicating), you can see this side (indicating) of the road.

Q Is there any photograph that you have that shows it better? A I haven't seen any of them, only what has been produced here.

Q Maybe this will help you, showing you Exhibit marked D. 3. A The main road is up here (indicating); this (indicating) is the back of the house.

Q The main road runs to the front of the house, along the front of the house? A No, this is the back of the house.

Q I mean, the back of the house? A Yes.

Q It runs parallel with the back of the house? A Yes, and the driveway comes from the garage and goes up like that (indicating) and meets the road.

Q You think that from a place on the driveway between the garage and where it meets the road, you can look in through the window on the end of the house and see what is going on inside of that room? A I don't think, I know, that when that window is open, I saw my mother lying in bed.

Q From the point that is indicated? A From the driveway.

Q And with the curtains in the room? Are there any curtains? A When the window is open.

Q Where do they come? A They are cottage curtains, tacked securely to the window.

Q They go up and down with the window? A Yes, drawn back at the sides, and bottom.

Q So that when the window is open there is nothing to obstruct the view? A Nothing but the screen.

Q Except the copper screen? A I don't know whether it is copper or not.

Q It is a screen? A It is a casement window.

Q You can see from that point through the screen? A Yes.

Miss Leona F. Hass, further direct.

Further direct examination by Mr. Lum.

Q Was your window open that night of June 28th? A The window that faced over the garage was. The one behind the bed was not.

Mr. Lum: I have one more witness, who was to be here before 2 o'clock. Can I go on with the personal property case?

Mr. Lane: Counsel asks me about the personal property case. I don't know anything about it.

The Court: Have you a witness you can examine now?

Mr. Lane: Mr. Lum says that he has some person here who will describe the building of that house. I would like to know —I don't care about the witness, but I would like to know before I put my witnesses on, what the position taken by him is as to the condition of that door.

Mr. Lum: I understand that the man who built the house will testify to the way in which the house was changed from the plans which have been put in, and will testify that the door was changed from the position called for on the plan, where it would open in, to a position where it would open out, while the building was in course of construction, and that it has never been changed in any way since.

The Court: You mean there has been no change in the door since the 29th of June, 1928?

Mr. Lum: Yes; nor at any other time since the building was built and completed.

Robert J. Foster, recalled, further direct.

Mr. Lane: What I want to know before I put my witness on, if I may, is whether the claim is that the door was first put up and changed, or whether changed in the process of construction.

Mr. Lum: Changed in the process of the construction of the house before the house was completed and used.

ROBERT J. FOSTER, heretofore sworn, recalled on behalf of the defendant Mrs. Pfender for further

Direct examination by Mr. Lane.

Q Mr. Foster, did you recently make an examination of the interior of this bungalow? A I did.

Q When? A Last Thursday.

Q And who were present? A Mr. Blankenhorn, Mr. McPartland, Mr. Harvey, and the agent of the company that owns the property.

Q Did you particularly look at the door which appears upon Exhibit D. 6, which goes into the room which has been called—the room in which Mr. Pfender was—to determine whether there were any objective signs to indicate a change in that door after the construction of the building? A I did.

Q And did you find such objective signs? A I did.

Q And what did you find? A I found where the lock had previously been when I had first been up there, had been filled in with a foreign piece of wood other than what the rest of the jam was, and where the hinges had been on the

opposite side, had been filled in also with a foreign piece of wood.

Q And did you notice the paint or the varnish? A There was varnish on the part, but there was very plainly—in fact, before going in to make the inspection we saw the marks from the outside, on the door, myself, Mrs. Pfender, my sister, Miss Foster, Mr. Blankenhorn, Mr. McPartland and Mr. Harley; then when we got on the inside of the place we were able to see the other two parts which we couldn't see from the outside, on the left-hand side.

Q Did you notice a door stop that had been installed there since you had been there? A There was a door stop on the door that led into the room where we found Leona Hass.

Q And that door stop, is the door stop in the room, or is it outside the room, in the living room? What door is that door stop designed to check the swing of? A It is designed to check the swing of the—what I refer to as the door stop is something screwed on a piece of wood, something on the lower part of the door, to prevent the other door from coming up against it, and that door stop is on the lower part of the door that leads into Leona Hass' room to prevent the door from the storeroom hitting up against the other door.

Q That is the door from the room in which Mr. Pfender was, hitting up against the door from the room in which Miss Hass was? A Yes.

Q Did you observe whether or not that door stop was new or old? A It was a new piece of wood.

Q Did you take a photograph there? A Mr. Blankenhorn took the photographs.

Robert J. Foster, recalled, further direct.

Q They didn't turn out very well, did they? A On account of the shadows it was hard to get them.

Q I show you a photograph and ask you whether that photograph represents—whether the door to the extreme left of the photograph is the door opening into the room in which Mr. Pfender was, leading down towards the cellar —the staircase leading down to the cellar? A The door is indicated on the left, and leads from the stairway down into the garage or the cellar.

Q Now, the door to the right—is that the door—that is the first door to the right, is that the door leading from the living room into the room in which Mr. Pfender was, swung open as it now swings? A That door swung in.

Q Is that the one? A That is the one there now.

Q Behind that, what door is it, that you just see? A That is the door to Leona Hass' room.

Q And the door that swings out from Mr. Pfender's room, when open, covers completely the door into Leona Hass' room? A Precisely.

Mr. Lane: I ask that that be marked.

(Marked Exhibit D. 4.)

The Witness: I might add that on one of these photographs, there is a slight indication of the change in the wood.

Q I show you another photograph, and ask you whether that is the photograph of the part of the door leading into Mr. Pfender's room nearest the lock. A Yes.

Q And is what you refer to as the indication of the change in the lock, the different color of the varnish? A Yes.

Robert J. Foster, recalled, cross.

Mr. Lane: I offer that photograph in evidence.

(Marked Exhibit D. 5.)

The Witness: I might also add that the photograph in one of the other exhibits, shows that the door from the room occupied by Mr. Pfender is open in such a way as to prevent a photograph being taken of that particular jam.

Q Did you while you were there measure the width of the enclosed staircase? A No, sir; not the enclosed staircase at all.

Q I mean, the width of the opening into the stairs leading to the basement from Mr. Pfender's room? A No, I did not.

Cross examination by Mr. Lum.

Q I understand you noticed particularly when you were there on that morning of June 30th, the door of Mr. Pfender's room opened in? A Yes.

Q No doubt about that at all? A No doubt of it.

Q And you noticed it particularly, and couldn't be mistaken about it, it opened in? A Well, I say that I noticed that, as I noticed everything else.

Q The question is, you noticed it, so that you cannot have any manner of doubt about it, it opened in? A I had no doubt about it.

Q And you are still receiving compensation in connection with this case? A I will say that I am not receiving any compensation personally from Mrs. Pfender for my work since last July. My work is being given gratis, to this woman

since last July, sir, as a result of what I have seen myself.

Q In other words, after you got $10,000, then you started to give your services, is that it? A In other words, after I received my fee of five thousand for discovering the facts, I then have given my personal services to protect this woman from any overt act that might be tried to be committed against her.

Q And of course in connection with that, you took pains to find out who built this particular house, didn't you? A No, sir.

Q Didn't seek to find out who constructed it? A The company's renting agent there gave us the plan.

Q And you asked them about when the door was changed? A They said that the door was —didn't say anything to me then about the door; we didn't say anything—

Q Just a moment. When you were taking this matter up with the renting agent, you asked them about the door? A I did not.

Q Didn't ask them when it was changed? A No, I did not.

Q Why not? A Well, because of the fact that they had refused to allow us to go into that cottage.

Q You got in since? A Yes, we did.

Q How did you get in? A We got into it through one of the agents.

Q Who is the agent? A The agent was a gentleman from Danbury, Connecticut, whom Mr. Pfender has used on a number of occasions in the cottage.

Q What is his name? A I believe his name is—I cannot recall his name. I gave it to Mr. Merritt Lane and Mr. Blankenhorn this morning.

Robert J. Foster, recalled, cross.

Q Did you ask him if he was going to be a witness here? A Why, if the man was, he would lose his job.

Q Did you ask him if he was going to be a witness here? A No.

Q Did you try to get him here? A He said he couldn't come.

Q Did you ask him when the door was changed? A He said the door had been changed, but when or by whom he did not know.

Q Didn't he tell you that it was changed in the construction of the building itself? A No, he did not, sir. He told me—I asked him, I was very specific with my question, before going on the inside of that place, we looked at the place from the outside, and he stated that that door had been changed. I asked him if he knew when or by whom; he said "no."

Q You knew that a lease was made of the place, I believe? A No, I did not.

Q Didn't you inquire about it? A No.

Q Didn't know that the lease provided that the tenant could make no changes? A We couldn't get no information at all about these people up there after we got these people in their love nest.

Q From your own examination with your own eyes, you know fully well that all the changes that are indicated there were such changes as would be made in changing the door in connection with the construction of the house itself, don't you? A No, sir.

Q What reason do you ascribe for anyone changing this particular door? A It is very apparent that that change there has been made to show that we could not see on the inside of

that bedroom, as has already been sworn to in the magistrate's court.

Q When did you swear in the magistrate's court? A It was in June or July.

Q Did you swear in the magistrate's court about that in July? A I swore we stood there and I looked into the door of—into the Leona Hass room, and into the vacant bedroom.

Q As a matter of fact, the proceedings before the justice were not brought until a short time ago, were they? A It is quite a long while ago; July or August—I don't know which.

Q The testimony before the justice was taken on the 14th of September, 1928, wasn't it? A That is the date, all right. If you say so, I guess it is.

Q Mrs. Hass wasn't occupying the cottage at that time? A I don't know; I don't know anything about that.

Q You were up there, weren't you, before Webster? A Yes.

Q You didn't go to the cottage then, did you? A I did not want to be accused of trying to tamper with witnesses, and I kept away from everybody, Hull, and everybody else.

Q You thought you might be accused of tampering. I ask you whether you—the reason you didn't go to look at the cottage in September, on the 14th, or right thereafter, was because—to find out whether there was anybody there, was because you didn't want to be tampering with witnesses? A One of the reasons why I did not have anything to do with anybody up there, Hull, or anybody else, we did not want to be accused, by you or anybody else, of trying to approach their witnesses, as has been done in some of our testimony, about our witnesses being approached.

Robert J. Foster, recalled, cross.

Q Mr. Foster, Hull was the constable that went there with you to make this arrest, wasn't he? A He told me—

Q Was he or not?

The Court: Why don't you answer the question and stop rambling all over creation? You can answer these questions by yes or no. If there is any explanation necessary, your counsel will bring it out.

Q Hull was the constable that went there with you to make the arrest? A He was.

Q There wasn't any question about tampering with witnesses then? A No.

Q You didn't call Hull's attention to the door, did you? A No.

Q You didn't call his attention to the bed, did you? A I did not.

Q You didn't speak to him on the subject, did you? A No.

Q You didn't think there was any question of tampering with witnesses then, did you? A No.

Q He was an independent witness, disinterested entirely, wasn't he? A Yes.

Q Why didn't you call his attention to these important things you are testifying to here now at this late date? A Why? I didn't think it necessary.

Q Why didn't you think it necessary? A Because we had seen what we went after, sir.

Q The fact that two people were in the house that night, that is what you saw, and that is all, and that is all you ever saw, isn't it—that is all you went for? A That after that he was living at 911 Walton avenue and at this place.

NORBERT A. McKENNA, sworn on behalf of petitioner, Carl D. Pfender.

Direct examination by Mr. Lum.

Q Where do you live? A South Salem, New York.

Q Do you know the bungalow occupied by Mrs. Hass last summer? A I do.

Q I show you Exhibit D. 4; do you recognize that as the bungalow? A I did.

Q When did you first know this bungalow? A When I built it.

Q When was that? A 1927.

Q I show you a plan and a picture of the house, called the "Tuxedo," marked Exhibit D. 5. Have you ever seen that? A I have.

Q Was this built, this building, precisely according to that picture and plan? A No, sir.

Q Will you tell the Court briefly what departures were made from the plan? A The "Tuxedo" model house was ordered by the owner from the Bossert Company. In the course of construction the owner wished certain changes to be made, and we made them, and we erected the staircase to the cellar and to the second story, and the only major changes were the changes that were required by that construction.

Q And what effect did that have on any of the doors? A It changed the swinging of the door.

Q Which door? A The door to the northwest bedroom.

Q Is that the large room or small room? A The small room.

Q And what change was made in that door from that plan while the building was being built? A Changed to the opposite side.

Q The built-in stairway, is in what room? A In the northwest bedroom.

Q Have you attempted—you may not have—
10 I have never spoken to this witness, I will say to the Court. Did you attempt to make any observation from the door of that small room as to whether one could see in it? A Just from what I recall of having closely examined the house.

Q Can you see from the doorway into that room? A You can see approximately two-fifths of the room.

Q What hides the view of the remainder of
20 the room? A Staircase to the second story and the cellar.

Q Is that the staircase that you built in, as the change in the plans? A Yes.

Q From that time on have you ever known of that door being changed to swing any other way than out in the living room, from the time the building was completed? A Since we built it?

Q Yes. A It has not been changed.

30 Q I will ask about the living room. Have you made measurements up there? A I have.

Q Have you any sketch or plan? A I have.

Q This sketch was made by you? A (No answer.)

Q From actual measurements? A Yes.

Q Is it in all respects a true and accurate sketch of the building as you completed the building of it? A Yes.

Q Were you familiar with the building when it was rented last summer? A I was.

40

Q And were you familiar with the furniture that was there? A I was.

Q When this sketch was made, was the same furniture there as when the building was rented? A Yes.

Q Referring to the small north bedroom, will you give us the dimensions, first the dimension of the dresser? A The dimension of the dresser is drawn to scale. It is 42 inches by 24. I need a ruler to give you the dimensions.

Q That is approximate? A Yes.

Q What is the distance between the dresser to the foot of the bed? A (Rule produced and handed to witness.). Approximately 18 inches.

Q Is the head of the bed as close to the wall as it could go, on that measurement? A Yes.

Q Is that the position of that furniture at the time the building was rented last summer? A To the best of my recollection.

Q Have you ever known it to be changed in any respect? A No.

Q This sketch shows the position of the doors and the swing of them? A Yes.

Q Have you known of any door-stop to be put in there since the building was completed, for any of the doors? A No.

Q Have you known of any painting or varnishing to be done to cover up anything? A No.

(Sketch offered in evidence and marked Exhibit P. 12.)

The Witness: It is a floor plan.

Q Do you know whether this building is below the level of the road? A Yes.

Q And has there ever been any shades in this building that you have known of? A No shades; curtains.

Q Is it possible from the ground for one to see into the various rooms downstairs, rooms of this building? A Yes.

Cross examination by Mr. Lane.

Q When did you make this sketch? A Yesterday.

Q At whose request? A Request of Mr. Bevier.

Q What connection has Mr. Bevier with your concern? A None whatever.

Q You just did it at his request? A Yes.

Q Because he asked you to? A Yes.

Q Did you say that you recollect that when this building was first leased, that the furniture was in the position as indicated by this sketch? A To the best of my recollection. It means that I have a pretty clear picture of how the furniture was placed.

Q And how often did you see it after it was first rented? A Oh, a dozen times.

Q And the furniture was never changed? A No, sir.

Q And it has been rented for how many months? A It was rented from June 1st to October 1st, to the best of my recollection. If you will give me a moment I will tell you the exact date.

Q Is that the only time? A Yes.

Q This was a new cottage at the time? A It had been occupied by the owner for a brief period.

Q So that had been occupied by the owner and had been occupied by the Hasses? A Yes.

Q And you are willing to swear that your recollection indicates that not one stick of furniture in the whole ground floor had been changed or moved by the occupants? A I am willing to swear that to the best of my recollection, and every time I was in the house after it was rented, that the furniture was in the same position.

Q Did you go into the bedrooms each time? A Yes.

Q You went through the house each time? A Yes.

Q How did you come to go through the house each time? A In the first few times I went there to see that the house was put in the order that I promised Mrs. Hass, and the balance of the period I went there to see to it that they were not damaging the house, the owner being particular and I being responsible for it.

Q Who fixed the location of the furniture originally? A The owner.

Q You had nothing to do with that? A No, sir.

Q There are five rooms, aren't there, or four? A There's a dining room, a bathroom, a living room, two bedrooms, a kitchen and an attic.

Q Did you pay particular attention each time you went in there, as to whether a bureau had been changed, as to how it was sitting? A No; but I get accustomed to making a mental picture of the location of the furniture in a room, it being my business, and from the plan.

Q How many rooms of the building did you go through in that way and make a mental picture of it in your mind? A Practically every building I have gone through in three years.

Q How many? A I have no way of knowing.

Q Approximately? A Approximately 75.

Q And you can tell now, and you have a mental picture, of the way the furniture in those houses were, and you can tell us whether at the present time, if you go in there again, any stick of furniture has been changed; is that right? A Within reason.

Q I know; but that is within reason? A I should say so, sir.

Q You can, then? What do you mean by within reason? A I mean that a chair can be moved 6 inches or 2 feet, and not make any difference in the general arrangement of the furniture.

Q And the bureau can be moved so that instead of facing this way it faces that way, and not make any particular difference in— A No, sir; it cannot.

Q You would spot that in any one of your houses the moment you entered? A Yes.

Q Any one of the 75 houses? A No, sir.

Q Any one of how many, then? A Ten houses.

Q Why the difference between 10 and 75? A Because the 10 houses are the ones I actually built, and familiar with, entering at least once a week.

Q So in any one of these ten houses, because you actually built them, and entered them once a week, you could spot the changing of a bureau from facing one way to facing the other way, and be able to testify about it and to swear positively that it was faced the other way before, is that right? A That is right.

Q This change as I understand was made during the construction of the building, is that right? A What change?

Q All the changes which were made from the plans? A Yes.

Q The building of the staircase to the changing of the swinging of the doors, is that right? A Yes.

Q They never were built any other way than they are built there now, is that right? A That is right.

Q And if it appears upon a casual inspection, that that door has been hung at one time or another on the other side, how do you account for it? A I account for it that it was hung that way in the beginning, we changed it before the house was occupied.

Q I thought it was built that way during the course of construction? A That is just exactly what I mean. You misconstrue my answer.

Q I beg your pardon. Didn't you tell Mr. Lum that there never had been a change after the door was hung? A You'd better put that question to me again.

Q (Question repeated.) "Didn't you tell Mr. Lum that there never had been a change after the door was hung?" A You'd better refer to the testimony. I will re-state the answer to any question referring to that.

Q I am now testing your memory. Your recollection for interior of houses seems to be good. Can you recall as to whether a few moments ago you told Mr. Lum that the door had never been changed after it was hung? Did you or didn't you? A If I did I spoke in error. I say, the door was hung one way once and before the house was completed it was hung on the other side and it has been that way ever since.

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Q So that it wasn't changed during the course of construction, but after construction completed; is that right? A No, sir, it is not right.

Q Tell us what is right. A As I said in my previous answer, the door was hung on one side of the door frame, and during the course of construction, after we had erected the staircase to the second floor, and the staircase to the cellar, we changed the swinging of that door to the other side of the door frame, and before the construction was completed.

Q In what shape was the house as to completion at the time that change was made that you now tell us about? A Framing completed, siding was complete and the roof on.

Q Is that all? A Rough floors laid.

Q Is that all? A Rough trim applied.

Q Is that all? A I should say so.

Q You are sure that is all? A I will repeat it from the beginning to be sure.

The Court: Can't you answer whether that is all or not?

A Yes, sir. I will repeat it. Shall I repeat it? The framing was completed, the sheathing and siding applied, the roof on, the trim on, and the floors laid, and the doors hung, when we made the change of the erection of the staircase to the second story and the cellar.

Q Is that all? A Yes, sir.

Q Any paint? A The paint on the exterior.

Q No paint on the interior? A No paint on the interior.

Q No varnish on the interior, or that which takes the place of varnish? A To the best of my recollection, no.

Q Aren't you as certain about that as you are about the fact that the door was hung? A No, sir; I am not.

Q Why not? A Because it is a detail considerably minor to the way the door was hung.

Q Isn't your answer that you don't know based upon the fact that you don't know whether there is evidence up there on that door jamb that the paint has been changed; isn't that the reason why you hesitate as to whether the paint was on? A Repeat the question, please.

Q (Last question repeated.) A No, sir.

Q It is not? A No, sir.

Q That has nothing to do with your hesitation? A No, sir.

Q How would you explain the fact, if it is true, that the paint has been changed on these door jambs? A I would say that we probably had applied our first coat of varnish, or something like that.

Q But you haven't any recollection as to that, have you? A No, I haven't any recollection as to whether there was a coat of varnish applied before these changes were made.

Q As you have described the situation of the house, the course of construction, it wasn't time yet for the entire painting, was it? A Well, it wasn't time for the entire painting until considerably later anyway, because the owner was bringing up his own painters to do the interior decoration.

Q Then it is clear, isn't it, that you didn't have a coat of varnish on the inside of the house? A No, I wouldn't say that, because our sub-contractor for the carpenter might have had in his sub-contract, the specification that one coat of varnish be applied to the trim.

Q Have you examined the door up there recently to see how the situation really is? A Oh, yes.

Q When did you do it last? A Yesterday afternoon.

Q You saw very clear evidence of change, didn't you? A Indeed, yes.

Q You saw that the change had been—you saw that the holes had been blocked up where the door had swung out, didn't you? A No; I saw where nail holes had been plugged out. A piece of wood was inserted where the hinges had originally been placed.

Q And you saw indications that the varnish had been disturbed, didn't you? A No, sir; I don't recall having seen any such indications.

Q Didn't you notice that the varnish there was lighter than the other and wasn't put on apparently at the same time? A No, sir; I didn't notice anything of the kind.

Q Did you examine it carefully? A I did.

Q Do you say the furniture from the whole operation is so that you cannot see the difference in the wood? A No, it is not.

Q You think that it was put on at the same time, the varnish? A I would say so; I know that one coat.

Q You know. You say that there is no door stop on the door into the end bedroom?

Mr. Lum: He didn't say that.

Q Do you say so? A That there is no door stop?

Q That there is a door stop? A There is one.

Q You say that is not a new one? A I say that the door stop to the best of my recollection is not a new one.

Q Did you look at it? Do you know anything about it? A You mean strip of wood which prevents the door from swinging all the way through, don't you?

Q It is a piece of wood as I understand at the bottom of the door that prevents the other door from hitting it. The door stop on the door of the room that we have called Leona Hass' room, the door stop on this door, the bedroom which we call Leona Hass' room, to prevent the door—the bedroom we call Mr. Pfender's bedroom, from hitting it. A I don't recall any such stop.

Q No such stop as that was put in during the course of construction, was it? A Not to the best of my recollection.

Q But you know, don't you? A I don't know.

Q You know the bed, and furniture, in it? A Yes.

Q Don't you know whether the door stop is there or not? A No, sir.

Q Did you notice that in making that change the beading was broken? A Beading on what?

Q On the door—the one into the small bedroom. A The beading where?

Q On the south side of the door—did you notice anything broken about it? A No; I don't really know what you are driving at.

Q I show you a photograph. Is that handwriting on the top of that photograph yours? A Yes.

Q When was that put on there? A I don't recall the date. When it was brought in to me to be identified.

Q By whom? A I don't recall; Mr. Bevier or Mr. Scott or Miss Hass; I don't recall; but I wrote my signature on a picture similar to that.

(Photograph referred to offered in evidence and marked Exhibit D. 8 for defendant, Mrs. Pfender.)

Q Can you tell me when that was put on? A I really cannot.

Q A week ago, month ago, or in July or August of this year? A I should say September of this year; but I don't want to state definitely.

Q About that time? A I should say somewhere around that time. They brought that in to me.

Q They brought that in to you to identify as what? A As a picture of the room, showing the location of the bed, and the changes of doors as being in the same location as when I rented the house to the Hasses.

Q You know Mr. Foster, don't you? A Yes.

Q Do you remember telling him or his asking you whether any change had been made from that plan—you gave him that plan? A I gave him the catalogue.

Q As the catalogue from which these houses had been built? A Yes.

Q He asked you for it? A Yes, he did.

Q When? A About the first or second time he came up.

Q Did he tell you why he wanted it? A No, but I asked why he wanted it.

Q So, when you handed it to him, you knew why he wanted it? A He wanted a floor plan.

Q Of this house? A Yes.

Q Did you tell him that the door had been changed? A No, sir.

Q Why not? A I didn't consider it of any importance; and I considered the whole case a beastly nuisance.

Q So he asked you for something which you assumed was a floor plan. We wanted a floor plan. You gave him something; because you considered it a beastly nuisance you didn't direct his attention to what you were giving wasn't what he wanted at all? A I told him that that was the house that was ordered for the original construction. If I recall correctly, I wrote in in general the structural change in the house.

Q You did what? A I wrote in in ink, I am not sure but I think I wrote in in ink, a general line of the major constructural change in the house.

Q The red on that is yours, isn't it, showing the word "road" in red ink? A Yes.

Q That is in red ink? A Yes.

Mr. Lum: Showing the witness Exhibit D. 5.

Q So that you did go a little bit beyond what you said, and you did indicate to him that there were certain changes? A Yes, sir.

Q So that you tried to, notwithstanding that it was a beastly nuisance, to give him an accurate floor plan, didn't you? A No; I tried to give him a reasonably accurate floor plan.

Q But you didn't change the door, did you? A No, sir.

Q Although you changed the staircase? A Yes.

Q And although you say that because you put the staircase in, is a reason why you changed the door? A Yes.

Q Why didn't you change the door? A Oh, I didn't think it was necessary.

Q So, it wasn't because it was a beastly nuisance; it was because it wasn't necessary? A That, too. You see, you can approach a request like that from two different angles. One was, Captain Foster said, "Have you a floor plan of the house?" My first answer was "no." I said, "Yes, there is a floor plan in the Bossert catalogue, and I will give that to you if that will serve you." I said, "By the way, we built a staircase in there." I showed that on the plan, and that is what I did, and I should like to indicate the facing of the house.

Q But you didn't think to tell him why you were making that floor plan; you didn't think to say, "Of course, we made this door here to swing the other way"? A No, sir; I didn't.

Q At the time you saw Captain Foster, had you seen Mr. Bevier? A No, sir.

Q Had you seen Mr. Pfender? A No, sir.

Q Talk about this case? After the arrest, I mean, on June 30th? A Did I see Mr. Pfender after the arrest?

Q And before you saw Foster and gave him this floor plan? A To the best of my recollection, no, sir.

Q And you hadn't seen Mr. Bevier? A Prior to giving Mr. Foster the floor plan?

Q Yes. A To the best of my recollection, no, sir.

Q You hadn't seen Davis? A I don't recall that name.

Q You hadn't seen anybody representing Mr. Pfender, you hadn't seen Miss Hass or Mrs. Hass? A I believe I did see Miss Hass and Mrs. Hass when they came in to pay their rent.

Q I mean, to talk about this case? A No, sir.

Q Or anybody else on the other side? A To the best of my recollection, no, sir.

Q No? A Not to the best of my recollection.

Q So that Foster was the first one that came in and asked for this floor plan? A To the best of my recollection, yes.

Q You gave him this with these changes which you have now made (Exhibit D. 5)? A Yes.

Q Then you saw Mr. Bevier? A Yes. I don't know whether I saw Mr. Bevier or Mr. Scott.

Q You saw one or the other of them? A Yes.

Q You consulted with them with respect to these photographs and put your signature on the photographs for their benefit; that is right? A Yes.

Q You made this sketch up there that you produce here in court; is that right? A Yes.

Q Now, you testified with respect to a change in this floor plan that wasn't shown upon the floor plan when you gave it to Mr. Foster? A Please repeat that question.

Q (Repeated.) "Now, you testified with respect to a change in this floor plan that wasn't shown upon the floor plan when you gave it to Mr. Foster?"

Mr. Lane: I withdraw it; it is obvious.

Q Look at this sketch made November 27, 1928—look at the outside of those windows. What are these swinging-out things supposed to be on the windows? A Shutters. It is indicated on here.

Q What is the swinging in supposed to be? A Casement sash.

Q Does that mean the sash open in the middle and swing in? A Yes.

Q The casements swing in and not out? A Yes.

Q And screens are affixed, aren't they, on the outside of the house—copper screens? A Yes.

Q Unpainted? A Painted.

Q Painted what? A White.

Q In fairly good condition? A Reasonably good.

Q And were in fairly good condition in June of 1928? A Yes, sir.

Q Small mesh screen, to keep out mosquitoes? A Yes.

Q Copper? A Yes.

Q And when did you attempt to see whether or not you could see in those windows from the outside? A Ever since it was built, I guess, I recall that I have been able to look in through the windows.

Q From what position can you look into the window of the bedroom, at the northeast side of the house? A Which bedroom?

Q This one here (indicating). A You can look into that from the road passing over the dam.

Q How many miles away is that? A About 150 feet.

Q You can look into this window, the one over the garage? A And you can also look into it, but you cannot see very much of the furniture in the room. If you will look at this elevation (indicating), the distance from the bottom of this window is approximately eleven feet to here, and this (indicating) is a slight excavation, the driveway here (indicating). Out here (indicating), it rises slowly, and over here (indicating) you can

look into the window, and see what is going on in a general way.

Q I want to know a point from which you can look into this window of the room that we call Miss Hass' room and see anybody lying on the bed.

The Court: Let me see the photograph of the interior of Mr. Pfender's room.

A There is no point that I know of where you can look through that window and see anyone lying in the bed in this room, located as it is now, and as it is usually located.

Q What I want to know, from your vast experience, from that house there is no point that you know of in that locality there, so that you can look into that bedroom window and see anybody on the bed—that is right? A What bedroom.

Q The bedroom that we call Miss Hass' bedroom—the one on the lake side, to the north—that is right, isn't it?

Mr. Lum: The large bedroom.

The Witness: No, you can, you can look from a point on a level with it and see somebody lying in the bed.

Mr. Lane: Will you read his answer just two or three answers back?

Mr. Bindseil (reading): "There is no point that I know of where you can look through that window and see anyone lying in the bed in this room, located as it is now, and as it is usually located."

Q I don't suppose the room has changed its location. You said two diametrically opposite things; which is true? A Yes, I have said two diametrically opposite things.

Q Which is true, and why do you say it? A I will make the true statement now. I just want to be careful and make statements of facts only, and I guess I was a little bit too careless then. It can readily be proved that you can see into direct practically that entire room from some point, some place.

Q You would be sitting in a tree to do it, with the bed located in this part of the room? A You can from up here on an elevation look directly in and see a good part of the bed.

Q Will you tell me why when I asked you that question you carefully considered and then you said, "There is no place from which you can look from the outside into that bedroom and see anybody on the bed"? A Yes, I will.

Q Tell me. A Because I forgot the grade of the lot next door running uphill to the west.

Q Are you testifying here from what you know of grades, or what you know from personal observation? A Both.

Q Are you testifying from personal observation, that you can see someone lying on that bed from some place outside of the house? A No, sir; that isn't from personal observation.

Q That is purely from a mathematical calculation in your own mind having regard to the grades? A Yes, sir.

Q From personal observation, you don't know anything about it? A No, sir.

Q Now, from what point in the road, from outside, can you see anybody who may be on the

bed in what we call Mr. Pfender's bedroom? A The one to the northwest side.

Mr. Lum: The small bedroom.

Q From what point on the Colony Road or the driveway? A From any point on the outside of the house nearer than 150 feet.

Q You don't mean to tell me that from a distance of 150 feet you can see into a room with screens on the room, do you, and see what is going on inside? A I would say it would be extremely difficult.

Q I would say so, too. Will you tell me some place from the outside that you can see into this other bedroom, this small bedroom, and see what is going on inside? A I would say if you were standing on the steps of the kitchen door, you could look in and see pretty well. I never made any personal test of that.

Q You have one place—the steps to the kitchen door? A I would say so.

Q Any other place? A Yes, back on the same level, on the grade of the plot to the rear, to the west.

Q Are you talking from personal observation? A No, sir; mathematical calculation.

Q So the whole business is mathematical calculation? A Very nearly.

Q I thought you said a few moments ago that you had made some test, or you did have some personal knowledge as to what you could see in these bedrooms, some part of which was based on mathematical calculation. Do I understand that your whole testimony as to what you can see and what you cannot see is based on mathematical calculation? A No, I will tell you what

personal observation I made, and that is peering through windows in the spring to see that nothing had happened on the interior of the house, walking on the porch and looking through the windows, and through the windows into the kitchen. I never examined the house or viewed the interior with any such purpose in mind as you evidently have.

Q You did it on November 27th, yesterday, didn't you, when you made this sketch? A No; I just took the levels, that is all.

Q But without that in mind? A Just to determine the elevations.

Q You know that you cannot stand close up against the house and see into the bedroom, the small bedroom, can you, into the window? A Yes, sir.

Q That cannot be done, can it? A No, sir.

Q How many feet is there from the ground level up to the window? A You can determine by a determination of this (indicating).

Q That hasn't been put in?

Mr. Lum: I offer both in evidence.

The Witness: You can determine by the measurements, by the use of a ruler and a quarter-inch scale.

Q Will you tell me what the elevation is, or what the distance is from the ground to the level of the window, the lower sill? A I should say about six feet, six.

Q What scale is that drawn to? A One-quarter inch.

Q Will you use that (witness handed ruler) and tell me? A Five feet six to the bottom of the frame. About six feet to the window sill.

Norbert A. McKenna, cross.

Q Nobody standing there could see in, could they? A Unless he is a very tall man.

Mr. Lane: I have finished with the witness.

Adjourned to December 11, 1928, at 10 A. M.

IN CHANCERY OF NEW JERSEY.

Between

CARL D. PFENDER,
Petitioner,

and

LILLIAN E. PFENDER,
Defendant.

Transcript of stenographer's notes of further proceedings in the above-entitled cause before Honorable Maja Leon Berry, one of the Vice-Chancellors of the State of New Jersey, at his chambers in the Industrial Office Building, Newark, New Jersey, on Tuesday, the 11th day of December, 1928, at 10 A. M.

Appearances:

As before stated.

Mr. Lum: Before we rest, I gave a copy of an affidavit to Mr. Lane the last time we were here—a witness in New York won't come here, and we have taken a deposition, we have an affidavit from this witness, and we have assured Mr. Lane that he would

have an opportunity to check the particulars in it. I will read this affidavit:

"John C. Reuter, being duly sworn, deposes and says: I am employed by the New York Telephone Company in the capacity of District Commercial Supervisor at 332 East 139th street, Borough of the Bronx, City of New York. The telephone exchange Topping is within my district and I am familiar with and have access to the records made by Topping numbers which are kept in my office; that the records of my office show that a call was made from Topping 3213 to South Salem, 62-L-3 during the evening of June 29th, 1928, and that the conversation started at 11:09 and lasted for three-quarters of a minute; that the records at my office further show that the subscriber's name at Topping 3213 is Miss Leona Hass and that her address is 911 Walton avenue, Borough of the Bronx, New York City."

I offer that affidavit in evidence.

(Marked Exhibit D. 1 L. E. Pfender, of this date.)

In the personal property case, Mr. Blankenhorn and I have agreed with your Honor's consent, to refer that to Mr. Bindseil as Master. It is a question of passing on various small items, and if that is satisfactory to your Honor, it will be entirely satisfactory to us, and perhaps save a little time.

The Court: All right.

Mr. Lum: We rest.

John McPartland, recalled, further direct.

JOHN McPARTLAND, recalled for

Further direct examination by Mr. Blankenhorn.

Q Since the time you went up to the cottage at South Salem and went in and found Mr. Pfender and Miss Hass in the cottage, have you visited that cottage? A Yes, sir.

Q When? A It was November 21st.

Q Look at Exhibit P. 6, and particularly at the door which is marked "F," which is the door opening into the northwest bedroom, or the small bedroom in which Mr. Pfender says he sleeps, and state whether or not that door was hung as shown in that photograph? A Well, the first time I went up there I did not take any notice of the doors, but when I was up there on the 21st, I realized that I had been standing at that time in the doorway of the small room, and I could see into the room occupied by Miss Hass, and if the door was hung the way it is now I could not have seen them there.

Q I show you Exhibit D. 4 for the defendant, and ask you if that correctly represents the door as it is hung now? A Yes, sir.

Q Did you see any marks indicating that any changes had been made? A Yes, sir, I saw some fresh varnish, and I saw a little piece of wood placed in the lock catch.

Q What about the hinges? A I did not take any notice of the hinges.

Q Where was this piece of wood set in the woodwork? A Right over here (indicating).

Q Well, tell us? A Right here (indicating).

Q On which side of the doorway were those pieces of wood inserted? A On the inside.

John McPartland, recalled, cross.

Q On the inside of the little room? A Little room.

Q Look at this photograph which has not been marked, and calling your attention to the window which opens out of the northwesterly bedroom, did you measure the height of that window from the ground? A I was there when it was measured.

Q Do you know how high above the ground it is? A Something like fifteen feet, I believe.

Q Did you try to see into that window from any point? A Yes, sir.

Q State whether or not it is possible to see into that window from any point surrounding that ground? A I cannot see in.

Cross examination by Mr. Lum.

Q On the particular night in question you did not try to see, did you? A Particular morning in question?

Q Yes. A No, sir.

Q So it would not make any difference whether it is five feet high or fifty feet high, you did not make any effort to look in, did you? A No, sir.

Q The ground does slope down to the window, does it not? A Yes, sir.

Q How many feet away did you get before your eyes were practically on a line with the window? A My eyes were not on a line with the window at any time that I recollect.

Q You did not walk up the slope to a place where you could look directly into the window, did you? A I walked all the way back, yes, sir.

Q You did not on the morning in question? A No, sir.

Mrs. Lillian E. Pfender, recalled, further direct.

Q You are quite sure that the door shown in this photograph does not swing the same way that it did when you were there? A I did not notice how it swung when I was there.

Q But if it had opened into the living room you could not have looked in? A I could not have looked in.

Q You considered the matter of looking in an important thing, of course? A I did, yes, sir.

Q You did not ask Mr. Hull to look in? A No, sir.

Q Nor speak to Mr. Pfender, I understand, about the condition of his clothes, or anything else? A No, sir.

Q Just kept that all a profound secret at the time, did you? A Yes, sir.

Witness excused.

MRS. LILLIAN E. PFENDER, recalled for

Further direct examination by Mr. Blankenhorn.

Q When you went to the cottage at South Salem this last summer did you walk into the northeast bedroom, which was the little bedroom on the rear of the house? A I did, as I turned around to leave after I had gone in and identified Miss Hass, then I turned in and looked into both rooms.

Q Did you see the door leading from the living room into the northeast bedroom? A Yes I did, and opened it.

Q Did you open the door? A I did.

Mrs. Lillian E. Pfender, recalled, cross.

Q How did you open it? A I turned in with my left hand toward the wall.

Q So that the door was on your left-hand side? A It was on my left-hand side.

Q I show you Exhibit P. 6 and calling your attention to the door which is marked in that photograph "F," I ask you if that was the way the door was hung when you were in that cottage? A It certainly was not. There was no door sticking out like that.

Cross examination by Mr. Lum.

Q Mrs. Pfender, you, of course, did not know on that particular morning that the direction in which any door swung was ever going to be of any importance, did you? A Yes, I did.

Q Why? A Because a person going in there would want to see everything and it would be obstructed by a door sticking out like that, it would obstruct the view from one of the rooms.

Q Of course, Mrs. Pfender, one who really wanted to see would go into the room, wouldn't they? A Yes, yes, I did.

Q And of course, if one went into the room it would not make a bit of difference which way the door swung? A Yes it would, else he could not see into both rooms at the same time, and in that corner you could see into both rooms at the same time.

Q Regardless of seeing into both rooms at the same time, if one wanted to see whether that bedroom was mussed up or not he would naturally go into the room? A Yes, I did go into that room the full width of the door, which was a little over two feet. I was in far enough to see a single bed and a bureau.

Mrs. Lillian E. Pfender, recalled, cross.

Q One who was really going into the room would not be concerned at all with the matter of the door, it would not make any difference whether the door opened in or out or opened up or down? A Yes, I think it would.

Q To one who was in the room? A Because I know it is very important to see things as they are in a case such as this, and I have learned to be very particular.

Q Did you notice the door to the attic open? A Door to the attic? I did not go around the stairway there, but there was a door going down cellar and then there was steps between, sort of like a blank wall.

Q Well, the door to the kitchen, did you notice particularly how it opened, also? A The door to the kitchen opened into the hall, so far as I know.

Q So far as you know? A Yes.

Q But you made particular note only of the door into the little room? A Yes, because I went into that, Mr. Lum. I remember distinctly. I have no reason for making any other statement than to tell the truth, as I have all through.

Q I understand you went into the room for the first time after you had come back from the house where you had been while the men were back at the house? A Yes, I did.

Q That was about what, eight or half-past eight? A That was between eight and a quarter-past eight.

Q You went into the room in which the double bed was, also? A I did, I looked into both rooms, Mr. Lum.

Q And I understand from you the double bed was all made up when you got there, the

room was fixed up? A Yes, it was, because we were there first very early. They had plenty of time to do up their work.

Witness excused.

Testimony closed.

The Court: Both sides rest?

Mr. Lane: Both sides, at least, we rest.

Mr. Lum: We rest.

Does your Honor want argument of both or neither?

The Court: I will consult your wishes to some extent on that. What do you want? If you are going to make an argument, I prefer that it be an oral argument, as it will take less time to dispose of that.

CONCLUSIONS OF VICE-CHANCELLOR.

IN CHANCERY OF NEW JERSEY.

Between	*On Petition for Divorce.*
CARL D. PFENDER, *Petitioner,*	*On Motion to Set Aside Decree Nisi.*
and	*Conclusions.*
LILLIAN D. PFENDER, *Defendant.*	*Docket 63, page 629.*

Merritt Lane, Esq., for the motion.

Lum, Tamblyn & Colyer (Mr. Ralph Lum) contra.

SYLLABUS.

1. Conscious deception of a court of equity by a petitioner in his suit for a divorce, by the giving of false testimony, the concealment of material facts pertinent to the issue and prejudicial to the suitor's cause, or by active or passive conduct creating a false impression favorable to that cause, is unconscionable conduct which will precluded relief notwithstanding that otherwise the suitor would have been entitled to a decree.

2. Upon proof of such deception submitted after decree *nisi*, and before final decree, the Court will set aside the decree *nisi* and dismiss the petition.

3. He who comes into equity for relief must not only enter with clean hands, but must keep them clean after his entry and until final decree.

4. Adultery by a petitioner for divorce pending the running of the decree *nisi* is sufficient

cause for vacation of that decree and the dismissal of the petition.

5. The same degree of proof of adultery, no more and no less, is required on an application to vacate a decree *nisi* for that cause, as would be required in a suit for divorce on the same ground.

BERRY, *V.-C.*

This is an application to set aside a decree *nisi* advised by me herein on January 10, 1928 (Docket 63, 629) and affirmed in 6 N. J. Advance Reports, 1580, for reasons, expressed in my opinion not yet officially reported. The reasons assigned for setting aside the decree *nisi* are (1) deception of the Court by the petitioner in the main case; and (2) adultery by the petitioner since the entry of the decree *nisi* and before final decree.

I will consider these reasons in the order stated:

I.

The petition for divorce which resulted in the decree *nisi* was based upon charges of extreme cruelty, one of which charges was of an "unjust accusation of infidelity." Before the parties separated on October 1, 1926, there had been considerable controversy between them over an alleged undue intimacy between the petitioner and Leona F. Hass, a young woman then in his employ and now twenty-five years of age. The petitioner's age is fifty-three. Mrs. Pfender had become insanely jealous of Miss Hass and had tried to arrange a meeting with her to discuss the affair but it was prevented by Mr. Pfender. At the hearings in the main case which were held during November and December, 1927, I was led to believe that the

friendly relations between Mr. Pfender and Miss Hass were of but short duration and had then long since ended; that he then had no interest in this woman and that his wife's suspicions and jealousy were altogether unfounded. It now appears, however, from the admissions of Mr. Pfender and Miss Hass themselves, that shortly after the first trouble between Mr. and Mrs. Pfender over Miss Hass occurred, she, conceiving that she was the cause of the trouble, refused to go out to dinner and to the theatre with Mr. Pfender again, as she had done on several occasions, so long as he lived with his wife. Within about six weeks after this refusal Mr. and Mrs. Pfender separated and Mr. Pfender and Miss Hass then resumed going out together and continued doing so on an average of two or three times a week until the occurrence on June 30, 1928, resulting in the charge of adultery to be hereinafter considered. During the course of the hearings on the main case and both before and since, Mr. Pfender frequently remained overnight at the apartment in New York City where Miss Hass and her mother resided. It is plain now that Mr. Pfender's interest in Miss Hass never waned but has increased constantly to this day. The impression which I got at the trial on this point was undoubtedly due to a false atmosphere created by the attitude of injured innocence assumed by Mr. Pfender and supported by his pastor, Dr. Dougherty. Mr. Pfender testified in the main case that he had always told his wife all of his "goings and doings" and that he never concealed anything from her. It is now plain that he did not fully inform her with respect to his relations with Miss Hass, even assuming the truth of his wife's testimony concerning his admissions, which he denied.

At the conclusion of the former hearing I was under the impression that Mr. Pfender was then actually residing, and, since October 1, 1926, had continuously resided with his pastor, Dr. Dougherty, at Glen Ridge, New Jersey. In paragraph 12 of his petition for divorce he says "he left his home and went to live with friends at Glen Ridge, New Jersey, where he has since then been residing." In paragraph 13 of his petition he says "Your petitioner has not lived with the defendant since the date last mentioned but has resided with friends at Glen Ridge." The only friends at Glen Ridge with whom he ever lived were Dr. and Mrs. Dougherty. At the hearing on the main case the testimony was to the effect that "he had lived there for some time." At the hearing on *this* application, both Mr. Pfender and Dr. Dougherty testified that Mr. Pfender had resided at Dr. Dougherty's home constantly from October 1, 1926, until the latter part of December, 1927. From the statement of residence in the petition and the testimony and attitude of the petitioner and his pastor, I assumed, and I think it was intended by them that I should assume, that this man, a vestryman in his church, whose life had been threatened by his wife, and who posed as having been unjustly accused by that wife of an improper intimacy with a woman employee, had fled for refuge and safety to the home of his spiritual adviser, and had resided there under his protection and guidance ever since. This presented a picture liable to excite the sympathy of the Court and was undoubtedly designed to have a controlling influence on its decision. That it did so is quite apparent from the reference to Dr. Dougherty's testimony in my former con-

clusions; but how different the picture here painted by the petitioner himself with the aid of Miss Hass! Instead of his being the embodiment of virtue and injured innocence which he then appeared, we find him at the very time of the hearings in the main cause, secretly seeking the company of and continuing the association of the woman who was the cause of the insane jealousy of which he complained; and so secret was this association that no hint of it was given during the trial, and even the petitioner's pastor, under whose roof he had taken refuge, knew nothing of it. The admitted facts are that this association had continued from the date of the separation, and, during the summer of 1928, Mr. Pfender's interest in Miss Hass, and his concern for her comfort had become so great that he suggested the renting of a larger apartment by the Hass family where he might also have a room. The testimony was to the effect that when he stayed overnight at the Concourse apartment he was obliged to sleep on a couch or sofa in the living room. Accordingly, in September, Mr. Pfender, Miss Hass and her mother rented an apartment at 911 Walton avenue, New York City, into which Miss Hass and her mother moved on October 1st, and for which Mr. Pfender paid a part, at least, of the rent. A room was reserved in this new apartment for him, he moved part of his clothing and personal belongings there, and made the apartment his New York home, eating there as a member of the family and sleeping there two or three nights a week. At the time of the former hearing the situation was that Mr. Pfender was actually maintaining two residences, one at Dr. Dougherty's in Glen Ridge and the other at the Hass

apartment at 911 Walton avenue, New York City; the one a technical residence for the purposes of the divorce action—not a legal requirement, but evidently to create atmosphere; the other, his domicillary residence where, according to the elevator operator, he was known as "Mr. Hass." Dr. Dougherty says he did not know of this situation and did not know where Mr. Pfender was spending his nights when he was not in Glen Ridge. During the holidays, in December, after the decree *nisi,* Mr. Pfender gave up his room at Dr. Dougherty's and removed all of his belongings to the Hass apartment, and thereafter made that his only residence and domicile. After January 1, 1928, Dr. and Mrs. Dougherty dined in New York and went to the theatre with Mr. Pfender and Miss Hass on at least two or three occasions. Even then the doctor remained in entire ignorance of where Mr. Pfender was living and saw nothing in Mr. Pfender's association with Miss Hass to excite his curiosity or suspicion, although Mrs. Pfender had previously, in a conversation with the doctor, charged this woman with being the cause of all her troubles. If the doctor's ignorance of Mr. Pfender's whereabouts and associations during the period preceding his moving from Dr. Dougherty's home was as sublime and complete as he would have the Court believe, it must have been due to the fact that he deliberately closed his eyes and ears to a situation which should have been self evident to one in his position. It is, of course, of small consequence where Mr. Pfender had his real residence. The important fact is that I was led to believe that the relations between Mr. Pfender and Miss Hass were at an end when the fact was quite

to the contrary. Whether or not the testimony of Mr. Pfender and Dr. Dougherty, the false atmosphere, or what-not, was intended to deceive the Court, it must have been apparent to the most casual observer at the main trial that that was the result. If so, it was the obligation of those responsible for that deception to undeceive me. The Court may excuse honest error, but it cannot condone either deliberate deception or conscious silence in the face of plain mistake resulting from deception unintended. The statements of residence as contained in the petition are misleading, to say the least. A statement by the petitioner under oath that he told his wife fully about all his relations with his alleged paramour, and a recital of those relations in part only when a full and complete recital would have disclosed to the Court that he had not made a full disclosure to his wife, and that there were substantial grounds for her jealous suspicions and accusations, and that the association of which his wife had justly complained was continuing at that time, is a withholding or concealment of material facts which the Court cannot overlook, and displays an attitude which does not commend a suitor to favor in a court of equity. If because of this circumstance the Court was deceived, it matters not whether that deception was the result of passive or active conduct on the part of the suitor, providing the suitor is conscious of the result and willing to profit by it. That this is the situation here I have no doubt. That I erred in my judgment and appraisal of the petitioner at the former hearing is now plain to me, but "to err is human" and no Court is infallible. It is the realization of this fact and the concern by rea-

son of it that cause men to break under the weight of judicial responsibility. But however deep the error into which a court of justice may fall, irrespective of the reasons therefor, the opportunity to correct it is always welcome. That it is my duty to correct my own error now, I have no doubt.

Let it be understood, however, that there is nothing in this case to indicate any knowledge on the part of the petitioner's solicitors of his deception or misconduct in the cause or of any connivance or participation in the petitioner's fraud and deception by his solicitors. Their reputation and standing at the bar preclude any thought or suspicion of misconduct on their part and I expressly absolve them from any charge or suggestion of it.

In *Clickner* v. *Clickner*, 95 N. J. Eq. 479, this Court held that where a suitor in equity has been guilty of false or misleading testimony and conduct in the presentation and hearing of his cause, his suit will be dismissed irrespective of whether or not he might otherwise be entitled to relief. The rule of that case is plainly applicable here. This does not mean that the defendant's threat against the petitioner's life, and because of which the decree *nisi* was advised, was justified or in any sense excusable; it means only that the unconscionable conduct of a suitor in a matter in which he seeks relief will prompt a court of equity to remain passive. *Newark Cleaning & Dye Works* v. *Gross*, 6 N. J. Adv. Repts. 598. In *Gluck* v. *Rynda Development Company*, 99 N. J. Equity, 788, affirmed 100 N. J. Eq. 554, it was held that he who comes into equity for relief must not only enter with clean hands but must keep them clean after his entry and until

the final determination of the issue, and this means until the final decree. One who by false or misleading testimony or conduct during the hearings in the cause deliberately deceives the Court cannot be said to have complied with that rule.

II.

The second reason assigned for setting aside the decree *nisi* is the alleged adultery of the petitioner with Leona F. Hass at South Salem, New York, on the night of June 29th or early morning of June 30, 1928. Both Mr. Pfender and Miss Hass vigorously deny this charge. Much of the testimony with respect to this occurrence is in sharp conflict and the defense makes much of the fact that the evidence supporting the charge was obtained by the payment of $10,000 to "Captain" Foster and his corps of detectives. Such payment is not denied. It is argued that the testimony of paid detectives, at best unreliable, is absolutely unworthy of consideration when obtained by the payment of such a large sum of money, which, of itself, is a sufficient inducement to witnesses of this character to shape their testimony to the needs of the case. But while the testimony of paid detectives is usually accepted with caution or oftimes totally rejected when uncorroborated by disinterested witnesses, it is only fair to say that here all the really important testimony of these detectives is amply corroborated by disinterested witnesses or by the admissions of Mr. Pfender and Miss Hass themselves. I have already recited some of these admissions respecting the association of Mr. Pfender and Miss Hass, their dining and going to the theatre to-

gether, the renting of the apartment at 911 Walton avenue and Mr. Pfender's residence there, and these admissions need not be here repeated. It is further admitted, however, that with the passage of time the mutual attraction of these two for each other grew stronger and their affection increased to such an extent that early in the fall of 1927, and before the final hearing in the main cause, Mr. Pfender embraced and kissed Miss Hass with increasing frequency and they usually called each other "dear," a term of address not altogether usual between an employer and employee, and that even before the separation he gave her expensive presents. She finally gave up her position with his firm. She drove his automobile which he kept in the city at a convenient garage. He admits that he was in love with her and while she says that until after the decree *nisi* he never told her of that love, yet her woman's intuition caused her to realize the fact that his affection was returned. She also says, however, that for a considerable period of time after the embracing and kissing began there was no thought on her part, or suggestion on his, of marriage, and that it was only after the decree *nisi* that he said, when he was free he *intended* to ask her to be his wife. In the spring of 1928 she became ill and went to Lakewood for her health and was visited there week-ends by Mr. Pfender. On her return to the city, Mr. Pfender rented a furnished bungalow at South Salem, New York, for the summer season, where it was intended that he and the Hass family should spend the summer. They had all spent one night or one week-end there prior to June 29th. At about eight o'clock on the evening of that date, Mr. Pfender and Miss Hass

drove to South Salem, taking with them in the car articles of household use, besides their clothing. Mrs. Hass had intended going with them but after loading up the car it was found there was no room for a third passenger and she decided to remain in New York and go up by train later that evening. Mr. Pfender and Miss Hass arrived at the bungalow about 10:30 o'clock that night and busied themselves with putting away their clothing and the household articles which they brought with them about one o'clock, when they retired. About eleven o'clock Mrs. Hass had called Miss Hass on the telephone and said it was storming in New York and that she would not be up that night. It did not then occur to either Mr. Pfender or Miss Hass that there would be any impropriety in their remaining in the bungalow alone that night although there was a hotel within two miles to which either one or both could have gone.

Mr. Pfender and Miss Hass were followed to South Salem by Mrs. Pfender, "Captain" Foster and his associates in another automobile. This coterie arrived there between five and six A. M., on June 30th, went to the bungalow, saw Mr. Pfender's car in the garage and being satisfied that Mr. Pfender and Miss Hass were in the bungalow, then went to a Justice of the Peace where Mrs. Pfender swore out a warrant charging Mr. Pfender with adultery. Then, accompanied by a constable armed with the warrant, they returned to the bungalow, knocked at the door and were admitted by Mr. Pfender, who was immediately placed under arrest. He was then clothed only in his pajamas and Miss Hass was in bed clothed only in her nightdress. After permitting Mr. Pfender to dress, the constable,

accompanied by the rest of his party, took him before a magistrate where he was held under bail for a preliminary hearing. There were two bedrooms in the bungalow, one with a double, and one with a single bed, the latter being termed Mr. Pfender's room. His clothing was in that room and he dressed there after his arrest. There is a sharp conflict of testimony respecting the condition of the beds in these two rooms. The detectives claim that the double bed in which Miss Hass slept showed unmistakable signs of having been occupied by two persons and that the single bed in the other room was made up and undisturbed, with Mr. Pfender's clothing lying thereon. This is vigorously denied by Mr. Pfender and Miss Hass. They say that both beds were occupied, the double bed by Miss Hass alone, and the single bed by Mr. Pfender, and that he was in that bed when he was awakened by someone walking on the gravel in front of the house, and that he sat up in bed, looked out of the window, and saw these men and Mrs. Pfender coming toward the house and asked what was wanted; that he then got up and admitted the party. Both bedrooms opened upon a living room and the doors to the bedrooms are separated only by the door frames which meet at a right angle. When Mr. Pfender and Miss Hass retired the night before they kissed each other good night, and, according to Mr. Pfender's story, they prepared for bed with the doors of their rooms open and they remained open all night. Miss Hass says her door was closed while she was undressing but she partly opened it when she was ready for bed and that it remained so during the night. There is some question as to the manner in which the doors of the two

bedrooms were hung. The door to Miss Hass' bedroom swings into that room, while Mr. Pfender claims that the door to his room opened by swinging into the living room, and that, consequently, when it was open it was impossible for anyone to see from one bedroom to the other. The door to Mr. Pfender's room does open into the living room now. The detectives claim that on the 30th of June it opened into the bedroom and that since then it has been rehung, so that it now swings into the living room. Admittedly there has been a change in the way it was originally hung, but Mr. Pfender says, and brings a witness to prove it, that it was changed at the time the bungalow was built. Much time was consumed by the taking of testimony of witnesses on this point, uselessly, as I think, for it is of small consequence how this door was hung. An open door, however hung, is but a slight barrier between two bedrooms occupied respectively by a man and a woman interested in each other as these two were, or inclined to commit adultery. Even closed doors have been known to yield to an undefended assault. The question which is presented to me under the admitted state of facts is whether under the rule of "inclination and opportunity" the charge of adultery has been proved. That the opportunity existed is admitted, but the inclination is denied.

That adultery by the petitioner for a divorce pending the running of the decree *nisi* will result in the vacation by the Court of Chancery of that decree, and in the dismissal of the petition for divorce, is well settled. *Fuller* v. *Fuller,* 41 N. J. Eq. 198; *Dolan* v. *Wagner,* 95 N. J. Eq. 1; *Helbig* v. *Helbig,* 6 N. J. Adv. Repts. 1561 (E. & A.).

Direct proof of adultery is not required; but to establish it by inference the circumstances must be such as would lead the guarded discretion of a reasonable and just man to the conclusion of guilt. *Berckmans* v. *Berckmans,* 16 N. J. Eq. 122, affirmed 17 N. J. Eq. 453; *Culver* v. *Culver,* 38 N. J. Eq. 163; *Hurtzig* v. *Hurtzig,* 44 N. J. Eq. 329; *Ludritz* v. *Ludritz,* 88 N. J. Eq. 103; *Marchese* v. *Marchese,* 98 N. J. Eq. 379 (E. & A.); *Johnson* v. *Johnson,* 99 N. J. Eq. 190.

As between two interpretations of a given set of circumstances, *equally consistent with probability,* that inference with favors innocence should be adopted. (Italics mine.) Biddle, p. 69; *Berckmans* v. *Berckmans, Hurtiz* v. *Hurtzig, supra.* It has also been held that as adultery is a crime, a divorce proceeding based upon that charge partakes strongly of the nature of a criminal proceeding, and that, therefore, it is necessary that the guilt of the accused be proved beyond a reasonable doubt. *Berckmans* v. *Berckmans, Marchese* v. *Marchese, Johnson* v. *Johnson, supra.* This proposition was questioned by Biddle, p. 69, citing *State* v. *Sharkey,* 73 N. J. L. 491, but the doctrine has been lately reasserted in *Johnson* v. *Johnson, supra.* It would seem to be an exception to the "preponderance" rule of evidence applicable to civil proceedings. It is certain, however, that the evidence must be so satisfying that the mind of the Court will be free from "conscientious and perplexing doubts." *Marchese* v. *Marchese, supra.*

But to prove adultery by circumstances, criminal desire and an opportunity to gratify it need only be shown. Where these both concur, guilt is presumed. *Berckmans* v. *Berckmans, supra. Black* v. *Black,* 30 N. J. Eq. 228; *Torrens* v. *Torrens,* 94 N. J. Eq. 480, E. & A. 2; *Ishop on Mar-*

riage and Divorce, Sec. 619. This is what is commonly known as the "inclination and opportunity" rule. In the Helbig case, *supra*, the Court of Errors and Appeals said that under some circumstances there is a very practical difference in the *application* of this rule before and after the commencement of the *nisi* period, and that "circumstances and conduct on the part of a married woman living with her husband, enjoying his support and protection, and owing him, not only the actual, but also the seeming, loyalty of a true wife, might very properly furnish convincing proof of a guilty inclination on her part, while the same circumstances and conditions in the case of a wife, who, as here, has been deserted and abandoned by her husband for over two years, and in his favor, a divorce decree *nisi* has been granted, and who, consequently, owes him no actual or seeming wifely loyalty of any kind, might very properly be construed to be entirely innocent and no proof whatever of such guilty inclination." It was there held that "to justify an order vacating a decree *nisi* and dimissing a bill for divorce during the running of such decree and before the final divorce decree has been entered, because of adultery, committed during that period by the party holding the *nisi* decree, the adultery must be established with the same degree of certainty that would be required because of that offense, to justify or defeat, as the case might be, a decree for divorce." The same degree of proof, no more and no less, is required. If both inclination and opportunity are shown, guilt is presumed, but after decree *nisi*, more proof of inclination would seem to be required under some circumstances. What circumstances

demand greater proof of inclination must be determined by the Court in each particular case as it arises.

In the case *sub judice,* the inclination or criminal desire on the part of Mr. Pfender and Miss Hass can be determined only by inference from their previous conduct. It has been said that facts, in themselves, inconclusive, may be made conclusive by proof of falsehood or concealment on the part of the offender. 2 *Bishop,* Sec. 629. Pfender's relations with Miss Hass were certainly effectively concealed from everybody connected with this cause, even from Dr. Dougherty. Secrecy is a concomitant of a guilty love. Their attachment was no doubt a guilty one. It began while Pfender most certainly owned every duty of a husband to his wife, and continued in secret throughout the whole period of the separation, and during the course of the previous trial. Pfender's presents to Miss Hass, insufficiently explained, as I think, furnish a strong suspicion of his guilt, and, in connection with other evidence, help establish the offense. 2 *Bishop,* Sec. 630. It has also been said that "the stronger the affection, the more perfect the concord, between married persons, the less likely is it that adultery will be committed." 2 *Bishop,* Sec. 621. Contrariwise, the less affection and the more discord between married persons, the more likely is it that adultery will be committed. There was an abundance of discord between the Pfenders.

The peculiar thing about the relations between Miss Hass and Mr. Pfender is that they can see nothing wrong in them. Mr. Pfender insists that he is a man of honor and that Miss Hass is a lady, and that all his attentions to

her were grounded upon his love and affection; but love has spelled the doom alike of kings and fools, and it has been said that "love darkens reason, and confounds discretion." That a man of fifty-three and a woman of twenty-five might spend a night alone in a secluded bungalow without committing adultery, may be admitted. To deny it would be to deny the existence of virtue and honor. But in the instant case, it could be the more easily believed if these two had not previously been on more intimate terms than the proprieties of every day life admit. And we must not lose sight of the fact that, however honorable and virtuous they claim to be, they were still human and had not previously hesitated to indulge in amatory conduct likely to excite the baser passions, and this while one was an undivorced husband separated from his wife, and the other a young woman, the primary cause of that separation, and with full knowledge that her lover was not free to bestow his affections upon her.

It is with the probabilities of human conduct that we are here concerned and not with that of a superman or an ultra-virtuous woman, and these probabilities must be determined in the light of the former conduct of the parties. It is argued that if the conduct of those parties admits of two interpretations, one of guilt, and the other of innocence, that which favors innocence should be adopted. The rule as laid down by Chancellor Green in the *Berckmans* case is "where the conduct of a party admits of two interpretations *equally consistent with probability,* the one involving guilt and the other consistent with innocence, the rule of evidence, as well as the dictates of justice, require that the

interpretation should be favorable to innocence." (Italics mine.) In invoking the rule quoted, counsel ofttimes fail to appreciate the import of the italicized words. When the human probabilities, as contrasted with the human possibilities, are here considered, I do not think it can be said that the conduct of these parties admits of two interpretations *equally consistent with probability.*

I have carefully considered the evidence submitted on this application in the light of that submitted in the main case, and, with a full realization of my own fallibility, I have reached the conclusion that the requirements of the "inclination and opportunity" rule have been fully met, and that adultery was committed as charged, and I so find. The result is that the decree *nisi* will be vacated and the petition for divorce dismissed.

Decided January 14, 1929.

ORDER AND FINAL DECREE.

Filed January 30, 1929.

IN CHANCERY OF NEW JERSEY.

Between CARL D. PFENDER, *Petitioner,* *and* LILLIAN E. PFENDER, *Defendant.*	*On Petition for Divorce and Counterclaim of Defendant for Divorce.*
Between LILLIAN E. PFENDER, *Complainant,* *and* CARL D. PFENDER, *Defendant.*	*On Bill for Maintenance.* *Order and Final Decree.*

Complainant, Lillian E. Pfender, having filed her bill for maintenance herein, and the defendand thereto, Carl D. Pfender, having appeared and answered and the said Carl D. Pfender having filed a petition for divorce against the said Lillian E. Pfender upon the ground of cruelty, and the said Lillian E. Pfender having appeared and answered and filed a counterclaim for divorce upon the ground of cruelty, and the said Carl D. Pfender having answered thereto, and the said suits having been consolidated by an order of the Court of the 10th day of May, 1927, and the matter having come on before the Court and testimony having been taken and

the said Lillian E. Pfender having withdrawn her counter-claim for divorce, and the matter having proceeded upon the petition of the said Carl D. Pfender for divorce and the bill of the said Lillian E. Pfender for maintenance, and testimony having been taken and a decree *nisi* having been entered on the 10th day of January, 1928, dismissing the counter-claim of the said Lillian E. Pfender, which had been withdrawn by her, and her bill for separate maintenance, and granting a divorce to the said Carl D. Pfender upon the ground of cruelty, and the said Lillian E. Pfender having appealed to the Court of Errors and Appeals and that Court having affirmed the said decree of January 10, 1928, and application having been made to this court, prior to the affirmance by the Court of Errors and Appeals of said decree, by the said Lillian E. Pfender to set aside the said decree and to re-open the said cause and to grant a further hearing and for an order for the payment of alimony from the date of said decree until the further order of the Court, and the Court having, on the 3d day of July, 1928, made an order to show cause requiring the said Carl D. Pfender to show cause why the relief prayed for by the said Lillian E. Pfender should not be granted, and the argument of such order to show cause having come on and the Court having been of the opinion, upon the return of such order to show cause, that the said Lillian E. Pfender should be accorded a further hearing and that the decree should be opened for the purpose of having such further hearing, all proceedings under said decree being stayed in the meantime, and the further hearing having come on in the presence of Ralph E. Lum, of

counsel with the said Carl D. Pfender, and Merritt Lane, of counsel with the said Lillian E. Pfender, upon all of the proceedings aforesaid, and all of the proceedings in the cause, and the testimony offered by the respective parties in open Court having been taken and the argument of counsel having been heard and considered, and it appearing to the Court that the said Carl D. Pfender did consciously deceive the said Court in the proceedings which led to the decree of January 10, 1928, by the giving of false testimony, the concealment of material facts pertinent to the issues and prejudicial to his cause, and by active or passive conduct creating a false impression favorable to that cause and that he was guilty of unconscionable conduct in the prosecution of said cause;

And it further appearing to the Court that, while the decree of the 10th of January, 1928, was on appeal undetermined in the Court of Errors and Appeals and before the said Carl D. Pfender was entitled to a final decre of divorce, said Carl D. Pfender was guilty of adultery as charged against him in the petition of the said Lillian E. Pfender to re-open the said decree;

And it further appearing to the Court, that, by inadvertence pending the appeal, a final decree of divorce was entered in favor of the said Carl D. Pfender against the said Lillian E. Pfender and that this Court has heretofore directed that said final decree so inadvertently entered be set aside;

It is thereupon, on this 30th day of January, 1929, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED, and the said Chancellor doth, by virtue of the power and authority of

this Court and of the statute in such case made and provided, ORDER, ADJUDGE and DECREE:

1. That the final decree of divorce in favor of the said Carl D. Pfender against the said Lillian E. Pfender be set aside and for nothing holden.

2. That the decree of January 10, 1928, being the decree *nisi* for divorce in favor of the said Carl D. Pfender against the said Lillian E. Pfender and dismissing the bill of the said Lillian E. Pfender for separate maintenance, be set aside and for nothing holden, except insofar as it dismisses the counter-claim of the said Lillian E. Pfender for divorce, which counter-claim was withdrawn at the hearing.

3. That the bill for maintenance be retained for such order or decree as this Court may hereafter make.

4. That the application of the said Lillian E. Pfender for an order directing the payment to her of support and maintenance from the date of the decree *nisi,* now set aside, and the application for costs, counsel fees, both in the Court of Errors and Appeals and in this Court upon the re-hearing, and for reimbursement for expenses incurred by her in the procuring of evidence in this proceeding and for the transcript of the testimony, be reserved for the further order of this Court.

5. That the causes be retained for such other proceedings as may be necessary or proper, and that either party may have leave to bring on any of the retained or reserved matters upon five days' notice to the other.

E. R. WALKER,

C.

Respectfully advised,

MAJA LEON BERRY,

V.-C.

NOTICE OF APPEAL.

Filed February 7, 1929.

IN CHANCERY OF NEW JERSEY.

Between CARL D. PFENDER, *Petitioner,* *and* LILLIAN E. PFENDER, *Defendant.*	*On Petition for Divorce and Counterclaim of Defendant for Divorce.*
LILLIAN E. PFENDER, *Complainant,* *and* CARL D. PFENDER, *Defendant.*	*On Bill for Maintenance.* *On Order and Final Decree.* *Notice of Appeal.*

Carl D. Pfender, the above petitioner, hereby appeals from the order and final decree made in the above-entitled causes on the 3rd day of January, 1929, by the Chancellor on the advice of Vice-Chancellor Maja Leon Berry, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated: February 1, 1929.

LUM, TAMBLYN & COLYER,
Solicitors for and of Counsel with
Petitioner, Carl D. Pfender.

Notice of Appeal.

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

RALPH E. LUM,
Of Counsel with Petitioner,
Carl D. Pfender.

PETITION OF APPEAL.

Filed February 19, 1929.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between CARL D. PFENDER, *Petitioner-Appellant,* *and* LILLIAN E. PFENDER, *Defendant-Respondent.*	*On Appeal from Chancery.*
LILLIAN E. PFENDER, *Complainant-Respondent,* *and* CARL D. PFENDER, *Defendant-Appellant.*	*Petition of Appeal.*

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

The petition of Carl D. Pfender, the appellant in the above-stated causes, respectfully shows that your petitioner finds himself aggrieved by a decree of his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, made on the advice of Vice-Chancellor Maja Leon Berry, on the 3rd day of January, 1929, in a cause in said court wherein Carl D. Pfender is petitioner and Lillian E. Pfender is defendant, and in a cause in said court wherein Carl D. Pfender is defendant and Lillian E. Pfender is petitioner, in this respect to wit:

That the said decree adjudges as follows: That the final decree of divorce in favor of the said Carl D. Pfender against the said Lillian E. Pfender, be set aside and for nothing holden;

That the decree of January 10, 1928, being the decree *nisi* for divorce in favor of the said Carl D. Pfender against the said Lillian E. Pfender and dismissing the bill of the said Lillian E. Pfender for separate maintenance, be set aside and for nothing holden, except insofar as it dismisses the counter-claim of the said Lillian E. Pfender for divorce, which counter-claim was withdrawn at the hearing;

That the causes be retained for such other proceedings as may be necessary or proper.

And your petitioner humbly appeals from that part of the decree of the Chancellor as aforesaid upon the ground that the same is erroneous for that the court below erred in holding that the said Carl D. Pfender did consciously deceive the said Court in the proceedings which led to the decree of January 10, 1928, by the giving of false testimony, the concealment of material facts pertinent to the issues and prejudicial to his cause, and by active or passive conduct creating a false impression favorable to that cause and that he was guilty of unconscionable conduct in the prosecution of said cause; and for that while the decree of the 10th of January, 1928, was on appeal undetermined in the Court of Errors and Appeals and before the said Carl D. Pfender was entitled to a final decree of divorce, said Carl D. Pfender was guilty of adultery as charged against him in the petition of the said Lillian E. Pfender to re-open the said decree;

Petition of Appeal.

Your petitioner therefore prays that the said decree of the Chancellor may be wholly reversed, set aside and for nothing holden and that your petitioner may have such relief in the premises as to this Honorable Court may seem meeting.

LUM, TAMBLYN & COLYER,
Solicitors for and of Counsel with
Appellant.

RALPH E. LUM,
Of Counsel.

Service of a copy of the within petition of appeal is hereby acknowledged this 25th day of February, 1929.

MERRITT LANE,
Solicitor for Respondents.

ANSWER TO PETITION OF APPEAL.

Filed February 26, 1929.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between CARL D. PFENDER, *Petitioner-Appellant,* *and* LILLIAN E. PFENDER, *Defendant-Respondent.*	*On Appeal from Chancery.*
LILLIAN E. PFENDER, *Complainant-Respondent,* *and* CARL D. PFENDER, *Defendant-Appellant.*	*Answer to Petition of Appeal.*

The answer of the above-named respondent, Lillian E. Pfender, to the petition of appeal of the above-named appellant, Carl D. Pfender.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, says and admits that a decree was, on the 3rd day of January, 1929, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be

produced, and this respondent is advised and believes, that the said decree is agreeable to equity, and prays that the same may be affirmed, with costs to be adjudged to this respondent.

Dated: February 25, 1929.

MERRITT LANE,
Solicitor for and of Counsel with
Respondent.

EXHIBIT D. 1.

12/11/28.

IN CHANCERY OF NEW JERSEY.

Between	*On Bill &c.*
CARL D. PFENDER, *Petitioner-Respondent,*	*On Petition &c.*
and	*On Appeal from Chancery.*
LILLIAN E. PFENDER, *Defendant-Appellant.*	

STATE OF NEW YORK }
COUNTY OF BRONX } *ss:*

John C. Reuter being duly sworn deposes and says that I am employed by the New York Telephone Company in the capacity of District Commercial Supervisor at 332 East 149th Street, Borough of Bronx, City of New York.

That the telephone exchange Topping is within my district and that I am familiar with and have access to the records of telephone calls made by Topping numbers which are kept in my office.

That the records of my office show that a telephone call was made from Topping 3213 to South Salem 62-L-3 during the evening of June 29, 1928 and that the conversation started at 11:09 P. M. and lasted for three quarters of a minute.

That the records of my office further show that the subscriber's name at Topping 3213 is Miss Leona Hass and that her address is 911 Walton Avenue, Borough of Bronx, New York City.

JOHN C. REUTER

Exhibit D. 1. 12/11/28.

Sworn to before me this 10th
day of August, 1928.

HERBERT LOEWENTHAL
Notary Public Bronx County
Bronx Co. Clks. No. 84, Reg. No. 3016A
N. Y. Co. Clks. No. 688, Reg. No. 0-464
Commission expires March 30, 1930

No. 686

STATE OF NEW YORK, }
COUNTY OF BRONX. } *ss.:*

I, ROBERT L. MORAN, Clerk of the County of Bronx (and Clerk of the Supreme Court of said County, and Clerk of the County Court for said County, the same being Courts of Record, having by law a seal), Do HEREBY CERTIFY, That Herbert Loewenthal whose name is subscribed to the certificate of acknowledgment, proof, affidavit or deposition of the annexed instrument and thereon written, was on the day of the date thereof a Notary Public within and for, and residing in said County, duly commissioned, qualified and sworn, having full power and authority by the laws of said State to take the acknowledgments of deeds or conveyances for lands, tenements and hereditaments in said State, and certify to same; also to administer oaths, to take depositions out of court, and to give certificates thereof; that full faith and credit may, and ought to be given to his official acts and attestations; that I am well acquainted with his handwriting and verily believe that the signature of said certificate of acknowledgment, proof, affidavit or deposition, is his genuine official signature as appears by the records of this office.

Exhibit D. 7.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, this 19th day of Sept., 1928.

ROBERT L. MORAN,
Clerk.

10

EXHIBIT D. 7.

7005

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE } *ss:*

I have compared the annexed copy of Operator's Original 1927-28 License #450468 issued
20 thereon to Carl D. Pfender with the original Application on file in this office, and do hereby certify that the same is a correct transcript therefrom and of the whole thereof.

GIVEN under my hand and the Seal of the Department of Taxation and Finance at the City of Albany, this 1st day of November in the year one thousand nine hundred and twenty 8

FRANK J. RYAN,
Deputy Commissioner

30

40

Exhibit D. 7.

BU

(State Seal)

State of New York—Department of Taxation and Finance—Bureau of Motor Vehicles

APPLICATION FOR OPERATOR'S LICENSE
Effective from July 1, 1927, to July 1, 1928

INSTRUCTIONS

1. ONE DOLLAR must accompany this application or it will be returned. DO NOT SEND CASH BY MAIL. POSTAGE STAMPS NOT ACCEPTED.

2. This application and attached stubs must be completely filled out. Application must be sworn to before a notary or other person authorized to take affidavits.

3. Every applicant under the age of 25 years is required to furnish either birth, baptismal or school certificate showing his or her age to be over 18.

4. Send application to nearest office (see list of offices on Renewal Stub on other side).

5. DO NOT BRING YOUR CAR TO OFFICE. An examination permit giving time and place of examination will be delivered to you upon the filing of this application.

The only fee you are required to pay is for this application. Any money paid to any person to influence the granting of a license to you is wasted. Any person attempting to bribe, or any person bribing, directly or indirectly, any person connected with the Department of Taxation and Finance or the Bureau of Motor Vehicles will be prosecuted to the fullest extent of the law.

Exhibit D. 7.

Office Record—Do Not Write in These Spaces

Fee $1 Examined by .... Date Received ....
Pending No. 10772 450468 Jan 1928

This space for stamp of issuing office

1. Name—Carl D. Pfender
(Name must be typewritten or printed)
2. Residence Address—Street and No.—911 Walton Ave. City or Village—New York County—N Y State—N Y
3. Business Address—Street and No.—80 Fifth Ave City or Village—New York County—N Y State—N Y
4. If employed give name of employer.....
5. Date of Birth—Mo. July Day 18 Yr. 1875
6. Color—White 7. Sex—Male 8. Weight—150 lbs. 9. Height—5 ft. 10 in. 10. Color of eyes—Blue 11. Color of hair—Grey Mix
12. Do you read, speak and understand English? Yes or No—Yes
13. What kind of motor vehicle do you intend to operate? Type—Passenger Car
(Passenger car, truck, motorcycle)
14. Have you ever had a license to operate a motor vehicle refused, suspended or revoked, in this state or elsewhere? Yes or No—No
If so, give particulars.....
15. Do you use drugs or narcotics in any form or manner, or have you done so within the past year? (If so, to what extent)—No
See other side for balance of questions
16. Have you ever had any accidents while operating a motor vehicle? Yes or No—No
17. Were you ever convicted of any felony or misdemeanor? Answer, Yes or No—No

Exhibit D. 7.

18. Were you ever convicted of any offense, or violation of any law, ordinance or regulation connected with or related to the operation of a motor vehicle? Answer, Yes or No—No

19. (a) Are you crippled in any manner?—No Is your eyesight or hearing impaired?—No Do you wear glasses?—for reading Have you any organic affection of the heart, suffered an attack of epilepsy, stroke of paralysis, vertigo, or are you subject to fainting spells?—No Do you suffer from any marked nervous affection?—No

(b) If the answer to any of the foregoing is "Yes" state all particulars.....

20. State when you desire your examination.....

Affidavit below must be signed in the presence of person authorized to take affidavits

STATE OF NEW YORK }
COUNTY OF N Y } *ss.:*

Free Notaries in Offices of Bureau

The undersigned, being duly sworn, deposes and says: I hereby make this application to the Commissioner of Motor Vehicles for a license to operate a motor vehicle (or motorcycle) and for that purpose have answered the foregoing questions, and swear that the statements and answers therein are true to the best of my knowledge, information and belief; that I am familiar with such portions of the Highway Law and General Highway Traffic Law as are necessary to secure the safe operation of motor vehicles.

Sign Here Carl D. Pfender

Signature of applicant to be made before Notary or Com'r. Sign your name in full—not initials

Exhibit D. 8.

Sworn to before me this 29
day of Dec 1927

O. Roads
Notary Public or Commissioner of Deeds

WARNING: Any person making a false statement in a verified application for registration, or in an application for a license, or in any proof or statement in writing in connection therewith, or who shall deceive or substitute, or cause another to deceive or substitute in connection with any examination hereunder, shall be guilty of a misdemeanor, punishable by a fine of $500, or imprisonment, for one year, or both.

EXHIBIT D. 8.

6241

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE } *ss:*

I have compared the annexed copy of Operator's Renewal Application 1928-29 License #7622 Issued thereon to Leona F. Hass with the original Application on file in this office, and do hereby certify that the same is a correct transcript therefrom and of the whole thereof.

GIVEN under by hand and the Seal of the Department of Taxation and Finance at the City of Albany, this 21st day of June in the year one thousand nine hundred and twenty Eight

FRANK J. RYAN
Deputy Commissioner

MG

Exhibit D. 8.

State of New York—Department of Taxation and Finance—Bureau of Motor Vehicles

OPERATOR'S RENEWAL APPLICATION FOR 1928-29

Do not send cash or postage stamps by mail.

Fee 50c. Examined by .... Date Received .... Checked by .... 7622 Jun 6 28

(Do not write in above spaces)

1. Name—Leona F. Haas
(Name must be typewritten or printed)
2. Give your 1927-28 operator's license number—1325318
3. Residence Address—Street and No.—911 Walton Ave City or Village—New York City County .... State—N Y
4. Date of birth—Mo. Oct Day 28 Yr. 1903 5. Color—Wht 6. Sex—Fem 7. Weight—134 lbs. 8. Height—5 ft. 6 in. 9. Color of eyes—Green 10. Color of Hair—Brown
11. Were you ever convicted of any felony or misdemeanor? Were you ever convicted of a violation of any law, ordinance or regulation connected with or related to the operation of a Motor Vehicle? Answer yes or no—No If so, how many times?.....
Nature of each offense.....
In what courts convicted?.....
Dates of convictions...Sentence imposed...
12. Have you had any accident resulting in death or personal injury while operating a Motor Vehicle since April 1, 1927?—No
If so, did you file a report of the accident with the Commissioner of Motor Vehicles,

Exhibit D. 8.

as required by law?.....
Give date or approximate date such report was filed .....

Answer additional questions and execute affidavit on other side

13. Have you suffered any physical or mental disability since April 1, 1927?—No.
If so, state all particulars.....

14. Has your license been suspended since April 1, 1927?—No. If so, has it been restored?...

15. Has your license ever been revoked?—No.
If so, has your right to operate been restored? .....

16. If now employed in any capacity, give employer's name .....

17. Give address of employer. Street .....
City or Village.....State.....

18. My address shown in space provided on other side is my actual place of residence and not one of convenience, or fictitious.

Affidavit Below Must Be Signed in the Presence of Person Authorized to Take Affidavits

STATE OF NEW YORK }
COUNTY OF N Y } *ss.:*

The undersigned being duly sworn says: I am the above named applicant. The statements and answers contained in the foregoing application are true to the best of my knowledge, information and belief.

Sign Here Leona F. Haas

Signature of applicant to be made before Notary or Com'r. Sign your name in full—not initials

Exhibit D. 8.

Sworn to before me this 6
day of June 1928.

Price
Notary Public or Commissioner of Deeds

INSTRUCTIONS

1. Your 1927-1928 license expires June 30, 1928. To renew your license for 1928-29, detach the renewal stub from your 1927-28 license and pin it to this application when completely filled out. MAIL or deliver both to the nearest office (see list of offices on stub to the right) with check, money order or draft payable to the Commissioner of Motor Vehicles for 50c. DO NOT SEND CASH OR POSTAGE STAMPS BY MAIL.

2. Answer all questions, fill out both stubs, and sign your name in full in the presence of a notary or application will be returned.

3. Do not detach either of the stubs which are attached to this application.

Exhibit D. 8.

EXHIBIT D. 8.

7004

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE } *ss:*

I have compared the annexed copy of Operator's Renewal 1928-29 License #118113 issued thereon to Carl D. Pfender with the original Application on file in this office, and do hereby certify that the same is a correct transcript therefrom and of the whole thereof.

GIVEN under my hand and the Seal of the Department of Taxation and Finance at the City of Albany, this 1st day of November in the year one thousand nine hundred and twenty 8

BU

FRANK J. RYAN
Deputy Commissioner

BU

State of New York—Department of Taxation and Finance—Bureau of Motor Vehicles

OPERATOR'S RENEWAL APPLICATION FOR 1928-29

Do Not Send Cash or Postage Stamps by Mail
Fee—50c. Examined by... Date Received...

Checked by.... 118113 Jun 5 28
(Do not write in above spaces)

1. Name—Carl D. Pfender
(Name must be typewritten or printed)
2. Give your 1927-28 operator's license number—450468

Exhibit D. 8.

3. Residence Address—Street and No.—911 Walton Ave City or Village—New York County—N Y State—N Y

4. Date of Birth—Mo. 7 Day 18 Yr. 1875 5. Color—W 6. Sex—Male 7. Weight—150 lbs. 8. Height—5 ft. 10 in. 9. Color of Eyes—Blue 10. Color of Hair—Grey Mix

11. Were you ever convicted of any felony or misdemeanor? Were you ever convicted of a violation of any law, ordinance or regulation connected with or related to the operation of a Motor Vehicle? Answer yes or no—No If so, how many times?.....
Nature of each offense.....
In what courts convicted?.....
Dates of convictions...Sentence imposed...

12. Have you had any accident resulting in death or personal injury while operating a Motor Vehicle since April 1, 1927?—No
If so, did you file a report of the accident with the Commissioner of Motor Vehicles, as required by law?.....
Give date or approximate date such report was filed .....

Answer additional questions and execute affidavit on other side

13. Have you suffered any physical or mental disability since April 1, 1927?—No. If so, state all particulars .....

14. Has your license been suspended since April 1, 1927?—No. If so, has it been restored?...

15. Has your license ever been revoked?—No. If so, has your right to operate been restored? .....

16. If now employed in any capacity, give employer's name—H. P. McKenney & Co.

Exhibit D. 8.

17. Give address of employer. Street—80 Fifth Ave City or Village—New York State—N Y

18. My address shown in space provided on other side is my actual place of residence and not one of convenience, or fictitious.

Affidavit Below Must Be Signed in the Presence of Person Authorized to Take Affidavits

STATE OF NEW YORK }
COUNTY OF N Y } *ss.:*

The undersigned being duly sworn says: I am the above named applicant. The statements and answers contained in the foregoing application are true to the best of my knowledge, information and belief.

Sign Here Carl D. Pfender
Signature of applicant to be made before Notary or Com'r. Sign your name in full—not initials

Sworn to before me this 6th
day of June 1928

J. Spitz
Notary Public or Commissioner of Deeds

INSTRUCTIONS

1. Your 1927-1928 license expires June 30, 1928. To renew your license for 1928-29, detach the renewal stub from your 1927-28 license and pin it to this application when completely filled out. MAIL or deliver both to the nearest office (see list of offices on stub to the right) with check, money order or draft payable to the Commissioner of Motor Vehicles for 50c. DO NOT

Exhibit D. 9.

SEND CASH OR POSTAGE STAMPS BY MAIL.

2. Answer all questions, fill out both sides, and sign your name in full in the presence of a notary or application will be returned.

3. Do not detach either of the stubs which are attached to this application.

EXHIBIT D. 9.

6206

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE } *ss:*

I have compared the annexed copy of Original Operators Application 1927-28 License #1325318 issued thereon to Leona F. Haas with the original application on file in this office, and do hereby certify that the same is a correct transcript therefrom and of the whole thereof.

GIVEN under my hand and the Seal of the Department of Taxation and Finance at the City of Albany, this fifteenth day of June in the year one thousand nine hundred and twenty eight.

FRANK J. RYAN
Deputy Commissioner

MOC

Exhibit D. 9.

(State Seal)

State of New York—Department of Taxation and Finance—Bureau of Motor Vehicles

APPLICATION FOR OPERATOR'S LICENSE
Effective from July 1, 1927, to July 1, 1928

INSTRUCTIONS

1. ONE DOLLAR must accompany this application or it will be returned. DO NOT SEND CASH BY MAIL. POSTAGE STAMPS NOT ACCEPTED.

2. This application and attached stubs must be completely filled out. Application must be sworn to before a notary or other person authorized to take affidavits.

3. Every applicant under the age of 25 years is required to furnish either birth, baptismal or school certificate showing his or her age to be over 18.

4. Send application to nearest office (see list of offices on Renewal Stub on other side).

5. DO NOT BRING YOUR CAR TO OFFICE. An examination permit giving time and place of examination will be delivered to you upon the filing of this application.

The only fee you are required to pay is for this application. Any money paid to any person to influence the granting of a license to you is wasted. Any person attempting to bribe, or any person bribing, directly or indirectly, any person connected with the Department of Taxation and Finance or the Bureau of Motor Vehicles will be prosecuted to the fullest extent of the law.

Exhibit D. 9.

Office Record—Do Not Write in These Spaces
Fee $1 Examined by....Date Received....

Pending No.—42002 1325318 Jun 25 27
This Space for Stamp of Issuing Office

1. Name—Leona F. Haas
(Name must be typewritten or printed)
2. Residence Address—Street and No.—2537 Gr Concourse City or Village—N Y County—N Y State—N Y
3. Business Address—Street and No.—80 Fifth Ave City or Village—N Y County—N Y State—N Y
4. If employed give name of employer—H. P. McKinney & Co.
5. Date of Birth—Mo. Oct. Day 28 Yr. 1903
6. Color—white 7. Sex—Fem 8. Weight—132 lbs. 9. Height—5 ft. 6 in. 10. Color of Eyes—Green 11. Color of Hair—Brown
12. Do you read, speak and understand English? Yes or No—Yes
13. What kind of motor vehicle do you intend to operate? Type Passenger Car
(Passenger car, truck, motorcycle)
14. Have you ever had a license to operate a motor vehicle refused, suspended or revoked, in this state or elsewhere? Yes or No—No
If so, give particulars.....
15. Do you use drugs or narcotics in any form or manner, or have you done so within the past year? (If so, to what extent)—No
See other side for balance of questions
16. Have you ever had any accidents while operating a motor vehicle? Yes or No—No

Exhibit D. 9.

17. Were you ever convicted of any felony or misdemeanor? Answer, Yes or No—No. If so, state circumstances below:

18. Were you ever convicted of any offense, or violation of any law, ordinance or regulation connected with or related to the operation of a motor vehicle? Answer Yes or No—No. If so, state circumstances below:

19. (a) Are you crippled in any manner?—No. Is your eyesight or hearing impaired?—No. Do you wear glasses?—Yes. Have you any organic affection of the heart, suffered an attack of epilepsy, stroke of paralysis, vertigo, or are you subject to fainting spells?—No. Do you suffer from any marked nervous affection?—No.

(b) If the answer to any of the foregoing is "Yes" state all particulars—Use glasses when steady writing

20. State when you desire your examination—June 25, 1927

Affidavit Below Must Be Signed in the Presence of Person Authorized to Take Affidavits Free Notaries in Offices of Bureau

STATE OF NEW YORK }
COUNTY OF WEST. } *ss.:*

The undersigned, being duly sworn, deposes and says: I hereby make this application to the Commissioner of Motor Vehicles for a license to operate a motor vehicle (or motorcycle) and for that purpose have answered the foregoing questions, and swear that the statements and answers therein are true to the best of my knowledge, information and belief; that I am familiar

Exhibit D. 9.

with such portions of the Highway Law and General Highway Traffic Law as are necessary to secure the safe operation of motor vehicles.

Sign Here Leona F. Haas

Signature of applicant to be made before Notary or Com'r. Sign your name in full—not initials

Sworn to before me this 11
day of June 1927

G. W. Sumner
Notary Public or Commissioner of Deeds

WARNING: Any person making a false statement in a verified application for registration, or in an application for a license, or in any proof or statement in writing in connection therewith, or who shall deceive or substitute, or cause another to deceive or substitute in connection with any examination hereunder, shall be guilty of a misdemeanor, punishable by a fine of $500, or imprisonment, for one year, or both.

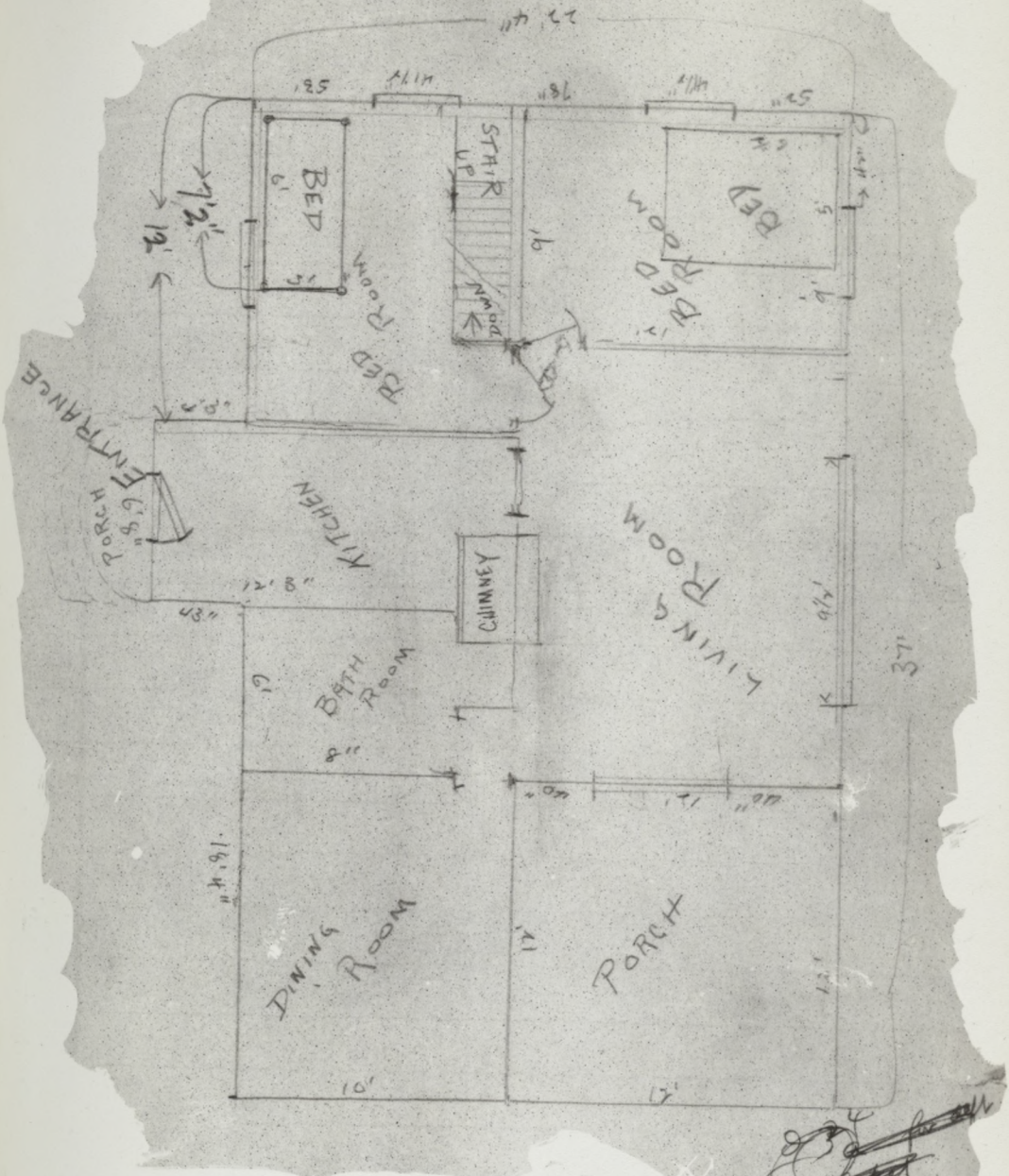
EXHIBIT D 1







EXHIBIT D 4


BED
BED ROOM
STAIR UP
DOWN
BED
BED ROOM
ENTRANCE
PORCH
KITCHEN
CHIMNEY
LIVING ROOM
BATH ROOM
DINING ROOM
PORCH
37'
10'
12'

)om adjoins, which means economy in)ing. The bedrooms are of ample size and ve windows on two or more sides, which is al in a house of this size. A stairway is led. There d e space. A t her side of d ation. gola Porch in or Dining R or or screening; they can be supplied and :d at short notice.

EXHIBIT D 5

Tuxedo

Road

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readily
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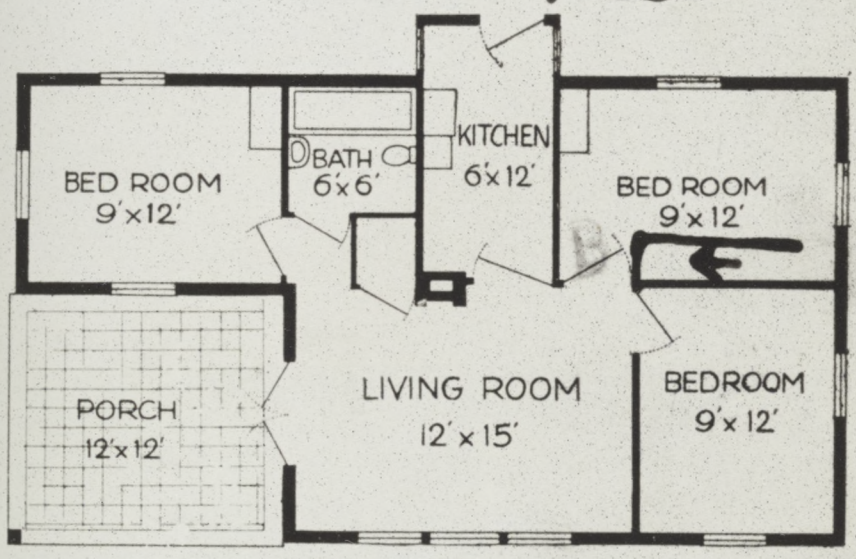


Floor Plan

Lake



Sert House

4 D 6
IWS

EXHIBIT D 6



EXHIBIT D 6

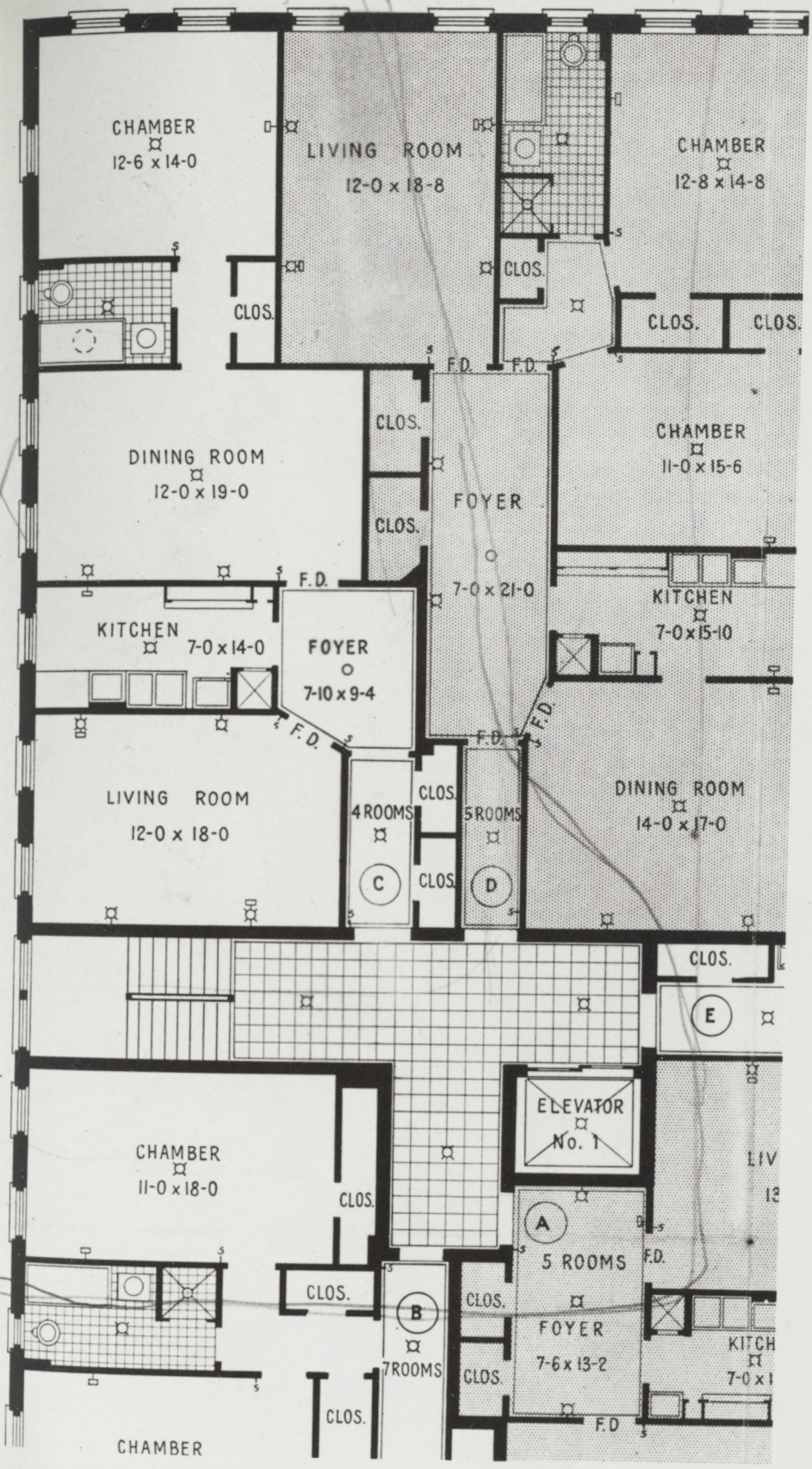

CHAMBER
12-6 x 14-0
LIVING ROOM
12-0 x 18-8
CHAMBER
12-8 x 14-8
CLOS.
CLOS.
CLOS.
CLOS.
F.D.
F.D.
DINING ROOM
12-0 x 19-0
CLOS.
CLOS.
FOYER
7-0 x 21-0
CHAMBER
11-0 x 15-6
F.D.
KITCHEN
7-0 x 15-10
KITCHEN
7-0 x 14-0
FOYER
7-10 x 9-4
F.D.
F.D.
F.D.
LIVING ROOM
12-0 x 18-0
4 ROOMS
C
CLOS.
CLOS.
5 ROOMS
D
DINING ROOM
14-0 x 17-0
CLOS.
E
ELEVATOR
No. 1
CHAMBER
11-0 x 18-0
CLOS.
A
5 ROOMS
F.D.
CLOS.
CLOS.
B
7 ROOMS
CLOS.
FOYER
7-6 x 13-2
CLOS.
F.D.
CHAMBER

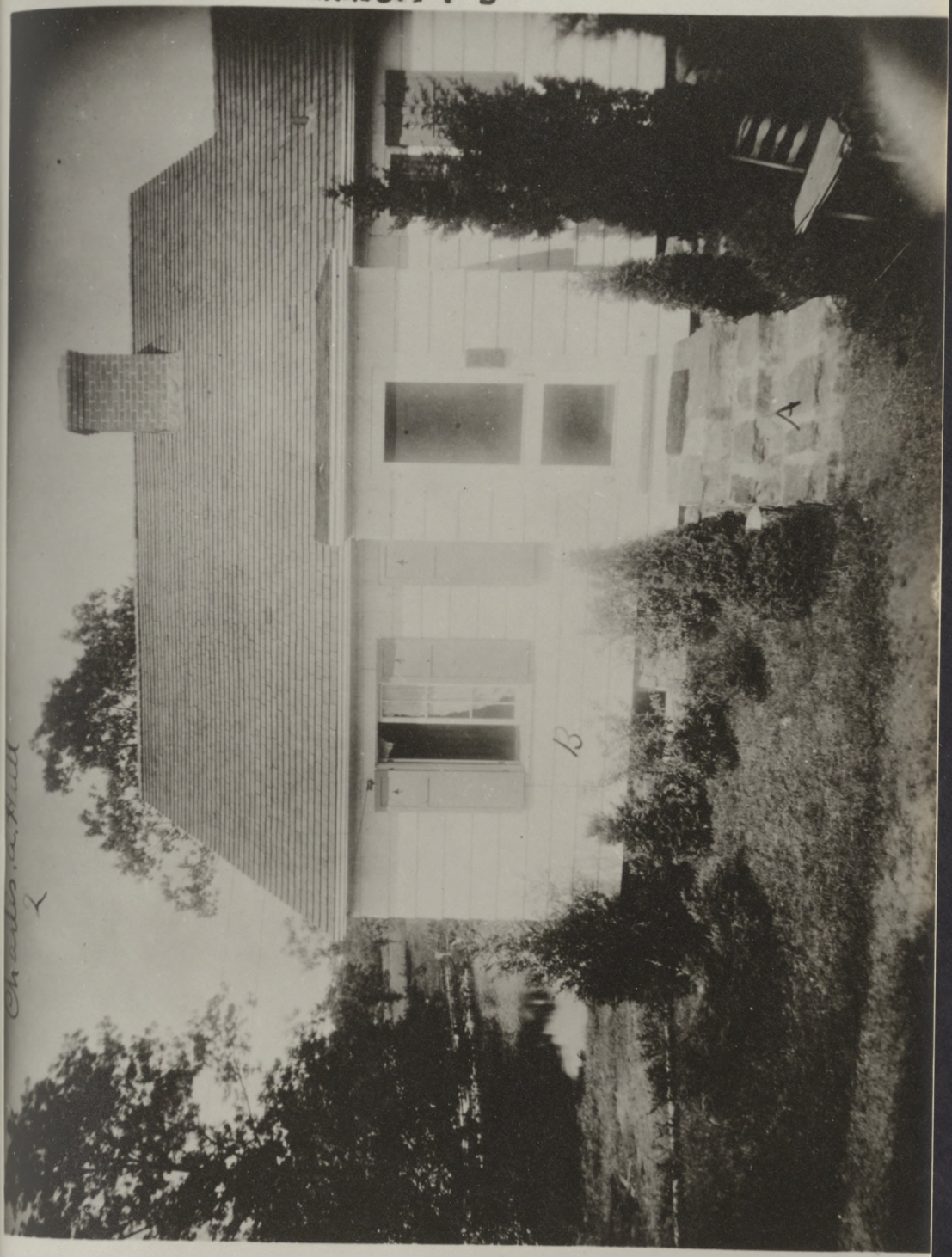


EXHIBIT D 5



EXHIBIT P 1

EXHIBIT P 2



Charles A. Hall

EXHIBIT P 3

EXHIBIT P 4

Corrected to April 29, 1928.

New York Central

Harlem Division

Time Tables

The Time Shown in this Folder is EASTERN STANDARD TIME One Hour Slower Than DAYLIGHT SAVING TIME

Suburban Trains
New York
Mount Vernon
White Plains
Pleasantville
Chappaqua
Mount Kisco
Lake Mahopac
and Intermediate Stations



Form 114

Corrected to April 29, 1928.

Miles	Stations		◆901	1001	◆402	405	◆407	1005	453	◆1027	455	457	1029	459	1053	495	461	463	493	1031	467		
			Night	4255	AM	AM	AM	AM	PM	PM	PM	PM	PM	PM	PM	PM	PM	PM	PM	PM	PM		
0	Lv G. Cent. Term.	Upper Level	12 00		5 15	6 06	6 33	6 57	5 56	6 03	6 35	7 03	8 03	8 35	9 30	9 35	9 45	10 25	10 35	10 38	10 48		
5	Lv 125th Street	Lower Level	12 11	5 05	5 25	6 16	6 43	7 07	6 10	6 16	6 45	7 13	8 14	8 46	9 41	9 45	9 55	10 35	10 45	10 48	10 58		
5	Lv 138th Street		12 14	5 08	5 27	6 18	6 45	7 10			6 48	7 16	8 17	8 48		9 47			10 47				
7	Lv Melrose (E. 162d St.)	a	12 17		5 29	6 20	6 47				6 50	7 18	8 19	8 51		9 49			10 49				
7	Lv Morrisania (E. 168 St.)	a	12 19		5 31	6 22	6 49				6 52	7 20	8 21	8 52		9 51			10 51				
8	Lv Claremont Pk. (E 171 St.)	a-b	12 21		5 33	6 23					6 54	7 22	8 23	8 54		9 52			10 53				
8	Lv Tremont (E. 177th St.)	a	12 23		5 34	6 25	6 53				6 56	7 24	8 25	8 56		9 54			10 55				
9	Lv 183d Street	a-b				6 27					6 57	7 25	8 27	8 57		9 55			10 56				
9	Lv Fordham (E. 190th St.)	a	12 26		5 37	6 29	6 56				6 59	7 27	8 29	8 59		9 56			10 59				
10	Lv Botanical Garden (E. 200 St.)		12 28		5 39	6 31	6 58				7 01	7 31	8 31	9 01		9 58			11 01				
11	Lv Williams Bridge (E. 210 St.)		12 30		5 42	6 33	7 00				7 03	7 33	8 33	9 03		10 01			11 03				
12	Lv Woodlawn (E. 233d St.)		12 33		5 45	6 36	7 03				7 06	7 36	8 36	9 06		10 04			11 06				
13	Lv Wakefield (E. 241st St.)	b	12 35		5 46	6 37	7 04				7 08	7 38	8 38	9 08		10 05			11 07				
14	Lv Mount Vernon		12 37	5 21	5 49	6 40	7 07		16		7 10	8 10	8 30	9 10	9 56	10 07	10 09	10 50	11 10		11 13		
15	Lv Fleetwood	b	12 39		5 51	6 42	7 09		18		7 12	8 12		9 12			10 11	10 52			11 15		
16	Lv Bronxville		12 42		5 54	6 45	7 12		21		7 14	8 14	8 35	9 14			10 13	10 54			11 18		
16	Lv Tuckahoe		12 45		5 57	6 49	7 14		25		7 18	8 18	8 39	9 18			10 15	10 56			11 20		
17	Lv Crestwood		12 47		5 59	6 51	7 16		28		7 18	8 18	8 40	9 18			10 17	10 58			11 22		
19	Lv Scarsdale		12 52		6 03	6 55	7 20		32		7 23	8 23	8 45	9 23			10 21	11 02			11 26		
21	Lv Hartsdale		12 57		6 07	7 00	7 24		33		7 27	8 27	8 49	9 27			10 25	11 06			11 30		
23	Ar White Plains		1 02	5 37	6 12	7 05	7 29		38	6 46	7 32	8 32	8 54	9 32	10 10		10 30	11 11		11 16	11 35		
24	Ar White Plains, No. Sta				6 18	7 06	7 35		48		7 38	8 38		9 38			10 40	11 16			11 40		
26	Ar Valhalla		g1 15	5 51									9 08		19 22					11 28			
27	Ar Kensico Cemetery			5 54																11 30			
28	Ar Mt. Pleasant		f1g18	5 57						6 59													
29	Ar Hawthorne		g1 20	6 01						7 01			9 12		19 25					11 34			
30	Ar Thornwood		g1 23	6 04						7 04			9 15		19 30					11 37			
31	Ar Pleasantville		g1 26	6 09						7 08			9 20		19 34					11 41			
33	Ar Chappaqua		g1 31	6 15						7 12			9 25		19 39					11 46			
37	Ar Mount Kisco		g1 39	6 24						7 20			9 33		19 47					11 54			
40	Ar Bedford Hills		g1 44	6 30						7 25			9 37		19 52					11 59			
42	Ar Katonah		g1 49	6 36						7 30			9 43		19 57					12 04			
44	Ar Golden's Bridge		g1 54	6 42						7 35			9 48		11 02					12 09			
			AM	AM	AM	AM	AM	AM	PM	PM	PM	PM	PM	PM	PM	PM	PM	PM	PM	AM	PM		

Stations	◆304	406	408	1002	412	◆430
	AM	AM	AM	AM	AM	PM
Lv Golden's Bridge	3 12			4 59		
Lv Katonah	3 18			5 04		
Lv Bedford Hills	3 23			5 09		
Lv Mount Kisco	3 29			5 14		
Lv Chappaqua	3 38			5 23		
Lv Pleasantville	3 43			5 28		
Lv Thornwood	3 46			5 31		
Lv Hawthorne	3 49			5 34		
Lv Mt. Pleasant	3 52			5 36		
Lv Kensico Cemetery						
Lv Valhalla	3 57			5 41		
Lv White Plains, No. Sta	4 00	5 03	5 32	5 44	7 55	
Lv White Plains	4 07	5 07	5 36	5 52	5 5	
Lv Hartsdale	4 12	5 11	5 39		6 0	
Lv Scarsdale	4 17	5 14	5 43		6 6	
Lv Crestwood	4 22	5 18	5 47		6 0	
Lv Tuckahoe	4 24	5 20	5 49		6 16	
Lv Bronxville	4 27	5 22	5 51		6 12	
Lv Fleetwood	b4 29	5 24	5 53		6 15	
Lv Mount Vernon	4 32	5 26	5 56	6 06	6 17	1 01
Lv Wakefield (E. 241st St.)	b4 33	5 28	5 58		6 19	1 02
Lv Woodlawn (E. 233d St.)	4 35	5 30	6 00		6 21	1 04
Lv Williams Bridge (E. 210th St.)	4 38	5 33	6 03		6 24	1 07
Lv Botanical Garden (E. 200th St.)	4 41	5 36	6 05		6 26	1 09
Lv Fordham (E. 190th St.)	a4 43	5 37	6 07		6 28	1 11
Lv 183d Street	a-b	5 38	6 08		6 29	1 12
Lv Tremont (E. 177th St.)	a4 46	5 40	6 10		6 31	1 14
Lv Claremont Park (E. 171st St.)	a-b4 48	5 42	6 12			1 15
Lv Morrisania (E. 168th St.)	a4 50	5 44	6 14		6 34	1 17
Lv Melrose (E. 162d St.)	a4 52	5 46	6 16		6 36	1 19
Ar 138th Street	4 55	5 49	6 19		6 39	1 22
Ar 125th Street	4 58	5 52	6 22		6 42	1 24
Ar G. Cent. Terminal Lower Level	5 09	6 03	6 33		6 53	1 35
Upper Level	AM	AM	AM		AM	PM

Will not run holidays. See Note ✢

Reference Marks and Notes

Light-face figures denote A.M. time; dark-face figures P.M. time.
Where time is omitted trains will not stop. No stop-over is allowed.

✢ Will not run holidays, May 30, July 4, Sept. 3.
◆ This train does not carry baggage.
‡ Does not run Saturday.
a Door closed one minute before schedule time for departure of all trains.
b Baggage cannot be handled and should, therefore, be forwarded to most convenient station North or South.
e No baggage handled for or from this station.
f Stops on signal to receive or discharge passengers.
g Does not run north of White Plains, North Station, Saturday night (Sunday morning)
h Stops only to receive passengers.
i Stops only to discharge passengers.
k Runs Saturday only.
r On holidays connects with number 1019.
w Stops only on holidays, May 30, July 4, Sept. 3.
z Stops Saturday only.
B Does not carry baggage on Saturdays.

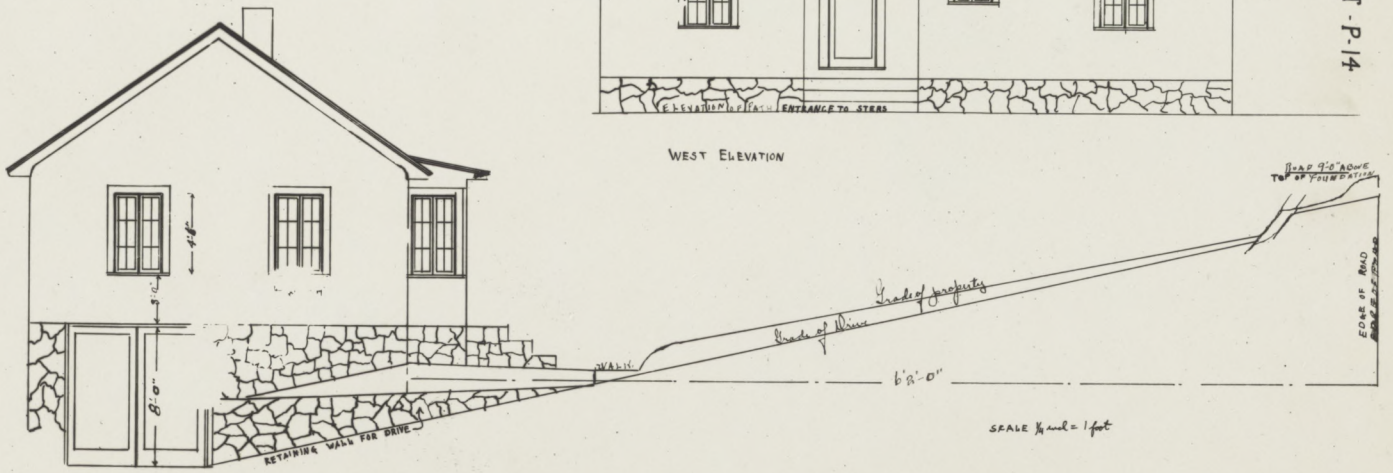
EXHIBIT P 10

EXHIBIT P 14

EXHIBIT - P-14



WEST ELEVATION



NORTH ELEVATION

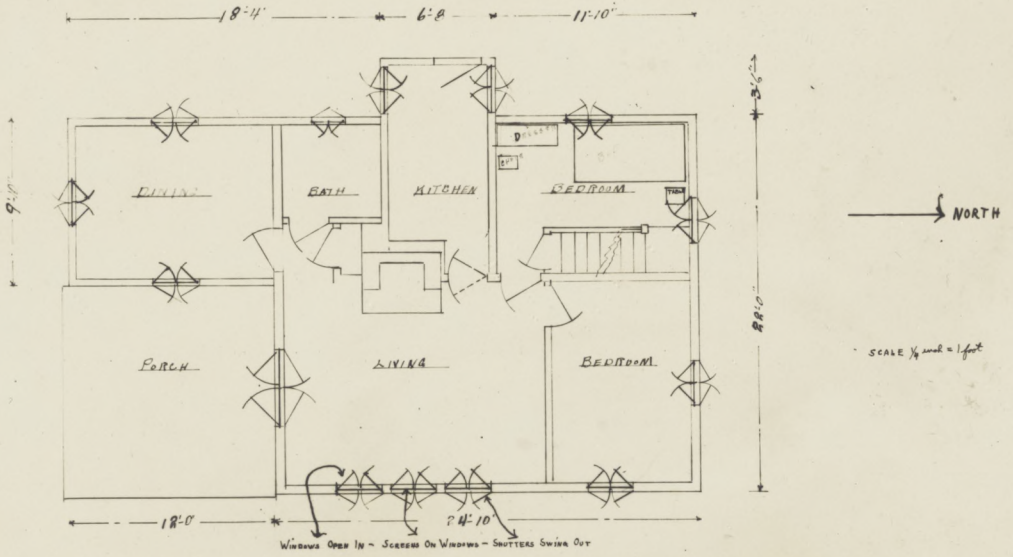
COTTAGE ERECTED ON LOTS 3 & 4 SECTION #1 TRUESDALE LAKE, SOUTH SALEM, N.Y.

DRAWING MADE NOV. 27th 1928 BY N. A. McKENNA

4 Photographs

EXHIBIT P 14.

FLOOR PLAN OF COTTAGE ERECTED ON LOTS 3 & 4 SECTION #1 TRUESDALE LAKE, SOUTH SALEM, N.Y



SCALE ¼ inch = 1 foot

DRAWING MADE NOV. 27th 1918 BY N.A. McKENNA

EXHIBIT-P 14.

New Jersey Court of Errors and Appeals

Between LILLIAN E. PFENDER, Complainant, and CARL D. PFENDER, Defendant.	On Bill for Separate Maintenance.
Between CARL D. PFENDER, Petitioner-Appellant, and LILLIAN E. PFENDER, Defendant-Respondent.	On Petition by Husband for Divorce on Ground of Extreme Cruelty. Final Decree Vacating Decree Nisi in Favor of Husband. Heard Below Before Berry, V. C. Appeal of Husband.

REPLY BRIEF FOR APPELLANT.

The brief filed on behalf of the respondent, Lillian E. Pfender, pictures her case in a manner which would seem to require the appellant to call the especial attention of the court to certain matters contained in the record and in the law, which are supplemental to the main brief in this cause.

The case is divided into two distinct portions. Originally the divorce was granted to the appellant upon the ground of the cruelty of the respondent and a Decree Nisi issued. In the main case there were references to certain attentions which the appellant was paying to one Leona Haas and full investigation of all phases of that matter were gone into at the hearing of the main case. The

New Jersey State Library

allegations of the respondent in the main case were always extravagant and incapable of proof. The Vice Chancellor, in his conclusions, used the following language, relative to the testimony given by the respondent herself (State of Case Vol. 1, p. 54):

> "The defendant's attitude on the witness stand was not such as to command the full confidence of the court and I do not consider many of her denials and much of her testimony worthy of belief. It was claimed that all acts of cruelty on her part testified to, including the revolver episode, were condoned. The only testimony indicating any such condonation was that of the defendant and that I do not believe. The petitioner's testimony and attend- and circumstances more than overcome the testimony of the defendant on this point."

While the respondent's brief excerpts certain testimony and endeavors to weave it together in such fashion as to create an impression that there was continued and constant attention given Miss Haas by the appellant which, joined with the subsequent acts complained of, are designed to paint a picture of infidelity upon the part of the appellant toward the respondent, it is submitted that the entire testimony gives no such impression and would rather lead to the view hereinabove cited, as taken from the Vice Chancellor's conclusions.

The second phase of the case, and that which is now before the court, is as to whether the court was justified in vacating the Decree Nisi heretofore granted on the grounds of cruelty, by reason of the fact that during the time for the running of the Decree the appellant had been guilty of adul-

tery. It would seem that, in the main, those matters which are argued in respondent's brief relate to an effort to reargue and redispose of the entire case, as though this court had granted the motion herein made to stay the final decree pending proceedings in connection with the adultery charge. The court denied such motion and it would seem that the court would be justified in the present instance in confining the issue to the second part of this case, namely, the question as to whether in fact adultery was committed during the running of the Decree Nisi. To allow the complete reargument of the original case after its determination by this court and after counsel had determined to proceed with it and failed to obtain a favorable decision from this court, would be to permit counsel to over-ride the rulings of the court and ultimately obtain for himself and his client what the court itself had theretofore denied. It would seem a strange policy that could permit such a procedure, when in fact the parts of this case are so absolutely severable. Counsel for the respondent has proceeded upon the theory of his brief because of the fact that the Vice Chancellor, in his subsequent conclusions upon the second part of the case, declared that there had been perjury and deception by the appellant. To sustain the Vice Chancellor's conclusions, upon the basis of which he dismissed the Decree Nisi, it is necessary to establish that there had been perjury and deception in the main case, and likewise subsequent commission of adultery.

In the main case there certainly was reference to Miss Haas and an opportunity given for a complete investigation concerning anything which had theretofore transpired in which she was involved. The brief of the respondent endeavors to indicate

that the appellant was not living with the Rev. George Dougherty at the time of the hearings in the main case. Such a conclusion is entirely unwarranted from the testimony. He stated that he was living with the clergyman and the clergyman corroborated it. It was in fact true and it made no difference whether or not he had arranged for an apartment in New York where he might spend a portion of the time if he so desired. An arrangement of that sort does not either change residence or justify the accusation of infidelity. There was no deception of the court in that respect because in fact no questions were asked relative to such apartment, although ample opportunity had been afforded to find out all about it if anybody had desired or thought it relevant. There was in fact no perjury because nothing was misstated in the main case. There was no deception of the court because in fact there were no misrepresentations and no adultery had been complained of. The respondent herself at that time, although she was aware of all the things which are contained in her brief in this court, said she had no reason to suspect her husband in that regard. She had, in the main case, understood that he had taken Miss Haas out in an automobile and to dinner, but no one attributed to him the commission of any act of infidelity. There could be no perjury and the Vice Chancellor could not have been deceived by anything in the main case stated.

The only question, therefore, presently before the court, or which the court need consider, is as to whether adultery occurred during the running of the Decree Nisi. It must be granted that the appellant had been a long time away from his home. He left in October 1926, and the acts complained of are alleged to have occurred on June 29th and

30th, 1928. This constitutes a period of twenty months. The dates upon which the acts complained of are alleged to have occurred were only a few days before the final decree would have been due. There is no doubt whatever as to the cruelty which existed in the main case. The proof of adultery in the present instance is only sought to prevent a divorce. If the divorce is prevented the appellant is left in a marital state where he was subjected, as the court has already determined, to great and extreme cruelties. It would seem, therefore, to call for the court's careful scrutiny of the facts which would tend to prove the commission of adultery and which should sentence the appellant to an existence to be carried on under such conditions, or perhaps to the subsequent payment of alimony to a person who had been so outrageous in her treament of him as had the respondent in this case.

In the respondent's brief there is very considerable effort made to demonstrate that the Rev. George Dougherty, a witness on behalf of Pfender at the main trial and also in the subsequent proceedings, and a Priest in the Protestant Episcopal Church, was in fact a perjurer and unworthy of credence. Nothing is found in the record which could indicate any perjury and as far as the credibility of his testimony is concerned, the Vice Chancellor said in the main case, "His story is amply corroborated" (State of Case, p. 54, l. 1). So it was amply corroborated by the testimony of the gardener, the maid and the physicians, and in the supplemental testimony there is certainly nothing which could reasonably lead the court to believe that this Priest had committed perjury.

Although subjected to the operation of moving pictures and to the surveillance of a large number

of spies obtained by his wife for the purpose and paid the sum of Ten thousand Dollars, nothing was discovered which could militate at all as against the character of the appellant until the episode at Truesdale Lake, South Salem, New York, on the nights of June 29th and 30th, 1928. It is necessarily true that the appellant had to live somewhere and, since he had no home, that he had to board, and there is nothing immoral or contrary to the "clean hands" doctrine of the Court of Chancery in his having lived with Mrs. Haas and her family in the apartment in the Bronx, or anywhere else. It is of no moment how he paid or what he paid for his board and lodging. That does not in any sense prove or tend to prove a condition which would invoke the aid of the Court of Chancery. As to the occurrences on June 29th and 30th, 1928, they demonstrate nothing more than this, namely that after an absence of twenty months from the same roof under which he and his wife had lived, and after the sale of that property, he slept in the same house with Miss Haas one night, on which they were alone. When the detectives found him they did not find him in her room and did not find his clothes in her room. He appeared at the window of the room in which he slept. The most that is clearly testified to is the admitted fact that he and Miss Haas, and no one else, spent the night in that house. All evidence which is given against him is by hired detectives and their testimony is meager and unconvincing. All facts seen by other witnesses than the hired detectives are wholly without any force or effect in this case. We are therefore reduced to the testimony of hired detectives as against the very frank statements of the appellant and Miss Haas. The very admissions of the fact that at times they had

kissed and embraced, the very honesty of their statement as to where they were and how they got there, would give to their testimony faith and credit. As against them and without more than the detectives have seen, as set forth in the State of Case, can the court believe that there is such proof of adultery as, under the circumstances, would justify the vacation of the Decree Nisi?

In this connection it may be proper to recall to the court's attention the case of *Helbig* v. *Helbig*, 6 New Jersey, Advance Reports, page 1561, decided by this court on October 15, 1928. In that case we had the testimony of hired detectives, upon whose testimony the court did not look with favor. The circumstances which they recounted were infinitely stronger than the circumstances in the present case and this court ruled that the Decree Nisi should not have been vacated, and further stated that such testimony as would vacate the Decree Nisi must be such as would originally have granted the divorce upon the ground of adultery. The rule as laid down in this last mentioned case would not seem to have been satisfied by anything in the testimony herein. As contrasted with the testimony in the Helbig case, the testimony in the case at bar is mild indeed. In any normal or natural way it would be difficult to find sufficient facts to warrant granting to the wife a divorce from her husband upon the ground of adultery. We feel that the case at bar is almost exactly like the Helbig case. In both cases there was a long absence from home. In both cases the original divorce was granted upon grounds other than adultery. In both cases there was an effort to prevent the final decree upon the ground of commission of adultery subsequent to the granting of the Decree Nisi and during its continuance. In both cases such adultery was sought

to be proved by means of hired detectives. Under such circumstances, therefore, it is submitted that this court should not sustain the decree of the Court of Chancery unless there is positive, definite and most convincing proof of an act of adultery. It would seem that the proof should be required to be even more convincing by reason of the fact that the situation to which the appellant would be reduced if the Decree Nisi were finally to be vacated would be far worse than in the Helbig case. There was a case of simple desertion. Here was a case of extreme cruelty. Without the most definite and positive proof should an individual be again subjected to that which the trial court found to be true and the appellate court had determined to be correct, namely, the kind of cruelty which he suffered.

Respectfully submitted,

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