

Hudson County Circuit Court.

JOHN RUST,

Plaintiff,

vs.

CHRISTIAN OLTMER,

Defendant.

In Tort.
Bill of Excep-
tions.

Weller & Lichtenstein, Attys. of Plaintiff.

John J. Fallon, Atty. of Defendant.

Be it remembered, that on the ninth and tenth days of January, A. D., Nineteen hundred and six, in the Hudson County Circuit Court, holden at Jersey City, in and for said County, before his Honor Charles W. Parker, Esq., Judge of said Circuit Court, the issues joined between the above named parties in the above stated cause, which issues were tendered by the declaration of the said plaintiff, whereby he declared on two counts, the first of which was for that the said defendant was guilty of criminal conversation with the wife of the said plaintiff, and the second of which was for that the said defendant enticed away the wife of the said plaintiff to a residence separate and apart from said plaintiff and there detained and harbored her, all against the consent of the said plaintiff, and which issues were accepted by the said defendant by his plea of not guilty, pleaded to both counts of said declaration, as appears fully and at length in the record in said cause, come on to be

tried by a jury for that purpose duly empaneled; and thereupon the attorneys of the said John Rust, the plaintiff, to maintain the issues upon his part called as a witness the said John Rust, who being duly sworn, testified that he and his wife, up to 1903, "lived pretty good; the only trouble we had, my wife was continually sick; she wasn't for three months without a doctor; and at the end of 1903 or the beginning of 1904, January, she seemed to be
 10 different altogether; she commenced running to dances, and she never knowed how to dance before that; she never used to know what the inside of a masquerade hall or those things was. She began to take a notion to go there and frequent them, and over that we often had certain words; when I was trying to correct her she would tell me, 'if you don't like it I have got a place to go to.' She neglected her home and children and all. That continued during ^{there} three or four months—into
 20 April. In April she was out one night awful late; she was out all the afternoon, and out that night till after eleven o'clock, and after I corrected her why the next Tuesday she left the house; she was away a couple of days and about two days after that I was called before Recorder Stanton—not subpoenaed, but to give me a hearing. She left the 9th of April, 1904. and this was the week after. After this hearing before Recorder Stanton, I suspicioned her, and I told her about it, because I
 30 had some words—some family secret what we had—and this Mr. Oltmer knowed about that;—it was funny to me; I had confidence in the two of them; I never thought my wife was anything out of the way, and everything was all right again until the 19th of July she left me again, rented rooms and moved away—moved away the furniture out of the house when I was on a building. She remained away till the latter part of August; she came back

right before the children had to go to school. Mr. Oltmer is in the iron business. Up to 1904 Mr. Oltmer and I were friendly. He done work for me since 1898,—1897 or 1898. I seen him then different times; he used to do work—sometimes twice a day, sometimes twice a month; but he was doing work for me right along. In his doing this work for me brought him to my house different times; if I had a plan for him to estimate on I would send him a notice and he would come to the house; but very seldom; maybe once a month or twice a month, that I called him in. Most of the time I met him in his shop. The first that I recollect any suspicion was when she lived in Willow Avenue; I told her to take care of the children, and I seen the children around the buildings; and one day my boy was around the buildings not the way I liked it. I thought she ought to take care of him; I sent her a notice that if she was away I supported her and wanted her to take proper care of the children. The second day he was around the building; that looked funny to me; I sent somebody around to her house; the party told me she was not home, and I accidentally went on the telephone to telephone to Mr. Oltmer's shop and he was not at home; and nobody in the shop knowed where he was; I asked all his men, telephoned three times that afternoon; nobody knowed where he was. Then I got one party, and I says, "it looks funny to me." Now, I watched Mr. Oltmer's shop and this party watched where the house was that she lived in, at the same time; the two of them came home together. Then I got suspicion and a day or two after I would forget it again, and I would never think it was that way. I did not go back to my wife; she lived in Willow Avenue; she lived apart from me; I would forget it now because I would see Mr.

Oltmer again, and I never thought he would go and do anything with my wife like that. Well, after October she came back again, and for two weeks she was awful nice, couldn't be any better, and then I noticed this going out for an afternoon—I noticed that she would leave and she was nervous—she would leave at noon and get back not till six or seven o'clock; and every afternoon she was out of the house I telephoned to Mr. Oltmer's shop, or sent a man there, and he couldn't
 10 be found; then I forbade my wife; I said, "if you ever go out for a full afternoon I want you to let me know;" then it would be all right to a week or two, and then it was the same thing again. I of course began to suspicion; I looked around to detect something, but I had to attend to my business, I didn't have time for it; two weeks would pass nice, and all of a sudden she was away again; sometimes it puzzled me; I went to watch which
 20 way she came back; I could not find out until November. In November she began—she wanted to go to masquerades again; I said, "if you start that masquerade running again I will put a stop to it;" she went somehow or other—it was a masquerade, and she really got everything ready, only somehow or other I came home a little bit late that night; it was all fixed that the boy had to be taken away by a friend of ours, a man who works for me; and the little girl left in another house;
 30 and she went to a masquerade again. Well, that was the 12th of December. The masquerade was held in Odd Fellows' Hall, Hoboken; I didn't know at the time because we were very little speaking together. She wanted to go out her own way, and I certainly didn't like it. She came home that night at three o'clock, and I was in the house; she came in the house around that time. The woman got so nervous that she was not home one after-

noon; I could come home at two or three o'clock in the afternoon; the house was locked up, after school time, the books were lying in the vestibule, the house closed—the woman never was home; she didn't have a minute's rest in the house no more; that was the 12th when the ball was, that was Saturday. The next Thursday she went away to New York, because I seen her comng on Second Street, from New York. I came home on the 17th for dinner, I had a row of buildings on hand and worked at least twenty-five to thirty men. She wanted to go that day to New York. That afternoon she went to New York; she told me she was going to go out with a friend; and I seen her coming back from New York; she told me that she was going out with a friend, and then when I seen her go away so nervous, I thought it over and rang up Mr. Oltmer's shop, and he also was gone, too; then, of course, I was not at ease, but that is all I could find out about it until she came home that evening, when I told her I wanted to know where she was; I says, "if you can't tell me, you are no good. Then the woman told me—". Then I told her she could leave my house any time. She said, "I will go; I am not going to be in this house any longer; I have got a place to go to." The next week it went on the same way; the house was closed nearly every night when I came home around four or five or six o'clock; one night I met my teamster and said, "who is putting this woman on the bum that way?" I says, "I can't stand for that any longer, the children neglected, the house always closed." Next day I went in Oltmer's shop and I asked him about the conversation the driver told me. He told me it was Mr. Oltmer took her from a ball, and that they left there at twelve o'clock, and that she left him at two o'clock, in his house, that is what the driver told

me. I told Mr. Oltmer I heard he had taken her from a ball, and wanted to know whether he had anything to do with my wife. He said very little; he said he only danced with her. Then I went home and questioned her, and there was a lady by the name of Mrs. Daly in the house, and she said in the presence of Mrs. Daly, she could go and leave my house any time and be a housekeeper for Mr. Oltmer at any time she wanted to; then
10 shortly after she took sick. On the 21st of December, in the morning, she had bronchial troubles in her throat, and had to go to a doctor to get it lanced; and I asked her, I said, "Don't you think it would be better"—she was afraid she would die—"don't you think it would be better to tell the truth, for the sake of the children?" She said, "If I have to tell the truth I might as well take
20 poison." She was sick then, the day before Christmas, when she left the house, it was then that afternoon, that night, she wrote some letter, what I handed to the lawyer. She left Christmas; she left the day before Christmas and she came back again to the house, but I was very seldom in the house; I just came in the house—I had my office on one side and the dining room is on one side; I did what I had to do in the office and went out again. She left day before Christmas; then she came back again once or twice, I believe; I was all upset that time; I did not know where my
30 head stood. She was back twice; she was back then and took the furniture away; it was two or three times, but I don't recollect the dates. She stayed one day once, and she stayed a couple of hours. When she left the house then of course I thought it was my duty to watch then. Then I had a party and I sent him up there to watch the house as much as we could, and one night she left the house and she met this here Mr. Oltmer in

West Hoboken—Jersey City, on the line of West Hoboken there; she met him on the street, and this party was with me; of course I was going to see what they were going to do, but I couldn't hold myself, and said "have I got you at last," and then the men pulled out and hit me. This was on Paterson Plankroad and Lake Street. They walking arm in arm. About nine o'clock. I hit him again. We had a fight there, and he ran away. It was dark, so I couldn't see any more of him after 10 where the last street was, Palisade Avenue; that is as far as we went, and then he ran like wild. I heard from different people that the man was bragging around. My revolver is lying up in your office, and I would have shot him there just as quick as look at him. Mr. Lichtenstein took it off of me. Of course I had to recover; I got to make my existence for the children. She has got them. I support them."

And thereupon the attorney for said defendant 20 cross-examined said John Rust, the plaintiff. And said plaintiff, having introduced further testimony, rested his cause. And said defendant, having introduced testimony to maintain and prove the issue aforesaid upon his part, rested his cause. And said attorney for said plaintiff thereupon recalled John Rust, the plaintiff, as a witness in rebuttal, who testified that: he knew Mrs. Teaching; he remembered her being at his house on the occasion that she spoke of; he remembered having a 30 quarrel with his wife that day. And thereupon said plaintiff rested his case in rebuttal.

Rest for all.

The testimony in the cause having been concluded, and the parties having rested the cause, said attorney for said defendant requested his Honor, the Judge, to charge the jury, among other

things, that: "Jury cannot consider the testimony of the plaintiff as to his wife's criminal conversation with the defendant." And thereupon, his Honor the Judge, declined to charge the jury in said cause as above requested, but charged the jury as follows:

"Gentlemen of the Jury:

This is a suit for what is called criminal conversation, that means, speaking generally, a suit
 30 by a husband against another man for seducing his wife, committing adultery with her. That is the claim made in this case, and the claim which the plaintiff must prove by a fair preponderance of evidence before he is entitled to a verdict against this defendant. Your inquiry, therefore is, did this defendant seduce Mrs. Rust and commit adultery with her once, or any number of times, on one or more occasions? A great deal of
 40 evidence has been given, of the value of the evidence you are the judges.

In weighing this evidence it is your duty to bear in mind that adultery is a crime which can hardly ever be proved by the direct evidence of an eye witness. It is most natural that when a man and woman desire to commit that offense they will avoid the sight and hearing of other people, and, therefore, the law properly says that direct evidence of eye witnesses is not essential, and that
 50 adultery may be proved by inference from other facts and circumstances which in the mind of an impartial person would tend to establish the assumption, the necessary connection of the crime with these facts.

Let us see what we have here, assuming you believe these circumstances to have been proved, because the circumstances themselves must be proved by the same weight of evidence which is

necessary to support the main charge. It is claimed as a circumstance that Mrs. Rust, after some years of married life got into the habit of neglecting her home and going out to balls and other entertainments, and there meeting Mr. Oltmer, and dancing with him. Those circumstances in themselves alone, if proved to your satisfaction do not mean very much, as counsel have said, it is not unnatural that a married woman, if her husband should be lacking, or neglectful, as is claimed ¹⁰ in this case, in the little attentions to her which a woman naturally expects from a husband, might be disposed to seek them elsewhere, and that entirely consistent with her innocence of any criminality and loyalty to her husband in other respects. Still, they are circumstances that you are entitled to consider. Of course, if she, as is claimed, danced with nobody else but Oltmer, it is a circumstance which might lend some force to the fact of her going to these balls, and if, as is ²⁰ claimed, she acted in such a way as to give others the impression fairly that she was devoted to him and would not dance with other men without letting him know of it, that is a circumstance, which, if proved, is entitled to be considered with the others, and given such weight as you fairly think is proper.

These perhaps, are the more significant circumstances in the case claimed on the evidence to have existed. We have those apparent absences of both ³⁰ the parties from their homes at the same time, we have this meeting which it is admitted took place on the heights between these parties in the evening, and at which there was something of an affray between the plaintiff and the defendant, where it is claimed that the defendant struck the plaintiff and ran away after some exchange of fisticuffs between them, and you have as well, what seems

to be perhaps the most important piece of circumstantial evidence in the case, if the occurrence took place, and that is this story about the defendant and the plaintiff's wife leaving a ball at twelve o'clock, or about that time, and a short time later entering the defendant's shop and their reappearance an hour or so later. In addition to these it has been testified in this case that this defendant himself admitted that he had been guilty of adultery with Mrs. Rust and he had paid her money for it. If you believe that he said that, of course that would be an admission by him, and is competent evidence in this case and you are entitled to consider it as such. With respect to statements made by Mrs. Rust, however, I understand the law to be ^{that} in a case of this kind, under these circumstances, they are not competent evidence of the guilt of Mr. Oltmer. If this was a divorce case between Mr. Rust and his wife, and her statements were proved, they would bind her and not him. This is a suit against Mr. Oltmer and necessarily he cannot be bound by the unsworn statements of the alleged other party to the crime, so that I think it is wise to instruct you that you need not and should not consider the evidence of what Mrs. Rust may have said, and more especially so as there is evidence tending to show that whatever she may have said to her husband was done under the influence of threats made by him. You need not consider that at all.

Now you have all these other circumstances, including the admission of Mr. Oltmer, and it is for you to say on all the evidence in the case, whether the plaintiff has made out to your satisfaction the fact of adultery committed by this defendant with the plaintiff's wife. If he has not there should be a verdict for the defendant. If he has there should be a verdict for the plaintiff.

The elements of damage which the plaintiff would be entitled to may be divided into damages by way of compensation and damages by way of punishment. Damages by way of compensation would include such sum as in your fair judgment is proper to be shown for the breaking up of the confidence existing between the plaintiff and his wife, the injury done to his home, not the injury of his children who are not parties to this suit, but injury to the plaintiff himself, the destruction of ¹⁰ peace of mind, injury to his feelings, and then when you come to the other elements of punishment you are entitled to assess what the law calls exemplary damages on the theory that this wrong committed was necessarily done wilfully, maliciously, with intent to injure this plaintiff, and you award such further sum as in your judgment is right on that ground.

There are, and there may be circumstances in this case in mitigation of damages, because it is ²⁰ very evident that if this plaintiff was on entirely friendly and affectionate terms with his wife, and she had his full confidence, and they were happy together up to the time of the entry of this intruder into their home, if you should so find the damages to the husband would necessarily be much greater than if the situation was that he and his wife were unhappy together, if their home was subjected to quarrels and brawls. Therefore, in fixing the damages you ought to consider what ⁵⁰ the relations were between these parties before the injury occurred. On the part of the plaintiff it is claimed that their relations were happy and peaceful. It is claimed on the other side, and there is evidence to support it, that the plaintiff and his wife were not on good terms, and you will remember that one of the witnesses testified that he saw on one occasion the plaintiff beating his wife,

cursing her, using vile language to her, so that if you get to this question of damages you must consider what the circumstances are in that regard and adjust your verdict accordingly.

I think that is all, gentlemen, that the court considers it necessary to say to you at this time."

Whereupon the counsel of the defendant, John J. Fallon, conceiving that by the law of the land
 10 the Judge should have charged and instructed the jury as above requested, and should not have charged the jury in that behalf as above set forth prayed that his Honor, the Judge, would set his hand and seal to this bill of exception to the said refusal of his Honor, the Judge, and to his ^{said} charge in that behalf, and it is sealed accordingly.

C. W. PARKER, J. (Seal.)

New York, April 4, 1907, 190

Rust v. Oltmer.

Messrs. Weller & Lichtenstein,
 Hudson Trust Building,
 Hoboken, N. J.

Dear Sirs:—

Referring to Mr. Weller's inquiry of yesterday, I have to say that on reaching home I carefully looked through the original notes in the above-
 30 mentioned case.

I find that I have some notes of the discussion between counsel and the Court, which I have transcribed and enclose copy herewith. This follows after the objection of Mr. Lichtenstein on page 105 of the printed book. If you will strike out what follows his objection, beginning with the remark of Mr. Fallon "I submit the objection is ill-timed," etc., down to and including fol. 30 on that page,

and substitute the enclosed, the record will be as taken by me.

I recall that about that time we were overwhelmed with orders for transcript, and Mr. Nugent at times relieved me by taking Judge Parker's court. In this case the charge was taken by him, as I find by a memorandum in my note book, after the adjournment (p. 116 of your record), "Mr. Nugent took rest of case"; so that I do not know what discussion may have taken place just preceding the charge.

Yours very truly,

(Sgnd.) CHAS. H. ARON.

(Insert at page 105, at point marked "A", printed record RUST v. OLTMER.)

Mr. Fallon: This also contains a count for seduction; three substantial counts, one for seduction and one for criminal conversation—

The Court: One for criminal conversation and seduction and the other for inducing and harboring. I understand the other side waive the inducing and harboring; is that it?

Mr. Lichtenstein: Yes, your Honor.

Mr. Fallon: I submit the witness is a proper witness under the circumstances.

Mr. Lichtenstein: I state we have no objection to the witness testifying—

Mr. Fallon: Why do you object then?

Mr. Lichtenstein (continuing): I am merely presenting the question to the Court, and it is a question whether the Court can hear her, whether we object to it or not.

Mr. Fallon: I submit the witness is a proper person to testify and ought to be permitted to testify under the form of the declaration as presented to this Court, and particularly should this

witness inasmuch as she is willing to testify and tell the truth about the matter, and they are trying to keep it out.

The Court: The statute seems perfectly clear.

Mr. Fallon: They ought not to be permitted to say "We do not object," and then allow the witness to go on and testify, and then—

The Court: The other side raises the point that the witness is not competent to testify. That is
 10 equivalent to an objection, if not made in that form.

Mr. Fallon: I submit the objection is ill-timed, because it should have been made when the witness was sworn.

The Court: She has been examined on the fact of the marriage.

Mr. Lichtenstein: That is all we consented to. That is what the statute says she has a right to testify to and nothing else.

20 Mr. Fallon: I submit the objection should have been made at the time she was sworn.

The Court: You may have your exception. The Court declines to hear any testimony except as to the fact of the marriage.

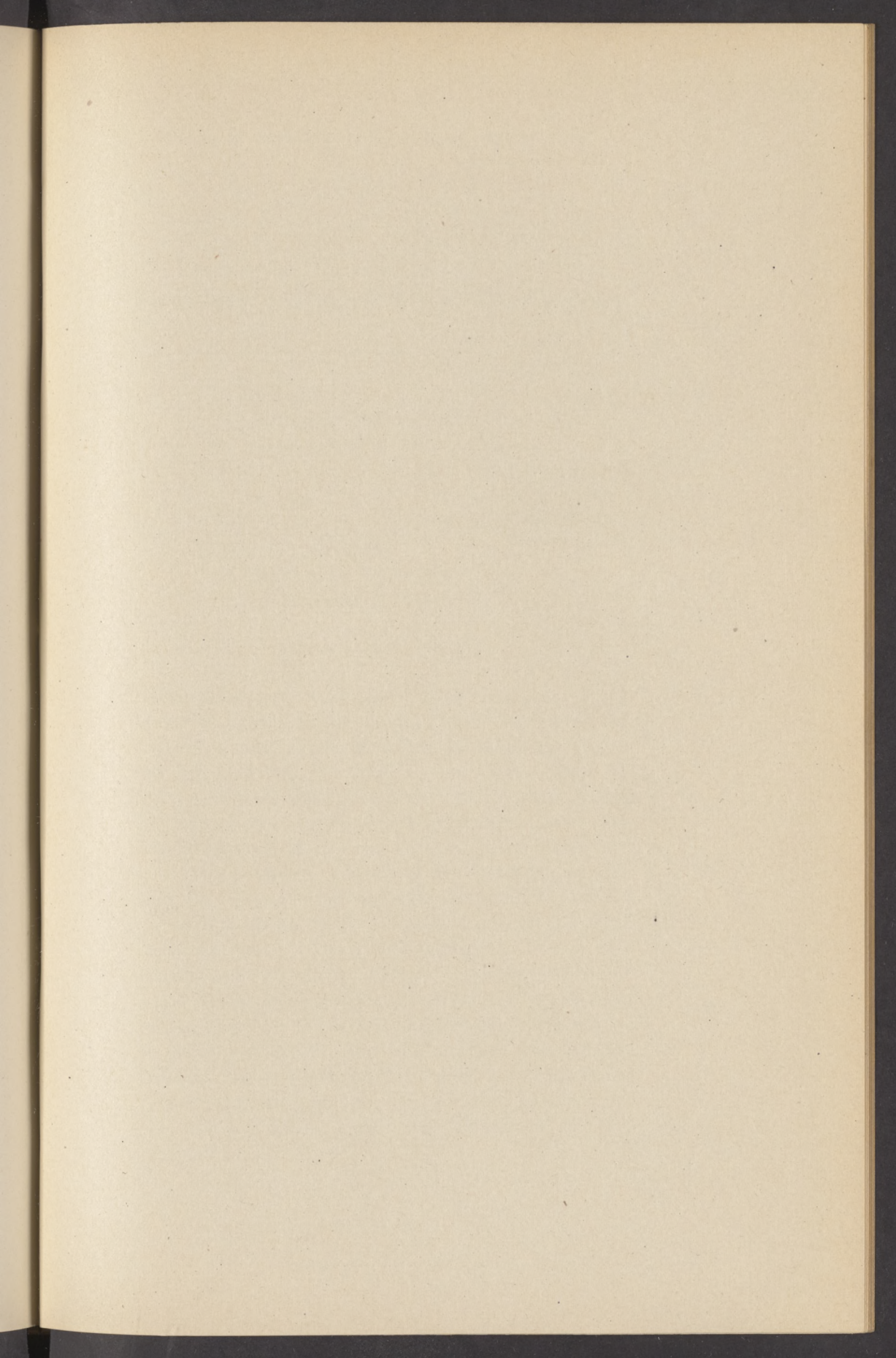
Counsel for defendant prays that an exception may be allowed, and it is allowed and signed and sealed accordingly.

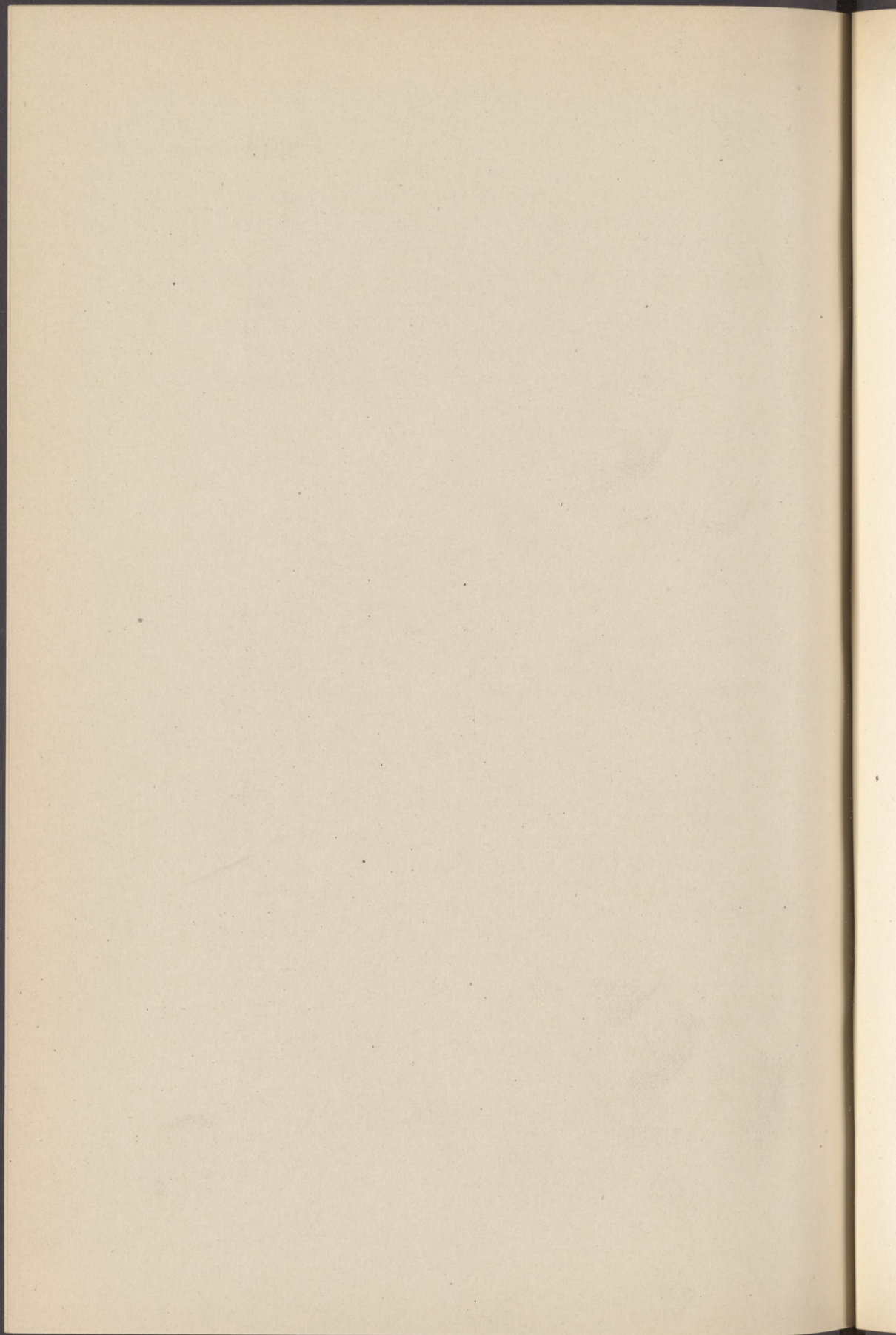
C. W. PARKER, J. (Seal.)

30 I hereby certify that the foregoing is a transcript from my original shorthand notes taken at the trial of the action of Rust v. Oltmer, in the Hudson County Circuit Court, before Hon. Charles W. Parker, Judge, and a jury, on the 9th day of January, 1906.

Dated, New York, April 4, 1907.

CHAS. H. ARON,
 Stenographer.





New Jersey Court of Errors and Appeals.

JOHN RUST,
Plaintiff Below and
Defendant in Error,

vs

CHRISTIAN OLTMER,
Defendant Below and
Plaintiff in Error.

In Tort.
Supplemental
Brief of De-
fendant in
Error.

The above case was argued at the last term of the Court of Errors and Appeals, and in order to bring the issues more squarely before the Court the plaintiff was allowed to apply to the Court below to have certain exceptions sealed, which appear by the record to have been allowed by the Trial Court, but which had not been sealed. At the trial of the case the defendant requested the Court to charge that the "Jury cannot consider the testimony of the plaintiff as to his wife's criminal conversation with the defendant." The Court refused to charge the request and an exception was allowed, which appears by the supplemental record to have since been sealed and that is the only additional exception to be here considered. The declaration filed by the plaintiff below contained two counts, one for criminal conversation and one for enticing and harboring, the second of which was abandoned by the plaintiff.

POINT I.

The refusal to charge as above requested was not prejudicial error.

Had the declaration in question contained but one count the plaintiff might have proved enticing and harboring under it, in aggravation of damages.

“Although it is usual to allege the seduction of the wife and the subsequent alienation of her affections, the loss of her company and assistance and of her services, these are matters of aggravation.”

2nd Ed. Am. & Eng. Enc. of Law, Vol. 8,
p. 268.

“It is true that as in actions for enticing, harboring, etc., the husband may, in actions for criminal conversation, show the alienation of his wife’s affections, and the loss of her services, etc., but this only goes in aggravation of damages.”

Tiffany’s Persons & Domestic Relations,
p. 79.

Inasmuch as the testimony complained of was admissible under the first count, the defendant suffered no harm by its admission and therefore under no view of the case could it have been prejudicial error.

And aside from this the Court specifically instructed the jury that the action was one for criminal conversation only.

Most of the testimony given by the plaintiff, of which the defendant now complains, was brought out by the defendant himself, and no objection was

made nor exception taken to any of his testimony. If the defendant wished to avail himself of the admission of illegal evidence, he should not only have objected at the time it was offered, but should have specified the grounds of his objections.

The Columbia Del. Bridge Co. vs. Geisse,
9 Vr., p. 39.

POINT II.

The second count was abandoned by the plaintiff.

On pages 12 and 13 of the supplement to the printed book, the Court will observe a letter from the stenographer who took the testimony at the trial, and also a certain colloquy that took place between the Court and counsel which was not printed in the original case and which is as follows:

Mr. Fallon: This also contains a count for seduction; three substantial counts, one for seduction and one for criminal conversation—

The Court: One for criminal conversation and seduction and the other for inducing and harboring. I understand the other side waive the inducing and harboring; is that it?

Mr. Lichtenstein: Yes, your Honor.

The word "inducing" should be "enticing," but the transcript furnished by the stenographer has been printed as furnished. The words "inducing" and "enticing" are written almost alike in shorthand, the only difference being that the down stroke in "inducing" is somewhat heavier than the down stroke in "enticing"; therefore it is clear that the

plaintiff had waived everything under the second count when his wife was offered as a witness by the defendant. Again the defendant did not offer the wife of the plaintiff as appears by the record, to deny the evidence submitted on the part of the plaintiff, if any, but to show that the defendant had been guilty of cruel treatment towards her.

POINT III.

The evidence of the plaintiff was competent evidence in the case.

Under Section 5 of the Evidence Act, a husband and wife are not competent or compellable to give evidence for or against the other in actions for criminal conversation. When the husband testified, he gave evidence for himself, not "for the other." Neither did he give evidence "against the other," because the plaintiff's wife, so offered as a witness, was no party to the record.

In the case of Frankenthal vs. Solomonson, 44 L. R. A., p. 311, in construing a similar statute, the Court said:

"Counsel for the respondent also cites the following cases as sustaining his contention, that the defendant Mrs. Solomonson was not a competent witness in the proceedings. * * * But an examination of these authorities will disclose that they are all cases in which the husband and wife are both parties and the plaintiff called either one or the other as a witness."

"The action was to recover damages for seducing and debauching the plaintiff's wife
* * * The only provision supposed to have

this effect is that contained in the first part of par. 831 of the Code. By that it has been declared that *'a husband or wife is not competent to testify against the other upon the trial of an action or the hearing upon the merits of a special proceeding, founded upon allegation of adultery, except to prove the fact of marriage or disprove the allegation of adultery'*. But the plaintiff was not offered as a witness to give evidence against his wife, but his evidence was proposed to be given against the defendant in the action. It is true that it may have the effect of implicating her in the misconduct, but as the action was not against her, but another person, the evidence proposed to be elicited would be against him and him alone."

Woods vs. Gledhill, 31 N. Y. St. Reporter, 103.

"In an action by the husband against the one charged with criminal conversation with his wife, the husband is not excluded by the above section from testifying in his own behalf that he caught his wife and the defendant in the act of adultery, because the wife is not a party to the action and the evidence is not strictly against her."

Smith vs. O'Brien, 6 N. Y. Supp., 174;
Affd. 127 N. Y., 684.

Under the Kansas Statute the following persons were not competent to testify. "Husband and wife for or against each other" etc.

The Court in the case of Roesener vs. Darrah in speaking of the case of Cornelius vs. Hamby, 15 Pa. St., 359 (24 At. Rep., 515) said, "It may be that the decision was satisfactorily reasoned, so far as that one statute was concerned, but in this State, we have in addition to such statute another one of material significance. Sec. 319 of the Civil Code reads, "No person shall be disqualified as a witness

in any civil action or proceeding because of his interest and except as limited by other statutes in *para materia* makes every person competent to give evidence in any case.

The limitation contained in the third subdivision of Sec. 323 of the Civil Code *supra* does not apply in such a case as this. That applies only to prohibit a husband or wife when not a party to the suit from testifying for or against the other one who is a party; not to prohibit the one who is a party from testifying for or against the other who is not."

Roesener vs. Darrah, 65 Kansas, 610.

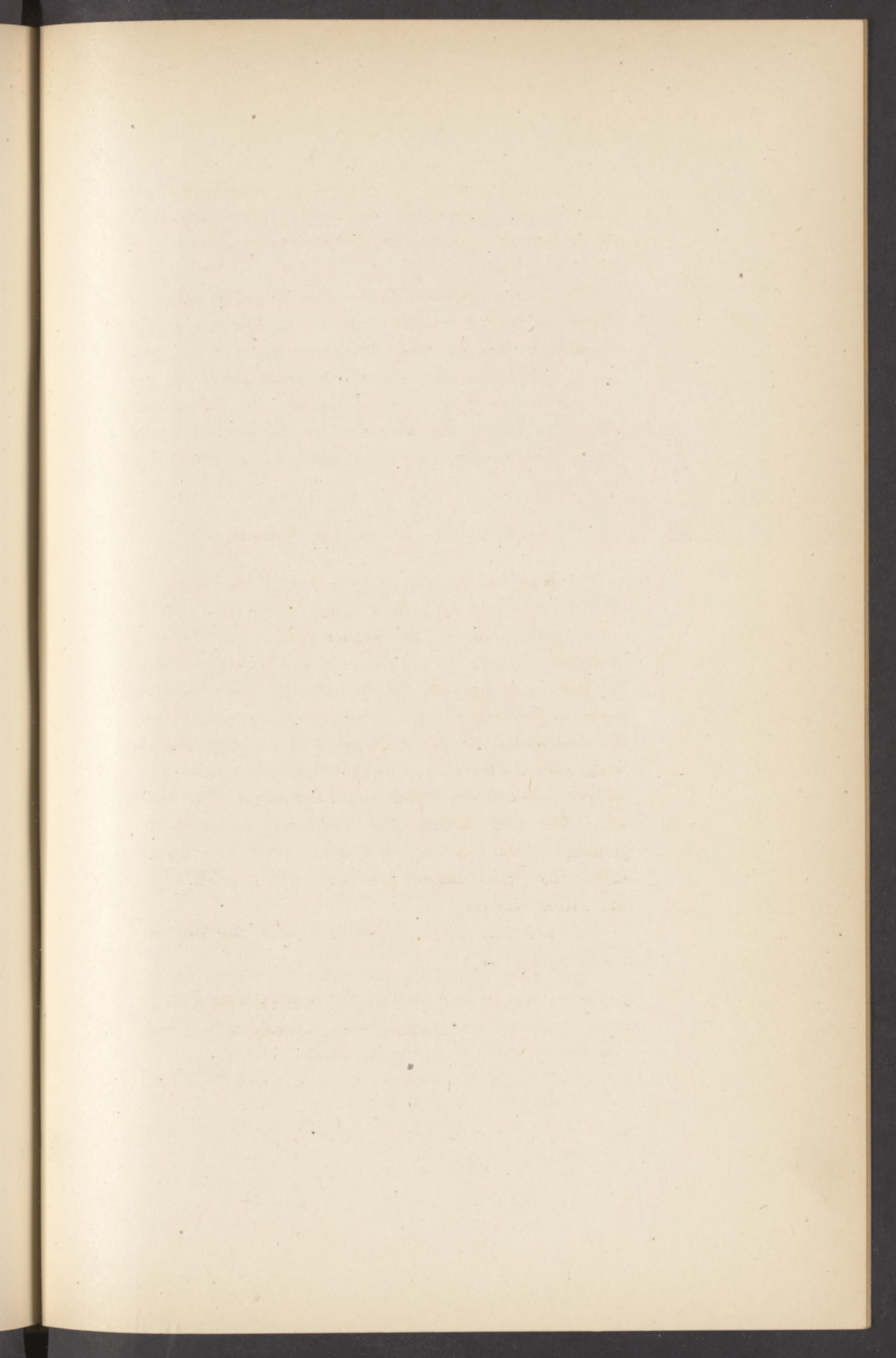
The Kansas statute is practically the same as Section 3 of our act concerning evidence.

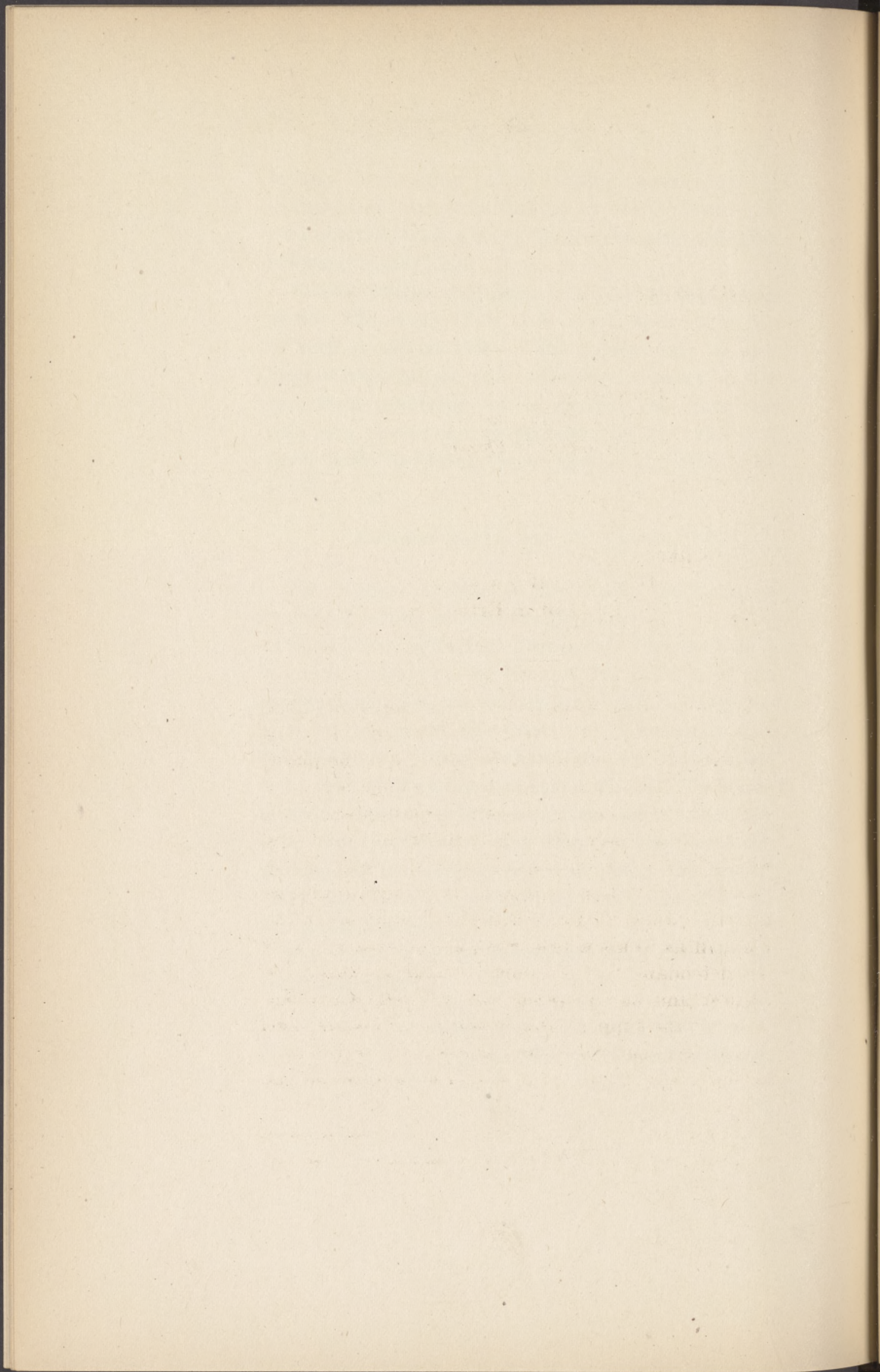
Counsel for defendant argues that inasmuch as a married woman at the time of the passage of the evidence act, had an action for criminal conversation in this State, the Court could not hold that the testimony of the husband was not against his wife, and at the same time give effect to the whole statute. Such a holding could not impair the statute. The Legislature may have contemplated the passage of an enabling act, and under the law of 1906, the Court can so hold and still give effect to the whole statute.

This brief is to be considered with the one already submitted.

WELLER & LICHTENSTEIN.

Counsel for Defendant-in-Error.





NEW JERSEY COURT OF ERRORS
AND APPEALS

JOHN RUST,)	
)	
Defendant in Error,)	
)	In Tort. 10
vs.)	On Error to Hud-
)	son Circuit Court.
CHRISTIAN OLTMER,)	
)	
Plaintiff in Error.)	

SUPPLEMENTAL BRIEF OF WM. H. SPEER,
COUNSEL FOR PLAINTIFF IN ERROR.

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In order to place the Court in possession of the reason and excuse for this supplemental brief, I will say that when this case was about to be argued in this Court I asked leave of the Court to procure certain exceptions, which had been noted on the trial below, but which, through inadvertence, had not been signed and sealed, to be signed and sealed and returned into this Court. At the same time Counsel for the defendant in error stated that the record was incorrect as to his side of the case, and asked leave to have it corrected therein. The Court, after conference, directed the argument to proceed as to those exceptions which were then before it, and gave leave to have the others signed and sealed and returned with a supplemental brief thereon, within thirty days from that date. Judge Parker, the trial judge, having been absent from the State, twenty days further time was granted by this Court to make the return and furnish the briefs. The additional exceptions have been returned into this Court, error has been

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assigned thereon and this brief is directed to the argument of the assignments of error predicated on those exceptions.

The first exception relates to the testimony of the plaintiff himself. The declaration contained two counts; one for criminal conversation and the other for enticing away the wife and harboring her. The count for enticing away the wife and harboring her was not abandoned by the plaintiff until very late in the case, (see page 105) so that, when the plaintiff offered himself as a witness in his own behalf both counts were still in the case. The fifth section of the "Act concerning evidence (revision of 1900) provides that 'in any trial or inquiry in any suit, action or proceeding in any court, or before any person or committee having by law or consent of parties, authority to examine witnesses or hear evidence, the husband or wife of any person interested therein as a party or otherwise, shall be competent and compellable to give evidence, the same as other witnesses, on behalf of any party to such suit, action or proceeding; PROVIDED, THAT NOTHING HEREIN SHALL RENDER ANY HUSBAND OR WIFE COMPETENT OR COMPELLABLE TO GIVE EVIDENCE FOR OR AGAINST THE OTHER IN ANY ACTION FOR CRIMINAL CONVERSATION, EXCEPT TO PROVE THE FACT OF MARRIAGE * * *'" It will be observed that this proviso interdicts the testimony of the husband or wife, for or against each other, except to prove the fact of marriage, in all actions of criminal conversation. So long, however, as both counts of the declaration remained in this case the testimony of the husband against the wife was admissible under the second count for enticing and harboring, but was inadmissible, except to prove the fact of marriage under the count for criminal conversation. What, then, was the remedy of the defendant where evidence bore this two-fold aspect, where it was admis-

sible under one count of the declaration and inadmissible under the other? The remedy and course of the defendant is pointed out in the case of *State vs. Hummer*, 43 *Vroom*, 328, where Gummere, C. J. said: "The defendant may protect himself against such a result by requesting the Court to instruct the jury as to the limitations of the evidence, and of the purposes for which alone it could be considered by them." This was precisely the course pursued by the defendant in this case. On page 7 (bottom) and 8 (top) of "the addenda to the case," in the exceptions subsequently returned, appears the following: "The testimony in the cause having been concluded, and the parties having rested the cause, said attorney for said defendant requested his Honor to charge the jury, among other things, that 'the jury cannot consider the testimony of the plaintiff as to his wife's criminal conversation with the defendant,' and thereupon, his Honor, the Judge, declined to charge the jury in said cause as above requestted, but charged the jury as follows." In his charge the Judge referred to very significant evidence of criminal conversation which proceeded entirely and solely from the plaintiff's own mouth, i. e., "the apparent absences of both parties from their homes at the same time," her going to balls with Oltmer, &c. This declination of the Judge to charge as requestted and his having specifically pointed out to the jury certain of the evidence of the plaintiff himself, and told them to give it such weight as they thought it was fairly entitled to, and as they thought it properly ought to receive, is confidently asserted to be erroneous and to lead to a reversal of this judgment. The contention of defendant in error on this branch of the case is that, admitting the evidence of the husband would be inadmissible in an action of criminal conversation if his wife were a party to the record, inasmuch as she is not a party to the record it is admissible or, to state the contention in a different way, the testimony of either husband or wife cannot be said to be

FOR or AGAINST the other unless such other is a party to the record. For many reasons this contention cannot prevail. "A statute ought to be so construed that, if possible, no clause, sentence or word shall be superflous, void or insignificant." Den. *James vs. Du Bois*, 1 Harr. 285. *State, Danforth vs. Paterson*, 5 Vr., 163. It is the duty of a Court so to constue a statute that THE WHOLE may stand. Ut res magis valeat quam pereat, *State, Baker vs. Scudder*, 3 Vr., 203; *Rudderow vs. State*, 2 Vr., 512, 517; *Smith vs. Tucker*, 2 Harr., 82, 84; *Waters vs. Quimby*, 3 Dutch, 296, 311. In the case of the proviso to the evidence act the construction contended for by defendant in error would render one-half of the proviso void, meaningless, inoperative and insignificant; effect would not be given to one-half of the proviso. The language of the proviso is "provided, that nothing herein shall render any husband or wife competent or compellable to give evidence for or against the other in action for criminal conversation, except to prove the fact of marriage." If, at the time of the enactment of this statute, and at the time of the trial of this case, both the husband and the wife could be parties to the record in an action for criminal conversation; if, in other words, the husband could then bring suit for criminal conversation committed with his wife, and if the wife could then bring suit for criminal conversation committed with her husband, the contention of the defendant in error would be entitled to very respectful consideration and would not be inimical to the rule of construction hereinbefore quoted. But such was NOT the case. The law then permitted the husband to bring an action of criminal conversation against the person who had had sexual connection with his wife, but no wife could maintain such an action against the woman who had had sexual relations with her husband. *Hodge vs. Wetzler*, 40 Vroom, 490, which case is authority for the propositions that a married woman could not, at common law, maintain

an action for criminal conversation against a female defendant who had had sexual intercourse with her husband, nor is such right of action conferred upon a married woman in this State by statute. It will thus be apparent that if defendant in error's contention is permitted to prevail all that part of the statute which says "that nothing herein shall render any husband * * * competent or compellable to give evidence for or against his wife in any action for criminal conversation" is meaningless and nugatory, for 10
 if a wife cannot be a party to the record, not having any right of action, either at common law or by statute, to maintain such a suit, it is idle to say that her husband, if she be a party to the record, cannot give evidence for or against her. While on the other hand the husband can be a party to the record, and the statute would operate to prevent his wife from testifying either for or against him. It will thus be apparent that such a construction of the statute would lack that prime essential of statutes in this 20
 class of cases—mutuality, for while the husband could ALWAYS testify to other matters than the fact of marriage in actions for criminal conversation no matter how strongly such testimony might be against the purity of his wife, she NEVER could, while he was a party, testify against him as to any fact save that of marriage. Such a construction will not be given to a statute unless imperatively demanded by its language, the mischief to be remedied and the clear intention of the legislature to be de- 30
 rived from these and other signs. We are not at liberty to adopt a construction pregnant with such results, when, without any violence to words, or the grammatical rules of construction, it is susceptible of a substantive and important meaning, promotive of the design and policy that underlie the enactment, not derogatory to the established rules of the common law, and in thorough harmony with the decision of this Court upon this and analogous subjects. 40
 What are the design and policy that underlie the

enactment? The ground of exclusion is that of public policy in the maintenance of marital confidence and peace. Mr. Justice Magie, in *Jackson vs. Johnson*, 22 *Vroom*, 457, 459 indicated that no other ground than this public policy, in view of the statutes of this State, exists for such exclusion. This being so, and it being perfectly manifest that the marital confidence and peace will be as rudely shocked and shattered whether the one testified against is

10 a party to the record or not, it would appear clear that the design and policy which underlie the enactment are both inimical to the construction contended for by the defendant in error and favorable to that espoused by the plaintiff in error. Is not a wife vitally interested in every action for criminal conversation brought by her husband? Isn't his success in the action dependent on the establishment of her shame? Does he not, of necessity, by testifying in his own behalf testify against her and her most vital interests?

20 Are not "words to be generally understood in their usual and most known signification; not so much regarding the propriety of grammar, as their general and popular use?" Is not a popular use of the words FOR and AGAINST to apply them to testimony favorable or unfavorable to a given state of facts, or to a given person? It stretches neither meaning nor sense, but accords with popular usage to say, when one has testified that another is guilty of adultery that he testified "against" that other person.

30 The construction contended for by defendant in error finds no support in a supposed analogy to the statute "concerning evidence of statements by or transactions with the deceased," for in that statute the phraseology is entirely different and the word "party" is always distinctly used, and the mutuality is preserved. In the proviso under review the word "party" is not used, and the construction contended for would be absolutely destructive of mutuality.

40 But if we have recourse to the established rules of the common law we will find them according with

and supporting the contention of the plaintiff in error. At the common law neither husband nor wife was admissible for the purpose of directly charging each other with any offense which in its nature was indictable. This rule rested upon the basis, as stated by Chief Baron Gilbert, in his treatise on evidence, that "the peace of families could not easily be maintained if the law admitted such attestations." And a husband cannot, in a collateral proceeding, be a witness directly to charge his wife with a crime which is of the grade of indictable offences. The State vs. Wilson & Wagner, 2 Vroom, 77. 10

It is thus clear that prior to our statute, as appears by the case last cited, which was decided in 1864, any evidence which tended directly to charge an indictable crime could not be testified to by either husband or wife, either in proceedings where they were parties to the record OR IN COLLATERAL PROCEEDINGS. And Chief Justice Beasley, in that case, lamented the fact that the law was not broader in its provisions so as to prevent husband and wife from charging each other with any act which is essentially infamous in general estimation. The proviso under review in this case extends the prohibition to actions of criminal conversation, the very nature and necessary tendency of which are to establish that the wife has been guilty of an indictable offence, i. e., adultery. No intention on the part of the legislature to change the common law which prohibited the husband and wife from giving such evidence in collateral proceedings, is discernable, and statutes in derogation of the common law are to be strictly construed. Sinnickson vs. Johnson, 2 Harr., 129, 144. It seems perfectly plain, therefore, that while the statute was designed to broaden the rules of the common law so as to bar all evidence from either husband or wife, except as to the fact of marriage, it was not intended to and does not derogate from the ancient rule of the common law that such evidence cannot be given whether the husband and 20 30 40

wife are parties to the record or not.

In *Hill vs. Pomelean*, 63 Atl. Rep., 269. This Court held that "in an action by a husband for criminal conversation the plaintiff is a competent witness to prove the fact of marriage." The statute (revision, P. L. 1900, p. 363, l. 5) recognizes and affirms such competency. This case is illuminative in at least one aspect. The admission of his competency as to the fact of marriage and the resting of that
 10 competency on the statute would seem to warrant the inference that as to facts other than marriage he would be incompetent.

It is, therefore, urged that for this error in refusing to charge the jury as requested by the plaintiff in error a reversal should be adjudged.

On page 12, 13 and 14 of the addenda appears the matter which counsel for the defendant in error requested to have incorporated into the record. His
 20 object is to show that the count for enticing and harboring was withdrawn from the case before its submission to the jury. I shall briefly indicate the inutility of that part of the addenda to the record. A perusal of it will show that the abandonment of the enticing count did not take place until nearly all the evidence of the defendant had been introduced. It can, therefore, have no bearing whatever on the refusal of the Court to charge the jury that the testimony of the plaintiff as to his wife's criminal
 30 conversation with the defendant could not be considered by them. It will further appear from a perusal of the addenda referred to, that the abandonment took place after the RECALL of plaintiff's wife to the stand, and consequently after the ruling as to the admissibility of her testimony, under the second count of the declaration, had been ruled against and an exception allowed to such ruling.

Respectfully submitted,

WILLIAM H. SPEER,

Counsel for Plaintiff in Error.

New Jersey Court of Errors and Appeals.

JOHN RUST,
Plaintiff Below and
Defendant in Error,

vs.

CHRISTIAN OLTMER,
Defendant Below and
Plaintiff in Error.

In Tort.
Brief.

This is an action for criminal conversation. The declaration contains two counts, one for criminal conversation and the other for enticing and alienating. Both counts cover the same period of time. The defendant pleaded the general issue. No evidence was offered by the plaintiff under the second count of the declaration. There was no motion either for a non-suit or the direction of a verdict. It appears by the record that the defendant made several requests to charge which were refused, but it does not appear that any exceptions were allowed, signed or sealed by the Court. It also appears that he excepted to several portions of the charge of the Court, but it does not appear that any of these exceptions were allowed, signed or sealed by the Court. Two exceptions seem to have been allowed and signed by the Court, but neither of them contains a seal in accordance with Section 211 of the Practice Act.

The first of these two exceptions is to the admission of evidence and will be found on page 40 of the printed case, and the second exception is as to

whether or not the wife of the plaintiff was a competent witness against him, and will be found on page 105 of the case.

POINT I.

There is no merit in the defendant's first exception.

In questioning the plaintiff concerning a certain conversation he had had with the defendant in 1904, the following question was asked:

“Q. When he spoke to you about the wife having left you, what did he say?”

The question was objected to on the ground that “it appears if anything transpired before that, he forgave his wife for it.”

There was no error in allowing an answer to this question:

(1) Because it did not appear that the plaintiff had any positive knowledge of his wife's wrongdoings until December 22, 1905, and

(2) Because condonation by the husband is no defense to such an action.

“The fact that the husband forgives or condones the wife's offense and cohabits with her after knowledge of her infidelity is no defense.”

Vol. 21, Law & Procedure, p. 1627.
 Shannon vs. Swanson, 208 Ill., 52.
 Sanborn vs. Nielson, 4 N. H., 501.
 Smith vs. Hackenberry, 101 N. W.
 (Mich.), 207.

POINT II.

There was no error in the refusal of the Court to hear any testimony of the wife "except as to the fact of the marriage."

As set out in the statement of facts the plaintiff proved nothing whatever under the second count in his declaration. On page 11 of the printed case the plaintiff said, "No; she lived in Willow Avenue; she lived apart from me. I would forget it now because I would see Mr. Oltmer again, and I never thought he would go and do anything with my wife like that." and again

"Well, after October she come back again and for two weeks she was awful nice, could'nt be any better, and then I noticed this going out for an afternoon," &c.

There is no evidence except by implication that the defendant enticed her to Willow Avenue. He at that time did not live on Willow Avenue, and there is not the least evidence that he harbored her there or even visited her at that address. But even if he had enticed her away or harbored her there the evidence was admissible under the first count in the declaration in aggravation of damages.

“Although it is usual to allege the seduction of the wife, and the consequent alienation of her affections, the loss of her company and assistance, and sometimes of her services, these are matters of aggravation, except so far as they are the statement of a legal inference from the fact itself, and actual proof of them is not necessary to the husband’s right of action.”

Second Ed. Am. & Eng. Enc. of Law, Vol. 8, page 268.

When the offer was first made by the defendant, he did not state under which count he proposed to have her give testimony. But he afterward stated that his offer of her as a witness was “to refute the testimony given by the husband himself as to the alleged acts of cruelty leaving aside the question of the criminal conversation,” etc.

She was clearly incompetent as a witness for that purpose.

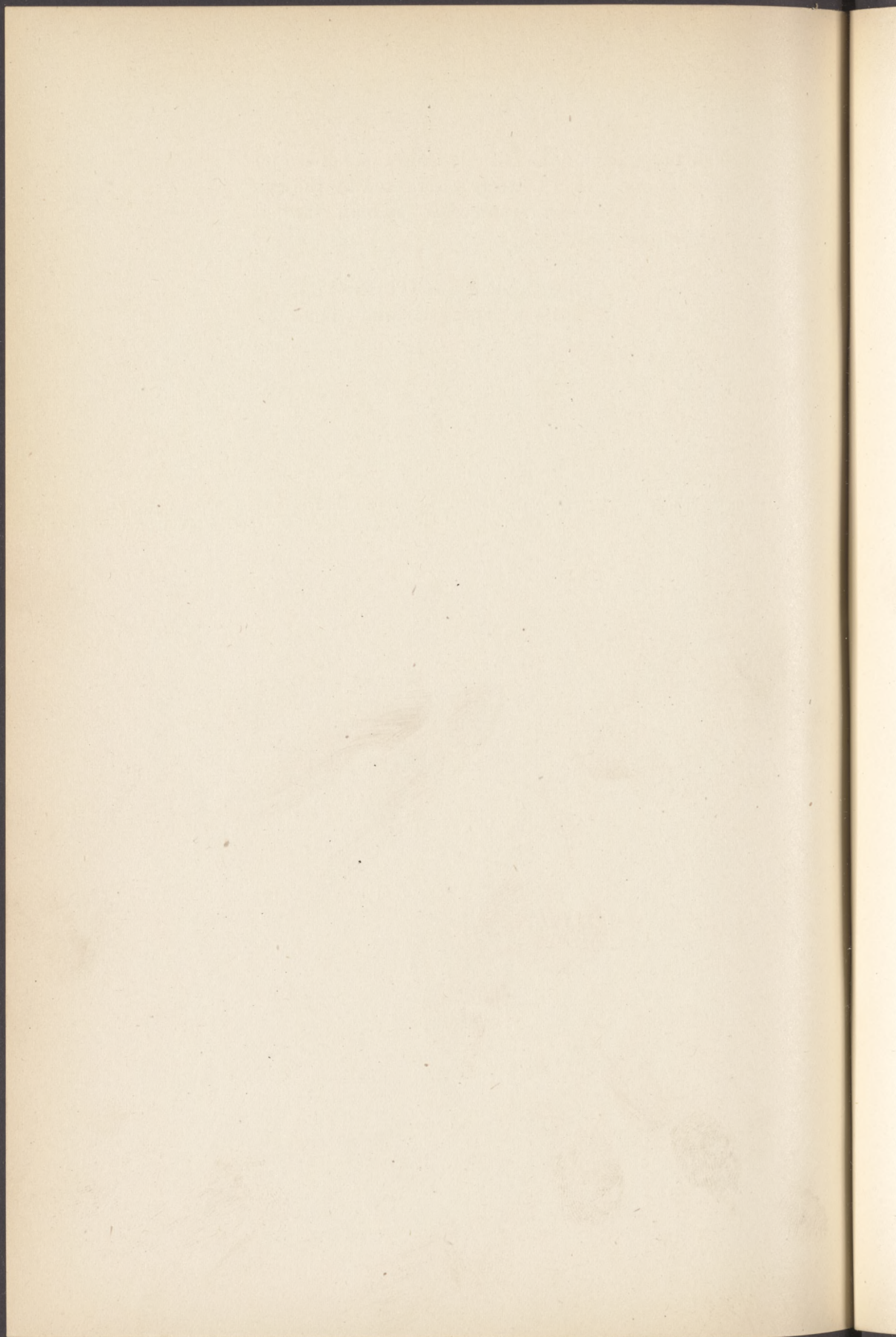
See Sec. 5, p. 363, Laws 1900.

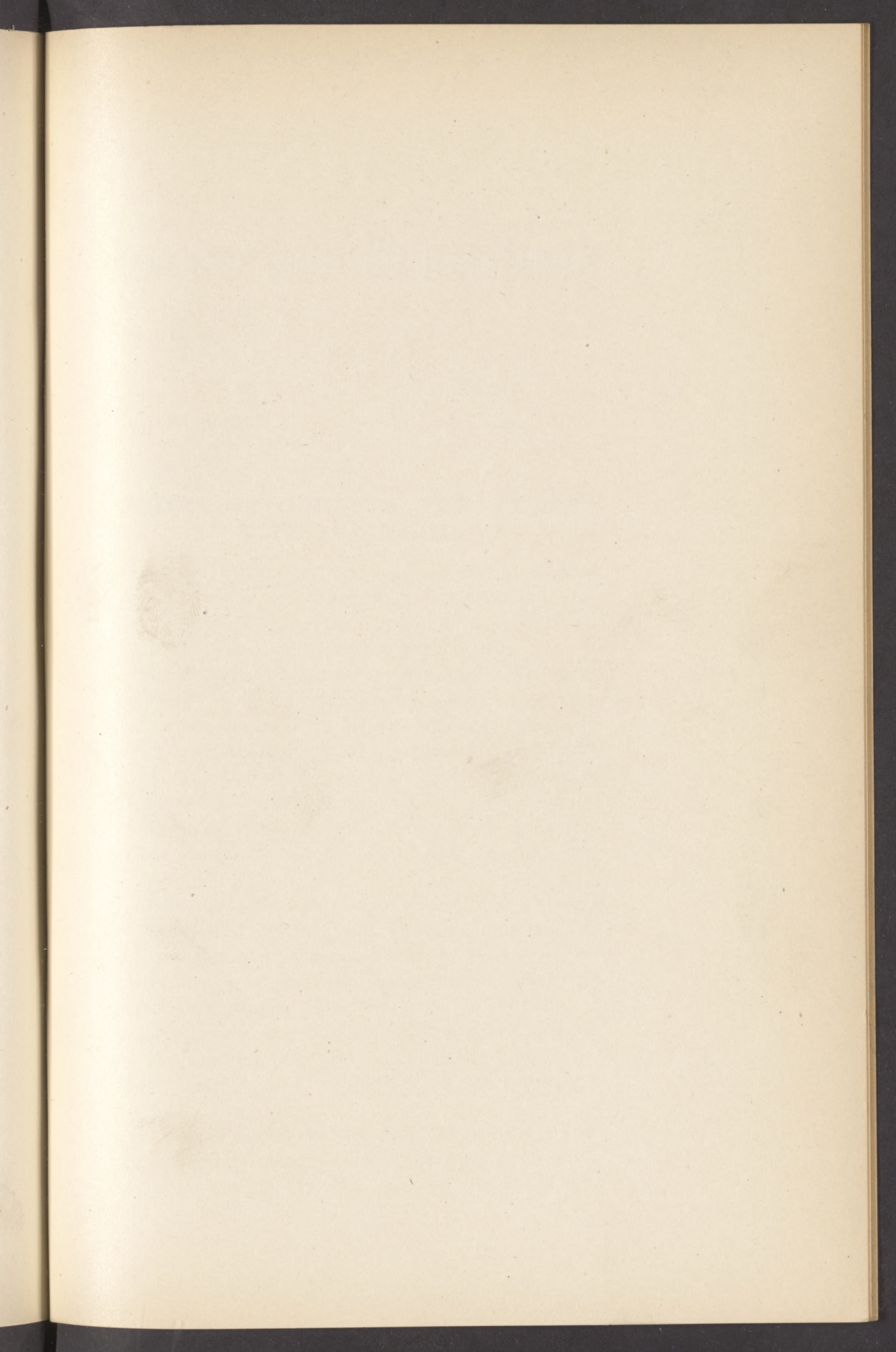
The plaintiff entirely abandoned the count for enticing and alienating and the Court in its charge to the jury told them that the only claim made by the plaintiff was for criminal conversation. The Court said:

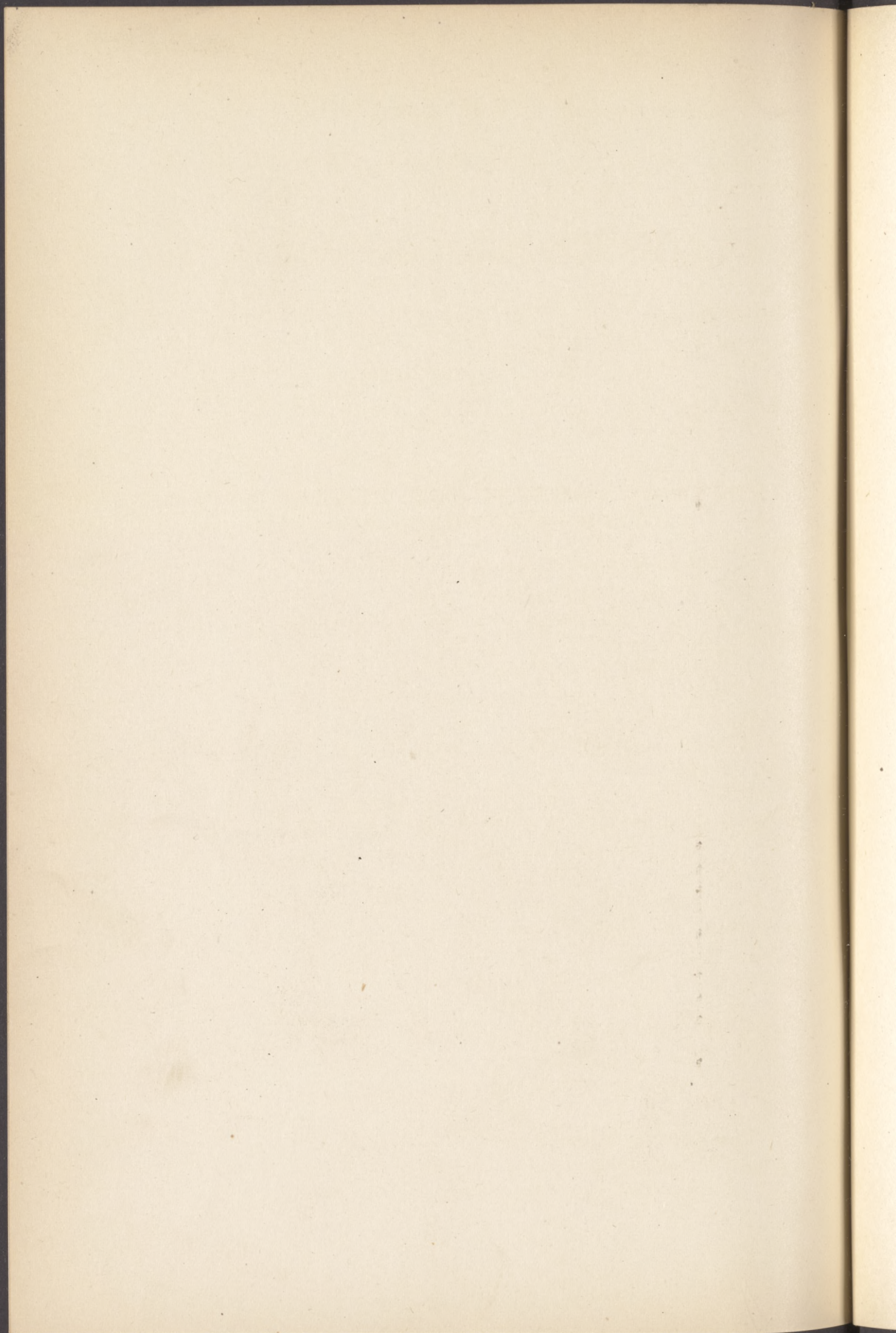
“This is a suit for what is called criminal conversation, that means, speaking generally, a suit by a husband against another man for seducing his wife, committing adultery with her. That is the claim made in this case, and the claim which the plaintiff must prove by a fair preponderance of evidence before he is entitled to a verdict against the defendant,” &c.

The judgment of the Circuit Court is a just and righteous one. It is entirely warranted by the evidence, and we most respectfully submit that it should not be disturbed.

WELLER & LICHTENSTEIN,
Attorneys for Defendant in Error.







New Jersey Court of Errors and Appeals

John Rust,
Defendant in Error,

vs.

Christian Oltmer,
Plaintiff in Error.

In Tort.

BRIEF OF COUNSEL FOR PLAINTIFF IN ERROR.

This writ of error brings up for review a most unjust verdict and judgment. The verdict was for \$4,000. The parties, both plaintiff and defendant, trod a very humble path in life.

The declaration contains two counts; the first for what is technically known as criminal conversation, the second for maliciously enticing away and detaining and harboring plaintiff's wife. The fact of the existence in the declaration of these two different causes of action must be continually borne in mind for it has a definitive effect on the decision of this case on this writ of error.

That these two causes of action are utterly separate and distinct, and that evidence that is not competent under one count, by reason of our "Evidence act," may be competent under the other, are propositions the truth of which is demonstrable, and will be demonstrated as soon as the precise question to which the court's attention is designed to be directed has been stated.

It is contended by the plaintiff in error, who was the defendant below, that the trial judge erred reversibly (1) in admitting the testimony

of John Rust, the plaintiff, (printed case pp. 8 to 42), as to facts other than the fact of marriage, and then, neglecting and refusing, when requested so to do by the defendant, (printed case pp. 116 and 117), to charge the jury: (a) "The jury cannot consider the testimony of the plaintiff as to his wife's criminal conversation with the defendant." and (b) "The jury cannot consider the wife's alleged confession to her husband of having misbehaved or going to the Van Troille Hotel with the defendant," and, in then charging the jury that they might consider certain facts which had been testified to by Rust, the plaintiff, as bases from which an inference of defendant's crim. con. with plaintiff's wife might legitimately be drawn. (These facts will be found on pages 117, 118, 119, 120, 121). It being perfectly manifest that if plaintiff can testify, in an action of crim. con., to facts from which the inference of guilt of adultery may be drawn, the rule of evidence forbidding in such action, the husband or wife to testify to any fact other than that of marriage is at an end. Plaintiff in error duly excepted to the judge's charge as made and to his refusal to charge as requested. The matters have been duly assigned as error and will be found on page 124 of the printed case as assignments fourth and fifth. (2) In refusing to admit the testimony of Mrs. Rust, the wife of the plaintiff, as to facts other than that of marriage. (see pages 104, 105 and 106 of printed case.) Mrs. Rust was expressly offered to testify to facts other than crim. con. and was an admissible witness as to those facts under the second count in the declaration which did not charge crim. con. or adultery. The trial judge refused to permit her to testify and an exception was duly taken and error has been assigned thereou. (p. 123, assignment third). To these assignments defendant in error has filed a joinder in error. (p. 126).

These two matters, above specified, will be first considered before proceeding to the examination of other assignments of error. (1) Because they stand upon the threshold of the case and (2) Because they depend to a large extent upon the same principles of law and may, therefore, profitably be treated together.

Section 5, of "an act concerning evidence (Revision 1900," N. J. pamphlet laws 1900, chapter 150, p. 363 enacts. "In any trial or inquiry in any suit, action or proceeding in any court, or before any person or committee having by law or consent of parties authority to examine witnesses or hear evidence, the husband or wife of any person interested therein as a party or otherwise shall be competent and compellable to give evidence the same as other witnesses, on behalf of any party to such suit, action or proceeding; provided, that nothing herein shall render any husband or wife competent or compellable to give evidence for or against the other in any action for criminal conversation, except to prove the fact of marriage, or to render any husband or wife competent or compellable to give evidence against the other in any criminal action or proceeding, except to prove the fact of marriage, and except as now otherwise provided by statute, or compellable in any action or proceeding for divorce on account of adultery to give evidence for the other, except to prove the fact of marriage, nor shall any husband or wife be compellable to disclose any confidential communication made by one to the other during the marriage."

It will have been observed that this statute, so far as civil proceedings, other than divorce, are concerned enables husband and wife to testify for or against each other in any suit, action or proceeding in any court, except in actions of crim. con. "When a statute provides that all parties may testify except that husband and wife

cannot in certain cases, they can in all other cases." *Minier* 4 *Lans.* (N. Y.) 421, 425. "No other view could possibly be taken." 9 *Am. & Eng. Encyc. Law*, Vol. 9, page 809 text and note 5.

Under the declaration which this writ of error has brought before this court could Rust and his wife legally testify for or against each other? In other words was this solely and purely an action for crim. con. or were there two separate and distinct causes of action stated in the declaration, one of which was for crim. con. and one not? For, if there were two distinct and separate causes of action one of which was crim. con. and the other not, then by force of the statute itself both Rust and his wife were competent and compellable to testify for or against each other in respect of all matters in issue under that count which was not for crim. con. and its answering plea. That such was the case in the cause now before this court is indubitable.

In *Kroessin vs. Keller*, (Minn. Sup. Ct.) 27 L. R. A. 685, the court said: "But we need not decide, as between these cases, for the exact question raised by the demurrer here was not the one under consideration in any we have cited. They were brought for enticing away the husband; causing him to withdraw his support from his wife; to abandon or desert her,—an entirely distinct and separate cause of action from that set out in the plaintiff's complaint. At common law this form of action was wholly different in pleadings and proof, as well as parties, from criminal conversation." And in *Houghton vs. Rice*. (Mass. Sup. Ct.) 47 L. R. A. 310-312 it was said "No adultery is alleged, and therefore the action is not for criminal conversation, where the allegation when a husband sues, is that the defendant debauched and carnally knew the plaintiff's wife. The alienation of the wife's affection in such a case is a mere matter of ag-

gravation, and the loss of the wife's consortium is the actionable consequence of the injury. Adultery was the essential fact to be proved, and if this was not proved, the action failed. At common law, also, a husband could maintain an action against one who "persuaded, procur- ed and enticed his wife to continue absent and apart from him, and to secrete, hide and conceal herself from him, whereby during the time she continued absent he lost her comfort and society, and her aid and assistance in his domestic af- fairs." He could also maintain an action against one for receiving his wife, and unlawfully har- boring, concealing and secreting her from him and refusing to deliver her to him. In such case adultery is neither alleged nor proved. The same distinction between an action for enticing and one for crim. con. is clearly drawn in Big- elow, on Torts, Seventh Edition, section 274 to 286 both inclusive. In Bouvier's Law Dict. Tit. Criminal Conversation, the learned author says, "This phrase is usually employed to denote the crime of adultery." In Am. & Eng. Encyc. Laws, Vol. 9 p. 834 et fol. section 22, legions of cases are cited in support of the proposition that adultery is the essence of the charge of crim. con. Common speech is at one with the law as to the definition of the term "criminal conversa- tion" for the Standard and other dictionaries unite in defining it "unlawful sexual inter- course," and the trial judge, in the case at bar, in his charge to the jury, so defined it.

There can be no doubt, then, as to the mean- ing to be ascribed to the term "criminal conver- sation" when used in our evidence act. When it says "in any action for criminal conversation," it means in any action brought by a husband against one who has had unlawful sexual inter- course with his, said husband's wife, for damages therefor, and does not embrace the case of an action where adultery is not charged.

It is perfectly manifest from the foregoing statement of facts, statute and principles that evidence from the husband or the wife in the case under review with respect to other facts than that of their marriage was inadmissible in support of the first count in the declaration but admissible in support of the second count, or, in other words, that in the action for crim. con. stated in the first count, the fact of marriage was the only fact to which either could testify either for or against the other, while in the action for enticing away the wife, stated in the second count, both could testify to all relevant facts in addition to that of marriage. The method of controlling such a situation from prejudicing the jury is by a request to charge the jury that the evidence is only applicable to the one count or the other, as the case may be, and not by excluding the evidence altogether. It is quite a common thing in the law to have, in the same cause, evidence admissible for one purpose and not for the other. "Evidence, which is competent solely for the purpose of explaining the conduct of a witness called by the State in a criminal trial should not be excluded because its natural tendency is to create a prejudice against the defendant in the minds of the jury. The defendant may protect himself against such a result by requesting the court to instruct the jury as to the limitations of the evidence, and of the purposes for which alone it could be considered by them." *State vs. Hummer* 43 *Vroom* 328.

When Rust, the plaintiff, was called as a witness, and interrogated as to matters other than the fact of his marriage, without a *nol-pros.* or abandonment of the second count of the declaration by plaintiff, defendant would not have been legally justified in objecting to such evidence, because it was manifestly admissible so long as the second count of the declaration remained unexpunged from the record; defendant's remedy

and protection was "to request the court to instruct the jury as to the limitations of the evidence, and of the purposes for which alone it could be considered by them;" in other words to request the court to instruct the jury that such evidence was applicable alone to the support of the second count in the declaration and not to the first. All the evidence given by plaintiff, so far it was not mere hearsay, was competent evidence in support of the second count, but was utterly inadmissible in support of the first count. It is perfectly clear therefore that defendant's counsel was right in waiting to assert the inadmissibility and, inapplicability of plaintiff's evidence to the first count of the declaration until he submitted to the trial court his requests to charge and that it was clear error in the trial judge not to distinctly and positively tell the jury that they must not consider any evidence given by the plaintiff as supporting the charge of crim. con. except that as to the fact of marriage, instead of commenting on some of plaintiff's own evidence and telling the jury that they might consider it in arriving at the inference of guilt of adultery. Rust himself had testified (p. 9, l. 10 to 25) that "after some years of married life Mrs. Rust got into the habit of neglecting her home and going out to balls and other entertainments," as the judge charged, (p. 118, ll. 24, 25, 26 and 27). Again on page 119, ll. 12, 13 and 14 we have the judge charging "We have those apparent absences of both the parties from their homes at the same time." This, if true, would be a most significant and incriminating circumstance, but it depends entirely upon the testimony of the plaintiff himself; no one else swears to it. He says whenever his wife would go out from his home he would ring up Oltmer's shop, and he would always be gone too and that then he would become suspicious and not at ease. (p. 13 ll. 30-40; p. 12 ll. 1 to 10; p. 11 ll. 10 to 20 and

again on pp. 34 and 35). It cannot be said that when the trial judge not only permitted the jury to consider the plaintiff's testimony as to matters other than the fact of marriage but even directed their attention specifically to an incriminating circumstance which depended on plaintiff's uncorroborated evidence and told them that they might infer adultery from this and other circumstances in the case some of which plaintiff himself had testified to, he did not commit reversible error. "Every party has the right to demand that he shall not be prejudiced by improper evidence. The admission of illegal evidence which bears in the least degree on the result is fatal." *Baird vs. Gillett*, 47 N. Y. 186-188. "The graver the charge the more strictly should this rule be applied." *Blackburn vs. Beall*, 21 Md. 208. The direction to the jury to consider these circumstances was not only in the least but in the highest degree prejudicial to the defendant. The judge charged the jury, (page 118, ll. 6 et fol.) "In weighing this evidence it is your duty to bear in mind that adultery is a crime which can hardly ever be proved by the direct evidence of an eye witness. It is most natural that when a man and woman desire to commit that offense they will avoid the sight and hearing of other people, and, therefore, the law properly says that direct evidence of eye witnesses is not essential, and that adultery may be proved by inference from other facts and circumstances which in the mind of an impartial person would tend to establish the assumption, the necessary connection of the crime with these facts. Let us see what we have here, assuming you believe these circumstances to have been proved * * * * * ." Then follows an enumeration of the circumstances most of which had been testified to by Rust and some of which had been testified to by him alone. It will have been observed that the trial judge starts out, in the portion above quoted, by say-

ing, "In weighing this EVIDENCE," thus giving to the legally interdicted testimony of Rust the name as well as the function of legal evidence.

The trial judge treated the case in his charge solely as one of crim. con. on p. 117, ll. 30 et fol. he opens his remarks to the jury as follows: "This is a suit for what is called criminal conversation, that means, speaking generally, a suit by a husband against another man for seducing his wife, committing adultery with her.

"That is the claim made in this case, and the claim which the plaintiff must prove by a fair preponderance of evidence before he is entitled to a verdict against this defendant." And later in the charge (p. 120 ll. 17 to 20) the court tells the jury that the fact of adultery must be proved or plaintiff's action fails. It will thus be seen that the only issue submitted to the jury was that of crim. con., that the jury were directed to consider plaintiff's evidence as to facts other than that of the marriage in reaching their verdict; that some of plaintiff's evidence was utterly uncorroborated; that that evidence bore upon essential facts in the case; that the trial court was requested by defendant's counsel to charge "that the jury cannot consider testimony of the plaintiff as to his wife's criminal conversation with the defendant;" that the court refused so to charge and charged directly to the contrary. It is confidently claimed that such action of the court is error and entitles plaintiff in error to a reversal. It cannot be successfully contended that plaintiff's testimony did not bear directly on the issue. One illustration in denial of this contention will suffice. Plaintiff swore, as no one else did, that his wife and Oltmer were absent from their homes at the same time, and that he ascertained this fact by telephoning from his home to Oltmer's shop. If he could swear they were both absent at the same time from their homes, he could also swear where they were

at those times and what they were doing. For there is no difference in kind between the testimony of absence from a place and presence at that place. Nor would it help the legal position of the plaintiff in any degree to assume that the case was tried from the start to finish on the theory that it was solely an action from crim. con. and that the second count in the declaration had been abandoned or not pressed. If it were an action for crim. con. pure and simple it is perfectly clear that all the testimony of the plaintiff, except as to the fact of marriage, was illegal and inadmissible, and was expressly made so by our statute. It is, furthermore, perfectly clear that the defendant could not waive the matter of its inadmissibility. On this point the authorities are positive and numerous. The rule was one involving public policy and therefore could not be waived by the consent of parties. *Turpin vs. State* 55, Md., 462, 477; *Stein vs. Bowman*, 13 Pet. ns. 223. *Randall's Case*, 5 City Hall Rec., 141, 153, 154; *Colbern's Case*, 1 Wheeler Crim. Cases, 479. *Sedgwick vs. Watkins*, 1 Ves. Jr. 46 The reason for the rule is that to permit the husband to testify by the consent or waiver of the wife is to assume that the interest of the wife is the only one to be considered or consulted and is the sole foundation of the rule, whereas the public has also an interest in the preservation of the domestic peace, which might be disturbed by his testimony notwithstanding her consent. *Greenleaf Ev. Vol. I. sec. 340*. "PUBLIC POLICY demands that those living in the marriage relation should not be compelled or ALLOWED to betray the mutual trust and confidence which such a relation implies." *Burr Jones, Ev. Vol. 3, sec. 751*.

In *Stein vs. Bowman*, 13 Peters 223 the Court said: "The rule which protects the domestic re-

lations from exposure rests upon considerations connected with the peace of families, and it is conceived that this principle does not merely afford protection to the husband and wife, which they are at liberty to invoke or not, at their discretion, when the question is propounded; but it renders them incompetent to disclose facts in evidence in violation of the rule. And it is well that the principle does not rest on the discretion of the parties." The prohibition is absolute. No consent can remove it. This construction gives full effect to the very words of our statute which says, "provided, that nothing herein contained shall render any husband or wife competent or compellable to give evidence for or against the other in any action for criminal conversation, except to prove the fact of marriage." Thus the public policy of this State is written in its statute; the witness shall not be even COMPETENT to testify. How can the consent of a party make that testimony competent which the statute has peremptorily declared to be incompetent, and is not such testimony against both the letter and the spirit of the law as well as inimical to the reason which underlies it. If this be so then the judge should have limited the testimony of the plaintiff himself to the mere fact of marriage and should have charged the jury that it was not evidentiary for any other purpose.

This brings us to a consideration of the request of defendant that the court charge the jury that "The jury cannot consider the wife's alleged confession to her husband of having misbehaved or going to the Van Troille Hotel with the defendant." It is the claim of plaintiff in error that he was entitled to have this request charged substantially as made, and not in the emasculated and etiolated form in which it was given. The court charged (pages 119 and 120) "with respect to statements made by Mrs. Rust, however, I understand the law to be that in a case

of this kind, under these circumstances, they are not competent evidence of the guilt of Mr. Oltmer. If this was a divorce case between Mr. Rust and his wife, and her statements were proved, they would bind her and not him. This is a suit against Mr. Oltmer and necessarily he cannot be bound by the unsworn statements of the alleged other party to the crime, so that I think it is wise to instruct you that you need not and should not consider the evidence of what Mrs. Rust may have said, and more especially so as there is evidence tending to show that whatever she may have said to her husband was done under the influence of threats made by him. You need not consider that at all."

The instruction requested was one that, if charged, would have removed absolutely from the consideration of the jury the alleged confession by plaintiff's wife of her misbehavior and of her having gone to the Van Troille Hotel with the defendant. This charge defendant was clearly entitled to. In *Berckmans vs. id.* 1 C. E. Green 141, the court said: "Parol evidence of the declarations of a particeps criminis, even though he had confessed his guilt, would not have been competent evidence against the defendant." The judge told the jury "that the statements made by Mrs. Rust were not competent evidence of the guilt of Mr. Oltmer," but the jury may well have believed that they were competent evidence of the guilt of Mrs. Rust. Then again the whole portion of the charge which bears upon this matter of the alleged confession is confused, argumentative and mildly advisory rather than in the form of an explicit and mandatory instruction which the jury would not feel themselves at liberty to disregard. In a matter of so much moment and so vital to a correct solution of the case the defendant was entitled to have his request charged substantially as requested.

(2) This brings us to a consideration of the refusal of the court to allow Mrs. Rust, having been produced by the defendant, to testify otherwise than as to the fact of marriage. This matter will be found on pages 104, 105 and 106 of the printed case. At the time Mrs. Rust was called to the stand the second count of the declaration had neither been nol-prossed nor abandoned. Evidence had been produced by the plaintiff and from the plaintiff's own lips that tended to prove that his wife had become infatuated with Oltmer, that she sought and found pleasure in his company; that she danced with him and with him alone at balls and other entertainments; that when her husband found fault with her she told him she had another place to go to; that she had said she could get a place as house-keeper for Oltmer; that Oltmer had furnished her with fifty dollars to get a divorce from Rust; that they telephoned to each other, &c. All this testimony from the mouth of plaintiff himself and admissible only on the theory that the case was being tried under the second count was on the record at the time Mrs. Rust was called to the stand. This testimony tended to support the second count of the declaration. Counsel for defendant therefore expressly offered Mrs. Rust as a witness to denials made by the husband of ill-treatment and cruelty toward his wife and of particular brutality to which his attention was called as a witness and expressly stated that he did not offer her on the issue of crim. con. The court overruled this testimony and plaintiff claims that such action is reversible error.

All the discussion as to the admissibility of the plaintiff himself as a witness to facts other than that of marriage is applicable to the admissibility of his wife. There were two counts in the declaration; Mrs. Rust was sworn to testify to facts in support of the defence against the sec-

ond, and did not essay to testify to anything which bore on the count for crim. con. That this was competent has been hereinbefore demonstrated. Not only was her testimony in respect to his treatment of her and her relation to him admissible to show that he drove her from him by his treatment and that Oltmer did not entice her away as charged in the second count, but the monstrous unfairness was perpetrated of letting the plaintiff testify to facts whose tendency was to show that it was by Oltmer's procurement that she went to balls and entertainments and neglected her home and wanted to and did leave it, and at the same time Oltmer was denied the right to rebut that testimony by the wife's evidence. If her testimony was incompetent so was his; if his was competent so was hers. If his was incompetent the court should not expressly have called the jury's attention to it and instructed them, in defiance of defendant's request, that they might consider it and draw inference of guilt from it, and have refused to permit Mrs. Rust to deny it. The truth of the whole matter is that if the action was tried from start to finish on the count for crim. con. alone neither could legally testify; if it was tried on both counts until the court came to charge the jury then both should have been permitted to testify under the second count. The refusal to permit Mrs. Rust to do this was error.

Defendant requests 4 and 5 were not charged as requested. The refusal to charge No. 4 permitted the jury to draw its conclusion as to defendant's guilt without the presence of all the elements that give that conclusion legal validity and No. 5 not being charged or referred to removed the consideration of the second count from the jury. This was error.

The judgment should be reversed and a venire
- le novo ordered.

Respectfully submitted,
JOHN J. FALLON,
Attorney.

WILLIAM H. SPEER,
Of Counsel.

The following is a list of the names of the persons who have been appointed to the various positions in the office of the Secretary of the State, and who have taken the oath of office and qualification.

SECRETARY OF STATE
 WILLIAM H. HARRIS

CLERK OF THE SUPREME COURT
 JOHN W. HARRIS

CLERK OF THE DISTRICT COURT
 JOHN W. HARRIS

CLERK OF THE COUNTY COURT
 JOHN W. HARRIS

CLERK OF THE PROBATE COURT
 JOHN W. HARRIS

CLERK OF THE JUDICIAL DEPARTMENT
 JOHN W. HARRIS

CLERK OF THE OFFICE OF THE SECRETARY OF STATE
 JOHN W. HARRIS

CLERK OF THE OFFICE OF THE ATTORNEY GENERAL
 JOHN W. HARRIS

CLERK OF THE OFFICE OF THE COMMISSIONER OF THE LAND OFFICE
 JOHN W. HARRIS

CLERK OF THE OFFICE OF THE COMMISSIONER OF THE DEPARTMENT OF AGRICULTURE
 JOHN W. HARRIS

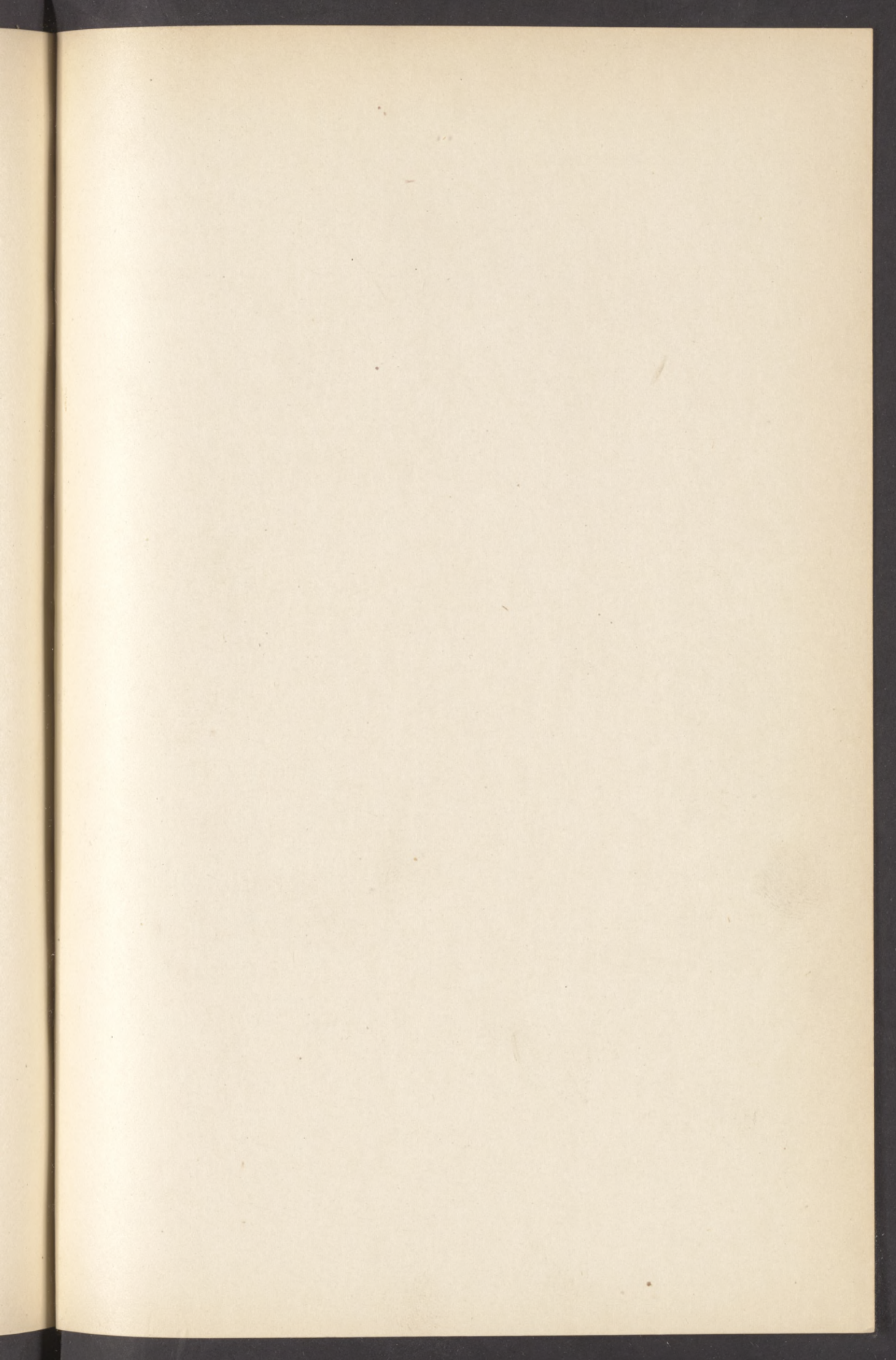
CLERK OF THE OFFICE OF THE COMMISSIONER OF THE DEPARTMENT OF EDUCATION
 JOHN W. HARRIS

CLERK OF THE OFFICE OF THE COMMISSIONER OF THE DEPARTMENT OF LABOR
 JOHN W. HARRIS

CLERK OF THE OFFICE OF THE COMMISSIONER OF THE DEPARTMENT OF PUBLIC SAFETY
 JOHN W. HARRIS

CLERK OF THE OFFICE OF THE COMMISSIONER OF THE DEPARTMENT OF SOCIAL WELFARE
 JOHN W. HARRIS

CLERK OF THE OFFICE OF THE COMMISSIONER OF THE DEPARTMENT OF HEALTH
 JOHN W. HARRIS



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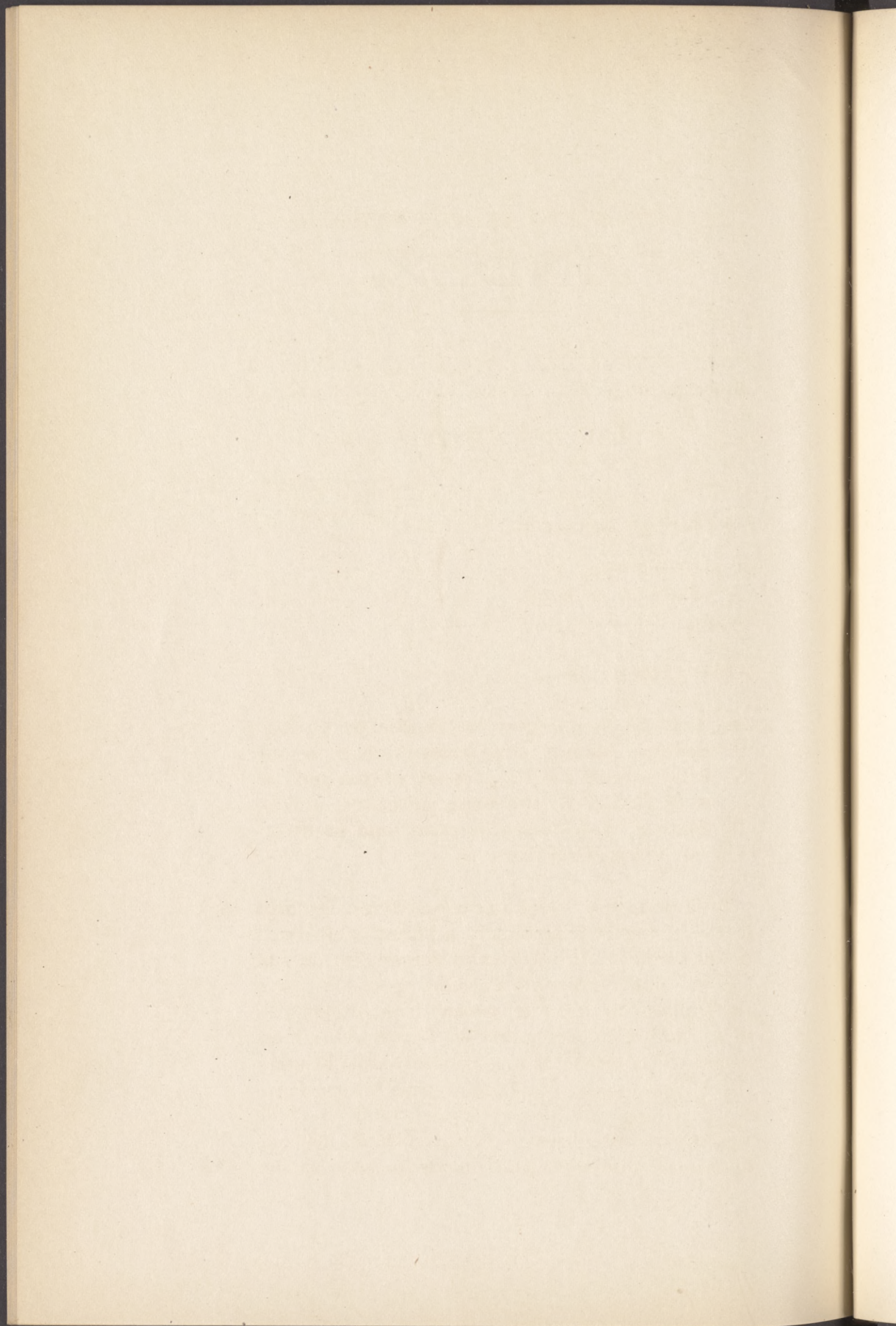
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COURT OF ERRORS AND APPEALS
Of the State of New Jersey.

JOHN RUST,	}	10
Plaintiff,		
Defendant in Error,		In Tort.
vs.		In Error to Hud-
CHRISTIAN OLTMER,	}	son Circuit
Defendant,		Court.
Plaintiff in Error.		

NEW JERSEY, ss. 20

The State of New Jersey to Charles W. Parker, Esquire, Judge of our Circuit Court at Jersey City, in and for the County of Hudson, or such Justice of the Supreme Court of the State of New Jersey as shall hold such Circuit Court, Greeting:

Because in the record and proceedings, and also 30
in the giving of judgment in a plaint, which was
in our Circuit Court, holden at Jersey City, in and
for the said County of Hudson, between John
Rust, plaintiff, and Christian Oltmer, defendant,
of an action in tort, manifest error hath inter-
vened to the great damage of the said Christian
Oltmer, as by his complaint we are informed, we
being willing that speedy justice should be done
to the parties aforesaid in this behalf, do com-
mand you distinctly and openly to send, under 40

your seal, the record and proceedings aforesaid with all things touching the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the fourteenth day of March next, nineteen hundred and six, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be futher done thereupon, for correctjng that error, what of right and according to the law and custom of the State of New Jersey, ought to be done.

Witness our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the twenty-third day of February, in the year nineteen hundred and six.

S. D. DICKINSON,
Clerk.

JOHN J. FALLON,
Attorney.

20

The answer of Charles W. Parker, Esquire, Judge of the Circuit Court holden in and for the County of Hudson and whereof mentioned is within made, the record and proceedings of the plaint within contained with all things touching the same I send to the Judges of our Court of Errors and Appeals in the last resort in all causes at Trenton at the day and year within named in a certain schedule to this writ annexed as within I am commanded.

C. W. PARKER,
Judge.

40

HUDSON COUNTY, ss. The State of New Jersey, to the Sheriff of
 (L. S.) the County of Hudson.

Greeting: We command you to summon Christian Oltmer, to be and appear before the Circuit Court to be held at Jersey City in and for the County of Hudson on the second day of February, 1905, to answer unto John Rust, in an action in tort to his damage, ten thousand dollars, 10
 as is said,
 and have you then and there this writ.

Witness. Charles W. Parker, Esquire, Judge of our said Court at Jersey City aforesaid, the twenty-fifth day of January, A. D. one thousand nine hundred and five.

MAURICE J. STACK,
 Clerk.

WELLER & LICHTENSTEIN, 20
 Attorneys.

I hereby deputize Jas. Farrell to serve the within writ. Witness my hand and seal this 26th day of Jan'y, 1905.

JOHN ZELLER, Sheriff.

By J. J. HEAVEY, Under Sheriff.
 (L. S.) Sheriff's fees, \$2.78.

Served within summons Jan'y 26th, 1905, personally on the defendant Christian Oltmer. 30

JOHN ZELLER, Sheriff.

By JAMES FARRELL, S. D. S.

Filed. Clerk's Office, Feb. 2, 1905. Hudson County, N. J.

MAURICE J. STACK,
 Clerk.

STATE OF NEW JERSEY,
Hudson County, ss:

Hudson County Circuit Court of the second day of February, nineteen hundred and five, to wit, Christian Oltmer, the defendant herein was summoned to answer unto John Rust, the plaintiff herein in an action in tort, and thereupon the said plaintiff by Weller & Lichtenstein his attorney complains. For that whereas the said defendant, Christian Oltmer contriving and wickedly intending to injure the said plaintiff, John Rust, and to deprive him of the comfort, fellowship, society and assistance of Elizabeth Rust, the wife of the said plaintiff, and to alienate and destroy her affections for the said plaintiff; heretofore to wit, on the first day of February, 1904, and at divers other days and times between that day and the date of commencing this action, at 122 Monroe Street and 317 Willow Avenue, and at Nos. 318 and 320 Grand Street, in the City of Hoboken, New Jersey, and at the Van Troille Hotel, at 24th Street and Lexington Avenue, in the City of New York, wrongfully, wickedly and unjustly debauched and carnally knew, the said Elizabeth Rust, then and there and still being the wife of the said plaintiff, and thereby the affections of the said Elizabeth Rust for the said plaintiff was then and there alienated and destroyed, and also by means of the premises, the said plaintiff, hath from thence hitherto lost and been deprived of the fellowship, society, aid, comfort and assistance of the said Elizabeth Rust, his said wife, in his domestic affairs, which the said plaintiff during all that time ought to have had and enjoyed and otherwise would have had and enjoyed, to wit at Hoboken, aforesaid, to wit, at Jersey City, in the County and State aforesaid.

And the said plaintiff further complains for

that whereas the said defendant, Christian Oltmer, contriving and wickedly and unjustly intending to injure the said plaintiff, John Rust, and to deprive him of the comfort, fellowship, society and assistance of Elizabeth Rust, the wife of the said plaintiff, and to alienate and destroy her affections for the said plaintiff; heretofore to wit, on the ninth day of July, 1904, maliciously enticed away the plaintiff's said wife, Elizabeth Rust, from the said plaintiff, and her then residence in the City of Hoboken, in the County and State aforesaid and within the jurisdiction of this Court, to a separate and other residence, to wit, 317 Willow Avenue, in the City of Hoboken, aforesaid, and from that time until the first day of September, 1904, constantly detained and harbored this plaintiff's said wife, Elizabeth Rust, at such separate residence, against the consent of the plaintiff and his utmost peaceable efforts to obtain her from said defendant's custody, influence and control, to the damage of said plaintiff ten thousand dollars and therefore he brings his suit, &c.

10

20

WELLER & LICHTENSTEIN,
Attorneys of Plaintiff.

Filed. Clerk's Office, Feb. 11, 1905, Hudson County, N. J.

MAURICE J. STACK,
Clerk. 30

And the said defendant, by John J. Fallon, his attorney, comes and defends the wrong and injury, when, etc., and says that he is not guilty of the said supposed grievances above laid to his charge, or any or either of them, or any part thereof, in manner and from as the said plaintiff hath above thereof complained against him. And 40

of this the said defendant puts himself upon the country, etc.

JOHN J. FALLON,
Attorney of Defendant.

~~X~~ _____
STATE OF NEW JERSEY,
County of Hudson, ss.

10

Christian Oltmer of full age being duly sworn according to law, upon his oath deposes and says, that he is the defendant in the above entitled plea, and that said plea is not intended for the purpose of delay, and this affiant verily believes that he has a just and legal defence to the said action on the merits of the case.

CHRISTIAN OLTMER,

20 Subscribed and sworn to before me this 3rd day of March, A. D. 1905.

MICHAEL J. CANNON,
Master in Chancery
of New Jersey.

John J. Fallon, Atty for Deft., 53 Newark St.,
Hoboken, N. J.

30 We hereby consent that the within plea be filed within time.

WELLER & LICHTENSTEIN,
Attorneys of Plaintiff.

Filed. Clerk's Office, Mar, 9, 1905, Hudson
County, N. J.

MAURICE J. STACK,
Clerk.

~~X~~ _____
40

THEREFORE to try the issue above joined let a jury come before the said Circuit Court, at Jersey City aforesaid on the ninth day of January, A. D. 1906, as yet of the Term of December in the year of our Lord one thousand nine hundred and five, who neither, &c., by whom, &c., to recognize, &c., because as well, &c., the same day is given to the parties aforesaid, at which day before the said Circuit Court comes the said parties by their attorneys aforesaid, and the jurors of the jury 10 above mentioned also come, who to speak the truth of the matters aforesaid being chosen, tried and sworn, say upon their oath that the said defendant is guilty as the said plaintiff hath thereof above complained against it and that they find in favor of the plaintiff and against the defendant and they assess the damages of the plaintiff on occasion of the premises, at four thousand dollars, over and above his costs and charges by the said plaintiff about his suit in this behalf ex- 20 pended.

THEREFORE, it is considered that the said plaintiff do recover against the said defendant his damages aforesaid in manner aforesaid found, and also forty-three dollars and fifty-seven cents for his said costs and charges by the said Court now here adjudged, and which said damages, costs and charges in the whole amount to four thousand and forty-three dollars and fifty-seven 30 cents.

And the said defendant in mercy, &c.

Judgment entered and signed this tenth day of January, 1906.

CHARLES W. PARKER,
Judge.

X

HUDSON COUNTY CIRCUIT COURT.

December Term, 1905.

JOHN RUST vs. CHRISTIAN OLTMER.	}	Tort.
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This cause came on to be tried before Hon. Charles W. Parker, Judge, and a jury, on Tuesday, January 9, 1906.

Weller & Lichtenstein, Esqs., for plaintiff.

John J. Fallon, Esq., for defendant.

A jury was duly impanelled and sworn.

20

Mr. Weller opened the case for the plaintiff.

JOHN RUST, the plaintiff, called and sworn on his own behalf, testified as follows:

DIRECT EXAMINATION by Mr. Weller:

Q. Where do you live now? A. 122 Monroe Street, Hoboken.

30 Q. What is your business? A. Mason and builder.

Q. How long have you lived at 122 Monroe Street? A. Five years.

Q. When were you married? A. 1894.

Q. Where? A. Kaskaskia, Illinois.

Q. Whom did you marry? A. My present wife.

Q. What was her name? A. Her name was Lizzie Unger—Elizabeth Unger.

Q. Where did her people live? A. In Kaskaskia, Illinois.

40

Q. After your marriage where did you com-

mence living together? A. Well, in two months we moved to Hoboken.

Q. Have you lived there since that time? A. We lived two month on Long Island; the rest of the time in Hoboken.

Q. How many children have you? A. Two.

Q. What is the oldest? A. The oldest is a boy, about ten years old.

Q. The youngest? A. The youngest is a girl eight years old.

Q. How did you and your wife live up to 1903? A. Well, we lived pretty good; the only trouble we had, my wife was continually sick; she wasn't for three months without a doctor; and at the end of 1903 or the beginning of 1904, January, she seemed to be different altogether; she commenced running to dances, and she never knowed how to dance before that; she never used to know what the inside of a masquerade hall or those things was. She began to take a notion to go there and frequent them, and over that we often had certain words; when I was trying to correct her she would tell me "if you don't like it I have got a place to go to." She neglected her home and children and all.

Q. How long did that continue? A. That continued during them three or four months—into April.

Q. Then what happened? A. In April she was out one night awful late; she was out all the afternoon, and out that night till after eleven o'clock, and after I corrected her why the next Tuesday she left the house; she was away a couple of days, and about two days after that I was called before Recorder Stanton—not subpoenaed, but to give me a hearing—and I told—

Objected to.

Q. Just when was that? A. She left the 9th

of April, and this was the week after.

Q. That was in 1904? A. 1904.

MR. WELLER—I said 1903 in my opening; I meant 1904.

Q. Then after this hearing before Recorder Stanton, what happened? A. Well, I suspicioned her, and I told her about it, because I had some words—some family secret what we had—and this Mr. Oltmer knowed about that;—it was funny to me; I had confidence in the two of them; I never thought my wife was anything out of the way, and everything was all right again until the 19th of July she left me again, rented rooms and moved away—moved away the furniture out of the house when I was on a building.

Q. How long did she remain away? A. Well, she remained away till the latter part of August; she came back right before the children had to go to school.

Q. What business is Mr. Oltmer in? A. Iron business.

Q. Up to 1904 were you and Mr. Oltmer friendly? A. Yes; he done work for me since 1898,—1897 or 1898.

Q. How often did you see him during that time? A. Well, I seen him then different times; he used to do work—sometimes twice a day, sometimes twice a month, but he was doing work for me right along.

Q. And in his doing this work for you, did it bring him to you house? A. Well, different times; if I had a plan for him to estimate on I would send him a notice and he would come to the house; but very seldom, maybe once a month or twice a month, that I called him in.

Q. Did you go to his shop often? A. Well, most of the time I met him in the shop, yes.

Q. You say you commenced to suspicion your

wife in 1904; about what time was it you first commenced to suspicion your wife? A. Well, the first that I recollect any suspicion was when she lived in Willow Avenue; I told her to take care of the children, and I seen the children around the buildings; and one day the boy was around the buildings not the way I liked it.

Q. Your own boy? A. My boy, yes; I thought she ought to take care of him; I sent her a notice that if she was away I supported her and wanted her to take proper care of the children. The second day he was around the building; that looked funny to me; I sent somebody around to her house; the party told me she was not home, and I accidentally went on the telephone to telephone to Mr. Oltmer's shop, and he was not at home; and nobody in the shop knowed where he was; I asked all his men, telephoned three times that afternoon; nobody knowed where he was. Then I got one party, and I says "it looks funny to me." Now, I watched Mr. Oltmer's shop and this party watched where the house was that she lived in, at the same time; the two of them came home together. Since that time—

MR. FALLON—I object.

Q. Who was that party that watched the house? A. Mr. Donahue sitting right here; then I got suspicion and a day or two after I would forget it again, and I would never think it was that way.

Q. You went back to your wife— A. No; she lived in Willow Avenue; she lived apart from me; I would forget it now because I would see Mr. Oltmer again, and I never thought he would go and do anything with my wife like that.

Q. Go right on? A. Well, after October she came back again, and for two weeks she was awful nice, couldn't be any better, and then I

noticed this going out for an afternoon—I noticed that she would leave and she was nervous—she would leave at noon and get back not till six or seven o'clock; and every afternoon she was out of the house I telephoned to Mr. Oltmer's shop, or sent a man there, and he couldn't be found; then I forbade my wife; I said, "if you ever go out for a full afternoon I want you to let me know"; then it would be all right to a
 10 week or two, and then it was the same thing again. I of course began to suspicion; I looked around to detect something, but I had to attend to my business, I didn't have time for it; two weeks would pass nice, and all of a sudden she was away again; sometimes it puzzled me; I went to watch which way she came back; I could not find out until in November. In November she began—she wanted to go to masquerades again; I said "if you start that masquerade running again
 20 I will put a stop to it"; she went somehow or other—it was a masquerade, and she really got everything ready, only somehow or other I came home a little bit late that night; it was all fixed that the boy had to be taken away by a friend of ours, a man who works for me; and the little girl left in another house; and she went to a masquerade again. Well, that was the 12th of December.

Q. Do you know where the masquerade was
 30 held? A. Yes, in Odd Fellows' Hall, Hoboken; I didn't know at the time because we were very little speaking together. She wanted to go out her own way, and I certainly didn't like it. She came home that night at three o'clock, and I was in the house; she came in the house around that time. The woman got so nervous that she was not home one afternoon; I could come home at two or three o'clock in the afternoon; the house was locked up, after school time, the books were
 40 lying in the vestibule, the house closed—the wo-

man never was home; she didn't have a minute's rest in the house no more; that was the 12th when the ball was, that was Saturday. The next Thursday she went away to New York, because I seen her coming on Second Street, from New York. I came home on the 17th for dinner,— I had a row of buildings on hand and worked at least twenty-five to thirty men. When I went home to my dinner I heard the children discussing things there, and I asked what it was, when she said "well, the little boy——" 10

MR. FALLON—I object to any of these conversations on the part of the wife in the absence of the defendant.

Q. You have to leave that all out; it is against the rules of evidence; just tell us what happened?

A. She wanted to go that day to New York, because the boy was going to turning school—that he would be supposed to be at turning school—that was the idea—— 20

MR. FALLON—I object to this line of testimony.

MR. WELLER—I will consent that it be stricken out.

THE WITNESS—That afternoon she went to New York; she told me she was going to go out with a friend; and I seen her coming back from New York; she told me that she was going out with a friend, and then when I seen her go away so nervous, I thought it over and rang up Mr. Oltmer's shop, and he also was gone too; then of course, I was not at ease, but that is all I could find out about it until she came home that evening, when I told her I wanted to know where she was; I says "if you can't tell me, you are no good." 30 40

Then the woman told me——

MR. FALLON—I object to what the woman told the witness. Surely her statements are not going to be used as evidence against my client.

THE WITNESS—Then I told her she could leave my house any time.

10

MR. WELLER—I merely want to show the feeling of a wife.

Objection withdrawn.

THE WITNESS—She said “I will go; I am not going to be in this house any longer; I have got a place to go to.” The next week it went on the same way; the house was closed nearly every
20 night when I came home around four or five or six o’clock; one night I met my teamster and said “who is putting this woman on the bum that way,” I says, “I can’t stand for that any longer, the children neglected, the house always closed”; then this man told me——

Objected to.

Q. Who told you? A. This teamster; this man
30 that was on the job.

MR. WELLER—I will put the teamster on.

BY THE COURT:

Q. Did you do anything else after he told you that? A. Yes.

Q. What did you do then? A. Next day I went
40 in Oltmer’s shop and I asked him about the con-

versation the driver told me.

Q. Did you tell him what the driver had told you? A. He told me it was Mr. Oltmer took her from a ball, and that they left there at twelve o'clock, and that she left him at two o'clock, in his house, that is what the driver told me.

Q. You told Mr. Oltmer about this, did you? A. No; I told him I heard he had taken her from a ball, and wanted to know whether he had anything to do with my wife.

Q. What did he say? A. Very little; he said he only danced with her. Then I went home and questioned her, and there was a lady by the name of Mrs. Daly in the house, and she said in the presence of Mrs. Daly, she could go and leave my house any time and be a housekeeper for Mr. Oltmer at any time she wanted to; then shortly after she took sick. 10

Q. Then what? A. On the 21st of December, in the morning, she had bronchial troubles in her throat, and had to go to a doctor to get it lanced; and I asked her, I said "Don't you think it would be better"—she was afraid she would die—"don't you think it would be better to tell the truth, for the sake of the children?" She said, "If I have to tell the truth I might as well take poison." 20

Q. Go on? A. She was sick then, the day before Christmas, when she left the house, it was.

Q. Did she tell you the truth about anything—did she make a confession to you? A. Yes, that afternoon; she was sick; then that afternoon, that night, she wrote some letter, what I handed to the lawyer. 30

Q. How long did you and your wife live together after that? A. She left Christmas; she left the day before Christmas and she came back again to the house, but I was very seldom in the house; I just came in the house—I had my office on one side and the dining room is on one side; I did what I had to do in the office and went out again. 40

Q. How long did she remain at your house up to that time? A. She left day before Christmas; then she came back again once or twice, I believe; I was all upset that time; I did not know where my head stood.

Q. When did she come back; at what time; you say she was back once or twice? A. She was back twice; she was back then and took the furniture away; it was two or three times, but I don't
10 recollect the dates.

Q. How long did she stay? A. She stayed one day once, and she stayed a couple of hours.

Q. After this did you hear anything from anybody else? A. When she left the house then of course I thought it was my duty to watch then. Then I had a party and I sent him up there to watch the house as much as we could, and one night she left the house and she met this here
20 Mr. Oltmer in West Hoboken—Jersey City, on the line of West Hoboken there; she met him on the street, and this party was with me; of course I was going to see what they were going to do, but I couldn't hold myself, and said "have I got you at last," and then the men pulled out and hit me.

Q. On what street was this? A. Paterson Plankroad and Lake Street.

Q. How were they walking? A. Arm in arm.

Q. What time of day or night was this? A.
30 About nine o'clock.

Q. When he struck you what did you do? A. I hit him again.

Q. And then what? A. We had a fight there, and he ran away.

Q. Where did he go? A. He ran across over the street—crossed over to Lake Street, and down Lake Street over to the Bluffs, and disappeared.

Q. Did he jump over the bluff? A. Well, it was dark, so I couldn't see any more of him after
40 where the last street was, Palisade Avenue; that

is as far as we went, and then he ran like wild.

Q. After this did you hear anything? A. I heard from different people that the man was bragging around that he——

Objected to.

Q. You hear this? A. Yes, sir.

Q. How did you feel when you heard it? A. My revolver is lying up in your office, and I would have shot him there just as quick as look at him. 10

Q. How does it happen to be in our office? A. Mr. Lichtenstein took it off of me.

Q. How have you felt since then? A. Of course I had to recover; I got to make my existence for the children.

Q. With whom are the children now, with you or with your wife? A. She has got them.

Q. Do you contribute to their support? A. Yes, I support them. 20

CROSS EXAMINATION by Mr. Fallon:

Q. How long have you known Mr. Oltmer? A. I know him about a year before, we were in business together about nine years.

Q. And up to what time were you friendly? A. We were friendly until I found out what happened.

Q. When was that? A. On the third of December, I sent him a check note for \$300— 30

MR. WELLER—That is, 1904.

THE WITNESS—Yes.

Q. As a matter of fact, were you not friendly with Oltmer until he had started a suit against you in the Hudson County Circuit Court here, to recover some \$800 that you owed him? A. No, 40

sir; my suit was brought in before ever his suit was brought in.

Q. You mean to say your suit was instituted before his? A. Yes.

Q. You are sure of that? A. Yes.

Q. Just refresh your memory now, and see if it is not a fact? A. Yes, because when I got a subpoena from the court, the court clerk told me it was a satisfaction suit because I had a suit
10 against him.

Q. Who told you? A. The court clerk told me, up in the court; my suit was brought, anyway, before his suit was brought against me.

Mr. Fallon requests that the papers be sent for.

Q. You say that you and your wife lived happily till 1903? A. Yes.

20 Q. That is not so, is it, Mr. Rust, that you lived happily with your wife until 1903? A. All that I know of.

Q. Isn't it a fact that you and your wife didn't get along very well together, a very short time after your marriage to her? A. Not as I know.

Q. You were accustomed to treat your wife in a very harsh, cruel manner, were you not? A. Not that I know.

30 Q. Well, you took her by the hair and pulled her around the room; you remember that, don't you? A. That is what you say.

Q. I am asking you? A. No.

Q. You say you didn't do it? A. No.

Q. Didn't you beat your wife from time to time? A. No.

Q. Didn't you take her by the throat and threaten to kill her? (No answer.)

40 Q. Didn't she bring you before Recorder Stanton in Hoboken, after you had attempted to choke her and pulled her about the room by the hair?

A. She brought me before Recorder Stanton because she wanted separation; she wanted separation and wanted to live with this man.

Q. The day before she brought you before Recorder Stanton, did you beat her? A. No.

Q. Did you put your hands on her at all? A. No.

Q. Never? A. No.

Q. Never struck her or hit her? A. The woman was always sick, in the doctor's care.

Q. Didn't she complain to you that she was under the doctor's care and you ought not to beat her; didn't she complain to you about that? A. Yes.

Q. Didn't she ask you not to beat her—that she was a sick woman? A. I never beat her.

Q. Didn't she ever scream? A. Yes.

Q. What was the cause of her screaming? A. Because she was put up by Mr. Oltmer; Mr. Oltmer told her not to holler "Police," but "Fire," so as to bring the neighbors in; you put that woman on the stand, if she didn't say so; that is the way it was; she was put up.

Q. You didn't bring your wife into court on a subpoena?

Objected to.

Q. You didn't ask your wife to come to court here? A. No; because she was subpoenaed from his side.

Q. How do you know? A. She was here the next time the case was called.

Q. You see your wife in court now, don't you? A. I don't see her.

Q. Just look down there and see if your wife isn't sitting on the second seat in the rear? A. I don't see her.

Q. The lady with the white bird on her hat? A. Yes.

Q. That is your wife? A. Yes.

Q. You have provided for her support right straight along? A. Yes, sir.

Q. Since this trouble arose? A. Yes, sir.

Q. And she has the children with her? A. Yes.

Q. Didn't you tell your wife that you had a grudge against Oltmer, and that you were going to get square with him? A. How can I—

10

MR. WELLER—Answer the question.

Q. I am asking, didn't you tell your wife that? A. No.

Q. How many times did your wife scream "fire"; you say she screamed? A. She done that since the time she wanted to get away from me and wanted to go with that man.

20 Q. When was that? A. It must have been two or three times. She came into my office and broke the lamp and hit me over the head.

Q. What did she do that for? A. Because she wanted a fight, to get me arrested and go with that man; she wanted to make out to people I was not treating her right and get all the neighborhood and all against me.

Q. You think that was your wife's idea? Is your wife a truthful woman? A. She was up to that time.

30 Q. You know where she is living now, do you? A. Yes.

Q. Where? A. 68 Monroe Street.

Q. Where did she live before she went to 68 Monroe Street? A. Griffith Street, Jersey City.

Q. Whom did she live there with? A. With the children.

Q. Did she have rooms of her own there? A. Yes.

40 Q. Who rented those rooms, you or she? A. She.

Q. Who gave her the money to pay the rent?
A. I support her; I give her everything she needs.

Q. Didn't you tell your wife at the time you started this suit, or just before that, you were going to bring a suit against Oltmer, that you were going to do Oltmer? A. No.

Q. Prior to bringing your suit had you lived separate and apart? A. I couldn't live with the woman no more.

Q. Did you say this to her? A. No. 10

Q. Didn't you establish a home for her on Jersey City Heights—did you put her in some apartments in Jersey City Heights, to live? A. No; she rented them.

Q. You gave her the money to rent them? A. Yes, sir.

Q. You knew where she was going? A. Yes, sir; and I supported the children ever since—

Q. You knew the children were going, too?
A. Yes, sir. 20

Q. Where were the apartments she went to after you and she separated, what street and number? A. She first went to Griffith Street, I think.

Q. She lived at 21 Gray Street, with Mrs. Tietjens, didn't she; you know that? A. Yes.

Q. What was the first place she lived? A. She didn't live there; she just stopped there.

Q. She was there a few days, wasn't she? A. I believe so. 30

Q. After that where did she go to live; did she first go to live with a family named Marsh, on Griffith Street, Jersey City? A. Yes, sir.

Q. You paid the rent? A. I am supporting the children, and I always will.

Q. You have been visiting her right along? A. No; first I went there once a week to see the children; in summer time I took the children out mostly every Sunday, or every two Sundays, but I didn't go there no more then to see the children. 40

Q. She lived in Griffith Street about six months, did she? A. I think so.

Q. And after that she moved, you say, to Hoboken? A. Yes.

Q. During the time that she has been living separate and apart, you and she have been quite friendly, haven't you? A. Quite friendly?

Q. Friendly? A. No.

Q. You have been speaking kindly to her? A. No.

Q. Did you ever talk to her when you visited her? A. No, in no way; I was coming there to see the children.

Q. Didn't you tell her you had a grudge against Oltmer? A. Certainly I have; that is what I am here for.

Q. Didn't you tell her you were going to get square, at any time you visited her? A. I told her I wanted satisfaction——

Q. Did you tell her if she didn't swear in court to just what you wanted her to swear to, you would shoot her; didn't you tell her that? A. No.

Q. You know Mrs. Tietjens, don't you? A. Yes, sir.

MR. FALLON—Stand up, Mrs. Tietjens.

(The person addressed rises.)

Q. Do you know that lady? A. Yes, sir.

Q. She lives at 122 Monrie Street, doesn't she? A. I don't know.

Q. You know she did live there? A. That is where I live.

Q. Does she live there? A. No.

Q. Did she visit you there while you and your wife lived together? A. Yes.

Q. Do you recall that on one occasion when she was visiting there you quarrelled with you wife?

MR. WELLER—I object to that unless you state the occasion.

Q. I am going to try and place it. The occasion that I wish to refer to is an occasion when you threatened—when you asked your wife if she had not been with Oltmer to his blacksmith shop and if Oltmer didn't put his coat upon the floor and place her upon it and have intercourse with her at that shop; do you recall that? A. Do I recall it? 10

Q. I am asking you if you recollect an occasion when you said that, when this woman may have been present? A. She told me that.

Q. Who told you that? A. The wife.

Q. Didn't you threaten on the occasion that I refer to, when you asked your wife if such a thing did not occur, and when she denied it—that if she didn't swear it was so you would shoot her? A. No. 20

Q. You never did? A. No.

Q. Didn't say you would shoot her? A. No.

Q. Didn't you, when you went to Weller & Lichtenstein's office, then threaten to shoot her, in the presence of Mr. Lichtenstein—didn't you say you would shoot both him and her? A. No.

Q. You are sure? A. Yes. I said to Mr. Lichtenstein, I said I was so nervous I would just as well blow the man's head off, because my life is ruined. 30

Q. Didn't you say you would go and blow both their heads off? A. Yes; I said—Mr. Weller was present—I would like to blow my head off.

Q. Was Mr. Weller present at the time Mr. Lichtenstein took the revolver from you? A. No, it was about an hour before.

Q. Was not the time that you went with the revolver to Messrs. Weller and Lichtenstein's office, the time—the day after you had been brought to the Recorder's Court by Mrs. Rust's 40

summons; wasn't that the date? A. A year——

Q. A year after? A. Six months; the Recorder's Court, why it was in April.

Q. How many times did she have you summoned in the Recorder's Court? A. Never summoned.

Q. How many times did you go there? A. Only once; that was the 10th or 11th of April.

10 Q. You know Herman Otten, don't you, this young man here? A. I know him, yes.

Q. He worked for you, didn't he? A. Yes, sir.

Q. What was he, teamster, or driver? A. No; an apprentice boy.

Q. You consider him a pretty truthful boy? A. No.

Q. No good, is he? A. No.

20 Q. Do you remember an occasion when you pulled your wife by the hair of the head, when Otten was present, and saw you do it, in March, 1904? A. No.

Q. Did you ever beat or strike your wife in the presense of Otten? A. No.

Q. Why did Otten leave your employ? A. I sacked him, because he was no good; he was in the house, hanging around there.

Q. When did you sack him? A. In April, 1904

30 Q. How long had he been working for you? A. Since a couple of months; when I thought I had him in the building, he was around the house, around the wife, and I wouldn't stand for it.

Q. He was hanging around your own house? A. Yes, sir; he would not work; he was too lazy to work; instead of putting his time on the building he was around the house.

Q. Did you have suspicions of Otten too?

Objected to.

A. No.

40 Q. Why was he no good? A. Because I want-

ed a man to work and not be in the house.

Q. Didn't have occasion to go to the house?
A. No; he was too lazy to work in the building; he would only go around the house, in the kitchen, and the like of that.

Q. That is your own house and your wife's house? A. Yes, sir.

Q. You say you did not in the month of March, 1904, or at any other time, in the presence of Otten, pull your wife around by the hair of her head? A. No. 10

THE COURT—Have the parties ascertained the commencement of the suits?

MR. FALLON—Yes, I would like to have it on record.

(Papers handed to Court.)

THE COURT—The summons in the present case of Rust against Oltmer, is dated the 25th of January, 1905; and in the case of Oltmer against Rust, it is dated the 27th day of January, 1905. 20

Q. You were the first one that introduced your wife to Mr. Oltmer, were you not? A. No.

Q. You did not? A. I never did.

Q. Didn't you go to Hoboken, to a ball, you and your wife, in the company of Mr. Oltmer? A. I went to a lodge ball; some lodge he belongs to with me. 30

Q. Where was it? A. West Hoboken.

Q. Were you ever to Schuetzen Park with her? A. No.

Q. Sure? A. Never.

Q. Didn't you ever have your wife in Schuetzen Park? A. I went once with the wife and children on Sunday afternoon. 40

Q. You say you didn't introduce Mr. Oltmer to your wife? A. No.

Q. Sure of that, are you? A. Well, I guess he knows our family as long as he does work for me, because when his wife died he said I was in trouble too—mine was always sick; he said; he said "well, you are in trouble too."

Q. Oltmer and his wife, and you and your wife used to visit places together, didn't you? A. Only once, we went to some kind of society Mr. Oltmer belongs to.

Q. And that was Quartette Club Hall? A. Yes, sir.

Q. Mr. Oltmer and wife used to visit your house? A. I never seen her in my house.

Q. Did you and your wife visit his house? A. Not that I know.

Q. Didn't you think you would know? A. Not with my wife; I just looked in the door and said I wanted to see him on some business, and went out.

Q. Did you ever accuse your wife directly of having any intercourse with Oltmer? A. After I found all this out, yes.

Q. When did you first suggest any such thing to her? A. Well, since I heard of this.

Q. Did you ever say to your wife that you believed she was having intercourse with Oltmer? A. Yes, when I knowed of that, I think I did.

Q. Did you ever say it to your wife?

MR. WELLER—He says so.

Q. When? A. Well, I want to think that over; after she stated it herself to me, that she was in a New York hotel with him, and that kind of hotel, there wasn't any use of my saying it, that he got her drunk and went with her to a hotel on Lexington Avenue, and stayed there all afternoon, so she was not even home at night again.

Q. Did you tell her all that, or is that your statement now to the jury? A. I know that, yes, but I asked her where she was that afternoon when she was seen, that the two of them went to the Van Troille hotel.

Q. When your wife was living at 21 Gray Street, Jersey City Heights, didn't you threaten your wife and say to her that she should say she had been with Oltmer at the Van Troille hotel, 24th Street and Lexington Avenue, in the city of New York; is that true? A. No. 10

Q. You didn't say anything like that to her? A. What was the use of my saying when she said it herself.

Q. Answer the question, please. You say she suggested it to you? A. Not suggested, she confessed it to me.

Q. When? A. The 21st of December, 1904.

Q. Did she tell you that she had been over there? A. Yes. 20

Q. When? A. That very day I suspicioned, the 17th day of November, this Thursday.

Q. More than a month had gone by before she confessed it to you? A. Yes. When I began to ask her, when she was sick this afternoon, then she began to confess.

Q. Just tell us all that was said at the time she confessed. A. That is all she said. I asked—I said "If you have to take poison you might as well tell the rest, because," I said, "I won't rest until I get at the bottom." 30

Q. Is that all you said? A. Yes.

Q. Then what did she say? A. Then I asked her, and said "I want you to tell me that afternoon, if you didn't go to New York—if you didn't meet him." I told her I missed them in Hoboken that afternoon, and it looked funny to me. First off she didn't want to come out with it, and afterwards she said they met, and they was to that hotel and everything. 40

Q. You didn't put all this into her head yourself, and tell her she should say it, did you? A. Do you think so?

Q. I am asking you; did you? A. I don't understand why you ask me such a question.

Q. Did you say to your wife that if she appeared in Court and testified against you that she wouldn't live long after? A. I did say—

10 Q. Did you say to your wife that if she appeared in Court to testify in this case against you, that she wouldn't live long afterwards? A. No.

Q. Did you ever say to your wife that if she appeared in Court you would shoot her before she was on the witness stand? A. No.

Q. If your wife says so, she would be telling an untruth, would she?

(No answer.)

20 Q. Do you think your wife would lie about it? A. I never said so. I don't want to shoot nobody, because I have got to live for my children.

Q. If your wife testifies to such things—A. (interrupting.) Then she is put up to do it, counsel.

Q. I am asking you if she says so, if you believe it? A. I am just telling you she was put up to it.

30 Q. On the occasion that you say you suspicioned her, as you call it, and met them, as you say, arm in arm, in West Hoboken, at about nine o'clock at night, didn't you on that day arrange with you wife so that she should telephone to Oltmer to have him come up there and see her on a matter of business?

(No answer.)

40 Q. Didn't you say to your wife she should arrange with Oltmer so that you and some of your friends could waylay him? A. No.

Q. At the time you saw him didn't you have three men with you? A. No.

Q. Wasn't there more than one with you? A. I had a man up there to watch.

Q. Some one of you had a cobblestone with you in your hand, so you could waylay him,— A. No.

Q. Did you have a stone of any kind in your hand? A. No.

Q. Didn't you strike Oltmer with a piece of stone? A. He hit me first and with my hand I defended myself. 10

Q. You had no one except this other man? A. No.

Q. What was his name? A. Dannie Donahue; there was people standing on the corner; they came running up after, when they heard it.

Q. Did you have your wife write a letter to Oltmer, saying he should call and see you, so you could waylay him,—catch him in her company? A. No. 20

Q. Were you in your wife's apartments at the time this assault took place?

THE COURT—What assault?

MR. FALLON—The one we are speaking of, the assault between him and Oltmer.

THE COURT—That was in the street. 30

Q. Were you in your wife's apartment at the time of the assault between Oltmer and you? A. No; in the street.

Q. Were you in your wife's apartments on that evening at all? A. No; she was on the hill, and I was in Hoboken, and afterwards I think she came down to the house.

Q. After you had so much suspicion upon Olt- 40

mer, you still continued to live with your wife up to December of 1904; is that so? A. To December 1904, yes. I had to get proof—I would suspicion one day and then the next day I would think again it was not so.

Q. When did your wife separate from you; what date was that? A. Last?

Q. Yes; the last time she left you? A. She went away day before Christmas; she came back again a couple of days; she was back a couple of times; on New Years—

Q. Didn't you give her part of the household furniture to move up to these apartments in Jersey City Heights? A. She took the whole household furniture.

Q. Didn't you tell her she should take it? A. I was satisfied because I wanted the children to have a home, until they had a better home.

Q. You and she agreed she should take that furniture? A. Yes, agreed—she just moved it away; I had to get some home for my children.

Q. Wasn't it a fact you had started your suit against Oltmer when you and your wife became separated and she lived separate from you? A. When I started the suit against Oltmer she was sick and under the doctor's care, and as soon as she got up, any better, or able to get around, she got up and she went away, because we couldn't live together no more; there wasn't five minutes—

30 we could not have one good word for one another no more.

Q. So it was after suit was started you and your wife separated? A. No, not separated; we never seen one another hardly any in the house.

Q. You did see her, as a matter of fact? A. I might have seen her, but not to speak pleasant at all.

Q. Didn't you ever speak to her at all; you knew she was sick? A. No, just questioned her.

40 Q. About what? A. About this affair.

Q. While she was sick? A. Yes.

Q. You know your wife has been ill for the last two months? A. She has always been ill.

Q. You know she has been ill with pneumonia, the last two months? A. Yes, two or three times since that time.

Q. Have you been to visit her? A. No.

Q. Did you send any doctor to see her? A. I did.

Q. What doctor? A. Dr. Duille (?) She had five different doctors while going with this man and going to New York. 10

Q. Who told you she was going to New York? A. She told me afterwards.

Q. She told you about this one occasion? A. Three or four times.

Q. Are you guessing, or did she tell you? A. She told me; I would not know where she was if she didn't tell me.

Q. Did she tell you where she was three or four times before? A. In that same hotel. 20

Q. Then she must have been there four times in all, with Oltmer? A. Yes, sir.

Q. She told this to you, did she? A. Yes.

Q. Did she tell you all of that at the same time she told you about having been over there on the 17th of November, the date you refer to? A. She told me that, about the 21st—about the 21st of December

Q. She told you on that date that she had been over there how many times, was it four or five? A. Different times. 30

Q. Did she say how many? A. I don't know exactly.

Q. She told you specifically she was there, on the 21st of December, did she? A. Yes.

Q. What day was that? A. That was Thursday, because that is the day the boy goes to turning school.

Q. You knew Oltmer was required to be out at 40

his work? A. If he goes away he generally takes a horse and wagon; when he is out he is working somewhere and takes a man along; I know the man well; he is doing my work six or seven years.

Q. Isn't it a fact that your own son was riding around on the wagon during that time? A. Yes, about once or twice a week.

Q. Isn't it more than that; wasn't he around with him mostly every day? A. No, very seldom.

10 Q. For how many weeks was he with him once or twice a week? A. Some weeks I wouldn't see him at all; that is the reason I suspicioned; I sent a notice and forbade her——

Q. If you knew your son was neglected and running about the streets, why didn't you keep him on the wagon with you—— A. I am not on the wagon; I have got a driver to be on the wagon.

Q. Well, he was on the wagon with the driver, wasn't he? A. He may have been, once a week.

20 Q. And might have been there five times a week for all you knew? A. I don't know.

Q. You don't follow the wagon, do you? A. I know where that wagon is mostly all the time.

Q. You are positive that your boy was not with that driver more than once or twice a week, during that time? A. No more; one week he didn't show up at all.

30 Q. You said you never thought your wife would do anything out of the way. I presume the first idea you had that she did anything out of the way was when she made this confession to you, was it? A. Yes.

Q. Your wife was a pretty good woman up to the time you say she made this confession to you? A. Yes—no; I says until she started to go to dances—since that time.

Q. After she made the confesion to you, you lived with her afterwards, didn't you? A. No.

40 Q. Didn't you and she live together after the 21st of December? A. No.

Q. Didn't you live with your wife after the 25th of January, 1905? A. No.

Q. You stated a little while ago that your wife was in the apartments with you for some time after this suit was started here, and that was started in January, 1905; is that true? A. In the apartments?

Q. Your living apartments? A. No.

Q. Where was your wife since January, 1905? A. In the house, in my house; we lived apart in the house. 10

Q. How many rooms have you? A. We got a whole house; four rooms upstairs and four rooms downstairs.

Q. What part of the house did you live in while she was ill, upstairs or downstairs? A. Upstairs.

Q. Did you wife live upstairs also? A. Yes, sir; she lived on one side and I on the other.

Q. You didn't occupy the same room, you mean? 20 A. No.

Q. What made your wife move away on July 19? I suppose you mean 1904. You say she returned in August; what occasioned her going away that time? A. About what she told me herself.

Q. What did she tell you? A. She told me Mr. Oltmer gave money to start a divorce suit against me, and told off a whole lot of nonsense—that I went around and didn't behave good, and she would get a divorce from me, and he gave her twenty-five dollars—he paid her right in the Fourth Street Park. 30

Q. He was married himself, then, wasn't he? A. No; he is a widower.

Q. But his wife was alive then at that time you are speaking of, July, 1904? A. I am speaking about July, 1904.

Q. Was his wife alive or dead? A. She was dead these three years. 40

Q. Do you know that Oltmer has a number of children also? A. Yes, sir.

Q. How man has he? A. Five he had at that time, that I had dealings with him.

Q. Did she leave you in August, 1904, or September? A. No; she came back in August; she left on July the 9th.

Q. 1904; and returned in August? A. Yes, sir.

Q. How long did she live with you after that?

10 A. Until Christmas—until this trouble occurred.

Q. What did you mean by saying after October she came back again and was all right for two weeks? A. After August; the latter part of August she came back again.

Q. I have a note here; I may be wrong, but I want to ask you, you said when you spoke about her being away, when she returned and you forgave her—I have a note there that it was after October she came back? A. I forgave her nothing; I didn't know she had anything to forgive.

20 Q. After October she came back and everything was all right for about two weeks; is that it? A. You got that wrong; I told you she left the 9th of July and came back in August.

Q. When she came back in August was she all right for about two weeks? A. Yes.

Q. After two weeks what happened? A. After two weeks she began to go out in the afternoon; it looked so funny; she always made some excuse; she had to go to New York, and sometimes other places, to North Bergen—

30 Q. Every time she went out you 'phoned Oltmer's shop? A. Yes.

Q. And it happened Oltmer was always out? A. Not just always, but three or four times.

Q. Didn't you say before in your testimony that when you telephoned he was always out? A. When she went to New York, that he was in New York.

40 Q. You didn't mean to say that every time you

telephoned to Mr. Oltmer's shop inquiring whether Oltmer was there, that he was away, do you? A. Not every time.

Q. Every time you had suspicion about being away with your wife, that you telephoned to his shop; was he always away? A. Yes, sometimes; I might have been wrong, but on three or four occasions; sometimes I didn't leave the house till one o'clock, and didn't know she was going out and went on the building and attended to my 10 work and would not know she was away.

Q. Are you sure that your wife didn't leave your home at the times you speak of, because of your ill treatment of her? A. What times?

Q. These several times you say she was away from her home? A. She told me that afternoon—that was the only way.

Q. What did she tell you? A. That Oltmer told her to say I was mistreating her, and he could get her away from me; and he gave her 20 money to start a divorce case with, and that he would take her and the boy, but the little girl, I could keep her, and he would give his big children away, and keep the two little ones or three little ones, and keep my big boy between the two of them, and my little girl I could keep myself.

Q. She told you all this? A. She told me that.

Q. Have you got affection for your children? A. What? 30

Q. Do you love your children? A. I certainly do; I have love for my children.

Q. If your wife has been going on in the way she has with Oltmer, do you think your wife would be the proper one to have custody of your children? A. I leave that to the court; I want this case settled and I will take care of that; my lawyer advised me not to make any break for the children until this was proven.

Q. You never told your wife you were going 40

to get a divorce? A. What is the use? I never spoke much to her.

Q. You never told you wife you were going to go to court? A. Against her?

Q. You never told her you were going to try to get the custody of the children away from her?

A. I never told that.

Q. How much do you pay your wife every week?

10 Objected to.

Q. Sure of that? A. Yes.

Q. Did you ever say to anybody that you had intercourse with other women? A. Not that I know of.

Q. You would not have told them so if it was untrue, would you? A. I might have said it for fun.

20 Q. Do you remember any occasion when you said it for fun? A. No.

Q. Did you ever tell Herman Otten if he would testify in the court for you, you would give him money? A. No, never in your life, no.

Q. You think that is very laughable, do you? A. It certainly is; he is a sorehead, that boy, because I sacked him.

Q. You are a sorehead against Otten yourself? A. Yes.

30 Q. So you think because he is a sorehead he is going to perjure himself? A. That boy?

Q. Yes? A. I never spoke to that boy since he left me. I sent my wife notice when she lived in Willow Avenue—I see that boy going in and out of the house, and I sent notice if she didn't do away with that boy I would take the support away from her and take charge of the children.

40 Q. In March, 1904, in your own apartments, and in the presence of Herman Otten, didn't you beat your wife and knock her into a coal scuttle, and while she was in that position punch her?

A. No; in March—one morning it was after she went to some dance—when we got up that morning, I told her that if that business was not stopped, I said I would certainly put a stop to it; then she says “I just want to let you know I don’t need you any more; I got a place to go;” and then of course we had words together; it was her habit to throw something at me, but I never raised my hand to hit the woman, because she was always sick and under the doctor’s care. 10

Q. You called her vile names? A. I might have called names—

Q. You called her a French bastard pretty often? A. I may have called—

Q. You remember that word; it was a familiar word with you, wasn’t it? A. No; I may have said words, but I never raised my hand to her.

Q. I will remind you of that one expression? A. I didn’t use that, no.

Q. Did you ever call her a son of a bitch? A. 20
I may have called her things; I don’t acknowledge now what words, because I was certainly excited when I did that. I made up my mind I would never hit her.

Q. You might have and not remember? A. Yes.

Q. You might have said that? A. She said I was too old and no good, and she wanted a younger man. I never raised my hand to hit her.

Q. Did you ever raise anything else to strike 30
her— A. I never gave her the satisfaction; she was just looking for me to do that, she wanted me to do that and get me arrested; she came in my office and broke a glass lamp over my head; she wanted me to hit her—that was the way she was put up by this man, but I always had the conscience not to touch her. She told me afterwards the man said she should use the word “fire” to get the neighbors in.

Q. On the occasion you were brought before 40

Recorder Stanton, didn't she have marks upon her arm? A. No; the Recorder asked her to show marks and she didn't have any.

Q. She did charge you with beating her? A. She said I called her vile names; she made a complaint—she wanted a separation.

Q. She made a complaint that you beat her, didn't she? A. I guess she did at that time.

10 Q. Why did you say a little while ago, when I asked you, that she didn't make any such complaint—that the first complaint she made was that she wanted a separation? A. She said I mistreated her and wanted a separation; that is the only thing I know; and Recorder Stanton asked if she didn't get well supported; she said yes. He told her if the thing comes up again she has got to show marks.

20 Q. She withdrew the complaint; she did not press the complaint? A. No; Recorder Stanton dismissed it; Recorder Stanton told her that if she came there again—when I told him she began to run to masquerades and begin to learn to dance, which she never knew before—then Recorder Stanton said if she came there again to make a complaint about me she had to show marks.

30 Q. Did I understand you to say that you were never brought before Recorder Stanton, except that one time, on complaint of your wife? A. Only once.

Q. Have you ever been convicted of crime? A. I had one fellow by the name of Mr. Ferris, we had words together.

Q. You were convicted? A. No.

Q. Weren't you tried for that case? A. Never tried; Mr. Ferris and I had words, and then he got me before Recorder Stanton, and that is all: I never got no fine or charge; Recorder Stanton dismissed the case.

40 Q. Weren't you upstairs in this court and plead-

ed guilty to striking Ferris? A. I never was in no court room before this one.

Q. Were you ever fined by Stanton? A. Never; I was never in no jail and no court room.

RE-DIRECT EXAMINATION by Mr. Weller:

Q. You say you went one time with Mr. Oltmer and his wife to some ball of a lodge you both belonged to—what lodge is that? A. This was a ball, what he belonged to; some singing society; that is the time his wife was living; him and his wife and me and my wife went. 10

Q. Do you both belong to the same lodge? A. We belonged to the Knights of Pythias, but that wasn't the lodge; this was a singing society.

Q. You were asked about the time you came to our place with a revolver; you saw me on one other occasion when you came to the office? A. Yes. 20

Q. Do you remember my trying to quiet you one morning? A. Yes.

Q. What were you going to do that morning?

MR. FALLON—Objected to as immaterial.

THE COURT—I think we have gone far enough into that. 30

Question withdrawn.

RE-CROSS EXAMINATION by Mr. Fallon:

Q. You say that the only time you were to a place with your wife when Oltmer was present, was at Quartette Club Hall? A. No, I didn't say that that was the first.

Q. I understood you to say that was the only time? A. No; we went twice; about twice we 40

went altogether after that; that is about four or five years ago.

Q. Let me direct your attention to another visitation you had with your wife; do you remember going to Lake Hopatcong with your wife and Oltmer being in your company? A. Yes.

Q. Do you remember striking your wife in the face that day? A. No.

Q. Did you strike her? A. No.

10 BY MR. WELLER:

Q. After your wife left you the last time, do you remember on one occasion speaking to Mr. Oltmer about her having left you? A. The last time?

Q. Yes? A. No.

Q. At any time after she left you, did you speak to Olmer about it? A. Yes, last summer—yes, in July. I mean 1904; he seen me every day.

20 Q. When he spoke about the wife having left you, what did he say?

MR. FALLON—Objected to, as it appears if anything transpired before that, he forgave his wife for it.

Question allowed.

30 Defendant prays that an exception may be allowed, and it is allowed, and signed and sealed accordingly.

C. W. PARKER, J.

Q. What did he say to you? A. He was feeling sorry for me; he even told me what lawyer
40 to take—

Q. What did he say about the wife, the likelihood of you and your wife ever living together again? A. He was trying to come to me and find out the way it looked to me, and afterwards he was going back to her and tell what he found out.

BY MR. FALLON:

Q. You say that Oltmer did speak to you about your wife, or about your wife having left you, and felt sorry? A. Yes. 10

Q. Do you remember you had had a lawyer named Peters, at that time—employed by you? A. Yes.

Q. Do you remember that the only conversation you had with Oltmer that time, was that you asked him if he would recommend you a lawyer? A. Yes, sir, I had conversation over it.

Q. Do you remember the conversation? A. 20
Some of it. He would ask me every day—

Q. He expressed sorrow for you, didn't he? A. Yes.

DANIEL DONAHUE, called as a witness on behalf of the plaintiff, and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Weller: 30

Q. Where do you live? A. 557 Second Street, Hoboken.

Q. Are you a married man? A. Yes, sir.

Q. How long have you been married? A. Going on five years.

Q. Did you ever work for Mr. Rust, the plaintiff in this case? A. Been working for him—you mean employed? 40

Q. Yes? A. Yes; I am employed by him since the starting in of 1903.

Q. How long did you know him before that? A. I lived in his house for about two months, and that is all I know of him before that; but I knew him being a boss mason, but never to speak to him.

Q. And you have been going to his house for about five years? A. No, sir! I had been living
10 in his house.

Q. Since that time have you been going to his house, back and forth? A. Yes; I have been working there and have been in the yard three or four times every week.

Q. Up to 1904 how did he and his wife live? A. I never heard anything between his wife—no quarrels; they lived in peace, as far as I could judge.

Q. Did you know the defendant, Mr. Oltmer?
20 A. Yes, sir.

Q. Did you ever see him come to Mr. Rust's house? A. Well, I never took much notice in 1903, his going to the house, but in 1904 I did.

Q. How often did you see him come there? A. Sometimes he came once or twice—three times; other times he might not come at all. If he happened to come in the yard he would ask if the boss was at home, and other times he would come in and ask for a can full of cement, for
30 fixing pier caps.

Q. Were you ever out in the yard when he came there? A. I have been in the yard and seen him coming down the stairs.

Q. Where? A. Where Mr. Rust lived, in the office.

Q. How often did you see him coming down stairs? A. That I couldn't say exactly, but I seen him three or four times coming down there.

Q. Who was up there? A. Mr. Rust's wife.

40 Q. Did you speak to him on these occasions?

A. Well, sometimes he might speak to me and other times he might walk in and might say "hello," and go right ahead.

Q. Did you ever see the wife there while he was there? A. I often came in the yard and he was talking to Mrs. Rust at the door.

Q. Do you remember the 12th of November, 1904? A. Yes, sir.

Q. What was going on in Odd Fellows' Hall that night? A. My wife was going to the Cycle ball; she got accompanied by her other two sisters, Dora Vion and Nellie Behrens; they and Mrs. Rust was going to the Defender Cycle ball; she brought the two young ones to my house and she put on the masquerade; she said that John, her husband, knowed she was going to a ball, but didn't know she was going to a masquerade; so the boy had fifteen cents; I was going to the theatre, and took the boy with me—

MR. FALLON—I object to any further conversation. 20

THE COURT—We have got them in now. Go on with your story.

THE WITNESS—Me and the boy went to the Empire Theater; the little girl was left with the woman that lived next door to me, a woman by the name of Mrs. Lynch. 30

Q. That is Mrs. Rust's little girl? A. Mrs. Rust's little girl, with this woman by the name of Mrs. Lynch; and I had the boy to the theatre. When I came home the woman said something about taking the young one out of there; I took her to my house; I put the little girl into bed, and me and the boy lay down on the lounge; I dozed off to sleep and the little girl was asleep; Mrs. Rust came in the house—

Q. What time was this? A. It was in the 40

morning she came; I didn't look at the clock; I asked my wife and she said it was two o'clock; she went into the front room; I thought she was taking off her masquerade clothes there; I didn't know what she was doing; she was in the front room, and I said what time is it. I seen her home, and she said John would have—

MR. FALLON—I object to what she said.

10

THE COURT—Never mind what she said.

Q. Then she took the children home, did she?

A. Both me and her; I went around with her; I said to her, "Why didn't you come home with my wife"—

MR. FALLON—I object to any conversation between this witness and Mrs. Rust.

20

. Objection sustained.

Q. Did you notice any change until 1904? A. Well, the woman always seemed to be a good woman in 1903, and around the house, and in 1904 she seemed different; nothing seemed to please her; she wanted to go to dances, all the time talking about them; like as if she was getting crazy for dances.

30

Q. How did she treat her husband in 1904? A. I don't know how she treated him—

Q. Do you remember the 5th of April, 1904?

A. She left the house I believe in April, the 5th.

Q. What was the quarrel about, do you know?

A. I was in the cellar, and I heard her telling—

MR. FALLON—I object to this line of testimony. I do not see how they can expect to use it against the defendant.

40

Q. Just what was it about? A. Well, he wanted her to stay away from balls, and picnics, and about that they quarrelled.

Q. Did she leave at that time? A. She left at that time and stayed away for two days.

Q. Do you remember the occasion in July when she left him? A. No; I remember she went away from the house in July, and I believe it was in July that she was doing something in Recorder Stanton's court; Mr. Rust came to my house.

Q. You don't know exactly the date? A. I don't know exactly the date it was when he was going up before Recorder Stanton, I can't bring that to memory; I did know it. 10

Q. You spoke about their having that quarrel in April, and Mr. Rust wanted her to stay away from balls; who told him she was to a ball; had you told Mr. Rust?

MR. FALLON—I object to that as immaterial. 20

THE COURT—I do not think it is material.

Q. Mr. Rust has testified to an occasion when he went up on the hill and saw Mr. Oltmer and his wife; were you along with Mr. Rust that time? A. Yes, sir.

Q. What time did you and Mr. Rust go to the hill? A. Well, I believe it was around seven o'clock we left, but we had been there before; we watched and nobody came along; both Mr. Rust and me had been there before this night. 30

Q. Did you go up together this night, or did you go ahead of him? A. The two of us went together.

Q. When you got up there, whereabouts on the hill did you go? A. Both Mr. Rust and me stayed right by the corner of Gray Street and Central 40

Avenue; not quite on the corner; there is empty lots; Mrs. Rust lived on Gray Street.

Q. Go right on? A. She came out one night and walked up as far as Central Avenue; that was not the night—this night she came out of the house and she walked up there as far as the transfer station, and when she got as far as the transfer station she met Mr. Oltmer.

10 Q. And then what? A. They came down arm in arm, down Paterson Avenue to Central, and I told Mr. Rust to take his time and let hem go ahead, and let them only just cross the street; I couldn't hold him and he went over; I don't know how it was, but Mr. Oltmer pulled out and hit him, and he hit Oltmer, and Oltmer ran.

Q. Where did he run to? A. On the cliffs, West Hoboken—Palisade Avenue; I don't know what became of him; we couldn't see any more; he jumped off there, I guess.

20 MR. FALLON—I object to the witness's conclusions.

BY THE COURT:

Q. He disappeared, you say? A. Yes.

BY MR. WELLER:

30 Q. How far did you follow him? A. As far as we could, up to the cliffs.

Q. And he was gone? A. When he was gone we were on top.

CROSS EXAMINATION by Mr. Fallon:

Q. Mr. Rust had a stone in his hand when he met Oltmer, didn't he? A. Mr. Rust didn't have anything in his hand.

40 Q. Are you sure Oltmer struck Rust? A. Yes, sir.

Q. How near were you when this occurred? A. About five feet.

Q. Were there only the two of you? A. There was a big gang of fellows on the corner, but only the two that we knew.

Q. That is, only you and he? A. Mr. Rust and me.

Q. How do you remember these dates that you have testified to so well? A. What dates?

Q. April 5, 1904, for instance? A. Because I have been testifying before. 10

Q. Where? A. In Jersey, when Mrs. Rust was bringing some kind of an action against her husband.

Q. When was that? A. Last year, 1904; she was going to bring up a case, for, I don't know whether it was a divorce case or what it was; but she was bringing up a case against him, some case, that she wanted to get separated—I was brought to the lawyer.

Q. You were brought to her lawyer? A. His lawyer. 20

Q. Who was his lawyer? A. That I couldn't tell you; some man in Jersey.

Q. What did you say to his lawyer about the occurrence of April 5, 1904? A. I told him that she left the house.

Q. That is all you did tell him? A. That is all.

Q. You made an affidavit at the time, didn't you? A. Yes, sir.

Q. Are you sure now that all you told him was she left the house? A. Yes, and that I always seen the people living on good terms up to this; that is all I told him.

Q. You didn't think they quarrelled that time? A. Up to that time I said they lived on good terms.

Q. Didn't you tell that lawyer that on April 5, 1904, Rust and his wife quarrelled? A. Sure; I told him that up to that time they lived in peace; he asked what I knew. 40

Q. I want to know if you told that lawyer on that occasion—whether you told that lawyer at that time that on that day Rust and his wife had quarrelled? A. On the day that I was over?

Q. On April 5, 1904? A. On April 5, 1904—I didn't tell him they quarrelled; that she left him.

Q. What did you say about that, on April 5, 1904—you remember the quarrelling? A. About Mrs. Rust leaving him.

10 Q. You remember that they quarrelled? A. Just the day before the 5th, the 4th; she left him on the 5th and returned on the 7th.

Q. Didn't you say a little while ago in your testimony, that on April 5, 1904, you remember that they quarrelled, and that she then left and stayed away two days? A. She left there after quarrelling—

Q. I want to know what you said? A. That is what I said.

20 Q. What did you mean by just now saying when she left it was a quarrel? A. Because the woman would not run away for nothing, if they didn't have a quarrel.

Q. Then you are guessing at it? A. No—

Q. I am speaking about April 5, 1904? A. April 5, 1904, Mrs. Rust left her home.

Q. Did they quarrel before she left? A. Yes; they quarrelled before she left.

30 Q. On the 5th? A. On the 4th I heard them quarrelling, not on the 5th..

Q. Why didn't you say before in your testimony that they quarrelled on the 4th and she left on the 5th? A. I didn't know that was what you wanted.

Q. Have you talked with anybody, since you talked to this lawyer in Jersey City? A. No.

Q. You have made a statement to somebody, haven't you? A. A statement to Mr. Rust's lawyer.

40 Q. When did you make that statement; about

how long ago I mean? A. About a week ago.

Q. You told him then it was on April 5, 1904, and she left her home and remained away two days, did you? A. Yes, sir.

Q. How do you remember the date of November 12, 1904, so well? A. Well, I got a ticket I had from a party that is living in the house, and I can't forget the date; it was to a ball.

Q. Is that the only ball you ever attended? A. I never went to a ball. 10

Q. You didn't go to this one? A. No.

Q. Your wife went? A. Yes.

Q. Didn't your wife ever go to any other ball than that one? A. Oh, yes.

Q. Can you remember the date of any other ball she attended? A. Well, I can't just remember the dates.

Q. You mean you prepared yourself beforehand? A. I didn't have to prepare myself.

Q. Didn't you have to see that ticket of November 12, 1904? A. I didn't have to see it, I got it; it is at home, the ticket. 20

Q. What impresses this upon your recollection? A. Because I have been brought up before, and I thought it would be needed again.

Q. You were preparing for just such an emergency as this? A. Yes, sir.

Q. You expected Rust and his wife were going to have trouble, and you impressed these dates very finely upon your mind? A. Yes, sir. 30

Q. You expected you were going to be called into court to testify sometime for Mr. Rust? A. Well, I didn't expect to be called on any more to testify.

Q. If you didn't expect to be called on to testify, why did you think it was necessary to remember those things? A. Well, I told it to that lawyer in Jersey, whatever his name is I don't know; what I told him, I always bore it in my mind. 40

Q. Why did you think that it would be necessary for you to remember those things, and about the dates of quarrels between Rust and his wife?

A. Because I saw the woman acted funny, and thought there was going to be a quarrel.

Q. You thought she acted funny in April, 1904?

A. Well, the woman didn't seem the same, and right after January, 1904, the starting in of the year, the woman would seem as if something was wrong; I would come to the yard, and not find her, when I was sent for a set of plans I couldn't get them.

Q. You don't know whether Oltmer was there at that time? A. I don't know whether anybody was there or not.

Q. You used to go there yourself? A. In the office; the office and house is all together.

Q. You had to go in through the same entrance? A. The same entrance, yes.

Q. And it was necessary for you at times to go into that office? A. When Mr. Rust sent for me.

Q. You have been in the house with his wife, have you? A. Alone? I was never in the house with Rust's wife alone.

Q. I mean when you were sent for plans? A. I might go to the door and ask for the plans for a building.

Q. Are you sure you never set your foot in the building at any time Mrs. Rust was inside? A. Well, that was in the building, as long as I am in the cellar.

Q. I am speaking of the office— A. I never put my foot in the room unless Mr. Rust would call me upstairs.

Q. There have been times—(interrupted) A. It may have been when I was in my own room.

Q. How long were you living there? A. About two months.

Q. During what time was that? A. 1902.

Q. What time in 1902? A. It was about December; November or December.

Q. Rust and Oltmer seemed to be pretty friendly right straight along up to the time these troubles started in court here? A. Yes, sir; if he had plans, or was giving a figure for a job or anything that he needed, Mr. Rust would send me to Mr. Oltmer's shop for it.

Q. And while you lived there in 1902, don't you remember that Oltmer and his wife used to visit Rust and his wife? A. Oltmer never had any wife that I have known; his wife was dead. 10

Q. You say his wife was dead in 1902? A. Yes, before I ever knew him.

Q. How many women went with Mrs. Rust in that party to the masquerade ball you speak of? A. All I know of is my wife and her two sisters; Mrs. Rust left my house and they went together to the ball.

Q. What time did you wife return? A. About five or ten minutes after two.

Q. Later than Mrs. Rust? A. Yes. 20

Q. You didn't think anything wrong in your wife returning that time in the morning? A. Not when her sisters was with her; I never thought anything the matter with any of them.

Q. When did you first observe that they quarrelled, Rust and his wife? A. Oh, I heard them; well, it was about February they started, in 1904.

Q. And they quarrelled frequently, didn't they? A. Well, once in a while; sometimes she wouldn't speak to him.

Q. You heard screaming, didn't you? A. I never heard the woman scream in my life. 30

Q. You heard Mr. Rust state that she screamed and hollered "fire"; did you ever hear that? A. If she did it was after working hours.

Q. What were your working hours? A. Well, from half past seven to five at night; sometimes a little later, because I was driving.

Q. You said she seemed to be a good woman up to 1904, but in 1904 she seemed to change, 40

describe to the Court and jury what you mean by that? A. The woman in 1904, I was working there; every time I would be sent for a set of plans or anything to the house, Mrs. Rust was right there.

Q. And in 1904? A. In 1904, coming on after February, you could come there maybe six days a week, and you could get in once, sometimes—

Q. Sometimes she would be away? She would visit your house wouldn't she? A. Never during working hours, that I know of.

Q. Did you ever see Mrs. Rust at your house other than the one occasion you speak of? A. Yes, a couple of times.

Q. She used to visit frequently? A. She used to come once in a while, once a month.

Q. Your wife and she were very friendly, weren't they? A. Sometimes; sometimes they would have a spat.

Q. What brings it to your recollection, that in July, 1904, she went away from home; how do you know? A. I would always be in the yard three or four times a day, the boy was at home once there that she was away, and told me his mother was away, had gone away and left him.

Q. How long was she away, did you say, in July, 1904? A. I couldn't say how long she was away in July.

Q. Was she away that entire day? A. In July?

Q. July, 1904; you said on July 4th she went away from home? A. Didn't I say it was April?

Q. You have mentioned November, April, and July? A. November I mentioned about the ball.

Q. I want to get that right. You said in July, 1904, she went away from home; that you cannot bring it very well to memory. Do you remember Mr. Weller asking particularly if you remembered the date in July, and you said you could not bring the date to memory? A. Mr. Weller asked about April.

Q. You mentioned the date of April 5th? A. That is all the date I mentioned, that she left home.

Q. Do you want to say she didn't leave in July, 1904.

MR. WELLER: He said she stayed away.

Q. Do you deny that you said here to-day that 10
in July, 1904, she went away from her home? A. July, 1904, that she went away from home? I said in April, 1904, she left her home, and only stayed away a couple of days.

BY THE COURT:

Q. Did you say anything about July? A. No, sir.

20

BY MR. FALLON:

Q. You didn't mention July at all to-day, did you? A. No.

Q. Do you remember Mr. Weller asking you if you could mention what date in July, and you saying "I can't bring it very well to memory, the date"; do you remember that being said here to-day by you? A. That Mrs. Rust left her home?

Q. Yes?

30

(No answer.)

THE COURT—The witness does not seem to remember.

Q. Your memory is faint, then, on that, is it? A. Yes. You are coming a little bit too hard on me; you are twisting me up.

Q. You are working for Rust now? A. Yes. 40

Q. In what position? A. Driving some days, and some days labor; I have been hired for a driver.

Q. Do you remember young Rust riding around on your wagon? A. Yes.

Q. Will you swear he never rode more than once or twice in a week? A. Yes, sir.

Q. Sure? You are under oath. A. Well, I would not just swear he would go on the wagon
10 once or twice—maybe he was on the tail of the wagon; he may have rode six or seven steps and jumped off.

Q. You knew he was on the wagon? A. Sometimes, and sometimes I would not let him on the wagon.

Q. When you saw he only rode once or twice, you mean— A. Some Saturdays he might do it, and some Saturdays he might not come near the
20 wagon.

Q. You know your employer, Mr. Rust, is not friendly to Mr. Oltmer; he has told you that, hasn't he? A. No, only I knowed that he could not be friendly.

Q. Haven't you and Rust talked about this case? A. What do you mean, talked it over?

Q. Yes; have you said anything at all about these dates and occurrences? A. No, sir; never mentioned a date.

30 Q. Have you never talked about this case? A. He asked me if I would go as a witness for him.

Q. Did he ask what you knew about the matter? A. His lawyers did.

Q. If Mr. Rust asked you to be a witness—how did he know it if you didn't talk about it; where did he learn it? A. I told him about his wife coming home with Oltmer.

Q. When was that? A. Well, the date that I told him his wife came home from the Defender
40 Cycle ball; it was in December, 1904.

Q. That is when you told him? A. That is when I told him.

Q. Of the occurrences that took place on November 12? A. Yes, sir.

Q. How did you know that Oltmer and she came home together? A. My wife told me.

Q. Then you are testifying to something your wife told you? Do you know of your personal knowledge that Oltmer came home with Mrs. Rust? A. I don't say that.

Q. Your wife told you; that is the reason you have been swearing to it, is it?

10

MR. WELLER —He didn't swear to it.

(Record read.)

RE-DIRECT EXAMINATION by Mr. Weller:

Q. That night when your wife came home, you say Mrs. Rust didn't come home with her to your house? A. Yes, sir; she did.

20

Q. Mrs. Rust came to your house first, you say? A. Yes.

Q. You were speaking about July, 1904; did Mrs. Rust leave her husband in July, 1904? A. Well, she left around July, but I could not say whether it is in the month of July that she left the house; but she was away.

BY MR. FALLON:

30

Q. What impresses that upon your mind; how do you know that? A. I don't know.

Q. Aren't you guessing at this, Mr. Donahue? A. No, sir; I am a poor guesser.

Q. If you are a poor guesser, tell us how you can remember that she left somewhere about July? A. Well, I don't know, only it is in my mind; I bore it in my mind.

Q. You have got it in your mind that she left somewhere in July, 1904? A. Yes, sir.

40

Q. Can you tell us what it is, if anything, that refreshes your memory—by which you can tell us?

A. No, I can't tell you anything.

MRS. TILLIE DONAHUE, called as a witness on behalf of the plaintiff and sworn, testified as follows:

10

DIRECT EXAMINATION by Mr. Weller:

Q. You are the wife of the last witness on the stand? A. Yes, sir.

Q. Do you remember the 12th of November, 1904? A. Yes, sir.

Q. Do you remember Mrs. Rust, the wife of the plaintiff, having gone with you up to Odd Fellows' Hall, to a ball that night? A. Yes, sir.

20 Q. Who else went with you? A. My two sisters, Mrs. Rust and myself.

Q. When you got to Odd Fellows' Hall, what did Mrs. Rust do? A. We went upstairs, and when coming down we met Mr. Oltmer; I don't know whether Mrs. Rust seen him first, or he knew her; she said "This is Mrs. Donahue"; he asked us for a drink, and we said all right, and went out; then one of my sisters said that Mrs. Rust had come up with her like a friend and she wasn't going to
30 leave her there; and she asked her if she was not going to stay. She said no, she had better go home, that John would get mad; I said "what do you want to go home for; why not stay a while; what did you come for if you have to go home so quick?" she said, "yes, I have, for John will get mad"; I said, "We had better take you home"; Mr. Oltmer said, "No, I will see her home." I looked at Mrs. Rust; she said, "yes, he will take me home."

40 Q. Did they go home together A. Yes, sir.

Q. What time of night was it? A. That was about ten minutes of twelve.

Q. And when you got home it was a little after two that night, was it? A. I came in about ten minutes after Mrs. Rust came; my husband said, "Why didn't you come with Mrs. Rust?" I said "She went home with a man; what should we go home with her for?"

Q. You said that Mr. Oltmer told her she had better go home, that Rust would be angry? A. 100
Yes; Mr. Oltmer told her and she said "what is it his business."

CROSS-EXAMINATION by Mr. Falion:

Q. Didn't Oltmer say he would go with her as far as the car? A. He said he was going to take her home.

Q. Isn't this what he said when he talked about going home with her—that he would see her as 200
far as the car? A. No; she said that.

Q. Said it in his presence? A. I didn't hear it, in front of him.

Q. Are you and Mrs. Rust on good terms now?
A. Yes, we ain't bad friends.

GEORGE BAKER, called as a witness on behalf of the plaintiff, and sworn, testified as follows: 300

BY MR. WELLER:

Q. Where do you live? A. I live at 114 Grand Street, Hoboken.

Q. Are you a married man? A. Yes, sir.

Q. What business are you in? A. Curb setter.

Q. Do you remember the 12th day of November, 1904? A. I do. 40

Q. Were you on Washington Street that night?

A. I was.

Q. How did you happen to go there? A. We went up to Bach's saloon and I told Mr. Sexton I was going to go to work for John Rust the following Monday; I was working on the water pipes.

10 Q. When you go there what happened? A. When I was coming home it was just about twelve o'clock; I seen Mr. Oltmer and Mrs. Rust coming out of Odd Fellows' Hall.

Q. About twelve o'clock? A. About twelve o'clock.

Q. When they came out of the hall, how were they walking? A. Side by side.

Q. Were they locked arms? A. Yes, sir.

Q. What did you do? A. I walked down behind them, because I seen her with this man; they came right out ahead of me.

20 Q. Go on; tell what you did? A. They walked right straight down Fourth Street, and I followed them down Fourth Street; I turned into Grand Street, where I lived, in Grand Street; I turned into Grand Street; she stopped about two doors from his shop, he opens the door and she goes in there.

Q. In the shop? A. In the shop.

Q. And that was after twelve o'clock at night?

A. It was around about quarter after twelve before we got down there.

30 Q. How long did you wait at the shop? A. I stayed at the saloon about an hour.

Q. Why did you do that— A. Because I knew she was all the time fighting with Mr. Rust, about wishing a divorce, and I thought I would watch them.

Q. Had they come out when you went away?

A. I was just about down the steps when he came out and slammed the door he walked toward Fourth Street and she walked down Third
40 Street.

Q. Alone? A. Alone.

Q. What time was that when they came out?

A. About one o'clock.

Q. How far did you follow her after that? A. To Third and Grand; I went right on home.

Q. Did you ever tell Mr. Rust about this? A. I told him after he had told me about seeing Mr. Oltmer on the hill with his wife; then I told him what I saw.

Q. That was a long time afterwards? A. Yes, 10
sir; that was in December, I think.

Q. Why didn't you tell him before? A. I didn't want to make no trouble between them.

Q. You didn't tell him then until after you had found out that he had caught them? A. That he had caught them himself.

CROSS-EXAMINED by Mr. Fallon:

Q. You are not friendly with Oltmer, are you? 20
A. I never had any trouble with him.

Q. You were a witness at the grand jury, at the time the charge was made against him—against Oltmer for that hill incident? A. Well—

Q. Do you remember speaking to some of the members of the grand jury and complaining because he was not indicted; do you remember that?
A. No.

Q. Sure of that? A. No.

Q. Didn't you state to a person standing outside of Kamlah's drug store, Hoboken, that it was a damn shame that that fellow— 30

MR. WELLER—Objected to unless he names the parties.

Q. I will name Michael Fallon, Mike Lally and another man that was standing there? A. I might have said that, because I know it was wrong. 40

Q. You might have said it? A. Yes.

NELLIE BEHRENS, called as a witness on behalf of the plaintiff and sworn, testified as follows:

10 BY MR. WELLER:

Q. Are you a married lady? A. No, sir.

Q. You are a sister to Mrs. Donahue? A. Yes, sir.

Q. Do you remember the 12th of November, 1904? A. Yes, sir.

Q. You are one of the parties that went up to Odd Fellows' Hall, aren't you? A. Yes, sir.

Q. And Mrs. Rust went with you? A. Yes, sir.

20 Q. What happened after you got to the hall?
A. We went up to the hall, Mrs. Rust and my two sisters and myself; when we got there we went for a dance, and when the dance was over we sat down and Mrs. Rust came over to us and said "would you have a drink?" We said "yes," and we all went out; there was a man sitting there, we all had a drink, and after the drink—

Q. Did she introduce you to the man? A. Yes, sir.

30 Q. Who was he? A. I don't remember.

Q. Did you see him? A. Yes, there he is. (pointing.)

Q. Mr. Oltmer here? A. Yes, sir.

Q. Go right on? A. After the dance they went out, and I didn't see Mrs. Rust no more.

Q. What time was it when Mrs. Rust disappeared? A. I don't know.

Q. How long after you got there? A. I don't know.

40

CROSS EXAMINATION by Mr. Fallon:

Q. What time did you go there that night? A. It was a little after eight, I think.

Q. Don't you know that Oltmer didn't get there till about two hours after you got there; you know that, don't you? A. No, sir.

Q. Don't you know it was near twelve o'clock when he got there? A. No, sir, for when it was twelve o'clock Mrs. Rust went home with him. 10

Q. How long had he been there before he and Mrs. Rust went home? I want you to be sure about it? A. It was near twelve o'clock.

Q. What time did you see Mr. Oltmer there first? A. I did not look at the time.

Q. Don't you know it was a very short time before he went home? A. No, sir.

Q. Whom did you see Mrs. Rust dance with that night? A. Mr. Oltmer.

Q. Only Mr. Oltmer? A. Yes. 20

Q. Didn't Mrs. Rust dance with others than Mr. Oltmer? A. No, sir.

Q. How many times did you see her dance with Mr. Oltmer? A. Once.

Q. That was right after he came there, wasn't it? A. I don't think so.

Q. How long after he came there? A. About half an hour after.

Q. Did you observe Mr. Oltmer there that night, so that you might have seen whether he danced with Mrs. Rust more than once? A. No, sir. 30

Q. You weren't in his company, you mean? A. No, sir.

Q. Did you only see him once during that night? A. I seen him twice.

Q. With Mrs. Rust, on each occasion was it? A. Yes, sir.

Q. One time they were drinking? A. Yes.

Q. Were you drinking in the party? A. Yes, sir. 40

Q. How many was in the party? A. Five.

Q. After the drink was had did he then go into a dance A. No.

Q. Did you go into a dance, or did you leave them sitting there? A. I went out to dance and my sisters came back.

Q. Did Mrs. Rust remain behind with Mr. Oltmer? A. Yes, sir.

Q. You are sure of that? A. Yes.

10 Q. He didn't dance that time? A. No, sir.

Q. When did you next see him that night? A. I seen him a couple of dances after he was dancing with her; he danced with her once, that is all I seen.

RECESS.

20 MRS. DORA VION, called as a witness on behalf of the plaintiff and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Weller:

Q. You are a sister also of Mrs. Donahue? A. Yes, sir.

30 Q. Are you one of the parties that went with Mrs. Rust to the ball up at Odd Fellows' Hall that night? A. Yes, sir.

Q. What time, about, did you leave Mrs. Donahue's home? A. It was about half past eight.

Q. What time did you get up to Odd Fellows' Hall? A. Around nine o'clock, a little after nine.

Q. Your sister, Mrs. Donahue, and your single sister, and Mrs. Rust went with you? A. Yes, sir.

Q. Did you see Mr. Oltmer there that night? A. Yes, sir.

40 Q. At what time did you see him there? A.

Well, I could not just tell you the time, because when I got upstairs I went with my own friends and I left my sister upstairs with Mrs. Rust.

Q. About what time did you see Mr. Oltmer?

A. It was after a dance, I think I seen him.

Q. Were you introduced to him? A. Yes, sir

Q. By whom? A. Mrs. Rust introduced me to him; she introduced me to him, and she came down to the ball room; I was there with my friends and she asked "will you come over and have a drink"? I said all right; I went over and Mr. Oltmer was sitting at the table. 10

Q. Did you have a drink? A. Yes.

Q. Who paid for that? A. Mr. Oltmer.

Q. What was the drink? A. A glass of beer.

Q. What did Mrs. Rust drink? A. I couldn't tell you; it was some fancy drink.

Q. What time did Mrs. Rust leave the hall?

A. I think it was around twelve o'clock.

Q. Did you see Mrs. Rust dance with any one that night? A. I seen her dance with Mr. Oltmer, one dance; I was with my other friends. 20

CROSS EXAMINED by Mr. Fallon:

Q. You saw Mrs. Rust dance one time? A. Yes, sir.

Q. You say you were drinking at the table? A. Yes, sir.

Q. You saw them around there? A. Yes, sir. 30

Q. Did Mrs. Rust dance with anybody else but Oltmer? A. No.

Q. Are you sure? A. Yes.

Q. You are prepared to swear to that? A. Yes, sir.

Q. What makes you so certain of it? A. That she didn't dance with anybody else? I don't know what you mean.

Q. What makes you so sure that Mrs. Rust didn't dance with any one than Mr. Oltmer that 40

night? A. Well, I didn't see Mr. Oltmer dance with anybody else.

Q. What is the reason you have for saying that you are sure it was not soda water that Mrs. Rust drank while sitting at the table? A. I couldn't tell you what it was.

Q. Why do you say it was a fancy drink? A. Because it was served in a fancy glass.

Q. What do you mean my a fancy glass? A.
10 It was some long kind of a glass; I know it was not beer or soda water, but I couldn't tell you what it was

Q. You are sure it was not beer nor soda water? A. No, it was not.

Q. And you say that just because you saw it in a fancy glass? A. I couldn't tell you what it was.

Q. What was the color of it? A. I couldn't tell you; I didn't take much notice.

20 Q. Then you don't know what she had? A. I know I asked for beer; my sister and other sister drank soda, and I didn't hear Mrs. Rust ask for soda.

Q. Don't you know that nothing but soda water was put on that table? A. I don't know—this was in a fancy glass.

Q. You say you reached the hall about nine o'clock? A. About half past eight; I couldn't tell you the time.

30 Q. Your sister, Miss Behrens, says you were there a little after nine; was it a little after eight or was it nine o'clock? A. I don't know just the time, but we met at Mrs. Donahue's house.

Q. Didn't you leave Mrs. Donahue's house about half past seven that night? A. No, sir.

Q. Do you remember what time you did leave? A. About half past eight.

Q. You mean you left her house about half past eight? A. Mrs. Donahue's house; Mrs. Rust was
40 there; we all went up together.

THE COURT—He is asking what time you left Mrs. Donahue's house to go to the ball?

THE WITNESS—About half past eight; I could not tell you the right time, just what time it was, but it was around that time.

Q. You are sure it was not half past seven? A. 10
No.

Q. When you say no, do you mean you are not sure? A. No, we didn't leave at half past seven; I am sure it was about eight o'clock.

Q. Do you remember what time it was that you were introduced to Mr. Oltmer? A. I don't know.

20

HENRY BORNEMANN, JR., called as a witness on behalf of the plaintiff and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Weller:

Q. You are a nephew of Mr. Rust, the plaintiff?
A. Yes, sir.

Q. Where do you live? A. 305 Summit Avenue, West Hoboken. 30

Q. Of course you know Mrs. Rust and her husband? A. Yes, sir.

Q. How frequently did you go to their house while they were living together? A. I went quite often in the last ten or eleven years.

Q. How did they live together during that time?
A. I have seen them live happy.

Q. When were you there last when she was at home? A. I don't remember when. 40

Q. Did you ever see Mrs. Rust out anywhere with any one? A. Yes, sir.

Q. Where? A. I seen her up at Odd Fellows' Hall, twice I have seen her there, the two receptions.

Q. Any one with her? A. Yes, sir.

Q. Who? A. Mr. Oltmer.

Q. What was the first reception at which you saw her? A. The Unter Uns; that was a ball.

10 Q. Was that this time, the 12th of November, which you are speaking about, or another time? A. This was in the month of March.

Q. Did you see her dance with any one? A. Yes; when I first seen her she danced with a lady.

Q. Then when you next saw her? A. I have seen her dance off and on with Mr. Oltmer, and then again with a lady.

Q. Did you ever see her dance with any other man but Mr. Oltmer? A. No.

20 Q. Were you there on the 12th of November, 1904? A. Yes.

Q. What was the other occasion when you saw her at Odd Fellows' Hall? A. That was the same month, about three weeks afterwards—that was the 24th of March, 1904; that was the last time I seen her.

Q. Who was she with then? A. Mr. Oltmer.

Q. Did she dance with you that ime? A. No.

Q. How long was she there with Mr. Oltmer?

30 A. I have seen her in the reception room with Mr. Oltmer, at a table.

Q. What was on the table? A. They were drinking; they were sitting down,—but whether they had a drink there or not I don't know.

Q. Was Mrs. Rust there on either one of these occasion? A. Yes.

Q. Did you ask her to dance on either of these occasions? A. I did at the one March 4th.

40 Q. Where was Mr. Oltmer at that time? A. I didn't see him at that time; when I asked her

for a dance, I was dancing with a lady—she tapped me on the shoulder; I bid her the time, and asked when the dance was over if we would have the next dance; she said “sure”; after that when I seen her again she asked me over and introduced me to Mr. Oltmer—she came over and introduced me to Mr. Oltmer, and said “this is my nephew, and this is Mr. Oltmer”; we said we were pleased to meet each other, and when the dance started I said “come on and have a dance”; she went over and asked Mr. Oltmer if she could dance; she asked Mr. Oltmer if it was all right, if he wouldn’t go away; he said “all right, go on and enjoy yourself.” 10

Q. Did she dance with you then? A. She danced with me at that dance.

Q. The last time you saw her there, what time was it? A. It was around about half past eleven o’clock I seen her, she was at a table with Mr. Oltmer, I bid the time to him, but I was a distance away from him; they were sitting over toward the wall; I seen her no more; they disappeared in the hall then. 20

CROSS EXAMINATION by Mr. Fallon:

Q. What occasion was it your refer to that you saw them in March, 1904? A. That was the Carlisle reception, Professor Carlisle.

Q. You stated that Mrs. Rust went over to Mr. Oltmer to ask his permission whether she could dance with you? A. Yes, sir. 30

Q. How far did she have to walk to find Mr. Oltmer? A. That was not very far; he was on the floor, in the hall.

Q. You don’t mean to say you heard Mrs. Rust ask Mr. Oltmer’s permission to go out with you? A. Yes, sir.

Q. It was quite a ways, wasn’t it? A. Oh, about ten feet. I was with Mrs. Rust at the time 40

when she walked over to Mr. Oltmer.

Q. What was said? A. She asked Mr. Oltmer if she should go and dance with me, if it was all right, and he wouldn't go away; he said "go on, and enjoy yourself," and we had the dance.

Q. That night you say she was the one that called your attention to her presence there, by tapping you on the shoulder? A. Yes, sir.

Q. Nothing unusual about her actions, there, 10 was there? A. No, not there, not at that reception.

Q. Which one was that? A. That was the Carlisle at that time the Unter Uns was the first one; at the Carlisle they disappeared.

Q. Was there much of a crowd there? A. There wasn't very many at the Carlisle.

Q. What time did you disappear? A. I stayed until it was out, about one o'clock.

Q. You were drinking that night, were you? 20 A. Yes; no intoxicating drink, though.

WILLIAM BRUNKEN, called as a witness on behalf of the plaintiff, and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Weller:

30 Q. Where do you live? A. 721 Monroe Street.

Q. Are you a married man? A. Yes, sir.

Q. Do you know Mr. Rust, the plaintiff in this case? A. I do.

Q. Do you know Mr. Oltmer, the defendant? A. Yes, sir.

Q. Do you remember working for Mr. Rust? A. I do.

Q. Up to 1904, how often did you go to their 40 house? A. A dozen times or more.

Q. How did they live? A. First-rate they lived like children together.

Q. How was the house kept up till that time? A. Good and clean.

Q. How about after that time? A. About that time; I went there occasionally, and used to collect some money which Mr. Rust owed me; and one night I came there in order to get some money; Mrs. Rust was dressed in a masquerade costume, and another lady there also; she said she was going to a masquerade ball, and they left the house and went out, and after they went out I went to get my money. I was waiting for my check, and Mr. Rust said to me "I don't know what is getting into my wife"—

MR. FALLON—I ask that that be stricken out.

Motion granted.

Q. Do you remember of having heard of the time Mr. Oltmer and Mr. Rust had a fight up in Jersey City; you have heard of it? A. Yes, I have heard about that.

Q. Did you ever talk to Mr. Oltmer about that? A. Yes, I talked to Mr. Oltmer; I met Mr. Oltmer down at Second and Grand Street, I believe it was the 10th or 11th of April; it was either the 10th or 11th that I met Mr. Oltmer; he was on his wagon, and I says "Well, I see you have got into a nice mess or trouble"; Oltmer said "wait till I pull out of the way of the car. I used the woman and paid her, and when it comes to court I can fetch more that used her also."

Q. Did he say what he had paid her? A. No; he also says that he had told the woman that she had better break away before people got on, or they would think she was a common prostitute,

and she said she didn't give so and so, that she loved him and would have him anyhow.

Q. Oltmer told you this? A. Yes.

CROSS EXAMINATION by Mr. Fallon:

10 Q. Do you mean to say that without any suggestion on your part, Oltmer met you on the street and stopped his wagon, and suggested they had themselves in a fine peck of trouble? A. Well, he stopped me in the street and said, "what are you doing, working here?" I said yes; I said, talking to him, "you have got yourselves in a nice mess of trouble," and he said "wait till we fetch it to court," and he said "let us go in and have a drink"; we went in there and had several drinks. He said "that is nothing, I have used the woman and paid the woman, and when it goes to court I can fetch more, and can prove that they used her also"; and Mr. Oltmer there will tell the same.

20 Q. What did you say to that? A. I didn't know what to say; I went back to Mr. Rust, and went to get some money which he owed me, and I happened to tell him, and he said "you will make a good witness."

Q. When did you tell him that? A. Two weeks after.

Q. When did you say it occurred, in April, 1904? A. No, April, 1905.

30 Q. How much have you been paid to come here to-day? A. Not five cents.

Q. Nothing at all? A. No, sir.

Q. You got fifty cents? A. No; I didn't get that off of Mr. Rust, I am sure.

Q. Who from? A. From the man that fetched the subpoena.

40 Q. Have you been promised any more money to come here? A. Not five cents. If it happened in my family, I would want a man to do the same for me.

LUCY BORNEMANN, called as a witness on behalf of the plaintiff, and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Weller:

Q. You are a sister of Mr. Rust? A. Yes, sir.

Q. During the time they lived in Hoboken, how often did you go to their home? A. I have been quite often to their home. 10

Q. How often? A. For the last eleven years.

Q. Every week? A. Not every week, but quite often.

Q. How did they live up to 1904? A. I never seen any fighting; they lived quite happy and good together; my sister-in-law, she was ailing all along, she was sick and sick, and she had the best of care and the best of doctors in Hoboken, and she had a good home, and never wanted for anything that I thought. 20

Q. After 1904, what did you see? A. In March month, I guess is was, my sister-in-law left her little girl one Sunday in my house.

Q. How did she care for her house up till 1904? A. She was always a good house woman, but after that I don't know.

Q. After 1904, were you in the house? A. I seen my sister-in-law change in 1904, she was not the same woman no more as what she was before. 30

Q. Do you recognize these pictures (showing witness)? A. (witness looks at pictures). The two little children.

Q. Here are two more (showing witness another picture.) A. Yes; she left the little girl in my house—

Objected to. Objection sustained.

MR. WELLER—I offer the pictures of the children in evidence.

Marked P. 1, and P. 2.

CROSS EXAMINATION by Mr. Fallon:

- Q. You say they got along together, your brother and his wife? A. Yes.
- 10 Q. Did your brother ever tell you he ever beat his wife? A. No, he never beat her that I seen.
- Q. You weren't there very often, were you? A. It was very often I was there.
- Q. How often were you there during the year 1904? A. I couldn't count it up.
- Q. Were you there very often before December, 1904? A. I don't know.
- Q. Can you say whether it was once or— A. I can't count it; I have been quite often there, and
- 20 have done a lot of work for my sister-in-law.
- Q. That was because she was ailing and sick? A. Yes, sir, certainly.
- Q. She was sick a good time? A. Yes, and was always a good woman up till 1904.
- Q. And then she suddenly got well? A. Did I say that?
- Q. I am asking you, did she? A. No, sir, she was not well at all.
- Q. And she is not well even to-day, is she? A.
- 30 I don't know; I don't speak to her.
- Q. Did you learn that she was ill? A. I have not seen her in two years.
- Q. And you don't care to see her? A. Well —
- Q. When did you see her last? A. I seen her last in April; she came with the two children, and she told me that she is going to part with my brother, her husband, that she can get married to another man.
- 40 Q. Did she tell you in 1905 when she told you

that, did she tell you she had already parted from him?

MR. WELLER—1904?

Q. When was it, 1904? A. Yes, sir.

Q. She was then living with your brother? A. Yes, sir.

Q. And they lived together until January or February, 1905, didn't they? A. Lived together? 10

Q. Yes? A. I think they didn't always live together.

Q. You ought to know; you visited there pretty often? A. No; after that I didn't visit no more.

Q. You didn't visit her after April, 1904? A. No; when she left the children there she told me she was going out to a masquerade ball.

Q. Did she tell you that more than once? A. She told me that first when she left the girl there.

Q. What ball was it she was going to? A. 20
That time she told me she went over to New York looking for work, on Sunday.

Q. Did she tell you she and her husband couldn't get along together? A. Yes, and that she could get married to another man.

Q. Did she tell you he beat her? A. No.

Q. Did she tell you he grabbed her by the throat? A. No.

Q. What did she tell you he did? A. She often said—she is always ailing— 30

Q. What did she say that your brother did to her?

Objected to.

A. She didn't tell me nothing my brother said.

PLAINTIFF RESTS.

40

Mr. Fallon opens case for the defendant .

DEFENDANT'S EVIDENCE.

CHRISTIAN OLTMER, the defendant, called and sworn on his own behalf, testified as follows:

DIRECT EXAMINATION by Mr. Fallon:

10 Q. Where do you live? A. 258 Seventh Street, Hoboken.

Q. What business are you engaged in? A. The iron business.

Q. You have an iron foundry, have you? A. No, structural iron works|

Q. How long have you been engaged in that business on your own account. A. About seven years.

20 Q. What did you do before that? A. I used to work for Fagan Iron Works, as iron worker.

Q. How long have you known Mr. Rust, John Rust, the plaintiff in this suit? A. About five or six years.

Q. How long have you known Mrs. Rust? A. About the same length of time.

Q. How did you become acquainted with Mrs. Rust? A. Because he always had plans to figure on, and sometimes he called me to his house; that is the way I got acquainted with Mrs. Rust.

30 Q. Who introduced you to Mrs. Rust? A. Mr. Rust himself.

Q. And after you became introduced to Mrs. Rust, did you and your wife and Mrs. Rust and Mr. Rust ever meet together and go in company together? A. Well, I couldn't say that for sure, it may be.

Q. Do you understand my question? A. I understand.

40 Q. Did you and your wife ever visit Rust and his wife at the house? A. No, not together.

Q. Did you visit separately? A. Did my wife visit there? No, my wife—

Q. Did Mrs. Rust ever visit your wife at your house? A. Yes.

Q. Was Mr. Rust at any time with Mrs. Rust, at a time when they visited your house? A. I don't think so.

Q. After you became acquainted with Mrs. Rust and Mr. Rust, did you and Mr. Rust and Mrs. Rust ever attend a social function together? A. We went once to Lake Hopatcong. 10

Q. When was that? A. With the Madison Social Club, about three years ago.

Q. Who was in that party? A. About seventy-five in the party—seventy-five or a hundred.

Q. You were there? A. Yes, sir.

Q. And Mr. Rust and Mrs. Rust? A. Yes, sir.

Q. Were you in the company of Mr. Rust and Mrs. Rust at the time? A. No, not just exactly, I had a ticket from the Club. 20

Q. On that occasion did you see any trouble or occurrence between Mr. Rust and Mrs. Rust? A. Yes.

Q. What was the trouble? A. They were picking flowers on the ground there, and a young man gave Mrs. Rust some flowers, and thereupon he slapped her in the face.

Q. Who slapped her in the face? A. Mr. Rust.

Q. He slapped who in the face? A. Mrs. Rust.

Q. Do you recall being at Quartette Club Hall at any time when you met Mrs. Rust there? A. No, not at Quartette Club Hall. 30

Q. Were you ever at Quartette Club Hall when you met Mrs. Rust? A. Mrs. Rust and Miss Tinke was there.

Q. When? A. It was the Arion Shooting Society's ball; I am a member of that society.

Q. How long ago was it? A. Three or four years ago.

Q. At that time was Mrs. Rust in your company or Miss Tinke's? A. Yes. 40

Q. Did you go home with her or with Miss Tinke? A. Miss Tinke.

Q. It was at Quartette Club Hall that they had the Unter Uns affair, in March, 1904! it has been stated you were there, and you and Mrs. Rust were in company with each other, is that true? A. That was in Odd Fellows' Hall.

Q. Is that true that you met her there? A. Yes, sir.

10 Q. How came you to meet her there? A. I got a ticket from a member of the club; I went there, and when I came there Mrs. Rust and Miss Tinke was there.

Q. The Unter Uns was quite a large ball, wasn't it? A. Yes, sir.

Q. How many people do you think were there that night? A. Several hundred.

Q. How many floors did they occupy of the hall? A. They had the whole building there.

20 Q. Was that a masquerade ball? A. Yes, sir.

Q. Were you masked? A. No, sir.

Q. Was Mrs. Rust masked? A. I don't know; I couldn't say for sure.

Q. Do you remember meeting this young nephew that testified, at that ball on that occasion? A. No.

Q. You didn't meet him there? A. Maybe; I know a whole lot of people there.

30 Q. Do you remember meeting at the Carlisle ball that he has spoken of? A. No.

Q. Do you know any occasion when this young man asked the privilege of dancing or to go into a march with Mrs. Rust, when they came over and asked your permission? A. No.

Q. Did any such occurrence take place? A. Not as far as I know.

Q. I am asking you; you ought to know if it did occur? A. No, sir.

40 Q. Did you attend the ball known as the Defender Cyclers' Ball, on November 12, 1904? A. I

think so; I attend a good many balls, and I don't know.

Q. Do you remember meeting Mrs. Rust there that night, or what time you got there? A. About eleven o'clock, I think.

Q. Who was in your company, anybody? A. A man named Al. I only know his first name; he was working with me and he took me in there.

Q. Had you any idea of meeting Mrs. Rust there that night? A. I had not. 10

Q. How soon after you had been in there was it that you met Mrs. Rust; how came you to meet her? A. I was there about a half an hour at least.

Q. How came you to meet her? A. I was standing there talking to somebody, and I saw her walking around there—dancing.

Q. You spoke to her then; just tell us how you came to be in her company that night? A. Mrs. Rust came to me and spoke to me. 20

Q. What did she say to you? A. "Hello, good evening," and I invited them to drink.

Q. How many dances did you have with them? A. I danced with her and Mrs. Donahue.

Q. Then you didn't dance alone with Mrs. Rust? A. Yes, and some other lady.

Q. One of that party? A. I couldn't say for sure.

Q. On that night did you leave that hall in the company of Mrs. Rust at about twelve o'clock? A. It was later than that, about one o'clock. 30

Q. When you did that do you recall saying to Mrs. Donahue that you would see her (Mrs. Rust) to the car? A. Yes, sir.

Q. Did you see her to the car, or did you go all the way home with her? A. I took her down to the car and went down to have something to eat.

Q. Did you walk down Fourth Street in Hoboken, and go to your shop at about half past one in the morning, and enter it? A. No, sir. 40

Q. And allow her to enter it? A. No.

Q. Did you ever have sexual intercourse with Mrs. Rust at any time, in any place? A. No.

Q. Were you ever in the Van Troille Hotel in the City of New York? A. No, sir.

Q. Do you know where that hotel is? A. I know where it is now.

Q. I want to know whether you were ever there in your life? A. I passed there several times after, and looked at it.

10 Q. You mean since this case has started? A. Yes, sir.

Q. Did you ever have a room in that hotel? A. No, sir.

Q. Did you have any intercourse with Mrs. Rust or have any improper conduct with her at 122 Monroe Street, Hoboken? A. No, sir.

Q. At any time? A. No, sir.

20 Q. Did you ever have any improper conduct or sexual intercourse with her at 318 and 320 Grand Street, in the City of Hoboken? A. No, sir.

Q. Did you ever have any intercourse, or were you guilty of any improper conduct with her at No. 317 Willow Avenue, in the City of Hoboken? A. No, sir.

30 Q. What were your relations with Mrs. Rust; will you state to the court and jury how friendly you were to her? A. Well, all I done is, I danced with her whenever I met her at a ball; that is the only thing I ever done.

Q. Was that because you were acquainted with her? A. Yes.

Q. Did you ever give Mrs. Rust any money? A. No.

Q. Did you ever say to this man Brunken, that you used this woman, meaning Mrs. Rust, and that you told the woman she should break away from the husband, that you would take care of her, and that you paid her some money? A. No.

40 Q. Did you ever meet him on the occasion he

speaks of? A. I don't think I ever did—he was taking down lumber in some house in Second Street, and asked about it.

Q. Did you ever have such a conversation as he has detailed? A. No, sir.

Q. Where was he taking down lumber? A. Second Street.

Q. He is a dealer in second hand lumber materials, or was at that time, was he not? A. Yes, sir. 10

Q. Where was he taking down the building on Second Street; Second and what? A. Between Clinton and Grand.

Q. Is that the place he says this conversation took place? A. That is the place.

Q. There is a saloon there? A. Yes.

Q. Two saloons, aren't there, and a grocery store, on that corner? A. Yes, I think so.

Q. Were you in either one of these saloons with him on that day that he speaks of? A. Yes, sir, we had a drink. 20

Q. In what saloon? A. I couldn't tell which one; I don't remember.

Q. What was the conversation you had with him on that occasion? A. He asked me—

Q. About what? A. About the case of Mrs. Rust and me.

Q. How did it come to be spoken of? A. As soon as he saw me he asked me about it, what I had to say about it; I said "I have nothing to say" I told him he should see you about it. 30

Q. Did you ever tell him at that time that you had used this woman? A. No.

Q. Did you ever tell him other people had used her, and when it got into court he would find it out? A. No, sir.

Q. Were you with Mrs. Rust in New York City at any time at all? A. No, sir.

Q. Did you ever say to Mr. Rust or anybody else 40

that you ever were with the woman? A. No, sir.

Q. You had some business difficulty with Mr. Rust, didn't you, about January, 1905, or December, 1904? A. Yes, sir.

Q. Was it about some moneys that he owed you? A. I was always after him, I never could collect it.

Q. Up to that time that you went after him, in the latter part of 1904, for the payment of
10 money he owed you, did you ever have any misunderstanding or altercation or quarrel with him or he with you, about his wife, or their relations? A. No; he told me about it a good many times.

Q. What did he tell you? A. About the trouble with his wife; he said his wife was running out all the time with these cigarette smokers, all young fellows; that he is no good, he is too old, and all this and that.

Q. He told you this himself? A. Yes.

20 Q. Did he ever accuse you of being with her? A. No.

Q. Do you remember any occasion when he spoke to you about some trouble with his wife, when he told you about a lawyer he had and you advised him to get a different lawyer? A. Yes, sir.

Q. What were your feelings toward Rust at that time, sympathetic or otherwise? A. I felt sorry for Mr. Rust in his troubles.

30 Q. Did you say so to him? A. Yes.

Q. On the occasion that you went up on the hill, when he met you and beat you, will you tell us how you came to go up there that night? A. I was telephoned several times to come up, and I thought I would not go there, but on one night I had some business up on the hill, and I went up; I was told to meet her at the transfer station; Summit Avenue and Paterson Plankroad.

40 Q. How long had you met her, or how long had you been with her there before you were attacked

by Mr. Rust? A. We walked down from the transfer station, down Central Avenue, towards Gray Street; on the corner of Gray Street, when we came there Mr. Rust was there.

Q. Did she live on Gray Street that time? A. That is what she said.

Q. Did you walk down arm in arm? A. No, sir, walked singly.

Q. Did you ever walk arm in arm with her? A. No.

Q. Were you ever at any social functions, other than those you have mentioned, when Mrs. Rust was present? A. No, sir. 10

Q. Did you ever invite Mrs. Rust to any of these social functions with you? A. No, sir.

Q. What did Mr. Rust say to you when he hit you on Gray Street? A. He called me a son-of-bitch, a cur, and had a stone in his hand, and went to hit me.

Q. Did he hit you? A. No, sir. 20

Q. Did you hit him? A. Yes, I did.

Q. Did he attempt to strike you? A. He did attempt it.

Q. How many men were with him? A. About five or six men there.

Q. How many had attacked you; was it only he alone, or were there others? A. There were five or six besides him.

Q. And you ran away because you were afraid; is that the reason you ran away? A. First I knocked him down; then I went for the stone; I had an idea it was a revolver. 30

Q. I can't hear you very plainly. A. I knocked him down and went for the stone he had in his hand; I thought he had a revolver; and as soon as I got near that the others got hold of me, and of course I got away from him anyhow.

Q. Then you ran away? A. Yes; in the meantime they were hollering; there was people coming from all sides, about thirty odd people there. 40

Q. Do you remember having asked Mrs. Rust to have a drink with you at the Odd Fellows ball that has been spoken of? A. Yes.

Q. At a time when these other ladies were present? A. Yes.

Q. Do you recall what it was that Mrs. Rust drank on that occasion? A. Soda water or beer, either one of the two.

Q. Any other fancy drinks on the table? A. No, sir.

Q. What was on the table? A. Mostly soda water and beer; mostly soda water, and some beer.

Q. Did you have any conversation with Mr. Rust at all during this last year or two. A. No.

Q. When was it you last met Mr. Rust to speak to? A. It was last year; in 1904; in December, about.

Q. Where did you speak to him at that time? A. Somewhere in Hoboken; somewhere near the shop, or somewhere near the buildings.

Q. During the course of your business are you obliged to be away from that shop or factory? A. Yes, sir.

Q. Quite often? A. Frequently.

Q. About what time in the day is taken up by your being away? A. I am generally seven hours away.

Q. What obliges you to be away from your shop about seven hours a day? A. I had about seven or eight jobs over in New York, and had to attend to them every day pretty near.

Q. Do you attend to the outside work? A. Yes, at that time I had inside and outside both.

Q. Since then you have got somebody else engaged in business with you, have you? A. Yes, sir.

Q. So now, do you devote your time to outside work or inside work? A. Well, to outside and inside, both.

Q. How old a man are you? A. Thirty-six years old.

Q. How long is your wife dead? A. March 12th, it will be four years.

Q. That is, next March it will be four years? A. Yes.

Q. How many children have you, and what are their ages? A. I have four children.

Q. What are their ages? A. From fifteen down to eight.

Q. Are they girls or boys? A. Two girls and two boys. 10

Q. Where do you live at the present time? A. 258 Seventh Street.

Q. With whom? A. My brother-in-law.

Q. Do your children reside there? A. Yes, sir.

CROSS EXAMINATION by Mr. Lichtenstein:

Q. Mr. Oltmer, when you started in business for yourself, where did you have your place of business? A. 408 Fourth Street. 20

Q. And you ran the business in your own name? A. Yes, sir.

Q. You don't run that business in your own name, now, do you? A. No, sir.

Q. It is a corporation now? A. Yes, sir.

Q. What is the name of that corporation? A. Oltmer Iron Works.

Q. You incorporated the company after Mr. Rust sued you in this case, didn't you? A. I had the idea a year ago before that. 30

Q. But you didn't actually incorporate until after Mr. Rust sued you in this case? A. Yes, sir.

Q. Do you know a man named Jaeckel? A. Yes, sir.

Q. He is in the iron business, is he? A. Yes, sir.

Q. Do you remember speaking to him about incorporating your company? A. I don't know. 40

Q. Didn't you want him to be a stockholder in that company? A. No, sir.

Q. Didn't you tell him that you wanted to incorporate the company because Mr. Rust was going to sue you and get a judgment against you? A. I never did.

Q. You were very friendly with Mr. Rust, weren't you? A. I was some time ago.

10 Q. Up until the year 1904? A. Yes.

Q. Mr. Rust is quite a big business man in Hoboken, isn't he? A. Yes.

Q. Always has been—Mr. Rust, I am speaking of? A. Yes.

Q. Always employed forty or fifty men, didn't he? A. I don't know if as much as that.

Q. As a matter of fact, didn't he to your knowledge employ forty or fifty men until the time of this trouble about his wife in 1904? A. Well, there is no building going on now; nobody has got any work.

20 Q. I am not speaking of now. For the past number of years, up till 1904, is it not a fact that Mr. Rust was in the habit of employing from forty to fifty or more people every day? A. He employs some; I don't know how many; I could not tell you.

Q. And he gave you all of his structural iron work to do? A. Yes, sir.

30 Q. You had your accounts running all these years, didn't you? A. Yes, sir.

Q. His financial reputation in Hoboken was excellent, wasn't it? A. As far as I know.

Q. Never had any trouble about paying his bills, to your knowledge, did he? A. He didn't pay my bills.

40 Q. Did you ever hear of his not paying any bills in Hoboken, outside of your own, that you speak of? A. He owed some bills when he was in partnership with somebody.

Q. You never heard of a suit against him? A. No.

Q. You owed him money during all the time he was in business? A. No.

Q. Didn't he do work for you at the same time you were doing work for him? A. That work he done for me didn't amount to fifty dollars.

Q. You started this suit against him for some money which you claimed he owed you, after he had sued you, that is true, isn't it? A. Yes. 10

Q. Do you remember how much your claim against him was?

(No answer.)

Q. Do you know how much the claim that you had against him was? A. Seven hundred dollars odd.

Q. 702.34? A. Yes.

Q. Part of that work was never completed? A. 20
Yes.

Q. And you sued him for work that was never completed—on the Hoboken Pencil Works? A. Yes.

Q. Why did you stop that work? A. Because he told me to stop it.

Q. That was after he had had the trouble with his wife? A. Yes.

Q. Now, you know that in this case in which you sued him, he filed a plea and a set off against you; don't you know that? A. Yes. 30

Q. And his claim is a great deal more than your claim? A. That is not true.

Q. Isn't it a fact that he filed a claim against you for \$932? A. You can put a whole lot on paper.

Q. So can you— A. I can prove mine was right.

Q. You have not proven them? A. I have had no show yet; you put it off all the time. 40

Q. Neither had he a show to prove his claim against you, had he? A. He would have a show if he wanted to; I give him all the show he wants.

Q. So that, according to his case in court now, his claim against you is a great deal more than your claim against him? A. That is the way it looks, yes.

Q. You were quite chummy with Mr. Rust all these years, were you? A. Well, I knew him.

10 Q. Well, you went out with him? A. Yes.

Q. You would go out with him nights? A. Yes.

Q. And would come to his house regularly? A. Not regularly.

Q. Well, you would come there and visit? A. No, sir; I never have visited.

Q. How often during the week would you come there, prior to 1904, on business? A. I couldn't tell you.

20 Q. Once or twice a week? A. Whenever he called me.

Q. Whenever you had any work for him to do you would come to his house where he also had an office, and would look over the plans that he had there? A. Yes.

Q. And during those visits you saw his wife, didn't you? A. Sometimes.

Q. She would be around the house? A. Not where the office was.

30 Q. You knew that Mrs. Rust was a home woman; she always stayed at home? A. Yes, sir.

Q. You never heard of her going out to balls or entertainments before 1904? A. I never had heard much, only Mr. Rust told me she always wanted to go out.

Q. That was 1904, when he told you she always wanted to go out, wasn't it? A. Yes, and he told me she went out, too.

40 Q. You were always in the habit of going to balls, weren't you? A. Yes, sir.

Q. You are quite a society man, aren't you? A. I am not a society man.

Q. You belong to a lot of lodges and clubs, don't you? A. Yes.

Q. And go to all of their affairs? A. Yes.

Q. You are quite a dancer, aren't you? A. Yes, sir.

Q. Mrs. Rust didn't know how to dance, did she? A. I should say so.

Q. Not till 1904? A. Yes. 10

Q. How do you know? A. I danced with her.

Q. You danced with her after 1904— A. You want to say I learned her how to dance?

Q. No, I didn't say that. During all the years that you knew Mr. Rust and his wife, and during all these years you have been going to these balls and picnics in Hoboken, you had never met Mrs. Rust at any of those affairs, had you? A. No, sir.

Q. Not until the latter part of 1903, or the early part of 1904, is that right? A. The Arion Shooting Society's Ball, that was the first. 20

Q. What month was that? A. I couldn't tell you.

Q. What year was it, 1904? A. We have a ball every year; I don't know when it was.

Q. That was the very first time you had met her? A. Yes, sir.

Q. Were you alone with her? A. No, I had Miss Tinke.

Q. You didn't go there with any lady friend? A. Yes, sir; my brother-in-law and his wife, and another lady from New York. 30

Q. You didn't take any young lady? A. I didn't take any young lady, no.

Q. It was after that that you often met Mrs. Rust at these affairs, and often saw her? A. No; at some of these affairs I saw her.

Q. And every time you saw her at an affair you danced with her? A. Yes, sir.

Q. Nothing wrong about that? A. No. 40

Q. And you would dance with her the entire evening too, would you not? A. I danced whenever I wanted.

Q. How many affairs in all did you meet Mrs. Rust at? A. I don't know.

Q. Was it a dozen? A. It might be less or might be a dozen.

Q. And might be more? A. I couldn't say.

10 Q. At every one of those affairs you danced with her? A. Yes.

Q. You didn't miss one of them? A. No.

Q. How did you come to pay so much attention to her, and dance at all of these affairs with her? A. I danced with every one I knew; not only with her.

Q. You knew all the people that came to these balls, didn't you? A. Not every one.

20 Q. Is there any ball you went to in Hoboken where there were less than four or five hundred people? A. I don't know.

Q. And of all those four or five hundred people you happened to pick out Mrs. Rust to dance with? A. Sometimes.

Q. You knew at least fifty other women in the same hall? A. There is no harm done when you dance.

Q. You don't mean to say you danced fifty dances one evening? A. I danced pretty near every dance.

30 Q. There couldn't be over twenty-four dances, could there? A. I don't know, I didn't count them.

Q. You are sure you danced with her on every occasion? A. Whenever I saw her.

Q. At this ball of the Defender Cyclers you were not a member of that club? A. No.

Q. How did you come to go there? A. I go to a good many balls; I ain't a member there.

40 Q. Mrs. Rust came there masked, didn't she? A. Yes.

Q. How did you know her? A. I didn't know her.

Q. She came to you, didn't she? A. Yes, with some other lady there, I think Miss Donahue.

Q. They were all masked, were they? A. Miss Donahue was masked.

Q. You knew they were coming there? A. I didn't know.

Q. Didn't you telephone to Mrs. Rust that day that you were going to this ball and that you wanted her to go? A. Not as far as I know. 10

Q. Might it be possible that you did telephone her you were going to that ball? A. I don't think so. I never telephoned Mrs. Rust to go to a ball.

Q. Mr. Rust had a telephone in his house, didn't he? A. Yes, sir.

Q. You often called up on the telephone? A. Yes, sir. 20

Q. And talked to Mrs. Rust on the telephone? A. Yes, sir.

Q. Isn't it possible you told her you were going to go to that ball? A. I wouldn't say sure I told her.

Q. Just think a little bit and see if you didn't actually tell her? A. I can't think of it.

Q. Don't you remember her speaking to you and telling you she was going to the ball? A. No.

Q. You can't remember that? A. No. 30

Q. After she came to you and you recognized who she was, you did dance with her? A. Very likely.

Q. I mean this Cycle ball? A. Yes, maybe.

Q. Don't you know that you did? A. I certainly danced with her.

Q. It is not "maybe" then? A. Yes.

Q. And she introduced you to these other friends of hers? A. Yes, sir.

Q. How long did you stay there and dance with 40

her? A. I danced with other ladies too; not only with her.

Q. How many dances did you dance with her?

A. I couldn't say.

Q. Several? A. Several.

Q. Then you must have neglected the other women to dance with her? A. What?

Q. You must have danced with her more than you did with the other women then? A. I can't
10 dance with every one.

Q. How many in all did you dance with her; three or four? A. I don't know; it is two years ago now.

Q. Was it more than four? A. I don't think any more than four.

Q. It was not less than four, was it? A. I don't know.

Q. Did you go home with her or take her to the car? A. I took her to the car, yes.

Q. How long after she had recognized you? A.
20 How do you mean, recognized?

Q. She had come over and talked to you, hadn't she? A. After that, when we left the hall, you mean?

Q. Yes? A. As soon as the car came, she went right on the car.

Q. How long after she came over to you and spoke to you, did you tell her that you were going home? A. She was the one what started the
30 talk about going home.

Q. What time was that? A. After one, I think.

Q. Isn't it a fact that it was not twelve yet? A. Oh, no, that was more than eleven o'clock when I got there.

Q. Were these two ladies with her, Mrs. Donahue and her sister, at the time she asked you to come home? A. Yes, I think so; Mrs. Donahue was.

Q. Do you remember Mrs. Donahue saying to
40 her "well, this is nice; we just came up here; now

you are leaving," do you remember her saying that? A. No.

Q. What did she say—Mrs. Rust? A. She asked to go home; that was about one o'clock, I guess.

Q. You told her, did you not, she had better go home, because John would be angry? A. I didn't tell her.

Q. She said, "John would be angry"? A. Yes.

Q. She told you John didn't know she was masked, didn't she? A. I didn't know that. 10

Q. Didn't Mrs. Donahue then say, "Weil, why don't you go home with us"; didn't she say that? A. I can't remember that.

Q. Didn't she say in your presence "No, Mr. Oltmer will take me home"? A. I don't know.

Q. Where did Mrs. Rust live at that time? A. 122 Monroe Street.

Q. That is between First and Second Streets, isn't it? A. Yes, sir. 20

Q. About the middle of the block? A. Yes, sir.

Q. What car did you take? A. The Washington Street car.

Q. Right in front of the house? A. Yes.

Q. The Odd Fellows' Hall is between Fourth and Fifth Streets on Washington, isn't it? A. Yes, sir.

Q. Only two blocks north of the street on which Mr. Rust lived? A. Two blocks south.

Q. Two blocks north, isn't it? Mr. Rust lived between First and Second, and this hall is between Fourth and Fifth Streets A. Yes. 30

Q. And you took her to the Washington Street car? A. Yes.

Q. That is right in front of the hall? A. Right on the corner of Fourth Street.

Q. Where did you intend she should go on that car? A. To transfer down on the Rutherford line.

Q. On Second Street? A. On Second Street. 40

Q. Did they transfer on Washington Street to the Rutherford car at that time? A. Yes, sir.

Q. Quite positive of that? A. Yes, sir.

Q. Don't you know that at that time of the evening the Rutherford cars are run about every hour? A. I don't know.

Q. Did you expect her to go down to the corner of Washington and Second Street and stand there and wait for a car all alone? A. Well, some-
10 times you get a car at once, as soon as you get there.

Q. Why didn't you take her right home? A. I wanted to get home too.

Q. Where do you live? A. On Seventh Street.

Q. Seventh and what? A. Seventh and Park Avenue.

Q. Why didn't you take her right home and then go home yourself? A. I don't know.

Q. Did you have any reasons for not going? A.
20 She took the car, and that is all I know.

Q. Didn't she want you to go home with her? A. No, sir.

Q. Did you have any particular reason for not taking her home? A. No, I had not.

Q. Do you think it was right, taking a lady from a ball, that you should allow her to go on a car and then take the chances of waiting an hour at the transfer station, and then have to walk up Second Street to her home?

30

Objected to.

A. I was only dancing with the lady and took her to a car; I saw no reason why I should take her home.

Q. Did you see her get on a car? A. Yes, sir.

Q. How long did you have to wait for a car? A. It came right away.

Q. Where did you go? A. I went down—up
40 Washington Street.

Q. You went to get something to eat? A. Yes; right across the street from Quartette Hall.

Q. In Doyle's? A. I don't know.

Q. Between what streets? A. Tenth and Eleventh.

Q. Why did you go to Tenth and Eleventh Streets to get something to eat, when you lived on Seventh Street? A. It was the nearest place open.

Q. Wasn't the Sea Palace (?) down on Lewis Street? A. Well, I can get it quicker there. 10

Q. Wasn't there Doyle's right across the street from Odd Fellows' Hall, open all night. A. I don't know.

Q. Where is your shop? A 318 Grand Street.

Q. That is only about a block north of where Mr. Rust lives, isn't it? A. Four blocks east.

Q. But it is right on the way down from Odd Fellows' Hall to Mr. Rust's house, isn't it? A. Yes, between Third and Fourth. 20

Q. You could walk right straight from Odd Fellows' Hall to your shop, on your way to Mr. Rust's house, without walking out of your way, couldn't you? A. Yes.

Q. You did meet Mr. Brunken on Second Street, you say? A. Yes.

Q. Just as he says you did? A. Yes.

Q. He was going down to a building, and rode on a wagon? A. Yes.

Q. And he stopped you in the street, or you stopped him? A. He stopped me. 30

Q. And he said, "this is a fine mess you have got into with Mr. Rust," didn't he? A. I don't know.

Q. What did he say about that? A. He asked me about it, what the trouble was between me and Rust.

Q. That was a little after Mr. Rust had met you up on the hill, wasn't it? A. Yes, I think so.

Q. And it had got out in the newspapers, hadn't it? A. Yes. 40

Q. Didn't he tell you he saw it in the newspapers? A. I don't know.

Q. You were on your wagon, weren't you? A. Yes, sir.

Q. And you said "wait till I drive out of the car track and I will tell you all about it"; you told him that? A. I don't think so.

Q. You did get out of your wagon? A. Yes.

10 Q. And got out of the car track? A. I don't know about that.

Q. You went into a saloon? A. Yes; we had a couple of drinks—I guess one drink.

Q. You talked with him about this case, didn't you? A. Not much.

Q. Why did you go in there? A. To get a drink; we had a good many drinks.

Q. Didn't you go in there to talk this matter over specially with Mr. Brunken? A. No, sir.

20 Q. You talked with him about the matter, didn't you? A. He asked me about it and I told him he should see Mr. Fallon; he would tell him all about it.

Q. What did he say to you about it? A. I can't remember what he said.

Q. He was teasing you about it? A. Yes.

Q. Then you said something to him about the case? A. I didn't say nothing.

30 Q. You didn't say a word to him at all about it? A. I told him they could talk all they felt like.

Q. And you didn't say anything? A. No.

Q. You were going to keep your mouth shut about it? A. Yes.

Q. And you didn't tell him it was not the truth, did you? A. What?

Q. About your relations with Mrs. Rust? A. I told him he should see Mr. Fallon, my lawyer, about it.

40 Q. That you wouldn't talk anything about it? A. No.

Q. The night that you went up to see Mrs. Rust on the hill, how did you happen to do that? A. They telephoned me several times.

Q. You know who telephoned you, don't you?
A. That was Mrs. Rust.

Q. Why didn't you say Mrs. Rust, then? A. What?

Q. Why didn't you say it was Mrs. Rust? A. I don't know all the time who telephoned, because sometimes the men was in the shop, they told me about it. 10

Q. Do you mean to say it was not Mrs. Rust telephoned you that day? A. I didn't say that.

Q. Why didn't you say it was Mrs. Rust instead of saying it was they who telephoned? A. Well, because one time—sometimes I ain't there, and then the men was there and they told me somebody telephoned, they don't know who it is.

Q. On this occasion you spoke to Mrs. Rust over the telephone didn't you? A. The last occasion, or before? 20

Q. She telephoned to you several times, you say? A. Yes.

Q. And she wanted to meet you? A. Yes, sir.

Q. She told you she wanted to meet you? A. Yes.

Q. She was living away from her husband that time, wasn't she? A. I don't know.

Q. Where was she living? A. I don't know. 30

Q. Don't you know that she had left her husband only a few days before? A. She never told me she left.

Q. Didn't you meet Mr. Rust and didn't he tell you himself that his wife had left? A. He thinks so—

Q. Didn't he tell you she had left? A. No, sir.

Q. Didn't you tell him that time that you didn't think they could live together anyhow? A. I never said it. 40

Q. Where did she say you should meet her? A. Up on the transfer station.

Q. On the hill? A. Jersey City Heights.

Q. Did she tell you where she was living? A. No, sir.

Q. Didn't she tell you she was living up at Gray Street? A. She told me up there she lived on Gray Street.

10 Q. Why did you go up on the hill to meet Mrs. Rust? A. She wants to have a talk with me, to see Mr. Rust about it, so they could get along again.

Q. She wanted you to act as a sort of a go-between, to see whether her husband wouldn't take her back? A. Yes.

Q. Did she talk to you over the 'phone about that? A. No.

20 Q. Didn't she tell you what she wanted you for? A. She always hung up the receiver—she telephoned several times, and she would hang up the receiver before—

Q. The last time she telephoned, she didn't hang up the receiver, did she? A. Yes; she done the same thing.

Q. Why did you go up there if she didn't give you the reason? A. I was going to see a party, and thought I would stop there and see what she wants.

Q. What party? A. Mr. Jaeckel.

30 Q. The same man I spoke about? A. Yes, sir.

Q. The same man you wanted to go into your corporation? A. No; that Mr. Jaeckel always come around, and I gave him an order on my brother-in-law; he didn't have a cent; I was not going to give him nothing any more; I would not believe him.

Q. So you went up there to find out whether he was really in need of something? A. Yes.

40 Q. And then you thought you find out what Mrs. Rust wanted? A. Yes, sir.

Q. Mrs. Rust was at the transfer station? A. Yes, sir.

Q. Where did she come from? A. Around the corner there, at Summit Avenue.

Q. You walked away together, didn't you? A. I talked to her—

Q. You didn't stand on the corner talking to her? A. I stood there on the corner.

Q. For how long? A. About a minute.

Q. And then you walked off together? A. We 10
walked down the Plankroad.

Q. And then you cut across Plankroad, didn't you? A. I could not say.

Q. What? A. I don't know about that.

Q. Didn't you walk right across the street? How many block east from the transfer station down Central Avenue, did you go? A. About three blocks or so.

Q. And you walked all that distance with her? A. Yes, sir. 20

Q. You were talking with her all that time? A. Yes, sir.

Q. What was she saying to you? A. She said she left the house there and took the girl with her, that she felt sorry about the boy, and she said she didn't have a cent of money; then I told her it was a foolish thing to do, running away from him without having a cent; so when he came—we came down to a corner there, and met Mr. Rust.

Q. Before you met Mr. Rust, weren't you just 30
about to go across the street? A. I don't know.

Q. Do you know where the hotel is there on Paterson Plankroad? A. No.

Q. The roadhouse? A. No, sir.

Q. Weren't you heading right direct for that roadhouse? A. No, sir.

Q. You were walking arm in arm, weren't you? A. No, sir.

Q. Why was it that Mrs. Rust was talking to you about these matters, what did she want you 40

to do? A. I don't know; she wanted me to see Mr. Rust there, and see if she could get back again.

Q. To take her back? A. Yes.

Q. Wasn't she blaming you for this whole thing? A. No, sir.

Q. Didn't she want you to help her with money? A. No, sir.

Q. She wanted you to go and see her husband, did she? A. Yes.

10 Q. And just about that time you say that Mr. Rust came along? A. Yes.

Q. And he was very angry? A. He was standing on the corner; he was standing still; he was not walking at all; he was standing there three or four minutes.

Q. He was very angry? A. Yes, sir.

Q. You were very much surprised to see him? A. Yes.

20 Q. And got very excited? A. Not very much excited.

Q. You didn't think it strange to see him there? A. I didn't do nothing wrong.

Q. There was nothing wrong in meeting another man's wife? A. No, not on the public street.

Q. When he got up to you he called you a damn scoundrel and cur, didn't he? A. Yes.

Q. And used some other strong language? A. Yes, sir.

30 Q. And was going to strike you; was he going to strike his wife, too? A. I didn't see him.

Q. And just as he was going to hit you, you hauled off and knocked him down? A. Yes, sir.

Q. Did you see any other man with him at that time? A. Yes, sir.

Q. Do you recall this young man, Mr. Donahue? A. Yes, sir.

40 Q. You remember his being there? A. Yes, sir.

Q. Do you recognize Mr. Baker? A. Yes, sir.

Q. Was he there? A. Yes, sir, I think he was here.

Q. Tell me any other person was there outside of these two men? A. There was three or four other men.

Q. Who were they? A. I didn't get their names.

Q. You knew these two? A. Yes.

Q. You can't describe any other person that was there? A. No.

Q. You were very much excited, weren't you? 10
A. I had to take care of myself.

Q. After you knocked him down he hollered and screamed, didn't he? A. He screamed before he struck me.

Q. And you struck him down because you were afraid he had a revolver in his pocket? A. Yes, sir.

Q. Why were you afraid of the revolver if you didn't do anything wrong? A. He was always 20
talking about shooting somebody.

Q. He was not talking about shooting you, was he? A. He didn't say that; he said he was going to shoot any one what does anything wrong to her.

Q. Were you afraid he was going to shoot you? A. No, sir; not when I didn't do anything wrong.

Q. Why were you afraid that night? A. Because I was not going to allow him to take a pistol—

Q. Then you started up and ran? A. I had to 30
fight against the other bunch.

Q. They wanted to hold you and have you arrested? A. Yes, sir.

Q. And you tried to get away? A. Yes.

Q. This was a public street? A. Yes, sir.

Q. Lots of people round? A. Yes, sir.

Q. Lots of people living around that neighborhood? A. Yes, sir.

Q. If you had done nothing wrong, why on 40

earth did you run? A. I didn't want to have my eyes blackened up.

Q. Couldn't you scream? A. No, sir; I didn't scream. I took care of myself.

Q. If you were in the right do you mean to say that people gathered around— A. (interrupting) If you are in the right and somebody tramples on you, don't you take care of yourself?

Q. You thought it best to run? A. Yes, sir.

10 Q. And you ran to the foot of the hill? A. Yes, sir.

Q. And didn't stop? A. Yes, sir.

Q. And when you started a couple of times, lots of people stopped you running? A. Yes, two parties did.

Q. But you shoved them aside and ran toward the hill? A. Yes, sir.

Q. This is your hat, isn't it? A. Yes, sir.

20 Q. And you lost that hat while running, didn't you? A. Yes, sir.

Q. You never stopped to pick it up did you? A. That was the first thing I lost that evening.

Q. You didn't stop to pick it up? A. No, I can buy a hat easy enough.

Q. When you got to the edge of the hill what did you do? A. I walked down the hill.

Q. Nothing happened to you at all? A. No, sir.

30 Q. Did these men run right to the edge of the hill? A. They ran across Palisade Avenue; there was about a half a dozen.

Q. As a matter of fact, didn't you jump head-long right off the top of that hill? A. No, sir.

Q. Weren't you laid up in bed four weeks after this thing? A. No, sir.

Q. Didn't you go right home and stay in bed three weeks? A. No, sir.

Q. Didn't you have a doctor right the next day? A. No, sir.

40 Q. Wasn't your head all bandaged up and your

leg pretty near broken? A. No, sir; and I can prove that by sending a messenger down—I can get three or four men down, they can testify I was the next day down in the shop, just as well as I could be.

Q. How many days was it after you met Mr. Rust on the hill, before you went back to your business? A. The next day I went down to business.

Q. Isn't it a fact that you left word in your office that you were sick, and that you couldn't come down? A. No; I went down in the afternoon, and on Saturday was there all day, and was there every day. 10

Q. You do know where the Van Troille Hotel is? A. Yes, I know it now.

Q. Where is it? A. On Twenty-fourth Street—Lexington Avenue and Twenty-fifth Street.

Q. A place that has a pretty bad reputation, hasn't it? A. Yes, the way I understand. 20

Q. How do you know it? A. Well, I heard of it in Mr. Fallon's office.

Q. You do know it is a house of bad reputation? A. Well, I passed there in the car; doing jobs that way; I pass there pretty near every week three or four times.

Q. Do you mean to say you can tell a house is a place of bad repute by passing it on the car?

A. I know a party used to work there, who told me about it. 30

Q. Who was that party? A. He lived on Second Street.

Q. When did he tell you about that, a couple of years ago, wasn't it? A. No, later than that—later than that, when we happened to be there with Mr. Rust

Q. Who was this party? A. Down in Second Street, between Harrison and Marshall Street, Mr. Bruckman; he used to be along there.

Q. He told you it was a house where any man 40

could walk in with a woman, and no questions asked? A. No.

Q. Isn't it a fact that he told you about this house long, long ago? A. No, sir.

Q. Did you look at the register of that house? A. No, sir.

Q. Did you not register in that house as Mr. Harmer? A. No, sir.

Q. Or Homer? A. No, sir.

10 Q. Did you ever go to the place? A. No, sir.

Q. Do you remember being in New York on the evening of November 17th, 1904? A. I don't know about that.

Q. Do you know Mrs. Rust's handwriting? (handing witness paper)? A. I don't know.

Q. Just look at that and see whether you recognize her handwriting? A. I can't tell if that is Mrs. Rust's handwriting.

20 Q. Never saw her handwriting? A. How should I see her handwriting?

Q. Didn't she send you letters? A. No, sir.

Q. Never? A. No, sir.

Q. Will you say that you weren't in New York on the 17th of November with her? A. No.

Q. Did you not go to a hotel with her on the 17th of November, and register under the name of Harman, or Homan? A. No, sir.

30 Q. You promised to marry her didn't you? A. No, sir.

Q. You wanted her to get a divorce from her husband? A. No, sir.

Q. How long have you been a widower? A. It will be four years on March 12th, this coming March 12th.

Q. Do you remember when she came to our firm to take proceedings against Mr. Rust for a divorce? A. Yes; Mr. Rust told me about it.

Q. He told you about that? A. Yes, sir.

40 Q. And it was you that recommended him to

a lawyer, wasn't it? A. I asked him what lawyer he had; he told me Mr. Peters.

Q. And then you told him he had better go to somebody else? A. Yes.

Q. And you recommended him to Mr. Fallon? A. Mr. Fallon and Mr. Stuhr.

Q. You gave Mrs. Rust, didn't you, fifty dollars to pay us? A. I did not.

Q. Don't you know that you paid all of her expenses in that suit? A. No, sir. 10

Q. Don't you remember that she had that money with a grocer in Hoboken? A. No, sir.

Q. Didn't you give her money long before she started suit to take proceedings against Mr. Rust for divorce? A. No, sir.

Q. Do you remember meeting Mrs. Rust in the park, in Church Square Park, Hoboken? A. No, sir.

Q. Didn't you tell her in the park that she should use the money that you gave her to start suit for divorce against her husband? A. No, sir. 20

Q. Now, it was around the beginning of 1904 that Mr. Rust told you he didn't know what was the matter with his wife, that she wanted to run out nights; that is right, is it? A. He told me; I don't know exactly when.

Q. You were very sorry for him, weren't you? A. Yes.

Q. What did you say to him that night or that time? A. What? 30

Q. When he told you he didn't know what was the matter with his wife, that she was running about? A. I don't know if I said anything.

Q. Didn't you tell him that time you didn't think he and his wife could ever live together again? A. I don't know.

Q. Did you ever say that? A. I couldn't say.

Q. Will you say you didn't say it? A. Well, I don't know; I would not say either way.

Q. Not positive? A. I am not sure about it. 40

Q. Did you not, a great number of times, tell Mrs. Rust stories about her husband, to poison her mind against him? A. No, sir.

Q. Didn't you tell her that her husband was running around with other women? A. No, sir.

Q. Didn't you tell her that you had been out with Mr. Rust, and that you had gone with other women? A. No, sir.

10 Q. This man, Jaeckel, do you remember meeting him in a saloon in Hoboken after your walking down the top of the hill, as you say? A. I don't know.

Q. In your own shop? A. Yes I met him several times, Mr. Jaeckel.

Q. And he talked to you about this Rust affair, didn't he? A. Yes.

20 Q. Said that you had got yourselves in a nice pickle, didn't he? A. Yes; he wanted me to pay him twenty-five dollars so he would do all he could.

Q. For you? A. Yes; I chased him out.

Q. You told him at that time that you didn't need him as a witness, didn't you? A. I would not have anything to do with him.

Q. You told him you didn't need him, because you had used Mrs. Rust, and had paid her for it? A. No, sir.

Q. Never said that? A. No, sir.

30

MRS. ELIZABETH RUST, called as a witness on behalf of the defendant, and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Fallon:

Q. Where do you live at the present time? A. 60 Monroe Street.

40 Q. You are the wife of John Rust, the plaintiff

in this suit, are you not? A. Yes, sir, I am.

Q. When were you married? A. 1894.

Q. Where were you married? A. Kaskaskia, Illinois.

Q. After your marriage did you and your husband live happily from the very beginning?

MR. LICHTENSTEIN—We object, your Honor, not because we have any particular objection to the lady testifying at all; but it seems to us that under the law she is incompetent and cannot be compelled to testify; so I do not think, even though we consented to her testifying, that the court could hear the testimony. 10

MR. FALLON—I submit the objection is ill-timed, because it should have been made when the witness was sworn. 20

THE COURT—The court declines to hear any testimony except as to the fact of the marriage.

Counsel for defendant prays that an exception may be allowed, and it is allowed and signed and sealed accordingly.

C. W. PARKER, J. 30

MR. FALLON—I want to submit that I offer Mrs. Rust as a witness to refute the testimony given by the husband himself as to the alleged acts of cruelty, leaving aside the question of the criminal conversation. I state this so as to get it upon the record: I will offer the witness, not as a witness to give testimony in denial of any criminal 40

10 conversation between herself and Oltmer, but as a witness with respect to denials made by the husband, of ill treatment and cruelty toward his wife, and of particular brutality to which his attention was called as a witness. I submit Mrs. Rust is a proper witness for that purpose, waiving, as I said, entirely the question of the propriety of the witness as a witness to the charge of criminal conversation—eliminating that.

20 THE COURT—The incompetency reserved by the statute, goes not to the character of the testimony, but to the action; it is the character of the action that makes the witness incompetent, and the statute excepts only such testimony as refers to the fact of the marriage; therefore your proposition to recall the witness for the purpose of denying the statement of the plaintiff as to the alleged cruelty, must be included in the ruling.

META TIETJEN, called as a witness on behalf of the defendant, and sworn, testified as follows:

30 DIRECT EXAMINATION by Mr. Fallon:

Q. Are you a married woman? A. I am.

Q. Do you know Mr. John Rust here? A. Yes, sir.

Q. And you know Mrs. Rust? A. Yes, sir.

Q. Do you remember an occasion when you were in the house, 122 Monroe Street, where Mrs. Rust and her husband lived? A. Yes.

40 Q. Do you remember being there one time when

you heard some talk between Rust and his wife about some shooting? A. Yes.

Q. Just tell the court and jury what you heard?

MR. LICHTENSTEIN—I will ask the counsel to fix the time.

Q. Were you there more than once? A. No, sir.

Q. Do you remember what time that was, the month and the year? A. The first of the year. 10

Q. Of what year? A. Last year, 1905.

Q. What conversation did you hear between Mr. Rust and his wife? A. I heard Mr. Rust ask his wife if Mr. Oltmer took her to his snop and took his coat off and laid her down on the floor and had the best of her, and she says "No, John, he didn't"; he said "yes, he did," and she says "No, John, he didn't"; "well," he said, "if you don't say yes I shoot you." That is what I heard; they were upstairs and I was downstairs. 20

Q. There is no doubt you heard just those words? A. Those words I heard, yes, sir.

CROSS EXAMINATION by Mr. Lichtenstein:

Q. Did you live in that house? A. No, sir; I was down for a visit.

Q. To whom? A. To Mrs. Rust.

Q. Mr. Rust knew you were there, didn't he? A. Yes, sir. 30

Q. That was in January of last year? A. Yes.

Q. Just about a year ago? A. Yes, sir.

Q. You heard of some of the trouble between his wife and him, didn't you? A. Yes, sir.

Q. You had heard before that day that there was some trouble between him and his wife? A. Yes, that minute I heard it.

Q. You mean before that minute? A. No.

Q. Didn't you hear there was some trouble be- 40

tween Mr. Rust and his wife? A. No, sir.

Q. You were a friend of the family? A. Yes.

Q. A friend of Mr. Rust just as much as his wife? A. Yes.

Q. You were a neighbor living there, weren't you? A. No; I always lived in Jackson Street that time.

Q. Weren't you a neighbor one time? A. No.

Q. How did you know the family? A. I took
10 care of Mrs. Rust when she was sick.

Q. When you got there, to see Mrs. Rust, Mr. Rust was there too, wasn't he? A. Yes.

Q. And there seemed to be some trouble there that day, wasn't there, when you got there? A. Yes, sir.

Q. Mr. Rust was very much excited, wasn't he? A. Yes, sir.

Q. Very much so? A. Yes, sir.

Q. You had never seen him that way before,
20 had you? A. No, sir.

Q. You didn't know what the trouble was? A. No, sir.

Q. And he was speaking to his wife, was he, when you first came in there? A. He didn't speak—they had a quarrel in his office.

Q. Was that at the start, the time you came in, or was it afterwards? A. At the same time I came in.

Q. Did they both see you coming in the house?
30 A. Yes, sir.

Q. Where did you stay? A. I was in the dining room.

Q. And they were in the office? A. In the office.

Q. The door was open? A. Yes.

Q. And it was while this door was open that you heard this talk between him and his wife? A. It was upstairs he said it, when he took her up.

Q. Did they talk about shooting upstairs—
40 They had a quarrel first in the office.

Q. The door was open when you got in there, was it? A. No, sir; only the dining room door was open.

Q. You could hear? A. I could hear—but I didn't know—I didn't understand.

Q. He was very much excited? A. Yes, but I couldn't hear what it was.

Q. Didn't you hear something? A. No, I only heard it upstairs, when he took her upstairs.

Q. How did he come to take her upstairs? A. 10
Well, he excused himself for a couple of minutes, and he says he had to speak to his wife.

Q. Didn't he say he had something very important to speak to his wife about? A. Yes.

Q. And did he excuse himself and walk upstairs? A. Yes, sir.

Q. And it was very easy to hear what was said, was it? A. Yes, sir.

Q. They talked very loud? A. Yes, sir.

Q. No privacy about the matter at all? A. 20
No, sir.

Q. Was he crying? A. Yes, sir.

Q. Was she crying very much? A. Yes.

Q. Wasn't he crying, too? A. No, he didn't cry.

Q. Weren't there tears in his eyes when he came out of the office and walked upstairs? A. No, I didn't see any.

Q. He told her that he had heard that she went away from a ball at twelve o'clock and didn't get to Mrs. Donahue's house till two o'clock, you 30
heard that? A. No, he did not say that.

Q. Didn't he ask her where she had been for those two hours? A. No, I didn't hear that at all.

Q. Didn't you hear him say that he had heard she had gone to Oltmer's shop at about twelve o'clock and stayed till one? A. No, sir. I only heard that he asked her upstairs, if Mr. Oltmer took her to the shop from the ball, from the car 40

to the shop, and took his coat off and laid her on it on the floor, and then she says no.

Q. How many times did he ask her that? A. Two or three times.

Q. And every time he asked her she cried and said no? A. She said no.

Q. And it was then he said he would shoot her if she didn't say yes? A. Yes.

10 Q. And she didn't say yes? A. Yes.

Q. She said yes to him? A. Yes.

Q. Admitted that she had been to the shop? A. Yes, sir.

Q. And you heard all of this? A. I heard that all; that is all what I heard.

Q. Do you mean to say you didn't hear anything yourself but his asking her that one question, and her first denying two or three times that she had been there, but finally saying "Yes, John, I did"?

20 A. Yes.

Q. What else did she say? A. That is all.

Q. Do you mean to say she only used one word "Yes"? A. Yes, and then he came right down.

Q. Didn't she beg his pardon, and say she wouldn't do it again, that she wanted to live with him again? A. No, sir.

Q. Didn't she ask forgiveness of him? A. No, sir.

30 Q. What did she do after admitting she had been in the shop—did she come downstairs? A. Yes.

Q. Crying? A. Yes, sir.

Q. Was he crying? A. No, sir.

Q. He was very much excited? A. No.

Q. Did he speak to you? A. Not very much.

Q. What did he say? A. I says, no, I won't interfere with it.

40 Q. What did he say to you that time? A. That Mrs. Rust—that Mr. Oltmer took Mrs. Rust to the shop.

Q. He said he had heard it, didn't he? A. Yes, sir.

Q. Told you that? A. Yes, sir.

Q. What did Mrs. Rust say then? A. She said it was not so; I should not believe it—when she was alone.

Q. What did he say when he told her that? A. He said, "do you deny it?" She said "No, she didn't."

Q. Did Mr. Rust leave the house? A. After a 10
while he went away.

Q. And you stayed there? A. Yes, sir.

Q. When he left the house didn't he say he was going to go out to kill that man Oltmer? A. No, sir.

Q. Didn't he threaten that he was going to do harm to Oltmer? A. He didn't say nothing at all.

Q. Was he crying when he left the house? A. No, sir. 20

HERMAN OTTEN, called as a witness on behalf of the defendant, and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Fallon:

Q. Where do you live? A. 621 Willow Ave- 30
nue, Hoboken.

Q. You were in the employ, were you, at one time, of John Rust? A. Yes, sir.

Q. For how long a time? A. About six months.

Q. When was that? A. 1903.

Q. What months? A. I couldn't say the months.

Q. Were you in his employ in the month of March, 1903? A. Yes.

Q. 1903 or 1904? A. 1903. 40

Q. During the time that you were in his employ, did you see him beat or ill treat his wife at any time? A. Yes, sir.

Q. Do you remember just when the occasion was? A. I don't remember the date.

Q. Were you in the rooms that time? A. Yes, sir.

Q. Just tell the court and jury what you saw him do to his wife? A. I seen him take his wife, punch her, and put her in the coal scuttle, and then pull her out and pull her hair, and then call her a couple of names.

Q. Do you remember what names? A. A French bastard, and son of a bitch.

CROSS EXAMINATION by Mr. Lichtenstein:

Q. When did you see this? A. March.

Q. Of what year? A. 1904—1903.

20 Q. Wasn't it 1904? A. No, sir.

Q. How do you know it was in March, 1903? A. I worked for him then.

Q. When did you begin your work for him and when did you end your work for him? A. I started in the summer with him, the beginning of the summer, and ended toward the winter.

Q. Did you begin your work in the month of March, 1904? A. No, sir.

30 Q. Did you work for him in the month of March, 1904? A. No, sir.

Q. Aren't you mistaken about that; think again? A. March, 1904.

Q. Yes? A. No.

Q. I show you an affidavit made on the 19th day of July, 1904, before Notary Public, New Jersey, and ask you whether you signed the paper and whether that is your signature? A. That is my signature.

40 Q. Do you remember making that affidavit? A. Yes, sir.

Q. What you said at that time, was it true?
A. Yes, sir.

Affidavit marked P. 3, for identification.

Q. You made that affidavit in our office, didn't you? A. Yes.

Q. For Mr. Rust? A. No, for Mrs. Rust.

Q. For Mrs. Rust? A. Yes.

Q. Do you remember swearing in that affidavit 10
that you were "well acquainted with Elizabeth
Rust and John Rust, her husband, parties to the
above cause"; you remember that, don't you? A.
Yes.

Q. "That in the month of March, 1904, ne work-
ed for the said John Rust, as bricklayers' appren-
tice"; do you remember swearing to that? A.
Yes, sir.

Q. Was it true? A. Yes, sir.

Q. Then why did you just say you didn't work 20
for him in 1904? A. Well, I worked over at the
American Electric; I worked over there about
eight months; it was 1904 then.

Q. On your direct examination you stated that
you saw Mr. Rust pull her hair, put her in the
coal scuttle, pull her out, and then pull her hair
and use vile language to her, in March, 1903.
Now then, you say that this affidavit is true, and
that you did work for him in 1904, in March; you
say this affidavit is true, do you? A. Yes. 30

Q. Is your other testimony true, that it was in
March, 1903? A. I couldn't say whether it was
in 1903, but I know it was in March.

Q. It was fresher in your memory when you
made this affidavit, wasn't it? A. Yes, sir.

Q. This affidavit was made on the 19th day of
July, 1904, only about four months afterward, so
that this affidavit must have been the correct
statement? A. Yes, sir.

Q. And the statement that you made to-day is 40

incorrect; that is true, isn't it? A. Yes.

Q. Inasmuch as that fixes the month as being March, 1904, instead of March, 1903, do you remember what the quarrel between Mrs. Rust and her husband was about? A. I don't know what it was about.

Q. Where was it, in their own house? A. In their own house.

Q. What were you doing there? A. I was coming
10 ing down to the stable at seven o'clock in the morning to feed the horse; I heard Mrs. Rust scream. I went upstairs and asked where I should go; she said "downstairs, till I come down"; that is when I seen him pulling her hair.

Q. Did you not hear him say to his wife, "you will feel sorry for this before twelve o'clock?" A. She said that to him.

Q. Didn't you hear what he accused her of?
20 A. No, sir.

Q. Wasn't he talking to her about going to balls and picnics with this man, Mr. Oltmer? A. Not when I was there.

Q. Didn't you hear him say that? A. No, sir.

Q. Did you ever hear him accuse her of going to balls and picnics? A. No, sir; he said she could go to balls—

Q. Didn't you hear him talking about Mr. Oltmer? A. No, sir.

Q. You didn't hear that? A. No, sir.
30

Q. How could you see what he did to his wife? A. I was upstairs.

Q. The same room that he was in? A. Yes, sir.

Q. And you mean to say you didn't hear what the dispute was about? A. No, sir.

Q. Just tell again what he did to her? A. He
40 pulled her hair, put her in the coal scuttle and pulled her out, and called her bad names, and punched her.

Q. Why didn't you say that in your affidavit here? A. I did say it, didn't I?

Q. Well, you didn't. Why didn't you tell us that? A. What.

Q. What you are swearing to now? A. I am just after saying it.

Q. Why didn't you tell that to us when we drew this affidavit of your's for Mrs. Rust? A. I did tell it.

Q. You didn't swear to it? A. I told it in the lawyer's office. 10

Q. Didn't you remember it at that time, or do you only remember it now? A. No, I remember that.

Q. I will read what you said in this affidavit, and ask whether it is so or not: "That he ran upstairs and the defendant, John Rust, had his wife, Elizabeth Rust, by the neck, knocked her head against the wall"—(A. (Interrupting.) He knocked her head against the wall, but he didn't run up. I ran up. 20

THE COURT: That is what the affidavit means. (to Mr. Lichtenstein.) Just change the person.

Q. "That he" (meaning you) "heard Mrs. Rust scream; that he (speaking of you) ran upstairs; that Mr. Rust had his wife, Elizabeth Rust, by the neck and knocked her head against the wall"; that is all that you said; is that true? A. Yes, sir. 30

Q. Why didn't you say he threw her in the coal scuttle and pulled her hair? A. He did.

Q. Why didn't you swear to it then? A. Didn't I say it there?

Q. No. Why didn't you tell us to-day that he got hold of her and got her by the neck and got her up against the wall; which is all that you said he did do that day? A. I did do it. 40

DEFENDANT RESTS.

JOHN RUST, the plaintiff, recalled in rebuttal:

BY MR. LICHTENSTEIN:

10 Q. You know Mrs. Teaching, do you? A. Yes, sir.

Q. Do you remember her being at your house on the occasion that she speaks of? A. Yes.

Q. Do you remember your being in the office with your wife that day? A. Yes.

Q. Do you remember your having a quarrel with your wife that day? A. We had a quarrel, yes.

Q. What was your quarrel about?

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MR. FALLON: I think this was gone into on direct examination by Mr. Weller.

MR. LICHTENSTEIN: Then I do not want to go into it again. I was not here during the first part of the testimony.

30 ADJOURNED till to-morrow, January 6, 1906, at 10 A. M.

DEFENDANT REQUESTS THE COURT TO CHARGE THE JURY AS FOLLOWS:

1. The jury cannot consider the testimony of the plaintiff as to his wife's criminal conversation with the defendant.

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2. The jury cannot consider the wife's alleged confession to her husband of having misbehaved or going to the Van Troille hotel with the defendant.

3. The plaintiff is obliged to prove the allegations contained in the declaration by a fair preponderance of evidence.

4. The burden of proof is upon the plaintiff to satisfy the jury by a fair preponderance of evidence that the defendant intending to injure the plaintiff, and to deprive him of the comfort, fellowship, society and assistance of the plaintiff's wife, and to alienate and destroy her affection for the plaintiff, did debauch, and carnally know the plaintiff's wife, and thereby the affections of the wife for the plaintiff were alienated and destroyed, and by means of the premises the plaintiff thereby lost and was thereupon deprived of the fellowship, society, aid and comfort and assistance of the wife in his domestic affairs.

5. The plaintiff must prove by a fair preponderance of evidence that defendant enticed away the plaintiff's wife from the plaintiff's residence to a separate residence at 317 Willow Avenue.

Gentlemen of the Jury:

This is a suit for what is called criminal conversation, that means, speaking generally, a suit by a husband against another man for seducing his wife, committing adultery with her. That is the claim made in this case, and the claim which the plaintiff must prove by a fair preponderance of evidence before he is entitled to a verdict against this defendant. Your inquiry,

therefore is, did this defendant seduce Mrs. Rust and commit adultery with her once, or any number of times, on one or more occasions? A great deal of evidence has been given, of the value of the evidence you are the judges.

10 In weighing this evidence it is your duty to bear in mind that adultery is a crime which can hardly ever be proved by the direct evidence of an eye witness. It is most natural that when a man and woman desire to commit that offense they will avoid the sight and hearing of other people, and, therefore, the law properly says that direct evidence of eye witnesses is not essential, and that adultery may be proved by inference from other facts and circumstances which in the mind of an impartial person would tend to establish the assumption, the necessary connection of the crime with these facts.

20 Let us see what we have here, assuming you believe these circumstances to have been proved, because the circumstances themselves must be proved by the same weight of evidence which is necessary to support the main charge. It is claimed as a circumstance that Mrs. Rust, after some years of married life got into the habit of neglecting her home and going out to balls and other entertainments, and there meeting Mr. Oltmer, and dancing with him. Those circumstances in themselves alone, if proved to your satisfaction do not mean very much, as counsel have said, it is not unnatural that a married woman, if her husband should be lacking, or neglectful, as is claimed in this case, in the little attentions to her which a woman naturally expects from a husband, might be disposed to seek them elsewhere, and that entirely consistent with her innocence of any criminality and loyalty to her husband in other respects. Still, they are circumstances that you are entitled to consider. Of course, if she, as is claimed, danced

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with nobody else but Oltmer, it is a circumstance which might lend some force to the fact of her going to these balls, and if, as is claimed, she acted in such a way as to give others the impression fairly that she was devoted to him and would not dance with other men without letting him know of it, that is a circumstance, which, if proved, is entitled to be considered with the others, and given such weight as you fairly think is proper.

10
 These perhaps, are the more significant circumstances in the case claimed on the evidence to have existed. We have those apparent absences of both the parties from their homes at the same time, we have this meeting which it is admitted took place on the heights between these parties in the evening, and at which there was something of an affray between the plaintiff and the defendant, where it is claimed that the defendant struck the plaintiff and ran away after
 20
 some exchange of fisticuffs between them, and you have as well, what seems to be perhaps the most important piece of circumstantial evidence in the case, if the occurrence took place, and that is this story about the defendant and the plaintiff's wife leaving a ball at twelve o'clock, or about that time, and a short time later entering the defendant's shop and their reappearance an hour or so later. In addition to these it has
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 been testified in this case that this defendant himself admitted that he had been guilty of adultery with Mrs. Rust and he had paid her money for it. If you believe that he said that, of course that would be an admission by him, and is competent evidence in this case and you are entitled to consider it as such. With respect to statements made by Mrs. Rust, however, I understand the law to be that in a case of this kind, under these circumstances, they are not competent evidence of the guilt of Mr. Oltmer. If this was a
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divorce case between Mr. Rust and his wife, and her statements were proved, they would bind her and not him. This is a suit against Mr. Oltmer and necessarily he cannot be bound by the unsworn statements of the alleged other party to the crime, so that I think it is wise to instruct you that you need not and should not consider the evidence of what Mrs. Rust may have said, and more especially so as there is evidence tending to show that whatever she may have said to her husband was done under the influence of threats made by him. You need not consider that at all.

Now you have all these other circumstances, including the admission of Mr. Oltmer, and it is for you to say on all the evidence in the case, whether the plaintiff has made out to your satisfaction the fact of adultery committed by this defendant with the plaintiff's wife. If he has not there should be a verdict for the defendant. If he has there should be a verdict for the plaintiff.

The elements of damage which the plaintiff would be entitled to may be divided into damages by way of compensation and damages by way of punishment. Damages by way of compensation would include such sum as in your fair judgment is proper to be shown for the breaking up of the confidence existing between the plaintiff and his wife, the injury done to his home, not the injury of his children who are not parties to this suit, but injury to the plaintiff himself, the destruction of peace of mind, injury to his feelings, and then when you come to the other elements of punishment you are entitled to assess what the law calls exemplary damages on the theory that this wrong committed was necessarily done wilfully, maliciously, with intent to injure this plaintiff, and you award such further

sum as in your judgment is right on that ground.

There are, and there may be circumstances in this case in mitigation of damages, because it is very evident that if this plaintiff was on entirely friendly and affectionate terms with his wife, and she had his full confidence, and they were happy together up to the time of the entry of this intruder into their home, if you should so find the damages to the husband would necessarily be much greater than if the situation was 10
that he and his wife were unhappy together, if their home was subjected to quarrels and brawls. Therefore, in fixing the damages you ought to consider what the relations were between these parties before the injury occurred. On the part of the plaintiff it is claimed that their relations were happy and peaceful. It is claimed on the other side, and there is evidence to support it, that the plaintiff and his wife were not on good terms, and you will remember that one of the 20
witnesses testified that he saw on one occasion the plaintiff beating his wife, cursing her, using vile language to her, so that if you get to this question of damages you must consider what the circumstances are in that regard and adjust your verdict accordingly.

I think that is all, gentlemen, that the court considers it necessary to say to you at this time.

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Defendant prays exception to that part of the charge relating to the inferences of adultery, and how it might be proved. And also to that part of the charge relating to circumstances of meeting at halls, permitting it to be considered as evidence supporting the plaintiff's statements, and where the court said that perhaps the most important piece of evidence is that relating to 40

the parties leaving the ball and entering the defendant's shop, and reappearing soon after, and that part where the court says, that if the jury believed the plaintiff's witnesses they should find for the plaintiff.

And also to the refusal of the court to charge as requested in the written requests, except so far as the court did charge in accordance therewith.

- 10 And also what the court said as to the statements of Mrs. Rust.
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COURT OF ERRORS AND APPEALS

Of the State of New Jersey.

Afterwards, to wit, on the fourteenth day of 10
 March, in the year of our Lord, one thousand nine
 hundred and six, in the Court of Errors and Ap-
 peals of the State of New Jersey, comes the said
 Christian Oltmer, by John J. Fallon, his Attorney,
 and says that in the record and proceedings afore-
 said, and also in the matters recited and contain-
 ed in the said bill of exceptions, and also in giving
 the verdict and judgment aforesaid, there is mani-
 fest error in this, to wit:

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First: Because judgment was given in favor
 of the said John Rust, plaintiff below, against the
 said Christian Oltmer, defendant below, whereas,
 by the laws of the land, judgment should have
 been given in favor of the said Christian Oltmer
 against the said John Rust.

Second: Because upon the trial illegal evi-
 dence offered on the part of the plaintiff was ad-
 mitted against objection and exceptions on the 30
 part of the said Christian Oltmer, as more par-
 ticularly appears in the several bills of exceptions
 stated upon the admission of evidence.

Third: Because upon the said trial, legal evi-
 dence on the part of the said Christian Oltmer
 was excluded against objection and exception of
 the said Christian Oltmer as more particularly
 appears in the several bills of exception stated
 upon the exclusion of evidence.

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Fourth: And there is error in this, to wit, that the said Judge before whom, &c., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid refused to charge the jury as follows: "The jury cannot consider the testimony of the plaintiff as to his wife's criminal conversation with the defendant," although regularly thereunto moved by the said defendant, and therein erred.

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Fifth: And there is error in this, to wit, that the said Judge before whom, &c., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid refused to charge the jury as follows: "The jury cannot consider the wife's alleged confession to her husband of having misbehaved or going to the Van Troille Hotel with the defendant," although regularly thereunto moved by the said defendant, and therein erred.

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Sixth: And there is error in this, to wit, that the said Judge before whom, &c., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid refused to charge the jury as follows: "The plaintiff is obliged to prove the allegation contained in the declaration by a fair preponderance of evidence," although regularly thereunto moved by the said defendant, and therein erred.

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Seventh: And there is error in this, to wit, that the said Judge before whom, &c., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid refused to charge the jury as follows: "The burden of proof is upon the plaintiff to satisfy the jury by a fair preponderance of evidence that the defendant intending to injure the plaintiff, and to deprive him of the comfort, fellowship, society and assistance of the plaintiff's wife, and to alienate and destroy

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her affection for the plaintiff, did debauch, and carnally know the plaintiff's wife, and thereby the affections of the wife for the plaintiff were alienated and destroyed, and by means of the premises the plaintiff thereby lost and was thereupon deprived of the fellowship, society, aid and comfort and assistance of the wife in his domestic affairs," although regularly hereunto moved by the said defendant, and therein erred.

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Eighth: And there is error in this, to wit, that the said Judge before whom, &c., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid refused to charge the jury as follows: "The plaintiff must prove by a fair preponderance of evidence that defendant enticed away the plaintiff's wife from the plaintiff's residence to a separate residence at 317 Willow Avenue."

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Ninth: Because the Court erred in its charge to the jury as to the law governing the case as appears by the objection and exceptions of the defendant thereto.

Tenth: Because the Court erred in its charge to the jury.

Eleventh: Because said proceedings, verdict and judgment are in divers other respects erroneous and illegal.

JOHN J. FALLON,
Attorney for Plaintiff in Error.

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JOINDEN IN ERROR.

And hereupon, afterwards, to wit, on the
day of A. D., nineteen
hundred and six, the said John Rust, by Weller
& Lichtenstein, his attorneys, comes into Court
and says that there is no error either in the
record and proceedings aforesaid, or in giving
the judgment aforesaid, and he prays here that
the Court here may proceed to examine as well
10 the record and proceedings aforesaid assigned for
error, and that the judgment aforesaid, in man-
ner aforesaid given, may in all things be affirmed,
&c.

WELLER & LICHTENSTEIN,
Attorneys for Defendant in Error.

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