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SUMMONS AND COMPLAINT.

THE STATE OF NEW JERSEY to CHARLES F. HOLDEN.

10
You are summoned to answer the annexed complaint of Oliver M. Davenport
(Seal) in an action at law in the Supreme Court.
And take notice that unless you file your answer to said complaint with the Clerk of the Supreme Court at Trenton within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

WITNESS, WILLIAM S. GUMMERE, Chief Justice 20
of the Supreme Court, at Trenton, this fourth day of December, A. D. nineteen hundred and eighteen.

ENOCH L. JOHNSON,
Clerk.

FRANK VOIGT,
DAVID R. ROSE,
Attorneys.

Complaint.**NEW JERSEY SUPREME COURT
CAMDEN COUNTY.**

10	OLIVER M. DAVENPORT,	}	Action at Law. Complaint.
	<i>Plaintiff,</i>		
	vs.		
	CHARLES F. HOLDEN,	}	
	<i>Defendant.</i>		

Plaintiff, a resident of Collingswood, New Jersey,
20 says that:

1. He was married to his present wife, Alva M. Davenport, May 29, 1913, at Camden, N. J., by Rev. John R. Mason.

30 2. That after his said marriage he and his said wife lived happily together until the month of August, 1918, when defendant, Charles F. Holden, with the intention of injuring plaintiff and depriving him of the comfort, fellowship, society, aid and assistance of plaintiff's wife, said defendant did alienate the affections of plaintiff's wife from him, the said plaintiff, and the said defendant did maliciously, wickedly and unlawfully entice plaintiff's wife away from him, and consorted with her as his own companion.

3. That on several occasions in the months of June, July, August, September, 1918, at the home of plaintiff's wife's parents in Ocean City and Collingswood, N. J., defendant did cunningly, wickedly, maliciously and unlawfully estrange the affections of plaintiff's wife from him, and diverted the same to his own personal advantage; that frequently defendant would throw his wallet containing large sums of money into the lap of plaintiff's wife while she was sitting on a lawn, saying, "Count it"; that on many occasions defendant enticed plaintiff's wife to ride with him in an automobile late at night. 10

4. That in the months of June, July, August and September, 1918, defendant occupied a bedroom opposite the bedroom of plaintiff's wife on the third floor of the summer cottage of plaintiff's wife's parents in Ocean City, and frequently said defendant and plaintiff's wife slept alone on said floor at night, without the protection of a chaperon. 20

5. That in the months of June, July, August and September, 1918, defendant sat upon a couch and fondled plaintiff's wife in the home of plaintiff's wife's parents in Ocean City.

6. On October 4, 1918, plaintiff's wife told plaintiff that she would not see defendant Holden any more, or have anything more to do with him, but, notwithstanding that promise, she has continued to consort with the said defendant and to meet and entertain him at her father's home in Collingswood, and has ridden alone with him in an automobile late at night, and received other attention from him. 30

7. On November 13, 1918, defendant Holden went to the home of plaintiff's wife's parents in Collings-

wood in an automobile which he left standing unlighted and improperly parked in front of said house; that at about 11 o'clock at night a policeman knocked on the door of said house and said defendant and plaintiff's wife came out on the porch together; that there were no lights around the porch and when defendant went away with the policeman plaintiff's wife said to him, the defendant, "Charlie, if you will come back soon, I will wait for you."

10

8. On November 30, 1918, December 1, December 2nd, 1918, defendant Holden went to the home of plaintiff's wife's parents in Collingswood, and on December 2nd defendant and plaintiff's wife went riding alone in an automobile at night, returning to said house at 12.40 A. M. Defendant went into said house at said time and remained with plaintiff's wife until 12.55 A. M., when he came out of said house, got into his automobile and rode away.

20

9. Plaintiff's wife, in the months of August, September, 1918, at her parent's home in Ocean City, N. J., washed defendant's trousers.

10. That in the months of June, July, August, September, October, November, December, 1918, defendant called upon plaintiff's wife at her parents' home in Ocean City and Collingswood, N. J., and still continues to call upon her and pay her improper, wicked and unlawful attention.

30

11. That by means of the premises aforesaid, plaintiff has, from June, 1918, to the present time, wholly lost and been deprived of the comfort, fellowship, society, aid and assistance of his said wife in his domestic affairs which plaintiff during that

time ought to have had and otherwise might and would have had.

12. That by reason of the premises aforesaid the affection of plaintiff's wife for plaintiff was then and there alienated and entirely destroyed.

Plaintiff has suffered great loss, inconvenience, suffering, damage, injury, loss of his wife's company, aid and assistance to the sum of twenty-five thousand dollars for which he brings this suit.

10

FRANK VOIGT,

DAVID R. ROSE,

Attorneys for Plaintiff.

[ENDORSED]

I hereby depute and appoint Joseph G. Smith to execute the within writ. Witness my hand and seal this 6th day of Dec., A. D. 1918.

20

W. Penn Corson, (Seal)
Sheriff.

By James E. Hewitt,
Under Sheriff.

A True Copy.

W. Penn Corson,
Sheriff.

By Joseph G. Smith,
Special Deputy Sheriff.

30

ANSWER.

NEW JERSEY SUPREME COURT

10	OLIVER M. DAVENPORT, <i>Plaintiff,</i>	}	Action at Law. Answer.
	vs.		
	CHARLES F. HOLDEN, <i>Defendant.</i>		

20 The defendant, Charles F. Holden, answering the complaint of the plaintiff in the above stated matter, says:

1st. He has no knowledge of the matters and things contained in the first paragraph of the complaint, but leaves the plaintiff to his proof.

2nd. He denies the matters and things contained in paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the plaintiff's complaint.

30

CHAS. A. COGAN,
Attorney for Defendant.

NOTICE OF APPEAL.

NEW JERSEY SUPREME COURT

OLIVER M. DAVENPORT,
Plaintiff,

vs.

CHARLES F. HOLDEN,
Defendant.

} Notice of Appeal.

10

To Messrs. Rose & Voigt, Attorneys for Appellee:

TAKE NOTICE that the appellant, Charles F. Holden, appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey, from the whole of the judgment entered in this cause on the following grounds: 20

1. The Court erred in refusing to grant a non-suit on plaintiff's opening.

2. The Court erred in refusing to strike out the testimony of the witness, Walter Davenport, as to occurrences after the separation of the plaintiff and his wife. 30

3. The Court erred in permitting the witness, Ada V. Davenport, to testify as to occurrences subsequent to the separation of the plaintiff and his wife.

4. The Court erred in refusing to grant the defendant's motion for a non-suit on the close of the plaintiff's case.

5. The Court erred in over-ruling the following question asked by the defendant to the witness, Alva Davenport, "Has the separation of you and your husband been caused by any action or attention or solicitation of the defendant, Charles Holden?"

10 6. The Court erred in over-ruling the following question to the witness, Alva Davenport, "Did your separation from your husband happen as a result of any affection of yours for Charles Holden?"

7. The Court erred in refusing to grant the defendant's motion for a direction of a verdict.

CHAS. A. COGAN,
Attorney of Appellant.

20

FRANCIS J. SMITH,
Counsel with Appellant.

30

AFFIDAVIT.

NEW JERSEY SUPREME COURT

OLIVER M. DAVENPORT,	}	Affidavit.	10
<i>Plaintiff,</i>			
vs.			
CHARLES F. HOLDEN,			
<i>Defendant.</i>		On Bill, &c.	

STATE OF NEW JERSEY,	}	ss.
COUNTY OF CAMDEN,		

EVA BAILEY, being duly sworn according to law on 20
her oath, deposes and says that on November 13th,
1919, she served the within notice of appeal upon
Messrs. Rose & Voigt, attorneys for appellee, by leav-
ing the same at their office, #522 Market Street,
Camden, N. J., with the person in charge thereof.

EVA BAILEY.

Subscribed and sworn to before me this fourteenth
day of November, A. D. 1919.

WM. S. C. RORAY,	30
<i>Atty.-at-Law of N. J.</i>	

TESTIMONY.

NEW JERSEY SUPREME COURT

10 OLIVER M. DAVENPORT,
 Plaintiff,
 vs.
 CHARLES F. HOLDEN,
 Defendant. } Action at Law.

Taken before HON. JOHN B. KATES, *Judge* and a
Jury, at Camden, New Jersey, October 15th, 1919.

20

APPEARANCES:

For Plaintiff, DAVID R. ROSE, ESQ.;

FRANK VOIGT, ESQ.;

For Defendant, CHARLES A. COGAN, ESQ.

30 Mr. Voigt: May it please the Court and gentlemen
of the jury, this action is brought by Oliver H. Daven-
port against Charles M. Holden for the alienation
of the affections of Mr. Davenport's wife.

We will show that Davenport and his wife were
married in the month of May, 1913, and that they
went to live together as man and wife, and lived
happily together; had one child, and that about June,

the early part of June sometime, which we will show by witnesses, a man by the name of Holden became acquainted with Mr. Davenport and his wife for the first time at a little family gathering at the sister of Mr. Davenport in Trenton, where Mr. Davenport and his wife had gone to spend the evening.

We will show that after this first meeting Mr. Holden began to call at the home of Mr. Davenport in Collingswood, where he and his wife were living 10 with her parents. We will show that he came there in his automobile and invited them along with other members of the family, at first, to go out and take a ride, and then it dwindled down to Mr. Davenport and his wife taking a ride.

We will show further that Mr. Davenport was called away to do State Militia duty at Sea Girt, and that during that time the friendship of Mrs. Davenport and Mr. Holden was more strongly cemented, and when Mr. Davenport came back and went to 20 Atlantic City to work and Mrs. Davenport had gone to Ocean City with her family, to their summer cottage, Mr. Davenport learned that Mr. Holden had gotten a room at Ocean City, and that he was coming down over the weekends ostensibly to see Mrs. Davenport, but we will show that on numerous occasions Mr. Holden would bring Mrs. Davenport in his machine over to Atlantic City to get Mr. Davenport and bring him back to Ocean City over the weekend. 30

We will show that as this went on, Mr. Davenport became displeased and called his wife's attention to the fact that he thought she was in Mr. Holden's company too much, seen together too frequently alone, and it became a bone of contention between them.

We will show you that on one occasion Mr. Davenport came home and he found Mrs. Davenport preparing to press the pants of Mr. Holden, and when he took her to task about this and said, "Why are you doing this? You never do mine"; she never made any reply and kept right on doing it, and he asked her who washed his suit, and she said she washed his suit. Then we will show that the trouble
10 became so bitter between them and her affections became so estranged from Mr. Davenport that their quarrels became more bitter all the time until it culminated in a quarrel one evening when Mr. Davenport was told by Mrs. Davenport to get out and he did, and as he was going by the door she handed him her wedding ring.

He then went to Trenton and got a position, and after he had cooled off, say in about a week or so, he thought the matter over and he wrote his wife a
20 letter, telling her he wanted her to come back to Trenton and live and he would provide a home for her where they could be together and alone. This she refused to do. She never went there. Then Mr. Davenport, finding that she refused to come and live with him, consulted legal advice as to what he should do in the matter, and he told him——

Mr. Cogan: I object, if your Honor please, to his stating that he secured legal advice and what the
30 attorney said.

The Court: The objection is well taken.

Mr. Voigt: It cannot do any harm. It is an opening to the jury.

Mr. Cogan: It is not relevant and cannot be produced as evidence.

The Court: I think the objection is well taken.

Mr. Voigt: We will show that Mr. Davenport made efforts to have his wife come live with him, and that she refused to come and live with him. We will show that Mr. Davenport, realizing that something must be done, made efforts and took means of finding out whether Mr. Holden was still calling at his wife's parents' home to see his wife, and when he found that he was calling there, he notified Mr. Holden that he must desist and he must not see his wife. 10

Mr. Holden refused to comply with his request and continued to go there.

We will show that after he had gone to Trenton he came to the house one day to get some of his belongings—this was after his wife had refused to go back and live with him or go to Trenton. He went to the house and when his wife went to the door, he asked if he might get some of his things. She said he might, and he found Mr. Holden there in the kitchen. No words passed between them. We will also show by our witnesses that Mr. Holden, after Mr. Davenport had left, called at the wife's home, was at the wife's home as late as eleven o'clock at night, and when an officer went there to arrest him for not having lights on his car, Mrs. Davenport came to the door and called, "Charlie, somebody wants to see you." Mr. Holden came from a room in the back part, put on his coat and came to the door, and when he was taken away by the officer, she said, "Charlie, are you coming back?" He said, "I don't 20 30

know." She said, "If you come back, I will wait for you."

We will then show you that after he was released from the Police Court, his automobile was standing in front of the Quint House at two o'clock in the morning.

10 We will show that during his stay in Ocean City, and while Mr. Davenport was in Atlantic City, they were frequently seen coming home in the car alone at two o'clock in the morning without any chaperone, that is while Mr. Davenport was away at work.

We will show that Mr. Holden on several occasions would take his wallet and throw it in her lap and say, "Take care of that for me."

20 We will show that Mr. Holden produced a steady course of effort to take away the affections of Mrs. Davenport from her husband, and we will show that he succeeded in doing that by her subsequent actions and attitude toward her husband, and if we show these facts, we will ask for a verdict for the plaintiff at your hands.

30 Mr. Cogan: On the opening made by counsel for the plaintiff, I ask that a non-suit be entered in this case, because he has not disclosed any act on the part of the defendant in this case to show that he has in any way wilfully alienated the affections of the plaintiff's wife. From his opening, he disclosed that the husband and the wife had a disagreement at Ocean City, and as a result of that disagreement they separated. Any acts on the part of the plaintiff's wife and the defendant in this suit cannot have any effect in this case whatever.

The Court: But in his opening he complained of certain acts that took place prior to the separation.

Mr. Cogan: I say he has not shown that there was any wilful intent on the part of the defendant to alienate the affections of the plaintiff's wife, and therefore if he has not opened to show that, he cannot succeed in this case.

Mr. Rose: The opening was quite full and exhaustive. It showed the situation of affairs which existed between Mr. Davenport and his wife before Mr. Holden appeared on the scene. It shows that Mr. Davenport and his wife were living together. His opening showed that Mr. Holden met Mrs. Davenport at a party sometime in June of 1918, and that after that time Mr. Holden frequently visited Mrs. Davenport at her parents' home, the Quints; that he spent quite a little time there; that he took her out automobiling and that because of those facts from June till August, Mr. Davenport and his wife quarreled, which culminated, as Mr. Voigt says, in Mrs. Davenport telling her husband to get out. Now, as far as the law is concerned, it is well settled in CYC, 21 CYC, page 1616 (Reads) and I respectfully submit that Mr. Voigt's opening gives us the right to go on. 10 20

The Court: I will refuse the motion and allow an exception.

(Exception noted for defendant.)

30

Mr. Cogan: With permission of the Court and gentlemen of the jury, this is, as counsel has told you, an action brought by Oliver Davenport against a man named Charles F. Holden, charging him with the alienation of the affections of his wife. It is true,

as counsel has told you, that the plaintiff and his wife were married in the year of 1913. We propose to show you that the husband and wife did not live happily together from the time of their marriage until the date of their separation——

10 Mr. Rose: I object to this. There is no defense set out in the answer which will entitle Mr. Cogan to go back to 1913. If he wishes to raise that question, he should have raised it and pleaded it in his answer.

The Court: I think the complaint sets forth that they lived happily together.

Mr. Rose: Yes.

The Court: It is overruled.

20 (Exception noted for plaintiff.)

30 Mr. Cogan: As I said before, we will show you that the husband and wife did not live happily together during the period from the time of their marriage until their separation last fall. We will show you that during all that period the husband and wife were always quarreling, and I think we can show you that on two occasions they separated, or were about to do so. During the greater portion of their married life they lived with the parents of the wife, who were Mr. and Mrs. Quint, at Collingswood. We will show you that Mr. Quint is a business man, engaged in business in Philadelphia; that he had a summer home at Ocean City. We will show you that the defendant, Holden, the man sitting here, was intro-

duced to Mrs. Davenport by the plaintiff himself in the month of March of last year; that he afterwards met the family of the wife, Mr. and Mrs. Quint. He called to see the parents of the wife, Mrs. Davenport, and later on in the summer he was invited to spend some time at the summer home of Mr. and Mrs. Quint. He did go to Ocean City and spent the time there.

It is true that during that period Davenport was employed in some shop on the Boardwalk in Atlantic City. Mr. Holden went from Ocean City on the evenings that he was there to Atlantic City with the wife of Mr. Davenport, and usually accompanied by her parents, to bring Mr. Davenport over to Ocean City, from his place of employment on the Boardwalk. That continued for several nights, or almost every evening that Mr. Holden was a guest of Mr. and Mrs. Quint. 10

We will show you that on the day that they mention that Mr. Holden threw his wallet in the lap of the wife of the plaintiff, he did so, but he didn't throw it—he handed it to her. Davenport and Mr. Holden were in bathing suits in front of the cottage of Mr. Quint. He had his wallet stuck in his belt, and they were doing some stunts on the lawn there, and the wallet fell out and he picked it up, and Mrs. Davenport and her mother and some others were sitting on the porch, and he handed it up and said, "Hold this for me," or "Take care of it," and that is the incident about the wallet. 20 30

We will show you further that at no time during the visit of Mr. Holden at the home of Mr. Quint did Davenport complain either to his wife or to Mr. Holden that he objected to any attentions that he thought was being paid to his wife by Holden, and on

the day that he left—or we will go to the day before—Mr. Holden and Mrs. Davenport and another lady, a Mrs. Martin, went to Atlantic City to bring him home, and his wife and he got into some discussion over some trivial thing. It was not over any action on the part of the wife or Mr. Holden; and that continued during the rest of the evening; and the next morning Davenport left the Quint home at Ocean City, and as he was leaving, he said to the defendant

10 Holden, “When you come up in the morning, Charlie, will you bring my dress suit case?” He said, “All right, I will,” and after he left he found out from the folks, or Mrs. Quint, that the wife and he had separated. The next morning, which was Monday morning, he came up and brought the dress suit case of Davenport and took it to his parents’ home in Collingswood—the parents of Davenport also live in Collingswood—and gave it to him, met him on the

20 veranda and handed it to him, and said, “You are making a mistake in separating yourself from your wife,” he says, “Now, promise me you will go down to your wife and live with her.” Davenport told him, “You have nothing whatever to do with it; you are out of this; this is mine, the wife and I.” But before he left him, he did exact a promise from him that he would go down during the week and patch up the dispute that they had had the day before, and we will show you that while Holden was there Davenport took him out and showed him a motorcycle, and

30 promised him that he would go down on the motorcycle and see his wife. Instead of doing that, Davenport went to Trenton to see some relatives that he has there, and while in Trenton met the sisters and brothers-in-law of Mr. Holden and they asked him what he was doing in Trenton, and he told them that

he and his wife were separated, and he was damned glad to be rid of her; that either the woman or the man asked him whether there was any friction between him and Holden, and he said, "Charlie Holden had nothing whatever to do with the wife and I separating."

So the first he knew that Davenport was charging him with any allegation of his alienating his wife's affections was some two months later when he received a letter from Davenport and said that he wanted Holden to stay away from where his wife was living. 10

Now, his wife was living with her parents, Mr. and Mrs. Quint. Mr. Davenport, or rather Mr. Holden, every time he was in the Quint house, was there at the invitation of Mr. and Mrs. Quint and the mother and father of the wife of Davenport, and he is still a friend and a guest at the Quint home in Collingswood. 20

Now, gentlemen, if we show you these facts, we will ask, at your hands, a verdict of no cause of action.

In the pleadings there are no charges made by the plaintiff Davenport, that there has been any wrongdoing between his wife and the defendant Holden, merely charges him with wilfully alienating the affections of his wife, which we deny, and we will show you by the evidence which I am outlining to you. If we do that, we will ask, at your hands, a verdict of no cause of action. 30

OLIVER M. DAVENPORT, SWORN.

Direct examination.

By Mr. Voigt:

- 10 Q. What is your name?
A. Oliver M. Davenport.
Q. Where do you live?
A. In Trenton.
Q. Are you the plaintiff in this case?
A. I am.
Q. When were you married to your wife?
A. 29th of May, 1913.
Q. Will you talk up, please.

20 The Court: It is very important that the last juror hear every word that is uttered. Unless you can speak louder, we will have to make some other arrangements. Speak up so I can hear you.

- Q. When did you say you were married to your wife?
A. 29th of May, 1913.
Q. Where did you go to live?
A. I was living at 909 Penn Street.
Q. Camden?
A. Yes.
30 Q. Did you have any children of that marriage?
A. One boy.
Q. Is he still living?
A. He is.
Q. Did you live happily with your wife up until—

Mr. Cogan: That is objected to as leading.

The Court: It is rather leading.

(Question withdrawn.)

Q. What were the relations between you and your wife until August of 1918?

A. Well, happy. Had family quarrels the same as any one else.

Q. You know the defendant in this case?

A. I do.

10

Q. Is he in court?

A. He is.

Q. Where is he?

A. Right beside Mr. Cogan.

Q. Were you present at the first meeting of Mr. Holden with your wife?

A. I don't think I was. I am not positive of that fact.

Q. Do you understand my question?

A. Was I present at the meeting of my wife and Mr. Holden. 20

Q. The first time they met. Do you know when they first met?

A. Not the exact date.

Q. Do you know the month?

A. No, I don't know that.

Q. Do you know the place?

A. At my sister's, in——

Q. Where?

A. In Trenton.

30

Q. Day time or night time?

A. Couldn't say to that.

Q. What month and what year was it?

A. 1918.

Q. What month?

A. March or April.

Q. How soon after that first meeting did Mr. Holden begin to call at your home?

A. Not until June.

A. At whose invitation did he come there?

A. Mine.

Q. How frequently, after his first coming to your home in Collingswood, did he come after that?

A. Once or twice a week.

Q. And how long did that continue?

10 A. Until they left for Ocean City.

Q. Where did you go when they went to Ocean City?

A. I was in Sea Girt. I was called to Sea Girt.

Q. After that where did you go?

A. Atlantic City.

Q. Did your wife call on you at Atlantic City?

A. One day a week.

Q. Who was with her?

A. Generally the baby.

20 Q. Was there any other time during the week that she called on you than the visit she made with the baby?

A. No.

Q. Did she come over to Atlantic City while you were there, during the week?

A. Saturday nights generally.

Q. How did she come?

A. Mr. Holden's automobile.

Q. Did she always come that way?

30 A. When she came at night.

Q. And who was in the machine besides your wife?

A. No one.

Q. Well, Mr. Holden?

A. Just Mr. Holden. He was driving the machine.

Q. What would occur when they came over?

A. Sometimes they would come in and wait for

me till I got through, and other times they would go up and down the Boardwalk till I was through and meet me out at the gate.

Q. Did you go back with them?

A. Yes, on several occasions.

Q. Did you ever say anything to your wife about these visits in the machine?

A. Only once, after we had gotten into Ocean City.

Q. What did you say to her?

10

Mr. Cogan: I object to that, to anything that he might have said to his wife, if it was not in the presence of the defendant.

The Court: This isn't a criminal case.

(Question withdrawn.)

Q. Did you object to your wife's going to Ocean City with Holden in the machine alone?

20

A. To Ocean City?

Q. To Atlantic City?

A. Only on one occasion I told her I didn't like her riding around everywhere.

Q. You did object, did you?

A. Yes.

Q. And you told your wife about it?

A. Yes.

Q. How long were you in Atlantic City?

A. From the third of July, the night of July 3rd, until the 17th of August. 30

Q. How frequently during that period in those months did Holden bring Mrs. Davenport to Atlantic City in the car?

A. Nearly every Saturday night; not every Saturday night, but whenever he was down there.

Q. When did you leave your wife?

A. 17th of August; 17th or 18th.

Q. What led up to your leaving?

A. I came down stairs the Sunday morning after we had had the fight in the machine, the Saturday night before.

Q. Wait a minute. When did you have this fight?

A. On leaving Atlantic City.

Q. Tell us about that.

10 A. They were going down Virginia Avenue. I was going to work from my boarding house. I recognized the machine and whistled, and they stopped.

Mr. Cogan: When you say "they," say who they are.

20 A. Holden and Mrs. Martin and my wife was sitting in the front part of the machine. I stopped them and got in the rear seat. Mrs. Martin spoke to me. Neither of the other two did. I noticed it, and I rode on down, and when I got down to the pier I got out of the machine and went to work, and that night they met me later and took me around to the boarding house. I got my clothes and went to Ocean City, back to Mr. Quint's house.

Q. Did you, on seeing your wife, say anything to her?

A. Well, I spoke to them all in general when I got in the machine.

30 Q. Did she answer you?

A. She did not.

Q. Then what happened?

A. We didn't say anything.

Q. Where did you go from there?

A. Down to the pier, to the Boardwalk.

Q. When did you go back to Ocean City?

A. That night about half-past eleven.

Q. With whom?

A. Mr. Holden and Mrs. Martin and my wife.

Q. What occurred when you got home?

A. There wasn't anything that happened; we all went to bed.

Q. When did you continue your quarrel?

A. In the morning when I came down stairs.

Q. What happened?

A. I came dwn stairs and my wife and her mother, 10
Mrs. Quint, was getting breakfast. Mrs. Martin was
between the kitchen and dining room. I stopped, and
I don't know just exactly what the argument was
over unless it was from the night before. We argued,
—my wife told me to get to hell out, "you are noth-
ing but a grouch." I asked her if she meant it. She
didn't answer me. I went up and asked her again.
She didn't answer me. I followed her to the shed.
"This is the third and last time; do you mean what
you said?" She didn't answer me. I went to the 20
front of the house and got my traveling bags and
suitcase, and as I went out the door she handed me
the ring off her finger and said, "We are through."

Q. Prior to that time, Mr. Davenport, were there
any times that Mrs. Davenport was taken to task by
you where Holden's name was mentioned?

A. No, sir.

Q. What did you do after you quarreled with your
wife that morning? Where did you go?

A. Right to my mother's house in Collingswood. 30

Q. Then where?

A. Then to Trenton the following Monday.

Q. Did you make any effort later to have your wife
come with you?

A. Not until I got in Trenton.

Q. What did you do when you got to Trenton?

A. Wrote her a letter.

Q. With relation to your wife?

A. What did I do?

Q. Yes.

A. Nothing at all but sought legal advice about a week after I got there.

Q. And as a result of that legal advice, what did you do?

A. Wrote her a letter asking her to come to Trenton to live; that I had two rooms up there.

Mr. Cogan: That is objected to, as to what the contents of the letter was that he wrote to his wife.

The Court: That part of the answer which refers to the contents of the letter will be stricken out.

Q. Did your wife, as a result of your effort to get her to come back with you,—did she come back?

20

A. She did not.

Q. Did she tell you that she wouldn't?

A. Yes, she said——

(Objected to.)

The Court: Yes; he has answered the question.

Q. After this time, Mr. Davenport, did you ever see Holden and your wife together?

30

A. I did.

Q. When and where was it?

A. On December 2nd I received a phone call from Trenton——

(Objected to.)

Q. Just state what you saw.

A. I saw them come home at quarter of one in the morning.

Q. Saw who come home?

A. Mr. Holden and my wife. They got out of the machine and went in the house at 12.45.

Q. Where was this?

A. At Mr. Quint's house in Collingswood.

Q. Was anybody else in the machine besides your wife and Mr. Holden?

10

A. There was not.

Q. Where was that?

A. At Collingswood.

Q. Was there any other occasion on which you saw Mr. Holden in the presence of your wife alone?

A. No.

Q. Did you ever call at your wife's home after leaving there?

A. Yes, on two occasions, to get some clothing that I had left at the house.

20

Q. Who did you see then?

A. My wife.

Q. See anybody else?

A. Her mother, that was all; just she and her mother, and the second time I went back to get some tools I had left there and a bicycle that was in the cellar. At that time Mrs. Quint and Mr. Holden were in the kitchen. He had been working on his machine in the yard; he was working on it when I went in there.

30

Q. Were you present when Mr. Holden threw a pocket book in your wife's lap?

A. Yes.

Q. Where was it?

A. Mr. Quint's house in Ocean City.

Q. Tell the Court and jury about it.

A. We were out in Mr. Quint's side yard playing catch, and Holden was afraid of losing his pocket book, I guess, and he threw it in my wife's lap and told her to watch it for him, and after that we went in bathing.

Q. Were there any other occasions on which he did the same thing?

A. Only the once.

Q. Did you ever see your wife press Holden's
10 pants?

A. I went home one Saturday morning from Atlantic City, and his clothing—a suit of his—were hanging on the line in the yard, and I asked her who was taking care of them. She said she was, she had washed them and she was going to press them.

Q. Was this before you left your wife?

A. Yes.

Q. Did you say anything to her about it?

A. I asked her why she was doing it for him and
20 wouldn't do it for me.

Cross-examination.

By Mr. Cogan:

Q. How old are you?

A. 29.

Q. You were married in 1913?

A. Yes, sir.

30 Q. And you say after your marriage you and your wife went housekeeping on Penn Street in the City of Camden?

A. No.

Q. Where?

A. We went to live with Mr. and Mrs. Quint, but

I was living at 909 Penn at the time I was married.

Q. So after your marriage you went to live with your wife's parents in Collingswood?

A. In Collingswood.

Q. You continued to live with them for how long?

A. I couldn't say just how long it was, because I don't know when it was that we went to live by ourselves.

Q. You were married, up to last fall, about five 10 years?

A. Yes.

Q. During that period of five years, how long did you and your wife keep house together, about?

A. I would say a little over a year.

Q. During the five years you were housekeeping about a year?

A. About a year.

Q. During the rest of the period where did you and your wife live? 20

A. With her parents.

Q. Mr. and Mrs. Quint?

A. Yes.

Q. At Collingswood?

A. Yes.

Q. When and where was the occasion that you met Mr. Holden?

A. At his sister's and brother's in Trenton.

Q. Was that the first time that you had met them?

A. Yes. 30

Q. Was your wife with you at that time?

A. I couldn't say; I don't know whether she was there or not.

Q. Can you tell me when that was?

A. You mean the month?

Q. Yes, about the month.

A. Not exactly, I would say June.

Q. Of last year?

A. Last year; it may have been before that.

Q. You are not sure whether your wife was present in Trenton at the time you met Holden or not?

A. No, because we used to visit without going together. I would go up and she would come up.

Q. Up to that time, you say the month of June, 1918, neither you nor your wife knew Mr. Holden?

10 A. Yes, sir.

Q. Will you tell me the next time after this Trenton occasion when you met Mr. Holden?

A. I couldn't say whether it was our trip to New York; we made a trip to New York. I don't know.

Q. Who do you mean went to New York?

A. My wife's sister, brother-in-law and Mr. Holden.

Q. And when was that, about?

A. The latter part of July, I would say.

20 Q. Of 1918?

A. 1918.

Q. Now, Mr. Holden made the acquaintance of Mr. and Mrs. Quint, did he not?

A. He did.

Q. And he visited their home in Collingswood?

A. Yes.

Q. Your wife and you were living there at that time?

A. We were.

30 Q. When did Mr. and Mrs. Quint go to Ocean City to their summer home, I mean now in 1918?

A. In the month of June, the latter part of June.

Q. Did you go with them?

A. No, I did not.

Q. Did your wife go with them?

A. Yes.

Q. She went down and opened the cottage up?
Where did you stay?

A. I was called to Sea Girt.

Q. And how many days did you spend there?

A. 28th of June till the 3rd of July.

Q. About four days?

A. Yes.

Q. After you returned from Sea Girt, where did you go?

A. Atlantic City.

Q. You obtained employment in a photograph gallery on the Boardwalk?

10

A. On the Steeplechase Pier.

Q. Where was your wife at this time?

A. Ocean City.

Q. Did you have a room in Atlantic City?

A. I did.

Q. Now, the first time that you saw Holden after you went to work on the Steeplechase Pier and she was at Ocean City, what was the first time that you saw Holden?

20

A. I couldn't tell the exact date. It was a Saturday night.

Q. Was it the first Saturday night that you worked there?

A. I couldn't say that.

Q. Under what circumstances did you see Holden then?

A. Brought my wife over to Atlantic City and took me home.

30

Q. Who was in the car beside your wife and Mr. Holden?

A. No one that I saw.

Q. When you went back in the car who was in?

A. No one.

Q. Just you and your wife?

A. Mr. Holden.

Q. Did you, on that occasion, say anything to your wife or Mr. Holden about his bringing your wife to Atlantic City to take you home?

A. I did not.

Q. You thought that it was perfectly proper for your wife and Holden to come to Atlantic City and take you home?

10 A. I thought they were friends, yes.

Q. Now, the next Saturday night, Holden came over from Ocean City in the car?

A. I couldn't tell you how many times he came over and when it was.

Q. At any time that he came to Atlantic City in the car to take you home, was there any one in the car besides Mr. Holden and your wife?

A. Mrs. Martin.

20 Q. Did he ever bring Mr. and Mrs. Quint over in the car?

A. Not that I saw, because they had to come in the car, and I couldn't say who all came in.

Q. This occasion you talk about of Mr. Holden handing your wife his wallet; that was on a Sunday morning, was it not, Saturday?

A. It must have been, because they were the only two days I was home.

Q. You and Holden were in bathing suits?

A. Yes.

30 Q. You were doing some stunts, on the lawn, playing ball?

A. Yes.

Q. Holden had his wallet in his belt?

A. I couldn't say where he had it.

Q. Who were on the porch besides your wife at the time he handed the wallet up?

A. No one.

Q. She was sitting there watching you and him doing these stunts?

A. Yes.

Q. Did you see the wallet fall out of his belt?

A. I did not, because I was out in the yard.

Q. And he handed it to your wife to take care of it?

A. Tossed it over the railing; she was in the swing.

10

Q. When you saw that happen, did you say anything to your wife or Holden about tossing it?

A. No.

Q. You made no comment on it at all?

A. No.

Q. Now, get down to the Saturday night that you met your wife and Holden and Mrs. Martin in the machine in Atlantic City. You got in the machine?

A. I did.

Q. And you went down to the Boardwalk?

20

A. I did.

Q. You finished out your work that evening?

A. I did.

Q. And the quarrel between you and your wife was not because she was in the machine of Holden, was it?

A. No, it was because she didn't speak to me.

Q. I am just going to take you into that quarrel a little bit. You made some remark to your wife which she says she didn't hear, and you said you were not in the custom of talking to yourself, didn't you?

30

A. I don't remember that.

Q. And your wife apologized and said if you had addressed a remark to her she had not heard it; do you remember that?

A. I do, yes.

Q. So they waited for you to finish out your night's work?

A. Yes.

Q. And you went home in the machine with them?

A. I did.

Q. You and your wife sat there in that car? Did you and Holden sit together in the car, on the front seat with him?

10 A. I believe we did, yes.

Q. And your wife and Mrs. Martin on the rear seat?

A. I believe so; I am not sure of it.

Q. And you got dickering with your wife all the way to Ocean City about the slight that she had done to you by not speaking to you?

A. Yes.

Q. Holden tried to fix it up, didn't he? Said to stop arguing about a little trifle like that?

20 A. Don't remember that.

Q. So you did not say that any action on the part of your wife was offensive to you?

A. I had told her I did not like her going around.

Q. You didn't tell her that, or didn't say anything to Holden about it?

A. I did to her.

Q. But not to Holden?

A. No, not to Holden.

30 Q. You say you got home that night and all went to bed. You and your wife did not sleep together that night, did you?

A. No, sir.

Q. So you renewed the quarrel over this slight the next morning?

A. Yes, sir.

Q. The quarrel the next morning was not as a result of any action on the part of your wife and Holden?

A. Only I thought that she was sore at me and wouldn't speak the night before.

Q. You did have some words, and your wife told you that if you persisted in carrying the grouch you had the night before and that morning, you could do one of two things?

A. Not in those words.

10

Q. But it meant the same, didn't it?

A. Yes, a little stronger.

Q. Now, as a result of what she said, you left?

A. I did.

Q. You saw Holden before you left the house that morning?

A. I hollered upstairs that I couldn't carry all my goods.

Q. Did you, when you met Holden that morning before you left the cottage, charge him that his actions with your wife were the result of your separation? 20

A. I did not. He was still in the room.

Q. Had you requested him to bring your suit case and clothes to your home in Camden?

A. Yes, with my uniform; I couldn't carry them.

Q. Did he bring them?

A. Yes.

Q. Did he see you the next day?

A. Yes.

30

Q. Did he have any conversation?

A. Yes, short one.

Q. Did he ask you to go to Ocean City and make up the quarrel you had with her?

A. He did not.

Q. Did you, during that meeting, say to him,

“Charlie, you have always been a friend of mine, and you had nothing to do with our separation”?”

A. I did not.

Q. Didn't make that statement?

A. I did not.

Q. Did you make any statement similar to what I have just spoken?

A. When he asked me—no, not about that.

Q. What did he ask you?

10 A. He asked me if he was the cause.

Q. What did you say to him?

A. When he asked me that, I told him to keep out of it, I would take care of it.

Q. Did you tell him that?

A. I meant it was none of his business; it was our affair, the wife and I.

Q. Did he try to get you to go and make it up with your wife?

A. I don't recall that.

20 Q. Do you remember promising him to go to Ocean City on your motorcycle?

A. I do not.

Q. You showed him the motorcycle?

A. Yes.

Q. You explained the motorcycle to him?

A. Yes.

Q. So that, when you and he separated then, there was no ill-feeling between you and him?

A. Not particularly.

30 Q. Now, you did not go back to Ocean City again?

A. I did not.

Q. Instead you went to Trenton?

A. Yes.

Q. And you have been in Trenton ever since?

A. I have.

Q. You never communicated with your wife in any way until after you had consulted a lawyer, did you?

A. No, sir.

Q. And you say that it was at the request of a lawyer that you wrote your wife a letter?

A. I went and asked for legal advice.

Q. And it was as a result of his advice to you that you wrote a letter?

A. Yes.

10

Q. Offered her a home in Trenton?

A. I did.

Q. But you didn't think of that before you secured legal advice?

A. Sure, I wanted her to come back. I would have taken her back.

Q. After you got to Trenton, you met Mr. and Mrs. Leslie?

A. I did.

Q. Do you remember having a conversation with Mr. and Mrs. Leslie concerning the separation of you and your wife?

20

A. Yes.

Q. During that conversation do you remember telling either Mr. or Mrs. Leslie that you and your wife had separated and you were damned glad to be rid of her?

A. I do not.

Q. Did you make such a statement?

A. I know I didn't.

30

Q. How old is your boy now?

A. Five years the 20th of this December.

Q. And you separated from your wife last August a year ago?

A. Yes, sir.

Q. Where have your wife and child been since you left?

A. With her parents.

Q. Who is supporting them?

A. He is, I guess; Mr. Quint.

Q. You have not contributed anything toward the support of your wife or your child?

A. Only I sent them fifteen dollars right after I left them.

10 Q. You have given your wife fifteen dollars since the separation from her?

A. Yes, sir.

Q. Was that money sent in the same letter that you wrote to her that you wanted to make a home for her, on the advice of your lawyer?

A. No, sir.

Q. I am going to take you back just to the latter automobile trip of your wife, yourself, Mr. Holden and Mrs. Martin. Mrs. Martin and you were
20 not very friendly, were you?

A. No, not overly friendly.

Q. And didn't the quarrel arise as a result of Mrs. Martin being in that machine with your wife?

A. It did not.

Q. Didn't that have something to do with the quarrel?

A. No, sir. Because she didn't speak.

Q. But didn't your grouch start as a result of Mrs. Martin being at the Quint summer home on
30 this particular occasion?

A. No, I won't say that it did; that wasn't what caused the grouch.

Q. Didn't have anything at all to do with it?

A. Well, I didn't like Mrs. Martin at the time.

Q. How long were you separated from your wife before you consulted a lawyer?

A. I would say about two weeks, or a week. I don't know just how long it was.

Q. And during that period of two weeks, did you, of your own volition, make any effort to patch up the quarrel you and your wife had?

A. No, sir.

Q. Where did you first get the idea of suing Charlie Holden?

A. From Al Leslie.

Q. And after you got the information from him, 10 did you consult a lawyer?

A. Not right away.

Q. Later on?

A. Yes, sir.

Q. You did meet your wife in Mr. Voigt's office, didn't you?

A. I did.

Q. Can you tell us the date?

A. No, sir.

Q. Your wife made certain charges against you 20 in his office, didn't she, and which you admitted were true?

(Objected to.)

Q. Didn't she charge you at that time that your trouble was that you carried all your petty little differences home to your parents and took advice from them instead of settling them yourselves?

A. She did.

30

Q. Have you, at any time since you separated from your wife, made a bona fide effort to get her and the child to return and live with you?

A. I did, in Mr. Voigt's office, that night.

Q. Only through counsel?

A. No.

Q. You never sought your wife out alone to talk with her?

A. No, because I knew what she was; I knew she wouldn't come back.

Q. You never made the effort?

A. No, I never made the effort.

Re-direct examination.

10 By Mr. Voigt:

Q. Why did you stop paying your wife any money after you paid her fifteen dollars?

A. Because she didn't stop having Holden at the house.

Q. Who was the lawyer that gave you this advice?

A. Wellington Butler.

20 Q. The night that you met the party in Atlantic City, did your wife talk to you when the car stopped?

A. No.

Q. Did you have any opportunity to have a quarrel concerning the third lady, the other lady that was in the car?

A. That night?

Q. Yes.

A. No.

30 Q. Had you, just previously, had any quarrel regarding this woman?

A. Not that I remember.

Q. Did you speak to everybody in general?

A. As I got in the car.

Q. And your wife didn't reply?

A. No, sir.

Q. Now, on the evening that your wife and your-

self called at my office, did your wife make any promise to you regarding her future conduct with Mr. Holden?

Mr. Cogan: I object. Any statement that the wife might have made to the husband in Mr. Voigt's office cannot bind this defendant. He says I brought it out on cross-examination. I only brought out the statement of certain charges the wife made against him, and I say, if your Honor please, that 10 nothing that the wife might have said to him or he to his wife, can be disclosed here.

Mr. Rose: We submit, that as Mr. Cogan asked the plaintiff here whether he did not admit certain things to his wife in Mr. Voigt's office, gives us the right——

The Court: The question of Mr. Cogan, as I understood it, was in regard to relations that existed 20 between husband and wife. This question goes into the relationship that existed between the wife and Holden; a different relation entirely, and for that reason I will have to sustain the objection. The examination of Mr. Cogan was to establish the lack of affection between husband and wife at that time and did not go into the question of the relationship between Mrs. Davenport and Mr. Holden.

Q. During the conversation that evening, Mr. 30 Davenport, was Mr. Holden the subject of discussion?

(Objected to.)

The Court: That is practically the same question, isn't it?

Q. What caused your grouch the night you met them in Atlantic City?

A. My wife wouldn't speak to me.

Q. No other reason?

A. No.

10 Re-cross examination.

By Mr. Cogan:

Q. Do you remember Mrs. Leslie asking you whether anything on the part of Mr. Holden caused your separation?

A. No, sir.

Q. And you said no, that Charlie had nothing to do with it?

20 A. No.

Q. Will you say it didn't take place?

A. There was a conversation.

Q. Will you say what I have just related did not take place between you and Mr. and Mrs. Leslie?

A. The conversation did, but I didn't make any statement.

Q. Did you make any statement similar to that?

A. Not that I was glad to get rid of her.

30 Q. Did you say to them that she had many times or several times before told you to get out, and that you hadn't done it, but this time you took advantage of it and went?

A. She had told me that before.

Q. She told you that before you ever met Holden?

A. Yes.

Q. So that you and she had quarreled prior to Holden coming into your life?

A. Sure.

Q. You did start to leave her one time, did you not, after the child was born, had your grip packed and was leaving the house and she came out and coaxed you to come back?

A. She didn't come out and coax me to come back. She was upstairs.

Q. Did you start to leave her then?

10

A. Yes.

Q. And it was not anything that she did that caused you to come back? You came back yourself?

A. Yes.

Q. So that you and your wife, as you have stated in this case, did not live happily together during your entire married life?

A. Only occasional quarrels; we were happy, yes.

20

JOHN W. CROSSLEY, SWORN.

Direct examination.

By Mr. Voigt:

Q. What is your occupation?

A. Police officer.

Q. Where do you live?

A. Collingswood.

30

Q. And work there?

A. Yes.

Q. Do you know the defendant in this case?

A. I do.

Q. Is he present?

A. He is, yes.

Q. Do you know Mrs. Davenport?

A. I do.

Q. Is she present?

A. She was a while ago, I think she is in the back, yes.

Q. At any time did you ever call at the Quint home to see Mr. Holden?

A. I did.

10 Q. What was your purpose there?

A. I went there to arrest him for leaving the car outside, for not having his lights lit.

Q. When was that?

A. 13th of November, 1918.

Q. At what time?

A. Little after eleven o'clock.

Q. In the morning or afternoon?

A. Night.

Q. Who did you see when you went there?

20 A. Mrs. Davenport; she came to the door.

Q. And what did you do?

A. I asked if the gentleman that owned the car was inside; she said yes; the gas was dimmed, and she turned it up and called him out of the side room, I think it was,—

(Objected to.)

A. —that is where he came from, the front room.
30 She says, "Charlie, the police officer wants you;" and he came and put his overcoat on. I think he had a coat, and he put it on; anyhow he came out to the car with me and she did also and him and I got in the car and she asked him if he was coming back. He says, "I don't know." She said, "If you come back, I will wait for you."

Q. What time did you say that was?

A. A little after eleven; I don't know exactly.

Q. Were you on duty all night that night?

A. I was till four o'clock in the morning.

Q. Did you see Mr. Holden's car there after his release from the Police Court?

A. I did.

Q. Where was it?

A. In front of Mr. Quint's home.

Q. What hour was that?

10

A. A little after one in the morning.

Q. You are not related to any of the parties in this suit?

A. Not a particle.

Q. How did you come to go down there to arrest Mr. Holden?

A. I had orders from the Mayor.

Q. You didn't know Mr. Holden, did you?

A. No, I don't know him now only by sight.

Q. Have you ever seen Mr. Holden and Mrs. Dav- 20
enport in the car together at Collingswood?

A. Yes.

Q. When?

A. On two or three occasions.

Q. At what time in the day?

A. Night. Well, night time, not in the day at all.

Q. About what time in the evening?

A. About ten or eleven o'clock.

Q. Was any one else in the car beside those two?

A. There were not.

30

Cross-examination.

By Mr. Cogan:

Q. What date was this?

A. 13th of November, 1918.

Q. The home of Mr. Quint is located on a street in Collingswood that is blind at the other end?

A. Yes, Cooper Creek.

10 Q. There is no traffic between that place, a short distance past the end house——

A. Yes, there are houses on the other side of it.

Q. This car was along close to the sidewalk without any lights?

A. And parked wrong beside.

Q. You didn't come across it as a matter of your patrolling your beat?

A. Not on that occasion no, sir.

20 Q. How did the Mayor communicate to you that there was a car on the street without lights on it, telephone or person?

A. In person.

Q. About what time?

A. I judge——

Q. Did you get the message from the Mayor?

A. Directly, yes, sir.

Q. About what time?

30 A. I couldn't exactly say, somewhere around, I don't know, eight or nine o'clock, something like that, maybe between nine and ten o'clock.

Q. And you didn't go to investigate it until after eleven?

A. I surely did; he wasn't there.

Q. The car was not there?

A. No, sir.

Q. When you found the car in front of the Quint

home without the lights on it, did you see any other cars in that block in the same condition?

A. Not one.

Q. And you did take him down before the Mayor?

A. I took him before the Mayor.

Q. And he was fined?

A. Not then. The next night he was ordered to come to the Mayor's office, the next night.

Q. You say that after you took him to the police station and he was released, did you follow him 10 back?

A. No. The next trip I made on my beat I saw his car there.

Q. How many times do you make a beat up this street?

A. Three or four times a night.

Q. And when you passed on this beat, did you take your watch out and look at the time?

A. What is that?

Q. Did you look particularly at the time when 20 you saw this car there?

A. I couldn't help but know it. I know about what time I got there.

Q. Do you make a mental note of every automobile you see standing out in front of houses in Collingswood?

A. No, sir, not by a whole lot.

Q. Then what particularly impressed this on your mind?

A. It is not my duty to do that. I report those 30 things.

Q. Is this the only automobile case you ever reported?

A. No, sir, not by a whole lot.

Q. And what impresses this particular case on

your mind? You remember the day and the hour and after you made the arrest you even shadowed the house until you saw him leave there?

A. I had my orders to arrest this man about his lights.

Q. And you did that?

A. Yes.

Q. Why did you shadow him after he returned?

10 A. I didn't shadow him. The next trip I made around he had his car there and he had his lights on full.

Q. And you took your watch out to see what time it was?

A. I don't say that I did that, because I know what my time is around there.

HARRY DILKS, SWORN.

20

Direct examination.

By Mr. Voigt:

Q. What is your occupation?

A. Engraver.

Q. Where do you live?

A. Darby.

30 Q. Are you acquainted with the parties in this suit?

A. Yes, I am.

Q. Did you ever visit the Quint home in Ocean City?

A. I have.

Q. Were you there during the summer of 1918?

A. Yes, three months.

Q. Did you see the plaintiff's wife there?

A. Yes.

Q. And the defendant in this suit?

A. Yes.

Q. Did you ever see them out late at night in an automobile?

(Objected to as leading.)

A. I have.

Q. Did you ever see the defendant, Holden, and Mrs. Davenport, together at any time? 10

A. I have, several times.

Q. Tell the circumstances.

A. Out walking together and also returning late at night in the machine.

Q. What time do you call late at night?

A. Between twelve and two.

Q. Where were you?

A. I was out surf fishing.

Q. Was any one else in the car at the time? 20

A. No.

Q. When was this?

A. What month?

Q. Yes.

A. July and August.

Q. How many times, during those months, can you recall having seen them?

A. That would be a hard question to answer.

Q. Approximate the number of times.

A. Possibly three or four times. 30

Cross-examination.

By Mr. Cogan:

Q. What is your full name?

A. Harry Dilks.

Q. Harry C. Dilks?

A. No C in it at all; Harry, plain.

Q. And where do you live at the present time?

10 A. Darby.

Q. Pennsylvania?

A. Yes.

Q. What are you doing here today?

A. Sitting in this chair.

Q. What brought you here?

A. To give evidence; that is all.

Q. Voluntary?

A. Voluntary.

Q. You have been quite a friend of Mr. and Mrs.

20 Quint, have you not?

A. Also Mr. Davenport's.

Q. And you have been a guest at their summer home in Ocean City?

A. I have.

Q. Were you a guest there during the past summer?

A. I was.

Q. Why did you volunteer to come here to testify, to attempt to blacken the character of the daughter

30 of your host?

(Objected to as a very improper question.)

(Objection sustained.)

Q. You have very recently become a competitor in business of Mr. Quint's, have you not?

A. I have, but that isn't all——

Q. That is all I want. And you say that on two occasions during the summer of 1918 while you were surf fishing at Ocean City, you saw Mr. Holden and Mrs. Davenport return between one and two o'clock in the morning?

A. I said between twelve and two.

Q. And you say they were alone?

A. Yes.

Q. Did you then, or at any time, communicate that fact to Davenport? 10

A. No, I did not.

Q. Did you then, or at any time afterwards, communicate your information to Mr. or Mrs. Quint?

A. No.

Q. Did you then or since say anything to Mrs. Davenport about returning to the cottage between twelve and two with a man other than her husband?

A. No.

Q. When was it that you did inform the plaintiff in this suit that you saw Mr. Holden and Mrs. Davenport returning between twelve and two? 20

A. November.

Q. November of what year?

A. Last year.

Q. Was it before or after this suit had been started?

A. Well, now, I don't know when the suit was started.

Q. When you saw this thing happen between Mr. Holden and Mrs. Davenport, you didn't think there was anything wrong about it, did you? 30

A. It was none of my business.

Q. But you have since made it your business?

A. I was simply asked to tell what I seen; that's all.

Q. Will you answer me this question: why did you volunteer to come here as a witness for the plaintiff as against your friends, Mr. and Mrs. Quint, and their daughter?

A. I felt I was doing the right thing.

Q. That is the only reason you have?

A. That is the only reason.

Q. Now, you didn't think there was anything wrong between these folks at the time you saw
10 them?

A. I don't know anything about it. All I mentioned is what I seen.

Q. But you come to this court and testify now that you are doing what is right, but you didn't think it was right or wrong to notify the parties?

A. Well, they were there to see themselves.

Re-direct examination.

20 By Mr. Voigt:

Q. You didn't see anything improper between Mr. Holden and Mrs. Davenport?

A. No.

Q. And did you voluntarily, of your own volition, look somebody up and say, "I want to testify in this matter"?

A. No.

Q. Why did you come here?

30 A. I had a conversation with Mr. Davenport.

Q. Did he approach you?

A. We were talking, one day, of the matter. I told him I felt very sorry for him.

By Mr. Cogan:

Q. How many days have you spent waiting for this case to be called?

A. I spent about two hours up to the present time.

Q. Were you here any other day?

A. No, sir.

10

WALTER DAVENPORT, SWORN.

Direct examination.

By Mr. Voigt:

Q. Are you related to any of the parties in this suit?

A. Father of Oliver.

20

Q. Where do you live?

A. Collingswood.

Q. In business?

A. Salesman.

Q. Are you acquainted with the defendant in the case?

A. I am.

Q. Is he present?

A. He is.

Q. Were you acquainted with the married life of your son and daughter-in-law after their marriage?

30

A. I always found it to be, as far as I know, very pleasant. We visited them a number of times and always found that things were going along as nice as any young married folks could; had no knowledge of anything wrong at all.

Q. When did you first know there was any serious difficulty between Oliver and his wife this last time?

A. When he came from Ocean City.

Q. How was that communicated to you?

A. By Oliver.

Q. What did he tell you?

(Objected to.)

10 (Question withdrawn.)

Q. Have you ever seen the defendant and Mrs. Davenport in company with each other?

A. A number of times.

Q. Alone?

A. Yes, sir.

Q. What were the circumstances?

A. Well, mostly in automobile; in and out of the automobile.

20 Q. When was the first time that you saw them together in an automobile alone?—going out or coming home?

A. I think it was the latter part of October.

Q. Of what year?

A. 1918.

Q. Was this before or after your son had left his wife?

A. After.

30 Mr. Cogan: Then I ask that all this testimony be stricken out.

The Court: On what grounds?

Mr. Cogan: Upon the ground that if the wife's affections had been alienated, it had been before October.

The Court: I will admit the question. I think it indicates the fact, whether they did or not take place.

(Exception noted for defendant.)

The Witness: I would like to say a word.

The Court: No, just wait.

Q. When was that that you first saw them?

10

A. The first I have any real knowledge is when I began to make dates of these visits, when they became so frequent that I started in to make the dates of visits. Previous to that I have no positive knowledge as to dates.

Q. When were the times that you saw them in the automobile together, alone?

A. Oh, a number of times.

Q. Well, when? What specific time?

20

A. Can I refer to dates?

Q. When did you make those memorandums that you have?

A. Right at the time.

Q. All right, refer to them then; read it to the jury please.

A. I have dates here running from October 26th, going as high as two and three visits in some particular days, the time averaging from 4.50 P. M. until 1.30 A. M.; some days they have three or four there and away and there and away again up until December the 17th, and I got so disgusted as a father would—

30

The Court: That is irresponsive—only the dates.

A. He was visiting all these times, and I became so disgusted and I stopped putting down the dates

(Objected to.)

The Court: That part of the answer will be stricken out, as to the disgusting part.

10 Q. Have you given those dates, Mr. Davenport? Will you read off the dates so the jury can hear it and the stenographer can get it?

A. Saturday, October 26th, 1918. On the 27th—

Q. What date?

A. October 27th, 1918; October 30th, 1918.

Q. Have you there any memoranda telling how long they stayed?

A. Yes.

Q. Give them, please.

20 A. On October 26th, Saturday, came at 4.50 P. M.; went at 5.30.

Mr. Cogan: Will you state where he came from and where he went?

A. We live within one door of Mr. Quint's, and he stopped at Mr. Quint's.

Q. Mr. Quint's home?

A. Yes.

30 Q. All right.

A. On October 27th he was there,—came at 9.10 P. M., left at 11.15 P. M. October 30th, 1918, came at 11.15,—11 o'clock, and left at 11.15. On November 5th, 1918, came at 8 P. M., left at 11.40 P. M. On November 8th, I haven't got a date for that, that is a visit I haven't got the dates special that

time. Sunday, November 10th, 1918, auto standing in Quint's yard back of house. It had run in there all night. Engine covered for protection; left 9.30 the next day; stayed all night that night. November 13th, came to Mr. Quint's at 10.30, away at 11.15; back at 11.40, and he was there when we went to bed. November 14th, Holden arrived at Quint's at 8.50; was there until we went to bed at 11 o'clock; didn't pay any more attention. Friday, November 15th, Holden came at 7.15 to Mr. Quint's, left at 11.20 P. M. Now, I have got a little note in here covering most everything down to Tuesday, November 26th. "Holden has been at Quint's Friday, November 22nd, Saturday, the 23rd, Sunday, the 24th, Monday, the 25th, and tonight" that is the date of November 26th. Wednesday, November 27th, Holden came at 7 P. M. Alva came out across the street to talk to him, and then away at 7.10. 10

Q. Who is Alva?

20

A. Oliver's wife, Mrs. Davenport. Back at 7.30, stayed all night Thanksgiving; away on 11/29, 8.30. Friday, November 29th, Holden at Quint's 5.30 P. M., hadn't gone away when we went to bed.

Q. What time was that?

A. We made a practice of going to bed between ten and eleven, anywhere between ten and eleven o'clock. Friday, December 17th, Holden came at 6.50; away at 7.15; back with Alva at 9.45, away with Alva and back again at 11.30. That is one time particular that I saw Mrs. Davenport with Mr. Holden. 30

Q. What time was it that he went out with her in the car, morning or evening, the last time?

A. At 9.45.

Q. Night?

A. Night, and back again at 11.30 P. M.

Q. Did they go out or stay in after that?

A. Went in the house; got out and went in the house.

Q. Did Holden go away?

A. That I couldn't answer, because I haven't any diary or any memorandum.

Q. Did you ever see Mr. Holden and Mrs. Davenport come back in the machine early in the night, or early in the morning?

A. Yes.

Q. When was that?

A. The night that they come home from Trenton.

Q. What night was that?

A. I don't remember; there was so many of them.

Q. How late was it?

A. It was around between one and two o'clock or around between half past twelve and half past one.

Q. How came it that you saw them on this occasion?

A. I waited to see them.

Q. Why were you waiting to see them?

A. Because we knew they were coming from Trenton where they had been together.

Q. Did they come home alone, or was someone with them?

A. Alone.

Q. And what time did they arrive?

A. Between half past twelve and half past one; just what the time was I don't remember.

Cross-examination.

By Mr. Cogan:

Q. You are the father of the plaintiff in this suit?

A. Yes.

Q. And how many other children have you beside this boy?

A. Two.

Q. What are they, boys or girls?

10

A. One boy and a girl.

Q. Besides being a salesman, are you an amateur detective?

A. No further than protection, as a father would go toward any child.

Q. Beg pardon.

A. No further than the protection of a child that a father would resort to.

Q. You live where, with respect to Mr. Quint's house?

A. Two doors.

Q. On the same side of the street?

A. Yes.

Q. And when did you first start to make notations of the visits of Charles Holden to the home of Mrs. Quint?

A. October.

Q. What day?

A. I think it was the 26th.

30

Q. When did you first learn that your son and his wife had separated?

A. When he came home from Ocean City.

Q. That was the day after it happened, or the same day?

A. Yes.

Q. Now, did you spend all of your evenings sitting at your front or side window watching the Quint home?

A. No.

Q. Where did you spend all of the time to gather the memoranda you have in that little book?

A. I was in the yard, doing the gardening work around home there, as I always do.

10 Q. And you kept minute details of the day, the hour and the minute that Holden arrived at the Quint home and the hour and the minute that he left?

A. Yes.

Q. And you were somewhat suspicious that there might be something wrong between him and your boy's wife, did you?

A. Yes.

Q. Were you a friend of Mr. and Mrs. Quint?

A. In a way, yes.

20 Q. Did you ever go to Mr. or Mrs. Quint or your son's wife and complain to them about the visits of Holden to the home of Mrs. and Mrs. Quint?

A. No.

Q. Never did?

A. No.

Q. You had your son's interest, didn't you?

A. Had my son's interest?

Q. You were interested in your son, and also his wife?

30 A. Sure; yes.

Q. They are young people?

A. Yes.

Q. And you are the father of three children?

A. Yes.

Q. And yet you didn't think it of sufficient—

(Objected to.)

Q. —importance for the welfare of your son or that of his wife, to complain to the parents of the wife, did you?

A. Didn't think it was of importance enough.

Q. You did not?

A. No.

Q. But you did think it was of sufficient importance to make minute notes of all you have narrated here this morning, did you? 10

A. Yes.

Q. Why did you make these notes?

A. In just such ways that things have wound up.

Q. I didn't get that.

A. In about the way things have wound up, under the circumstances. Now, let me ask you: a married man running with a married woman—

Q. Yet you didn't think that was of sufficient importance to go and consult with the parents of the girl you knew and was friendly with? 20

A. Wasn't he con——

Q. Answer the question; did you?

(Question repeated.)

A. No.

Q. No?

A. No.

Q. Do you make any notations or keep any memoranda as between the wife and yourself? 30

A. My wife and myself?

Q. Yes.

Mr. Rose: That is objected to, as not proper cross-examination.

The Court: And it is immaterial.

Q. I want to go back to one of those notations in that book there. Turn to November 13th, will you?

A. All right.

Q. You start off by saying he arrived at what hour?

A. 5.30.

10 Q. And what time did he leave?

A. 7 o'clock.

Q. What time did he return?

A. 10.30.

Q. And what time did he leave?

A. Around 11.45.

Q. What time did he return?

A. 11.15—what time did I say? 11.40.

Q. What time did he leave?

A. 11.40.

20 Q. That was the last time?

A. Yes.

Q. Have you a telephone in the house?

A. Yes.

Q. Did you call the Mayor up that night and tell him there was a car out in front of Quint's house without any light on it?

A. Yes.

Q. So that is how the Mayor got the information then?

30 A. Yes.

Q. Why did you do it?

A. Because he was disobeying the law.

Q. That is the only interest you had?

A. Yes.

Q. At other times there are other machines on that street without any lights, aren't there?

(Objected to as not proper cross-examination.)

A. Yes, but they are not parking in the opposite direction and without any light beside.

Q. But they are either one thing or the other? They are either without any light or on the wrong side of the street?

A. There are others that have been reported.

Q. Have you ever reported anybody else?

A. I have called the police's attention to it.

10

Q. But no one was ever arrested except this man, was there?

A. I don't know anything about the Police Court.

Q. The only time that you testified you saw Holden and Mrs. Davenport together was the night they returned in the automobile, as you say, from Trenton?

A. The only time?

Q. Yes.

A. I seen them every time I made the note here. 20

Q. You mean at Mr. Quint's home?

A. Yes; there was a number of occasions I saw them together.

Q. Where?

A. Going in and out of the house; getting out of the automobile.

Q. Every time that they went out in the automobile did they go alone?

A. Not always.

Q. Who accompanied them?

30

A. Mr. and Mrs. Quint on one occasion. One occasion is the only one I remember.

Q. Have you a notation of the date when Mr. and Mrs. Quint went with them?

A. Yes.

Q. Tell me when it was.

A. That I can speak of when they went away; when they went to Ocean City.

Q. Beg pardon.

A. When they went to Ocean City.

Q. Have you got a note of it in the book there?

A. I thought I could put my—I thought I had, but I haven't.

Q. Mr. Davenport, that book seems to contain only something that you thought might be against
10 your son's wife and Holden. You have nothing good in there about them, have you?

A. No.

Q. You say you started to make those notations in the month of October?

A. Yes.

Q. Your son separated from his wife in August?

A. Yes.

Q. Did Holden call between August and the time you started to make those notations?

20 A. Call at my home?

Q. Did Holden call at Mr. Quint's? Answer my question. Did Mr. Holden call at the Quint home during the period from August to October when you started to make those notations?

A. Yes.

Q. Why did you start to make the notations in October and not in the month of August or September?

A. It got to be such a steady thing, and I naturally just thought, well, I will make note of this.

30 Q. Is that the reason? It was not because your son came to you and said—

(Objected to as not proper cross-examination.)

The Court: Complete the question.

Q. —that he was going to lay a foundation to sue Charlie Holden, and for you to keep tabs on him?

A. No, sir.

Q. Did he ever say anything like that to you?

A. My son?

Q. Yes.

A. No.

Q. Was it you that suggested to your son that you would do this and he should sue?

A. That thing was never mentioned. The only thing I said, "Oliver, keep yourself clean, as we have always done."

(Recess to 1.30 P. M.)

WALTER DAVENPORT, resumed.

Cross-examination, continued.

20

By Mr. Cogan:

Q. Will you let me see that little book you have? What did you do with the rest of the pages out of this book?

A. There isn't anything missing in the book at all; that is all there is to it.

Q. And there is only one notation in there where you saw Mr. and Mrs. Quint go out with their daughter and Mr. Holden?

A. There is no notation in there. I find that the time I saw them was previous to the dates, the starting of these dates.

Q. So from the time you started to keep the book until you filled it, you never saw Mr. or Mrs. Quint going out in the machine with their daughter?

A. Never; only the one time.

Q. That was before you started to keep the book?

A. Yes, and after I started to keep the book I didn't see them at any time with him.

Q. Then you don't know that they did or did not go out in the machine, do you?

A. No, I couldn't do that.

Q. And the time you were at home from October, when you started to keep the book, until you filled
10 it, you spent watching the Quint house?

A. No, sir.

Q. You spent quite a little time though, didn't you?

A. These things were occurring so frequently when I would be in the yard——

Mr. Cogan: That's all.

20

ADA V. DAVENPORT, SWORN.

Direct examination.

By Mr. Voigt:

Q. Where do you live?

A. Collingswood.

Q. Are you the wife of the gentleman who was
30 just on the stand?

A. Yes.

Q. The mother of the plaintiff in this matter?

A. Yes.

Q. Are you acquainted with the defendant?

A. Yes.

Q. Is he present?

A. Yes.

Q. Of course you know the wife of your son?

A. Yes.

Q. Did you ever see Mr. Holden and Mrs. Davenport go out together or come home together in an automobile, alone?

A. Yes.

Q. When? Can you recall the times that that happened?

A. Not the dates. Mr. Davenport has the dates 10 that I seen him every time that he has seen them.

Q. You saw him every time that was mentioned?

A. Yes.

Q. Were they alone?

(Objected to as leading.)

The Court: Endeavor to abstain from asking leading questions.

Q. What time of the evening was it that you saw them, Mrs. Davenport? 20

A. Early in the evening and late in the evening, both.

Mr. Cogan: I would like the witness to fix the time, whether before or after the separation of the plaintiff and his wife.

The Court: Was this before or after the separation? 30

The Witness: After.

Mr. Cogan: Then I make the same objection to her testimony as I did to that of her husband, that

anything that transpired after the separation cannot be charged as alienation of the affections of the wife by this defendant.

10 The Court: Relative to your objection, I have this to say: that the testimony offered with regard to what transpired after the separation only tends to prove or disprove the fact that the affections were alienated, and cannot be construed as a contributing cause. I will admit it for that particular purpose, but I will not admit that testimony in an endeavor to establish a contributing cause to the loss of affections, but only to establish the fact that the loss did take place, if you can make the distinction that I have in mind. I will only admit it to show that there was a loss of affection and the affection was directed in some other direction, if it was.

20 Mr. Cogan: You are not going to admit that evidence and charge that to the defendant?

The Court: I am only saying that this evidence indicates the condition that existed between husband and wife, but it couldn't be a contributing cause after the separation.

Mr. Cogan: Could not be?

30 The Court: Yes; and counsel on both sides understand this testimony relates to facts that occurred subsequent to the separation as merely dealing with the question of the loss of affection, and not to the cause of the loss.

Mr. Cogan: I will ask your Honor to allow me an exception as to the admission of this testimony.

(Exception noted for defendant.)

By Mr. Cogan:

Q. Did you say, Mrs. Davenport, that on the occasions enumerated by your husband that he saw Mrs. Davenport and Mr. Holden go out in the machine, that you also saw the same thing?

A. Yes.

Q. And they all happened, you say after the separation between your son and his wife? 10

A. Yes.

Q. Did you, at any time, see any of the Quint family go out with your daughter-in-law and Mr. Holden in the car?

A. Yes.

Q. How many times did you see the family of Quint go out with their daughter in Mr. Holden's car?

A. Two or three times. 20

Q. And that was after the separation of your son and his wife?

A. Yes.

OLIVER DAVENPORT, recalled.

Re-direct examination.

30

By Mr. Voigt:

Q. I show you a letter addressed to Mr. Davenport, dated Camden, N. J., signed Charles F. Holden, and ask you whether or not you received that

letter in the course of the mails, and whether or not it was in that envelope?

A. Yes, sir.

Mr. Voigt: We offer it as an exhibit.

Mr. Cogan: May I glance at it?

The Court: What is the objection?

Mr. Cogan: He offers the letter as an exhibit,
10 and I ask permission to see it.

The Court: Oh, yes, I think counsel has a perfect right to see the letter before it is offered.

Mr. Cogan: We have no objection to this letter being offered.

(Letter and envelope offered in evidence, marked Exhibit P1, and read as follows:

(Envelope) Camden, N. J. Sep. 12, 1.30 A. M. 1918.

20 Mr. Oliver M. Davenport,
232 Crestmont Terrace,
Collingswood, N. J.

47 Ellsworth Ave., Trenton.

(Letter)

Camden, N. J.

Mr. Davenport.

Sir:

30 In reply to your letter of recent date expressing your surprise at your folks talking about me, and wanting to know which one of them it was, doesn't matter just now for your actions and attitude in the matter bears them out in what they have said. But I will say that your remark that you are no friend of mine doesn't make me a bit mad for I don't want to do a thing that's not man enough to tell a man what he wants but will resort to small underhand ways about doing it. You said I was seeing your wife against your wishes; you are a liar for

that Monday night after you had abandoned your Wife and child you told me that I was not the cause of your trouble. Since then you have also told my sister and her husband the same thing. Why wasn't you man enough then to tell me to my face that you didn't want me to go to your Wife's Father's house while she was there; there is only one answer because there wasn't man enough in your make up to do it, and further, any man that is a man wouldn't tell strangers personal things 10 about his wife the same as you have done. If you had been the right kind of a husband and payed her the attention that was due her as a wife probably she wouldn't have made that one mistake, but don't think for one minute that you are going to tell me what I will do and what I wount do, and any time that you or that rat of a brother-in-law of yours think you can beat me up like you was telling a party you was going to do why just come along. You know where I live and I'm mostly always at 20 home or in Camden, and when you start to do any sueing, be sure that you know what you are doing for you are liable to get the surprise of your life, and have a few skeletons that have been locked in the closet brought to light, but I thank you for the forewarning because they say that forewarned is forearmed. I will go to the Shipping Board attorney and put the case before him and rest on what he says, so Mr. Davenport let this be the end of you and all the rest that belong to you, for I am 30 sorry for the day I ever got acquainted with your kind.

Charles F. Holden.")

PLAINTIFF RESTS.

DEFENDANT'S MOTION FOR NON-SUIT.

Mr. Cogan: If your Honor please, at this time I wish to renew my motion for a non-suit in this case, for the reason that it has not been shown, on the part of the plaintiff, that any actions of the defendant in this suit caused the separation between the plaintiff and his wife. The fact that the husband and the wife separated does not constitute a
10 cause of action, or the abandonment of the wife by the plaintiff does not constitute a cause of action.

The Court: There has been a loss of affection. That is admitted, isn't it?

Mr. Cogan: Yes.

The Court: Now, the only question is whether I have a right to let it go to the jury to determine
20 whether Holden is the cause of it.

Mr. Cogan: I say that there is nothing in this case at this time to show any action on the part of the defendant to alienate the affections of the plaintiff's wife. Whatever was done by the defendant, any attention that he showed to her, was by and with the consent of the husband. He at no time objected to any actions of Holden or his attentions toward his wife, and he admitted on the stand that
30 when he and his wife separated, it was not because of any attention that Holden had paid to his wife; therefore, I say that it must have been shown in the plaintiff's case that the acts of the defendant, Holden, were wilful, and were an attempt or intent to alienate the affections of the wife from the husband. Now, that is lacking in this case. It has

not been shown by any of the witnesses, and the testimony of the plaintiff himself is as to the acts after the separation. This suit is based entirely upon the alienation of the affections; the affections had to be alienated before the separation——

The Court: Or at the time.

Mr. Cogan: Or at the time, yes, sir. There is nothing in this case at this time that would warrant the defendant in putting in any defense. If his wife don't like him, we are not responsible for that, and they don't show in this case that we are responsible for his wife not liking him, and as I said a moment ago, whatever acts were shown toward the wife were with the consent of the husband. He had full knowledge of everything that was going on, and therefore, I say that he is not entitled to recover, or the defendant is not required to defend the action. If your Honor please, even if this woman has fallen in love—I will go as far as to say if she has shown any affection for this man and it was not by any wilful act that he did, he is not responsible. There are many cases where women will meet men and become very much infatuated with them; a man may not have any regard for her at all. Now, the mere fact that the wife separated herself from her husband or he separated from her—the plaintiff cannot succeed in this case unless he shows that it was from an act of interference on the part of the defendant, and I contend, if your Honor please, that from the testimony that has been offered in the case at this time, it does not disclose any interference on the part of the defendant to separate them, separate

man and wife, and therefore I say I am entitled to a non-suit.

The Court: I will refuse the motion to non-suit and grant you an exception.

(Exception noted for defendant.)

10

DEFENDANT'S TESTIMONY.

CHARLES F. HOLDEN, sworn.

Direct examination.

By Mr. Cogan:

Q. Where do you live, Mr. Holden?

A. In Camden.

20

Q. How old are you?

A. Thirty-four.

Q. Where are you employed?

A. At the New York Shipyard.

Q. What is your trade?

A. Ship fitter.

Q. Do you know a Mr. Oliver Davenport?

A. Yes, sir.

Q. Do you know his wife, Alva Davenport?

A. Yes.

30

Q. Do you know Mr. and Mrs. Quint?

A. Yes.

Q. When did you first become acquainted with Oliver Davenport and his wife?

A. Sunday, March 30th, 1918.

Q. Where?

A. At his father's and mother's house in Collingswood.

Q. Who introduced you to Mrs. Davenport?

A. I was introduced by Mr. and Mrs. Davenport, but at the same time by Mr. Davenport's sister, a Mrs. Nickels.

Q. After the introduction, what was the next time that you saw Mr. and Mrs. Davenport?

A. I should say possibly three weeks after the first introduction. 10

Q. At that time was Mr. and Mrs. Davenport living with her parents, Mr. and Mrs. Quint?

A. Yes, sir.

Q. Where?

A. Cressmont Terrace, Collingswood.

Q. Where did you meet them the second time?

A. I was coming to Mr. Davenport's parents' home with a message from his sister from Trenton, and as I left their house I saw Mr. and Mrs. Davenport, Jr., on the street. I spoke to them and we went back to Mrs. Davenport's father's house for the evening. 20

Q. The next time you met them was where?

A. Practically the same occurred pretty nearly every time I saw them was when I went to Mr. Davenport's parents' home.

Q. Were you a friend of the parents of Oliver Davenport?

A. Yes.

Q. And likewise a friend of the Quints? 30

A. Yes.

Q. Did you, at any time, have Mrs. Davenport in your automobile prior to the going of the Quints to Ocean City?

A. Yes, sir.

Q. Was Mr. Davenport with her on those occasions?

A. Yes, sir.

Q. When did the Quints go to Ocean City in the summer of 1918?

A. In May.

Q. Who invited you to Ocean City?

A. Mr. Davenport asked me to take his wife to Ocean City to her father's place.

10 Q. When?

A. Sunday of June that he went to Sea Girt. If I can refer to my notes I can tell you the date.

Q. Never mind. The day he went to Sea Girt he requested you to take her to her parents at Ocean City?

A. Yes.

Q. In your machine?

A. Yes.

Q. Who went along?

20 A. Mrs. Davenport and myself. After I went from her father's home I left him at the armory. We waited until the soldiers left the armory, until we couldn't see them any further, and then we started for Ocean City.

Q. Mr. Davenport knew about you taking her to Ocean City?

A. Yes.

Q. You say it was at his request?

A. Yes, sir.

30 Q. Who invited you to visit Ocean City?

A. After that first visit when I brought Mr. Quint up to Camden he told me that if at any time during the summer, if I wanted to come down for the week end, his home was open to me.

Mr. Rose: Who said that?

The Witness: Mr. Quint.

Q. Did you accept his invitation to spend the week ends?

A. Yes.

Q. The first week you went to Mr. Quint's summer home, did you take Mrs. Davenport out in the automobile?

A. Not without her father and mother being along.

10

Q. Did they go with you?

A. Yes, sir.

Q. Where did you go?

A. We took a ride to Wildwood and Cape May.

Q. The first Saturday that you went to Ocean City, did you go over to Atlantic City to bring Oliver Davenport home?

A. After the 4th of July when he went to work at Atlantic City.

Q. Who would go along with you on those trips 20 to Atlantic City?

A. Well, Saturday nights when I would go over after Mr. Davenport, there was no one in the car except me and her from Ocean City until we arrived at Atlantic City.

Q. Except the last one?

A. Except the last one.

Q. And who was in the car on that last trip to Atlantic City?

A. Mrs. Davenport, Mrs. Martin and myself. 30

Q. During any of the trips that you took Mrs. Davenport to Atlantic City to meet her husband, did Mr. Davenport at any time say to you that he did not want you to take his wife out in your machine?

A. No, sir; never.

Q. And on this last Saturday night that you went over there, as I understand, he informed you that he had given up his position on the Pier?

A. Yes, sir.

Q. Now, Mr. Holden, will you tell the Court and jury, as briefly as you can, and as nearly as you can remember, what happened from the time you reached Atlantic City and Mr. Davenport whistled, until the next morning.

- 10 A. My car was going through Pacific Avenue towards the street—I think it is Pennsylvania Avenue where the Pier is—near the Steeplechase Pier, where I had been in the habit of parking and waiting for Mr. Davenport. As we turned the corner where the post office is, we heard a whistle. Mrs. Davenport says, “That is Oliver.” I immediately stopped, and Mrs. Davenport walked across the street. Mrs. Davenport says, “What is the idea?” “I have finished down at the Pier.” Mrs. Martin
- 20 says, “Don’t you see anybody?” He looked up gruffly; she said, “Aren’t you going to kiss me?” He said no. He got in the car, in the rear seat. Mrs. Martin and Mrs. Davenport and I were on the front seat. I went down the Avenue until I got a place to park the car. He said how long he would be on the Pier. I sat in the car. When the women folks came back, Mr. Davenport hadn’t come from the Pier. We waited ’till he came out from the Pier. They got in the back seat. I was in the
- 30 front. He said something, I couldn’t hear it. It was addressed to Mrs. Davenport, presumably she didn’t hear it. He said he wasn’t in the habit of talking to himself. She said if she had heard him say anything to her she would have answered him. We spoke of something to eat; he knew of a place to go to. He wouldn’t get out of the machine, and

I took the two women and he wouldn't go in. We came out, the women on the rear seat, I on the front seat when the car started to make Ocean City, there was a quarrel. I tried to break it up. It didn't do any good; nagging back and forth; when the car reached Ocean City I put it in the garage and went to bed.

Q. Now, Mr. Holden, from the time he got in the car and had whistled and you had stopped, till the time you got to Ocean City, was the argument to do 10 with you and his wife?

A. No, sir.

Q. At any time did the husband charge you or his wife with any intimacy?

A. Not that I know of; never charged me.

Q. I mean on this night or at any other time.

A. No, sir.

Q. Now the next morning was a Sunday morning after this argument of the night before; it was Sunday, was it not? 20

A. Sunday morning, yes, sir.

Mr. Rose: Fix the date.

The Witness: 18th of August, 1918.

Q. Tell us what you know about that Sunday morning. Before Davenport left, did he come to you?

A. Yes, sir. 30

Q. Did you go to him?

A. No, sir.

Q. Tell us what he said.

A. I was standing in the room that I had been occupying on the second floor. When Mr. Davenport walked past the door was opened. I was fully

dressed. He said, "Charlie, will you take my uniform up to Collingswood when you go up tomorrow;" he said he wasn't going with us. "No, I am going today;" and he came downstairs with his handbag and went out; that is all I know.

Q. Later on in the day you learned he had left?

A. Yes.

Q. Did you take his uniform or his grip to his home in Collingswood?

10 A. Yes.

Q. Tell us what conversation you had at his parents' home in Collingswood on that morning?

A. After working hours that Monday afternoon I left the shipyard with his grip. I went to his parents' home in Collingswood. He was in the porch hammock, presumably asleep. When I went up he kind of waked up. I said, "Here, Charlie, is your grip" and he immediately told me he had bought a motorcycle. I said, "Did you get a good bargain?" He said he did, and we went out to look at it. I said, "Charlie, don't you think you are a little bit hasty the way you did with Alva? Don't you think you ought to consider it? She is your wife and you have a little child. Why don't you go down this week and patch it up?" He didn't want to humble himself and make it look as if he was looking over it. I even told him the shortest route to Ocean City so he would have no trouble in getting there on his motorcycle. He as much as
20 promised that he would go, and he as much as
30 promised that he would come to my garage where the car is, but he never showed up.

Q. Did he, on that occasion, charge you with being the cause of his wife's and his separation?

A. No, sir.

Q. After the Quints came back from Ocean City, did you visit their home in Collingswood?

A. Yes, sir.

Q. Did you go there to see Davenport's wife or to see Mr. and Mrs. Quint?

A. To see Mr. and Mrs. Quint.

Q. Did you go there at their invitation?

A. Yes, sir.

Q. During all the visits you made to the Quint house, would you find Mr. and Mrs. Quint there? 10

A. Yes, sir.

Q. Any time that you went out in the automobile after the return from Ocean City, did you take Mr. and Mrs. Quint along with you?

A. Yes, sir, a number of times.

Q. You heard the testimony of the father of Oliver Davenport in which he says on one occasion you returned home alone at one o'clock in the morning, alone with Mrs. Davenport in your car. Will you tell the jury what that occasion was? 20

A. It was on December 1st, Sunday night. My mother and sister had intended a little surprise for me that Sunday at Mr. and Mrs. Quint's house in Collingswood. Being the next day was my birthday they thought they would come down and surprise me. My car had been acting very mean all the way along the whole day Sunday, I was trying to get the car in condition. After supper the car was going enough to go out in. After supper I took my sister, brother and mother to Trenton and Mrs. 30 Davenport was alone. Immediately after I got there I turned the car around and went to Collingswood so that I wouldn't have to stop the motor. I returned to the Quint home in Collingswood at one o'clock.

Q. Did Mr. and Mrs. Quint know that their daughter was going to Trenton with the party in this automobile?

A. Yes, sir.

Q. They knew when you returned that night?

A. Yes, my sister requested that Mrs. Davenport be allowed to go along——

(Objected to.)

10

The Court: That will be stricken out.

Q. At any time since your acquaintance with Mrs. Davenport, have you, in any way, attempted to alienate her affections from her husband?

(Objected to as leading.)

20

The Court: It will be admitted.

(Exception noted for plaintiff.)

A. No, sir.

Q. Since the separation of Mrs. Davenport and her husband, Mrs. Davenport has not lived at any place except the home of her parents?

A. No, sir.

Q. You are a single man?

A. No, sir. Separated; my wife and I are separated.

30

Q. And how long have you been separated from your wife?

A. It will be three years this coming January.

Q. The occasion mentioned in the complaint that you gave your wallet to Mrs. Davenport and told her to cover it or keep it or take care of it; will

you explain briefly, telling the jury about the instance of the wallet?

A. The only incident of the wallet—I was at Ocean City. Mr. Davenport was over on a vacation of a couple days from Atlantic City. We had been to the beach swimming; had returned to the house, still in our bathing suits. Mrs. Quint wanted to do some shopping, I think. I didn't have my license card with me. I went in the house and took out my wallet and put it in my belt. She went on the errand and Mr. Davenport and I started to fool, catching ball, and as we were standing on our hands with our feet against the house, my wallet dropped out of my bathing suit belt. I picked it up, and Mrs. Davenport and her mother were on the porch. I went to the side of the porch and asked her to hold it for me. 10

Mr. Rose: Asked who?

20

The Witness: Asked Mrs. Davenport to hold it for me.

Q. The husband was right there?

A. Right alongside of me.

Q. There has been some mention made about the wife washing or pressing some clothes for you. Tell the jury about that.

A. I had a pair of trousers that I had been using to run the car. They weren't the best, but they were good enough to work around in. I had soiled them in the grime and dirt from the car. I requested Mrs. Quint if she would allow me the use of the wash tub 'till I washed the trousers. Mrs. Davenport was at the house the same morning. She said, "You and Oliver go out and play ball; I will 30

take care of the trousers." Mrs. Quint and her daughter probably washed the trousers together. When I came back the trousers had been washed and Mrs. Quint was pressing them.

Q. And not Mrs. Davenport?

A. No, sir.

Q. Mr. Holden, you heard the testimony this morning of a man named Dilks?

A. Yes, sir.

10 Q. You have heard him relate, on two or three occasions, he said, he saw you and Mrs. Davenport return in your car anywhere between eleven and one o'clock.

A. Yes, sir.

Q. Did that happen or not?

A. No, sir, my car was never out when we were at Ocean City.

Mr. Rose: I object to that. The question is answered. He said no.

Q. What is the latest time that your car was out when you were at Ocean City at Mr. Quint's house?

A. Bringing Mr. Davenport from Atlantic City, which would be all the way from twelve to half past twelve at night.

Q. How many times did you bring him from Atlantic City in your car?

30 A. Practically every Saturday night from the time he went to work until he finished.

Q. And about how many Saturday nights was that?

A. I will refer to my notes and can tell you exactly.

Q. About how many?

A. I should say seven. That will cover the period of his employment.

Q. And you might have returned with him as late as one o'clock?

A. I don't know whether it has been as late as one. It has been around half past twelve though.

Q. Did you ever return to the Quint home in Ocean City in that car with Mrs. Davenport alone?

A. No, sir.

Q. So that on the nights that Dilks claims he saw 10
you and Mrs. Davenport return, Mr. Davenport was also along?

A. Yes, sir.

Q. You were arrested for leaving your car parked in front of Mr. Quint's home?

A. Yes.

Q. And fined?

A. Yes.

Q. Why did you leave your car in the street over
nightfall without any light on it? 20

A. My battery was in bad condition due to the voltage regulator not working properly, and I didn't want to have the car standing in front of the house with the lights burning and not have any lights burning while I was running through the streets; therefore I put my lights out.

Q. Did you return to the Quint house after you had been taken to the police station at Collingswood?

A. Yes, sir.

Q. For what purpose? 30

A. To let Mr. Davenport know what the outcome was of my being arrested, which was natural, a guest at a person's house.

Cross-examination.

By Mr. Rose:

- Q. Where did you live, Mr. Holden, before you came to Camden?
- A. In New York.
- Q. How long did you live in New York before you came to Camden?
- 10 A. Lived in New York all my life.
- Q. When did you move to Collingswood?
- A. I never moved to Collingswood.
- Q. Where is your residence now?
- A. My residence now is in Camden.
- Q. When did you first go to the Quint's home to live?
- A. I have never lived at the Quint's home.
- Q. Didn't I understand you to say you had a room in their home?
- 20 A. No, sir, I did not; I said when I visited Ocean City over weeks' ends.
- Q. When did you first go to Ocean City to visit over the week ends?
- A. In June.
- Q. Of what year?
- A. 1918.
- Q. And that was at the home of the parents of Mrs. Davenport?
- A. Yes, Mr. and Mrs. Quint.
- 30 Q. How large a house is that?
- A. A house of about nine rooms.
- Q. Where was your room?
- A. On the second floor front.
- Q. Where was the room of Mrs. and Mrs. Quint?
- A. Right adjoining the room that I had.

Q. Where was the room of Mrs. Davenport?

A. On the third floor.

Q. Who else lived in that house during that time?

A. No one outside of when Mr. Dilks would come down over Saturday week ends; they had a room on the third floor where Mrs. Davenport slept.

Q. Did you ever spend any time alone with Mrs. Davenport in the Ocean City home?

A. No, sir.

Q. You went out with her in the automobile at 10 night alone?

A. Only to go for her husband.

Q. Never at any other time?

A. No, sir.

Q. When you came home you retired to your own room?

A. Positively.

Q. Never spent any time with her there?

A. No, sir.

Q. What about this occasion when you said Mrs. Quint told you and Oliver to go out while she washed your trousers? 20

A. Yes, sir.

The Court: The direct testimony is——

(Question withdrawn.)

Q. You say the Quints went to Ocean City in May of 1918? 30

A. Yes.

Q. How do you fix that time?

A. It is presumably; I am not saying just exactly that it was in May, or the first part of June.

Q. But you think it was in May of 1918?

A. I won't be positive that that was when they went to stay down.

Q. And at that time you had been visiting Mrs. Davenport at the Quint home, had you not?

A. Been visiting?

Q. You had been visiting Mrs. Davenport at the Quint home, had you not?

A. Not Mrs. Davenport, no; Mr. and Mrs. Davenport.

Q. Was Mr. Davenport living in the house at that time?

10 A. Mr. Davenport was, yes.

Q. Did you and Mrs. Davenport ever go in to bathe together at Ocean City?

A. Not without Mr. Davenport being there when they were living together.

Q. You never went alone?

A. No, sir.

Q. On this occasion when you took Mrs. Davenport in your automobile to Trenton——

A. Yes.

20 Q. —you say you and Mrs. Davenport were alone?

A. Coming back.

Q. What time did you leave Trenton?

A. Possibly eleven o'clock.

Q. What time did you arrive in Collingswood?

A. Around about half past twelve, maybe.

Q. Did you ask Oliver Davenport for permission to bring his wife alone in your automobile from Trenton to Collingswood on that night at eleven o'clock?

30 A. He wasn't living with his wife.

Q. I ask you if you asked Mr. Davenport for permission.

A. No.

Q. When you got back to Collingswood on that night, where did you spend the night?

A. I didn't spend the night.

Q. Where did you stay that night?

A. I went to my place in Camden.

Q. What time did you leave Davenport's that night?

A. I wasn't at Davenport's at all.

Q. Quint's, that night.

A. Possibly I was at the house fifteen minutes after we returned.

Q. You returned about one o'clock in the morning, or half past one?

10

A. Possibly that.

Q. You said half past one.

A. No, I won't say half past one. I said it was after half past twelve.

Q. Did you stay, probably, 'till one o'clock?

A. No, I was away from the house before one o'clock.

Q. When you and Mrs. Davenport got home that night to the Quint house, where were Mr. and Mrs. Quint?

20

A. Upstairs.

Q. In bed?

A. I suppose so.

Q. You didn't see them when you got back?

A. Didn't look for them.

Q. And you spent how long?

A. Fifteen minutes.

Q. It took you fifteen minutes to say good-bye?

A. Not necessarily. I washed my hands and had a drink.

30

Q. What were you talking about?

A. Lots of things; the condition of the machine and the folks being down.

Q. Did you talk about your ride from Trenton?

A. I suppose so.

Q. What else?

A. Ordinary subjects, probably.

Q. What night was that?

A. That was the night of December 1st.

Q. You say that that was the night you were to have a surprise party?

A. That was the night of the day when my mother and sisters gave me a surprise.

Q. That was to be given in Quint's home?

A. Yes.

10 Q. Why in Quint's home?

A. Because I had no home anywhere else; Mr. Quint offered his home.

Q. Did you ask Mr. Quint's permission to have a surprise party in his home?

A. How could I ask him if I didn't know anything about it?

Q. You have referred to Mrs. Davenport on a number of occasions as "Alva"; is that what you mean?

20 A. Yes.

Q. How long have you been calling her Alva?

A. Ever since Mr. Davenport gave me the privilege of calling her Alva.

Q. When was that?

A. When I met them he said, "Mr. and Mrs. Davenport is too stiff," and he called me Charlie from the first day he met me.

Q. And when you are alone with Mrs. Davenport, you call her Alva, do you?

30 A. Yes, sir.

Q. And about how often would you stay Saturday and Sunday in Ocean City in the Quint home?

A. From the time that I first took Mrs. Davenport down 'till they returned, when I went to see my sister in Trenton.

Q. That would be from May——

A. From early June——

Q. —till October?

A. Yes.

Q. And you were down there nearly every Saturday night?

A. Yes.

Q. And spent Sunday?

A. Yes.

Q. And slept in that bed alone?

10

A. Yes.

Q. And associated with the Quint family?

A. Yes, sir.

Q. On the night when Policeman Crossley went to the Quint home to arrest you for not having a light on your automobile, you say that you were taken away about eleven o'clock at night; is that so?

A. I suppose it would be around that.

Q. And you were taken to the Mayor's office?

20

A. The Mayor wasn't at his office.

Q. You went to the Mayor's home on Haddon Avenue? You had a hearing, didn't you?

A. No hearing. He asked me why I left the car standing there.

Q. What time did you get back to the Quint home?

A. I suppose it might have taken me twenty minutes from when we met him to go to the Quint home.

Q. And you say you went back to let Alva know what the outcome was of that suit?

30

A. Yes.

Q. Why were you so anxious or interested to let Alva know what the outcome was?

A. Who else should I let know?

Q. Why should she be so particularly interested in it?

A. Wouldn't you, if you were a guest?

The Court: Answer the question.

Q. Why didn't you go and tell somebody else?

A. I didn't know of anybody else.

Q. Why didn't you tell your own wife what the
10 outcome of it was?

(Objected to.)

The Court: It is irrelevant and immaterial and will be stricken out.

Q. But you felt it was important to go back and tell Alva what the outcome of that arrest was?

A. Certainly.

20 Q. And you got back about twelve o'clock at night?

A. No.

Q. What time did you get back?

A. I don't know; I wasn't looking at the clock.

Q. But close to midnight?

A. May have been.

Q. Who did you find there?

A. Mrs. Davenport.

Q. Who else?

A. No one else on the ground floor.

30 Q. Where was Mrs. and Mr. Quint?

A. Upstairs.

Q. In bed?

A. No, sir.

Q. Who were you visiting that night?

A. I took Mr. Quint to Swedesboro to get his wife, who was visiting friends, and brought them back.

Q. And Mrs. Quint went upstairs?

A. No, sir.

Q. You heard the policeman testify that when he came there you and Mrs. Davenport came alone to the door?

A. Yes.

Q. You heard him testify to that?

A. Yes.

Q. And you heard him testify that Mrs. Davenport said, "Don't be long, Charlie; I will wait for 10 you." Isn't that so?

A. Yes.

Q. So you and Mrs. Davenport were alone on the first floor when the officer came? That's true, isn't it?

A. Yes, sir.

Q. You were alone, weren't you?

A. Yes.

Q. Did you ask Mr. Davenport's permission to be alone with his wife that night? 20

A. No; I didn't know where Mr. Davenport was.

Q. And you knew you would be alone with Alva when you came back, didn't you?

A. No, I didn't know it.

Q. Is that your letter (showing witness Exhibit P1)?

A. Yes, sir.

Q. Is that your signature?

A. Yes. 30

The Court: That has been offered and marked?

Mr. Rose: Yes.

Q. You said, "Don't think for one moment

that you are going to tell me what I will do and what I won't do." What did you mean by that?

A. In answer to his letter he sent me.

Q. Have you got that letter?

A. Yes.

Q. Where is it?

A. In my pocket.

Q. Produce it.

10 (Witness produces letter.)

Q. So your reply was in answer to this part of his letter signed "Oliver Davenport" and this is what he says: "I am also told that you are still calling at my wife's father's house on the pretense of being a friend of mine. I want it stopped right here and now. I am no friend of yours and you are no friend of mine." That was your reply, was it?

20 A. Yes; you might read my reply.

Mr. Cogan: Will you offer that?

Mr. Rose: No, I won't offer it.

Mr. Cogan: Then I will offer it.

The Court: All right, it will be marked.

30 (Letter offered in evidence, marked Exhibit D1.)

*Letter above
referred to was
lost in court.
Chas. M. Cogan*

ALVA DAVENPORT, SWORN.

Direct examination.

By Mr. Cogan:

Q. Where do you live at the present time?

A. Collingswood.

Q. You are the wife of Oliver Davenport?

10

A. I am.

Q. And you were married to him in the year 1913?

A. I was.

Q. And where do you live at the present time?

A. Collingswood.

Q. With whom?

A. With my parents.

Q. And who are they?

A. Mr. and Mrs. Quint.

20

Q. And how long have you been living with your parents?

A. Always with the exception of about a year that we were housekeeping.

Q. Have you any children?

A. One.

Q. How old is it?

A. Five.

Q. Boy?

A. Boy.

30

Q. And with whom is he?

A. My parents.

Q. When did you and your husband separate?

A. August, 1918.

Q. When?

A. 1918.

Q. Where did the separation take place?

A. In my father's home in Ocean City.

Q. You are acquainted with Charles F. Holden, the defendant in this suit?

A. Yes.

Q. When did you first become acquainted with him?

A. On Easter Sunday, 1918.

Q. Where?

10 A. At the Davenport home in Collingswood.

Q. Who introduced you?

A. Davenport's sister.

Q. Did your husband meet him at the same time?

A. At the very same time.

Q. Had you known him prior to that introduction by Mr. Davenport's sister at Collingswood?

A. Just from hearing about him; that is all I knew about him.

20 Q. After the introduction, what was the next time that you saw Charles Holden?

A. I don't remember.

Q. Your parents have a summer home at Ocean City?

A. Yes.

Q. Did they go to that summer home last year?

A. Went in May sometime.

Q. Did you go with them at the time they opened the home?

A. No.

30 Q. Did your husband go?

A. No.

Q. Where did you stay?

A. At my father's home in Collingswood.

Q. And your husband was there also?

A. Yes.

Q. Do you remember the occasion of your husband going to Sea Girt Camp?

A. I do.

Q. He left on a Sunday, as I understand it.

A. Sunday morning.

Q. Do you remember the date? He has testified it was June 28th.

A. Yes, I guess that would be right.

Q. And did you accompany him to the station that morning?

10

A. Not to the station; to the Armory.

Q. And who brought you to the Armory that day?

A. Mr. Holden.

Q. Take your husband also?

A. Yes.

Q. After you left your husband at the Armory, what became of you and Mr. Holden?

A. At Davenport's request Mr. Holden took me to Ocean City.

20

Q. And did he take you to Ocean City in his car?

A. He did.

Q. And did he come to Ocean City after that? Mr. Holden.

A. He came down the 4th of July.

Q. To see you?

A. No; Davenport promised to meet him the 3rd of July from Sea Girt, and Mr. Holden told me if he would come and meet him he would bring him down to Atlantic City and he failed. Mr. Davenport never showed up.

30

Q. At whose request did Mr. Holden visit Ocean City?

A. Davenport first asked my father if he could bring Mr. Holden down over some week ends. My father said yes.

Q. Did he come there to see you?

A. No, he came to see all of us.

Q. And how many visits did he make there during that summer, about; you won't have to be exact.

A. I imagine around six or seven weeks during the time that Davenport was working at Atlantic City.

Q. That was week ends?

A. Yes.

10 Q. And every occasion that he came down, did he take you over to meet the husband in Atlantic City?

A. He did. Davenport requested it.

Q. Davenport requested it?

A. Asked us to come over after him.

Q. During any of those trips, did your husband complain to you, or in your presence to Mr. Holden, about his bringing you over there in the machine alone?

A. Never did; for he asked us to come.

20 Q. You know something about this case of the wallet that has been mentioned, do you not?

A. Yes.

Q. Were you and your mother sitting on the veranda that morning?

A. Sitting in a swing on the front porch.

Q. And your husband and Holden were——

A. Down on the lawn.

Q. Having a little horse-play on the lawn?

A. Yes.

30 Q. What happened as to the wallet?

A. Mr. Holden was doing somersaults and standing on his head, and Davenport was taking his picture, and on several occasions the wallet dropped out of his belt and he handed it to me and asked me to put it on the table, which I did, and the wal-

let was never opened for I was never asked to count the money inside of it.

Q. Will you tell us the occasion of the pressing of the trousers? Your husband testified that you washed and pressed a pair of trousers belonging to Charles Holden at your summer home in Ocean City. Tell us about that also.

A. Mr. Holden asked if we were going to use the tubs. Mother said no. "Would you mind if I used them to wash out a pair of greasy trousers?" "If 10 you want to work on the machine, go out and I will do them." She rubbed them a while and I rubbed a while and she showed me how and we hung them up; so she had as much as I did to do with it.

Q. Coming down to the night when you and your husband had the disagreement, that is, the night that you and Mrs. Martin were in Mr. Holden's car at Atlantic City, when your husband whistled. Will you tell the jury about the incident?

A. Yes. The quarrel started the Wednesday 20 previous to that night.

Q. What was the occasion of the quarrel that started the Wednesday night?

A. I invited this friend down whom Davenport did not like.

Q. What friend?

A. Mrs. Martin.

Q. Go on; tell us about inviting her down.

A. The Sunday before Davenport said he was coming over from Atlantic City for two or three 30 days vacation, Mr. Holden had two or three days off. My father and mother had come over at the same time, so that we will all be together, which we did, and on several occasions Davenport tried to find occasions to get away and go fishing and left us alone. On Wednesday night he saw the dress suit

case up on the third floor, and he asked whose it was and I told him it was Mrs. Martin's. He asked how it got down, and I said my father stopped and brought it down, as Mrs. Martin was coming down to see her father. He didn't like her and didn't want her down and our quarrel started from then.

Q. Did he say anything at that time that his two or three days vacation would be spoiled by reason of Mrs. Martin's presence? At any rate, go on and
10 tell us about Atlantic City, about the machine.

A. When we got to Atlantic City, he was standing on the corner. I heard him whistle. I said, "That is Oliver standing over there." I knew his whistle. So we stopped the machine and we came over. I was surprised to see him in town as I thought he was working. I said, "What is the idea?" He said, "I want to get rid of the job." I was provoked, because he is always giving up his jobs and never holding a job at all. So we went up
20 to the Pier, he sitting on the rear seat, and we went up to the Pier, and he went in and got what things he had to and came out again and then he came in the machine and said something which I did not hear and I did not answer him, and he said he wasn't in the habit of talking to himself and the quarrel started from that. We went down Atlantic Avenue to get something to eat and we asked him to go in and he wouldn't go in because he had too big a grouch and he had the grouch all the way
30 home and when we got home we sat around for only a few minutes and went to bed. The next morning when we got up my mother said, "Whose bag is this?" Mrs. Martin says, "It is ours." And Mrs. Martin says something about asking Oliver, and I said I was going to make him tell his own dirty work, that I was tired of doing it for him.

I went to him and said, "Why don't you tell mamma you have given up your job?" and he said, "I did tell her." I said, "You did nothing of the kind." Our quarrel started. I said, "I am tired of this. You have either got to get rid of that grouch or get out; I am getting tired of it," and in half an hour he was outside of the house.

Q. Up to that time when he left you, had he said anything to you or you to him about Charles Holden?

10

A. The Wednesday night before he made a remark about thinking more of other people than I did of him. I said, "We never will get along." We never have. Where there is continual fussing or fighting two people can never be happy; and Charles' name was mentioned—I don't know why. "If you don't want Charles Holden coming down here, tell him; he is right down in the room below." But he wasn't man enough.

Q. Your husband left you on the 18th of August? 20

A. Yes.

Q. And this conversation you had with your husband was the Wednesday previous?

A. Yes.

Q. And the 18th was a Sunday?

A. Yes.

Q. When your husband separated from you, did you see or hear from him until you received the letter?

A. No.

30

Q. Has he, at any time since he separated from you come to you and stated that he would make a home for you?

A. Not only that time I got that letter.

Q. I mean other than the letter you received from him?

A. No.

Q. And who has supported you and your child since your husband separated from you?

A. My mother and father have always practically supported my child and myself.

Q. During your married life and before you or your husband became acquainted with Charles Holden, did you live happily together?

A. We have never lived happily.

10 Q. Did you quarrel?

A. Always continually quarreled.

Q. Did your husband ever threaten to leave you before?

A. Several occasions and one time he started to leave.

Q. Before or after the child was born?

A. After.

Q. And why didn't he go then?

A. I don't know why; he just came back.

20 Q. How long was he away?

A. Wasn't away; just got out of the house.

Q. And came back?

A. Then came back.

Q. Has your husband ever supported you?

A. Well, about the only time he supported me was when we were at housekeeping.

Q. And that was for how long?

A. A little over a year.

Q. Have you lived together——

30 A. Not that. It was not a year.

Q. Lived together for how many years? From 1913 to 1918?

A. Yes.

Q. And the balance of the time you lived with your parents?

A. And on my parents; with and on my parents.

Q. Has the separation of you and your husband been caused by any action or attention or solicitation of the defendant, Charles Holden?

(Objected to as leading.)

The Court: It is immaterial from this witness. It is a matter for the jury, without an opinion to be expressed by this witness.

10

(Exception noted for defendant.)

Q. Did the defendant, Charles Holden, ever suggest to you to separate yourself from your husband?

A. Never.

(Objected to.)

The Court: It will be admitted.

20

Q. Did your separation from your husband happen as a result of any affection of you for Charles Holden?

(Objected to.)

The Court: That is rather leading.

(Exception noted for defendant.)

30

Q. Was there any reason for you and your husband's separating except as a result of the quarrel that you and he had over Mrs. Martin coming to your father's home?

(Objected to.)

(Question admitted.)

(Exception noted for plaintiff.)

A. Yes.

Q. What was it?

A. On several occasions I have been told that he wanted to get rid of me——

10 (Objected to as not responsive.)

The Court: That will be stricken out.

Cross-examination.

By Mr. Rose:

Q. Mrs. Davenport, you have known Mr. Holden since Easter of 1918?

20 A. Yes.

Q. And do you call him "Mr. Holden"?

A. I did until I was requested to call him "Charlie."

Q. And when was that?

A. The same time he asked my husband to do it.

Q. Can't you fix the time?

A. Several weeks later.

Q. Several weeks after Easter time?

A. Yes.

30 Q. Have you called him Charlie ever since?

A. I have.

Q. Has he called you Alva ever since?

A. Yes, by my husband's request.

Q. And do you call your husband by his first name?

A. Yes.

Q. Do you realize that during all of your testimony that you referred to your husband as Davenport?

A. I do.

Q. Why didn't you say either "Mr. Davenport" or "Oliver"?

A. I didn't want to.

Q. Is it because you don't like him?

A. It is.

Q. And when did that dislike occur in your mind? 10

A. About a year after married him.

Q. But you called him Oliver up 'till the time that Holden appeared on the scene, didn't you?

A. Why, certainly, I called him that 'till today.

Q. And it is only since Mr. Holden appeared on the scene that you stopped calling him Oliver, and called him Davenport?

A. No.

Q. Who arranged this surprise party at your father's home for Mr. Holden? Did you arrange 20 it?

A. His sister.

Q. And you arranged it too, didn't you?

A. Yes.

Q. And you and Mr. Holden went over to Trenton alone in an automobile?

A. No, we didn't go over to Trenton alone.

Q. But you came back alone?

A. We came back, yes.

Q. You left Trenton eleven o'clock at night? 30

A. Around eleven.

Q. And got back to Collingswood some time early in the morning? Isn't that so?

A. After twelve sometime.

Q. You and Mr. Holden were alone all of that time?

A. We were.

Q. Did you tell your husband that you were going to ride alone with Mr. Holden that night?

A. How could I tell my——

Q. Did you get his permission?

A. No, because we agreed to leave each other alone, and glad of it.

Q. And that came after Mr. Holden came upon the scene?

10 A. Our separation came, yes.

Q. So your husband didn't know that you were out riding alone in an automobile with Mr. Holden at eleven o'clock at night from Trenton to Collingswood, did he?

A. He did not.

Q. When was that?

A. December 1st.

Q. You said that one night in Atlantic City, I think it was, that you went to the Pier, Mrs. Martin was with you; the four of you were together?

20 A. No, we didn't go to the Pier.

Q. Didn't you go to the Pier?

A. We took a walk on the Boardwalk. Mr. Holden said he was coming back.

Q. I misunderstood you when I thought I heard you say you went to the Pier?

A. You heard me say we went to the Boardwalk and he went in and got on the Pier.

Q. You didn't say that you and Mr. Holden sat
30 down on the front seat?

A. I don't remember.

The Court: Mr. Holden testified that he sat on the front seat of the car, as I recall it, when they were on the Boardwalk.

Q. Did Mr. Holden tell you he was a married man?

A. Yes.

Q. When did he tell ou that?

A. I knew it before I met him.

Q. You met him——

A. Easter Sunday.

Q. Of 1918?

A. Yes.

Q. And you knew he was a married man before 10 that time?

A. I did.

Q. When did you first learn he was a married man?

A. When my sister told me; I don't just remember that.

Q. How long before Easter?

A. A few weeks; I don't know.

Q. Five weeks? Six weeks? Two months?

A. I guess it would be around two or three weeks, 20 and my mother-in-law said that she was coming down Easter Sunday.

Q. You testified the first time you met him was on Easter Sunday?

A. Yes.

Q. You are sure about it?

A. I know it.

Q. Then why do you say Holden was a married man before you met him?

A. Because my husband's sister told me.

30

Q. And you knew it before you knew Holden?

A. Yes.

Q. When we finished I think we were talking about the time that you first learned Mr. Holden was a married man. I want you to try to fix definitely in your own mind when it was you first learned

that. You say you met him on Easter Sunday, 1918?

A. Yes.

Q. Fix in your mind, if you can, when it was you learned or knew that Mr. Holden was a married man?

Mr. Cogan: I object to that. It has no material force when she found out he was a married
10 man.

The Court: I don't think it is material.

Q. Mrs. Davenport, Police Officer Crossley came to your father's home late one night in 1918, I think it was December, wasn't it?

A. Well——

Q. November, 1918?

A. Yes.

20 Q. He came there about eleven o'clock at night?

A. Yes.

Q. At that time you and Mr. Holden were together downstairs in the front room?

A. Yes.

Q. How long had you and Mr. Holden been together?

A. About two minutes.

Q. When the officer came the house was dark?

A. It was not.

30 Q. When Mr. Holden went away with the officer, did you say to Mr. Holden, "Charlie, if you won't be gone long, I will wait for you"?

A. Yes.

Q. Why did you say that?

A. I had no idea why he should be arrested when people have other cars on the street unlighted.

Q. But you felt a special interest in Mr. Holden?

A. Yes, because he was there in the house.

Q. And because he was visiting you?

A. All of us.

Q. He was visiting you at that particular time?

A. Yes, at that minute.

Q. Did your husband know he was there at that time alone?

A. I don't know what my husband knew; I wasn't living with him.

10

Q. You knew Mr. Holden pretty well?

A. Yes.

Q. Called him Charlie?

A. Yes.

Q. Go out with him a great deal?

A. Yes.

Q. Go bathing with him in the summer?

A. I didn't—

Q. This last summer?

A. No.

20

Q. But you did in 1918?

A. When my husband was along.

Q. Why did you go bathing with him?

A. Why is anything done?

Q. You like Mr. Holden pretty well?

A. No better than anybody else.

Q. Did you tell your husband last winter that you wouldn't know what to do if it weren't for Charlie's week end visits?

30

Mr. Cogan: I object to any statement that this woman might have made to her husband or any other persons, if not made in the presence of the defendant.

The Court: The objection is well taken.

Q. When was the last time Mr. Holden called to see you? Mr. Holden visits your home still, doesn't he?

A. Yes.

Q. And spent week ends at our father's home in Ocean City all of last summer?

A. Yes.

Q. And you and Mr. Holden were in each other's company a great deal, isn't that so?

10

Mr. Cogan: That is objected to for the same reason.

The Court: I will admit it on the same ground that I did the previous question.

(Question repeated.)

A. Yes.

20

(Exception noted for defendant.)

Q. Mr. Holden had a room in your father's house at Ocean City on the third floor?

A. He did not.

Q. Where?

A. On the second floor, front, next to my father's.

Q. Where is your room?

A. Third floor front.

30

Q. When was the last time that Mr. Holden called to see you?

A. When do you mean?

Q. The last time. You call that your father's home. When?

A. Why, yesterday when we were waiting for this case.

Q. When before that?

A. The day before.

Q. So that his visits have been continuous?

A. Certainly.

Q. And they haven't ceased at this time, have they?

A. No.

Re-direct examination.

By Mr. Cogan:

10

Q. Mrs. Davenport, yesterday he took you and your mother and father home in his machine, didn't he?

A. Yes.

Q. He did the same thing the day before?

A. Yes.

Q. And he did the same thing last Thursday and Friday, didn't he?

20

A. Just one day; took sisters and brother-in-law home one day.

Q. You have been in attendance here in court since last Thursday?

A. Yes.

Q. Does Mr. Holden come particularly to your father's home to see you?

A. He does not.

Q. Who does he come to see?

A. We are all there together.

30

Q. Has your father or mother at any time before or since the separation of your husband and you, objected to Mr. Holden coming to their home?

(Objected to.)

A. No.

Q. He comes as a friend of the family?

(Objected to as calling for a conclusion.)

A. He does.

10 ALEXANDER B. LESLIE, SWORN.

Direct examination.

By Mr. Cogan:

Q. You live in Trenton?

A. Yes, sir.

Q. You are married to Mr. Holden's sister?

A. Yes, sir.

20 Q. You know Oliver Davenport and his wife, Alva Davenport?

A. Yes, sir.

Q. You and your wife lived in Trenton in the month of August, 1918?

A. Yes, sir.

Q. You live next door to the sister of Oliver Davenport?

A. Yes, sir.

Q. You did in 1918?

30 A. Yes, sir.

Q. You are acquainted with the sister of Oliver Davenport?

A. Yes, sir.

Q. Will you tell the Court and jury the conversation you had in the presence of your wife, with Oliver Davenport, over the back fence between your

house and that of Oliver Davenport's sister, in relation to the separation of Oliver Davenport and his wife?

A. Why, one morning, Mrs. Nickels, Mr. Davenport's sister, come to the back fence, and she hollered, "Who, who" like that, and I went out. She said, "Is Mabel there?" I said "Yes."

Q. Who is Mabel?

A. My wife. "Tell her to come out; I want to speak to her." And I came out too. And she said, 10
"You cannot guess who is here." She said, "Who?" She called, "Mr. Nickels." Tell him to come out here. And they came out. Mr. Davenport came out on the porch, and Mrs. Nickels or Mr. Davenport told us that he had left Alva, that is Mrs. Davenport. Mrs. Leslie says, "You don't blame my brother for it?" He says, "No, Mabel, Charlie hasn't got a thing to do with it. She has tried to leave me a couple times or I have tried to leave her a couple times, and this time she handed 20
me a wedding ring and I called her bluff, and I am damn glad to get rid of her."

Q. Can you fix the date?

A. No, sir, I don't remember the date.

Q. The month?

A. The first day he came up there—he came up there the night previous.

Q. That was the month of August?

A. I wouldn't say what month it was, but whatever night he came up there. 30

Cross-examination.

By Mr. Rose:

Q. When was that?

A. I don't remember the dates, but it was the day after he came up the night before.

Q. You had a general conversation?

10 A. Over the fence.

Q. And what did you say to Mr. Davenport?

A. I didn't say anything at that time. I turned around to Mabel, my wife, I said, "It is too bad, to find they separated that way."

Q. Who else was present?

A. My wife.

Q. And this took place in the back yard?

A. Right over the fence.

Q. When?

20 A. The next morning that Mr. Davenport came there.

Q. At what time in the morning?

A. About eight o'clock.

MRS. MABEL LESLIE, SWORN.

Direct examination.

30

By Mr. Cogan:

Q. You are the wife of the witness just on the stand?

A. Yes.

Q. And your name is Mabel Leslie?

A. Yes, sir.

Q. You live with your husband in Trenton?

A. Yes.

Q. And you did in the month of August, 1918?

A. Yes, sir.

Q. You live there at the present time?

A. Yes, sir.

Q. You are acquainted with Oliver Davenport and his wife?

A. Yes.

Q. You knew him prior to August of 1918?

A. Yes, sir.

Q. You know the sister of Oliver Davenport?

A. Yes, sir.

Q. And her name is what?

A. Edith Nickels.

Q. And you were home one morning in the month of August, 1918, when Edith Nickels called you to the rear of your home?

A. Yes, sir.

Q. Will you tell the Court and jury what transpired in relation to Oliver Davenport at that time?

A. I was called to the back door by Edith Nickels, Oliver Davenport's sister, saying who did I think was there. So she called her brother out, and he came down to the fence to talk to me. The first thing I said was, "You don't blame my brother for this trouble?" He said, "No, I don't blame Charlie one bit," and he said, "She handed me her wedding ring, told me to go, and this time I took it and got out, I was damn glad to get rid of her."

Q. Who was present?

A. My husband, Mr. Leslie.

Q. Did Mrs. Nickels remain?

A. No, not that I can remember.

Q. Did you see him after that?

A. Who?

Q. Oliver.

A. Yes.

Q. Was he still living with his sister?

A. Yes, far as I know.

Q. In Trenton?

A. Yes, sir.

Q. Is that the only conversation you had with relation to the separation from his wife?

10 A. Well, I can't just say. He did speak several times after that to me, but, of course, I can't remember just what the conversation was, but not in very good terms, I do know that.

Q. But you don't remember——

A. No, sir, I don't remember.

Cross-examination.

By Mr. Rose:

20

Q. Your name is Mrs. Leslie?

A. Yes.

Q. And you are a sister of Mr. Holden?

A. I am.

Q. And you can only remember this one conversation out of the large number of conversations?

A. I didn't say large number.

Q. You said a number of conversations.

A. I said he spoke to me on several occasions.

30 Q. And this is the only thing that you can remember of all these conversations?

A. Yes, directly; I wouldn't say positively.

Q. Did Mr. Holden and Mrs. Davenport ever talk to you about this case?

A. Never.

Q. Sure about that?

A. Never.

Q. Have they ever visited your home in Trenton?

A. Yes, my brother and Mrs. Davenport.

Q. How often?

A. I can't say how often.

Q. Several times?

A. Yes.

Q. Did they come alone?

10

(Objected to as not cross-examination.)

The Court: Strictly speaking, it is not cross-examination.

CHARLES H. QUINT, SWORN.

Direct examination.

20

By Mr. Cogan:

Q. Mr. Quint, you live in Collingswood?

A. Well, I have been living there; well, yes, I am living with my daughter after I sold my house, yes, sir.

Q. And you have a wife?

A. Yes, sir.

Q. Alva Davenport is your daughter?

30

A. She is.

Q. She married Oliver Davenport?

A. Sorry to say she did.

The Court: Before we go any further,—don't interpose any of your opinions. Just answer the question.

Q. And you are engaged in business in the City of Philadelphia?

A. Yes.

Q. What is the character of your business?

A. Rubber stamps; steel stamps, letters and so forth.

Q. How many children have you?

A. Three.

Q. And is Alva the oldest one or the youngest
10 one?

A. Alva is the youngest.

Q. She has a child?

A. A boy.

Q. Living with you?

A. Yes.

Q. During their married life, how much of the time did they live with you?

A. Ever since they have been married, with the exception of the few months they were at housekeep-
20 ing. I couldn't say just how many it was.

Q. You know the defendant in this suit, Charles F. Holden?

A. Yes.

Q. When did you become acquainted with him?

A. Some time, I didn't know the exact dates, but in the summer of 1918, when Oliver Davenport came to me and was talking to me, and talking about the good friend that he had, that they saw such good times in automobiles and asked me if I would have
30 any objections for bringing him down over the week's end, and I told him no, to bring him along.

Q. You have a summer home at Ocean City?

A. Yes.

Q. How large?

A. Possibly nine, ten or eleven rooms.

Q. So the first time you met Charles Holden was when Oliver Davenport brought him to your summer home in Ocean City?

A. Oliver didn't come along with him when he came. He came down and I was surprised not to see him, and then she told me——

(Objected to.)

Q. Your acquaintance with Charles Holden was the result of Oliver Davenport—— 10

A. Decidedly.

Q. After he made his first visit to your summer home, did you invite him to come again?

A. I did, yes, sir.

Q. And all the visits he made to your summer place——

A. Was with my consent and invitation.

Q. Just as much so as Harry Dilks was your guest? 20

(Objected to.)

The Court: I will admit it.

Q. After your return from Ocean City in the summer of 1918 to your home in Collingswood, did you invite Charles Holden to visit you there?

A. Yes, sir, I wanted to renew the friendship.

Q. From the time that he came as a guest of 30 yours, at your summer home in Ocean City, up to the present time, has he come particularly to see your daughter Alva?

A. Not that I know of. He came to see us all; that was the general invitation.

Q. Were his actions in your home towards your

daughter such as to excite your suspicions of anything between him and——

A. No, sir, I wouldn't allow any such thing in the house.

Q. And the occasion that he went to Trenton after the surprise party—you knew of your daughter going along with the party?

A. I did.

Q. Were you at home when they returned that
10 night?

A. Yes.

Q. You saw them when they came in?

A. I was upstairs. I seen them when they came in, yes, sir.

Q. So all of the visits that have been made at your home, both in Ocean City and Collingswood, in the Collingswood home, have been by and with your consent?

A. Yes, sir.

20 Q. He has stayed over night in your home, has he?

A. Yes, sir, with my permission and my wife's permission.

Q. Have you ever seen any evidence or action on the part of Charles Holden, of affection between him and your daughter?

A. Not any more than any friend would be; not any more than some of my other friends that come there; they think a good deal of my children. I
30 have a great many friends.

(Objected to.)

Q. Does he still have the entree of your home as such guest and friend?

A. My respect and regard.

Q. Mr. Quint, it has been testified here by Mr. Davenport, Senior, that he has seen your daughter and Charles Holden leaving your home in the automobile alone. He says there was only one occasion on which you or your wife accompanied them, between October of 1918 and December of 1918. Did you frequently, or not, go out with them in the automobile?

Mr. Rose: I object to that.

10

The Court: The question is leading, to say the least.

Q. Did you ever accompany your daughter and Charles Holden on automobile trips during the month of September, October, November, December, of 1918?

A. Nearly every time they went out either the wife or both of us was with them, with the exception of going down to the store or back home one afternoon. 20

Q. But you knew they were going?

A. We knew they were going, yes.

Q. You remember the night he was arrested?

A. Yes.

Q. Where had he been that night?

A. Down at Swedesboro; my wife was down visiting friends.

Q. And you came back with him?

30

A. Yes, I went down with him and the wife came back with us.

Q. Where were you when the officer came?

A. We had just been upstairs, and he was ready to go home.

Q. Were you there when he returned that night?

A. I didn't come down.

Q. You were there?

A. I was in the house; I didn't come down.

Cross-examination.

By Mr. Rose:

Q. When did you first get acquainted with Mr. Holden?

10 A. That Sunday that he brought Mr. Davenport down.

Q. Can you fix the time?

A. No.

Q. You had never known Mr. Holden before that time?

A. Only by reputation, that Mr. Davenport had told me.

Q. And immediately upon Mr. Holden's coming to your home you threw your home wide open to him?

A. Yes, sir.

Q. Made no investigation of his prior life?

A. I didn't need to.

Q. Give him permission to sleep in your house?

A. Yes.

Q. And give him permission to go out with your daughter?

A. Only with the family.

30 Q. You permitted him to do all this without investigating his past record?

A. Yes.

Q. Did you know he was a married man?

A. No.

Q. When did you learn——

A. Several weeks afterwards. It wouldn't make any difference anyhow.

Q. Notwithstanding that, you still permitted him to pay attention to your daughter——

A. He didn't pay any attention to my daughter—don't get that in your head.

Q. You still permitted Mr. Holden to take your daughter automobiling riding?

A. With my wife and I.

Q. Were you present with your daughter and Mr. Holden the night they came from Trenton?

A. No.

Q. Neither was Mrs. Quint?

A. No.

Q. So you don't know what they did on that night, do you?

(Objected to.)

The Court: That will be stricken from the record.

Mr. Cogan: It is admitted by all parties——

The Court: It will be stricken from the record.

Q. You say that Mr. Holden still has the entree of your home?

A. He has, yes.

Q. And has the privilege of coming and going whenever he pleases?

A. Yes.

Q. Notwithstanding that your daughter is a married woman?

A. That is all right. I don't see anything wrong in that.

Q. And notwithstanding the fact that Mr. Holden is a married man?

A. No, that doesn't make a particle of difference. He is a man.

Q. Did you always remain up at night while Mr. Holden was in your house with your daughter Alva?

(Objected to.)

The Court: Any intimation of any improper conduct will be eliminated.

10 (Adjourned until Oct. 16th, 1919, 9 o'clock A. M.)

(October 16th, 1919, 9 o'clock A. M.)

(Trial of the cause resumed.)

FLORENCE P. QUINT, SWORN.

20 Direct examination.

By Mr. Cogan:

Q. Mrs. Quint, you are the mother of Alva Davenport?

A. Yes, sir.

Q. And you live with your husband in Collingswood?

30 A. Yes, sir.

Q. You are the mother of three children?

A. Yes, sir.

Q. Alva is the youngest of the three?

A. Yes, sir.

Q. She has lived with you, as I understand it, all her life, except about a year during her married period?

A. Yes.

Q. She has lived with you since she and her husband separated?

A. Yes.

Q. You know the defendant, Mr. Holden?

A. Yes.

Q. And you became acquainted with him about the same time that your husband did?

A. Yes.

Q. You and your husband and family spend the 10 summer at Ocean City?

A. Yes, sir.

Q. You spent the summer of 1918 at Ocean City?

A. Yes.

Q. Did you and your husband extend an invitation to Charles Holden to visit you at Ocean City?

A. Yes.

Q. And he did visit you there?

A. Yes.

Q. While there did your daughter go out in his 20 automobile with him?

A. Yes.

Q. During any of those occasions did you or your husband accompany them?

A. Yes.

Q. How often, during those automobile trips, did you and your husband accompany them?

A. Most every one of them.

Q. Did Mr. Holden ever take your daughter out in your automobile that you did not know about? 30

A. No; always knew it.

Q. After your return from Ocean City to Collingswood, did you or your husband, or both, extend an invitation to Mr. Holden to call to see you there?

A. We did.

Q. During his visit to your home in Collingswood, was he there to see your daughter?

A. He came to see the whole family.

Q. While in your home in Ocean City or Collingswood, did Mr. Holden pay any particular attention to your daughter?

A. He came to see us all.

Q. I say did he pay any particular attention to your daughter Alva?

10 A. No.

Q. During your entire acquaintance with Mr. Holden, did you ever see any acts on his part toward your daughter that were objectionable to you?

A. No.

Q. He still is a guest at your home, with your and your husband's permission? Is that correct?

A. Yes.

Q. He has stayed over night in your home, has he?

A. Yes.

20 Q. At whose invitation has he stayed over night?

A. Both Mr. Quint's and mine.

Q. Mr. Quint and your's?

A. Yes.

Q. You remember the occasion of the surprise party in your home?

A. I do.

Q. Did you know that your daughter was going to accompany Mr. Holden and his friends that evening, in the car?

30 A. I did.

Q. And were you and your husband up when they returned that night?

A. I was at the top of the stairs.

Q. You remember the occasion spoken of here about the wallet, and the ironing of a pair of trousers belonging to Mr. Holden at Ocean City?

A. Yes.

Q. Tell the jury what you know about the trousers incident.

A. Well, Mr. Holden was there in the yard and playing these tricks, and came in to see if he could wash those trousers, and we were going to do some washing also, and the daughter and I washed the trousers.

Q. Was the husband there at the time? I mean Mr. Oliver Davenport.

10

A. He was.

Q. Did you say anything to Mr. Holden about what he could do that morning, he and Mr. Davenport?

A. Yes, said they could go down and have a good time and we would wash the trousers.

Q. Did you wash them?

A. Yes.

Q. And your daughter?

A. Both. She started to do them, and I didn't 20 think she was able and I took them and washed them, finished them.

Q. You live, or did, in Collingswood, within one or two doors of the Davenport parents; do you not?

A. Yes, next door but one.

Q. When did you return from Ocean City in 1918?

A. Why, about October 1st.

Q. During any time after your return from Ocean City, did either Mr. or Mrs. Davenport call on you 30 and complain that the actions of Mr. Holden and your daughter were objectionable to them?

A. No, not that I know of.

Q. Did they ever say anything to you about it?

A. No.

Q. So that all the visits that Mr. Holden has made

to your home has been at the invitation of you and your husband? Is that correct?

A. It has.

Q. During the time in Ocean City, when Mr. Davenport was living with his wife there, did he, at any time, complain to you about the conduct of his wife toward Mr. Holden?

A. No, he did not.

Q. The morning that he was leaving, you saw him
10 then, didn't you?

A. Yes.

Q. Did he say to you then that the occasion of his leaving was due to any conduct of his wife toward Mr. Holden?

A. He didn't say anything.

Q. Since he has separated himself from his wife to the present time, has he ever come to you and made any complaint that he objected to Mr. Holden calling at your home?

20 A. He has not.

Q. The occasion when he came to get some clothes; didn't he at that time complain to you about his wife's conduct?

A. No, sir.

Q. So, during the summer of 1918, when they lived together at your summer home, and since the separation, there have not been any complaints made to you by either the husband or any of the family of the conduct of Alva and Mr. Holden?

30 A. There has not.

Cross-examination.

By Mr. Rose:

Q. Mrs. Quint, you said that you first became acquainted with Mr. Holden, as I understand it, in the Spring of 1918?

A. Yes.

Q. Your daughter testified yesterday that it was Easter Sunday; is that right?

10

A. Not——

Q. What have you to say to that?

A. It was later.

Q. Later than Easter Sunday?

A. Yes.

Q. How much later than Easter Sunday?

A. That I don't know.

Q. Well, would you say it was a month later?

A. Yes, about a month later.

Q. Five weeks later?

20

A. About a month, I guess.

Q. And you are sure it was not on Easter Sunday?

A. No, it was not on Easter Sunday, because I wasn't home.

Q. You heard your husband testify it was Easter Sunday, didn't you?

A. When we were at Ocean City?

Q. You heard him testify it was Easter Sunday, didn't you?

30

A. No, he didn't.

Q. You heard your daughter testify yesterday that it was Easter Sunday that Mr. Holden first came to your house, did you?

Mr. Cogan: I object to that. It is not the testimony of the daughter. The testimony of the daughter is that she met Mr. Holden on Easter Sunday.

The Court: My recollection of the testimony is as Mr. Cogan has stated.

Q. Had you ever known Mr. Holden before that
10 time?

A. No.

Q. Never?

A. No.

Q. He was a comparative stranger to you?

A. He was.

Q. And you say that when he came to your home,
you gave him an invitation?

A. I did.

Q. To visit you?

20 A. Yes.

Q. And that you entertained him over night?

A. Yes.

Q. That he slept in your house over night?

A. Yes.

Q. That you provided a home for him in your
summer home in Ocean City?

A. Yes.

Q. That he used to come down there and spend
week ends during the summer?

30 A. Yes.

Q. And slept in your house. You testified to
that, didn't you?

A. Yes.

Q. Had you made any investigation as to Mr. Hol-
den's past life before you gave him such an invita-
tion?

A. No.

Q. You permitted him to come there and stay there at whose request?

A. Mr. Quint's and mine.

Q. And you had never known him before?

A. No.

Q. You didn't know at that time that Mr. Holden was a married man?

A. Not just then.

Q. If you had known that he was a married man, 10
would you have given him, as Mr. Cogan says, the
entree of your home, and permitted him to stay
there at night?

A. Yes.

Q. You would, eh? And you would have per-
mitted that thing to continue?

A. It was all right, yes.

Q. Notwithstanding the fact that he was a mar-
ried man, you say that is right, do you?

A. I don't see why.

20

Q. Notwithstanding the fact that your daughter
is married, you think it is all right, do you?

A. After he had left her.

Q. You think it is all right for this Mr. Holden,
who is a married man, to be spending time in your
home with you and your family and daughter?

A. Yes.

Q. She is a married woman?

A. Yes.

Q. You think that is all right?

30

A. Yes, with our consent.

Q. And you think it all right for Mr. Holden to
take your daughter automobiling with him?

A. Yes, we were with him.

Q. And you think it is all right for Mr. Holden

and your daughter to automobile from Trenton alone at eleven o'clock at night to Collingswood? You think it is all right, do you?

A. At our consent it was.

Q. No one else being present in the car?

A. We were there when they went.

Q. But you weren't in that car that night?

A. No, I could have gone, I suppose.

Q. There may have been times in your home when

10 Mr. Holden and Mrs. Davenport might have had some private conversations; might there not have been?

A. I don't know when, for we have always been together.

Q. You testified that on the night they came home from Trenton, you were at the top of the stairs?

A. Yes.

Q. Had you been asleep?

A. No.

20 Q. Had you retired for the night?

A. I was going up, retiring for the night.

Q. Were you present the night that the policeman came there?

A. Yes.

Q. You and your husband had retired for the night?

A. I wasn't in bed.

Q. You had gone upstairs?

A. Yes.

30 Q. And Mr. Holden and your daughter were down stairs alone? Is not that so?

A. Yes, they had just gotten home.

Q. And they were downstairs?

A. For a few minutes.

Q. When the policeman came and took Mr. Hol-

den away, your daughter remained there alone?
Did she not?

A. Yes.

Q. And how long was Mr. Holden gone?

A. I guess about twenty minutes.

Q. When he returned you and your husband were still upstairs?

A. Yes.

Q. And remained upstairs?

A. Yes.

10

Q. And you don't know what conversation they had?

A. I heard them, but I didn't go down to hear.

Re-direct examination.

By Mr. Cogan:

Q. Who first recommended Mr. Holden to you and your husband?

20

A. Mrs. Nickels introduced.

Q. Yes, but who first suggested the invitation to have Mr. Holden at your summer home?

A. Mr. Quint. Oliver Davenport, he wanted to know if he could bring Mr. Holden down for a few days, and Mr. Quint told him yes, so he came to me, and I said yes.

Q. So it was the plaintiff first requested the invitation for Mr. Holden to visit you over week ends at Ocean City?

30

A. Yes.

Q. Mr. Holden is not the only married man that you invite to your home?

(Objected to as not a part of this case.)

The Court: It will be stricken out as immaterial.

Mr. Cogan: I asked this lady the question whether she did not invite other men to her summer home, and he objected to the question.

The Court: I think it is very immaterial.

Mr. Cogan: On the cross-examination of this witness by Mr. Rose, he brought out from her, that “notwithstanding Mr. Holden is a married man, you
10 invited him to your home, your summer home?” I want to show by this witness that Mr. Holden is not the only married man invited to their home.

The Court: I don't see the materiality of it at all.

DEFENDANT RESTS.

20 PLAINTIFF'S TESTIMONY IN REBUTTAL.

EDITH NICKELS, sworn.

Direct examination.

By Mr. Voigt:

Q. Where do you live?

A. Trenton.

Q. Are you related to any of the parties in this
30 suit?

A. Why, Oliver Davenport is my brother.

Q. Are you acquainted with Mr. Holden's sister?

A. Yes.

Q. And her husband?

A. Yes.

Q. Were you present at any time when Mr. Davenport was present and Mrs. Leslie, and they were talking about Mrs. Davenport, Jr.?

A. Not that they were talking about Mrs. Davenport, Jr.

Q. Were you present when they had any conversation?

A. The morning he came to the house we were in the back yard, talking.

Q. What did they say? 10

Mr. Cogan: I object. This is rebuttal.

The Court: I will admit it, but they must confine it to conversation in the presence of Mr. Holden.

A. He came out in the yard, and said he had left Alva. Outside of that there wasn't anything more said. 20

Q. Is that the only thing he said, that he left Alva?

A. Yes.

Q. Did he say that he was damn glad to get rid of her?

A. Didn't hear any such remark as that.

Q. You were there all the time during the conversation?

A. I was.

Q. And you didn't hear that remark? 30

A. I certainly did not.

Q. Did you hear Mrs. Leslie ask Oliver Davenport whether Mr. Holden was the cause of their separation?

A. Yes.

Q. What did Davenport say?

A. I don't know that he said anything. He didn't give any answer.

Cross-examination.

By Mr. Cogan:

10 Q. That question might have been asked your brother by either Mr. or Mrs. Leslie not in your presence, couldn't it?

A. I was there the whole time.

Q. You are sure?

A. Yes.

Q. And did you hear Mrs. Leslie ask your brother whether her brother Charles was responsible for their separation?

A. Yes.

20 Q. But you don't remember the answer your brother gave to that, do you?

A. No.

Q. So that if your memory is faulty in that respect, it might be also faulty as to hearing your brother say he was damn glad to be rid of his wife?

A. He didn't use any such language, and there wasn't anything said like that at all.

Q. Your brother is not given to——

A. Oh, I don't say that. All men mostly use that.

30 Q. But you are sure he wouldn't use such a term about his wife, "damn glad to get rid of her"?

A. No.

OLIVER DAVENPORT, recalled.

Direct examination.

By Mr. Rose:

Q. You were present at the meeting which was mentioned by Mrs. Leslie yesterday?

A. Yes.

Q. And did you have any conversation with her in Trenton regarding leaving your wife?

A. I did.

Q. What was that conversation? I will withdraw that question. Mrs. Leslie testified yesterday that in a conversation with her and her husband—that is, your conversation—that you said you left your wife and were damn glad of it?

A. I did not.

Q. Either of them?

A. No, sir.

Q. They both testified that it was asked of you whether or not Charles Holden was the cause of your separation? Did you tell them that he was not?

A. I did not.

Cross-examination.

By Mr. Cogan:

Q. You were a witness here yesterday?

A. I was.

Q. Do you remember the question being asked you yesterday whether you had talked with Mr. and Mrs. Leslie about your separation and you said you had not?

A. No, sir.

Q. You don't remember that?

A. No.

Q. Now, this morning, you say you did talk with them about your separation from your wife?

A. I did. I don't think that question was brought up yesterday.

Q. Oh, yes, it was.

10 Mr. Rose: We will refer to the stenographer's notes.

The Court: I will leave it to the jury, to recall what it was.

Q. You did have some conversation with them, didn't you?

A. Yes.

Q. And you did tell them that you had separated
20 from your wife?

A. Yes.

Q. You heard your sister testify a moment ago?

A. I did.

Q. You heard her say that Mrs. Leslie asked you whether Charles Holden was responsible for your separation?

A. Yes.

Q. Was that question asked you?

A. I suppose she did ask me.

30 Q. You said a moment ago that it had not been; is that correct?

A. Well, she did ask me that question. I suppose in the course of the conversation she asked me, but I don't just remember the time she asked me.

BOTH SIDES REST.

DEFENDANT'S MOTION FOR DIRECTION.

Mr. Cogan: I would like to renew my motion for a non-suit at this time—mean a direction for a verdict.

The Court: State your grounds.

Mr. Cogan: Upon the same grounds that I offered for a non-suit at the close of the plaintiff's case. There has not been anything shown in the case on the part of the plaintiff or the plaintiff's witnesses that there was any intent upon the part of the defendant in this case to alienate the affections of the plaintiff's wife, and after hearing the testimony of the defendant and his witnesses, I say that we are entitled to a direction for a verdict in favor of the defendant. 10

Mr. Rose: I make the same answer to that that I made yesterday. It is entirely a jury question. There is evidence here that this man and his wife Davenport were living happily together until this man appeared on the scene, and it was from that time that they became estranged, and after that time Mr. Holden was more constant in his attentions, which finally resulted— 20

The Court: I think it is a pure question of fact for the jury. I will allow it to go to the jury and grant you an exception. 30

(Exception noted for defendant.)

POSTEA.**NEW JERSEY SUPREME COURT.**

Between
10 OLIVER M. DAVENPORT, }
 Plaintiff,
 vs.
CHARLES F. HOLDEN, }
 Defendant.

Postea.

20 This case was tried before Judge John B. Kates,
with a jury at the Circuit Court, on October 16th
and 17th, 1919, by reference of Judge Frank T.
Lloyd, Judge of the Circuit Court of Camden
County, upon consent of counsel for the plaintiff and
defendant.

The jury rendered a general verdict against the
defendant and in favor of the plaintiff for fifteen
hundred dollars, \$1500.00.

JOHN B. KATES,
Judge.

NOTICE.

COURT OF ERRORS AND APPEALS.

OLIVER M. DAVENPORT,	}	Action at Law.	10
<i>Plaintiff,</i>			
vs.			
CHARLES F. HOLDEN,	}	Notice.	
<i>Defendant.</i>			

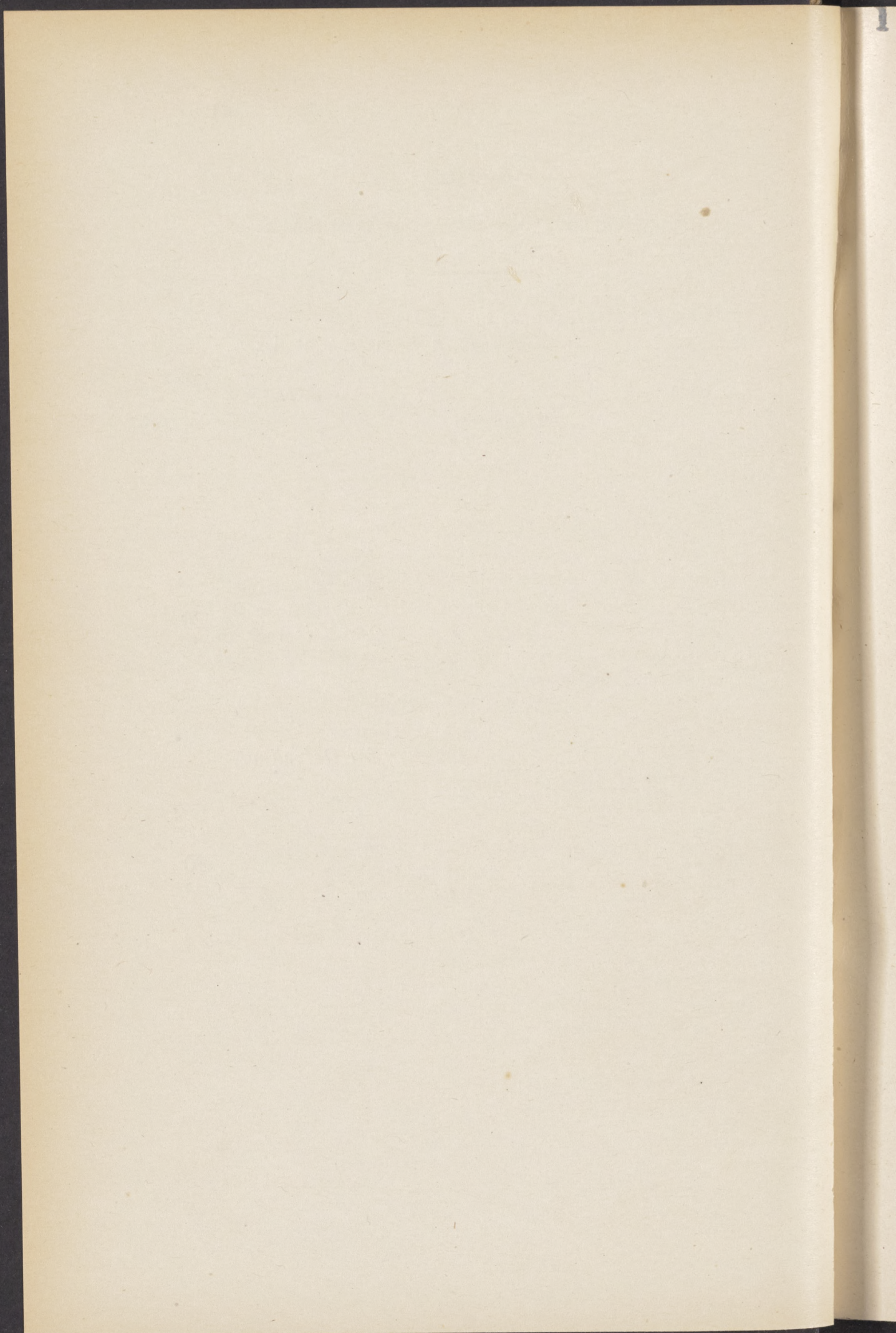
Sir:

Take Notice, of the argument of the issue joined in this cause before the Court of Errors and Appeals of New Jersey, to be held at the State House, in the City of Trenton, State of New Jersey, on the first Tuesday in March, next, at eleven o'clock in the forenoon, or as soon thereafter as the Court can attend to the same. 20

Yours respectfully,
CHAS. A. COGAN,
Attorney for Defendant.

To DAVID R. ROSE,
Attorney for Plaintiff.

Service acknowledged Feb. 4, 1920. 30
DAVID R. ROSE,
Atty. for Respondent.



New Jersey Court of Errors and Appeals

OLIVER M. DAVENPORT, Plaintiff-Respondent, vs. CHARLES F. HOLDEN, Defendant-Appellant.	{	Action at Law Appeal from Supreme Court
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BRIEF FOR RESPONDENT

The complaint alleges that in the months of June, July, August, September, October, November, December, 1918 defendant with the intention of injuring plaintiff and depriving him of the comfort, fellowship, society and assistance of his wife, estranged and alienated her affections from him (S. C. 2, 3, 4, 5).

Defendant's answer denied the averments of the complaint seriatim (S. C. 6).

The case was tried before a jury in Camden County resulting in a verdict of \$1500 for plaintiff (S. C. 140).

Defendant appeals from the verdict assigning several reasons (S. C. 7). They will be answered in the numerical order in which they are stated.

POINTS

I

In the opening to the jury plaintiff's counsel stated, among other things (S. C. 14):

“We will show that Mr. Holden produced a steady course of effort to take away the affections of Mrs. Davenport from her husband, and we will show that he succeeded in doing that by her subsequent actions and attitude towards her husband, and if we show these facts, we will ask for a verdict for the plaintiff at your hands.”

On this opening it would have been error to grant a compulsory non-suit.

In *D'Aloia vs. Union Italiana of Vineland*, (Court of Err, & App.,) 87 Atl., 472, it is held:

“When a motion for compulsory non-suit is based on the opening statement of counsel, plaintiff is entitled to the benefit of all facts proposed to be proved, and in reviewing the legality of the non-suit the Court of review must regard them as proved.”

II and III

The testimony of Walter and Ada Davenport as to occurrences subsequent to August, 1918, was relevant and material.

The complaint, after alleging specific acts from June to December, 1918, charged:

“II. That by means of the premises aforesaid, plaintiff has, from June 1918, to

the present time, wholly lost and been deprived of the comfort, fellowship, society, aid and assistance of his said wife in his domestic affairs which plaintiff during that time ought to have had and otherwise might and would have had'' (S. C. 4).

The summons and complaint were served Dec. 6, 1918 (S. C. 5).

It is respectfully submitted that any testimony as to the conduct of defendant and plaintiff's wife between those dates was proper and material.

The defendant bases his objection to that testimony on the ground that defendant's attentions to plaintiff's wife after the date of the separation in August 1918 was proper, and in no wise affected the affections of the wife for the husband. That might have been so if defendant's attentions began *after* the separation, but where, as here, the attentions began two months *before* the separation, and continued persistently thereafter, the attentions subsequent were concomitant with the attentions precedent and testimony thereof was material and relevant to show the general course of conduct between defendant and plaintiff's wife in order that the jury might determine whether the conduct of defendant before the separation was the primary cause of the loss of affection.

Stewart vs. Hagerty, (Pa.) 96 Atl., 1099.

There was proof of loss of affection:

Plaintiff's wife in testifying for the defense said (S. C. 105):

(Cross-examination.)

“Q. Do you realize that during all of your testimony that you referred to your husband as Davenport? A. I do.

“Q. Why didn’t you say either ‘Mr. Davenport’ or ‘Oliver’? A. I didn’t want to.

“Q. Is it because you don’t like him? A. It is.”

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IV

A non-suit at the close of plaintiff’s case would have been improper.

In addition to the testimony of plaintiff as to acts between defendant and plaintiff’s wife, there is testimony of four witnesses who testified that on certain dates they saw defendant and plaintiff’s wife in company with each other late at night.

Harry Dilks testified that in the months of July and August 1918, he saw defendant and Mrs. Davenport several times: He testified as follows (S. C. 49):

“Q Did you ever see the defendant Holden and Mrs. Davenport together at any time? A. I have several times.

“Q. Tell the circumstances. A. Out walking together and also returning late at night in the machine.

“Q. What time do you call late at night? A. Between twelve and two.

“Q. Where were you? A. I was out surf fishing.

“Q. Was anyone else in the car at the time? A. No.”

John W. Crossley testified as follows (S. C. 44):

“Q. At any time did you ever call at the Quint home to see Mr. Holden? A. I did.

“Q. What was your purpose there? A. I

went there to arrest him for leaving the car outside, for not having his lights lit.

Q. When was that? A. Thirteenth of November, 1918.

"Q. At what time? A. Little after 11 o'clock.

"Q. In the morning or afternoon? A. Night.

Q. Who did you see when you went there? A. Mrs. Davenport; she came to the door.

"Q. And what did you do? A. I asked if the gentlemen that owned the car was inside; she said yes; the gas was dimmed, and she turned it up and called him out of the side room, I think it was—

"(Objected to.)

—that is where he came from, the front room. She says, 'Charlie, the police officer wants you;' and he came out and put his overcoat on. I think he had a coat, and he put it on, anyhow he came out to the car with me and she did also, and him and I got in the car and she asked him if he was coming back. He says 'I don't know.' She said, 'If you come back, I will wait for you.'

"Q. What time did you say that was? A. A little after eleven; I don't know exactly.

"Q. Were you on duty all night that night? A. I was till 4 o'clock in the morning.

"Q. Did you see Mr. Holden's car there after his release from the Police Court? A. I did.

"Q. Where was it? A. In front of Mr. Quint's home.

"Q. What hour was that? A. A little after one in the morning."

Walter Davenport, (S. C. p. 56) testified that on Oct. 26, 27, 30; Nov. 5, 10, 13, 14, 15, 22, 23, 24, 25, 26, 27; Dec. 17, 1918, he saw defendant Holden and Mrs. Davenport together alone, late at night.

Ada Davenport (S. C. 67) corroborated Walter Davenport as to the dates he saw defendant and Mrs. Davenport together alone.

Defendant, Holden, wrote the following letter to plaintiff on Sept. 12, 1918 (S. C. 70):

“Camden, N. J. Sept. 12, 1:30 a. m. 1918.

“Mr. Oliver M. Davenport,
47 Ellsworth Ave., Trenton.

Camden, N. J.

“Mr. Davenport.

Sir:

“In reply to your letter of recent date expressing your surprise at your folks talking about me, and wanting to know which one of them it was, doesn't matter just now for your actions and attitude in the matter bears them out in what they have said. But I will say that your remark that you are no friend of mine doesn't make me a bit mad for I don't want to know a thing that's not man enough to tell a man what he wants but will resort to small underhand ways about doing it. *You said I was seeing your wife against your wishes; you are a liar* for that Monday night after you had abandoned your wife and child you told me that I was not the cause of your trouble. Since then you have also told my sister and her

husband the same thing. Why wasn't you man enough to tell me to my face that you didn't want me to go to your wife's father's house while she was there; there is only one answer because there wasn't man enough in your make up to do it, and further any man that is a man wouldn't tell strangers personal things about his wife the same as you have done. If you had been the right kind of a husband and paid her the attention that was due her as a wife probably she wouldn't have made that one mistake, but don't think for one minute that you are going to tell me what I will do and what I won't do, and any time that you or that rat of a brother-in-law of yours think you can beat me up like you was telling a party you was going to do why just come along. You know where I live and I'm mostly always at home or in Camden, and when you start to do any sueing, to sure that you know what you are doing for you are liable to get the surprise of your life, and have a few skeletons that have been locked in the closet brought to light, but I thank you for the forewarning because they say forewarned is forearmed. I will go to the Shipping Board Attorney and put the case before him and rest on what he says, so Mr. Davenport let this be the end of you and all the rest that belongs to you, for I am sorry for the day I ever got acquainted with your kind.

"CHARLES F. HOLDEN."

That letter was in reply to a letter sent by plaintiff to defendant, which reads in part, as follows (S. C. 94):

"Q. So your reply was in answer to this part of the letter signed 'Oliver Davenport' and this is what he says: 'I am also told that you are still calling at my wife's father's house on the pretense of being a friend of mine. I want it stopped right here and now. I am no friend of yours, and you are no friend of mine.' That was your reply, was it? A. Yes; you might read my reply."

It is respectfully submitted that there was sufficient evidence at the close of *plaintiff's* case to justify the trial court in refusing the defendant's motion for a non-suit.

"In reviewing a motion to non-suit or direct a verdict, the testimony will be considered in the aspect which is favorable to defendant in error."

Broame vs. N. J. Camp Meeting Ass'n,
(Court of Errors and Appeals) 83
Atl., 901.

V and VI

Those questions are objectionable because they are leading, and call for a conclusion.

The trial court in sustaining the objection to the question said (S. C. 103):

"It is immaterial from this witness. It is a matter for the jury, without an opinion to be expressed by this witness."

In *Chambers vs. Hunt*, (Court of Errors and appeals) 2 Zab., 552, it was held:

“The permission of leading questions to a witness in direct-examination is in the discretion of the Court, and no ground for reversal; if improperly permitted the remedy is a new trial.

See, also,

Mershon vs. Hobensack, 2 Zab., 376,
aff'd, 3 Zab., 580.

State vs. Fox, 1 Dutch., 566.

VII

“A trial court cannot direct a verdict where there is a substantial dispute as to the facts or the inferences to be drawn therefrom * * *.”

Broame vs. N. J. Camp Meeting Ass'n
(Court of Errors and Appeals), 83
Atl., 901, 902.

It was not necessary to show that the wife was debauched or seduced. Loss of consortium only was necessary to be shown, 21 Cyc., 1617.

It is respectfully submitted that the judgment below should be affirmed.

June Term 1920.

DAVID R. ROSE,
Counsel for Respondent.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

OLIVER M. DAVENPORT,

Plaintiff,

vs.

CHARLES F. HOLDEN,

Defendant.

On Appeal, Etc.

Brief.

BRIEF.

This is an action brought by the plaintiff against the defendant for the alienation of the affection of plaintiff's wife. It was a Supreme Court issue, tried before the Honorable John B. Kates, Judge, and a jury, at Camden, N. J., on October 15, 1919. Judgment for the plaintiff in the sum of fifteen hundred (\$1,500) dollars was entered.

First error complained of is, that the Court erred in refusing to grant a non-suit on the plaintiff's opening.

The gist of the action for alienation of a wife's affection is that the defendant wilfully and maliciously and with the intent to alienate the affections of the wife, caused her to transfer her affections from the plaintiff to the defendant. And the examination of the opening of the plaintiff, shows that there was no allegation or evidence of any wilful, wrongful or malicious intent on the part of the de-

fendant, done with the intent to alienate the affections of the wife. There are no allegations of affection on the part of the defendant towards the wife of the plaintiff, nor any allegation of affection on the part of the wife of the plaintiff towards the defendant. The only statement is that the defendant had visited the home of the parents of the wife of the plaintiff, where the wife of the plaintiff lived. We contend that these allegations are not sufficient to maintain an action. In order to maintain this action, it must be proven that the defendant wilfully, maliciously and intentionally alienated the affections of the plaintiff's wife. Mere alienation of the affections of the wife does not alone constitute a cause for action. It was held in *Neville vs. Gile*, 174 Mass., 54 N. E. 841, that "alienation of affections alone is not a substantive cause of action, even where the husband brings the action, but is merely an aggravation of damages for loss of consortium."

Therefore, alienation of a wife's affection alone, would not give rise to a cause of action on the part of the plaintiff against the defendant, in the absence of wrong doing and there is no allegation in the plaintiff's opening or pleadings of any wrong doing between the defendant and the wife of the plaintiff. While separation is not necessary, the loss of consortium is, and there is no allegation or evidence that the plaintiff suffered any such loss. The only allegation tending towards the loss of consortium or a separation is that Davenport and his wife had a quarrel and Mrs. Davenport told her husband to get out; which he did.

Mere proof of abandonment and that the husband maintains improper relations with the defendant is not sufficient, 21 Cyc. 1621; *Scott vs. O'Brien*, 129 Ky. 1; 110 S. W. 260, so in this case it appears that

there is no allegation of wrong doing and even if there was wrong doing, unless it results in loss of consortium there is no right of action for alienation.

In this action the plaintiff voluntarily abandoned the company of his wife, even if she had left him, for it was held in *Scott vs. O'Brien*, that alone would not have been sufficient to hold this defendant liable, unless it is established that the husband was induced to abandon the wife by some active interference on the part of the defendant.

And it must be established, it was held by the Court in the *Scott vs. O'Brien* case, that

“Although you may believe from the evidence that the plaintiff’s husband transferred his affections from the plaintiff to the defendant, yet if you further believe that the plaintiff’s husband alienated his own affections from plaintiff, without any intentional misconduct on the part of the defendant or that such alienation was occasioned by some other cause over which the defendant had no control or exercised no intentional direction or cause, then you will find for the defendant.”

In this case, there is no allegation of any intentional act on the part of this defendant from which it could be inferred that he attempted to alienate the affections of the wife. The mere fact that may have extended to her courtesies does not justify the conclusion that he wilfully, intentionally and maliciously alienated her affections.

It was further held in the *Scott vs. O'Brien* case that “if defendant made presents to the plaintiff’s wife and gave her other attentions by and with the consent of the plaintiff with no evil intent and without the intention to alienate her or her affections

from him and never had carnal knowledge of her, the plaintiff cannot recover, even though as the consequences of such acts she conceived a fondness and affection for the defendant." Nor is there any inference to be drawn that if the husband had not consented to the extending of these courtesies or the making of gifts to the wife by the defendant, that the defendant would be liable.

Adams vs. Main, 3 Ind. Appeals 232, 29 N. E. 792;
50 *Amer. Rep.* 266.

Malice on the part of the defendant is the foundation of the action and if not existing, there is no liability even if whatever advice or assistance the defendant gave to the husband was partly or wholly the cause of desertion.

Tasker vs. Stanley, 153 Mass. 148, 10 L. R. A. 468, 26 N. E. 417;
Geromino vs. Brunelli, 214 Mass. 942, 102 N. E. 67, 46 L. R. A. N. S. 465;
Houghton vs. Rice, 174 Mass. 336, 47 L. R. A. 310, 75 *Amer. St. Rep.* 351, 54 N. E. 843.

And in this case there is no allegation of malice or allegation of any facts upon which malice could be based nor is there any allegation that he advised the defendant to remain away from, or to leave the husband.

In the case of *Tasker vs. Stanley*, cited above, it was held as follows: "To make a man liable who has no special influence or authority answerable for mere advice of this kind, because it is followed, we think it ought to appear, that it did not represent his real opinions or that it was given from malevolent motives, and so are all the cases." It

appears from this case that even if the defendant had advised the wife of the plaintiff to leave the husband he would not be liable and there is no allegation that even this act on the part of the defendant caused the separation. In fact, there is no allegation of any friendship between the defendant and the wife of the plaintiff, until some months after the separation of the husband and wife and then there is no intimation nor any evidence of affection or wrong doing. The only allegation being that they were often seen together. Allegations of what occurred subsequent to the separation have been held not to be relevant or material.

Haggerty vs. Stewart, 96 Atl. 1096.

The authorities cited above apply with equal force to the fourth and seventh assignments of error, which are that the Court erred in refusing to grant a non-suit and that it erred in refusing to direct a verdict, respectively, for at no stage of the case is there any allegation or any evidence to show that this defendant was responsible for the trouble between the plaintiff and his wife; in fact, the plaintiff himself says that this defendant was not responsible. The plaintiff states on page 24, of the state of the case, line 2, "that he left his wife on the 17th of August; 17th or 18th." He says at that time (see line 25, page 25) that "he had never made any complaint, at that time he had never taken his wife to task or was Holden's name mentioned." And on page 33, line 20, referring to the quarrel that caused the separation of the parties, on cross-examination he was asked:

"Q. And the quarrel between you and your wife was not because she was in the machine with Holden; was it?

A. No; it was because she didn't speak to me."

And on page 32, line 3, he was asked, referring to the last trip of Mr. Holden to Atlantic City with Mrs. Davenport to meet Mr. Davenport, as follows:

"Q. Did you, on that occasion say anything to your wife or Mr. Holden about his bringing your wife to Atlantic City to take you home?

A. I did not.

Q. You thought it was perfectly proper for your wife and Holden to come to Atlantic City and take you home?

A. I thought they were friends; yes."

And on page 38, line 22, the plaintiff was asked referring to the quarrel between himself and his wife:

"Q. And didn't the quarrel arise as a result of Mrs. Barton's being in that machine with your wife?

A. It did not.

Q. Didn't that have something to do with the quarrel?

A. No, sir; because she didn't speak."

And on page 42, line 3, the plaintiff was again asked:

"Q. What caused your grouch when you met them at Atlantic City?

A. My wife wouldn't speak to me.

Q. No other reason?

A. No."

And on page 35, line 1, the plaintiff was asked:

"Q. The quarrel next morning was not as a

result of any action on the part of your wife and Holden?

A. Only I thought she was sore at me and wouldn't speak the night before."

And on line 19, page 35, plaintiff was asked:

— "Q. Did you, when you met Holden that morning before you left the cottage, charge him that his action with your wife was the result of your separation?

A. I did not, he was still in his room."

And on line 29, he was asked:

"Q. Did you see him the next day?

A. Yes."

And on line 9, page 36, plaintiff was asked:

"Q. What did he ask you? (Referring to conversation with Holden.)

A. He asked me if he was the cause.

Q. What did you say to him?

A. When he asked me that, I told him to keep out of it, I would take care of it.

Q. Did you tell him that?

A. I meant it was none of his business; it was our affair, the wife and mine."

All of these statements show that at the time of the separation that there was no act of Holden's that in any way contributed towards the separation and that the conduct of Holden and Davenport's wife were such as met with the approval of the plaintiff, and were by him consented to. Nor did the plaintiff make any attempt that was a *bona fide* attempt after the separation to ever resume marital relations with his wife.

On direct examination on page 25, starting with line 28, the plaintiff was asked:

“Q. What did you do after you quarrelled with your wife that morning? Where did you go?

A. Right to my mother’s house in Collingswood.

Q. Then where?

A. Then to Trenton, the following Monday.

Q. Did you make any effort later to have your wife come with you?

A. Not until I got to Trenton.

Q. What did you do when you got to Trenton?

A. Wrote her a letter.

Q. With relation to your wife?

A. What did I do?

Q. Yes?

A. Nothing at all, but sought legal advice about a week after I got there.

Q. And as a result of that legal advice what did you do?

A. Wrote her a letter asking her to come to Trenton to live, as I had two rooms up there.”

And on page 37, line 1, the plaintiff was asked:

“Q. You never communicated with your wife in any way until after you had consulted a lawyer, did you?

A. No, sir.

Q. And you say that it was at the request of a lawyer that you wrote your wife a letter?

A. I went and asked for legal advice.

Q. And it was as a result of his advice to you, that you wrote a letter.

A. Yes.

Q. And you offered her a home in Trenton?
A. I did."

And on page 39, line 1, the plaintiff was asked:

"Q. And during that period of two weeks did you of your own volition make any effort to patch up the quarrel you and your wife had?

A. No, sir."

And on line 1, page 40, the plaintiff was asked:

"Q. You never sought your wife out alone to talk to her?

A. No, because I knew what she was; I knew she wouldn't come back.

Q. You never made the effort?

A. No, I never made the effort."

It is apparent that there was not good feeling between the husband and wife even before Holden came into their lives and that they had frequently quarreled and prepared to separate, for the plaintiff on line 1, page 43, says as follows:

"Q. So you and she had quarreled prior to Holden coming into your lives?

A. Sure."

It is apparent that from the evidence of the plaintiff's and from other witnesses produced in his behalf that there was no act on the part of the defendant that caused the separation, nor did anyone consider ~~the plaintiff, or others,~~ at the time of the separation that this defendant had anything to do with it. The plaintiff cannot complain that the action of Holden prevented a reconciliation because he says that he never sought his wife out to make a reconciliation, but that he once or twice communicated

with her through lawyers. It certainly is not a method which is likely to result in a reconciliation and, as he states, he wrote to his wife because a lawyer advised it.

Now, as an examination of the authorities cited, to sustain the exception to the failure of non-suit on the plaintiff's opening, they clearly show that even if this defendant had been the cause of the separation in the absence of any malicious act on his part, he is not liable, but presuming that the courtesies extended by Holden to the wife of Davenport, had caused her to become infatuated with the defendant, and there is no evidence in the case at all of any such infatuation, even then would the defendant not have been liable.

"It may be laid down as a general rule, at least where there is no element of seduction or adultery, that a defendant in an action for alienation of affections is not liable unless he acted maliciously, whether he is a parent or a stranger to the plaintiff's spouse. It is true, that as is hereinafter shown, it requires more evidence to establish malice on the part of the parent than is necessary in the case of a stranger, but this difference is an evidential one merely. It does not affect the truth of the above statement; that it is always material to inquire whether the defendant was influenced by malevolent or improper means."

Geromino vs. Brunelli, 214 Mass. 492, 102 N. E. 67, 46 L. R. A. N. S. 465.

In the case of *Houghton vs. Rice*, as cited above, the Court cites with approval the case of *Lillis vs. Lambert*, 24 Ont. Appeal 653, where Judge Osler on page 664, held:

“The loss of a wife’s affections not brought about by some act on the defendant’s part which necessarily caused or involved the loss of her consortium, never gave a cause of action to the husband. His wife might permit an admirer to pay her attentions, frequent her society, visit at her home, spend his money upon her, and by such means alienate her affections from him, resulting even in her refusal to live with him, and so far as she could bring it about, in the breaking up of his home, and yet there being no adultery, and no ‘procuring or enticing’ or ‘harboring and secreting’ of the wife, no action lay at the suit of the husband against the man.”

And in this case there is no evidence of any wrong doing, no evidence of affection between the parties, no evidence of anything being done by this defendant to cause the separation of the husband and wife, nor is there any allegation or evidence of any act on his part to prevent their reunion.

To support an action for alienating the husband’s affection, it is held that it must be established that the defendant was the enticer. Mere proof of abandonment and that the husband maintains improper relations with the defendant is not sufficient.

21 *Cyc.* 1621, Note 24.

That a spouse voluntarily gives his or her affections to another, the latter doing nothing to win such affection, is no grounds for action.

21 *Cyc.* 1621.

And let us go further and see if these acts of courtesy on the part of Holden to the wife of the

plaintiff were not by and with the consent of the plaintiff. On page 22, line 1, question is as follows:

“Q. How soon after the first meeting did Mr. Holden begin to call at your home?

A. Not until June.

Q. At whose invitation did he come?

A. Mine.”

And on page 23, line 19, he was asked:

“Q. Did you object to your wife going to Ocean City with Holden in the machine?

A. To Ocean City?

Q. To Atlantic City?

A. Only on one occasion, I told her I didn't like her riding around everywhere.”

But never did this plaintiff tell Holden that he did not want him to take his wife to Atlantic City, he permitted and consented to what was a friendly act, to bring Mrs. Davenport to meet her husband at Atlantic City and then bring them both back to the Ocean City cottage.

If the rides to Atlantic City were the cause of the separation of the husband and wife, it is not alleged or proven, but presuming what is most favorable to the plaintiff's cause, they were done with his consent and therefore, as held in the case of *Milewski vs. Kurtz*, 77 N. J. Law, 132, that where the husband consented to the acts constituting and contributing to the injury his consent was a bar to recovery. The plaintiff in this case states that he never objected even to the wife about the trips until the day they separated and that that was not the cause of the separation.

On page 34, line 24, the plaintiff says, that on the night before they separated he said to his wife “that

he did not like her going around" and he was then asked "You didn't tell her that, or didn't say anything to Holden about it?" he answered, "I did to her," he was then asked, "But not to Holden?" and he answered, "No, not to Holden."

In other words, he made no objections until this night and says that that even was not the cause of the quarrel or the cause of the separation. The other contention which seems to be in the case, is that some actions on the part of Holden prevented a reconciliation. Testimony on the part of the plaintiff shows that there was no effort on the part of Holden to prevent a reconciliation.

The only evidence which it might be argued, the conclusion might be drawn that Holden prevented a reconciliation is that they were seen several times together in automobiles, once that they returned late at night to Collingswood.

In the case of *Stewart vs. Haggerty*, 96 Atl. 1099 (Pa.) case, it was held that the association of the defendant and the husband of the plaintiff on the public streets was no evidence whatever of improper relations nor did it prove the exercise of any allurements on the part of the defendant for the purpose of enticing the husband away from his wife.

It also held that evidence of the relations existing subsequent to the separation and that appears to be the law of the Court, at least inferentially followed out in New Jersey.

In the case of *McKenna vs. Algeo*, 51 Atl. 936, in which it was held that

"In order to justify a recovery in this case, the burden was upon the plaintiff to show not only that she had lost the affections of her husband, but to prove that they had been alienated

from her by the defendant. To prove that after the plaintiff had lost her husband's love, and that he had deposited it upon the defendant is not enough to sustain a verdict. The evidence must show that the defendant's acts deprived the plaintiff of these affections."

In this case, the parties had separated for another cause, they were no longer living together, the only evidence on the point as to whether the wife ceased to love the husband, is from her testimony on page 105, line 8, when in response to the questions of the attorney of the plaintiff which were as follows:

"Q. Is it because you don't like him?

A. It is.

Q. When did that dislike occur in your mind?

A. About a year after I married him."

This disposes of the exceptions for the failure to non-suit and directed a verdict. The second and third exceptions are practically the same and they are as to occurrences subsequent to the separation. It is contended that the evidence of Walter Davenport and his wife, Ada Davenport, are incompetent and immaterial, as they are subsequent to the separation, and the loss of consortium and are therefore immaterial.

In this case of *Stewart vs. Haggerty*, cited above, it was held that "evidence as to relations existing between the defendant and plaintiff's husband were improper and that what occurred subsequent thereto was not proper evidence in an action of this sort."

In this case, we therefore ask that the judgment below be reversed, for the admission of the evidence referred to in the testimony of Ada Davenport and

on account of the failure of the Court to strike it out in the case of Walter Davenport.

On account of the errors in the record the defendant respectfully requests that this Court reverse the judgment of the Court below.

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