

INDEX.

|   | Page |
|---|------|
| Petition .....                              | 1    |
| Answer and Counterclaim .....               | 3    |
| Affidavit of Gladys E. Arnaboldi .....      | 6    |
| Replication and Answer to Counterclaim..... | 7    |
| Replication to Answer to Counterclaim.....  | 8    |
| Order of Reference .....                    | 9    |
| Order .....                                 | 10   |
| Amendment to Answer .....                   | 11   |
| Replication to Amended Answer .....         | 13   |
| Testimony .....                             | 14   |
| Opinion of Vice Chancellor .....            | 167  |
| Final Decree .....                          | 176  |
| Order .....                                 | 181  |
| Order .....                                 | 182  |
| Notice of Appeal .....                      | 184  |
| Petition of Appeal .....                    | 186  |
| First Amended Notice of Appeal.....         | 188  |
| Second Amended Notice of Appeal.....        | 191  |
| Notice .....                                | 194  |
| Affidavit of Jacob Siff .....               | 195  |
| Affidavit of Gladys Arnaboldi .....         | 197  |
| Affidavit of Helen Van Nostrand .....       | 199  |
| Affidavit of John Lehe .....                | 201  |
| Order .....                                 | 205  |
| Amended Petition of Appeal .....            | 207  |
| Answer to Petition of Appeal .....          | 212  |
| Answer to Amended Petition of Appeal.....   | 213  |
| Notice of Appeal .....                      | 214  |
| Petition of Appeal .....                    | 215  |
| Amended Notice of Appeal .....              | 217  |
| Answer to Petition of Appeal.....           | 219  |
| Stipulation .....                           | 220  |

WITNESSES FOR PETITIONER.

|                            | Page |
|----------------------------|------|
| Joseph P. Arnaboldi:       |      |
| Direct .....               | 14   |
| Cross .....                | 26   |
| Redirect .....             | 44   |
| Recalled—Direct .....      | 164  |
| Mrs. Marguerite Arnaboldi: |      |
| Direct .....               | 47   |
| Cross .....                | 48   |
| Redirect .....             | 50   |
| Thomas Karen:              |      |
| Direct .....               | 51   |
| Cross .....                | 54   |
| Henry Schloetzer:          |      |
| Direct .....               | 56   |
| Cross .....                | 61   |
| Redirect .....             | 65   |
| Edward John Keating:       |      |
| Direct .....               | 65   |
| Cross .....                | 66   |
| Miss Amelia Ardito:        |      |
| Direct .....               | 66   |
| Cross .....                | 68   |
| Recalled—Direct .....      | 70   |
| Mrs. Rosie Ardito:         |      |
| Direct .....               | 69   |
| Cross .....                | 70   |
| George Schaefer:           |      |
| Direct .....               | 71   |

WITNESSES FOR DEFENDANT.

|                           |     |
|---------------------------|-----|
| Mrs. Gladys E. Arnaboldi: |     |
| Direct .....              | 72  |
| Cross .....               | 102 |

|                          |     |
|--------------------------|-----|
| John B. Lehe:            |     |
| Direct .....             | 113 |
| Cross .....              | 127 |
| Redirect .....           | 138 |
| Mrs. Helen Van Nostrand: |     |
| Direct .....             | 139 |
| Cross .....              | 143 |
| Mrs. Louise Fortier:     |     |
| Direct .....             | 146 |
| Theron Wheeler:          |     |
| Direct .....             | 147 |

TESTIMONY IN REBUTTAL.

|                |     |
|----------------|-----|
| Bruno Frangi:  |     |
| Direct .....   | 148 |
| Cross .....    | 150 |
| Redirect ..... | 156 |
| Arno Kohler:   |     |
| Direct .....   | 157 |
| Cross .....    | 158 |

EXHIBITS.

|                  | Adm'd<br>Page | Ptd<br>Page |
|------------------|---------------|-------------|
| P-2—Letter ..... | 164           | 166         |

*[Handwritten scribbles]*

**Petition.**

Filed April 12, 1926.

**In Chancery of New Jersey.**

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Between  
JOSEPH P. ARNABOLDI,  
Petitioner,  
  
and  
  
GLADYS E. ARNABOLDI,  
Defendant.

10

On Petition  
for Divorce.

---

To Honorable EDWIN ROBERT WALKER, Chancellor 20  
of the State of New Jersey.

The petition of Joseph P. Arnaboldi, of the Borough of Cliffside Park, in the County of Bergen and State of New Jersey respectfully shows:

1. He was lawfully joined in the bond of matrimony to the defendant, Gladys E. Arnaboldi, his present wife, on the twenty ninth day of March, nineteen hundred and nineteen, by Recorder Cutler, Judge of the Recorder's Court of the Town of West Hoboken, Hudson County, New Jersey in said town of West Hoboken. Her maiden name was Gladys E. Wheeler. 30

2. Defendant, every day during the month of March, 1926, and on the 1st, 2nd, 3rd, 4th, 5th, 6th, and 7th days of April, 1926, committed adultery with John Lehe at #23 Grace Street, Jersey City, New Jersey. 40

3. Defendant, at various times and places at

*Petition.*

present unknown to the Petitioner committed adultery with said John Lehe at places unknown to the petitioner.

10 4. Three children were born of said marriage to wit: Allyn Arnaboldi, aged 6 years, Joseph P. Arnaboldi, Jr. aged 4 years, and Vivian Aranboldi, aged 1 year.

Petitioner and defendant were both bona fide residents of this State when this cause of action arose, and have, ever since, continued to be such residents.

20 Petitioner prays that the marriage between petitioner and defendant may be dissolved for the cause aforesaid, according to the statute in such case made and provided; and that the petitioner may be awarded the custody of said children of the marriage and that he may have such further relief as may be just.

And your Petitioner will ever pray, &c.

HENRY MARELLI,  
Solicitor of Petitioner.

State of New Jersey, }  
County of Passaic, } ss.:

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

JOSEPH P. ARNABOLDI.

Sworn to and subscribed before me this }  
10th day of April, A. D. 1926. }

40 Phoebe E. Ward,  
Notary Public  
of New Jersey.

**Answer and Counterclaim.**

Filed May 10, 1926.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPH P. ARNABOLDI,  
Petitioner,

and

GLADYS E. ARNABOLDI,  
Defendant.

Answer and Counterclaim. 10  
Docket 60-484.

The defendant, Gladys E. Arnaboldi, of the City of Jersey City, in the County of Hudson and State of New Jersey, by way of answer to the petition filed in the above cause says that: 20

1. Paragraph 1 is admitted.
2. Each and every allegation contained in paragraph 2 is denied.
3. Each and every allegation contained in paragraph 3 is denied.
4. Paragraph 4 is admitted.
5. Paragraph 5 is admitted except that this defendant denies that any cause of action ever arose in favor of petitioner and against this defendant. 30
6. This defendant denies that petitioner is entitled to the relief prayed for or any part thereof. And the defendant, by way of counterclaim exhibited against the petitioner, says that:

1. This defendant was lawfully joined in the bonds of matrimony to the petitioner, Joseph P. 40

*Answer and Counterclaim.*

Arnaboldi, her present husband, on the twenty-ninth day of March 1919, by Recorder Cutler, Judge of the Recorder's Court of the Town of West Hoboken, in the County of Hudson and State of New Jersey, in said Town of West Hoboken.

10 2. About August 1923, the said Joseph P. Arnaboldi deserted this defendant, ever since which time and for more than two years last past, the said Joseph P. Arnaboldi has willfully, continued-ly and obstinately deserted this defendant.

20 3. This defendant is and has been a bona fide resident of the State of New Jersey continuedly since March, 1919, residing at Jersey City, West Hoboken and Union City, all in the County of Hudson and State of New Jersey; that this defendant was a bona fide resident of the State of New Jersey when this cause of action arose and she has ever since continued to be and still is a bona fide resident of the State of New Jersey; that the said petitioner, Joseph P. Arnaboldi is and has been a bona fide resident of the State of New Jersey continuedly since his birth, about 29 years ago, residing at West Hoboken and Union City, in said  
30 County of Hudson; that the said Petitioner was a bona fide resident of the State of New Jersey when this cause of action arose, and he has ever since continued to be and still is a bona fide resident of the State of New Jersey.

40 4. Three children, now in the custody of this defendant, were born of said marriage, to wit; Allyn Arnaboldi, aged 6 years; Joseph P. Arnaboldi, Jr., aged 4 years, and Vivian Arnaboldi aged more than 1 year and less than 2 years.

*Answer and Counterclaim.*

5. This defendant has no means of support except by her own exertion; that this defendant is unable to work for her support owing to the necessity of attending to her said three children and her household duties.

6. This defendant's maiden name was Gladys E. Wheeler. 10

7. This defendant prays that the marriage between this defendant and the said petitioner may be dissolved for the causes aforesaid according to the Statute in such case made and provided, that she be awarded the custody of said children, and that the said petitioner, Joseph P. Arnaboldi, may be compelled by a decree of this Honorable Court to support this defendant and the said three children, and that defendant may be allowed to re-  
20 sume her maiden name and that this defendant may have such other and further relief as may be just.

And defendant will ever pray, etc.

GLADYS E. ARNABOLDI,  
Defendant.

SIFF & SIFF,  
Solicitors for Defendant. 30

IRVING SIEGLER,  
Of Counsel.

**Affidavit of Gladys E. Arnaboldi.**

IN CHANCERY OF NEW JERSEY.

Between

JOSEPH P. ARNABOLDI,  
Petitioner,

and

GLADYS E. ARNABOLDI,  
Defendant.

Affidavit.

10

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

Gladys E. Arnaboldi, of full age, being duly  
sworn according to law upon her oath deposes and  
says that:

20

I am the defendant named in the annexed coun-  
terclaim; that my said counterclaim is not made  
by any collusion between me and the petitioner,  
but in truth and good faith for the causes set forth  
in the said counterclaim.

GLADYS ARNABOLDI.

Sworn and subscribed to before me this }  
fourth day of May, 1926. }

30

Joseph Kraemer,  
Master in Chancery  
of New Jersey.

40

**Replication and Answer to Counterclaim.**

Filed May 8, 1926.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPH P. ARNABOLDI,  
Petitioner,

and

GLADYS E. ARNABOLDI,  
Defendant.

On Petition  
for Divorce.

Replication  
and Answer to  
Counterclaim.

10

The petitioner joins issue on the answer of the  
defendant.

As to the counter-claim contained in said an-  
swer, petitioner says:

20

(1) He admits paragraph one.

(2) He denies paragraph two.

(3) He admits that defendant was a bona fide  
resident of the State of New Jersey when her al-  
leged cause of action arose, and he admits the oth-  
er allegations in paragraph three.

30

(4) He admits paragraph four.

(5). He denies paragraph five.

(6) He admits paragraph six.

This petitioner prays that the said counter-claim  
of defendant may be dismissed, and that the pe-  
titioner may have the relief prayed for in his said  
petition.

HENRY MARELLI,  
Solicitor of Petitioner.

40

**Replication to Answer to Counterclaim.**

Filed May 11, 1926.

IN CHANCERY OF NEW JERSEY.

|    |         |   |                                     |  |                |
|----|---------|---|-------------------------------------|--|----------------|
| 10 | Between | } | JOSEPH P. ARNABOLDI,<br>Petitioner, | On Petition<br>for Divorce.                  |                |
|    | and     |   |                                     | Replication<br>to Answer to<br>Counterclaim. |                |
|    |         |   |                                     | GLADYS E. ARNABOLDI,<br>Defendant.           | Docket 60-484. |
|    |         |   |                                     |  |                |

The defendant joins issue on the Answer of the petitioner to the defendant's Counterclaim.

20

SIFF & SIFF,  
Solicitor for the Defendant.

30

40

**Order of Reference.**

Filed June 7, 1926.

IN CHANCERY OF NEW JERSEY.

|    |         |   |                                     |                                    |    |  |
|----|---------|---|-------------------------------------|------------------------------------|----|--|
| 10 | Between | } | JOSEPH P. ARNABOLDI,<br>Petitioner, | On Petition<br>for Divorce.        | 10 |  |
|    | and     |   |                                     | Order of<br>Reference.             |    |  |
|    |         |   |                                     | GLADYS E. ARNABOLDI,<br>Defendant. |    |  |
|    |         |   |                                     |                                    |    |  |

This matter being opened to the Court by Henry Marelli, solicitor of the petitioner, and Siff and Siff, solicitors of the defendant, and upon reading the consent hereto underwritten:

20

It is Thereupon, on this seventh day of May, 1926, ORDERED that the above cause be referred to Honorable John Bentley, one of the Vice-Chancellors of this Court, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein.

E. R. WALKER,  
C. 30

We consent to the entry of the above order.

HENRY MARELLI,  
Solicitor of Petitioner.

SIFF & SIFF,  
Solicitors of Defendant.

40

Order.

Filed June 28, 1927.

IN CHANCERY OF NEW JERSEY.

|    |   |   |                                    |
|----|---|---|------------------------------------|
| 10 | Between<br>JOSEPH P. ARNABOLDI,<br>Petitioner,<br><br>and<br><br>GLADYS E. ARNABOLDI,<br>Defendant. | } | On Petition,<br>Etc.<br><br>Order. |
|----|---|---|------------------------------------|

Application having been made by Jacob Siff, Esq., Solicitor for the defendant in the presence of Henry Marelli, Esq., Solicitor for petitioner, at the close of the taking of testimony in the above matter to file additional defenses in the above matter in behalf of the defendant, Gladys E. Arnaboldi, and good cause for filing the same appearing from the said testimony, it is on this 28th day of June, 1927,

ORDERED, that the defendant be and is hereby granted leave to amend the answer filed by the defendant in the above entitled cause by adding thereto the additional defenses annexed hereto.

E. R. WALKER,  
 Chancellor.

Respectfully advised,  
 JOHN BENTLEY,  
 V. C.

Amendment to Answer.

Filed June 28, 1927.

IN CHANCERY OF NEW JERSEY.

|    |   |   |   |    |
|----|---|---|---|----|
| 10 | Between<br>JOSEPH P. ARNABOLDI,<br>Petitioner,<br><br>and<br><br>GLADYS E. ARNABOLDI,<br>Defendant. | } | On Petition,<br>Etc.<br><br>Amendment<br>to Answer. | 10 |
|----|---|---|---|----|

The defendant, Gladys E. Arnaboldi, pursuant to leave of this court first had, hereby amends the answer heretofore filed by her in the above entitled cause and hereby adds thereto the following additional defenses and says that:

SECOND ANSWER TO PETITION.

1. Paragraphs one, two and three of the counterclaim heretofore filed in the above matter in behalf of the defendant, are hereby made a part of this answer.

2. By reason of the willful, continued and obstinate desertion of the defendant by the petitioner prior to any alleged adultery on the part of the defendant as is alleged in the petitioner's petition, the petitioner is not entitled any relief prayed for in his said petition and is barred from receiving said relief.

FOURTH ANSWER TO PETITION.

1. Paragraphs one, two and three of the coun-

*Amendment to Answer.*

terclaim filed herein in behalf of the defendant are hereby made a part of this answer.

2. About six months prior to the marriage of the petitioner and defendant on March 29, 1919, the petitioner seduced the defendant and had sexual intercourse with her as a result of which their first child was born about three months after their marriage; that thereby the petitioner had knowledge of ante-nuptial incontinence on the part of the defendant; by reason thereof, the petitioner was bound to exercise peculiar and extraordinary vigilance and care over the defendant and prevent her from being placed in a position where she might be tempted to have sexual intercourse with a man other than her husband, the petitioner; that instead of extending to the defendant such vigilance, care and protection the petitioner wrongfully deserted the defendant for more than two years as aforesaid, during all of which time he withdrew said protection and during said period of time shadowed the defendant and the said John Lehe, hoping that the said defendant and John Lehe would be tempted to commit adultery and that the petitioner would be able to secure evidence of such adultery between the defendant and John Lehe; by reason of the foregoing facts, the petitioner connived at the commission of adultery if any, between the defendant and the said John Lehe as alleged in the petition and thereby the petitioner is barred from receiving the relief prayed for in the petition.

JACOB SIFF,  
Sol'r for Defendant.

40

**Replication to Amended Answer.**

Filed July 24, 1928, as within time.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPH P. ARNABOLDI,  
Petitioner,

and

GLADYS E. ARNABOLDI,  
Defendant.

On Petition  
for Divorce. 10  
Replication  
to Amended  
Answer.

Petitioner joins issue on the Amended Answer of defendant.

HENRY MARELLI,  
Solicitor of Petitioner. 20

I consent to the filing of the above Replication as within time.

JACOB SIFF,  
Solicitor of Defendant. 30

40

**Testimony.**

IN CHANCERY OF NEW JERSEY.

|    |                                     |     |                                    |  |
|----|-------------------------------------|-----|------------------------------------|--|
|    | Between                             |     |                                    |  |
| 10 | JOSEPH P. ARNABOLDI,<br>Petitioner, | and | GLADYS E. ARNABOLDI,<br>Defendant. | }                                      |
|    |                                     |     |                                    | On Pet. for<br>Divorce.<br>Transcript. |

20 Transcript of the testimony taken in the above-stated cause, on final hearing, at the Chancery Chambers in Jersey City, on Wednesday, March 22, 1927, at 10 o'clock in the forenoon, before his Honor JOHN BENTLEY, Vice-Chancellor.

APPEARANCES:

HENRY MARELLI, ESQ.,

For the Petitioner.

JACOB SIFF, ESQ.,

For the Defendant.

30 JOSEPH P. ARNABOLDI, sworn in his own behalf, testified as follows:

*Direct-examination by Mr. Marelli:*

Q. You are the petitioner in this case, Mr. Arnaboldi? A. Yes, sir.

Q. When were you married to the defendant? A. On March 29, 1919.

Q. Where? A. In West Hoboken.

40 Q. By whom? A. By Rector Cutler.

*Joseph P. Arnaboldi—Direct.*

Q. After your marriage where did you and your wife go to live? A. For the first two weeks I lived with my parents, and after that we resided at Central Avenue, right near Bowers Street, for one month.

Q. Then where did you go? A. To 700 Paterson Avenue, West Hoboken. 10

Q. And then where did you go? A. I resided there until the time—

Q. Until the time of separation? A. Right.

Q. Well, when was that? A. That was the last Friday in August, 1923.

Q. How many children were born of the marriage? A. 2.

Q. While you were living together. A. There was two.

Q. Any born after that? A. There was a little girl born after that. 20

Q. Now, state the names of your children and their ages. A. Allyn Arnaboldi, now 7 years old, and Joseph P. Arnaboldi, now six years of age.

Q. What is the other one? A. The other one, if I have the name correctly, is Vivian Arnaboldi.

Q. Where were you living at the time of the separation, did you say? A. In Union City.

Q. On what street? A. 706 Paterson Ave. 30

*By the Court:*

Q. That was on what date? A. That was the last Friday in August, 1923.

*By Mr. Marelli (continued):*

Q. Now, what is it that was the cause of the separation? A. Why, the cause of my separation was that my wife intermingled with other men, which I strongly objected to, and she took no heed 40

*Joseph P. Arnaboldi—Direct.*

to my objection; and that last Friday in August I had to go to a Union meeting, and I simply told her if I came home and found her out that I would leave her, and so I did.

Q. Well, did you find her out very often? A. Yes, she was out, on an average of four nights a week.

10 Q. What time would she come home? A. Ranging from half past 11 and 12 to 1 o'clock in the morning.

Q. Did you try to stop her? A. I did.

Q. What would she say? A. She told me it was none of my darn business what she was doing and she would go out with whoever she pleased, and she would leave the children with the little girl upstairs.

20 Q. Did she go to New York with someone some time before the separation? A. She did.

Q. Tell us about that. A. Sometime in May, 1923, my wife had made arrangements to meet some salesman for some clothing concern—just what concern it was I do not recall.

*Mr. Siff:*

30 Q. What kind of a salesman? A. Clothing salesman.

*By Mr. Marelli (continued):*

Q. Go ahead. A. And I objected to her going, and I was quarreling with her—

40 The Court: Mr. Siff, I think those two older boys ought to be kept out of the courtroom. They will probably remember what they hear. Has your client some friend or relative here who can take care of them?

*Joseph P. Arnaboldi—Direct.*

Mr. Marelli: That is the grandfather there, and he is very friendly with them.

The Court: All right; will you ask him, Mr. Marelli to take the children out.

(The children are taken out of the room.)

10 Q. Will you proceed with the incident with the salesman. A. Well, as I was saying, she told me that this salesman was coming, to which I greatly objected, and due to that we had an argument there, quite heated, I must say, and in the meantime while we were having this argument my parents came down to take us out in the machine with the youngsters to go on a Sunday picnic, and she objected to going, and she said "No, I have made an appointment with this man to go to New York to buy a coat and I am going"; and she left me and my parents and my children and proceeded to New York.

20 Q. Did you see the man? A. He called at the house and I told him that I objected to her going; in fact, I asked him to get out and he wouldn't because she insisted upon going.

30 Q. Did you take hold of her? Did you try physically to stop her from going? A. I did, but it was of no avail.

*By the Court:*

Q. When was this? A. This was sometime in May, 1923.

Q. Was that a Sunday? A. On a Sunday morning; yes, sir.

40 Q. What did she say her purpose was, in going to New York? A. To go there to buy a coat; and I said "What's the matter with me; couldn't I go and buy a coat instead of having a stranger do it".

*Joseph P. Arnaboldi—Direct.*

*Direct-examination by Mr. Marelli resumed:*

Q. She went, did she? A. She did.

Q. What time did she come home? A. Why, she got home sometime in the afternoon. She left about half past 10 or 11 in the morning and got back sometimes in the afternoon.

10 Q. Do you know about what time? A. I wouldn't be able to say exactly what time it was, but it must have been between 4 and 6.

Q. Now, did you speak to her when she came back and returned? A. I did.

Q. What did you say to her? A. I asked her where she had been all that time; did it take all that time to buy a coat", and she said "None of your business".

20 Q. Now, after that did she go out again against your wishes? A. She positively did.

Q. And what happened finally in August, just before the separation? A. Well, in August, that Friday night, I had to go to the Union meeting, and I told her if I came home and found her—

The Court: You have told us that; you said that you would leave, and did leave.

30 Q. Now, do you know a man named Lehe? A. Yes, I do.

Q. Is he here in court? A. He is.

Q. Where is he? A. The man sitting in the seat there.

40 Q. What do you know about him? A. Why, he has been very friendly with my wife, and he is supposed to be a boarder with my wife for over two years or two and a half years, and he is the man at the time of the raid that we caught in his underwear holding the little baby girl in his arms.

*Joseph P. Arnaboldi—Direct.*

Q. With whom was he living? A. He was living with my wife.

Q. When was that? A. Well, that was—well, I will say that was in 1925, 1926 and 1927.

Q. How do you know he was living with your wife? A. Because I saw him go in and out through our shadowing of the house. 10

Q. Now, did you hire and engage a detective? A. I did.

Q. Who was it? A. Mr. Coridon, a private detective from Hoboken.

Q. Any of his operators here? A. Why, yes, sir; Mr. Thomas Karen, one of his operators.

Q. Now, did you go into the house with Mr. Coridon and others? A. I did.

Q. When was that? A. That was April the 9th. 20

Q. What year? A. 1926.

Q. What time of the night was it? A. That was half past 11.

Q. What did you see in there? A. At the time I entered—

Mr. Siff: Just a moment. There is no allegation here of this.

The Court: I appreciate that, and, of course, no divorce can be granted on any act committed by the defendant except 30 when it is mentioned in the petition; but other acts of intimacy may be shown, not for the purpose of proving their case but for the purpose of tending to prove the disposition of the defendant.

Mr. Siff: I suppose we are to consider paragraph 3, which says "at various other times and places unknown, under Rule 259?" 40

*Joseph P. Arnaboldi—Direct.*

The Court: Well, I don't know.

Mr. Siff: Paragraph 2 is all right; paragraph 3 I think is a nullity. Rule 259 says, "You must set forth the time and place."

10 The Court: Well, I will deal with that afterwards.

A. At the time I entered the place I saw a man standing in his underwear, between the kitchen and the room leading into the front room, and my wife at the time had evidently—

*By the Court:*

20 Q. Where is that, between the kitchen and the room leading into the front room? A. Yes, between the kitchen and I believe the room they were using as a dining-room.

The Court: Go ahead.

30 A. —and my wife had slipped on a house dress, being that we were standing outside in the hall waiting for an answer to our knock at the door, and about 3 minutes afterwards she opened it, but she had had no shoes or stockings on. And we walked into the front room; and in the front room Mr. Lehe was sitting on a couch or a bed.

The Court: Sitting?

At the time we entered, no, sir. We proceeded through the kitchen and Mr. Lehe went to what was supposed to be his room, and when we entered that room he was sitting on a couch holding the baby in his arms. He was in his underwear at the time.

40 Q. How many beds were in there? A. Her bed was in her bedroom, and the bed that was supposed

*Joseph P. Arnaboldi—Direct.*

ed to be in what was his room was disassembled. I asked why was it disassembled, and he said "We painted that bed".

*By the Court:*

Q. By "disassembled" you mean taken apart?

A. Taken apart, yes.

10 Q. How was it taken apart? A. The spring was in one place and the mattress was standing in the corner, and the frame of the bed was being painted.

*Direct-examination resumed:*

Q. Did you have any talk with your wife then?

A. The only words that were said between my wife and I was, "Joe, did you come back to stay?" I says, "What after you have been living with a man 20 over two and a half years?" and with that she did not answer.

Q. Did you, prior to this time, see Lehe in the home where your wife was living? A. Why, yes; we saw Mr. Lehe at Cortland Street when she lived at the Cortland Street address. I don't remember the address, but it was on Cortland Street right off of Central Avenue.

30 Q. Did you see Mr. Lehe at this home you raided? A. Yes.

Q. When? A. A couple of months previous to that.

Q. Well, had you seen him after that? Had you seen him go in or out of the place? A. Why, during the time of the raid, this day we are talking of, yes.

40 Q. This raid occurred on April 9th, 1923; now, just before that did you see him? A. Yes. She moved from Cortland Street down to Grey Street

*Joseph P. Arnaboldi—Direct.*

sometime either in November or December, and he was living at 20—I think it is 20 or 23 Grey Street, if I recall the number right, and at that time my wife moved to 19 Grey Street and they were very friendly there, and Mr. Lehe often visited my wife at the 20 address and she moved to 23, and that was where Mr. Lehe was a boarder with my wife.

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The Court: Was that where you went on the 9th of April?

A. That is where we went on the 9th of April.

Q. Now, did you see him there after that? A. Why, yes; he continued to live there just the same.

Q. How do you know that? A. I know that because we shadowed the place every Saturday from then on, and on Saturday, June the 12th, we shadowed the place from six o'clock at night until a quarter to 2 in the morning, and both of them retired and went to their own rooms when we left there and went home. The following week, June the 19th, we shadowed the place again at six o'clock, and we saw Mr. Lehe getting off the trolley car with a bouquet of flowers and went over and entered the house. We hung around there until 8 o'clock and my wife went to the drugstore on the corner, and so did Mr. Lehe go out to another place with about a half an hour in between, and we still hung around, and I saw my wife go down the avenue. She got on the Central Avenue bus. We followed the bus and she got off at Bowers Street and then she looked into the shop windows and then went across the street to a movie house. Then we left and went back home and had a bite to eat, and we came back about a quarter after 11. All this time she was at the movies and Mr. Lehe was home taking care of the children. At quarter after

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*Joseph P. Arnaboldi—Direct.*

11 we went back, and we got into the back yard, and there we watched both windows to see what was going on. The shades happened to be up high enough so that we could see, and as we stood there Mrs. Arnaboldi came back, and when she got back Mr. Lehe and my wife were in the kitchen together, and they had cake and so forth and coffee, and it was about quarter to 1 when Mr. Lehe walked through the kitchen door into the dining-room into his room, and when he was in there a couple of minutes he came out again, and he went to the bath-room, and he came out of the bath-room and he stood between the kitchen door—right by the kitchen door, and I do not like to say what went on then.

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Q. Go ahead and tell us. A. He was standing by the kitchen door there, and much to my surprise I saw Mr. Lehe acting in a very ungentlemanly manner.

20

Q. Tell us what he did. A. He just simply took out his penis; and with that she nodded her head "yes", and it was a few minutes after that my wife went to her bedroom and undressed in the bedroom, and then went in the bath-room; then she went to the kitchen sink; there she had either a can of powder or something on the shelf, and she just powdered herself, and then she walked right in through that door into Mr. Lehe's room. So, on seeing that we waited a few minutes. There happened to be one of these sliding screens there, and we raised the window a little bit and took out the sliding screen and put it out in the yard. We took one of the children's shoes and put it out in the yard, and we raised the window, and then we proceeded, and we made one dash through the din-

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*Joseph P. Arnaboldi—Direct.*

ing-room door into the room where Mr. Lehe and my wife were, and we saw my wife and Mr. Lehe in bed together; and she sat up on the edge of the bed in a sitting position and said "Who are you?". Of course, the room was dark as pitch, but we had a flashlight on them; and with that she says "Who are you?".

10 I says, "You know darned well who I am."

She says, "What do you want?"

I says, "I got what I want". And so, as she got up in a sitting position Lehe was crouched in back and it looked as if no one was in the bed but her; and with that a friend I had with me pulled the quilts off the bed and there we saw Mr. Lehe lying right in bed.

20 Then my wife says to me, "Well, after all it is only the first occasion"; and with that I answered her, "How many more occasions were there?" and she didn't answer.

30 So with that we simply backed out through the dining-room into the kitchen, and when we got in the kitchen door Mr. Lehe says, "Come here; I have got something to show you." He had a bottle in his hand which he offered to us. We unlocked the kitchen door and went out in the hallway and went away.

The Court: When was that that you have just described?

A. June the 19th, after we had raided the place with the detectives.

Q. In 1923? A. No, 1926.

40 Q. When you separated did you make arrangements for the support of your children? A. I did. At that time I was making \$49 or \$50 a week, and, of course, out of that comes holidays and so forth

*Joseph P. Arnaboldi—Direct.*

which we do not get paid for, and I figure I was making on an average of \$40. a week, and I voluntarily sent her \$20 a week for the support of the children.

Q. And where have you lived since the separation? A. Why, when I first left her I was living with friends in New York by the name of Garroni.

10 Q. Were you working in New York then? A. I was working in New York for Mr. Daniel Cannelhart.

Q. How long did you stay there? A. For a period of two months.

Q. Then where did you go? A. Then I came up to West Hoboken to see some friends and I found they had a front room downstairs to rent, and I rented that and stayed there until 1925.

20 Q. That was in West Hoboken, you say? A. In West Hoboken.

Q. And from there where did you go? A. From there I went up with my folks.

Q. Where? A. In Grantwood.

Q. New Jersey? A. New Jersey, yes.

Q. Have you been living there ever since? A. I have been living there ever since.

Q. And living there now? A. Yes.

30 Q. At the time of the separation do you know whether or not, at that time, your wife was pregnant? A. No, sir; I do not.

Q. Did you afterwards hear that she was pregnant? A. Yes, about three months later. My mother received a letter stating that, and that was the first I had known it.

*Joseph P. Arnaboldi—Cross.*

*Cross-examination by Mr. Siff:*

Q. From the time you separated from your wife until the time your petition was filed did you ever visit your children? A. I did.

Q. Where? A. I have met them on the street and spoke to them quite often.

10 Q. Were they with Mrs. Arnaboldi? A. Why, no; they were on the street.

Q. Did you ever visit them at their home? A. No, because I didn't want to have anything to do with my wife.

Q. Did you ever ask to have the children brought up to your folk's home so that you might see them there? A. I did. We had the children up there quite often.

20 Q. Did you see the children there? A. I did.

Q. After the separation? A. After the separation; yes, sir.

Q. Did you ever go to visit the child that was born after the separation? A. No, sir; I did not.

Q. Did you pay for the expenses of the birth of the youngest child? A. Why no, because I didn't know of it; never had been notified of it.

30 Q. You knew your wife was pregnant and expecting a child, didn't you? A. Three months after our separation, I did. That was the first I had known of it.

Q. You knew she was expecting a child? A. Evidently, if she was pregnant.

Q. And you showed no interest in that, did you? A. No, sir.

Q. And you made no inquiries as to when the child was born? A. Positively not.

40 Q. And when did you hear that the child had been born? A. Oh, that was, I guess, about three

*Joseph P. Arnaboldi—Cross.*

or four months after the child was born.

Q. And did you go to see the child? A. I did not.

Q. Did you ever see that child? A. I did.

Q. When? A. When it was out playing with the other youngsters.

Q. You never saw the youngest child until she was able to get out and play alone; is that it? A. That's right. 10

Q. Did you ever buy your children any gifts of any sort? A. I did.

Q. After the separation? A. After the separation.

Q. It was a Saturday the separation took place wasn't it? A. No, sir; I differ with you.

Q. And wasn't the cause of the separation that your wife was pregnant? A. No, sir. 20

Q. Hadn't you said prior to the day of the separation that if she ever got pregnant again you would leave her? A. No, sir; I never made any such remark.

Q. And isn't it a fact that on the Saturday in August that she told you she was pregnant you left her? A. No, sir; she did not tell me she was pregnant at the time I left.

30 Q. Now, you say the cause of the separation was that she mingled with other men; whom had she mingled with? A. Prior to the separation Mr. Lehe was living on the same floor with us in another apartment. He was rooming there at the time with a cousin of his and had to get out when he wasn't paying his room rent, and he wouldn't work, and I seen them standing there in the hallway two or three times, and I objected to it.

Q. Isn't it a fact that she didn't even know Mr. Lehe until Lehe was living at the same number you 40

*Joseph P. Arnaboldi—Cross.*

mentioned? A. No, sir; she knew him.

Q. What floor did you live on in that building?

A. On the second floor front, right.

Q. What floor did Lehe's cousin live on? A. Second floor.

Q. On the same floor? A. Yes, sir, rear left.

10 Q. And you had seen her standing in the hall with Mr. Lehe? A. I did.

Q. On how many occasions? A. Three.

Q. Can you give us the dates? A. Why, no, that I can't say.

Q. Can you give us the year? A. The year? Yes, 1923.

Q. The year of the separation? A. Yes, sir.

Q. What months? A. I guess it was May and June.

20 Q. Are you sure of the months? A. Positive.

Q. How long did Lehe live there before the separation? A. Why, for a period of about four months he was with his cousin there on that floor.

Q. Under what circumstances did you find them there in the hall? A. Why, they were just standing there talking.

30 Q. You mean she was at her door and he was at his door? A. No, sir; she was in the hallway about 15 feet away from her kitchen doorway at that time, and that was right near the bed-room door.

Q. Were they standing together or was there any distance between them? A. I think there was a distance between them.

Q. Did you hear what they were talking about? A. No, I didn't hear what they were talking about.

Q. What were they doing? A. Just gossiping between them.

40 Q. Did you stay in the hallway and gossip with

*Joseph P. Arnaboldi—Cross.*

them? A. No, I told her to get in where she belonged.

Q. How did you come to find her there? A. I was home from work and every day we had to go out in the hall and I was out there.

Q. Were you suspicious of her and Lehe? A. Yes, I was. 10

Q. Was there anything at that time that gave you ground for suspicion, outside of the fact that you saw them gossiping there? A. Well, the fact is she used to go out every so often and I resented that, and she told me she didn't care for me and told me to go to pretty places and swear at me, and I objected to it and it was of no avail.

Q. Was there anything in Lehe's actions that aroused your suspicion? A. The first time I resented her going out in the hall with Lehe I suspected they were pretty friendly when they continued to do that afterwards. 20

Q. At that time were you suspicious of her? A. I was.

Q. Merely from the fact that they were gossiping, or was there anything else? A. Merely from the fact that he would probably go out a few minutes before her and she would go out afterwards, saying she was going to the movies, but I never knew where she went. 30

Q. Did you watch them at that time? A. Why no, I didn't exactly watch them. She used to go out and I used to go out after her, but I would always be foiled and in some way I never could find out where she went.

Q. You say you followed her when you were suspicious of the fact that Lehe had left; did you find her with Lehe? A. Why, no. 40

*Joseph P. Arnaboldi—Cross.*

Q. At that time you shadowed her? A. I did.

Q. Anybody else shadow her for you at that time? A. No, not at that time, because I kept my troubles to myself.

10 Q. And so, up to the time of the separation, outside of the fact that you saw her talking with Lehe on two or three occasions in the hall you had no reason to believe there was anything wrong upon her part and Lehe, did you? A. Previous to that.

Q. Previous to the separation? A. No, those were the only times.

Q. Now, what other men did she mingle with before the separation that aroused your suspicion? A. Well, I can't mention any men that she mingled with, but the only thing I can say she would go out and stay out until one and half past one in the morning.

20 Q. Did you ever see her with any other men than Lehe? A. No, I didn't.

Q. On what do you base your conclusion that she mingled with other men, outside of the fact that she came home late? A. For the reason when I wanted sexual intercourse she wouldn't even give me that, and I asked her why and she said "none of your damn business".

30 Q. And that happened often? A. Yes, it did; very often.

Q. How long before the separation? A. Well, I might as well say from the time we got married.

Q. And you didn't see her with any other men, I understand? A. No, sir.

Q. Then it wasn't the fact that she mingled with other men; it was the fact that she came home late that caused the separation? A. Yes, but what was she doing out at all hours of the night.

40 Q. How many times a week would she come

*Joseph P. Arnaboldi—Cross.*

home at 11 and 11:30 or 12 o'clock? A. She would be out on an average of four nights a week.

Q. How long did that continue before the separation? A. Well, that was regular.

Q. That was from the time of your marriage down to the time of your separation; is that it? A. Yes, sir.

10 Q. And that covered a period of how many years? A. Five years.

Q. So you bore that for five years before you decided it was time to quit; is that right? A. I did.

Q. How many times, to your knowledge, did she leave the children upstairs and go out alone? A. She left the children right in our apartment and she had a little girl to take care of them.

Q. In your apartment? A. Yes, sir.

20 Q. How often would that happen? A. Every time she went out.

Q. With reference to this salesman, what sort of a salesman was he; for women's clothing was it? A. What's that?

Q. This salesman that you referred to, that in 1923 went to New York with your wife, what sort of clothing did he sell, ladies' clothing? A. Evidently. I think she went to New York for the purpose of buying a coat, if I'm not mistaken, and I think that was what she told me.

30 Q. You didn't suspect her of any improper relations with him? A. You never can tell. Why should she go out in that way?

Q. Didn't she ask you to go with her to pick out a coat? A. She didn't.

40 Q. And didn't you refuse to go? A. I did not. I says, "Why not wait a week or two so that we could pay for it with cash, because I objected to the installment plan."

*Joseph P. Arnaboldi—Cross.*

Q. Did she ask you to go with her to buy a coat?

A. Did she ask me to go with her to buy a coat?

Q. With this salesman? A. No, sir.

Q. Did she ever ask you? A. Why, certainly, when she wanted to buy clothes.

Q. For this particular coat? A. No, sir.

10 Q. And you say you did not refuse to go? A. No, sir; I did not.

Q. Now, wouldn't she often ask you to take her out? A. Did she often ask me to take her out? No, not often.

Q. Did you ever offer to take her out? A. I did.

Q. Did you take her out often? A. She wouldn't go out with me.

20 Q. And isn't it a fact that she would ask you to take her out and you would refuse and tell her to go to hell and go herself? A. No, sir; those are just the words my wife used towards me.

Q. Did you take her out often? I have forgotten your answer.

The Court: He said no; she wouldn't go out with him.

*By the Court:*

30 Q. Did you know the name of the salesman? A. No, sir, I did not. He was a Jewish lad and I couldn't get any information at all on that.

*Cross-examination resumed:*

Q. Now, with reference to this incident June 9th; you say you shadowed her? A. Yes, sir.

Q. Where were you standing when all this went on? A. When all this went on?

40 Q. From 11:15 p. m. on, where were you, in

*Joseph P. Arnaboldi—Cross.*

front of the building, or rear of the building? A. Rear of the building.

Q. By the kitchen window? A. Yes, sir; behind the kitchen window.

Q. And could you see all the rooms from the kitchen window? A. Well, the kitchen was so situated that from the one window you could see who- 10 ever went into the dining-room, and from the other window you could see right in her bed-room, and whatever went on in the kitchen you could see.

Q. What did you do, keep hopping from one window to the other? A. No, sir; I had somebody else watch out at the other window.

Q. Are you telling what you saw or what the other party saw? A. What I saw.

Q. Which window were you stationed at? A. 20 Facing the kitchen, I was as your right.

Q. And who was at the other? A. Mr. Schloetzer was at the other.

Q. With the lights on or off? A. The lights were on.

Q. The lights were on in what rooms? A. In the kitchen.

Q. Were the lights on in any other room? A. No, sir.

Q. And through your window you could see in- 30 to which rooms? A. I could see into her bed-room, and I could see anyone that went through from the kitchen into the dining-room.

Q. You could see the kitchen and you could see her bed-room? A. Yes, sir.

Q. You could see anybody going from the kitchen into the dining-room? A. Right.

Q. Could you see into that? A. No, sir, you could not. 40

*Joseph P. Arnaboldi—Cross.*

Q. Was the dining-room dark or light? A. Dark.

Q. Was her bed-room dark or light? A. Dark.

The Court: Let me ask you: Has anybody had the forethought to draw a diagram of this apartment?

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Mr. Marelli: No, I haven't.

Q. As you were facing in through that right window on what side of you was the bed-room? A. To the right. The door leading into her bed-room was directly in front of the kitchen window. The dining-room door was just to the left, right next to the bed-room door. The two doorways were right close together.

20 Q. Now, from the other window what rooms could you see? A. Why, through the other window you could see the dining-room and her bed-room.

*By the Court:*

Q. Was there a doorway leading from the dining-room into her bed-room? A. Why, no, sir. You had to come out of the dining-room to get into her bed-room. There was only one door leading 30 into her bed-room.

Q. That was from the kitchen? A. Yes.

*Cross-examination resumed:*

Q. Where was the bath-room? A. In the right-hand corner; that is, facing the back part of the house it was toward the front, and the kitchen door was right next to the two, to the right.

40 Q. Well, was there a passage-way leading from

*Joseph P. Arnaboldi—Cross.*

the kitchen to the dining-room? A. Why, no; there was just a doorway.

Q. Who was at the other window that night? A. Mr. Schloetzer.

Q. Now, as I understood your testimony before, at quarter to one you saw Lehe go into his room?

A. Yes.

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Q. And his room was which room? A. The front room.

Q. The living room? A. Yes, sir; and in order to get into that room he had to go through the dining-room.

Q. And then you saw him go into the bath-room? A. Well, he come out of the dining-room into the kitchen, and then went to the bath-room.

Q. And you say at the kitchen door he shook his penis at her; where was that? A. He was standing in the doorway between the kitchen and the dining-room.

20

Q. Between the kitchen and dining-room? A. Yes, sir.

Q. And where was Mrs. Arnaboldi? A. She was sitting right in the kitchen looking toward the dining-room door in the direction of Mr. Lehe.

Q. Was she doing anything? A. No, sir; just sitting.

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Q. Fully dressed? A. He was, yes; and so was she.

Q. And she was doing nothing; just sitting there? A. Just sitting there. They were talking. What the conversation was I could not hear.

Q. Was the window open? A. The right window was closed and the left window had a sliding screen in it.

Q. And this was a warm evening, wasn't it, in June? A. Well, it was on these chilly evenings.

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*Joseph P. Arnaboldi—Cross.*

Q. And would you say the windows were not open? A. Just the one window was closed and the other was open and had a screen on it.

Q. When he was in the bath-room what was Mrs. Arnaboldi doing? A. Just sitting on that chair.

10 Q. Was she reading? A. No, sir.

Q. She wasn't undressing? A. No, sir.

Q. Doing no housework? A. No, sir.

Q. How long had you seen her sitting there? A. She sat there until he came out of the bath-room and stood by the door a minute, and he walked into his room, and then he came out and went into her bed-room.

20 Q. How long had you seen her sitting there? A. Well, they were sitting there quite sometime at the table having coffee and cake, evidently, and talking to one another, and that was from 11 o'clock to a quarter to one, when they decided to go to bed, I guess.

*By the Court:*

Q. From 11? A. From half past 11, I guess, or a quarter to 12, whatever it was; I don't recall.

30 *Cross-examination resumed:*

Q. Well, will you say that after he shook his penis at her she nodded her head "yes"; is that right? A. Yes, sir.

40 Q. And where did they go, into her bed-room? A. Why, he went into his room and evidently got undressed and went to bed. A few minutes after that my wife got up and went to her bed-room and undressed, and then went to the bath-room, came out of the bath-room and went to the kitchen sink

*Joseph P. Arnaboldi—Cross.*

and she powdered her privates, or something to that effect.

Q. You saw her using some powder; is that right? A. Yes, sir.

Q. Was her face toward you or her back to you? A. She was facing the sink.

Q. Did that bring her back to you? A. No, sir, 10 her side.

Q. And she went to her room; is that right? A. She dimmed the light and later went into Lehe's room.

Q. Did you go around to the front of the house? A. When?

Q. That night? A. No, sir, we did not; we stayed right in the rear.

Q. Were you in the hall that night? A. No, 20 sir, not in the hall, not outside of when we came out.

Q. How did you get into the back room? A. Why, we went through the window.

Q. How did you get into the back way or yard? A. Oh, we went through another hallway, in the house right next door.

Q. Did you flash that flash-light that night in the hallway of this particular room where your wife's apartment was? A. No, sir. 30

Q. Were you in that hall that night? A. The house my wife was living in?

Q. Yes. A. Only when we came out.

Q. Outside of that you weren't in there at all? A. No, sir; not that night.

Q. Do you remember whether you coughed that night while you were shadowing? A. No, sir, I don't recall that.

Q. And who opened the window in your apart- 40

*Joseph P. Arnaboldi—Cross.*

ment in order to get in? A. I did; I raised the window an inch.

Q. And both you and Mr. Schloetzer got in; is that right? A. Yes, sir.

Q. Which window did you open, the one you were watching from with Mr. Schloetzer? A. Yes.

10 Q. And you both went in? A. Yes, sir.

Q. You were both very quiet? A. Yes, sir.

Q. And you edged into this living-room? A. Well, we didn't edge in; we simply made one dash, and I flashed the flashlight on the two of them in bed.

Q. You dashed from the rear window? A. No, not from the rear window; we were in the kitchen standing by the kitchen stove.

20 Q. How long did you stay in the kitchen? A. About a minute or minute and half after we entered.

Q. How long after Mrs. Arnaboldi went to the living room was it that you crept in through the window? A. How long?

Q. Yes. A. I would say about 2 minutes.

Q. About 2 minutes after she went into that room; and there was an additional minute, I think you said, in the kitchen, and she right in the living-room? A. Yes.

30 Q. And you threw your flash-light on them; is that correct? A. Yes, sir.

Q. What did your flash-light disclose? A. My flashlight disclosed both my wife and Mr. Lehe in bed together.

Q. Did they have any covers on? A. Yes, sir; Mr. Lehe was uncovered, eight under the quilt.

Q. Any part of the quilt over your wife? A. 40 Why, she was in a sitting position.

*Joseph P. Arnaboldi—Cross.*

Q. Was she sitting when you came in? A. She was evidently in bed, and, naturally, hearing us come in she was in a sitting position.

Q. You don't know whether she was in the bed or not; you know she was in a sitting position on the bed? A. She positively was in the bed.

Q. I mean, all you know was that she was right on the bed in a sitting position; did you see anything else? A. No.

Q. Did you see the covers over her? A. No, but she had no shoes on.

Q. Well, had she had any shoes on when she waked from the bed-room in there? A. Yes, sir.

Q. All you saw when the flashlight went on was your wife on the bed in a sitting position and Lehe in bed with the covers over him; is that correct? A. Yes, sir.

Q. You are not sure whether she was sitting on the bed or on the chair next to the bed? A. She was sitting on the bed.

Q. And when your flashlight went on isn't it a fact that she was on this chair or on the bed, and she jumped up? A. No, sir; she did not jump up.

Q. Well, who spoke first, you or she? A. She did.

Q. What did she say? A. She says, "Who is it?"

Q. What did you say? A. I says, "You know darned well who it is", and in that way she recognized my voice.

Q. Was your flashlight on before you started this conversation, before she spoke? A. Yes, sir, the flashlight was on.

Q. And isn't it a fact that she jumped up off of that bed from a sitting position? A. No, sir; she did not; she sat there.

*Joseph P. Arnaboldi—Cross.*

Q. While you were in this kitchen, before you went in the room, did you hear them talking—did you hear your wife's voice? A. Yes, we could hear voices, but I could not understand what they were saying.

10 Q. Is your voice a low voice? A. No, not very low, because Mr. Lehe has a harsh voice.

Q. I mean your voice. A. It was low, as they were talking low.

Q. How about the living-room; were there shades there drawn and the windows up? A. Why, no; the windows were closed and the shades drawn.

Q. Were there any chairs in the room? A. Yes.

Q. Was there a couch in the room? A. Why, I do not recall.

20 Q. Isn't it a fact that when you came in there Mr. Lehe jumped out of bed and says "What did you see"? A. No, he didn't jump out of bed.

Q. Didn't you and Mr. Schloetzer say, "Now we have caught you," and Mr. Lehe got out of bed and said, "What did you see"? A. No, sir.

Q. Didn't Mr. Lehe say that he heard you before you came in? A. If he did, damn it, why did he take the woman to bed with him?

30 The Court: Now don't use any such language as that in this court-room; keep your temper.

Q. Didn't Mr. Lehe say to you, "I heard you coughing your head off about an hour ago, out in the hall"? A. No.

Q. Didn't Mr. Lehe say that he knew you had been out there? A. No, sir.

40 Q. Now, whom did you live with when you came

*Joseph P. Arnaboldi—Cross.*

back from New York in this front room? A. I hired the room of a party by the name of Mrs. Zoller.

Q. And she is a divorced woman? A. I couldn't say.

Q. She is not living with her husband? A. She is all alone. 10

Q. How old is she? A. Oh, I don't know; I guess about 39 or 40.

Q. You don't know her age? A. No, sir; I do not.

Q. Why didn't you go and live with your parents at that time? A. Because I didn't want my parents to have anything to do with my trouble, and I didn't care to go to work and force my trouble upon my parents.

Q. How long did you live at Mrs. Zoller's? A. 20 Oh, I guess about—I don't know, 20 months or something like that.

Q. You were a boarder in there, weren't you? A. No, sir.

Q. I mean, you had a room there? A. I had a furnished room there, yes, sir.

Q. When you discovered that Mr. Lehe was boarding with Mrs. Arnaboldi did you go to your wife and make any objection to it? A. Why, no, 30 sir; I did not.

Q. Did you warn her against Mr. Lehe? A. I did; I wanted him to leave at the time we were at the Paterson Avenue address before our separation.

Q. Did you do so after the separation? A. No, sir.

Q. After you learned that he was boarding with her? A. I did not. 40

*Joseph P. Arnaboldi—Cross.*

Q. Did you ever offer to take your wife back?

A. No, sir; I did not.

Q. Did you tell Mrs. Fortier after the separation that you would never live with your wife again? A. I did pass that remark; yes, sir.

Q. You said that a number of times, didn't you?

10 A. Yes, sir; I did.

Q. And had told your folks that? A. I did; yes, sir.

Q. And you made those remarks for a period of two years following the separation, didn't you?

A. No, I said that before. I even told my wife at the time I left her that I would never return to her.

Q. You never asked her to return to you, did you? A. No, sir; I didn't.

20 Q. You never gave her the benefit of your society after your separation? A. No, sir; never had any relations with her after the separation.

Q. Oh, by the way, at the time of the raid on April 9th how many people came to make that raid? A. How many people were there there?

Q. Yes. A. Why, there was one, two, three, four, five, six and myself; that was seven.

30 Q. And the only conversation between your wife and yourself was that your wife was willing to live with you and wanted to make up with you; is that right?

Mr. Marelli: I object to that. That isn't what the witness said.

A. No, sir; I didn't say that.

The Court: What he said on direct was, that she said, "Have you come back here to live, Joe?"

40

*Joseph P. Arnaboldi—Cross.*

A. "Did you come back here to stay?"

Q. Didn't she say she would like to make up with you and live together? A. No, sir; she didn't.

Q. After the separation did your wife know where you were? A. I don't know whether she did or not.

10

Q. You never told her that you were living at this furnished-room place? A. No, sir; I did not.

Q. Do you know whether or not she went to your folk's home and tried to find out where you were, after the separation? A. No, sir; I don't believe she ever asked my folks where I was at.

Q. Do you recall, about Christmas after the separation, an occasion when Mrs. Arnaboldi went to your folk's home with Mrs. Fortier? A. Why, yes; I was told about that.

20

Q. You know about that occasion? A. Yes, I do.

Q. You were there? A. I got out.

Q. You got out the minute you saw your wife come to your folk's home; you left at once? A. I did; yes, sir.

Q. And there was no conversation between you? A. Absolutely none.

Q. She didn't even get a chance to talk to you? A. No, sir.

30

Q. You didn't give her an opportunity to talk to you? A. No, sir.

Q. You made it sure that she had no opportunity to talk? A. She had plenty of opportunity if she wanted to.

Q. How? A. Through letters, if she cared anything for me.

Q. How would she know where to address you? A. 218 Milton Avenue, Grantwood.

40

*Joseph P. Arnaboldi—Redirect.*

Q. Whose place is that? A. My mother's.  
 Q. She had gone there personally to ask for you? A. Did she ask my mother?

10 The Court: Don't ask questions; answer them if you can and if you can't, say "no" or you don't know. (Addressing counsel)  
 I suppose he only knows what somebody told him about that.

Mr. Siff: That is all.

*Redirect-examination by Mr. Marelli:*

Q. Why did you not interest yourself in the birth of the last child? A. Because my honest opinion is that I am not the father of that child.

20 Q. Before you and your wife separated did you hear anything about her fondness for other men?  
 A. Why, yes, I did hear of it.

Q. Through whom? A. Through a Frenchman that was living there. He has now passed out.

Q. What do you mean, died? A. He died.

Q. And after the separation, did you, afterwards, hear of men going to see your wife? A. Why, yes.

30 Mr. Siff: I object to that.

Mr. Marelli: I think that is proper. We will have the persons here. We will have all the persons here. It simply goes to the reason why he left.

The Court: All right, those witnesses may tell what they know. I think for him to testify is plain hearsay.

Mr. Marelli: All right; I will withdraw the question.

40

*Joseph P. Arnaboldi—Redirect.*

*By the Court:*

Q. You have told us that your wife, on the night of June 19th did not have any shoes or stockings on; you haven't told us what she did have on. A. All she did have on was a silk nightgown; that is all she had on.

Q. What about the man? A. The man was in his undershirt lying in bed. 10

*By Mr. Marelli:*

Q. Now, are you sure that the raid was the 9th of April? A. Just a minute now; I will recall that. Here is the exact date of that as of April the 7th.

*By the Court:*

Q. What day of the week was it? A. I don't remember. 20

*By Mr. Siff:*

Q. How do you fix in your mind the date? How do you know whether it was the 9th or the 7th? A. Well, I can't forget those dates.

Q. You just forgot it today. Once you say it was the 7th and once you say it was the 9th. A. It was the 7th. 30

Q. Well, how do you fix that? A. Because the day before I happened to be down around the place to see how the conditions were and the situation of the house was.

Q. How do you know that that day wasn't the 6th or the 8th? A. That day was the 7th.

Q. You say the way you fix the 7th was because you were down to the house the day before? A. Yes, sir. 40

*Joseph P. Arnaboldi—Redirect.*

Q. Isn't there anything else that fixes the date in your mind? A. No, sir.

Q. Do you know what day of the week it was? A. Just a minute; I might be able to recall what day it was. (Witness pauses to think.) I have forgotten now. No, I don't recall it.

10 Q. Whose child do you think this youngest child is? A. Why, that I couldn't say.

Q. Were you having relations with your wife prior to the separation? A. Why, for the month of August I did not.

Q. When was the last time you had intercourse with her? A. Well, sometime in July, I guess.

Q. Just what day? A. I do not remember.

20 Q. Well, couldn't you have been the father of that child if you had intercourse with her in July? A. I don't know when she was born even.

Q. Well, do you think you are the father of the other two children? A. Yes, sir; I do; I think so.

Q. She was going around with other men at the time she became pregnant with the other children, wasn't she?

Mr. Marelli: He didn't say that.

30 Mr. Siff: He says "Since she has been married." I asked him how long that condition has been going on and he said "Since the marriage."

The Court: Yes, he said that.

40 Q. (Question read by the stenographer) A. Yes, sir; she was.

*Mrs. Marguerite Arnaboldi—Direct.*

MRS. MARGUERITE ARNABOLDI, sworn on behalf of the petitioner, testified as follows:

*Direct-examination by Mr. Marelli:*

Q. You are the mother of Mr. Arnaboldi, the petitioner in this case? A. Yes.

Q. Do you recall going to his home in May, 1923, on a Sunday? A. Yes. 10

Q. You and your husband? A. Yes.

Q. With the automobile? A. Yes, I recall that I went to take them out for a pleasure trip with the family.

Q. About what time? A. I guess around half past 9 or 10 o'clock in the morning.

20 Q. When you reached the home what occurred? A. Well, what occurred was, I seen my son was in one corner and she was in another and in an argument, and the argument turned out that she wanted to get a coat, and she was waiting for a young man to take her to New York to get a coat.

30 Q. What did he say to her? A. He objected to it; he didn't want her to go, and I didn't say nothing because I didn't know what the trouble was between them. And finally a young man came in while I was there, and so she dressed up and she went with the young man; and he says, "Where are you going?" She said, "Well, I am going with this young man to get a coat", and he objected to it, and, of course, finally they had little words and she went off with the young man, and I didn't say anything with them. And so I took the children that Sunday, and I went over to her sister and inquired of her sister what happened and told her.

40 Q. Never mind about your conversation with the

*Mrs. Marguerite Arnaboldi—Cross.*

sister. Were you there when she returned that day? A. No, I wasn't there, no.

Q. He is living with you? A. Yes, he is living with me now for the last—going on two years last September. Next September it will be two years.

10 *Cross-examination by Mr. Siff:*

Q. What time was that that you were there on Sunday? A. Well, between half past 9 and 10 o'clock in the morning; the exact time I couldn't say, but it was about that time in the morning.

Q. Do you know what time Mrs. Arnaboldi got back that day? A. No, because I didn't go back to her home at all; I went to my home.

20 Q. Do you recall that Mrs. Arnaboldi came to your home after the separation? A. Yes.

Q. On how many occasions? A. Well, she came about three or four times.

Q. What did she want? A. She never said anything; never mentioned anything.

Q. She also wanted to see the children; is that the idea? A. I think she did quite often call on the children. I often saw the children myself, because I liked the children.

30 Q. When did you first know that she was in a family-way after the separation? A. Well, when she left a note in my letter-box one Sunday afternoon when I came back from a joy ride, and I found the letter in the letter-box, and I have it here if you want to read it.

Q. Did she ever ask where her husband was or where she could find Joe? A. Well, she knew where he was, as much as I did.

40 Q. Well, did you know where Joe was? A. At the beginning, no, I didn't know where he was.

*Mrs. Marguerite Arnaboldi—Cross.*

Q. He didn't even tell you? A. No, he never told me his troubles until he came to the house to live with me.

Q. He was at the house around Christmas time? A. Well, at Christmas time he always called on me.

Q. And Mrs. Arnaboldi came there at that time with Mrs. Fortier? A. Not on that Christmas. 10

Q. Around Christmas, I mean. A. Oh, it was before.

Q. And Joe was there at the time, wasn't he? A. Yes.

Q. Out in the kitchen? A. He was there, and he heard his wife, and he went out; he didn't want to see her.

Q. Did Mrs. Arnaboldi ask you if you knew where Joe was? A. No, she never said a word about Joe; never asked about him, either, to me. 20

Q. In other words, Joe had left her and she wasn't interested; is that it? A. What do you mean?

Q. Joe had left her, hadn't he? A. Yes.

Q. And she didn't make any inquiries? A. I suppose she wasn't interested; being that she never mentioned anything about him was that she wasn't interested.

Q. She liked Joe, didn't she? A. I don't know; ask her. How do I know whether she liked him. 30

Q. You were friendly before? A. I was always friendly; I have got no grievance against nobody, and I am friendly with her today.

Q. When did you know there was any trouble between them? A. My son was the one that told me. He didn't want to have any trouble with her.

Q. But there was no complaint to you that Joe wasn't treating her right? A. No, she never did; she is there and she can prove it. 40

*Mrs. Marguerite Arnaboldi—Redirect.*

Q. She continued to live at this house where they were living at the time of the separation? A. Yes, she continued to live there.

Q. Who owns that house? A. My husband and I; we are the owners.

10 Q. You permitted her to stay there? A. Why not? She paid the rent just the same as anybody else. Why should I put her out.

Q. And she never asked you where Joe was? A. At the beginning, no; I never knew where he was, because he didn't want to bother us with his trouble.

Q. When did you first know where he was? A. I don't know; I don't recall how long.

Q. About how long? A. I don't know; I don't recall.

20 Q. Was it a year, or two years? A. Well, around a year or so; something like that; he called on me but he never gave me his address where he lived.

Q. Can you give us the approximate time? You say Mrs. Arnaboldi visited you about three times after the separation; can you tell us about when that was? A. The exact time I can't give you an answer to that.

30 Q. Was the first time around Christmas? A. I can't say how long ago. It was quite some time ago.

Q. About a year or more? A. Oh, it is more than a year, I guess. It is over two years, if I am not mistaken.

*Redirect-examination by Mr. Marelli:*

40 Q. The rent you were charging your son was

*Thomas Karen—Direct.*

much less than you would charge others? A. Yes, we always made it less.

Q. And when she was there alone you didn't increase her rent? A. Not at all.

Q. You spoke about a joy ride—

The Court: You needn't waste any time on that. She means she was out on a pleasure trip. 10

THOMAS KAREN, sworn on behalf of the petitioner, testified as follows.

*Direct-examination by Mr. Marelli:*

Q. What is your occupation, Mr. Karen? A. I work for a contractor now. 20

Q. Were you employed as an investigator? A. As an operator for Mr. Coridon—Coridon's Detective Agency, Hoboken.

Q. When were you employed there? A. Up to about a year ago.

Q. Were you engaged in some work for Mr. Arnaboldi? A. I was.

Q. When was that? A. On April 7th.

Q. What year? A. 1926.

Q. Now, what happened then? A. Well, we covered the house until—do you want the whole business? 30

Q. Yes, tell us the whole thing. A. I saw Mr. Arnaboldi go out for ice-cream and he went back in the house—not Mr. Arnaboldi, that gentleman down there (pointing to Mr. Lehe).

Q. Mr. Lehe? A. If that's the name; I didn't know. He came back and we covered the back of the house back of the bill-board fence and could 40

*Thomas Karen—Direct.*

see the house, and we watched them until the light went out. I imagine that was about 11:30. We went around, and I knocked at the door. I says there was a telegram for Mrs. Arnaboldi, and about a minute I heard a man say—I knocked at the door first and heard a man say “Who’s there?” and I says, “Telegram for Mrs. Arnaboldi”; and he says, “Just a minute,” and I guess he must have went a full minute and half and there was no answer, and I again knocked, and a woman says “Just a minute”; and I says “open the door” and with that they opened the door, and I pressed the door open and I saw that gentleman down there, Mr. Lehe, standing in the doorway—standing in the doorway in his underwear, holding a small baby in his arms. And, of course, they all came in with a rush. The room was dark. We had flashlights, and at that time I went into the bedroom and Mrs. Arnaboldi stood there and I think she had a dress on or kimono. It wasn’t buttoned in front and she was buttoning it at the time in the bed-room. And I saw two children in the crib in the bed, and she stood there all the time after we lighted the light. I went into the front room past this man and it was dark, and I says, “You had better sit down before you fall” because he was shaking terrible. Whether it was fright, I don’t know. He acted very nervous and, in fact, Mrs. Arnaboldi acted very nervous, and she says, “Why not light the light?” so I got a match and lighted the light. There was a couch in the front room, and I asked Mr. Lehe if this was his room, and he said “yes”. The couch had canvas on it, but it didn’t look as if anybody had been sleeping into it, although it was made up as a bed, and the bed was in the room and it had the mattress in the

*Thomas Karen—Direct.*

corner, the springs up against the wall; and there was no closet in this room because the room contained a lot of woman’s clothes and also one man’s coat, and on the chair in the kitchen before you enter the dining-room were a pair of pants laying over the chair, and in the bed-room there was a man’s blue shirt over the bottom of the bed. It looked like a working shirt. The bed looked as if there had been two sleeping in it. The whole of the clothes were turned down and there were two pillows.

Q. Did you say anything or make any comment there in their presence regarding the clothes in the closet? A. I did to the lady. I asked him if this was his room and Mr. Lehe said “yes”, and he also pointed out and said “There’s my picture on the wall,” a very big picture on the wall. I says, “Whose is the lady’s clothes?” and he says, “This is my clothes closet but we keep our clothes together.”

*By the Court:*

Q. What time was it when you entered the house? A. I judge about 11:30.

*Direct-examination resumed:*

Q. Was there any remark made by Mrs. Arnaboldi? A. Yes, I heard Mrs. Arnaboldi say, “Joe, did you come home to stay”?

Q. What did he say? A. He looked a minute and he said, “What, come home to stay with you after living with another man two years and a half”; and she didn’t say anything; she just dropped it.

*Thomas Karen—Cross.*

Q. You saw others besides Mr. Arnaboldi with you? A. Yes.

Q. Was there anything mentioned there about getting in and out of the room? A. Yes, I asked him, "Is this your room?" The couch was against the door, and I says, "How do you go in and out of this room?" and he said "I move that couch every time I go out on account of the paint. He didn't want the couch to be too close to the paint.

Q. Did the couch appear as if anyone had been in it? A. Nobody sleeping in it that night. It was made up as a bed.

*Cross-examination by Mr. Siff:*

Q. So her main thought, even in the presence of Lehe, was, so far as she was concerned, to make up with him; is that right? A. I don't get you.

Q. (Question read by the stenographer) A. She didn't seem to pay any attention to her husband outside of asking him if he came home to stay.

Q. That seemed to be the thought uppermost in her mind?

Mr. Marelli: I object to that. How does he know?

The Court: I don't suppose he does.

Q. What door was the couch up against? A. The front door, leading into the hall.

Q. Was there anything to prevent him from going from the dining-room into the living-room? A. No.

Q. When you came there you started to ask him a lot of questions, didn't you? A. Yes.

Q. Did he tell you not to touch the paint? A. He said he had just painted it.

*Thomas Karen—Cross.*

Q. Did it seem as if it had just been painted? A. It was just painted.

Q. Did he claim that he had to sleep on the couch? A. I says, "Why are you sleeping on the couch," and he says, I just painted the bed and Mrs. Arnaboldi paid me for it".

Q. He said it was his own bed? A. No. 10

Q. Do you know whether it was his own bed? A. I do not.

Q. Where was he when you first saw him; was he standing in the kitchen or sitting on the couch? A. Standing in the doorway between the dining-room and kitchen holding the baby in his arms.

Q. You saw him at the door? A. At the door between the dining-room and kitchen.

Q. It was later that he sat down with the baby on the couch? A. Afterwards; I told him he had better go in and sit down. 20

Q. Didn't you ask him what he was doing with the baby? A. I did.

Q. What did he say? A. When the knock came on the door the baby started to cry and he took the baby up.

Q. Did he say that Mrs. Arnaboldi had dropped the baby and he picked it up? A. No, sir.

Q. Where did the three children sleep? A. All I saw was two children in the crib. 30

Q. Do you mean crib or bed? A. I would call it a small bed or crib.

Q. What was there in Mrs. Arnaboldi's room? Wasn't there just one bed? A. One full-sized bed and a crib for the youngsters that stood about a foot or a foot and half from the bed.

Q. Didn't the two children sleep with Mrs. Arnaboldi in the bed? A. They weren't that night, no.

Q. Where did this youngest child sleep that 40

*Henry Schloetzer—Direct.*

night, the third child? A. At the time I saw it it was in this gentleman's arms.

Q. Do you know whether or not the child had been with Mrs. Arnaboldi in bed? A. I do not.

Q. Did you ask? A. I did not.

Q. You saw two children in the crib? A. Yes.

10 Q. Was there room in there for a third one? A. I imagine there was.

Q. Which two children were in there, the oldest one? A. I don't know the age of the children, but I know it was the baby about a year old in this gentleman's arms.

Q. That was the youngest one? A. If that is the youngest.

Q. That one looked much younger to you than the other two children? A. It did.

20 Q. Did you arrest Mrs. Arnaboldi and Mr. Lehe that night on a charge of adultery? A. No.

HENRY SCHLOETZER, sworn in behalf of the petitioner, testified as follows:

*Direct-examination by Mr. Marelli:*

30 Q. You know Mr. Arnaboldi? A. I do.

Q. How long have you known him? A. Since he was a small child.

Q. Did you at any time watch his wife with him? A. Yes, we watched his wife quite often.

Q. Do you remember the occasion of the raid in April, 1926? A. Yes, sir.

40 Q. Did you watch the house where his wife lived before that raid? A. Yes, Joe and I used to go down there on an average of once a week for about two months.

*Henry Schloetzer—Direct.*

Q. Did you see Lehe there at that time? A. Yes, I saw Lehe going in at 10 regularly.

Q. Were you there at the time of the raid? A. Yes, sir.

Q. Will you tell us what happened on that occasion. A. Well, I was in the back yard that night at the time Karen went to the door and knocked, and told her he had a telegram, and after they got in we opened the window in the back yard, and I got into the window, and we all went from the dining-room into the front room, and there was Mr. Lehe sitting on the bed with the baby in his arms; and after that the operator started to ask Mr. Lehe questions regarding the things around the room. 10

Q. Where were the children sleeping? A. I didn't take no notice of that. 20

Q. Did you take notice of the bed at all? A. Well, her bed-room was dark and I could just make out the outline of the bed in the room.

Q. Where were you standing? A. I was in the kitchen at the time.

Q. Did you go into the bed-room at all? A. Not in her bed-room, no, sir.

Q. Which bedroom did you go into? A. I went into the room Lehe was in, the front room. 30

Q. How do you get from the kitchen to the front room? A. Through the dining-room door to the front.

Q. Well, do you have to go through the dining-room? A. To get to the front room, yes, sir.

Q. And pass her bed-room? A. Well, her bed-room door is like this sketch. The cot is there, and you go that way through to the front, and her door is from the kitchen here.

Q. Can you get from the kitchen without going 40

*Henry Schloetzer—Direct.*

through her room? A. To his bed-room without going through her room?

Q. Yes. A. I don't understand that.

Q. How would you go from the kitchen to the front room? A. Go through the dining-room.

Q. Then you didn't have to go through her bed room? A. No, sir.

Q. How was she dressed? A. She had a house dress on.

Q. How was he dressed? A. In his underwear.

*By the Court:*

Q. What is a house dress? A. She had a house dress or a kimona on.

Q. What do you mean by a house dress; I don't understand and am asking you. A. It is a sort of woman's dress made out of something like an apron, and it is a dress that she slips over and does things around the house.

Q. Did you go with Joe to the house for this raid? A. Yes, we used to watch the house; generally down there Saturday.

Q. While there would you see Mr. Lehe there? A. We used to see him there on a Saturday.

Q. On Saturdays? A. When we were down there, yes, sir.

Q. Now, in June did you get into the house again? A. Yes, on a Saturday night we got into the house.

Q. Tell us about that visit. A. We were watching the house from about 7 o'clock until we got into the house, which was about, I should judge, between half past 11 and 12 o'clock, and Joe was at this window and I was at the left window which had a screen in, and I could see from that window into the kitchen and see her bed-room, and they

*Henry Schloetzer—Direct.*

were sitting at the table talking, and I know Mr. Lehe brought something in, whatever it was, and then after Mr. Lehe retired, why, I saw Mrs. Arnaboldi. She went to the toilet and then she came and went into her bed-room and undressed. When she was undressing—it was dark in there and I couldn't see distinctly, but I know she was undressing, and she came out toward the kitchen, and from then I couldn't see any more, and Joe told me that she went inside—

The Court: Never mind what he told you.

So we went in through the window and got in the kitchen, and from there, why, we ran inside, and there was Mrs. Arnaboldi. She was just getting up and sat on the bed, and she spoke and says, "Who is it; who is it" and Joe answered her. So then I went over toward the bed and I pulled the covers back and there was Lehe all up in a knot, and I says to Joe, "Joe, we had better go; we don't want any arguments." And so, as we were going out, Mr. Lehe says, "Come here, I have got a bottle here". I says, "Joe, we had better be going; he wants to get rough"; and with that he goes out in the kitchen and goes out of the house all together.

Q. When you took the covers off and saw him in bed how was he dressed? A. He had his underwear on.

Q. How was she dressed that night? A. She had a sort of blue silk kimona on or night gown.

Q. Did she have shoes on? A. That I couldn't say; I didn't notice.

Q. Did you see what she did by the sink? A. No, sir.

Q. Did you see what he did? A. No, I couldn't

*Henry Schloetzer—Direct.*

see that; the sink was over on that side (indicating).

Q. I mean, did you see what he did before she went to the sink? A. No, sir; I didn't see it.

Q. You didn't see any peculiar actions? A. No, sir; I didn't see that.

10 Q. You heard what Mr. Arnaboldi said? A. Yes.

Q. You didn't see that? A. No, sir.

Q. Why? Couldn't you see it? A. I couldn't look in that way; I could only look in at this angle (indicating) and the sink would be that way and also the door.

20 Q. You couldn't see the bath-room from where you were? A. I could see where she went into the bath-room; yes, sir. The bath-room was on the right. I could look in and see the bathroom; that's all.

*By the Court:*

Q. Could you see the door leading into the dining-room from your window? A. No, I could only see the door leading into her bed-room.

*Direct-examination resumed:*

30 Q. Did you watch them after that again? A. I was out with Joe one night, and he told me that Mrs. Arnaboldi moved up to North Bergen, and he says "We will go up there and take a look", and so we went up there.

Mr. Siff: Let us have the date.

*By the Court:*

40 Q. When was this, about? A. That's about, I presume, before Christmas.

*Henry Schloetzer—Cross.*

Q. What year? A. 1926.

*Direct-examination resumed:*

Q. All right; continue. A. As we passed, there was somebody in the cellar chopping wood, and I says "There's a kid chopping wood". We looked 10 back and who did we see but Mr. Lehe.

Q. In her home? A. Yes, sir.

Q. Did you see him at all before that at her home, that is, between the time that you saw him in bed in June and this time, Christmas of last year? A. I saw him around at the other place a few times after the raid, when she lived in Grey Street.

20 Q. Did you see him at the other place a few days after you and Joe went there alone? A. No, I never went up there only that once.

*Cross-examination by Mr. Siff:*

Q. Where do you live, Mr. Schloetzer? A. 922 Bergen Street.

Q. Whereabouts? A. North Bergen.

Q. Does your wife live there? A. Not just now, no, sir.

30 Q. Do you know where your wife lives? A. No, sir; I do not.

Q. You don't know where she is at all? A. No, sir.

Q. Do you know where Mr. Arnaboldi lived after the separation from his wife? A. Yes, sir.

Q. Where did he live? A. In some place up in Elm Street, West Hoboken—Union City now.

40 Q. Whom did he live with? A. Why, he lived up with a lady by the name of Marie. I know her,

*Henry Schloetzer—Cross.*

but I don't know her last name.

Q. Was it Mrs. Benzota? A. I think it is.

Q. How long did he live there; do you know?

A. That I couldn't say.

Q. Did you ever visit there? A. Yes, I visited there once or twice.

10 Q. And you are quite friendly with Mr. Arnaboldi? A. Yes, sir.

Q. In fact, your family and his family were very friendly before the separation? A. Yes, sir.

Q. On the night when you went to Mrs. Arnaboldi's apartment where did you first see Mr. Lehe? A. He was in the kitchen there.

Q. You first saw him in the kitchen. I am referring to April, not to June. A. You mean the night of the raid?

20 Q. Yes, the night of the raid was on the 7th. A. I saw him sitting on the bed. That was the first time I saw him.

Q. When you came in he was sitting on the bed with the baby in his arms? A. Yes, sir.

Q. Did you hear anyone ask him what he was doing with the baby? A. I don't recollect.

30 Q. Do you recollect whether he said that Mrs. Arnaboldi had dropped the baby when she went to answer the door and he had picked the baby up? A. No, sir; I did not.

Q. Now, on the night in June when you went there you got inside—who carried the flash-light, you or Mr. Arnaboldi? A. Mr. Arnaboldi.

Q. Were you in the hall that night before you got in? A. Not in her hall; no, sir.

Q. Do you recall whether Mr. Arnaboldi coughed that night while you were there? A. I don't recollect.

40

*Henry Schloetzer—Cross.*

Q. You wouldn't say that he didn't? A. Not that I know of.

Q. And who went in first into Mr. Lehe's room; you or Mr. Arnaboldi? A. Mr. Arnaboldi.

Q. And you were back of him? A. Yes, sir.

Q. As you got in there it seemed to you that Mrs. Arnaboldi got up? A. It seemed that she jumped up suddenly when I came in, yes, sir. 10

Q. Was that before anybody spoke or after somebody spoke? A. Before anybody spoke.

Q. Before anybody spoke it seemed to you as if Mrs. Arnaboldi jumped up? A. Yes.

Q. Now, was there a chair next to the bed there? A. I think there was.

Q. Could you see whether she jumped up from the chair or jumped off that bed? A. No, sir; I could not. 20

Q. You can't tell which she jumped up from? A. No.

Q. You didn't see her lying there with Mr. Lehe, did you? A. No, sir.

Q. Now, tell us all the conversation that went on. A. Well, when we got in there Joe came in and spoke to his wife, and he said something I don't know, and I think she said "This is the first occasion", and Joe said "How many occasions were there besides this?" and when that came, that is the time when I walked over to the bed and pulled the covers off the bed and saw Mr. Lehe in the bed, and as we were going out Joe and his wife was arguing, and she said "You are a better man than he is"; and I said, "Come on, we had better move on or there's be an argument, and then Lehe says, "Come back here; I've got a bottle", and I thought he was going to use the bottle on both of 30 40

*Henry Schloetzer—Cross.*

us, and we simply walked out of the place and went on home.

Q. And you didn't hear what Mr. Arnaboldi said when he first went into the room, did you? A. No, sir.

10 Q. Isn't it a fact that Mr. Arnaboldi said, "I got you"? A. I don't recollect, sir.

Q. And didn't Lehe get up out of bed and say, while putting his arms out like that (illustrating), "what did you see?" A. Not that I know of. The only thing I saw was, when I pulled the covers up he was all up in a knot; whether he got up I don't know.

Q. Did he pretend he was asleep? A. He pretended he was asleep and wanted to hide himself. That is the way it looked to me.

20 Q. And not hiding Mrs. Arnaboldi; is that it? A. Yes.

Q. Just one of them wanted to hide? A. He was under the covers and couldn't get far enough, it looked to me.

Q. You didn't see him jump up out of bed? A. No, sir.

30 Q. Did he lie in bed the entire time you were talking to him? A. He must have got up, but I didn't see him get up.

Q. You pulled the clothes off? A. Yes, sir.

Q. What did he say to that? A. He didn't say a word to that.

Q. What did you say to him? A. Nothing.

Q. Did he say anything at all to anybody when you pulled the clothes off? A. He didn't say anything that I know of, except when we were going out, and then he started to speak.

*Henry Schloetzer—Redirect.  
Edward John Keating—Direct.**Redirect-examination by Mr. Marelli:*

Q. When she said "You are a better man than he is" whom was she talking to? A. She was talking to Lehe.

10

EDWARD JOHN KEATING, sworn on behalf of the petitioner, testified as follows:

*Direct-examination by Mr. Marelli:*

Q. You are a police officer, are you not? A. Yes, sir.

Q. In the Police Department in Jersey City? A. Yes, sir.

Q. You know Mr. Arnaboldi, the petitioner? A. 20 Yes, sir.

Q. And his wife Mrs. Arnaboldi? A. No, I don't know the lady.

Q. You have seen her, haven't you? A. No, I haven't seen her until this morning.

Q. Do you know anything about this raid that took place? A. Why, yes.

Q. Tell us about it, on the 7th. A. I don't know anything that transpired inside of the building.

30 Q. What transpired outside? A. On the evening in question of April the 7th I saw some suspicious looking men in an automobile, and so I investigated who they were and found out it was Mr. Coridon and some men employed by him. I immediately went to the phone box and sent in a call and told them who was hanging around and what their purpose was, and they told me, in turn, that they had been at the station and made their mission known there and to let them proceed; and 40

*Miss Amelia Ardito—Direct.*

10 so I informed Mr. Coridon, and when the men came through the rear end of this building with the light down dim and the people had gone to bed, shortly after that the people had got out of the automobile. I went there for the sole purpose of seeing that no one around there was injured, and I stood outside. That is all I know about the case.

*Cross-examination by Mr. Siff:*

Q. Nobody asked you to arrest Mr. Lehe? A. No, they did not.

20 Mr. Siff: I would like to ask a question of Mr. Schloetzer: Did Mr. Arnaboldi say to you after they were separated he would never go back to his wife?

Mr. Schloetzer: Yes, sir, he made the remark to his wife.

MISS AMELIA ARDITO sworn on behalf of the petitioner, testified as follows:

30 *Direct-examination by Mr. Marelli:*

Q. You are acquainted with Mr. Arnaboldi and his wife? A. Yes, sir.

Q. Where were you living in 1923? A. In the same apartment they did, 706.

Q. You mean the same building? A. The same building.

Q. 706 what street? A. Paterson Avenue.

40 Q. What place, West Hoboken? A. Yes, sir.

*Miss Amelia Ardito—Direct.*

Q. Which floor did you live on? A. Top floor, left-hand side.

Q. On which floor did Mr. Arnaboldi and his wife live? A. On the second floor on the left-hand side.

Q. Did you have occasion to go to his home? A. Yes, sir. 10

Q. Under what circumstances? A. To watch the children.

Q. Who would ask you to watch the children? A. Mrs. Arnaboldi.

Q. At what time would she ask you to go to watch the children? A. Six o'clock.

Q. Before or after Mr. Arnaboldi would return to his work? A. Yes, sir.

Q. Well, when was it, before or after, that she would ask you? A. Before he would return. 20

Q. Would she have the meals ready for him? A. Yes.

Q. Well, would any conversation take place between them? A. Yes.

Q. Because she wanted to go to the show; is that what you mean? A. Yes.

Q. Well, what did she say? A. She said she wanted to go to the show, and he says "You might stay home once in a while." 30

Q. And then what more? State just the conversation, just the words that he would use and the words she would use. A. She would use kind of bad words, and he did once in a while, too, because he didn't like her to go out so often, and so he asked her to stay home once in a while and she wouldn't want to stay home; she would want to go out to the show.

Q. Up to what time would you stay at the home? A. Sometimes half past 10 and sometimes 11. 40

*Miss Amelia Ardito—Direct.*

Q. Would she always return home by that time?  
A. Sometimes Joe got home before.

Q. And then when Joe would get home what would you do? A. I would go upstairs.

Q. You wouldn't wait until she got home? A. No.

10 Q. Did you ever hear Joe say anything about her coming in late? A. Well, I went upstairs.

Q. I mean before she would start to go out to the show. A. Yes, they would start to quarrel.

Q. What would he say? A. He would ask her if she is going to stay home, and she would say no, she wanted to go to a show.

Q. Did she ever do anything to him? A. Yes, she threw many a thing at him.

20 Q. Why would she do that? What would bring that about; what would he do to cause her to throw things at him? A. Because he was mad at her for going to the show.

Q. At what time would she leave to go to the show? A. About six, and sometimes seven.

Q. When would she leave to go to the show, while he was there or while he was away? A. While he was there.

30 Q. Did she ever leave while he was away? A. Yes.

Q. Where would he go, do you know? Would he be away for a long time? A. Maybe for about an hour or so.

Q. And in the meantime she would go away? A. Yes.

*Cross-examination by Mr. Siff:*

40 Q. Did he ever offer to take her to the show? A. Yes, many a time.

*Miss Amelia Ardito—Cross.  
Mrs. Rosie Ardito—Direct.*

Q. What would he say? A. He would ask her if she wanted to go and she refused.

Q. Did she ever ask him to take her to the show? A. No.

Q. She always went alone? A. Yes.

10

MRS. ROSIE ARDITO sworn on behalf of the petitioner, testified as follows:

*Direct-examination by Mr. Marelli:*

Q. You are the mother of the girl that was just on the stand? A. Yes.

Q. You lived upstairs? A. Upstairs, top floor.

Q. Above Arnaboldi's? A. Yes.

20

Q. Right over his apartment? A. Oh sure, the same.

Q. No, but was your apartment right above his? A. No, the other side.

Q. On the other side? A. Yes.

Q. You were living there while he was living there, weren't you? A. Yes.

Q. Do you know anything about his wife going out at night? A. Well, I know she would go to the moving pictures.

30

Q. Do you know about her coming home at night? A. She come home late.

Q. How do you know that? A. Because my daughter watch the children.

Q. Do you know whether anybody came to see her during the day? A. Well, I don't know.

Q. I know, but do you know of any men coming to see her? A. Sometimes.

Q. Who was it? A. A man; I don't know him; 40

*Mrs. Rosie Ardito—Cross.*  
*Miss Amelia Ardito—Direct.*

a salesman or anybody. Sometimes a man come to collect money.

Q. Would anybody stay in there for any length of time? A. Oh, I don't know about that, no; I don't bother with it.

10 *Cross-examination by Mr. Siff:*

Q. Insurance men would come to collect money?

The Court: I understand that.

Q. That is all.

*By the Court:*

Q. You don't know how long they stayed? A.  
20 No, I don't know anything about it.

MISS AMELIA ARDITO recalled on behalf of the petitioner, testified as follows:

*Direct-examination by Mr. Marelli:*

Mr. Marelli: My client has called my attention to something.

30 Q. Would you tell us what he would do in the house? A. What do you mean by what he would do?

Q. What work would he do? Would he do anything in the house? A. Yes, he used to clean many a time, and cook his own supper many a time, too, and wash the dishes. And he used to hang out clothes for her.

40 No cross-examination.

*George Schaefer—Direct.*

GEORGE SCHAEFER sworn on behalf of the petitioner, testified as follows:

*Direct-examination by Mr. Marelli:*

Q. Are you acquainted with Mr. and Mrs. Arnaboldi, the petitioner and defendant in this case?  
A. Only with Mr. Arnaboldi.

Q. You have seen Mrs. Arnaboldi? A. I have seen her a few times.

Q. Were you in this raid on April 7, 1926? A. I was.

Q. Tell us what you saw. A. Why, before we went into the house we seen this man Lehe go out to the store, and he seemed kind of worried about her coming home; that is, he knew that she was out, and when she came home, why then we entered the house, and when the detectives went in first I was behind the raiding party, and we happened to enter the parlor, the front room, and I happened to see this man sitting on the bed with a baby in his arms. One of the detectives asked, "Is this your room?" and he says "yes"; and he opened the wardrobe and he happened to see Mrs. Arnaboldi's clothes in there, and he says "Is this your clothes?" and he says, "Why, we put our clothes together in that room". So when we came out to the kitchen Mrs. Arnaboldi says "Joe, did you come home to stay?" and he says "Not after living with a man for two years or more".

Q. Did she say anything to that? A. Why no, she just simply dropped her head.

No cross-examination.

Mr. Marelli: Petitioner rests.

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*Mrs. Gladys E. Arnaboldi—Direct.*

THE DEFENSE.

MRS. GLADYS E. ARNABOLDI, the defendant, sworn in her own behalf, testified as follows:

*Direct-examination by Mr. Siff:*

10 Q. You are the defendant in this case, aren't you, Mrs. Arnaboldi? A. I am.

Q. And when were you married to Joseph Arnaboldi? A. I think it was in 1919.

Q. And by whom were you married?

The Court: You don't question that. What is the use of going through all that again.

20 Mr. Siff: I only want to corroborate it. We don't have to go into the question of residence; that has been corroborated by the—

Mr. Marelli: The mother corroborated it.

Q. When did you become separated from your husband? A. I think it was August, 1923.

Q. Do you remember what day of the week the separation was? A. I think it was on Saturday afternoon.

30 Q. What was the cause of the separation? A. Why, somehow or other from the beginning Joe didn't trust me, and when he was keeping company with me he never trusted me throughout our courtship. What was your question? I have forgotten.

40 Q. What caused the separation? A. Well, he seemed to feel the responsibility of the children. He didn't want any more children; that was the idea.

*Mrs. Gladys E. Arnaboldi—Direct.*

Q. What did he say to you about that at the time you got pregnant with this last child? A. He always said to me, right before people and before my children, if there was ever any more children he would leave me for good.

Q. Did you tell him you were pregnant with this last child? A. I wasn't sure I was that way when he left. 10

Q. Did you say that you thought you were? A. Yes.

Q. What did he say or do? A. Well, once before, he threatened to leave. I think it was on a Sunday night, and I said, "Think what you are doing, Joe; don't leave your children."

Q. How long was that before the separation? A. About two weeks; three maybe. 20

Q. Why did he threaten at that time to leave? A. Well, he always threatened to leave me, even from the beginning. 20

Q. Well, at that time what was the reason that he threatened to leave? A. Well,—let me see—I can't remember.

Q. And when you told him you thought you were pregnant what did he say? A. Well, he didn't want any more children, and he said—I don't think he gave me any answer. He was always threatening; he never said so much. 30

Q. Did he say he was going to leave you? A. He always said that.

Q. I mean on that particular Saturday when he left? A. Yes. When he was home he was watching me. I made up my mind I would have no more fights; if he goes he goes; no use trying to hold him.

Q. Well, did he say anything at the time he left? 40

*Mrs. Gladys E. Arnaboldi—Direct.*

A. He just said, "Because you are that way you needn't think that will keep me."

Q. Just because you were that way? A. Yes, in a family way.

Q. Did he say anything else at that time? A. I think that was the last word he said. I don't think he even said good bye. Then he went away.

10 Q. And were you accustomed to going out three or four times a week from the time of your marriage down to the time of your separation, without him? A. I never went out with out Joe, I don't think; even if he wasn't inclined to ask me to go out, and, sometimes he did and I refused, if I was worried about something, and he didn't like to take me out very much.

20 Q. When you asked him to go out did he take you? A. Yes, he used to take me to the movies, and we would get along fairly well.

Q. Were there times when he refused to take you out? A. No. He used to be away quite sometime, too.

Q. Were there times when he would leave you alone considerably? A. Yes, he would.

Q. On such occasions did you go to the movies? A. Well, I used to like the movies. I could go every day, you know.

30 Q. Well, how often did you go? A. Well, quite often.

Q. On such occasions did you leave your children with this Miss Ardito? A. She was a very kind neighbor and she used to let her daughter watch the children; but she didn't like to leave her with the children too much.

40 Q. What time did you usually get back from the movies? A. Well, the movies used to let out, the

*Mrs. Gladys E. Arnaboldi—Direct.*

first show about 10, I think; and we used to go to the first show.

Q. Were you in the habit of getting home as late as 11 and 11:30, 12 and 1 o'clock? A. Oh no; never.

Q. Did you go out with men? A. I never did in my life.

Q. Before your separation? A. Let's see, before the separation; I did on that one occasion when my husband said about the Jew salesman.

Q. Did you know whether or not you were shadowed? A. I never even dreamed that he would mistrust me; I thought he would trust me absolutely.

Q. And he testified that on two or three occasions he found you out in the hall speaking to Lehe; is that true? A. That is untrue.

Q. Did you ever speak to Mr. Lehe while you were living in that house and while he was living there? A. Yes.

Q. Did you ever know him while he was living there? A. I never saw Mr. Lehe. He used to come to my store for smokes.

Q. That was after the separation when he came to your store for smokes; but before the separation did you ever speak to him? A. I never saw him in my life; no.

Q. Is it true that you have stood in the hall gossiping with him? A. I never gossiped in my life; I don't believe in it.

Q. Did you have any conversation with Mr. Lehe prior to your separation? A. Any conversation, did you say?

Q. With Mr. Lehe before you became separated from your husband? A. No, because I didn't see the man; I never saw him.

*Mrs. Gladys E. Arnaboldi—Direct.*

Q. You didn't even know there was such a man, did you? A. No, I did not.

Q. Now, with reference to this incident about the clothing; what led up to that? A. Well, that very day I happened to unpack my trunk, you know, and Mr. Lehe didn't have very many clothes—

10 Q. I am talking about that May 23, when that salesman came. A. What is your question?

Q. The man you went to buy a coat with; what was the argument about then? Did you ever ask your husband to go with you? A. Yes, I used to like to have him buy the children's clothes, because he knows the value of things and has a quick way of answering—

20 Q. On this occasion when the Jewish salesman came, prior to that had you asked him to go to New York? A. I didn't ask him again.

Q. Did you ask your husband to go on that occasion? A. I think I did, on several occasions.

Q. What did he say? A. Well he said to wait until I had the cash and wouldn't have to pay interest.

30 Q. What did you decide to do? A. Well, I believe in the installment plan when you haven't any money, and I did buy on that plan more or less, and I sort of kept one man going so that as fast as one bill is paid I would get something else, but I don't do it any more.

Q. How did you happen to come in contact with that salesman that called on Sunday; did you know him? A. Yes, he was a regular salesman I knew besides the insurance salesman.

Q. You went to New York and selected a coat? A. Yes.

40 Q. And came right back? A. Yes, and I had a

*Mrs. Gladys E. Arnaboldi—Direct.*

glass of orange juice, and like a fool I paid more than I should have paid, and when I came home I was in the house and my mother-in-law came in, and she didn't ever like to interfere in our business, and she looked at the coat and thought it was pretty, and she didn't say much that day.

Q. Did your husband object to your going over to New York with that salesman? A. I imagine he did. He licked me, I think; I'm not sure. 10

Q. Did you have any interest in the salesman other than a business one? A. No.

Q. Did you have any improper relations with him of any sort? A. No, I never did, never; no.

Q. On that particular Sunday do you recall whether Mr. Arnaboldi tried to stop you from going to New York with the salesman? A. Yes, he said he wanted to be divorced. 20

Q. What did he do that particular Sunday; that is what I am asking? A. I have forgotten exactly.

Q. Well, he says he asked you not to go with him and you insisted you were going. A. Yes, because I made appointments on three occasions like that, and I says "I will go now or never"; see?

Q. Did he try to stop you by force? A. No, Joe was not brutal in any way. 30

Q. He never used physical force on you? A. No.

Q. Now, it has been testified here that on several occasions you threw things at him. A. Yes, four times in all our married life together, about seven years, I think.

Q. And that was during the course of quarrels? A. Yes, that wasn't on his way out always.

Q. What were the scraps over, going to movies that caused you to fire something? A. Yes. 40

*Mrs. Gladys E. Arnaboldi—Direct.*

Q. And you admit that he helped around the house? A. Yes, I think he loved his home, in a way.

Q. Now, was it just on one occasion, or was it on more than one occasion that he threatened to leave you forever if you got pregnant again? A. About three times, that I recall.

10 Q. And that was prior to the birth of your last child; is that correct? A. Yes.

Q. About what time was it that he left you? A. In the afternoon.

Q. And did you try to find out where he had gone? A. Yes, lots and lots of times.

Q. When was the first time you made efforts to locate him? A. It seems to me the first time was when I wrote to my mother-in-law, asking did Joe come home to see her once in a while.

20 Q. How long was he gone before you made inquiries? A. Well, I always had in mind.

Q. How long did you wait, a week, 2 weeks, 3 weeks, or what? A. When I was up to my mother-in-law at that time.

Q. And that was how long after he left you? A. I think it was about 3 months, I guess.

30 Q. And did she tell you where he was? A. She didn't know herself.

Q. Did you go to visit your mother-in-law or father-in-law about Christmas of 1923? A. Shortly after Christmas, yes; about the first of the year, I guess it was.

Q. What was your object in going there? A. Why, I thought perhaps I would see my husband. I was always looking for him.

Q. Did you want him back? A. Certainly.

40 Q. Did you want to have him come back to you? A. Yes.

*Mrs. Gladys E. Arnaboldi—Direct.*

Q. Were you able to locate him? A. No, I never saw him but once on the street.

Q. Well, did you see him on that occasion at your mother-in-law's home? A. I did, just a glance, and he left.

Q. Now, at the time you were married to Mr. Arnaboldi were you pregnant with a child by him? A. Why, yes. 10

Q. How long? A. Six months.

Q. That was at the time you were married? A. Yes.

Q. Now, after the birth of the second child were you pregnant by him? A. Yes, I was.

Q. How many times? A. Perhaps I might say two or three.

Q. And what happened? A. I visited a midwife; is that the idea? 20

Q. At whose suggestion? A. At my husband's.

Q. At your husband's suggestion, did I understand? A. Yes.

Q. Just because he didn't want any more children? A. Yes.

Q. Now, do you recall when was the first time you met your mother-in-law or saw your mother-in-law after your husband had left? A. I wrote her a letter after three months and I went there once before. 30

Q. How long after your husband had left? A. When he was gone three weeks. I hadn't heard from him.

Q. The time you went to see his mother did you ask her where he was? A. I did.

Q. What did she say? A. She did not know.

Q. Did you want him back with you at that time? A. I did.

Q. So that the object of your inquiry as to 40

*Mrs. Gladys E. Arnaboldi—Direct.*

where he was, was so that you could see him? A. Yes.

Q. And then you wrote a letter, which she answered by saying she didn't know where he was?

A. I did.

Q. Do you still want him back? A. I do.

10 Q. Do you want him back now if he will come back? A. I do.

Q. And after you wrote the letter, that was when you went to see your mother-in-law at Christmas time? A. Yes, right after Christmas.

Q. What did you observe at that time; did you see him there? A. I did.

Q. What took place before you had a chance to talk with him? A. He went out.

20 Q. Where was he when you saw him? A. Near the window.

Q. What room? A. Dining-room.

Q. Where were you? A. On the porch; I rang the bell.

Q. And he went right out; is that correct? A. He did.

Q. Did you have a chance to speak to him, on that occasion? A. I did not.

30 Q. Did you go to see your mother-in-law after that at any time? A. No, I did not.

Q. And have you tried to find your husband after that? A. On two or three occasions.

Q. Well, when was the first occasion? A. I went to his Union.

Q. Where was that? A. In Jersey City.

Q. Electrical Society? A. Yes.

Q. Did they tell you where he was? A. They did not know, I do not think.

40 Q. Did you ask? A. I did.

*Mrs. Gladys E. Arnaboldi—Direct.*

Q. Was there a meeting on at that time? A. Yes.

Q. You don't recall whom you spoke to? A. No, I don't know.

Q. Do you know what position he held? A. No. It was just one of the men there.

Q. You did attend a meeting; is that true? A. 10 Yes.

Q. And they didn't know where he was; is that right? A. Yes.

Q. After that what efforts did you make to try to locate him? A. I went to a saloon on some street, because they said my husband was there; at least, they thought it was my husband; a man away from his wife.

Q. Did you go there more than once? A. Yes, 20 two or three times.

Q. What did you discover? A. Yes, and I went up to the rooms and there was some men in there, and there was a hat there, and I said, "That is my husband's hat", and she said "No, it was a boarder's hat, and when he came in she said it wasn't my husband at all.

Q. Now, did you make any further effort to locate your husband? A. I met my husband on the street with another lady in the car; it was in the morning. 30

Q. When was that? A. Seven o'clock in the morning.

Q. Do you remember the month? A. The baby was about three months old, I guess.

Q. When was the baby born? A. In May.

Q. What year? A. 1924, I think.

Q. You didn't have the baby with you at that time? A. It was a cold morning and I had the baby in a carriage. 40

*Mrs. Gladys E. Arnaboldi—Direct.*

Q. It must have been more than three months old, then? A. Perhaps so six months old; I'm not sure.

Q. Sometime after the baby was born, the latter part of 1924 or early in 1925? A. Yes.

Q. Where was that, on the Hudson Boulevard?  
10 A. Summit Avenue.

Q. And you went up there with the baby and you ran into your husband? A. Yes; I always wanted to talk to him.

Q. You were on the sidewalk, I understand? A. Yes.

Q. What happened as you were on the sidewalk? A. I spoke and he never answered me.

Q. Where was your husband, on the sidewalk, too? A. He was in the car going to work in the  
20 morning.

Q. In an automobile? A. Yes.

Q. He just went by and didn't speak? A. Only raised his hat.

Q. Did he stop the car? A. No.

Q. Had he seen the baby up to that time? A. Never.

Q. Did he know what the baby looked like? A. No.

Q. He just passed by in the machine; is that correct? A. Yes.  
30

Q. Did you know at that time where he was living? A. No.

Q. When was it when you first found out where he was living? A. Through my cousin.

Q. And when was that? A. The baby was pretty big; I am sure it was quite a long time, about 18 months or more after my husband went away. He has been away now about four or five years, I  
40 think.

*Mrs. Gladys E. Arnaboldi—Direct.*

Q. Do you remember what year it was when you learned first where he was living? A. 1924.

Q. 1924 or 1925? A. The baby was quite big; the baby was born in May, in 1924. In 1925 I took the store. This was before I took the store.

The Court: He is asking you when you first found out where your husband was living. 10

A. That was in 1925, before I took the store.

Q. When did you move to the store? A. In April, Easter Sunday.

Q. That is when you first found out where your husband was living? A. Yes, I knew then, I think. I didn't know the exact address; I was told it was on Elm Street. 20

Q. You didn't know the exact address? A. No.

Q. And when did you find out the exact address—how soon after you opened the store? A. I never knew the exact address.

Q. All that you knew was that he lived— A. Somewhere on Elm Street.

Q. And further than that you couldn't locate him; is that right? A. No.

Q. And didn't know where he was living; is that right? A. Yes. 30

Q. He never informed you where he was living, did he? A. No.

Q. And only through that cousin you found out he was living somewhere on Elm Street? A. Yes.

Q. Whom did you see with him when he passed you in the automobile? A. Some lady.

Q. Do you know her name? A. I do now; I didn't then.

Q. What is her name? A. Mrs. Zoller. 40

*Mrs. Gladys E. Arnaboldi—Direct.*

Q. Is that the lady that has been referred to on the stand as the lady he is boarding with? A. Yes.

Q. How old a lady is she? A. I should say 35 or 40.

10 Q. After your husband left you where did you live? A. At Paterson Avenue.

Q. 706 Paterson Avenue, West Hoboken? A. Yes.

Q. And how long did you continue to live there? A. About six months, I guess.

Q. And where did you move to then? A. Paterson Plank Road.

Q. What number? A. 113.

Q. What town? A. Union City.

Q. New Jersey? A. Yes, sir.

20 Q. What did you rent there? A. A store.

Q. Any rooms in back? A. One large room.

Q. You opened a stationery store? A. Yes, sir.

Q. About what month did you open the stationery store? A. April, 1924.

Q. How long were you there? Until when did you live there? A. At that number until—that should be 1925, I guess. The store was opened April, 1925.

30 Q. How long after your husband left you did you open the store?

The Court: She is wrong in that date.

Mr. Siff: It is 1924.

*By the Court:*

Q. Was it the year following? A. Yes, my husband was away about a year.

*Mrs. Gladys E. Arnaboldi—Direct.*

*Direct-examination resumed:*

Q. And from there you went to where? A. Cortlandt Street.

Q. What number? A. 708, I think is the number.

Q. What town? A. Union City. 10

Q. New Jersey? A. Yes.

Q. And about when was it that you moved to Cortland Street? A. I had the store about three months,—if I am not mistaken I had it from April, May and June, and I think I left in July.

Q. And when did you move out of Cortland Street? A. I lived there about three months.

Q. And where did you move to? A. To Grey Street.

Q. Grey Street, Jersey City, New Jersey? A. 20 Yes.

Q. What number Grey Street did you move to? A. No. 19 Grey Street, Jersey City.

Q. How long did you live there? A. Three months.

Q. From when until when, about? A. I lived there in August, September and October, and I lived there in October, November and December.

Q. How long did you live at 19 Grey Street? A. 30 Three months, about.

Q. And from there you moved to where? A. No. 23.

Q. 23 Grey Street, Jersey City, New Jersey? A. Yes.

Q. And until when did you live there? A. I lived there either one month, two months, or three months; I don't remember.

Q. And you moved from there to where? A. To Myers Avenue. 40

*Mrs. Gladys E. Arnaboldi—Direct.*

- Q. What number? A. 727.  
 Q. Or 726? A. 727.  
 Q. Myers Avenue where? A. North Bergen.  
 Q. North Bergen, New Jersey? A. Yes.  
 Q. And you still live there; is that right? A. Yes.  
 10 Q. Now, when did you first become acquainted with Mr. Lehe? A. About two or three weeks after I first opened the store. He used to come to buy smokes.  
 Q. Is that the first you ever knew him? A. The first I ever saw the man.  
 Q. And do you know where he was employed at that time? A. Just then he happened to be out of work, I think; it was a pretty cold day.  
 20 Q. What is that? A. The weather was pretty severe and he was out of work.  
 Q. Did you give him any job there at your place? A. Yes, Mr. Lehe used to work for me.  
 Q. How did that come? A. Let me see; it is his disposition to want to work and he had some ambition, and I was pretty well broken up and I says, "Run the place; I can't".  
 Q. How often did he work there? A. Maybe twice a week; maybe week ends and Wednesdays.  
 30 Q. And did you pay him for his services? A. I did, yes.  
 Q. When he first came to board with you where were you living at that time? A. At Cortland Street when he first boarded with me.  
 Q. How long was he there? A. About three months; maybe two months, because he secured one at Grey Street and the rent was cheap. He always wanted a home of his own.  
 40 Q. When he boarded with you, I am asking. A. He boarded with me at Cortlandt Street, and at

*Mrs. Gladys E. Arnaboldi—Direct.*

that time he did have work. That is why he paid me board.

Q. How much did he pay you? A. About what he thought was right; about \$5. or what he had or what he could spare.

Q. And where was he working at that time? A. I think he was back to his old trade. 10

Q. Well, did he get back his old job before he left Cortlandt Street or after he left Cortland Street? A. He was working a little bit and at the store. At first, he was out of work and he had no work.

Q. That is, when he started to work at Cortland Street he was out of work? A. He was back to his work when he boarded at Cortland Street.

Q. Was he with you when he got his new job? A. Yes, that is why he got the idea of moving. He wanted a home of his own. 20

Q. At what number did he live on Grey Street? A. No. 19.

Q. Was that on the same floor that you were, or different floor? A. He had the top floor.

Q. He lived on the top floor? A. Yes.

Q. How long was he living at Grey Street before you moved to Grey Street? A. Almost two months, I think. 30

Q. Did he furnish up his own apartment? A. Nicely, yes.

Q. What floor did you live on? A. The ground floor.

Q. You had your own furniture? A. I did.

Q. Did he pay for his apartment at 19 Grey Street? A. He did.

Q. Did you pay for your apartment there? A. I did.

Q. And do you know where he had been sleep- 40

*Mrs. Gladys E. Arnaboldi—Direct.*

ing before you moved into Cortland Street? A. Well, like in a garage—like that.

Q. He had no place to go? A. He boarded with his cousin at 706 Paterson Avenue, and he couldn't pay his room rent.

10 Q. And he slept in some garage? A. As far as I know, if he slept at all.

Q. What room did he occupy in Cortland Street? A. The front room.

Q. And you had a separate bedroom? A. I had a couch bed like.

Q. Who slept on the couch bed? A. Mr. Lehe slept on the couch.

Q. Did you occupy separate bed-rooms? A. With my children, yes.

20 Q. Did you always sleep with your children wherever they slept? A. I most always slept with my children, because I wanted them near me.

Q. The three children occupied the same bedroom that you did? A. Yes.

Q. Where did the youngest always sleep? A. With me.

Q. The youngest one? A. With me.

Q. Where did the other two children sleep? A. With me.

30 Q. All four of you in one bed? A. Yes.

Q. Did you have a crib? A. I never put it up in that place.

Q. What's that? A. The rooms were so small I never put it up.

Q. That is, in this Cortland Street place? A. Yes.

Q. At 19 Grey Street did you sleep with the children? A. I did.

40 Q. Did any of them sleep in the crib, or did you all sleep in one bed? A. All slept in one bed.

*Mrs. Gladys E. Arnaboldi—Direct.*

The rooms were even smaller there.

Q. When was it that you moved into 23 Grey Street? A. I lived in 19 three months, and then I moved to 23.

Q. How long were you living there when he came there, that is, at 23 Grey Street?

The Court: She says he lived there before she did. 10

Mr. Siff: She lived at No. 19 on the first floor and then she moved to 23 Grey Street.

Q. How long after you moved in did he come? A. I guess he lived there maybe a week or two.

Q. What was his status there; did he rent any of the rooms of the landlord? 20

Mr. Marelli: I object to these leading questions. I am perfectly willing, in order to expedite matters, for him to lead, but not on important matters.

Q. Well, under what arrangement was he there? A. He couldn't pay his own rent and he asked the landlady's permission to take the room, and she said she knew me and thought I was a good woman, and so she told Mr. Lehe "All right". 30

Q. Whom did he pay his rent to? A. To me.

Q. When he lived at Cortland Street and lived at Grey Street, did he engage just a room or room and meals? A. He had a room like a nursery with me and he used to eat with me if he ate at all.

Q. Did you ever have intercourse with Mr. Lehe? A. No. 40

*Mrs. Gladys E. Arnaboldi—Direct.*

Q. Now, referring to the occasion in April. A. No.

Q. Until when did Mr. Lehe live there at 23 Grey Street and board at your apartment? A. How long did he live there?

Q. Yes. A. About two months, I guess.

10 Q. When did he move from there? A. He moved before I did.

Q. What month did he move out; when did he leave there? A. About June—May or June.

Q. What year was it? A. I think it must have been 1926.

Q. Now, were you in the habit of going out with Lehe? A. Once in my life to the movies.

Q. Do you recall what year that was? A. It was the year I had the store—the same year.

20 Q. Now, referring to this occasion on April 7, 1926, will you tell us what you recall happened that evening. A. That was the time my husband didn't send me any money for two weeks, and then I was beginning to get short and worried about money, and somebody told me to go to the Poor-master—is that what you want?

30 Q. Overseer of the Poor. A. Yes; I went to the court house and I saw a man by the name of Tue, and he said it was an interesting case, and, of course, he took an interest in it—

Mr. Marelli: I object to all this.

The Court: I know it is objectionable, but there is no jury here. Go on. (Addressing the witness) What you are asked about is the night of April 7th.

40 A. That was the night of the raid. It seemed to me to be very late, because I went to bed and

*Mrs. Gladys E. Arnaboldi—Direct.*

slept long, and I heard the pounding on the door, and I imagined that Mr. Lehe was suspected, that I was being with him, and he thought he wanted to protect me, and of course it frightened me, such an awful loud noise.

Q. What time was it? A. Somebody said it was half past 11, but it seemed to be very late, 12 or half past; I don't know when it was. Thinking of the three children I didn't like to open the door with my night-gown on, but I went to the door and the man said it was a telegram, but it wasn't a telegram. But I opened the door and he sort of wanted to walk in. 10

Q. Now, where were you sleeping at the time of the rap on the door? A. In my room.

Q. Was there a crib there? A. Yes, there was a crib. 20

Q. And who slept in the crib? A. Nobody that night.

Q. Where did the three children sleep? A. With me.

Q. And when you were awakened what did you do with the youngest child? A. The baby was afraid of the noise and that is why she cried bitterly, and I didn't know what to do. I dropped the baby and was too weak to pick her up myself, and John came in and he picked her up from (witness hesitates). 30

Q. From the floor? A. Yes.

Q. What floor? A. I think my kitchen floor.

Q. Then when you got out in the kitchen you accidentally let the baby drop; is that it?

Mr. Marelli: I object to the question as leading.

Mr. Siff: I withdraw it. 40

*Mrs. Gladys E. Arnaboldi—Direct.*

Q. How did the baby get onto the kitchen floor?

A. She slid from the bed down on the floor; she has done that ever since she was an infant.

Q. Where was John Lehe at the time of the raid; do you know? A. Oh, I think he was in his room.

10 Q. Who awakened you? A. The pounding; the noise.

Q. And when you let these men in what did they say; what happened? A. They didn't seem so interested in me as the man. They went right across to Mr. Lehe's room.

Q. Whose furniture was in the living-room? A. All Mr. Lehe's things.

Q. And that was the room that you had rented to him? A. Yes.

20 Q. By the way, had he lost his position at the time he moved into Grey Street? A. Yes.

Mr. Marelli: I object to that. It is immaterial.

The Court: I will allow it.

Q. Was that the cause of his moving into 23 Grey Street? A. Yes.

30 Q. Was his bed in the living-room? A. Yes, couch bed like.

Q. And aside from that was there any other bed in the living room? A. Just a disassembled bed wet with paint.

Q. Where did he sleep? A. On this couch that he always had.

Q. He didn't use his regular bed because the bed had been painted?

40 Mr. Marelli: I object as leading.

*Mrs. Gladys E. Arnaboldi—Direct.*

The Court: Yes, it is leading.

Mr. Siff: I will withdraw that.

Q. Where did Lehe always sleep? A. When he was boarding with me, you mean?

Q. Yes. A. He slept in his own room, the front room, on the cot. That couch belonged to me, and I never used it, and he used it because he had no bed. 10

Q. Did he always use the couch bed? A. Yes.

Q. Did he ever use any other bed except in the living-room? A. No.

Q. What was said when those men got in there that night? A. Well, nothing. Nobody asked me any questions; they just walked through.

Q. Do you know what was said to Mr. Lehe? A. I wasn't interested. I thought Mr. Lehe could take care of his own troubles. 20

Q. Did anybody say anything to you about your clothes being in the closet? A. No, not to me personally.

Q. Did they say anything to anybody about that? A. They were talking to Mr. Lehe; they didn't say anything to me.

Q. What did they say to Mr. Lehe about that? A. I imagine they questioned him. 30

Q. Did you have any of your things in there? A. I did. That very day I unpacked my trunk to air out some of my things in the living-room closet.

Q. Was that by anybody's permission? A. Yes, Mr. Lehe gave me permission; he said "You might just as well use my closet" and I put my things in there that very day.

Q. That was because of the shortage of the closet room; is that right? A. Yes. 40

*Mrs. Gladys E. Arnaboldi—Direct.*

Q. Now, did you have any conversation with your husband that evening? A. I did.

Q. What was that conversation? A. I said, "Are you home to stay, Joe" and he gave me an answer.

10 Q. What did he say? A. Something like my living with a man.

Q. What did you say to that? A. I didn't give him any answer, because I know Joe was stubborn and I said to myself, "No use arguing".

Q. So far as you know did your husband ever visit your children after the separation? A. No.

Q. Has he shown any interest in any of the children?

The Court: Shown any affection.

20 A. Oh well, I couldn't tell, because he never came to see the children, or me either.

Q. Did Mr. Lehe contribute to your support in any way? A. He always had whenever he had any money.

Q. How much did he give you a week? A. All that he had.

Q. Well, how much was that? A. You mean when he was working, Mr. Siff?

30 Q. What arrangement did you have with him as to how much he was to pay? A. He was always supposed to pay for his room.

Q. Outside of paying for his room did he contribute to your support? A. I will say that he did.

Q. In what way? A. Well, he couldn't contribute to my support in any other way than financially.

40 Q. And he wasn't paying for his room? A. Yes, he doesn't owe me any money.

*Mrs. Gladys E. Arnaboldi—Direct.*

Q. Has he paid you in full for the board and the room? A. Absolutely.

Q. Did he pay you anything besides the room rent? A. No.

Q. Who did help support you outside of what you got from your husband? A. Mr. Lehe.

10 Q. Did he give you anything outside of the room rent? A. He is no millionaire; he never had much money, but what he had he gave to me.

Q. Did your sister contribute to your support?

Mr. Marelli: I object as leading.

The Court: Yes, it is leading. You can ask if anyone else helped her.

Q. Did you have any source of support outside of what you got from Lehe? A. (Witness does not answer). 20

Q. (Question read by the stenographer) A. No, I never had any money.

Q. Now, what happened in June? Your husband has testified to an incident in June, 1926; what time did you get home that night?

The Court: Your husband says that he came in with a flash-light.

30 A. Oh, pretty late. I think I made ice-cream and went to the movies and had a good time.

Q. About what time did you get home? A. About 10, I guess.

Q. And was Lehe at home when you got there? A. He is always home.

Q. And where was he when you got home? A. Sitting in the chair.

Q. In what room? A. Kitchen.

40 Q. How long did he stay up? A. Oh, this was

*Mrs. Gladys E. Arnaboldi—Direct.*

the night of the second raid?

Q. Yes. A. Oh, we sat there for about half the night, nearly all night, talking and like that.

Q. And then what happened? A. Oh, he was going to bed, and I said "Don't get up early", and I said "Good night", and he went in his room, and I sat there for awhile.

10 Q. Whereabouts did you sit? A. I think I sat down by the kitchen table.

Q. What were you doing when you sat by the kitchen table? A. Just thinking.

Q. What's that? A. Thinking what to do next.

Q. Don't you recall what you were doing there? A. I wasn't doing a thing; was just sitting there thinking.

Q. What time was it that he went to bed? A. 20 It was pretty late.

Q. About what time? A. It seemed to me very late, nearly one or two o'clock.

Q. Where did he sleep at that time? A. That very day I cleaned thoroughly and he slept in the large bed. It was the assembled bed.

Q. What did you do after you sat there for awhile? About how long were you in the kitchen? A. Oh, about 20 minutes or a half an hour.

30 Q. Then what did you do? A. Then I went to the toilet or bath-room, whatever you call it.

Q. Then what did you do? A. When?

Q. When you came out of the bath-room? A. I went to my own room.

Q. What did you do there? A. I took off my dress, I think.

Q. And then what did you do? A. Then lowered the gas.

40 Q. Then what did you do? A. I was very, very nervous that night.

*Mrs. Gladys E. Arnaboldi—Direct.*

Q. Why? A. Because Mr. Lehe said "Somebody is around".

Q. Did he mention any names? A. He said your husband and others are around tonight".

Q. What did you do? A. I said "You are crazy." Three times he mentioned that there was somebody around, and I said "You are crazy".

Q. What else did you do? A. After I lowered the gas?

Q. Yes. A. I went to his room.

Q. For what purpose? A. I wanted to tell him to close the windows.

Q. Why? A. Because he was always in the habit of leaving his windows open.

Q. Well, was there any other reason? A. No other reason.

Q. What happened in his room? A. You know 20 that couch bed that he always used to sleep on by the window—just the couch bed by the window? I sat at the window for about five or ten minutes. There were cars still in front; there was always cars more or less, and I wanted to see what there was in front. I thought there was men around.

Q. Did you look for anyone in particular? A. Nobody in particular.

Q. And did you ascertain who was watching? 30 A. Yes, I thought there was somebody there in the hall or in the house around.

Q. Did you hear any noise of any sort? A. Not myself, I didn't hear noises, no.

Q. Well, after you sat on the couch there about 10 or 15 minutes what happened? A. When I first went into the room I says, "John, either get dressed or close the windows," and I was in the room about half an hour and I heard noises and

*Mrs. Gladys E. Arnaboldi—Direct.*

I walked through and I closed the windows myself.

Q. After you were sitting at the window, not in the kitchen but at the front window there, what happened? A. I didn't hear any noises from the front; there seemed to be nobody right near the house; I never was suspicious of being watched right near the house. 10

Q. What happened after you were sitting there on the cot? A. I was between two fires and didn't know whether to stay where I was.

Q. Why do you say you were between two fires? A. I thought that my husband was in the house.

Q. What made you suspicious that your husband was in the house? A. Because John had told me so many times that night they were around.

Q. Did you hear any noise? A. Yes, plenty. I heard noises and that was why I was so nervous; coughing and things like that. 20

Q. As you sat on the cot there you thought you heard a noise in the kitchen? A. Yes.

Q. What did you do when you thought you heard a noise in the kitchen? A. Well, it all happened so quick; my husband came in so quick and he was in the dining-room.

Q. You heard a noise in the dining-room? A. Yes. 30

Q. As if somebody was moving around? A. Yes.

Q. And where were you at the time you heard that noise? A. I was sitting on the edge of the bed, I guess.

Q. What were you doing sitting on the edge of the bed? A. Nothing.

Q. Was there any conversation between you and 40

*Mrs. Gladys E. Arnaboldi—Direct.*

Mr. Lehe while you were sitting at the edge of the bed? A. No.

Q. What were you doing, listening to those noises? A. No, I was pretty nervous that night; I don't know what I was doing.

Q. What made you go from the cot to the edge of the bed; how did you happen to do that, for what purpose? A. No purpose. 10

Q. Did you say anything to Mr. Lehe while you were sitting at the edge of the bed? A. Oh, he seemed to know that Joe was pretty near.

Q. Well, did you say anything about Joe being around? A. John said, "Joe is in here"—something like that. He said, "He is here or near here or something".

Q. Were you talking to each other? A. Yes, a little bit. 20

Q. In a loud voice or low voice? A. Low.

Q. Were you trying to get him up out of bed? A. Yes, he was pretty tired and we retired very, very late; that is why.

Q. Did you ask him to get up to see who was in the dining-room? A. That was my purpose in going into the room.

Q. Was that your purpose in your going over to the edge of the bed? A. Yes. 30

Q. What did he say about getting up? A. Oh, he didn't give me any answer; he said "Why did you come in my room?"

Q. Did he say anything else besides "Why did you come in my room? A. He kept insisting "Your husband is here, or in the house".

Q. Did you try to keep a running conversation or did you keep quiet, to find out if you could hear anything? A. Quiet, I guess. 40

*Mrs. Gladys E. Arnaboldi—Direct.*

Q. And then what happened? A. Then the fun began; I saw my husband.

Q. Well, what was the fun; what happened? A. I didn't say "who are you?" "who are you"; I knew.

10 Q. That is, you didn't say that, as testified by your husband; you had heard somebody moving around? A. Yes, sure.

Q. After he came in what did your husband say? A. He says "Now I got you".

Q. What did you say? A. I says, "This is the first occasion".

Q. First occasion what? A. I meant exactly what I said; this is the first occasion I ever was in another man's room.

20 Q. Is that the truth, the first time you had been in Lehe's room? A. The first time.

Q. What did Lehe do or say? A. He said "What did you see?" when Joe asked him.

Q. Was Lehe under the covers or did he get up? A. He didn't get up; he stayed where he was.

Q. Did Lehe say anything? A. He just said, "What did you see?"

30 Q. What did anybody else say there then? A. There wasn't anybody else there at all except Mr. Schloetzer, and he says "Come on; you have seen enough".

Q. It has been testified here that before Mr. Lehe went to his room that night he shook his penis at you; is that correct? A. Absolutely untrue.

Q. And it has been testified that you used some powder that night, or you powdered your private parts; is that correct? A. Perhaps.

40 Q. Well, do you recall? A. I do; I did, I guess.

*Mrs. Gladys E. Arnaboldi—Direct.*

Q. Was that before or after you went into Lehe's room? A. It was before.

The Court: Am I in error? I thought she never left that room until after the entry of her husband.

10 Mr. Siff: She testified she went into her bed-room and from there she said she went to the bath-room, and then she went to her bed-room, and then she went into Lehe's room and sat on the cot.

The Court: Yes, but she didn't leave that front room, the living-room, until after the entry of her husband.

Mr. Siff: That's right.

20 The Court: I just wondered if I misapprehended.

Q. On that occasion did you say, in the presence of Mr. Schloetzer, "You are a better man that he is", referring to Lehe? Did you make the remark to Lehe, saying, "Well, you are a better man than my husband is, or something to that effect? A. I think I did say something to Mr. Lehe; I'm not sure.

30 Q. What did you say? A. Something like that, I think.

Q. Did you intend to convey that meaning?

Mr. Marelli: I object to that.

Mr. Siff: I withdraw it, because I haven't got her words.

*By the Court:*

40 Q. What did you mean when you said that? A. If I said it, I always say what I mean.

*Mrs. Gladys E. Arnaboldi—Cross.*

Q. Well, in what respect did you mean he was a better man than your husband? A. The fact that John always seemed to take an interest in me and seemed to protect me. He acted as a body-guard, don't you know.

10 *Cross-examination by Mr. Marelli:*

Q. When did you say your last child was born?  
A. May 20, 1924.

Q. And when was it that you and Joe separated? A. August, 1923.

Q. Do you know what date it was in August?  
A. Is there 31 days in August?

Q. Yes. You said it was a Saturday in August, 1923? A. Yes.

20 The Court: I don't think there can be any great disagreement; the husband said they separated the last part of August and she said they separated a Saturday the last day of August. The last day of August, 1923, was on a Friday.

Q. Now, you said that you told your husband that you were pregnant? A. I thought I was and  
30 I did.

Q. Now you say you thought you were; I say did you tell him you were? A. I did.

Q. Well, did you know whether you were or not? A. I was.

Q. How did you know? A. Every woman knows when she is pregnant.

Q. When was the first time you told him? A. Two or three days before that.

40 Q. Well, when was the first time you told him before this day? A. One Sunday.

*Mrs. Gladys E. Arnaboldi—Cross.*

Q. The Sunday before or two Sundays before?  
A. Two or three.

Q. Two or three Sundays before? A. Yes.

Q. And what were the words you said to him about two or three Sundays before? A. I said it was going to be a girl.

Q. Is that what you said to him? A. Yes. 10

Q. And if that was three Sundays before it must have been around the 10th of August that you first mentioned to him that you were pregnant; is that right? A. I think you are correct.

Q. What? A. I think so.

Q. You knew then that you were pregnant? A. I did.

Q. And when was the second time you told him?  
A. That other Sunday when he threatened to  
20 leave.

Q. That was the next time you told him again about it? A. Yes.

Q. Well, did you tell him that you were pregnant immediately after you had intercourse with him? A. I did.

Q. Immediately after? A. I did.

Q. You knew it right after? A. I thought so.

Q. And you still thought it on the 31st; you thought you were pregnant? A. Yes. 30

Q. Now, if you had had illicit relations, or if you had had connections with Lehe would you admit it on the stand now? Would you say you had?

Mr. Siff: I object to that. It is a catch question.

Mr. Marelli: I think that is a perfectly proper question.

The Court: Well, it is an admissible question, possibly tricky. 40

*Mrs. Gladys E. Arnaboldi—Cross.*

Mr. Marelli: The question is asked frequently.

The Court: I will allow it. (Addressing the witness) If you had had sexual intercourse with Lehe would you admit it now; would you say that you had or would you deny it?

10

A. I would deny it.

Q. You said that you had the crib in your room on the night of this first raid, on the 7th of April, 1926; that is true, is it? A. It is.

Q. And it happened that the children were not in the crib just that night? A. Yes.

Q. They were in with you that night? A. That's right.

20

Q. But on other nights they were in the crib? A. They were. I always had the crib in use.

Q. Why didn't you have them in the crib that night? A. That one night I had the boys with me. Sometimes I changed off.

Q. Didn't you have the three of them in the crib sometimes? A. Never.

Q. You say you put your clothes in Lehe's closet just on that day? A. Yes.

Q. Where were your clothes on other days? A. They were in the trunk. It wasn't so long ago that I had moved.

Q. Why did you put them in the closet that particular day? A. It just happened that way. It was a Saturday like over week end and I was cleaning up.

Q. Was this raid on a Saturday? A. Yes, it was a Saturday night if I'm not mistaken.

Q. Are you certain about that? A. I was positive it was Saturday.

40

*Mrs. Gladys E. Arnaboldi—Cross.*

Q. You are now, are you? A. No, my husband said it was Thursday; that is correct then; it was Thursday.

Q. When was it that you put the clothes from the trunk into the closet? A. That morning, I think.

Q. That same morning? A. Yes.

10

Q. Why did you put them in the closet that particular morning? A. I just happened to be cleaning the room, because Mr. Lehe was working in Great Neck and he used to come home week ends.

Q. Then you had your clothes in there before that time, didn't you? A. No.

Q. Well, it was one week end that you were cleaning that you didn't put the clothes in the closet? A. It was that week end.

Q. Thursday isn't a week end, is it? A. After Wednesday it is week end—Thursday, Friday, and Saturday is week end.

20

Q. Mr. Lehe contributed to your support all that he had, didn't he—everything he earned he gave to you? A. Naturally. Every man that thinks anything of a woman gives her everything he has.

Q. And he thought a lot of you? A. More or less.

30

Q. And you thought a lot of him? A. I like Mr. Lehe.

Q. When your husband and the officers raided your place on the 7th of April you weren't interested in what was being said to Mr. Lehe, were you? A. (Witness pauses) You said so. I wasn't interested in what was being said to Mr. Lehe. If the man were talking to me I would be interested.

Q. Weren't you interested in that raid? A.

40

*Mrs. Gladys E. Arnaboldi—Cross.*

Naturally, on account of my own good name.

Q. And you knew that your name was being linked up with Mr. Lehe, didn't you? A. I didn't fully sense that at the time.

Q. Well, you knew that was the purpose, didn't you, of connecting your name with Mr. Lehe? A. I do now, but I didn't then.

10 Q. Why do you suppose they raided the place, then? A. Well, to have some fun.

Q. What kind of fun? A. Why, any raid is interesting.

Q. Well, you knew at the time certainly that they were trying to get you and Mr. Lehe together, didn't you? You knew that? A. I didn't know what they were there for, no.

20 Q. You mean to tell me, Mrs. Arnaboldi, that you didn't know that the purpose of the raid was to see whether or not you and Mr. Lehe could be found in a compromising position? A. That was the purpose of the raid, yes.

Q. You knew that, didn't you? A. I guess I did know it. If I stopped to think I would know it.

Q. The reason was that your husband suspected you of having improper relations with Mr. Lehe? A. Yes.

30 Q. And then, in spite of that, you continued to live with him after that? A. I always said to Mr. Lehe—

Q. You continued to live with him after that, in spite of the suspicions that were cast upon you? A. I never lived with him in my life.

Q. You continued to occupy the same apartment? A. Never.

40 Q. You occupied three rooms and he one? A. That was Mr. Lehe's apartment.

*Mrs. Gladys E. Arnaboldi—Cross.*

Q. And you ate together? A. Sometimes.

Q. And he would give you all the money he had? A. He paid me when he ate with me, because he used to provide food.

Q. So that he occupied the apartment with you, didn't he? A. Well, no, not altogether.

The Court: Mr. Marelli, you needn't spend a great deal of time in cross-examining the defendant. My mind is definitely made up after hearing her direct testimony. I will tell you what is causing me some concern, is whether or not there can be any decree for the complainant, even if I do find that fact that adultery has been committed. You are familiar with Rath v. Rath and Young v. Young? 10

Mr. Siff: And the Pike case that your Honor decided only a month ago. 20

The Court: Yes; and although I heard what he said about having seduced her before marriage, it is a very tenuous line to suspend a decree upon where a woman so testifies and her husband denies it and there is nothing more one way or the other. But your client says that he left this woman as the result of suspicion that had been aroused in his mind by her going out and returning to the home at late hours many times a week. 30

Mr. Marelli: And in disobedience of his orders—continuous orders, not once but the whole time, saying "I don't want you going out" and insisting upon her remaining in the home.

The Court: Is that a ground for divorce? 40

*Mrs. Gladys E. Arnaboldi—Cross.*

Mr. Marelli: I don't say it is a ground for divorce, but I do say it justified him in leaving her if she insisted upon going out and coming in during the early hours of the morning.

Mrs. Arnaboldi: Your Honor—

10

The Court: No, you have a lawyer to represent you who is much better able to take care of you than you are.

Mr. Marelli: I say he was justified in leaving her. What are we to do, establish the double standard of conduct here in this court?

20

The Court: Would you say that a woman should be permitted to leave her husband because he, against her orders, went out every night in the week and stayed out until late hours?

30

Mr. Marelli: No, that is an entirely different proposition. The husband is the bread earner, and the husband, furthermore, may go out at night; it is perfectly proper for him to go out at night, but it is not proper for the woman to go out at night, night after night, against the orders of her husband who is doing his best to keep her in. I don't mean to say that that would be a basis for a suit for constructive desertion on the part of the husband afterwards; no, I don't say that. I don't say that that would justify him in subsequently getting a divorce; but I do say it does justify him in living separate and apart from his wife.

40

The Court: He is not justified in separating himself from her under any circumstances except where she has been guilty of a

*Mrs. Gladys E. Arnaboldi—Cross.*

matrimonial offense, of which in this state there are only three.

Mr. Marelli: He isn't justified; but what I think is intended is this: He didn't abandon her; he supported her; he simply didn't have relations with her, that is all. He simply didn't sleep with her; he didn't live with her, but he didn't abandon her; he supported her.

10

The Court: I know, but desertion can take place with the fullest financial support, with even a continuous living in the same house and under the same roof. We have *Raymond v. Raymond*, *Rector v. Rector*. Moral support alone is not the sole duty of a husband, and the State says that when a man unjustifiably separates himself from his wife and remains absent for two years against her wishes he is guilty of a matrimonial wrong. That is the case of *Young v. Young*. Here, the petitioner testifies, "I left my wife for the reason that she was not doing right by me; we had quarrelled over the fact that she was going out nights. I have not lived with my wife since October 16th and have had no sexual relations with her since that time. As the Chief Justice says, in writing the opinion for the Court of Errors and Appeals, "It is not justifiable, so far as I know if there is dissatisfaction with the wife's cooking. And so here. Of course, it is a reprehensible thing for any married woman to go out evenings alone except upon the rarest occasions. I agree with all that. Taking the testimony at its

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*Mrs. Gladys E. Arnaboldi—Cross.*

10 face value, I agree that he had cause for  
complaint against his wife, if all he says is  
true; but I don't think he had justification  
to separate himself from her. It seems to  
me that we are just wasting time, and, of  
course, I want to hear you at the greatest  
length. I am willing to examine any  
authority or any written argument that you  
care to present to me, and, of course, I am  
going to hear Mr. Siff if he wants to be  
heard as to whether or not any adultery  
took place. I think there did now, unless  
he convinces me to the contrary. That is  
why I said to you you needn't proceed on  
any extended cross-examination of the de-  
fendant, so far as the adultery charge is con-  
cerned.

20 Mr. Marelli: Well, I am frank to state to  
the Court that I haven't any doubt at all  
about my ability to prove the adultery in  
this case. The point that I had in mind,  
the obstacle—the serious obstacle that I  
knew I would have to overcome—was this  
matter of the leaving. I anticipated all that  
at the time, but it seemed to me to be so  
clear that this woman would not do what  
her husband desired her to do, insofar as  
staying home was concerned, and so far as  
doing her duty in the household was con-  
cerned, he was justified in saying to her "I  
can't stand this". What is a husband to do?  
Here is a woman who refuses absolutely—

30 The Court: Go to the Legislature. You  
know that we have no inherent divorce pow-  
er.

40 Mr. Marelli: I know that, but I think still

*Mrs. Gladys E. Arnaboldi—Cross.*

that what he did was perfectly justifiable.

The Court: It has been held, time and  
again, that the utmost neglect of the house-  
hold duties by the wife, the most filthy liv-  
ing conditions, are not justifiable causes for  
a husband separating himself from his wife.

10 Mr. Marelli: You see, he was suspicious  
of her doing more than that; he was suspici-  
ous that she was not true to him, and it  
seems that subsequent acts of hers confirmed  
his suspicions. So that we may inferential-  
ly reason that she did commit adultery be-  
fore he left her.

20 The Court: I don't think you can do that  
in a criminal court. The Court of Errors  
and Appeals in a case in 17 Equity laid  
down the rule that adultery in this state is  
a crime, and that to convict one of it is  
ground for a divorce suit, and that is an ap-  
peal from this court. They say that it must  
be proved beyond reasonable doubt. They  
use the phrase "reasonable doubt", and that  
case has been followed and followed well,  
as well as the case of *Marchese v. Marchese*,  
in about 96 or 97 Equity. In that case they  
followed that rule and affirmed me. That  
is the case of *Harry Weinberger*.

30 Mr. Marelli: Isn't it a rule that you must  
show opportunity and inclination?

The Court: Yes, but how can I say that  
this woman would have committed adultery  
three years later if she hadn't been aban-  
doned?

40 Mr. Marelli: We show that she was in-  
clined to do that before her husband left  
her.

*Mrs. Gladys E. Arnaboldi—Cross.*

The Witness: No.

10 Mr. Marelli: That she would go out late at night, and she was familiar then, in a way, with this man Lehe; that her husband talked to her about that and that she admitted to her husband that she would go out with men and do what she pleased. She says, "I go out with whomsoever I please". I am not repeating the exact words, but that is the substance of her testimony. What else can a man do; what would a man do under circumstances of that kind. Isn't he justified when his wife practically admits to him—

20 The Court: Do what he did subsequently: Have her watched and determine and find out whether these excursions from the house were for any illicit purpose. Well, I didn't want to throw you completely off; I wanted to indicate to you that I don't think you need waste much time in cross-examining on the adultery charge or anything else. I am not deciding the case now; I want to give you the benefit—both of you—of what is running through my mind. I don't intend in this abrupt way to cut you off from any further argument.

30

Mr. Marelli: I know what it is, and that is actually what I had in my mind right from the beginning of this case, just what your Honor has just said. Well, I will refrain from further cross-examination.

The Court: Any redirect?

Mr. Siff: No, no further examination.

40 The Court: That is all, Mrs. Arnaboldi; you may step down.

*John B. Lehe—Direct.*

JOHN B. LEHE, sworn on behalf of the defendant, testified as follows:

*Direct-examination by Mr. Siff:*

Q. Mr. Lehe, in 1923 what months did you go to live with your cousin on Paterson Avenue? A. What months in 1923? 10

Q. In 1923, yes. A. I should say May.

Q. And until when did you leave there? A. I stayed there about two weeks.

Q. And did you go back there again and live with your cousin? A. Why, yes.

Q. When was that? A. Sometime in April.

Q. April what year? A. 1923.

Q. Well, had you lived there before April, 1923? A. I lived there in April and May, three weeks all together. 20

Q. In April and May, 1923, you lived with your cousin in Paterson Avenue? A. Yes, sir.

Q. And where did you live after that? A. In a garage.

Q. And until when did you live in the garage; what month? A. Around the first of June.

Q. Of 1923? A. Yes, sir.

Q. And where did you go to live then? A. Cortland Street. 30

Q. Prior to August, 1923, whenever Mr. and Mrs. Arnaboldi separated, did you know Mrs. Arnaboldi? A. No, sir.

Q. At the time she lived at Paterson Avenue did you know she was living there? A. No, sir.

Q. Did you ever see her there? A. No, sir.

Q. Now, how did you become acquainted with her? A. In the candy store.

Q. Who ran the candy store? A. Mrs. Arnaboldi. 40

*John B. Lehe—Direct.*

Q. Where was that candy store? A. On Plank Road.

Q. What town? A. Union City.

Q. Was that near the garage where you worked at that time? A. About a block away, or block and a half.

10 Q. What year was that, if you remember? A. 1923.

Q. 1923 or 1924? A. 1924, I think—no, 1923.

Q. Well, at any rate, it was when she ran that candy store; is that right? A. Yes.

Q. And where did you work at that time? A. Well, sometimes I worked in the garage and sometimes I worked in the glass business in Union Hill.

Q. What did you do around the garage; were you employed there regularly or at odd times? A. 20 Sometimes I worked and sometimes I wouldn't.

Q. Was it doing odd jobs? A. Just washing cars.

Q. And you slept in the garage? A. Yes, for awhile while I was out of work.

Q. How did you become acquainted with Mrs. Arnaboldi, by coming in the store? A. Yes, sir; buying cigarettes.

Q. And what happened when you came into the store there; do you remember how you came to be 30 employed by her? A. Well, I went in the store there and she asked me to help her out at the circus time.

Q. Where was the circus? A. Down on North Street lots.

Q. Jersey City? A. Yes.

Q. What did you suggest to her? A. I said, "Why don't you take some candy and I will get a truck and we will try to sell a lot of candy down 40 by the circus, and she did; she went out with me,

*John B. Lehe—Direct.*

and we went and got a Ford auto, or something like that, and we loaded up the auto and sold candy.

Q. And it was then that you started in to work around the store? A. Yes.

Q. How often did you work around the store? A. Sometimes Sundays, and sometimes off nights, 10 like Saturday night, a busy night, twice a week about.

Q. Did you get paid for your services? A. Yes, sir.

Q. And during that time you were working around the garage? A. Yes, I would go back to the garage and make a few dollars, say, three or four dollars or five dollars, whenever a car came in, you know.

Q. And when did Mrs. Arnaboldi give up the store? A. Oh, about—I should say two months 20 after that, or three months after that.

Q. And where did she move to? A. Cortland Street, 706.

Q. And did she permit you to sleep there at Cortland Street? A. Yes.

Q. You had been sleeping in the garage before you moved into Cortland Street? A. Yes, sir.

Q. And she permitted you to sleep in Cortland Street place? A. Yes, I asked her for a room; I 30 didn't want to remain in the garage.

Q. Under what arrangement did you occupy that room in Cortland Street? A. At so much a week.

Q. How much a week? A. \$5.

Q. And did you run short some weeks? A. Sometimes I did.

Q. How long did you live at Cortland Street? A. About a month and half, or so. 40

*John B. Lehe—Direct.*

Q. And had you paid up your board by the time you moved away from there, or did you owe her some money when you left? A. Well, I owed her for something like a week or so.

Q. What room did you occupy in Cortland Street? A. Front room.

10 Q. Did she have a separate bedroom? A. Yes, sir.

Q. Whom did she sleep with? A. Her three children.

Q. And where was her bedroom? A. Well, they were—

Q. Did you have separate rooms? A. Separate rooms; yes, sir.

Q. What caused you to move from Cortland Street? A. Well, I went back to my position.

20 Q. That is, the glass trade? A. Yes, sir.

Q. You got regular work? A. Yes, sir.

Q. Then you moved where? A. Then I started my own home and got three rooms at 19 Grey Street.

Q. What floor did you live on? A. The top floor, four families in the house.

Q. You furnished up an apartment with your own furniture? A. My own furniture.

30 Q. How long after that was it that Mrs. Arnaboldi moved to 19 Grey Street? A. About a month after.

Q. What floor did she occupy? A. Downstairs in the rear.

Q. Did she have furniture there? A. Yes, sir.

Q. Then what happened after that? A. What happened after Mrs. Arnaboldi was downstairs?

Q. Yes. A. Well, she got 23 Grey Street where there was lots of room, and her other place was

40

*John B. Lehe—Direct.*

bad on account of having no baths and hot water.

Q. Well, whose suggestion was it that she move to 23 Grey Street; was that your idea? A. Her own idea.

Q. And after she moved in there did you live at 23 Grey Street, too? A. I did.

Q. How did you come to make arrangements to live at 23 Grey Street? A. I asked Mrs. Arnaboldi for a room. 10

Q. What caused you to give up your apartment? A. Well, cheaper rent.

Q. Were you still working at the glass trade? A. I was only working twice a week; it was a little slack.

Q. And your income was reduced? A. Yes, sir.

Q. And you had to find cheaper quarters; is that right? A. Yes. 20

Q. What arrangements did you make with Mrs. Arnaboldi concerning the living-room there? A. I do not recall.

Q. Did you hear the question? What did you do concerning the living-room at her place at 23 Grey Street? A. What did I do?

Q. Yes. Did you move in there? A. Yes.

Q. Under what arrangements? A. \$5. a week.

Q. Whom did you rent it from? A. Mrs. Arnaboldi. 30

Q. Was that just for the rent of the room? A. Just for the rent of the room.

Q. Did you pay her \$5. a week? A. I did, sir.

Q. Did you pay her something outside of the rent? A. Well, sometimes I was short a few dollars—something like that.

Q. What was that for? A. Well, that was for just my room.

Q. Did she ask for it? A. Sometimes she did. 40

*John B. Lehe—Direct.*

Q. Did the extra money pay for food?

Mr. Marelli: I object to that.

A. One minute—

The Court: Here, you keep quiet. I think it is pretty leading, Mr. Siff.

10

Q. Did you eat there? A. I did, sir.

Q. Who paid for that? A. I did, sir.

Q. Did you pay for that? A. Yes.

Q. Did you give her any money to cover anything besides the food and the room? A. No, sir.

Q. Do you recall the night of April 7th, 1926?

The Court: The night of the raid.

A. What happened?

20

Q. Yes, what happened that night; give us the time, Mr. Lehe. A. Well, I should say about quarter to 11 or 10 minutes to 11, something like that, I don't know the time exactly, someone rapped hard at the door, and I got out of my cot that I had, and I says, "Who is there?" and he hollered out "Telegram; hurry up; open the door"; and so with that Mrs. Arnaboldi got up out of bed and she drops the child in front of her, see, and I picks up the child, and when he says "Hurry up and open the door" the second time I grabbed the child and ran, and someone jumps through the window.

30

Q. Which window? A. The window near the bath-tub, alongside of the bath-room; and I sat on my bed with the child.

Q. And when the men came in who admitted them? A. Mrs. Arnaboldi.

Q. When the raid occurred which room were you in? A. I was in the front room, my room.

40

Q. Where did you sleep? A. In my room.

*John B. Lehe—Direct.*

Q. What were you doing when they pounded on the door? A. Sleeping.

Q. Did you awaken before Mrs. Arnaboldi, or at the same time? A. No, sir.

Q. Who awakened first? A. I did.

Q. And did Mrs. Arnaboldi wake up by the time you got to the door? Did she get up right away? A. She got up, I should say, in about a minute and a half. 10

Q. Did you talk to her before she got up? A. No, when I heard the—I heard the rapping, you know, and he says "telegram", I stood there, and just as I stood there I stepped back past the door of the hallway, and I then says to Mrs. Arnaboldi "There is a telegram", and with that Mrs. Arnaboldi dropped the child and went to the door and I picked the child up and took it in the living-room. 20

Q. What happened after the men were admitted? A. They came into my room—

Q. Who came in there? A. Well, the police, and a man who said he was—

Q. A detective? A. Yes, and several others.

Q. What did they say? A. They asked me "Whose bed is that?" I says, "Mrs. Arnaboldi's".

Q. What else did they say? A. They says, "What are you doing here" and someone said "Here is some woman's clothes" and I said "What about it"; I said "I gave her permission to put the clothes in there." 30

Q. Well, was there anything else said there? A. Yes.

Q. What else? A. They said "Are you trying to break this man's home up?" and I said "No, sir; I am a married man myself" and I had my wife's picture there. 0

*John B. Lehe—Direct.*

Q. You had your wife's picture in your room?

A. Yes, sir.

Q. You are separated from your wife, are you?

A. Yes, sir.

Q. Well, go ahead. A. He says "I want this man arrested".

10 Q. Whom did he say that to? A. Mr. Arnaboldi said it to me.

Q. What did you say? A. I says, "For what? You can't have me arrested; for what?"

Q. What did he say? A. Then he didn't say nothing. Then he says, "Do you know this man?" I says, "I do". He says, "Who is this man?" I says, "This man is Arnaboldi".

Q. Well, did he arrest you? A. No, he did not.

20 Q. Well, do you recall anything else that happened. A. Oh yes, they were starting to leave, and I says "Wait a minute; this is my stuff in this place here".

Q. Was there anything said about the bed there? A. Oh yes.

Q. What was said about that? A. (Witness pauses).

Q. What was the condition of your bed at that time? A. I painted the bed that afternoon.

30 Q. And what was said with reference to the bed? A. What was said? They asked me, "Where do you sleep".

Q. Well, what did you say? A. I says, "On a cot".

Q. What did he say? A. He didn't say anything.

40 Q. Was there anything said about the bed being painted? A. When I said I just painted it that afternoon he put his finger on it, and I says, "If you don't believe it feel it, it is still wet".

*John B. Lehe—Direct.*

Q. Anything else happen that night that you recall? A. I don't recall.

Q. It has been testified here that on that occasion Karen found your trousers in the kitchen; is that correct? A. No, sir.

Q. Where were your trousers? A. They were alongside of my cot. 10

Q. And Karen also testified that he saw a blue shirt in Mrs. Arnaboldi's bedroom; is that correct?

A. That was in my room.

Q. Did you sleep with Mrs. Arnaboldi that night or have intercourse with her that night? A. No, sir.

Q. Or at any other time? A. No, sir.

Q. Now, coming down to the occasion in June: Do you remember an occasion when Mr. Arnaboldi and Mr. Schloetzer came there in June, 1926? A. Yes. 20

Q. What time did you go to sleep that night? A. Something like quarter to 11, I think, or 10 minutes to 11.

Q. When you came in that night whom did you see. What time did you get home that night? A. Oh, I came in a little after 10 o'clock.

Q. Whom did you see when you got home? Did you see anybody in the hall or around the apartment? A. I heard someone coughing, that's all. 30

Q. Did you know who it was? A. Yes.

Q. Who was it? A. Mr. Arnaboldi.

Q. Where was it that he coughed? A. Right in back of the bathroom.

Q. What time was that? A. Oh, that was about 25 minutes to 11.

Q. Where were you? A. In the kitchen.

Q. What were you doing in the kitchen? A. I was just after coming out of the bath-room. 40

*John B. Lehe—Direct.*

Q. It has been testified here that when you came out of the bath-room on that night that you shook your penis at Mrs. Arnaboldi; is that true? A. No, I never did anything like that.

10 Q. It has also been testified here that after you did that she shook her head, as if to say "yes"; did that happen? A. No, sir; she was reading at the time I went to the bath-room.

Q. She was reading what? A. A magazine on a little table or little book-stand of some sort.

Q. What time was that? A. That was 25 minutes after 11.

Q. Were you undressed at the time? A. I was dressed.

Q. Were you dressed or undressed? A. Dressed.

20 Q. What time was it that you went into the living-room and got undressed? A. Well, I should say five minutes after.

Q. Five minutes after what? A. That would be half past 11.

Q. And did you go to sleep? A. Not exactly.

Q. What did you do? A. I laid down, just dozing off.

Q. Did you fall asleep? A. I did not, no.

30 Q. What kept you awake? A. Well, nothing kept me awake.

Q. Did you see any flash light at your door? A. I did.

Q. Where did you see it? A. Through a crack of the door-jamb of the door.

Q. Do you know who it was? A. Yes, Mr. Arnaboldi.

40 Q. How do you know it was Mr. Arnaboldi? A. He had the habit of doing that every night.

*John B. Lehe—Direct.*

Q. You mean you heard noise around there every night? A. Yes.

Q. Did you see him around there? A. About four or five times to my knowledge.

Q. What happened there when you heard the noise? A. Mrs. Arnaboldi spoke and said there was someone walking around the house. She came in to tell me that. 10

Q. Did she tell you that when she first came into the room? A. No.

Q. What did she do when she first came into the room? A. She went and closed the window.

Q. How long was she in the room before she closed the window? A. I should say about two minutes.

Q. What did she do? A. She came over to my bed and she said "You had better get dressed; somebody is around the house." 20

Q. How long was that after she came in to close the windows? A. About 10 minutes.

Q. Did you hear her when she first came into the room? A. No.

Q. Didn't you see her when she was trying to wake you up standing there by your side? A. She wasn't standing; she was sitting on a little green chair I have, an old-fashioned parlor chair. 30

Q. By the bed? A. By the bed, yes.

Q. What did you say when she asked you to get up? A. I told her to get out of my room.

Q. What did you say to her? A. I says, "Get out my room; your husband is outside".

Q. What did she say? A. She said I am crazy.

Q. Well, when was it that she woke you up and you heard somebody moving around? A. That was at half past 11. 40

*John B. Lehe—Direct.*

she explain what she meant? A. Well, I don't know what she meant, but I know she jumped up and said something like that.

Q. What did you say? A. I says, "What do you mean? Where do you get that stuff?"

Q. What did she say? A. She stayed there quietly. 10

Q. Did you have a bottle or anything there? A. No.

Q. Did you say to them that you had a bottle, or anything of that sort? A. No bottle at all.

Q. Now, it is testified here that around Christmas 1926 they found you chopping wood in Myers Avenue, North Bergen; is that true? A. Where is that, where she lives now? Why yes, I have chopped wood there.

Q. Did Mrs. Arnaboldi pull your clothes off at that time? A. No, sir. 20

Q. Did you have intercourse with Mrs. Arnaboldi at that time? A. No, sir.

The Court: He said he never had. It is now time to adjourn. We cannot go on tomorrow as I have another hearing. You will have to take it up with Mr. Bailey and see if another day can be found to complete the case. You must have given him a wrong impression as to the length of time this case would take when it was first set down. 30

Mr. Marelli: I thought we could surely finish it in a day, and I guess my opponent did.

The Court: How many more witnesses will you have, Mr. Siff?

Mr. Siff: Testimony as to residence and 40

*John B. Lehe—Direct.*

I want to call Mrs. Arnaboldi's sister to testify as to one incident.

The Court: Well, you needn't spend any more time on the residence. Mr. Marelli has already said the petitioner's mother testified to that. Well, I imagine that we ought to be able to close the entire thing in another two hours, including the argument. 10

Mr. Marelli: I think so, yes.

Mr. Siff: You might get it on the record again that we agree upon the date of the birth of the first child as July, 1919.

Mr. Marelli: Yes, there is no dispute about that.

Mr. Siff: They were married in March, and that is proof that she had been seduced.

Mr. Marelli: Yes, seduced. 20

Mr. Siff: I don't know whether you call it seduced or that they had sexual relations.

Mr. Marelli: I will withdraw that word and say that they had sexual intercourse before they were married.

(The further hearing is adjourned to Wednesday, June 1, 1927, at the Chancery Chambers in Jersey City, at 3 P. M.) 30

Hearing of June 1, 1927, 3 P. M.

JOHN B. LEHE resuming the stand, testified as follows:

*Cross-examination by Mr. Marelli:*

Q. I believe you are married, aren't you? A. Yes, sir. 40

*John B. Lehe—Cross.*

the garage? A. I went over and bought my cigarettes there, that's all.

Q. You never stayed there awhile to see her? A. I stayed there selling stuff for her.

Q. But you got paid for that? A. Yes, I got paid for it.

10 Q. Did you sell stuff for her while you were working in the garage? I don't mean at the same time, of course, the same hours, but on the same days that you worked in the garage only different hours? A. Well, I didn't do what I call work in the garage; I would wash a car and whenever I could make a dollar I would make it.

Q. You would wash cars and work in the store afterwards? A. Yes.

Q. How much did she pay you? A. \$3.

20 Q. For what? A. Working in the store.

Q. For what period of time? A. Something like two or three hours or four hours.

Q. She paid you \$3. for working four hours in a candy store; what time did she open the store, do you know? A. Well, generally a candy store opens at 7 o'clock.

Q. How late would she keep open? A. Until about 10.

30 Q. How big was the store? A. About 75 feet.

Q. 75 feet what, long? A. Yes, sir, long; 55 feet long.

Q. Are you sure about that? Can you indicate here—can you show us or indicate here the length of the store where she was; from you to where? A. Oh, about to the end of that banister.

Q. From the wall to the banister? A. Yes, sir.

Q. And you think that is equal to 55 feet? A. Yes.

40

*John B. Lehe—Cross.*

Q. And how wide is it? A. Pretty good sized store.

Q. How many rooms did she have in the back? A. Two.

Q. You were in there and you know, don't you? A. No, sir.

Q. Then how do you know there were two? A. 10 Well, you can see from the store. It is one straight room.

Q. Did you go in it at all? Did you know whether there were any rooms behind those rooms?

A. Well—

Q. Were there any rooms in back of the two rooms you saw? A. Well, there was an extra room behind with a door.

Q. How many rooms all together? A. Two I think. 20

Q. How long a time did you work in the store—how many weeks? A. About two weeks.

Q. Then where did you go to work? A. In the garage.

Q. Did you work in the store again while you were working in the garage? A. Yes, I went back and worked a few days.

Q. How many weeks all together did you work for her? A. About two weeks. 30

Q. Two weeks more? A. No, just two weeks.

Q. Two weeks all together; where did you go to work after you terminated your employment with her? A. Back to my shop, glass business.

Q. Where? A. Union Hill, mirror works.

Q. How far from her house? A. About a mile.

Q. Where did you go to live then? A. I lived in Cortland Street.

Q. Where was she living? A. In Cortland Street. 40

*John B. Lehe—Cross.*

Q. You went to Cortland Street with her, didn't you? A. Well, I had a room there.

Q. Now, when did you go to Cortland Street to live? A. When did I go to Cortland Street to live?

Q. Yes. A. Oh, about a month after.

10 Q. That is, in May, 1925. Now, wasn't it 1924 and not 1925? A. I think it is June.

Q. 1924, wasn't it? A. 1925.

Q. Now, just let me refresh your memory a moment; wasn't it in April, 1924 that you went in the store? A. 1925.

Q. And then it was in June, 1925, that you went to Cortland Street? A. Yes, sir.

20 Mr. Siff: May I make a suggestion? We are all confused and I think the witness is. It was 1924 that she opened the store, the same year. I don't think this injures Mr. Marelli; you will certainly mislead the court.

Mr. Marelli: Well, it was in 1924?

Mr. Siff: Yes.

30 Q. Then it was in June, 1924, that you went to Cortland Street, wasn't it? A. May I ask what is this year?

Mr. Siff: 1927.

A. It was in 1925.

Q. You still insist it was 1925?

*By the Court:*

Q. How many years is it now? A. If this is 1927, one year.

40

*John B. Lehe—Cross.*

*By Mr. Marelli:*

Q. All right. Now, didn't you ever live in the house of Mr. Arnaboldi's father at the corner of Central Avenue and Paterson Avenue? A. Yes, sir.

Q. You lived there in 1923, didn't you? A. 10 1925.

Q. You never lived in Arnaboldi's house in 1923? A. 1925, sir.

Q. Well, where were you living just before you went to Cortland Street to live? A. In a garage.

Q. When did you go in the garage to live? What date was it? A. It was in April.

Q. What year? A. 1925.

Q. Where did you live before you went in the garage? A. In Paterson Avenue. 20

Q. Where? A. Arnaboldi's house.

Q. With whom were you living? A. With my cousin.

Q. What is her name? A. Mrs. Gideon.

Q. Were you living in Mr. Arnaboldi's house when Mrs. Arnaboldi was living there? A. No, sir.

Q. You didn't live there then? A. No, sir.

Q. Do you remember having a front room in that house that belonged to Mr. Arnaboldi? A. Yes, 30 sir.

Q. And when was that? A. That was in April.

Q. What year? A. 1925.

Q. You left the garage April, 1925, you lived in Cortland Street, and you lived in Arnaboldi's house, all in one month? A. Yes.

Q. Well, how long had you been living in the Arnaboldi apartment house on the corner of Paterson Avenue and Central Avenue before you went 40

*John B. Lehe—Cross.*

to the garage to live? How long had you lived there? A. A little over a week—about a week and half or two weeks.

Q. In Arnaboldi's house? A. Yes, sir

Q. Two weeks or a week and a-half? A. Yes.

Q. Where did you live before that? A. In the  
10 garage.

Q. In the garage, too, before you lived in the Arnaboldi house. Where did you live before that? A. I slept in the garage. I had no place.

Q. How long did you live in the garage before that? A. Well, on and off a couple of weeks or so.

Q. A couple of weeks; well, where did you live before you lived in the garage? You understand English? A. Nowheres outside; no place.

20 Q. When did you separate yourself from your wife? A. Oh—where did I go then? I went with my mother.

Q. How long ago is that? A. That is two years from then.

Q. How long ago was it from now that you left your wife; how many years? A. Seven years—going on seven years.

Q. Where did you go to live then? A. With my  
30 mother.

Q. How long did you live with your mother? A. I don't know; been out ever since.

Q. Where did you go from your mother's place? A. To the garage.

Q. And then where from the garage? A. To Paterson Avenue.

Q. And then you went to the garage again? A. Yes.

40 Q. And then you went to live with Mrs. Arnaboldi?

*John B. Lehe—Cross.*

di? A. Yes, then I went to Cortlandt Street.

Q. You were here when Mrs. Arnaboldi testified, weren't you, a couple of months ago? A. I was here.

Q. Yes. A. Yes.

Q. You heard her testify? A. Yes.

Q. You heard her say that you contributed  
10 to her all that you had; is that so? A. Oh, no, I did not.

Q. Then she didn't tell the truth when she said that? A. No.

Q. Where are you living now? A. Great Neck, Long Island.

Q. How long have you been living there? A. Oh, I should say about a month and half.

Q. Were you living there at the time of the last  
20 hearing? A. Yes, sir.

Q. At Great Neck? A. Yes, sir.

Q. Now, you admitted going to where Mrs. Arnaboldi lived at the time of the last hearing? You admitted going there to chop wood, didn't you? A. Yes, sir.

Q. Did she pay you for doing that? A. What, to chop the wood?

Q. Yes. Say yes or no. A. (Witness pauses).

Q. Why hesitate? A. I chopped wood. 30

Q. Well, did you get paid for it? A. I don't remember.

Q. You recall the raid that occurred on April 7, 1926; you knew what it was for, didn't you, the raid? A. No, I did not.

Q. You knew it was for the purpose of finding out if you and Mrs. Arnaboldi were having improper relations together, don't you? A. I don't know that that was the reason the raid was made  
40 for the purpose of—

*John B. Lehe—Cross.*

Q. Whether you and Mrs. Arnaboldi were having illicit relations together. A. No, I didn't know that.

Q. You heard somebody say he had a telegram and you said you knew what was what? A. I knew what was what?

10 Q. Yes; as soon as you heard it was a telegram you knew what was what. Now, what did you mean by that? A. What did I mean by that? I knew it was the police; then I knew there was something wrong.

Q. Did you complain to the police about this raid? A. No.

Q. Didn't you say it was outrageous to raid your place? A. No, I didn't.

20 Q. Now, why didn't you leave her after the raid when you knew you were being suspected with living improperly with Mrs. Arnaboldi? Why didn't you leave her then? A. Why didn't I leave her?

Q. Yes. A. I kept that room on account of I got a case myself.

Q. What case have you got? A. Divorce case.

Q. Your wife is suing you for a divorce? A. No, I am suing her.

30 Q. But you kept living with Mrs. Arnaboldi because you are suing your wife? A. No, I have got to keep a room in New Jersey.

Q. There are lots of other places. A. That's right. I was living in New York at that time and I had to keep a room here. I used to come home on Saturday.

Q. You moved with her, didn't you, to another place? A. No, sir.

Q. After the raid? A. No, sir.

40 Q. Well, how long did you keep living there af-

*John B. Lehe—Cross.*

ter the raid? A. About a month or so.

Q. You kept living there a month? A. Sure.

Q. Did you hear Mrs. Arnaboldi say the night of the raid that you were a better man than he, she referring to her husband? A. No, sir.

Q. Now, you said that you knew it was Joe that was in your room on the night of the raid because of the flash light? A. Yes, sir. 10

Q. Was there any difference between the flash-light he had than any other? A. I saw the light through the bottom of the door.

Q. Was there anything special about his flash-light that distinguished it from any other flash-light? A. I didn't say it was Joe; I said I knew it was Joe when he coughed in the back. Then I knew it was Joe. 20

Q. You slept in the room that the painted bed was in, didn't you? A. Yes, sir. 20

Q. Could you sleep in a room with a painted bed; didn't the smell of the paint affect you? A. No, sir.

Q. You said you were excited the night of the raid; is that so? A. Well, a little bit.

Q. What made you excited? A. Well, the way they knocked at the door. I thought they were knocking the house down. 30

Q. You weren't mad at all about the raid, were you? A. No, sir.

Q. Did you ever go out with Mrs. Arnaboldi to the movies? A. Yes, sir.

Q. Did you ever go out with Mrs. Arnaboldi? A. I said only once; that's all.

Q. And when was that? A. I don't remember.

Q. Didn't you ever talk with Mrs. Arnaboldi in the hall of the house at the corner of Paterson Avenue and Central Avenue? A. Never. 40

*John B. Lehe—Cross.*

Q. Before Mr. Arnaboldi separated himself from her, while he was living there? A. No.

Q. Didn't you talk with her on the street at the time he was still living with her? A. No, sir, never saw her; never knew her.

10 Q. Did you ever know of his living there? A. I never saw Mr. Arnaboldi, either.

Q. Never saw him? A. I was in that house and never saw him there. I saw his father; I know his father well.

*Redirect-examination by Mr. Siff:*

20 Q. When was that that you took Mrs. Arnaboldi to the movies on this one occasion; was that before or after— A. That was—I think that was in Grey Street.

Q. You were living in Grey Street? A. No. 19, yes, sir.

Q. What moneys did you pay Mrs. Arnaboldi? A. \$5.

Q. What was that for? A. For my room.

Q. From the time you were out of work were there any arrears? A. Yes.

30 Q. And when you got employment at the glass factory did you make efforts to catch up with the arrears?

Mr. Marelli: I don't think counsel ought to be permitted to ask such a question as that on redirect.

The Court: I agree with you.

Q. Did you make any efforts to catch up with your arrears for this room? A. I did.

40 Q. Now, the day you went in the store after cigarettes, was that the very first day that you had

*John B. Lehe—Redirect.*

met Mrs. Arnaboldi or had you seen her before that? A. Never saw her before.

Q. In other words, it was the very first day you went in there? A. The first day I went in there.

Q. Was it about that time that you went there to help her sell some candy? A. Yes, sir.

10

MRS. HELEN VAN NOSTRAND, sworn on behalf of the defendant, testified as follows:

*Direct-examination by Mr. Siff:*

Q. You are a sister of the defendant in this case? A. Yes.

Q. Where do you reside? A. Seventy-six Broad Street, Newark. 20

Q. What is your occupation? A. I am a school teacher.

Q. In the Newark Public School system? A. Yes.

Q. Do you know what caused the separation between Mr. and Mrs. Arnaboldi?

Mr. Marelli: I object to that.

Q. I merely ask you if you know? A. I don't know, but I think I know. 30

Mr. Marelli: I don't object to that.

Q. Do you know of any trouble existing between your sister and Mr. Arnaboldi before the desertion took place? A. Yes, I do.

Q. And did you have conversations with Mr. Arnaboldi in respect to the difficulty between your sister and Mr. Arnaboldi before the separation took place? A. In regard to their trouble? 40

*Mrs. Helen VanNostrand—Direct.*

Q. Yes. A. No.

Q. Was there any talk that you heard on the part of Mr. Arnaboldi as to what would happen if your sister became pregnant again?

Mr. Marelli: I certainly object to that.

10 The Court: On the ground as leading?

Mr. Marelli: Yes.

The Court: It doesn't do you a particle of harm if it is answered "yes" or "no", and if it is answered "no" that is the end of it.

(Addressing the witness) Answer that "yes" or "no"; was there any such conversation with Mr. Arnaboldi?

A. I heard him make a remark about that.

20 Q. How long before the separation did you hear those remarks? A. I should say—well, a year before, on three or four different occasions.

Q. What was it he said? A. He remarked, if there were ever any more children he would leave.

Q. When was the last time that he made that remark, as far as you know? A. I can't tell the date of the last time; I can tell one particular date. It was 1923.

30 Q. Do you recall the month? A. Once on March 13th, 1923. I remember that particular day because it was the occasion of my sister's birthday and he made the remark after dinner, and as they were about to go home the children became tired and fretful, and he made that particular remark. I had heard that before, but I couldn't tell the date.

40 Q. Was March 23d the last time? A. No, that was not the last time I heard it; during the Spring of 1923 in his own home I heard it.

*Mrs. Helen VanNostrand—Direct.*

Q. Do you know what led up to the separation?

A. No, not exactly.

Q. When did you first learn of the separation?

A. Shortly after it happened.

Q. When did it happen; do you know? A. I think it was August, 1924—no, it was 1923.

Q. Where were they living at that time? A. 10 Paterson Avenue.

Q. What town? A. I guess it was changed to Union City.

Q. How long after the separation did your sister continue to live there? A. I couldn't tell you. She went to this store in April.

Q. The following year, 1924? A. Yes.

Q. Did you visit your sister frequently at Paterson Avenue? A. Yes.

Q. And did you visit your sister at the store? 20 A. Yes.

Q. How long did she live at the store? A. From April until June.

Q. And June of the same year, 1924? A. Yes.

Q. And then where did she move to? A. Grey Street—no, from the store, do you mean?

Q. Yes. A. To Cortland Street.

Q. What town was that, the same town, Union City? A. Yes. 30

Q. And when did she move from there, from Cortland Street? A. I couldn't tell you the exact date. I should say about three or four months.

Q. And from there she moved to where? A. To No. 19 Grey Street.

Q. How long did she stay at 19 Grey Street? A. Well, she didn't stay so long there because the rooms were quite inadequate. She had to move to larger quarters. 40

*Mrs. Helen VanNostrand—Direct.*

Q. Then she moved to 23 Grey Street? A. Yes.

Q. How long did she live there at 23 Grey Street?  
A. I couldn't tell you exactly.

Q. Did she move from there to her present address? A. To Meyers Avenue. That was last summer, I think in August.

10 Q. That is North Bergen, N. J., and that is where she is still living; is that right? A. Yes.

Q. Now, did you know John Lehe? A. Yes.

Q. At all these various addresses how often did you visit your sister? A. Not very often.

Q. Did you see anything to arouse your suspicion? A. Absolutely nothing, no.

Q. Where is Mr. Lehe employed now? A. He is employed at Great Neck, Long Island.

20 Q. For whom? A. Well, I really can't tell the name of the man he is working for now, but he is doing painting down there for different ones around town.

Q. Has he worked for any of your relatives out there who have tried to assist him? A. Yes, he has.

30 Q. And after the separation did you go to see Mr. Arnaboldi to find out where the petitioner was? A. I went once with my sister, sometime in the month of June, 1924; I can't tell you the exact date.

Q. What was the purpose of that visit? A. We hoped that we might see the babies' father; we went to see the father and grandmother.

Q. In the hope that seeing the children—A. Might make him relent.

Q. And they might be reconciled? A. Yes.

40 Q. Was the petitioner there? A. I didn't see him.

*Mrs. Helen VanNostrand—Direct.*

Q. Did you inquire? A. My sister did.

Q. What did they say? A. They said they didn't know.

Q. Now, have you contributed to the support of your sister from the time of the separation? A. I have.

Q. To what extent? 10

Mr. Marelli: I object as immaterial.

The Court: What is the purpose of it?

Mr. Siff: I tried to bring it out by the petitioner.

The Court: I suppose it is competent for the purpose of mitigating what Mr. Marelli will say about this man Lehe supporting her.

20 Q. To what extent have you been contributing to her support? A. At the lowest figure \$250. a year since the separation.

Q. Has any other member of the family contributed to her support? A. My brother has provided her with some things.

Q. In what form? A. Clothing for the children and herself.

30 Q. Is that the brother that was in court? A. A different brother.

*Cross-examination by Mr. Marelli:*

Q. You say Mr. Lehe is in Great Neck, L. I.? A. Yes.

Q. You seem to have quite an interest in him? A. I have.

40 Q. Why? A. Because I think he is a worthy fellow.

*Mrs. Helen VanNostrand—Cross.*

Q. You were at the home on March 17, 1923, you say? A. March 13, 1923.

Q. And he was there? A. He was, yes and he says, "Well, if you have any more children I will leave you."

Q. He was cross and you were irritated, too? A. 10 Yes.

Q. Now, when after that did he say this? Was it in your home? A. No, in his home on Paterson Avenue.

Q. How did he come to say it? Wasn't he somewhat irritated over something? A. Yes, he was, as I recollect it.

Q. How often did you visit your sister in West Hoboken? A. Well, maybe two or three times a month, sometimes more frequently.

Q. Lehe and your sister never did anything improper in your presence? A. Are you talking 20 about my visiting there when Mr. Lehe was there with her? No, I did not.

Q. How often did you go there after the separation, if at all? A. I should say about three times a month on an average.

Q. Sometimes less and sometimes more? A. Yes.

Q. And you never saw Mr. Lehe do anything 30 improper? A. Absolutely not.

Q. Was it towards evening that you were there? A. Sometimes, and sometimes after school in the afternoon.

Q. Was he working when you went there? A. I don't know.

Q. Most of the time that you were there he was working engaged in some occupation away from home, wasn't he? A. Yes.

Q. And would you stay until late at night with 40

*Mrs. Helen VanNostrand—Cross.*

your sister? A. Yes, around 9 or 10 o'clock.

Q. And would Lehe be there before you would leave? A. Sometimes he would go out.

Q. Would you always stay at your sister's home when you would go there to see her? A. Most always.

Q. Did Mr. Lehe have his dinner at your sister's home when you were there? A. I don't think so. He didn't make a practice of it. 10

Q. But sometimes he did? A. Occasionally. I don't know where he ate; sometimes there and sometimes he was away.

Q. You know he would mind the children while your sister would go to the movies; you know that, don't you? A. No.

Q. If you knew that he did would that change your opinion. 20

Q. You said you gave her \$250 towards her support? A. I could swear that I have, yes.

Q. Did you ever give her anything while she was living with her husband? A. No, only just little gifts.

*By the Court:*

Q. Are you older than your sister? A. Yes.

Q. About how old is she? A. I think she is 27. 30

Q. Do you know that there is something peculiar in her manner; did you hear her testimony, in part? A. Yes.

Q. Were you struck by any peculiarity? A. I thought she was nervous.

*Mrs. Louise Fortier—Direct.*

MRS. LOUISE FORTIER, sworn on behalf of the defendant, testified as follows:

*Direct-examination by Mr. Siff:*

Q. Mrs. Fortier, where do you live? A. Niantic, Conn.

10 Q. And do you recall going to Mrs. Arnaboldi's parents' home? A. Yes.

Q. When was that? A. It was either in the latter part of November or the first part of December. It was before Christmas.

Q. What year? A. 1923.

Q. It was after they were separated? A. Yes.

Q. Do you know both parties? A. No, I don't; I never had met Mr. Arnaboldi.

20 Q. But you learned from Mrs. Arnaboldi that they were separated? A. I knew that.

Q. What was your purpose in going to the home of the parents? A. To see if we could meet Mr. Arnaboldi and talk things over.

Q. Whom did you see? A. Well, when we reached the place she said "I see Joe in there", and then he disappeared into the kitchen.

Q. Did you see this? A. I didn't see it; she saw it.

30 Q. Did you go inside? A. I did.

Q. Did you see Mr. Arnaboldi's parents? A. I did.

Q. And did you ask where Mr. Arnaboldi was? A. She didn't know where he was. The mother said that.

No cross-examination.

40

*Theron Wheeler—Direct.*

THERON WHEELER, sworn on behalf of the defendant, testified as follows:

*Direct-examination by Mr. Siff:*

Q. Where do you reside, Mr. Wheeler? A. I travel on the road and have no home address. I am just on the road in New England, and I have no address anywhere except in care of my firm in New York City. 10

Q. Are you the brother of Mrs. Arnaboldi, the defendant? A. Yes.

Q. From the time she has been separated from her husband have you contributed to her support? A. Yes, sir.

Q. To what extent? A. Why, I couldn't tell; merely groceries and some food supplies. I couldn't say how much. 20

Q. Have you given those to her frequently? A. Well, at times.

Q. Can you give us some idea of what that would amount to a year? A. Well, it might be \$100 or \$80 possibly.

Q. Have you given her any cash? A. Just small amounts.

No cross-examination. 30

Mr. Siff: Just one thing I wanted to bring out by Mr. Schloetzer; he testified that he could fix certain dates; perhaps Mr. Marelli and I can agree on the date as 2 years.

Mr. Marelli: Oh yes, I will agree to that.

Mr. Siff: That is all; we rest. 40

## PETITIONER'S REBUTTAL.

BRUNO FRANGI sworn on behalf of the petitioner, in rebuttal, testified as follows:

*Direct-examination by Mr. Marelli:*

Q. Mr. Frangi, where do you live? A. 922 Hill Street, North Bergen.

10 Q. How old are you? A. Twenty.

Q. Were you living in the house where Arnaboldi lived at the corner of Central Avenue and Paterson Avenue, West Hoboken? A. Yes, sir.

Q. In 1923? A. Yes, sir.

Q. Mr. and Mrs. Arnaboldi Junior were living there then, were they not? A. Yes, sir.

Q. Do you know whether Lehe was living there at that time? A. In 1923?

Q. Yes. A. Yes, sir.

20 Q. Do you remember the time that Mr. Arnaboldi separated from his wife? A. Yes, sir.

Q. Do you know whether Lehe was living in the same house just before they separated? A. Yes, sir.

Q. Was he living there? A. Yes, sir.

Q. How do you know? A. Because I lived right next door to where they used to live.

Q. In the same house? A. In the same house.

30 Q. What you mean is the apartment? A. Yes.

Q. Now, where did Lehe live at that time with relation to the apartment occupied by your family? A. Next door to where I had my room.

Q. Did you ever see him talking to Mrs. Arnaboldi in the house on Paterson Avenue? A. As I was coming in from the outside they would be going out and I also seen them over on the corner talking.

Q. Standing there talking? A. Yes.

40 Q. Did you see them there talking that way

*Bruno Frangi—Rebuttal—Direct.*

often? A. I believe once or twice.

Q. Now, you are sure that was before Mr. and Mrs. Arnaboldi separated? A. Yes, sir.

Q. Did you ever see them on the street together before the separation? A. No, sir, not on the street.

Q. Did you ever see them on the street together right after the separation? A. No, sir. 10

Q. Did you ever see anybody go into her apartment while her husband was away at work? A. I did see men go in there.

Q. Now, would these men stay in there for any length of time? A. Stay about an hour or so.

Q. You saw that, did you? A. Yes, sir.

Q. Did you ever go to the store she kept on the Plank Road? A. I did on Paterson Plank Road.

Q. Did you ever see anything unusual happen there? A. Well, I seen men going and coming from the back of the store. 20

Q. You saw men going in where in the back of the store? A. In the rear of the store.

Q. To where in the rear, to the room? A. Yes, they had a little room there in the back.

Q. And would you see her in there by the men? A. I don't believe I did.

Q. You didn't see her go in? A. No. 30

Q. But you saw the men going back there? A. Yes.

Q. Did you see that often? A. When I used to come home from work I used to see men standing outside of the store.

Q. I know, but did you see men inside of the store in the room in back? A. Yes, sir.

Q. How often would you see that? A. Three or four times a week. 40

*Bruno Frangi—Rebuttal—Cross.**Cross-examination by Mr. Siff:*

Q. Are you a detective by occupation? A. No, sir.

Q. What was your business in 1923? A. Silk finishing.

10 Q. Whom did you work for? A. For a silk finishing company.

Q. And what were your hours of employment? A. From 8 to 5.

Q. Were you in court the last time this case came up? A. No, sir.

Q. Did you ever speak to Mr. Arnaboldi about this case? A. No, sir.

Q. Are you sure? A. Yes, sir.

Q. Never? A. Yes, sir.

20 Q. You understand my question: Did you ever speak to Mr. Arnaboldi about this case? A. I didn't, only when he handed me the subpoena a few days ago.

Q. Did you ever speak to him before that time? A. No, sir.

Q. You can't be mistaken? A. No, sir.

Q. Did you ever speak to Mr. Marelli about this case? A. No, sir; I didn't know Mr. Marelli until today.

30 Q. You never spoke to anybody about this case until two days ago; are you sure of that? A. Yes.

Q. How did Mr. Arnaboldi come to bring you a subpoena; how did he know you knew anything about this case if you didn't speak to him? A. I guess he figured out we lived next door to him on Paterson Avenue.

Q. You guess he remembered that you had lived on Paterson Avenue; is that right? A. Yes, sir.

40 Q. And without knowing whether you knew any-

*Bruno Frangi—Rebuttal—Cross.*

thing or not he gave you a subpoena? A. Yes, sir.

Q. And you didn't tell him what you knew about it? A. Not exactly.

Q. Did you tell him anything? A. Not that I know of.

Q. What? A. No, sir.

Q. Did you ever tell Mr. Arnaboldi that you had seen Mrs. Arnaboldi in the hallway? A. No, sir.

Q. You never told him that? A. No, sir.

Q. Has anybody asked you whether you ever saw them together? A. No, sir.

Q. And you have been put on the stand and asked these questions and you never told that to anybody; is that right? A. No.

Mr. Marelli: I object to that; he didn't say that.

The Court: He just said it now; Mr. Siff asked him.

Mr. Marelli: I think he has in mind one thing and Mr. Siff another.

Q. Before you took the stand did you ever tell Mr. Arnaboldi that you had seen Mrs. Arnaboldi and Lehe in the hallway in the Paterson Avenue house? A. No.

Q. You didn't tell him that? A. No, sir.

Q. And you didn't tell it to Mr. Marelli, did you? A. No, sir.

Q. Well, can you give us any explanation as to what would make Mr. Marelli ask you questions about that? Can you offer any explanation? A. I can't.

Q. He just guessed it; is that it? A. No, sir.

*Bruno Frangi—Rebuttal—Cross.*

- Q. He didn't guess it? A. I guess not.
- Q. Who else lived on that floor? A. Some French people that moved out recently.
- Q. When did you move out of there? A. When I got married.
- Q. When did you get married? A. 1925.
- 10 Q. You have been out of there two years, haven't you? A. Yes, sir.
- Q. And these French people just recently moved out? A. Just before I did.
- Q. Who else lived in that house? A. Some Italian people who went to Europe.
- Q. What time of the day was it the first time you saw Mrs. Arnaboldi and Lehe in the hallway? A. Coming home from work.
- 20 Q. What time was it? A. Around quarter after or half past 5 at night.
- Q. Where did Lehe work at that time? A. I believe in the garage.
- Q. How far from the home was your place of employment? A. About a mile and half.
- Q. And what time did Mr. Arnaboldi get home? A. About six o'clock.
- Q. Did you notice how long they stayed in the hallway on that day you saw them? A. I paid
- 30 no attention to it.
- Q. Did you see anything wrong there? A. No, sir.
- Q. Did you hear what they were talking about? A. No, sir.
- Q. She wasn't in his room, was she? A. No, sir.
- Q. And he wasn't in her house, was he? A. No, sir.
- 40 Q. But they were just in the hallway? A. Yes, sir.

*Bruno Frangi—Rebuttal—Cross.*

- Q. What date was that? A. I can't recall the date.
- Q. What year was it? A. 1923.
- Q. What month was it? A. I think it was in April or May.
- Q. And you remember that distinctly? A. Yes, sir.
- 10 Q. You can't be mistaken about it? A. No, sir.
- Q. You can't tell us the month but you are pretty sure it was April or May? A. Yes.
- Q. And although you haven't discussed this with anybody you remember that clearly; is that right? A. Yes, sir.
- Q. You don't remember the year? A. Yes, 1923.
- Q. Can you tell us something else that happened that day? A. I can't.
- 20 Q. This is the only thing that happened that day that you remember clearly; is that right? A. Yes, sir.
- Q. How long after that was it that you saw them in the hallway again? A. A few weeks after that; a few weeks later.
- Q. What month was it? A. I should say about the same month.
- Q. What day of the week was it? A. I don't
- 30 know the day of the week.
- Q. What time was it? A. Around 6 o'clock.
- Q. When you were living up there on Paterson Avenue? A. Yes, sir.
- Q. And Mr. Arnaboldi was expected home at six? A. Yes, sir.
- Q. And she was at home talking with Lehe; is that right? A. Yes.
- Q. Did Lehe still work in the garage? A. Yes,
- 40 sir.

*Bruno Frangi—Rebuttal—Cross.*

Q. How long did Lehe live there at that time?  
A. Probably two months.

Q. What two months did he live there? A. April or May, I believe.

Q. And where did he go to live from there? A. I lost track of him.

10 Q. Did he live there in August? A. No, sir.

Q. Did he live there in July? A. I don't recall.

Q. When did Mr. Arnaboldi get in touch with you in reference to this case? A. When he handed me the subpoena two days ago.

Q. How long before that was it that you ever saw or spoke to Mr. Arnaboldi? A. I hadn't seen Mr. Arnaboldi since he left his wife.

Q. You weren't asked to come here the last time, were you? A. No, sir.

20 Q. Did he tell you about this case at any time before two days ago? A. Two days ago when he handed me the subpoena he told me I am to come down and tell what I knew.

Q. Did he offer to pay you any money? A. No, sir.

Q. Did he offer to pay you for your time? A. Yes, sir.

Q. How much? A. \$2.

30 Q. Did he give you the subpoena fee? A. No, sir.

Q. Did he discuss the case at all? A. No, sir.

Q. Did he tell you what kind of a case it was?  
A. Divorce case.

Q. Did he ask you any questions as to what you knew about it? A. No, sir.

Q. Did you tell him what you knew about it?  
A. No, sir.

40

*Bruno Frangi—Rebuttal—Cross.*

*By the Court:*

Q. Was there anything about the position of Lehe and the defendant in the hallway to indicate that they were too familiar or intimate? A. No, sir.

Q. You saw her talk to no other men in the hallway? A. No, sir. 10

Q. Outside of these other two men in the house?  
A. Yes, sir.

Q. But this man was in that building, too? A. Yes.

Q. You never told anybody or spoke to anybody, you say, about what you had seen? A. No, sir.

Q. And you can't explain in any way how this information got into the possession of the petitioner or his lawyer? A. No, sir. 20

*By Mr. Siff:*

Q. How many men did you see go into that apartment? A. Two or three.

Q. How often did they go in there? A. It wasn't the same man that I saw going in each day; I saw different men.

Q. How many men did you see going in there, four or five? A. Every day? No, not every day.

Q. How often? A. Twice a week or three times a week. 30

Q. How long did you spend in there? A. I can't say.

Q. What time did you see them going in? A. About half past five.

Q. And Mr. Arnaboldi was in the habit of coming home at six o'clock? A. Yes.

Q. These men would stay there an hour? A. Yes, sir. 40

*Bruno Frangi—Rebuttal—Redirect.*

Q. You said before that they would stay there an hour? A. Yes, sir.

The Court: An hour or hour and half is what he said.

Q. And she would go in the back room with them? A. That I can't say. 10

Mr. Siff: If this boy wasn't so young I think he ought to be committed for contempt of court.

Mr. Marelli: I don't think so.

*Redirect-examination by Mr. Marelli:*

Q. I talked with you here, didn't I? A. Yes.

Q. And you wouldn't tell me anything about this case; isn't that the fact? A. Yes, sir. 20

Q. There were days that you didn't work, weren't there? A. Yes, sir.

*By Mr. Siff:*

Q. Did you see these men coming out what would stay an hour and half? A. No.

Q. How do you know they stayed an hour and half? A. I could see the doors shut.

Q. Did you know that somebody was going in and out? A. No. 30

Q. It always happened that you were there when these men went in there? A. Not exactly.

Q. How many months? A. I couldn't say that.

Q. Did you ever tell Mr. Arnaboldi about these men going in there? A. No.

*Arno Kohler—Rebuttal—Direct.*

ARNO KOHLER sworn on behalf of the petitioner, in rebuttal, testified as follows:

*Direct-examination by Mr. Marelli:*

Q. Where were you living in 1923? A. I was living on Paterson Plank Road since 1915, right across the street from where Joe lived. 10

Q. Were you acquainted with Joe and his wife? A. Well, not with his wife, but my wife was raised with Joe, and I knew Joe, too.

Q. You know who Joe's wife is? A. Yes.

Q. Now, what was your occupation in 1923? A. I am a steam shovel engineer by trade.

Q. Do you know this man Lehe? A. Yes, I know him.

Q. Did you see him in 1923? A. I think the first time I saw him was in 1922 and between November and Christmas. I was in an accident and had my shoulder and ribs broke, and I was walking around in a sling, and I took a position in the garage where he used to come and sleep nights, and I asked him who he was and he told me his name was Lehe. 20

Q. That was when you first saw him? A. That is the first time I got acquainted with him.

Q. Did you see him in the spring of 1923? A. Yes, he was around there all the time. 30

Q. Did you ever see him with Mrs. Arnaboldi at that time? A. Well, not early in 1923.

Q. When did you see him with Mrs. Arnaboldi in 1923? A. I was laid up seven months. I was hurt in November, 1922 and about June or July I was out of a job and that was when I saw him talking with her on the street on Summit Avenue, or wherever they might be. 40

*Arno Kohler—Rebuttal—Direct.*

Q. You did see them talking together on the street? A. Yes, sir.

Q. And you are sure that was in 1923? A. Positive.

Q. And you are sure it was in the summer? A. Yes, in the summer.

10 Q. Was it before August? A. Yes.

Q. Do you recall the occasion when Joe and his wife separated? A. Yes, I do.

Q. Was it before they separated that you saw Mrs. Arnaboldi and Lehe talking on the street together? A. Before.

Q. Did you see them often talking together? A. Well, maybe two or three times.

*Cross-examination by Mr. Siff:*

20

Q. You say this was in June, 1923? A. Yes.

Q. Was it early in June or the latter part of June? A. I couldn't just tell you. I was hurt in November, I think, 1922. I went to the City Hospital up here about 8 o'clock in the morning with a broken shoulder in an automobile accident.

Q. How long were you laid up? A. About 9 months. I had taken a night-watchman's job.

30 Q. Was it early in June or the latter part of June? A. I reckon it was early.

Q. Where were you when you saw them? A. I was on my way home.

Q. Home from where? A. Looking for work.

Q. Where had you been? A. I just couldn't tell you where I had been. I might have been to a dozen different places.

Q. Can you tell us just one place? A. I couldn't, no.

40 Q. Why, because it is too far back? A. No, it

*Arno Kohler—Rebuttal—Cross.*

ain't too far back; I didn't have to keep account of the jobs where I was looking.

Q. Did you ever keep an account of Mrs. Arnaboldi? A. No, I didn't.

Q. Was there anything strange at that time that she should be walking with Mr. Lehe? A. No; it never came to my knowledge until I seen it in the paper. 10

Q. And then you started to think about it? A. Yes.

Q. Started to think about what? A. What I had seen, and I hollered to Joe and told him he was getting a haggging, and he said "I am sick and tired of it".

Q. What did you tell him at that time? A. I told him he was getting a whipping.

Q. What do you mean by that? A. Don't you know what a haggging is? 20

Q. No. A. When you get something rubbed into you. My place is about a half a block from where the store was and they are in the factory business, and the kind of people that hangs out there is sickening and when they want to get stuff then went down to the candy store.

Q. Did she know the character of those people? A. I don't know that; I never ask her. 30

Q. You mean, they made her place a hang-out? A. When the cops came they beat it and went in the candy store.

Q. You don't know whether they went in to buy anything or not? A. No, I couldn't tell you.

Q. What made you think she was doing anything wrong and was rubbing it into Joe? A. The way Joe treated her. I thought Joe was giving her a good break and then to turn out the way it was I didn't think it was right. 40

*Arno Kohler—Rebuttal—Cross.*

Q. But what made you think she was rubbing it into Joe? A. What made me think that?

Q. What did you say? A. I didn't say nothing.

Mr. Marelli: Tell everything.

10 Q. Tell everything you know. A. I didn't see anything that I could condemn her for, but the way the people were talking around there at that time wasn't very nice.

Q. That was after Joe had left her? A. Yes, she had a store; after Joe had left her, yes.

Q. Did you ever see her after 1923 with anybody else? A. She was very seldom home.

Q. Well, did you see her out? A. Yes.

20 Q. Whom else was she out with? A. Well, I don't know; I seen her only with one talking, not out but talking with John Lehe.

Q. Where was he? A. On Central Avenue or Summit Avenue; I didn't pay much attention to it.

Q. Did you see them out there more than once? A. Maybe twice.

Q. Where was the first time you saw them? A. On Summit Avenue from Roosevelt Avenue East.

30 Q. Where were you at that time, hacking? A. No, no, that was when I was looking for a job.

Q. Whereabouts did you see them? A. In front of the theatre.

Q. What time did you see them in front of the theatre? A. May be 4:30 or 5 o'clock, or something like that.

Q. Where had you come from? A. Looking for work.

Q. You don't know the last place where you had been? A. No, I don't.

40 Q. Did you ever go and look for a job when you

*Arno Kohler—Rebuttal—Cross.*

had no definite place to go? A. Yes, you keep on looking, and that is what I had done.

Q. Had you come from out of town just then?

A. Maybe in Bergen County, I don't know; might have been.

Q. What line are you in? A. Steam shovel engineer. 10

Q. When was the next time you saw them? A. It must have been in the same month, because I went to work the next month.

Q. That was in June? A. Yes.

Q. Where were you living at that time? A. What time?

Q. The time that you saw Mrs. Arnaboldi? A. I don't know where I was living. When he worked in the garage he used to come there and sleep nights, and in the day I used to see them in the hall. 20

Q. When he lived in the same building? A. Yes. I seen him go in but I don't know where he went.

Q. What month was it that you saw him going in there? A. That was any time from November up, of 1922. Of course I hung around in that sling and plaster clear up to June.

30 Q. Do you know when you first saw Lehe go in to that house? A. No, I couldn't say.

Q. That isn't as clear in your mind? A. To tell you the truth, I didn't know him very well; I didn't know whether he was any relation or not, but I recollect the face and he looks now just as he did then.

Q. When he first went to the garage you saw him there very frequently? A. He didn't work there; he went there to sleep. 40

*Arno Kohler—Rebuttal—Cross.*

Q. What month did he first go there? A. About the end of November.

Q. 1922? A. Yes.

Q. Then you did know him? A. I knew his face but I didn't know his name.

10 Q. How long did he stay around there? A. He only worked there up to Christmas, and I think he then took a job after that.

Q. He had no steady job while he was around there? A. No, only opened the doors and took the cars in and out.

Q. How long after you saw him the first time did you see them together the second time? A. It must have been close onto one week.

Q. And you never saw them together again? A. No, not after that.

20 Q. Where was it you saw them the second time? A. Some place right around in the neighborhood.

Q. You don't know where? A. Where they lived; in that neighborhood.

Q. Did you see them together after that? A. No, I never did.

Q. You saw them twice together? A. Yes.

30 Q. And you can't tell us exactly where it was? A. No. At one time I saw him on Cortland Street when he got off a car.

Q. What time was the second time? A. In the evening after working hours.

Q. Were you working at that time? A. No, I was looking for work.

Q. You were coming home looking for work? A. Yes.

Q. Between 4:30 and 5 o'clock? A. Yes.

40 Q. You say he was working in the garage until Christmas, and this was in June. Where was he

*Arno Kohler—Rebuttal—Cross.*

working then? A. I don't know where he was working then.

Q. Are you sure you saw them? A. Oh, positively.

Q. When did you first tell Joe of that? A. Just this last year before Christmas. I think I met him at the station. 10

Q. What was the special subject you were talking about when you met him three years after that? A. I don't know what we were talking about after 3 years had elapsed.

Q. What did you say? A. I told him he was getting a haggling.

Q. Did you tell him what you had seen? A. Positively.

Q. You told him you had seen them talking together? A. Yes. 20

Q. That proved something to your mind, didn't it? A. Yes.

Q. They were just conversing in the street at that time? A. Yes.

Q. Were you here in court the last time the case came up? A. No, sir.

Q. Weren't you asked to come here and tell what you had seen between Lehe and Mrs. Arnaboldi before he and his wife separated? A. I 30 wasn't asked to tell anything special. I didn't get any subpoena. He says, "Will you go down with me" and I says, "Sure, if I am not working."

Q. You knew what it was for? A. Yes.

Q. He didn't ask you if you had seen them together? A. No.

Q. And you didn't tell that to Mr. Marelli? A. Yes, I told Mr. Marelli.

Q. When? A. I met Mr. Marelli. 40

*Arno Kohler—Rebuttal—Cross.*

Q. Where? A. Up in Woodcliff.

Q. And did Mr. Marelli ask you when it was that you had seen them together? A. Yes.

Q. Did he ask you where it was? A. Yes.

Q. And before you told that to Mr. Marelli had you told Mr. Arnaboldi? A. Yes, I think Mr. Arnaboldi got wind of it.

10 Q. Isn't it a fact that Mr. Arnaboldi came to you and wanted you to testify that you had seen them together? A. No, sir.

Q. And you weren't asked to come here at the last hearing? A. No, sir; I didn't know when it was.

Q. You had met Mr. Arnaboldi often? A. No, sir; I moved out of town.

Q. When? A. Four years ago.

20 Q. Where are you living now? A. Keyport, N. J.

Q. Have you lived there ever since? A. Yes, sir.

JOSEPH P. ARNABOLDI recalled in his own behalf, testified as follows:

*Direct-examination by Mr. Marelli:*

30 Q. Is this your wife's handwriting (showing paper to witness) A. Yes, sir.

Mr. Marelli: I offer this letter in evidence.

(Admitted and marked Exhibit P-2)

Q. Is it true that your wife told you before the separation that she was pregnant? A. No.

40 Q. Did you ever tell her you didn't want any more children? A. No, I didn't.

*Joseph P. Arnaboldi—Rebuttal—Direct.*

Q. Did you ever ask her or advise her to go to a midwife to have an abortion performed upon her? A. No.

Q. Did you ever know of her going to a midwife for that purpose? A. Never to my recollection.

Q. Did you ever tell her that you would leave her if she became pregnant again? A. No, I did not. 10

Case closed.

20

30

40

**Exhibit P-2.**

Thurs. A. M.

Dear Mother,

I am writing because I feel that you ought to know that I am sorry, so sorry if I have done things to displease you.

10 I know it is very hard and a life's work for any woman to love her daughter-in-law; but you surely have done everything to show that you have cared for me, and I have seemed so ungrateful. I hope you can forgive me, and try to understand that I do care a great deal for you and Dad.

Only the other day Allen asked me if I was mad at Grandpa? So you see my kiddies do think of their Grandma and Grandpa.

I cannot change my disposition; but I will keep trying to do better.

20 I hope Joe has been to see you, and I know that you realize; if it is God's will that Daddy should turn against me and stay away from home always; then, that I cannot change.

If his heart does not cry out for his wife and kiddies; there is no chance for amends.

Joe is like Dad, a prince among men, and I am a damnable cat.

I hate to worry you, but I must tell you that I am looking for a little baby in six months, in 30 June.

I trust that the Springtime will bring happiness to us all.

Sincere love to your dear self and kindest regards to Nona.

GLADYS.

40

**Opinion of Vice Chancellor.**

This proceeding is based on a petition filed by a husband, charging adultery, and a counterclaim alleging desertion.

The parties were married in 1919. They have three young children, and the early days that they spent with each other appear to have marked them as leading ordinary lives. The petitioner seduced 10 the defendant before marriage.

On August 27, 1923, the petitioner left the defendant and their children and has never returned. They differ widely as to the cause of his departure. He says she was leading a life that no husband should be expected to tolerate. That she not only neglected nearly all of her household duties, making it necessary for him to do much of it, including even laundering of some of the apparel for his children and constantly cooking his own 20 meals, but, in addition to that, he says that his principal concern was over the frequent, if not habitual, absences of the defendant from the home until late at night. In the month of May she wilfully and against his determined efforts departed from her home for the day with a man unknown to her husband, giving as her excuse that he was a salesman who was going to assist her in the selection and purchase of an overcoat for herself, 30 notwithstanding the fact that the trip was made on a Sunday. The defendant does not seriously contradict this testimony, but she alleges that the reason her husband left her was his objection to any more children. She says that at the time of his departure, or the night before, she told him that she thought she was again pregnant, and that he, thereupon, went away.

As between these two stories, it seems to me that 40

*Opinion of Vice Chancellor.*

the probabilities are all in favor of the petitioner. My reasons for so believing would be tolerable to publish in this opinion, and they have been completely indicated to the parties and their counsel. After the petitioner had left his home the defendant fell in with a man named Lehey, with whom she unquestionably committed adultery, although she denies it. My reasons for so deciding have also been sufficiently indicated to counsel and it would serve no good purpose to reproduce them here. Thus, we have a situation in which it is shown that a man who was dissatisfied with his wife's conduct left her, although that conduct did not amount to a matrimonial wrong recognized by our divorce statute as a ground for divorce. There is no proof of any adultery before the separation, and no extreme cruelty or desertion by the wife.

(1, 2). The first point made against any decree in favor of the petitioner is that he himself was guilty of desertion when he left his wife, who had not been guilty at that time of any matrimonial offense recognized by our Legislature. I am not aware of any adjudication by the Court of Errors and Appeals that definitely decides or lays down any rule as to the sort of conduct on the part of one spouse that will justify the other in withdrawing from cohabitation. There can be no question that the great weight of authority is expressed in 1 Bishop's Mar., Div., and Sep. § 1742, where it is said:

"Where there is no consent, acquiescence, or estoppel, \* \* \* no ills arising out of the marriage, or ill conduct of one party to the other, will so justify a breaking off of the cohabitation as to prevent its being desertion,

*Opinion of Vice Chancellor.*

except ill conduct of the sort and degree which the law has made foundation for divorce."

This learned and most careful author says that after more than 40 years spent in uninterrupted reading of judicial decisions and interpreting them. the dicta of judges constitute such a mass of contradictions that an author by skillful selection could write any sort of a doctrine on any subject by repeating the words of the selected dicta, "and all the fools would praise his book for its marvelous accuracy." He says that, with all the volumes that have been written, he cannot say there is one case in which it is authoritatively laid down that the above rule is not the true one. Sections 1747, 1748. In this court, in the case of *Moore v. Moore*, 16 N. J. Eq. 275, Chancellor Green, in passing upon a defense of justification in a suit for desertion, said:

"The conduct which will justify the wife in abandoning her husband must be such as would constitute a ground for divorce or alimony" (citing authorities).

In the later case of *Laing v. Laing*, 21 N. J. Eq. 248, Chancellor Zabriskie laid down the opposite rule saying that conduct less atrocious than was requisite to sustain a suit for divorce might excuse the offended spouse leaving the wrongdoer; but a careful reading of his opinion will show that he actually decided the case as he did because the wife had condoned the offenses of which she complained, and they had never been repeated. Consequently, what he had to say on the subject under discussion amounted, in fact, to no more than an

*Opinion of Vice Chancellor.*

expression of his individual opinion, and not a decision of the case. Anything said in that opinion at variance with the views expressed in *Moore v. Moore*, supra, does not in any way shake the authority of the latter case. In *Boyce v. Boyce*, 23 N. J. Eq. 337, Chancellor Zabriskie seemed to re-  
 10 consider his dictum in the *Laing Case*, because he there found and decided that the most provocative kind of conduct on the part of a wife, but not amounting to a matrimonial offense, invested the husband with no right to separate himself from her. In *Meldowney v. Meldowney*, 27 N. J. Eq. 328, Vice Chancellor Van Fleet said that by personal violence, coarse language, and constant neglect, not amounting to extreme cruelty, the petitioner had driven the defendant away from him  
 20 quite as effectually as if he had bodily put her out of the house, but he actually rendered his decision on the ground that there was no obstinacy in the separation. Furthermore, there is not a scintilla of proof shown in the opinion from which the extent and character of the misconduct of the petitioner in that case may be inferred. It is merely said that a daughter testified:

30 "Mother left because she could not stand it any longer."

Of course, that great judge never considered the daughter's opinion to be evidence. In *Drayton v. Drayton*, 54 N. J. Eq. 298, 38 A. 25, Chancellor McGill said:

40 "The generally accepted, and, I think, the true, doctrine is that continued desertion, as contemplated by such a statute as ours, is justified only when it is shown by clear and sa-

*Opinion of Vice Chancellor.*

isfactory proof that the deserting party has been so offended against as to authorize at his instance, a decree for divorce or judicial separation" (citing many decisions in this and other jurisdictions, including some of those already cited herein).

The present Chancellor, in *Suydam v. Suydam*, 79 N. J. Eq. 144, 80 A. 1057, declared the law to be the same way, at page 145 (80 A. 1057) as he also did in *Csanyi v. Csanyi*, 93 N. J. Eq. 11, 115 A. 76, and *Danielly v. Danielly*, 93 N. J. Eq. 556, 118 A. 335, as well as in *Hauenstein v. Hauenstein*, 95 N. J. Eq. 34, 122 A. 241. 10

In the case of *Doty v. Doty*, 92 N. J. Eq. 660, 114 A. 546, while the rule was not discussed, it would appear to be some support to the rule adopted in this court. There, a woman left her husband because of conduct upon his part which caused  
 20 "her to be afflicted with a serious nervous trouble, that threatened to permanently destroy her health and comfort if she continued to live with her husband." This, of course, fits the rule, defining extreme cruelty, in *Black v. Black*, 30 N. J. Eq. 215, at page 221 quoted and adopted by the Court of Errors and Appeals in the *Doty* case. In fact, that court say, in the last-named case: 30

"We think the petitioner established a clear case of constructive desertion and therefore she was entitled to the relief prayed for in her petition."

While it does not follow necessarily that less provocation would not have excused her departure from her husband, yet there would seem to be some logic in the belief that the Court of Errors 40

*Opinion of Vice Chancellor.*

and Appeals had in mind the rule under discussion. In *Young v. Young*, 94 N. J. Eq. 155, 119 A. 92, 25 A. L. R. 1049, the petitioner said he left his wife because they had a quarrel over the fact that he was made ill "from eating meat which she cooked." The present Chief Justice, writing the opinion for the Court of Errors and Appeals, said

10 that he had deserted his wife without justifiable cause, "for it never has been suggested, so far as I know, that dissatisfaction upon the part of the husband with his wife's cooking justifies him in permanently deserting her, even if on one occasion he is made ill from eating food she has prepared." From this language, it is apparent that there must be some standard by which the propriety of the departing spouse must be measured.

20 And, in reason, what other standard could be adopted? As Bishop says, in his work quoted above, if this is not the rule, what rule shall be adopted? How much less mis-conduct will excuse the departure? Is there to be no rule? Is each case to be decided upon the personal opinion of the judge or one of the parties (section 1750)? It would seem to me that the Legislature has fixed the rule when it formulated the causes for any one or more of which one spouse may leave the other

30 and secure a decree of divorce. It is almost banal to say that the policy of the state is in the keeping of the legislative branch of the government, and that the commonwealth has a deep and vital interest in the preservation of the home, which is founded upon matrimony, whence it necessarily follows that promiscuous and unwise dissolution of marriages would be deeply injurious to the public. The law requires that parties, who are mar-

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*Opinion of Vice Chancellor.*

ried, shall remain married until freed by judicial pronouncement, and, until free, shall live together until one or the other of such parties shall have committed one or more of the defined offenses. It is not every grievance that one may have against the other, either temporary or permanent, that shall be allowed to destroy this solemn compact.

10 Whether petty or weighty, there is no middle ground. The state has said that if either of the parties be guilty of extreme cruelty, adultery, or desertion the other may, upon meeting certain safeguards, secure a divorce, either absolute or limited. For less than this, no such decree shall be made, and it therefore follows that no separation shall occur. Having taken each other for better or worse, anything less than the state has declared to be a ground for divorce must be borne or overcome.

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I regret that I cannot bring myself to a belief that the defendant was by all means averse to the absence of the petitioner, as that would render his conduct lacking in obstinacy, and therefore, because of the rule already dealt with at length, he would not be, before the court, himself guilty of conduct with relation to the marriage that renders his position untenable. I mention this because

30 counsel joined in importuning the court to end the impossible position of these parties by severing the matrimonial bond. Personally I believe that it would be much better for every body concerned if they could be freed from one another, but the policy of the state has been established, and counsel must realize that it is vain to expect the court to be swayed by compassion in the face of the clearly expressed legislative will. If such were to be done, the administration of the divorce

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*Opinion of Vice Chancellor.*

law would result in the greatest chaos, each case depending upon the personal view and inclination of the particular member of the court by whom it should be heard.

Nor can the defendant expect to succeed in securing a divorce by reason of anything decided in Hedden v. Hedden, 21 N. J. Eq. 61. There, it was  
10 said that if a man seduced his wife before their marriage and was thus put upon his guard as to her weakness, he is called upon to use "peculiar vigilance" to protect her against her weakness. While it is true that the petitioner seduced his wife before marriage, it is quite as true that he did everything he could to prevent her falling again into evil ways. He urged her in every way he could to remain at home evenings, and even  
20 went to the extent of a personal struggle to prevent her going to New York on the Sunday she says she went with a strange man to select an overcoat. My own recent opinion in Pike v. Pike, 136 A. 421 (not yet officially reported), has been cited by the defendant. In that case, the husband after seducing his wife, never made a home for her, gave her little or none of his society, permitted her to reside in a hotel in New York City while  
30 he remained domiciled with his parents in New Jersey, allowed her to live under her maiden name and to pursue the vocations of model and actress, which are perilous to the chastity of any woman. That is a very different situation from that of a man who gives his wife his name, prepares a home for her, and is ready and willing to live upon ordinary domestic terms. But even if he had not lived up to the rule of Hedden v. Hedden, supra, it would be of no avail to her, because that is a de-  
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*Opinion of Vice Chancellor.*

fensive doctrine that, it seems to me, can never be used for the purpose of securing a divorce, because in proving it the woman, of necessity, stamps herself as an adulteress whose hands are so unclean that she cannot thereby secure affirmative relief. I know of no case where either a man or woman can plead his or her own adultery as a  
10 ground for securing a divorce against the other spouse.

Counsel for the petitioner apprehends that the case of Young v. Young, supra, has been overruled by the decision in the later case of Smith v. Smith, 95 N. J. Eq. 657, 123 A. 738, and, hence, that the petitioner was not a deserter and was under no duty to seek out his wife and solicit her return. With the former of these deductions, I am unable  
20 to agree. In the last-named case the defendant actually deserted her husband without any provocation or cause on his part, and went to live with another man. The rationale of the opinion is that, as one of the exceptions to the rule requiring a husband to attempt to effect a reconciliation with his deserting wife, where her departure was caused to any extent by his misconduct, even though not amounting to a matrimonial offense, if  
30 a woman is guilty of conduct that gives her husband just cause to suspect her chastity, he is under no obligation to attempt to effectuate her return. This is very different from the problem presented by the case at bar, because here the husband himself was the deserter before immoral conduct on the part of the defendant cognizable in a divorce suit. In short, Smith v. Smith sets up an exception to the duty to effect a reconciliation,  
40 while the question, to decide which that case is cited, is whether or not misconduct less than that

*Opinion of Vice Chancellor.*

which will support a decree of divorce will justify a withdrawal from matrimonial cohabitation.

Both the petition and the counterclaim should be dismissed.

10 Since the publication of this opinion, the Chancellor has directed my attention to Rogers v. Rogers, 81 N. J. Eq. 479, and Taylor v. Taylor, 73 N. J. Eq., 745. These are both pronouncements of the Court of Errors and Appeals and agree with the overwhelming preponderance of the authorities in this court.

**Final Decree.**

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Filed July 5, 1927.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPH P. ARNABOLDI,  
Petitioner,

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and

GLADYS E. ARNABOLDI,  
Defendant.

On Petition,  
Etc.  
Final Decree.

This cause coming on to be heard before the Honorable John Bentley, Esq., one of the Vice Chancellors of this Court, pursuant to the reference made to him and in the presence of Henry

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*Final Decree.*

Marelli, Esq., Solicitor for the Petitioner, and of Jacob Siff, Esq., Solicitor for the Defendant, and application having been duly served for the making of this order and decree and upon duly considering the petition of petitioner and the answer of the defendant as amended and the cross petition of the defendant and the evidence offered to sustain the allegations thereof and said application, it now satisfactorily appears to the Chancellor that the petitioner and the defendant were lawfully married on or about the 29th day of March, 1919, by Recorder Cutler, Judge of the Recorder's Court of the Town of West Hoboken in the County of Hudson and State of New Jersey in the said Town of West Hoboken, and that the defendant committed adultery with John Lehe on various dates unknown and unproved but during the period commencing June, 1925 and ending April 12, 1926, the date of the filing of the petition herein, there being no proof that said adultery was committed on any one or more of the dates specifically alleged in the petitioner's petition, and that the said adultery was committed at #113 Paterson Plank Road, Union, Hudson County, New Jersey, #708 Cortland Street, Union, Hudson County, New Jersey, #19 Grace Street, Jersey City, Hudson County, New Jersey, #23 Grace Street, Jersey City, Hudson County, New Jersey, or at one or more of said places, there being no proof of the specific place or places where each or any of said acts of adultery was committed and there being no proof that each or any of said acts of adultery was committed at the specific place or places designated in the petitioner's petition, and that the defendant is and has been a bona fide resident of the State of

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*Final Decree.*

New Jersey continuedly since March, 1919, residing at Jersey City, West Hoboken and Union City, all in the County of Hudson and State of New Jersey and that she was a bona fide resident of New Jersey when her cause of action alleged in her said cross petition arose and when the cause of action alleged in the petition arose and she has ever since continued to be and still is a bona fide resident of the State of New Jersey and that the petitioner, Joseph P. Arnaboldi is and has been a bona fide resident of the State of New Jersey continuedly since March, 1919, residing at Union City and Grantwood, New Jersey, and that the said petitioner was a bona fide resident of the State of New Jersey when the cause of action alleged in the petition and the cross petition arose, and he has ever since continued to be and still is a bona fide resident of the State of New Jersey, and that the said petitioner has at all times been a resident of the State of New Jersey, and that in August, 1923, the said petitioner, Joseph P. Arnaboldi deserted the defendant herein ever since which time and for more than two years last past, the said petitioner, Joseph P. Arnaboldi has lawfully, continuedly and obstinately deserted the defendant herein, and that the petitioner seduced the defendant prior to their marriage and that the petitioner is not entitled to an absolute divorce from the defendant by reason of said desertion, and that the defendant is not entitled to an absolute divorce by reason of said adultery, and that three children, now in the custody of the defendant herein were born of said marriage, to wit: Allyn Arnaboldi, age six years, Joseph P. Arnaboldi, age four years and Vivian Arnaboldi age two

*Final Decree.*

years, and that the defendant should have the custody of the said children and that the said petitioner should be obliged to support the defendant and the said three children and that the petitioner, as an employee earns \$65.00 per week and that the defendant has no means of support except by her own exertion and that the said defendant is unable to work for her support owing to the necessity on her part of attending to her said three children and her household duties and that the petitioner should pay the costs of this suit to be taxed, including a reasonable counsel fee, it is thereupon on this day of July, 1927,

ORDERED, ADJUDGED AND DECREED, that the petitioner's petition for an absolute divorce in the above entitled cause be and the same is hereby dismissed; and it is further

ORDERED, ADJUDGED AND DECREED, that the petition of the above named defendant filed in the above entitled cause, by way of counterclaim for an absolute divorce, be and the same is hereby dismissed, and it is further

ORDERED, ADJUDGED AND DECREED, that the custody of the three children born of the marriage between the petitioner and defendant herein, to wit: Allyn Arnaboldi, Joseph P. Arnaboldi, Jr. and Vivian Arnaboldi, be held in abeyance; and it is further

ORDERED, ADJUDGED AND DECREED, that the petitioner pay unto the defendant herein, a total sum of \$20.00 per week for the support, maintenance and education of the said Allyn Arnaboldi, \$6.00 per week being for the support, maintenance and education of the said three chil-



Order.

ORDERED, ADJUDGED AND DECREED, that the petitioner do pay to the defendant or to her solicitor, the costs of this application and a counsel fee of \$75.00 for his services on this application, and that execution issue therefor according to the practice of this court.

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E. R. WALKER,  
C.

Respectfully advised,  
JOHN BENTLEY,  
V. C.

Order.

Filed August 19, 1927.

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IN CHANCERY OF NEW JERSEY.

Between

JOSEPH P. ARNABOLDI,  
Petitioner,

and

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GLADYS E. ARNABOLDI,  
Defendant.

On Petition,  
Etc.  
Order.

Due notice of the application for the following order having been served by the solicitor for the defendant upon the solicitor for the petitioner, and the solicitors for the parties hereto having consented thereto as appears by their signatures hereunto affixed, it is thereupon on this 19th day

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Order.

of August, 1927, on motion of Jacob Siff, Esq., solicitor for the defendant,

ORDERED, that the petitioner do pay to the defendant, or her solicitor, the cost of transcribing the testimony and printing the State of the Case, and the sum of One Hundred and Fifty (\$150.00) Dollars, as a preliminary allowance on account of counsel fees of the defendant's solicitor, in order to enable the defendant to prosecute an appeal to the Court of Errors and Appeals of the State of New Jersey, from the final decree made in the above entitled matter on the fifth day of July, 1927.

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E. R. WALKER,  
C.

Respectfully advised,  
JOHN BENTLEY,  
V. C.

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We hereby consent to the making, entering and filing of the above order.

HENRY MARELLI,  
Solicitor for Petitioner.

JACOB SIFF,  
Solicitor for Defendant. 30

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**Notice of Appeal.**

Filed Dec. 22, 1927.

IN CHANCERY OF NEW JERSEY.

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Between

JOSEPH P. ARNABOLDI,  
Petitioner,

and

GLADYS E. ARNABOLDI,  
Defendant.

On Petition,  
Counterclaim,  
Etc.

Notice  
of Appeal.

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Gladys E. Arnaboldi above named defendant, hereby appeals to the Court of Errors and Appeals in the last resort in all causes from the final decree filed in this cause and dated July 5, 1927 and as amended by decree of the Court of Chancery of New Jersey, dated July 21, 1927, which Ordered, Adjudged and Decreed that the petition of the above named defendant filed in the above entitled cause by way of counterclaim for an absolute divorce, should be and was thereby dismissed and from so much thereof as finds that the said defendant committed adultery with John Lehe on various dates all unknown and unproved but during the period commencing June, 1925 and ending April 12, 1926, the date of the filing of the petitioner's petition herein, there being no proof that said adultery was committed on any or more of the dates specifically alleged in petitioner's petition, and that the said adultery was committed at #113 Paterson Plank Road, Union, Hudson County, New Jersey, #708 Cortland Street, Union, Hud-

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*Notice of Appeal.*

son County, New Jersey, #19 Grace Street, Jersey City, Hudson County, New Jersey, and #23 Grace Street, Jersey City, Hudson County, New Jersey, or at one or more of said places, there being no proof of the specific place or places where each or any of said acts of adultery was committed and there being no proof that each or any of said acts of adultery was committed at the specific place or places designated in the petitioner's petition and from so much thereof as finds that the defendant is not entitled to an absolute divorce by reason of the said adultery.

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JACOB SIFF,  
Solicitor for Defendant.

MEYER M. SEMEL,  
Of Counsel with Defendant.

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Dated Dec. 19th, 1927.

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

MEYER M. SEMEL,  
Of Counsel with Defendant.

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**Petition of Appeal.**

Filed Dec. 22, 1927.

NEW JERSEY COURT OF ERRORS AND APPEALS.

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| 10 | Between<br>JOSEPH P. ARNABOLDI,<br>Petitioner-Respondent,<br><br>and<br><br>GLADYS E. ARNABOLDI,<br>Defendant-Appellant. | } | On Appeal<br>from<br>Chancery.<br><br>Petition<br>of Appeal. |
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20 *To the Honorable, the Court of Errors and Appeals in the Last Resort in All Causes:*

30 The petition of Gladys E. Arnaboldi, defendant-appellant respectfully shows that your petitioner finds herself aggrieved by so much of the final decree made in the Court of Chancery of the State of New Jersey by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, dated July 5, 1927, as amended by a decree made in said court by the said Chancellor dated July 21, 1927, as Ordered, Adjudged and Decreed that the petition of the above-named defendant-appellant filed in the above entitled cause by way of the counterclaim for an absolute divorce should be and was thereby dismissed and from so much thereof as found that the said defendant-appellant committed adultery with John Lehe on various dates all unknown and unproved but during the period commencing June 1925 and ending April 12, 1926, the date of the filing of the petitioner's petition here-

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*Petition of Appeal.*

in, there being no proof that said adultery was committed on any or more of the dates specifically alleged in petitioner's petition and that said adultery was committed at #113 Paterson Plank Road, Union, Hudson County, New Jersey, #708 Cortland Street, Union, Hudson County, New Jersey, #19 Grace Street, Jersey City, Hudson County, New Jersey, #23 Grace Street, Jersey City, Hudson County, New Jersey, or at one or more of said places, there being no proof of the specific place or places where each or any of said acts of adultery was committed, and there being no proof that each and any of said acts of adultery was committed at the specific place or places indicated in petitioner's petition, and from so much thereof as finds that the defendant-appellant is not entitled to an absolute divorce by reason of said adultery.

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And your petitioner appeals from so much of the said final decree as amended as aforesaid as is above specified on the ground that the same is erroneous for that the said Chancellor according to the proof should have recited, ordered, decreed and adjudged that your petitioner was not guilty of adultery and that your petitioner be divorced from the bonds of matrimony with the petitioner-respondent for the causes set forth in the counterclaim of the defendant-appellant, and that your petitioner should have the other relief prayed for in and by her said counterclaim.

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Your petitioner therefore prays that so much of the said final decree as amended as is above set forth may be reversed, rescinded and for nothing

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*Petition of Appeal.*

holden and that your petitioner shall have such further relief as shall be meet.

JACOB SIFF,  
Sol'r for Defendant-Appellant.

MEYER M. SEMEL,  
Of Counsel with Defendant-Appellant.

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Due, legal and timely service of the within notice is hereby acknowledged as within time on this 19th day of December, 1928.

HENRY MARELLI,  
Solicitor for Petitioner-Respondent.

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**First Amended Notice of Appeal.**

Filed June 20, 1928, as of Dec. 22, 1927.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPH P. ARNABOLDI,  
Petitioner,

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and

GLADYS E. ARNABOLDI,  
Defendant.

On Petition,  
Counterclaim,  
Etc.

Notice  
of Appeal.

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Gladys E. Arnaboldi above named defendant, hereby appeals to the New Jersey Court of Errors and Appeals in the Last Resort in All Causes from the final decree filed in this cause and dated July

*Amended Notice of Appeal.*

5, 1927, made by the Chancellor on the advice of John Bentley, Vice Chancellor, and as amended by decree of the Court of Chancery of New Jersey, dated July 21, 1927, made by the Chancellor on the advice of John Bentley, Vice Chancellor, which Ordered, Adjudged and Decreed that the petition of the above named defendant filed in the above entitled cause by way of counterclaim for an absolute divorce, should be and was thereby dismissed and from so much thereof as finds that the said defendant committed adultery with John Lehe on various dates all unknown and unproved but during the period commencing June 1925 and ending April 12, 1926, the date of the filing of the petitioner's petition herein, there being no proof that said adultery was committed on any one or more of the dates specifically alleged in petitioner's petition and that the said adultery was committed at #113 Paterson Plank Road, Union, Hudson County, New Jersey, #708 Cortland Street, Union, Hudson County, New Jersey, #19 Grace Street, Jersey City, Hudson County, New Jersey, and #23 Grace Street, Jersey City, Hudson County, New Jersey, or at one or more of said places there being no proof of the specific place or places where each or any of said acts of adultery was committed and there being no proof that each or any of said acts of adultery was committed at the specific place or places designated in the petitioner's petition and from so much thereof as finds that the

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*Amended Notice of Appeal.*

defendant is not entitled to an absolute divorce by reason of the said adultery.

JACOB SIFF,  
Solicitor for Defendant.

MEYER M. SEMEL,  
Of Counsel with Defendant.

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Dated, Dec. 16, 1927.

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

MEYER M. SEMEL,  
Of Counsel with Defendant.

20 Due legal and timely service of the within notice is hereby acknowledged as within time on this 16th day of December, 1927. It is hereby mutually stipulated and agreed by and between the undersigned solicitors of the within named parties that the within amended notice be considered filed as of December 22, 1927.

HENRY MARELLI,  
Solr. for Petitioner.

JACOB SIFF,  
Solr. of Defendant.

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**Second Amended Notice of Appeal.**

Filed May 4, 1928, as within time.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPH P. ARNABOLDI,  
Petitioner,

and

GLADYS E. ARNABOLDI,  
Defendant.

Amended  
Notice  
of Appeal.

10

Gladys E. Arnaboldi above named defendant, hereby appeals to the New Jersey Court of Errors and Appeals in the Last Resort in All Causes from the final decree filed in this cause and dated July 5, 1927, made by the Chancellor on the advice of John Bentley, Vice-Chancellor, and as amended by decree of the Court of Chancery of New Jersey, dated July 21, 1927, made by the Chancellor on the advice of John Bentley, Vice-Chancellor, which Ordered, Adjudged and Decreed that the petition of the above named defendant filed in the above entitled cause by way of counterclaim for an absolute divorce, should be and was thereby dismissed and from so much thereof as finds that the said defendant committed adultery with John Lehe on various dates all unknown and unproved but during the period commencing June, 1925 and ending April 12, 1926, the date of the filing of the petitioner's petition herein, there being no proof that said adultery was committed on anyone or more of the dates specifically alleged in petitioner's pe-

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*Amended Notice of Appeal.*

10 titution and that the said adultery was committed at #113 Paterson Plank Road, Union, Hudson County, New Jersey, #708 Cortland Street, Union, Hudson County, New Jersey, #19 Grace Street, Jersey City, Hudson County, New Jersey, and at #23 Grace Street, Jersey City, Hudson County, New Jersey, or at one or more of said places there being no proof of the specific place or places where each or any of said acts of adultery was committed and there being no proof that each or any of said acts of adultery was committed at the specific place or places designated in the petitioner's petition and from so much thereof as finds that the defendant is not entitled to an absolute divorce by reason of the said adultery.

20 And the said Gladys E. Arnaboldi above named defendant hereby appeals to the New Jersey Court of Errors and Appeals in the Last Resort in All Causes from the whole of an order in this cause dated December 16, 1927 made by the Chancellor on the advice of John Bentley, Vice-Chancellor, which order denied the application of the petitioner for an order opening in the above cause and the final decree made therein dated July 5, 1927 and the amended decree made therein dated July 21, 30 1927 for the purpose of offering testimony correcting the dates mentioned in the testimony heretofore taken in the said cause and for the purpose of offering testimony as to the date that John Lehe's relative with whom he lived moved into the premises known as 706 Paterson Avenue, West Hoboken, New Jersey and as to the name, description and date of removal of the person who previously occupied the apartment which Lehe's relative moved into and for the purpose of correcting 40

*Amended Notice of Appeal.*

the said testimony heretofore taken in so far as will be made apparent by establishing the correct dates in the matters aforesaid.

JACOB SIFF,  
Sol'r for Defendant.

MEYER M. SEMEL,  
Of Counsel with Defendant. 10

Dated, December 16, 1927.

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

MEYER M. SEMEL,  
Of Counsel with Defendant.

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*Affidavit of Gladys Arnaboldi.*

middle of August, 1925, I moved to #708 Cortland Street, Union, New Jersey. I resided at #708 Cortland Street, Union, New Jersey, from about the middle of August, 1925, until about the middle of December, 1925.

10 About the middle of December, 1925, I moved to #19 Grace Street, Jersey City, New Jersey; I resided at #19 Grace Street, Jersey City, New Jersey, from about the middle of December, 1925, until about March, 1926. In March, 1926, I moved to #23 Grace Street, Jersey City, New Jersey. I resided at #23 Grace Street, Jersey City, New Jersey, from March, 1926, until about the middle of August, 1926. About the middle of August, 1926, I moved to #727 Myers Avenue, North Bergen, New Jersey. I resided at #727 Myers Avenue, North Bergen, New Jersey, from about the middle of August, 1926, to about June, 1927.

30 My attention has been directed to the fact that the testimony heretofore given by me in the above entitled cause differs from the facts herein stated. In so far as the said testimony differs from the facts herein stated, the said testimony is erroneous and I desire to correct the same so that the facts therein testified to will correspond with the facts stated in this affidavit.

GLADYS E. ARNABOLDI.

Sworn and subscribed to before me this }  
8th day of December, 1927. }  
Esther Michelstein,  
Notary Public of New Jersey.

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**Affidavit of Helen Van Nostrand.**

Filed Jan. 6, 1928.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPH P. ARNABOLDI,  
Petitioner,  
and  
GLADYS E. ARNABOLDI,  
Defendant.

On Petition, 10  
Etc.  
Affidavit.

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

Helen Van Nostrand, of full age being duly 20  
sworn according to law on her oath deposes and says:

I am a sister of the defendant herein and was a witness in the above entitled cause; I have read the annexed affidavit of Gladys Arnaboldi, the defendant herein and the statements contained therein are true.

My attention has been directed to the fact that my testimony heretofore given in the above entitled cause varies from the statements contained in the annexed affidavit of Gladys Arnaboldi. In so far as the testimony given by me in the above entitled cause varies from the statements contained in the annexed affidavit of Gladys Arnaboldi, my testimony heretofore given is incorrect and the statements contained in the said affidavit of Gladys Arnaboldi are correct. 30

I desire to correct my testimony heretofore given in the above entitled cause so that my testimony 40



*Affidavit of John Lehe.*

10 My cousin, Mrs. Jean Giliom moved into the apartment rear left side (as you stand in the street and face the front of the house) #706 Paterson Avenue, West Hoboken, New Jersey in September, 1923; this was subsequent to the dates fixed by the witnesses in the above entitled cause as the date that the petitioner deserted the defendant herein.

20 Before my cousin moved into said apartment, the said apartment had been occupied for at least a year previously by the person referred to in the testimony of the above entitled cause as the "Frenchman" the said Frenchman's name being Mr. Myers. As above stated, I lived with my cousin in said apartment for about two and a half or three weeks in April, 1924 or partly in April 1924 and partly in May, 1924.

30 From about April 1924 or May, 1924 until September, 1924, I lived at said garage. In September, 1924 I lived with my mother for about two weeks at #112 Central Avenue, Union City, New Jersey. From September, 1924 until April, 1925 I lived at said garage. In April, 1925 I again took a furnished room in said apartment with my cousin, Mrs. Jean Giliom and lived there for a period of about two weeks. Thereafter, I again lived at said garage from April 1925 or May 1925 and I lived at said garage until I moved to Cortland Street as referred to in the testimony in the above entitled cause.

40 While I was living at said garage and about two weeks after the above named defendant opened the store at #113 Paterson Plank Road, Union City, New Jersey, I first became acquainted with the defendant. It was about June, 1925 that I first became acquainted with the said defendant. I

*Affidavit of John Lehe.*

never knew the defendant at any time during the period that she resided at #706 Paterson Avenue, West Hoboken, New Jersey.

10 Before my said cousin moved into the said apartment on the second floor rear, left side, my said cousin lived in the apartment on the second floor rear right side at #706 Paterson Avenue, West Hoboken, New Jersey. She moved from the last mentioned apartment into the apartment first mentioned in this affidavit. I never lived with my said cousin during the time she lived in the said apartment on the second floor, rear, right side. I did not live at #706 Paterson Avenue, West Hoboken, New Jersey, at any time during the year 1923. I did not know the defendant at any time during the year 1923. I did not know the defendant at any time during the year 1924. I did not know the defendant at any time during the year 1925 until about June, 1925. I never even saw the defendant during the year 1923, 1924 or 1925 until about June, 1925, not even during the two periods when I lived with my cousin at said address during 1924 and during 1925.

30 When my cousin, Mrs. Jean Giliom, moved into the apartment formerly occupied by Mr. Myers at #706 Paterson Avenue, West Hoboken, New Jersey, she became the janitress for the parents of the petitioner of the lands and premises at #706 Paterson Avenue, West Hoboken, New Jersey and has ever since been and still is the janitress of said premises. At the present time the said Jean Giliom still resides at said address but at the present time she occupies the apartment directly below the apartment formerly occupied by Mr. Myers.

40 At all times herein stated, Mr. and Mrs. Arna-

*Affidavit of John Lehe.*

boldi, father and mother of petitioner, were owners of said lands and premises and the production by them of their records of the rents with reference to said lands and premises will corroborate the truth of the statements herein contained; the said records will also establish the date when Mr. Myers moved from the said apartment.

The testimony of petitioner and petitioner's witnesses that I lived at said address with my said cousin during a part of the year 1923 and that they saw me in the hall at said address talking to Mrs. Arnaboldi, the defendant herein, is untrue.

I have read the annexed affidavit of Gladys Arnaboldi. The same is true with respect to her various places of residence from June, 1925 to June, 1927.

My attention has been directed to the fact that my testimony taken in the above entitled cause differs from the facts stated in this affidavit. In so far as said testimony differs from the facts stated in this affidavit, the said testimony is incorrect and I desire to correct the same so that the same will correspond with the facts stated in this affidavit.

MR. JOHN B. LEHE.

Sworn and subscribed to before me }  
this 20th day of March, 1928. }  
Wm. M. Shultz,  
Commissioner of Deeds,  
of N. J.

**Order.**

Filed Jan. 6, 1928.

IN CHANCERY OF NEW JERSEY.

|   |   |   |    |
|---|---|---|----|
| Between<br>JOSEPH P. ARNABOLDI,<br>Petitioner,<br><br>and<br><br>GLADYS E. ARNABOLDI,<br>Defendant. | } | On Petition<br>for Divorce.<br>Etc.<br>Order. | 10 |
|---|---|---|----|

Application having been duly made to the above court for an order opening the above cause and the final decree made therein dated July 5, 1927, and the amended decree made therein dated July 21, 1927 for the purpose of offering testimony correcting the dates mentioned in the testimony heretofore taken in the said cause and for the purpose of offering testimony as to the date that John Lehe's relative with whom he lived moved into the premises known as #706 Paterson Avenue, West Hoboken, New Jersey, and as to the name, description and date of removal of the person who previously occupied the apartment which Lehe's relative moved into and for the purpose of correcting the said testimony heretofore taken in so far as will be made apparent by establishing the correct dates in the matters aforesaid and the solicitors for the petitioner and defendant having on the date of this order in open court waived any irregularities as to the practice and procedure taken in making said application and having agreed that

Order.

said application should be considered as tho' made in the proper manner as required by the practice and procedure of this court and the court having considered the affidavits presented on said application together with facts contained in the affidavit of John Lehe dated December, 1927, which affidavit had been drawn but had not as yet been signed by John Lehe but which affidavit of John Lehe it was agreed by and between the solicitors for the parties hereto should be considered as one of the affidavits on said application and the court having heard the argument of counsel for the parties hereto and the court being of the opinion that the said application should be denied, not by reason of any error of practice or procedure but by reason, first, that the said witnesses should not be permitted to correct their testimony, secondly, by reason of there being no fraud shown, and thirdly, because the affidavits do not disclose any newly discovered evidence, and fourth, because even if the testimony in the above cause were corrected in the respects in which it was sought to correct the same, the final decree of this Court as amended would be the same as heretofore entered, because of admissions by the parties and Lehe, and this court having ruled that the said application should be denied and defendant's solicitor having duly objected to the said ruling of this court and the making of this order and requesting that the said objection be duly noted in the record of the above entitled cause, it is on this 16th day of December, 1927.

ORDERED, that the said application be and the same is hereby denied and the objection of the defendant's solicitor to the ruling of this court and the making of this order be and is hereby duly

Order.

noted in the record of the above entitled cause.

E. R. WALKER,  
C.

Respectfully advised:  
JOHN BENTLEY,  
V. C.

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**Amended Petition of Appeal.**

Filed April 26, 1928, as of time.

NEW JERSEY COURT OF ERRORS AND APPEALS.

|  |   |   |                                  |
|--|---|---|----------------------------------|
| Between<br>JOSEPH P. ARNABOLDI,<br>Petitioner-Respondent,<br><br>and<br><br>GLADYS E. ARNABOLDI,<br>Defendant-Appellant. | } | On Appeal<br>from<br>Chancery.<br><br>Amended<br>Petition of<br>Appeal. | 20<br><br><br><br><br><br><br>20 |
|--|---|---|----------------------------------|

*To the Honorable, the Court of Errors and Appeals in the Last Resort in All Causes:* 30

The amended petition of Gladys E. Arnaboldi, defendant-appellant respectfully shows that your petitioner finds herself aggrieved by so much of the final decree made in the Court of Chancery of the State of New Jersey by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of his Honor, John Bentley, Vice Chancellor dated July 5, 1927, as amended by a decree made in said court by the said Chancellor

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*Amended Petition of Appeal.*

on the advice of his Honor, John Bentley, Vice-Chancellor dated July 21, 1927 as Ordered, Adjudged and Decreed that the petition of the above named defendant-appellant filed in the above entitled cause by way of the counterclaim for an absolute divorce should be and was thereby dismissed and from so much thereof as found that the

10 said defendant-appellant committed adultery with John Lehe on various dates all unknown and unproved but during the period commencing June 1925 and ending April 12, 1926, the date of the filing of the petitioner's petition herein, there being no proof that said adultery was committed on any one or more of the dates specifically alleged in petitioner's petition and that said adultery was committed at #113 Paterson Plank Road, Union,

20 Hudson County, New Jersey, #19 Grace Street, Jersey City, Hudson County, New Jersey, #708 Cortland Street, Union, Hudson County, New Jersey, #23 Grace Street, Jersey City, Hudson County, New Jersey, or at one or more of said places, there being no proof of the specific place or places where each or any of said acts of adultery was committed, and there being no proof that each or any of said acts of adultery was committed at the

30 specific place or places indicated in petitioner's petition, and from so much thereof as finds that the defendant-appellant is not entitled to an absolute divorce by reason of said adultery.

And your petitioner appeals from so much of the said final decree as amended as aforesaid as is above specified on the ground that the same is erroneous for that the said Chancellor according to the proof, should have recited, ordered and decreed and adjudged that your petitioner was not guilty

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*Amended Petition of Appeal.*

of adultery and that your petitioner be divorced from the bonds of matrimony with petitioner-respondent for the causes set forth in the counterclaim of the defendant-appellant, and that your petitioner should have the other relief prayed for in and by her said counterclaim.

And the amended petition of Gladys E. Arnaboldi, defendant-appellant, respectfully shows that your petitioner finds herself aggrieved by the whole of an order made in the Court of Chancery of the State of New Jersey by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey on the advice of his Honor, John Bentley, Vice-Chancellor dated December 16, 1927 which order denied an application for an order opening the above named cause and the final decree made therein dated July 5, 1927 and the amended decree made therein dated July 21, 1927 for the purpose of offering testimony correcting the dates mentioned in the testimony heretofore taken in the said cause and for the purpose of offering testimony as to the date John Lehe's relative with whom he lived, moved into the premises known as 706 Paterson Avenue, West Hoboken, New Jersey and as to the name, description and date of removal of the person who previously occupied the apartment which Lehe's relative moved into and for the purpose of correcting the said testimony heretofore taken in so far as will be made apparent by establishing the correct dates in the matters aforesaid.

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And your petitioner appeals from the whole of the said order dated December 16, 1927 denying the said application on the ground that the same is erroneous for that the said Chancellor accord-

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*Amended Petition of Appeal.*

ing to the record of the said application and proofs offered and considered in support thereof should have recited, ordered, adjudged and decreed that the said application should be granted on the following grounds:

10 First. Said application should have been granted so that the petitioner and her witnesses should have had an opportunity to correct the dates mentioned in the testimony theretofore taken in the said cause, so as to correspond with the dates mentioned in the affidavits, offered and considered in support of said application, the errors as to the dates have been inadvertent.

20 Second. The said application should have been granted so that the petitioner and her witnesses would be given an opportunity to correct errors which crept into the testimony due to the inadvertent errors as to the said dates.

Third. Said application should have been granted so that the other testimony sought to be introduced might be offered in corroboration of the fact that the errors, as to dates, was inadvertent.

30 Fourth. The said application should have been granted because the testimony sought to be offered would establish each of your petitioner's defenses beyond any doubt and so that in the event of an appeal by the said Joseph P. Arnaboldi, if this court did not sustain the dismissal of the petition of Joseph P. Arnaboldi on the one defense on which it was dismissed in the said Court of Chancery, this petitioner might be in a position to sustain the said dismissal in this court on her other  
40 defenses.

*Amended Petition of Appeal.*

Fifth. The said application should have been granted by reason of their being fraud shown;

Sixth. The said affidavits disclosed, newly discovered evidence;

Seventh. Because the said testimony might have produced a final decree granting the relief 10 sought by this petitioner's petition or counterclaim in the said Court of Chancery, or might result in the granting of the said relief in this court.

Your petitioner, therefore prays that so much of the said final decree as amended as is above set forth may be reversed, rescinded and for nothing holden and that the said order dated December 16, 1927 may be reversed, rescinded and for nothing 20 holden and that an order be entered in this court or in said Court of Chancery ordering the granting of the said application mentioned in the said order dated December 16, 1927 and that your petitioner shall have such further relief as shall be meet.

JACOB SIFF,  
Sol'r for Defendant-Appellant.

MEYER M. SEMEL,  
Of Counsel with Defendant-Appellant. 30

**Answer to Petition of Appeal.**

Filed January 25, 1928 as of Time.

NEW JERSEY COURT OF ERRORS AND APPEALS.

|    |  |   |                                     |
|----|--|---|-------------------------------------|
| 10 | Between<br>JOSEPH P. ARNABOLDI,<br>Petitioner-Respondent,<br><br>and<br><br>GLADYS E. ARNABOLDI,<br>Defendant-Appellant. | } | Answer to<br>Petition<br>of Appeal. |
|----|--|---|-------------------------------------|

20 The answer of the petitioner-respondent to the petition of appeal of the defendant-appellant.

30 The petitioner-respondent admits it to be true that a certain decree was, on July 5th, 1927, made and entered in the Court of Chancery of the State of New Jersey, and amended by a decree made in the Court of Chancery of the State of New Jersey by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, dated July 21, 1927, as in the petition of appeal stated, but as to the substance and form thereof this petitioner-respondent prays to refer thereto when the same shall be produced.

And this petitioner-respondent is advised and believes that said decree, as to the matters complained of by the defendant-appellant in her petition of appeal, is agreeable to law and equity and prays that the same may be affirmed in the particulars aforesaid.

HENRY MARELLI,  
 Solicitor for and of counsel  
 with Petitioner-Respondent.

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**Answer to Amended Petition of Appeal.**

Filed April 26, 1928, as within time.

NEW JERSEY COURT OF ERRORS AND APPEALS.

|    |  |   |  |    |
|----|--|---|--|----|
| 10 | Between<br>JOSEPH P. ARNABOLDI,<br>Petitioner-Respondent,<br><br>and<br><br>GLADYS E. ARNABOLDI,<br>Defendant-Appellant. | } | On Appeal<br>from<br>Chancery.<br><br>Answer to<br>Amended<br>Petition<br>of Appeal. | 10 |
|----|--|---|--|----|

20 The answer of the respondent to the amended petition of appeal of appellant.

The respondent admits it to be true that a certain decree was, on July 5th, 1927, made and entered in the Court of Chancery, and that, on December 16th, 1927, an order was made and entered in the Court of Chancery, as in the amended petition of appeal stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced.

30 And this respondent is advised and believes that said decree and order, as to the matters complained of by the appellant in her amended petition of appeal, are agreeable to law and equity and he prays that the same may be affirmed in the particulars aforesaid.

HENRY MARELLI,  
 Solicitor for and of Counsel with Respondent.

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*Petition of Appeal.*

by reason of the adultery of the defendant-respondent, on the ground that the same is erroneous, for that the said Chancellor should have recited and adjudged that the petitioner-appellant was entitled to a decree of divorce because of the defendant-respondent's adultery.

10 Your petitioner therefore prays that the said decree, so far as it dismisses the petitioner's petition for a decree of divorce, be reversed, rescinded and for nothing holden, and that your petitioner may have such further relief as shall be meet.

HENRY MARELLI,

Solicitor for Petitioner-Appellant.

Service of the above petition of appeal is, on this 19th day of December, 1927, acknowledged.

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JACOB SIFF,

Solicitor for Defendant-Respondent.

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**Amended Notice of Appeal.**

IN CHANCERY OF NEW JERSEY.

Filed July 19, 1928, as of December 22, 1927.

Between

JOSEPH P. ARNABOLDI,  
Petitioner,

and

GLADYS E. ARNABOLDI,  
Defendant.

On Petition,  
Counterclaim,  
Etc.

Amended  
Notice  
of Appeal.

10

Joseph A. Arnaboldi, the above named petitioner, hereby appeals to the Court of Errors and Appeals in the last resort in all causes from the final decree filed in this cause and dated July 5th, 1927, made by the Chancellor, on the advice of John Bentley, Vice-Chancellor, and as amended by decree of the Court of Chancery of New Jersey, dated July 21st, 1927, made by the Chancellor, on the advice of John Bentley, Vice-Chancellor, which ordered, adjudged and decreed that the petition of the above named petitioner, filed in the above entitled cause, should be and was thereby dismissed and from so much thereof as finds that the petitioner is not entitled to a decree of divorce.

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HENRY MARELLI,  
Solicitor and of Counsel  
with Petitioner.

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

JACOB SIFF,  
Of Counsel with the Respondent.

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*Amended Notice of Appeal.*

Due, legal and timely service of the within notice is hereby acknowledged as within time on this 16th day of December, 1927. It is hereby mutually stipulated and agreed by and between the undersigned solicitors of the within named parties that the within amended notice be considered filed as of December 22, 1927.

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HENRY MARELLI,  
Solicitor of Petitioner-Appellant.  
  
JACOB SIFF,  
Solicitor for Defendant-Respondent.

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**Answer to Petition of Appeal.**

Filed December 29, 1927.

## NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

JOSEPH P. ARNABOLDI,  
Petitioner-Appellant,

and

GLADYS E. ARNABOLDI,  
Defendant-Respondent.

On Appeal  
from  
Chancery.

10

Answer to  
Petition  
of Appeal.

The answer of the defendant-respondent to the petition of appeal of the petitioner-appellant.

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The defendant-respondent admits it to be true that a certain decree was, on July 5th, 1927, made and entered in the Court of Chancery of the State of New Jersey and amended by a decree made in the Court of Chancery of New Jersey, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, dated July 21, 1927, as in the petition of appeal stated; but as to the substance and form thereof this defendant-respondent prays to refer thereto when the same shall be produced.

30

And this defendant-respondent is advised and believes that said decree, as to the matters complained of by the petitioner-appellant in his petition of appeal, is agreeable to law and equity and he prays that the same may be affirmed in the particulars aforesaid.

JACOB SIFF,  
Solicitor and of Counsel with  
Defendant-Respondent.

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**Stipulation.**

**NEW JERSEY COURT OF ERRORS AND APPEALS.**

Filed April 26, 1928..

10 Between  
 JOSEPH P. ARNABOLDI,  
 Petitioner-Respondent,  
 vs.  
 GLADYS E. ARNABOLDI,  
 Defendant-Appellant.

On Appeal.  
 Stipulation.

---

20 Between  
 JOSEPH P. ARNABOLDI,  
 Petitioner-Appellant,  
 vs.  
 GLADYS E. ARNABOLDI,  
 Defendant-Respondent.

On Appeal.  
 Stipulation.

It is Hereby Mutually Stipulated and Agreed by and between the undersigned that the State of the Case in the foregoing causes be abridged as printed, and that same State of Case shall serve for both appeals.

30 JACOB SIFF,  
 Sol'r for Defendant-Appellant  
 and Defendant-Respondent.

MEYER M. SEMEL,  
 Of Counsel with Defendant-Appellant  
 and Defendant-Respondent.

HENRY MARELLI,  
 Sol'r for and of Counsel with Petitioner-  
 Respondent and Petitioner-Appellant.

40

9 OCT. 1. 1928

**New Jersey Court of Errors and Appeals**

Between  
 Joseph P. Arnaboldi,  
 Petitioner-Respondent,  
 vs.  
 Gladys E. Arnaboldi  
 Defendant-Appellant.

On Petition for Di-  
 vorce, etc.

Between  
 Joseph P. Arnaboldi,  
 Petitioner-Appellant,  
 vs.  
 Gladys E. Arnaboldi,  
 Defendant-Respondent.

On Appeals from  
 Court of Chancery.

**BRIEF FOR PETITIONER-RESPONDENT  
AND PETITIONER-APPELLANT**

**STATEMENT OF THE CASE**

On July 12, 1926, petitioner, Joseph P. Arnaboldi, began suit in the Court of Chancery of New Jersey, against his wife, Gladys E. Arnaboldi, for absolute divorce, charging her with the commission of adultery with one John Lehe on every day in March, 1926, and on April 1-7, both inclusive, in the same year, at 23 Grace Street (referred to uniformly in the evidence as 23 Grey Street) in the City of Jersey City (Case, pages 1-2). The defendant's answer as amended (Case, pages 3-5 and pages 11-12) denies adultery, sets up by way of recrimination the petitioner's alleged desertion of the defendant, his seduction of her before marriage and his alleged want of care and vigilance

over her, and seeks an absolute divorce from the petitioner on the ground of his alleged desertion of defendant (Case, pages 3-5 and pages 11-12).

The case was referred to Vice Chancellor Bentley (Case, page 9) who, after final hearing, advised a decree dismissing both the original petition and the counterclaim on the grounds that, although the defendant was found to have been guilty of adultery, the petitioner was found to have been guilty of desertion. [See opinion (Case, pages 167-176) and final decree (Case, pages 176-180); this decree was amended by an order awarding the custody of the children to the defendant (Case, pages 181-182) a subject with which the original final decree failed, thru inadvertence, to deal.]

Both parties appeal. The defendant filed her first notice thereof on December 22, 1927 (Case, pages 184-185), and her petition thereon, on December 22, 1927 (Case, pages 186-188), and her second amended notice of appeal on May 4, 1928, as within time (Case, pages 191-193).

The petitioner filed his notice of appeal on December 22, 1927 (Case, page 214), and his petition thereon on December 29, 1927 (Case, pages 215-216).

By stipulation the same state of the case serves both appeals (Case, page 220).

Defendant's amended petition of appeal is put on the ground that the dismissal of her counterclaim was wrong because she should not have been found guilty of any adultery (Case, page 208), and she further complains therein of an order dated December 16, 1927, denying her application to open the decree for the purpose of correct-

ing the testimony in respect to certain dates (Case, page 209). The petitioner says he is aggrieved by the dismissal of his petition, and says that he should have been granted a divorce on the ground of defendant's adultery (Case, page 216).

The parties were married on March 29, 1919 (Case, page 14); and, with the exception of the first six weeks following their marriage, kept house at 706 Paterson Avenue, West Hoboken, until their separation on the last day of August, 1923 (Case, page 12, and page 72). Two children were born of their marriage, aged seven and six years respectively, at the time of the final hearing in 1927 (Case, page 15). A third child was born to defendant on May 20, 1924 (Case, page 102). It is undisputed that petitioner paid Twenty Dollars a week for the support of his children, from his separation from his wife (Case, page 24, last 4 lines and page 25, lines 1-4).

The defendant having been the first party to appeal, we shall first deal with her appeal; and the proofs will be found to have established her adultery beyond any mistake.

She occupied an apartment on the ground floor at 23 Grace (or Grey) Street; and a clarifying word or two may be here said in regard to the layout of the apartment. The kitchen was in the rear; one door from the kitchen opened into the dining room. Beyond the dining room and toward the street lay the front or living room (claimed by Lehe as his bed room); and a door from the dining room opened into this front room. A second door in the kitchen opened into the bath room and a third door, into defendant's bed room. An

observer, standing in the rear of the house, commanded from one of the two kitchen windows a view of the kitchen and of the defendant's bed room, and from the other kitchen window, a view of the kitchen and of the dining room. The bath room could be seen from both windows.

## I.

***THE FINAL DECREE RIGHTLY REFUSED  
A DIVORCE TO THE DEFENDANT BY REA-  
SON OF HER ADULTERY WITH JOHN LEHE.***

The proofs convincingly established adulterous relations between her and Lehe; and we start our analysis of the evidence with the invasion by petitioner and others of the apartment at 23 Grace Street, in the City of Jersey City, in which defendant dwelt with Lehe (and her three infant children) in the Spring and Summer of 1926 (nearly three years after the separation between petitioner and defendant), the first invasion occurring on April 7, the second of June 19.

The first of these successive entrances was said by the petitioner to have been made on April 9 (Case, page 19), but he subsequently fixed April 7 as the true date (Case, page 45). Thomas Karen, an employee of a private detective agency, who accompanied him (Case, page 19), names April 7 as the time; the *fact* of the raid was admitted by the defendant and also by Lehe, and the latter date was assumed or accepted by defendant's solicitor (Case, pages 90 and 118) and assented to by defendant (Case, page 90) and Lehe.

The entrance of April 7 was effected at about 11:30 P. M. (Case, pages 19 and 53.) Lehe was in his underwear and was standing, when first seen by the petitioner, between the kitchen and the dining room. As the invaders walked through the kitchen, Lehe retired to the front room, and sat upon a couch with defendant's youngest child in his arms. There were two beds in the apartment, one in a bedroom, the other in the front or "living" room—the latter bed with its frame freshly painted, its spring in one place and mattress in another. Petitioner inquired why the bed had been taken apart, and Lehe answered "We painted that bed." Defendant said to petitioner, "Joe, did you come back to stay?" and he replied, "What, after you have been living with a man over two and a half years?"; and the accusation met with no answer (Case, pages 20-21).

The petitioner was scarcely cross-examined touching this story of April 7 (Case, page 42, lines 23 to bottom, page 43, first four lines, and pages 45-46).

Although petitioner was then accompanied by six others, only three were sworn and, first, Karen, a contractor at the time of the final hearing, a detective on the staff of a private agency when the raid was made (Case, page 51). He testified that the invading party "watched them" (defendant and Lehe) "until the light went out"; then knocked at the front door; and upon a man's asking, "Who's there?" the witness answered, "Telegram for Mrs. Arnaboldi"; the man said: "Just a minute"; they waited "a full minute and a half", and knocked again, and a woman called "Just a minute"; the door opened, and all rushed

into the still unlighted house. Using a flashlight, the witness went into the bedroom and saw the defendant in a kimono "open in the front", which she was buttoning up; two children were in the crib. The witness then went into the "front room," which was still dark, and said to Lehe "You had better sit down before you fall," because he was shaking terrible." A light was then lit, which disclosed a couch "made up as a bed," without any indication of having been slept in; there was also a bed in this front room; its mattress was in a corner, its springs leaning against a wall; Lehe said the room was his, but in it were "a lot of woman's clothes" and a "man's coat." In the kitchen a pair of trousers lay on a chair; *"and in the bed-room there was a man's blue shirt over the bottom of the bed.* It looked like a working shirt. *The bed looked as if there had been two sleeping in it.* The whole of the clothes were turned down and there were two pillows." When Lehe said, in answer to the witness' question, that the front room was his, Karen asked "Whose is the *lady's* clothes," Lehe replied, "This is my clothes closet but we keep our clothes together." The witness corroborates the petitioner touching the talk between petitioner and defendant:

"I heard Mrs. Arnaboldi say, 'Joe, did you come home to stay?' He looked a minute and he said, 'What, come home to stay with you after living with another man two years and a half;' and *she didn't say anything; she just dropped it.*"

To the like effect runs the brief testimony of the witness, George Schaeffer, a member of the invading party (Case, page 71).

Not a syllable from defendant to repel this charge of long continued unchastity, and not a word of protestation from Lehe that his relations with the woman were honorable and virtuous. Both receive this scornful accusation without a murmur.

Again the witness was questioned about the appearance of the couch,—an all-important question because Lehe either occupied it, or shared the bed of the defendant.

Q. Did the couch appear as if anyone had been in it? A. Nobody sleeping in it that night. It was made up as a bed.

And with this his direct examination was concluded. (Case, pages 51-53.)

When cross-examined, the witness said the front room bed had been newly painted, and that Lehe volunteered that Mrs. Arnaboldi had "paid" him for painting it; that when the witness first saw Lehe, the latter was "standing in the doorway between the dining-room and kitchen holding the baby in his arms"; that the witness asked him what he was doing with the child, and Lehe replied that "when the knock came on the door the baby started to cry and he took the baby up"; that in the defendant's bedroom was "one full-sized bed and a crib"; that the two older children were not sleeping with their mother that night, for the witness saw them in the crib; that he thinks there was room in the "small bed or crib" (as he once describes it; Case, page 55,

lines 32-33) for the third child; and that the occupants of the apartment were not that night arrested on a charge of adultery (Case, pages 54-56).

The defendant, describing the night of April 7, said that she had been long asleep when awakened by the pounding on the door, and she "imagined" (and this she volunteers: no question suggests or elicits it) "that Mr. Lehe was suspected, that I was being with him, and he thought he wanted to protect me, and of course, it frightened me, such an awful loud noise"; that she opened the door; that she had been sleeping in her own bedroom, with all three children in her bed, "nobody that night" sleeping in the crib.

"Q. And when you were awakened what did you do with the youngest child? A. The baby was afraid of the noise and that is why she cried bitterly, and I didn't know what to do. I dropped the baby and was too weak to pick her up myself, and John came in and he picked her up from (witness hesitates).

Q. From the floor? A. Yes.

Q. What floor? A. I think my kitchen floor.

Q. Then when you got out into the kitchen you accidentally let the baby drop; is that it?

Mr. Marelli—I object to the question as leading.

Mr. Siff—I withdraw it.

Q. How did the baby get onto the kitchen floor? A. She slid from the bed

down on the floor; she has done that ever since she was an infant." (Case, pages 91-92.)

She said she thought Lehe was in the front room at the time of the raid, where he always slept "when he was boarding with me", on the cot; that the invading party "didn't seem so interested in me as in the man. They went right across to Mr. Lehe's room"; no one asked her any questions.

"Q. Do you know what was said to Mr. Lehe? A. *I wasn't interested.* I thought Mr. Lehe could take care of his own troubles."

She admitted that she had some of her "things" in Lehe's room, and accounted for it by the coincidence that "that very day I unpacked my trunk to air out some of my things in the living room closet", and said that Lehe said "You might as well use my closet." She agrees that she asked the petitioner if he was home to stay, and by way of answer he said "something like my living with a man"; and says she gave him no answer, "because I know Joe was stubborn and I said to myself 'No use arguing'". (Case, pages 93-94.)

*There was no denial by her of the man's blue shirt on the foot of her bed, or of the absence of any sign of occupancy of the front room cot.*

Counsel for the petitioner asked, in cross-examining her, whether if she had had illicit relations with Lehe, she would admit it. After objection made, the Court himself put the question:

"If you had had sexual intercourse with Lehe would you admit it now; would you say that you had or would you deny it? A. I would deny it." (Pages 103, lines 30-40.)

She admits that on other nights the children were in the crib. "I always had the crib in use"—"That one night I had the boys with me. Sometimes I changed off;" but denies that all three children ever slept in the crib at once. She testified that she just happened to put her clothes in Lehe's room that day, saying: "It was a Saturday like over week end and I was cleaning up." (Case, page 104, lines 27-40.) She had already on her examination in chief fixed April 7 as the time this night visit (Case, page 90, last four lines). Then she discovers that April 7 fell on a Thursday, and says that the transfer of her apparel from her trunk to Lehe's closet was made on "that morning, I think"; and justifies her first statement about a "week end" by the observation "After Wednesday it is week end—Thursday, Friday and Saturday is week end". Case, page 105.)

She was then asked and testified as follows:

"Q. Mr. Lehe contributed to your support all that he had, didn't he—everything he earned he gave you? A. *Naturally. Every man that thinks anything of a woman gives her everything he has.*" (Case, page 105, lines 23-27.)

Notwithstanding that she had already sworn that her immediate thought on being awakened by the knocking at the door was that "Mr. Lehe was suspected, that I was being with him" (Case, page 91, lines 1-5), she repudiates it all, saying that although she now realizes, she did not then know or "sense"

the purpose of the raid to have been to "connect" her with Lehe.

"Q. Why do you suppose they raided the place, then? A. Well, to have some fun.

Q. What kind of fun? A. Why, any raid is interesting." (Case, page 106, lines 10-14.)

And finally she takes her original position, and guesses she did know it. At least, "If I stopped to think, I would know it." Then she admits that, notwithstanding her knowledge that her husband suspected her relations with Lehe to be unlawful, Lehe and she continued to occupy the apartment. (Case, page 106.)

Lehe was called by the defendant, and testified that the raid of April 7 occurred about eleven o'clock; that he was sleeping in the front room and was awakened before Mrs. Arnaboldi; got out of his cot and asked "Who is there"; and some one answered "Telegram"; that Mrs. Arnaboldi "got up out of bed and she drops the child in front of her, see, and I picks up the child"; the defendant opened the front door, and some one entered also through the bathroom window, and the witness returned to the front room; that some one asked whose clothes were in his closet and he said he gave defendant leave to put them there; that the petitioner said (referring to Lehe) "I want the man arrested"; that the witness answered "For what?" and the petitioner said nothing; and that the unused bed in the front room had been painted that very forenoon and was still wet. He denied that he ever slept with the defendant and says that his trousers and blue shirt were in his own room (Case, pages 118-121).

Questioned by counsel for petitioner, the witness said that he continued to stay in the apartment after April 7 because he was then suing his own wife for divorce and understood that he was obliged, during the pendency of that suit, to sleep in New Jersey (Case, page 136).

Petitioner himself says that he knows Lehe remained there because "we shadowed the place every Saturday from then on" (Case, page 22), until they found the defendant in Lehe's room and bed on June 19.

It will be recalled that Mrs. Arnaboldi testified that Lehe gave her all he earned (Case, page 105). Lehe neither expressly admitted nor expressly denied it; he said he paid her \$5.00 a week for his room, and ate with her and paid her for that also, but omitted to say what. His testimony on this head closed with the vague inquiry, "Did you give her any money to cover anything besides the food and the room?", and he answered "No."

On June 19, the petitioner and his friend, Henry Schloetzer (not a detective or sleuth), watched the apartment from 6:00 o'clock in the afternoon until they entered it about 1:00 o'clock on the following morning. The petitioner testified that the defendant went out to the movies alone in the evening, and returned at about quarter past eleven, the children having been left with Lehe. From the backyard, the watchers covered both windows; the shades were raised high enough to afford a view of the interior; Lehe and Mrs. Arnaboldi had a lunch

in the kitchen; "about quarter to one" Lehe walked from the kitchen through the dining room into the front room, presently came out, visited the bathroom and then stood by the kitchen door and signified by a sign, observed by the defendant, what he wanted of her, she nodding her head to express her understanding or assent (Case, page 22-23, and particularly lines 23-25 of the latter page). Mrs. Arnaboldi soon went to her bedroom and undressed, then to the bathroom, and from there to the kitchen sink. On the kitchen shelf she found a powder can, which she used; and "then she walked right in through the door into Mr. Lehe's room." Petitioner and his companion waited a few minutes, and then raised a window and removed the sliding screen and got into the apartment.

"And we made one dash through the dining room door into the room where Mr. Lehe and my wife were, and we saw Mr. Lehe and my wife in bed together; and she sat up on the edge of the bed in a sitting position." (Case, pages 23-24.)

The invading party used a flashlight; Mrs. Arnaboldi asked who it was and what was wanted, and the petitioner told her she knew who it was and that he had got what he wanted; Lehe was "crouched" in the back of the bed; petitioner's friend pulled away the bed-covers and exposed Lehe "lying right in bed"; Mrs. Arnaboldi said, "Well, after all it is only the first occasion"; petitioner asked how many other occasions there had been, and she fell silent (Case, page 24). They backed out through the dining room into the kitchen; Lehe came out with a bottle in his hand, saying he had

something to show them; but they left the apartment.

When cross-examined, the petitioner said that the two windows through which they watched were both in the kitchen; one commanded a view of the dining room, the other of Mrs. Arnaboldi's bedroom; the kitchen light was lit, the apartment otherwise in darkness (Case, pages 33-34). When he found his wife sitting on Lehe's bed, she had no shoes on, although she wore them into the dining room on her way to the front room (Case, page 39). On re-direct examination, he said that his wife had on a "silk nightgown" and she wore only an "undershirt" (Case, page 45).

Henry Schloetzer supports the petitioner in regard to the disclosures of this visit. From the window at which he was stationed, he could see into the kitchen and the defendant's bedroom (Case, page 58); the time came when he saw her disrobing in her bedroom; she left that room; and he lost sight of her; the petitioner said something; and both got into the kitchen through the window.

"And from there, why, we ran inside, and there was Mrs. Arnaboldi. She was just getting up and sat on the bed, and she spoke and says, 'Who is it; who is it?' and Joe answered her. So then I went over toward the bed and I pulled the covers back and there was Lehe all up in a knot, and I says to Joe, 'Joe, we had better go; we don't want any arguments'. And so, as we were going out, Mr. Lehe says, 'Come here, I have got a bottle here'. I says, 'Joe, we had better be going;

he wants to get rough'; and with that he goes out in the kitchen and goes out of the house all together." (Case, page 59.)

The witness adds that Lehe "had his underwear on" and Mrs. Arnaboldi wore "a sort of blue silk kimona or night gown" (Case, page 59, lines 31-35).

About the Christmas season of the same year (1926), the witness accompanied the petitioner to a house in North Bergen, into which the defendant had moved, and found Lehe chopping wood in the cellar (Case, pages 60-61).

This witness, when questioned by defendant's counsel, said that it seemed to him that Mrs. Arnaboldi "jumped up suddenly" when they entered Lehe's bedroom; that he did not actually see her lying down in the bed with Lehe; recalls (of his own accord) that the defendant remarked that this was the first occasion and that her husband asked how many more there had been; and recollects also that Mrs. Arnaboldi said that Lehe was "a better man than" the petitioner, *a statement which she admits she then made*: see Case, page 101, lines 20-40) (Case, page 63). Lehe said nothing except as they were departing (Case, page 64).

Here is adultery unless the story of this night is utterly false. The fact probably is that no wife, accused of adultery, ever supplied more completely satisfactory proof of her own guilt than was furnished by the testimony of this wife. The Vice-Chancellor, before whom this case was tried and who advised the decree in question, interrupted petition-

er's counsel before he had proceeded far in cross-examining the defendant.

"The Court—Mr. Marelli, you needn't spend a great deal of time in cross-examining the defendant. My mind is definitely made up after hearing her *direct* testimony." (Case, page 107.)

Just before she describes the night of June 19, she testified, on *direct* examination, that Lehe gave her "*all that he had*" (and this in answer to the question, "How much did he give you a week?"). This was disconcerting testimony, and her counsel presently asks:

"Q. Outside of paying for his room, did he contribute to your support? A. I will say that he did.

Q. In what way? A. Well, he couldn't contribute to my support in any other way than financially.

Q. Did he give you anything outside of the room rent? A. He is no millionaire; he never had much money, but *what he had he gave me.*" (Case, pages 94-95.)

She says on June 19 that after she had returned from the movies, she and Lehe sat up "for about half the night, nearly all night, talking and like that"; then Lehe went to his bed room, she remaining by the kitchen table "thinking what to do next." By another sheer coincidence, "that very day I cleaned thoroughly and he (Lehe) slept in the large bed. It was the assembled bed." About twenty minutes or more later, she went to the bath room and then to her own room, removed her dress and *lowered the gas.* (Case, page 86.)

"Q. Then what did you do? A. I was very very nervous that night.

Q. Why? A. Because Mr. Lehe said: 'somebody is around'.

Q. Did he mention any names? A. He said: 'your husband and others are around tonight'."

She adds that he mentioned this three times and she said: "You are crazy."

"Q. What else did you do? A. After I lowered the gas?

Q. Yes. A. I went to his room.

Q. For what purpose? A. I went to tell him to close the windows.

Q. Why? A. Because he was always in the habit of leaving his windows open.

Q. Well, was there any other reason? A. No other reason."

When asked what happened in Lehe's room, she mentioned the couch bed by the window, and said that she sat at the window for about five or ten minutes. She wanted to see what there was in front; "I thought there was men around," but she was looking for "nobody in particular." She heard no noises.

"Q. When I first went into the room, I said 'John, either get dressed or close the windows,' and I was in the room about half an hour, and I heard noises and I walked thru and I closed the windows myself. (Case, page 98.)

Q. What happened after you were sitting there on the cot? A. I was between two fires and didn't know whether to stay where I was.

Q. Why do you say you were between two fires? A. I thought that my husband was in the house.

Q. What made you suspicious that your husband was in the house? A. Because John had told me so many times that night they were around."

She heard a noise in the dining room, and was then "sitting on the edge of the bed, I guess", doing "nothing" (Case, page 98). She thinks there was no talk between her and Lehe, and does not know what she was doing.

"Q. What made you go from the cot to the edge of the bed; how did you happen to do that, for what purpose? A. No purpose."

She testified that while she was sitting at the edge of the bed, Lehe seemed to know that petitioner was close by, observing "He is here or near here or something"; she and Lehe were talking low together. Then she said that her purpose in going into his room was to get him up (although she lingered there, according to her testimony, for half an hour). (Case, page 99.)

"Q. And then what happened? A. Then the fun began; I saw my husband. \* \*

Q. After he came in what did your husband say? A. He says, 'Now I got you.'

Q. What did you say? A. I says, 'This is the first occasion.' (which is exactly what the petitioner quotes her as having said.)

Q. First occasion what? A. I meant exactly what I said; this is the first occasion I ever was in another man's room."

Lehe stayed under the covers, but did not get up; he just said "What did you see?" And Mr. Schloetzer said: "Come on; you have seen enough." She denies the sign made to her by Lehe before he retired to his room, but admits her use of the powder. (Case, page 100.)

"Q. On that occasion did you say, in the presence of Mr. Schloetzer, 'You are a better man than he is,' referring to Lehe? Did you make the remark to Lehe, saying, 'Well, you are a better man than my husband is,' or something to that effect? A. I think I did say something to Mr. Lehe, I am not sure.

Q. What did you say? A. Something like that, I think. \* \*

Q. What did you mean when you said that? A. If I said it, I always say what I mean (Case, page 101).

Q. Well, in what respect did you mean he was a better man than your husband? A. The fact that John (referring to Lehe) always seemed to take an interest in me and seemed to protect me. He acted as a body guard, don't you know." (Case, page 102.)

Lehe, testifying about June 19, said, in contradiction of the defendant, and of all the witnesses, that he went to sleep before 11 o'clock. He heard someone coughing in the hall or around the apartment a little after 10, and said it was the petitioner. He denies the story of the sign made by him to the defendant. He was just dozing off when he saw the flash light at his door, and said that he knew it was the petitioner because the petitioner had the habit

of being around every night (Case, pages 121-122). The defendant, he said, came in to tell him that someone was walking around the house, but did not say so when she first entered his room; she first went and closed the window, and was in his bed room "about two minutes" before she closed it; then "about ten minutes" after she came in to close the windows, she told him he had better get dressed because somebody was around the house. He told her to get out of his room, that her husband was outside; and she answered that Lehe was crazy (Case, page 123). She did not go, and the two men came in with flash lights, the petitioner saying "I got you now", and Lehe replying "What did you see?" Lehe was still in bed. Lehe also said that he told the petitioner that he heard him coughing an hour before. He admits that Mrs. Arnaboldi said: "This is the first time" (Case, page 125). He denies that he had a bottle, and admits that he chopped wood for the defendant about Christmas time of the same year at North Bergen (Case, page 126).

This testimony narrating the occurrences of April 7, and June 19, 1926, was admitted on the ground that other acts of intimacy may be shown that those specifically alleged in the petition "for the purpose of tending to prove the disposition of the defendant" (Case, page 19); and at the time of objection to the story of April 7, the date of the raid, subsequently corrected, and the corrected date acquiesced in by all the parties and all the witnesses, was fixed by petitioner as occurring on April 9 (Case, page 19).

"Evidence of adulterous intercourse between the parties prior to the time set forth in the pleadings, or *subsequent thereto*, is admissible, where the relations are shown to have commenced before suit." *19 C. J., 130*, Divorce; Opportunity and disposition.

In this case the relations between the defendant and Lehe began two years before April 7 and June 19, 1926, and this is admitted both by the defendant and by Lehe. In April, 1924, the defendant opened a store at 113 Paterson Avenue, Union City (Case, page 84); and she says, although the petitioner and his witnesses fixed the beginning of her acquaintance with Lehe before the separation of petitioner and defendant in August, 1923, that she first became acquainted with Lehe about three weeks after opening this store. In July, 1924, she removed to 708 Cortlandt Street, Union City (Case, page 85), where Lehe immediately came to board with her (Case, page 86, lines 32-35). Three months later she went to 19 Gray Street, Jersey City, where she lived three months (Case, page 85), and then moved into 23 Grey Street, (Case, page 85) (which is the 23 Grace Street, mentioned in the petition). When she moved into 19 Grey Street, Lehe moved there also, but on a different floor (Case, page 87) and in a week or two after she moved to 23 Grey Street, he moved in also (Case, page 89). To this he agrees (Case, page 113, as to the commencement of their acquaintance in the store; page 115, as to boarding with her on Cortlandt Street; page 116 as to their living on separate floors at 19 Grey Street;

and page 117 as to his moving in her apartment at 23 Grey Street).

The adultery charged in the petition alleges "every day during the month of March, 1926, and on April 1, 2, 3, 4, 5, 6 and 7, 1926", at the same place, always, 23 Grey Street, with the same person, John Lehe.

The final decree finds that defendant committed adultery with Lehe on various dates unknown and unproved but during the period commencing June 1925, and ending April 12, 1926, the date of the filing of the petition "there being no proof that said adultery was committed on any one or more of the dates specifically alleged" in the petition, and that the adultery was committed at 113 Paterson Plank Road, 708 Cortlandt Street, 19 Grace Street and 23 Grace Street, or "at one or more of said places, there being no proof of the specific place or places where each or any of said acts of adultery was committed" (Case, page 177).

These declarations accord with the proofs.

On the argument of the cause before the Vice Chancellor, it was urged on behalf of the defendant that inasmuch as she had been seduced by the petitioner before marriage (Case, page 79) and he had left her without his protection since August, 1923, (Case, page 15) her guilt with Lehe should not bar her petition for an absolute divorce from the petitioner on the ground of his desertion; and Hedden vs. Hedden, 21 N. J. Eq. 61, was cited in support of this claim. But as the Vice Chancellor points out in his opinion, the doctrine of Hedden vs. Hedden was

a defensive doctrine, and no woman can plead her own adultery as a ground for a divorce against her husband (Case, page 74, last 3 lines and page 175, lines 1-12).

Defendant appeals also from an order, dated December 16, 1927, denying an application for an order to re-open the cause to the end that certain testimony might be corrected (Case, page 209-211). The order in question (Case, pages 205-206) denied the application, for several stated reasons, some technical, but chiefly perhaps, because the corrections, if made, would not have changed the result. The dates sought to be corrected do not touch the heart of the issues, and this branch of the appeal merits scant notice.

In rebuttal, the petitioner called two witnesses who testified that the defendant's acquaintance with Lehe began before the separation between defendant and the petitioner in August, 1923. Bruno Frangi swore that, before that separation, Lehe resided in an apartment in the same house on Paterson Avenue, in West Hoboken, in which petitioner and defendant were then dwelling (Case, page 148); and testified to a state of friendliness then subsisting between the defendant and Lehe. Arno Kohler testified to the same effect (Case, pages 157-158). The petitioner himself, in presenting his direct case, said substantially the same thing (Case, page 27, line 29 to bottom and pages 28-30).

The affidavits of the defendant (Case, pages 197-198), of Helen Van Nostrand (Case, pages 199-200),

and of John Lehe (Case, pages 201-204) [upon which, together with the affidavit of the solicitor for defendant (Case, pages 195-197) ] the application to re-open the case rests, are directed at nothing save the date of the beginning of the friendship between the defendant and Lehe. In Lehe's affidavit, he stated that when defendant opened her store at 113 Paterson Plank Road, in Union City, he first became acquainted with her, and says that this date was about June, 1925 (Case, page 202, last 6 lines). None of these affidavits challenge the fact that defendant and Lehe lived in the same house at 19 Grey Street, or in the same apartment at 23 Grey Street. The effort seems to have been [1] to show that Lehe never knew the defendant while she lived with her husband, and [2] that the defendant and Lehe began to live together on Cortlandt Street, not in the middle of 1924, but in the middle of 1925.

We submit that the defendant's counterclaim was rightly dismissed because of her own guilt with Lehe.

## II.

### **INSTEAD OF HAVING DISMISSED THE PETITIONER'S PETITION, THE COURT OF CHANCERY SHOULD HAVE GRANTED HIM A DIVORCE.**

The defendant's adultery was found as a fact; and the ground for dismissal of the petitioner's petition was his desertion of defendant.

He separated from her on the last Friday in August, 1923, (Case, page 15), having told her in the evening that he was going to attend a meeting of

his union and that if he found her out on his return, he would leave her. She was out and he did as he had said (Case, page 16). He told her on his leaving that he would never come back; to others he said the same thing; and he never offered to live with his wife, nor had any relations with her after the separation (Case, page 42). These things he himself frankly said.

He claimed, however, that his wife provoked his leaving; that she went out alone on an average of four nights a week, and did this for years, and returned at late hours ranging from 11:30 to 1 o'clock in the morning; that he endeavored to dissuade her from his course of conduct; that she answered that what she did was none of his business and that she would go out as she pleased (Case, page 16). That she left her little children in the care of a neighbor, (Case, page 16) is supported by the neighbors. Amelia Ardito, who lived on the top floor of 706 Paterson Avenue, West Hoboken, when the petitioner and his wife were residing on the second floor, said that she often went into the petitioner's apartment, at the request of his wife "to watch the children". She went at six o'clock and sometimes before the petitioner's return from his work. They quarreled, in her presence, about the defendant's going out. She testifies that the petitioner said to his wife "You might stay home once in a while"; and that the defendant would use bad words, which sometimes provoked the petitioner into doing the same; and that petitioner's attempts to dissuade his wife from going out were of frequent recurrence (Case, page 67). She said that she, the witness, remained in petitioner's home until half past ten, or

eleven, and that sometimes the petitioner returned home before his wife, and that the witness would go up stairs to her own home as soon as the petitioner came home. Sometimes the defendant would start out for a show before the petitioner came home for his supper, and sometimes after; and he sometimes asked his wife to go out with him to a show, and she invariably refused. When she went to a show she went alone (Case, page 68 and 69). Rosie Ardito, mother of the last witness, corroborated her daughter in regard to defendant's going to the moving pictures and come home late (Case, pages 69-70). Amelia Ardito, recalled, said that the petitioner "many a time" cooked his own supper and washed the dishes and cleaned the house and hung out the clothes (Case, page 70).

The defendant herself said that when she asked her husband to take her to the movies, he did so, and that he never refused to do so. She said she liked the movies, and could go to them "every day." Asked how often she did go, she replied "quite often" and admits that she called on Miss Ardito to watch the children on these occasions (Case, page 74).

The defendant admits also that she had thrown things at her husband, but limits that sort of domestic turbulence to "four times in all our married life together, about seven years, I think." (They were married in 1919 and separated in 1923.) She agrees with the Ardito girl that these outbursts occurred during quarrels about her frequenting the movies (Case, page 77, lines 23 to bottom).

With this insistence on her part of a right to run out alone at night arose another thing,—her denial to the petitioner of a marital right; and upon his inquiring the reason for this denial, he says (and she fails to contradict him) that her reply was "None of your damn business." (Case, page 30, lines 23-29.) In fact, he testified.

"the cause of my separation was that my wife intermingled with other men, *which I strongly objected to*, and she took no heed to my objection." (Case, page 15, lines 36 to bottom, and page 16, line 1.)

In the summer of their separation, and before he left her, he found her standing in the hallway of the house in which they lived, talking with Lehe who "was rooming there at the time with a cousin of his," and I objected to it (Case, page 27). In May and June of that year, he thrice found the pair in the hallway "right near the bedroom door"; "I told her to get in where she belonged" (Case, page 28 and page 29, first line). He was suspicious of Lehe, not chiefly because he chanced to find them talking together, but because of her persistent going out from her home and her saying that she did not care for him and her swearing at him; "I objected" to this behaviour, "and it was of no avail" (Case, page 29); Lehe would go out "a few minutes before her and she would go out afterwards, saying she was going to the movies, but I never knew where she went"; "she used to go out and I used to go out after her, but I would always be foiled and in some way I never could find out where she went" (Case, page 29, lines 28 to bottom).

"Q. Was there anything in Lehe's actions that aroused your suspicions? A.

The first time I resented her going out in the hall with Lehe I suspected they were pretty friendly *when they continued to do that afterwards.*" (Case, page 29, lines 18-22.)

He cannot mention other male acquaintances of hers during this period, but "she would go out and stay out until one and half past one in the morning"; he saw her in no other man's company, but her repulsing of his advances to her, which happened "very often," coupled with her curt and profane reply when he sought the reason, stirred his suspicions and distrust (Case, page 30), and doubtless justly. When it was brought home to him by his wife's solicitor that he had not after all actually *observed* her to be spending her time, when absent from her little children, in the society of male acquaintances, he falls back upon bedrock reasoning: "*Yes, but what was she doing out at all hours of the night?*" (Case, page 30, lines 36-40.) Her regular average was "four nights a week" out; and this he bore for "five years" (Case, page 31).

That she was headstrong and obstinate in going out when and with whom she pleased against the petitioner's remonstrance and objection is shown by an instance related by him, confirmed by his mother and admitted by his wife herself. She arranged with a salesman to go over to New York with him on a Sunday in May, 1923 (the year of the separation in August) to buy a coat; the petitioner protested her going; the discussion became heated; his parents arrived in their car to take the family on a Sunday picnic; she refused to accompany the party, saying "No, I have

made an appointment with this man to go to New York to buy a coat and I am going;" and she went (Case, pages 16, lines 23 to bottom, and 17, lines 1-22). The petitioner told the salesman he objected to her going, and told him "to get out and he wouldn't because she insisted upon going"; he tried to detain her by physical force, but failed (Case, page 17); nothing would stop her; he asked "what's the matter with me; couldn't I go and buy a coat instead of having a stranger do it?" she left at ten or eleven o'clock in the morning and returned between four and six in the afternoon; he inquired where she had been and whether she required all that time to buy a coat, and she answered that it was none of his business (Case, page 18).

Marguerite Arnaboldi, petitioner's mother, corroborates him (Case, page 47).

So does the defendant herself; and that, on her examination in chief. She begins by saying that she "used to like to have him (her husband) buy the children's clothes, because he knows the value of things"; says that he asked her to defer the purchase of a coat until they could pay "cash," but that her policy was to pay by installments; "I sort of kept one man going so that as fast as one bill is paid I would get something else." Asked how she had come in contact with this Sunday salesman, she explains "he was a regular salesman I knew beside the insurance salesman" (Case, page 76).

"Q. Did your husband object to your going over to New York with that salesman? A. I imagine he did. He licked

me, I think; I'm not sure. (Case, page 77, lines 10-12.)

Q. Well, he says he asked you not to go with him and you insisted you were going?

A. Yes, because I made appointments on three occasions like that, and I says 'I will go now or never'; see?

Q. Did he try to stop you by force? A. No, *Joe was not brutal in any way.*

Q. He never used physical force on you? A. No." (Case, page 77.)

She gives her husband a good character elsewhere also; when asked whether it was true that he "helped around the house," she replied, "Yes, *I think he loved his home*, in a way" (Case, page 78).

His distrust of his wife at this time appears to have been well grounded in fact. Bruno Frangi then lived in the same apartment as these litigants and next door to living rooms therein in which Lehe was then staying with his cousin. He met Lehe and the defendant "going out" as he was "coming in", and saw them also "over on the corner talking" (Case, page 148). At times when the petitioner was out, the witness saw men go into her apartment and "stay about an hour or so" (Case, page 149, lines 12-14). Arno Kohler saw Lehe and the defendant on the street together in June and July, 1923 (Case, pages 157-158).

The defendant's explanation of the separation was that the petitioner wanted no more children (Case, page 72) and said "right before people" (although none were summoned to corroborate

her) that "if there were ever any more children he would leave me for good" (Case, page 73). In as much as she pretends that he left her because she told him she was pregnant again, we call attention to what she testified on this head.

"Q. Did you tell him you were pregnant with this last child? A. *I wasn't sure I was that way when he left.*

Q. Did you say that you thought you were? A. Yes.

Q. What did he say or do? A. Well, once before he threatened to leave. I think it was on a Sunday night, and I said, 'Think what you are doing, Joe; don't leave your children.'

Q. How long was that before the separation? A. About two weeks, maybe three.

Q. Why did he threaten at that time to leave? A. Well, he always threatened to leave me, even from the beginning.

Q. Well, at that time what was the reason that he threatened to leave? A. Well, let me see—I can't remember.

Q. And when you told him you thought you were pregnant what did he say? A. Well, he didn't want any more children, and he said—I don't think he gave me any answer. He was always threatening. He never said much.

Q. Did he say he was going to leave you? A. He always said that.

Q. I mean on that particular Saturday when he left? A. Yes. When he was home he was watching me. I made up my mind I would have no more fights; if he goes he goes; no use trying to hold him (Case, page 73).

Q. Well, did he say anything *at the time* he left? A. He just said, "*Because you are that way* you needn't think *that* will keep me." (Case, page 73, last line and page 74, lines 1-2.)

If this testimony means anything, it means that the petitioner left the defendant, not *because* of her alleged pregnancy, but *in spite of* it.

By her statements under cross-examination, she would not have suspected her condition on August 31, 1923, if then pregnant at all by the petitioner. (Her husband says that the last times he had access to her was in July, 1923 (Case, page 46).) She fixes the date of birth of the child as May 20, 1924, and of the separation as the last day or last Saturday of August, 1923 (Case, page 102); and says she told her husband of her pregnancy then, and then knew that she was pregnant: "Every woman knows when she is pregnant," she declares, when asked how she then knew it; she told him one *Sunday* two or three days before the separation (Case, page 102); she shifts next to "two or three Sundays" before the separation; "I said it was going to be a girl"; she agrees that the time must have been around the 10th of August.

"Q. Well, did you tell him that you were pregnant *immediately after you had intercourse* with him? A. I did.

Q. Immediately after? A. I did.

Q. You knew it right after? A. I did." (Case, page 103.)

We give her up.

The Vice Chancellor writes in his opinion:

"They differ widely as to the cause of his departure. The petitioner 'says that his principal concern was over the frequent, if not habitual, absences of the defendant from the home until late at night.' She says that at the time of his departure, or the night before, she told him she thought she was again pregnant, and that he, thereupon, went away. As between these two stories, it seems to me that the probabilities are all in favor of the petitioner." Case, pages 167-168.

(We omitted to notice that she also said that, at her husband's instance, she had successfully sought the help of a midwife on earlier occasions: Case, page 79; and he denied it: Case, pages 164-165.)

He went away, but provided for his children, as we have seen, and continued to see the two of them he knew to be his own, at first, upon the street, and afterwards at his mother's (Case, page 26).

It is true that, when she was married to him, she was already pregnant by him (Case, page 79); but as the Vice Chancellor found, "it is quite as true he did everything he could to prevent her falling again" (Case, page 174). He said that "Counsel joined in importuning the court to end the impossible position of these parties by severing the matrimonial bond." He perceived and said: "Personally I believe that it would be much better for everybody concerned if

they could be freed from one another"; but felt constrained to leave them shackled together during the whole remaining course of their joint lives (Case, page 173).

Is there no way out? We think there is, because if the petitioner's continued absence from the defendant was not contrary to her will, it was "continued," it was "wilfull," but not "obstinate."

And we think that it is evident from this record, with which we have been dealing with patience and painstaking fidelity and exactness, mis-stating nothing and coloring nothing and withholding nothing, that this wife cheerfully acquiesced in her husband's departure, rejoiced in the freedom which she gained by his going, preferred all along her paramour's embraces to those of the petitioner, and secured by his withdrawal that which she had contemplated and for which she had hoped. In 1924, before a year had passed since the separation, Lehe had become a member of her household; where she moved, he followed; before her husband left her, she was unwilling that he should enjoy her person; and when discovered in her lover's bed, she brazenly observed that he was the better man.

"Consent need not be express. It may be tacit, as where the plaintiff was willing and made no objection." 9 R. C. L., Divorce and Separation: Proof of Consent to Separation, No. 145.

The petitioner's withdrawal from his home was the natural result of his wife's misconduct. She obstinately persisted in her course of living, against his protests and remonstrances and objections; and provoked his going. She was apprized in advance—and long in advance—of the ultimate consequence of her persistence; and when that consequence fell, she allowed it, as she says herself, without a struggle. Is it not equally as plain that she allowed it without a sigh?

Respectfully submitted,

HENRY MARELLI,  
Solicitor for and of Counsel with  
Joseph P. Arnaboldi.

INDEX.

|                                      | PAGE |
|--------------------------------------|------|
| Bill of Merits                       | 2    |
| Answer                               | 3    |
| Amended Answer                       | 7    |
| Order Permitting Amendment of Answer | 8    |
| Bill                                 | 9    |
| Ex Post                              | 10   |
| Agreement                            | 12   |
| C. S. Roberts, direct                | 17   |
| cross                                | 31   |
| Wing Corson, direct                  | 43   |
| cross                                | 45   |
| Richard Johnson, direct              | 49   |
| Discussion                           | 51   |
| Charles Remlinger, direct            | 54   |
| cross                                | 58   |
| E. M. Chester, direct                | 61   |
| cross                                | 64   |
| Clayton B. Roberts, cross            | 65   |
| Richard H. Johnson, direct           | 68   |
| Charge of the Court                  | 69   |
| Notice of Appeal                     | 71   |
| Grounds of Appeal                    | 72   |