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*Petition and Affidavit.*

**PETITION AND AFFIDAVIT.**

Filed June 28, 1923.

**In Chancery of New Jersey**

To his Honor, Edwin Robert Walker, Chancellor 10  
of the State of New Jersey:

The petition of Robert H. Armstrong, of the  
Borough of Dunellen, in the County of Middle-  
sex and State of New Jersey, respectfully shows:

1. Your petitioner was lawfully joined in the  
bonds of matrimony to his present wife, Bertha  
L. Armstrong, the defendant in this suit, on the  
twenty-eighth day of September, 1910, by Fred-  
erick Stiehler, a Minister of the Gospel, at Rich-  
mond Hill, in the City of New York and State 20  
of New York.
2. Defendant, since her marriage to your peti-  
tioner, and on the thirteenth day of January,  
Nineteen Hundred and Twenty-three, committed  
adultery with David M. Tullock, at Dunellen, in  
the County of Middlesex and State of New Jer-  
sey.
3. Petitioner and defendant were *bona fide* 30  
residents of the State of New Jersey when this  
cause of action arose, and they have ever since  
continued to be *bona fide* residents of this State,  
down to the time of the commencement of this  
action, residing at Dunellen, in the County of  
Middlesex.
4. No children were born of the marriage  
aforesaid.
5. Your petitioner prays that the marriage 40  
between your petitioner and the defendant may

*Petition and Affidavit.*

be dissolved for the cause aforesaid, according to the statute in such case made and provided; and that he may have such further relief as may be just: And your petitioner will ever pray, &c.

EDMUND A. HAYES,  
Solicitor of Petitioner.

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

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

20

ROBERT H. ARMSTRONG.

Sworn and subscribed to before me,  
this 25th day of June, 1923.

ELIZABETH H. HARDING,  
Notary Public of N. J.

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*Answer.*

**ANSWER.**

Filed July 19, 1923.

IN CHANCERY OF NEW JERSEY.

ROBERT H. ARMSTRONG, <i>Petitioner,</i>  <i>vs.</i>  BERTHA LOUISE ARMSTRONG, <i>Defendant.</i>	}	<i>On Petition for Divorce.</i>  <i>Answer.</i>	10
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Defendant, who resides at Dunellen, Middlesex County, New Jersey, says that:

1. She admits paragraph 1 of the petition. 20
2. She denies paragraph 2 of the petition.
3. She admits paragraph 3 of the petition.
4. She admits paragraph 4 of the petition.

JOHN WINANS,  
Solicitor of and of Counsel with Defendant,  
No. 437 North avenue, Westfield, N. J.

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*Petition for Alimony, Pendente Lite.*

funds of the petitioner herein and her said husband, and except that during the period beginning January 13, 1923, and ending May 1, 1923, petitioner's husband sent her \$10 in each week as partial payment for her maintenance and support; petitioner is wholly destitute of means to support herself and to defray the expenses of defending herself against the charges made by her husband in his said petition filed against her in this case.

5. No children have been born of the marriage between petitioner and her said husband.

6. Your petitioner is in ill health and at intervals since her husband left her she has been obliged to take, and has taken, frequent treatments by Dr. Thomas D. Blair, a duly licensed physician and surgeon of Plainfield, and is obliged to attend at his office from time to time for surgical treatments, and she has been obliged at frequent intervals to visit the office of Dr. L. Howard Moss, a surgical specialist in diseases of women, from which one or more of which your petitioner has been and still is suffering seriously; the expenses of traveling and for the fees and charges of these two physicians have been a severe burden upon your petitioner and she has, since January 13, 1923, incurred large bills for treatments and consultations by both of them, which she is unable to pay unless funds are provided by her said husband for the purpose.

7. Petitioner's said husband owns a considerable interest in the dwelling house and plot of land which your petitioner is now occupying at Dunellen, New Jersey, which is of the value of at least \$9,000 and which was purchased about 12

*Petition for Alimony, Pendente Lite.*

years ago for \$4,600; since its purchase a large amount of money has been spent on this property in improvements, and a mortgage for \$3,500 has been placed thereon, the proceeds of which were received and disposed of by her said husband; that the equity thereon now amounts to at least \$5,000 and that said premises are otherwise unencumbered except for taxes for the current year, and according to the understanding and agreement between your petitioner and her husband, said house and land, comprising about one acre, is owned in equal shares and interests between them, but petitioner's said husband is the record owner thereof and your petitioner is unable to realize any money whatever upon her interest therein.

8. Petitioner's said husband is employed by Robert Rosenthal & Co., wholesale dealers in silks, at 471 Fourth avenue, Borough of Manhattan, City and State of New York, as a salesman at a salary of \$60 per week, in addition to his expenses which are paid by his employer; he has ample means wherewith to pay such sums as may be necessary for the purposes aforesaid.

9. Petitioner's said husband has two children by a former marriage, one of whom, a daughter, is married and is not a subject to any expense to petitioner's husband, and the other, a son, about 35 years of age, is self-supporting, and with said son and at his address in Brooklyn, in the State of New York, the street and number of which are unknown to your petitioner, her husband has been living since the time when he left petitioner on January 13, 1923.

10. Your petitioner is unable to earn her own livelihood on account of her ill health, and be-

*Affidavit of Bertha L. Armstrong.*

cause she is not skilled in any trade, profession or occupation; and always during her married life devoted herself exclusively to her household duties; she is therefore unable to support herself or to earn any money toward defraying the expenses of her support and maintenance and the defense of this suit.

She prays that an order may be made requiring her said husband to pay her a proper maintenance for her support and maintenance until the termination of this suit, and also to pay forthwith a reasonable sum for the fees of counsel in defending this cause for her; and for such other relief as the circumstances of the case may render fit, reasonable and proper.

And your petitioner will ever pray, &c.

BERTHA L. ARMSTRONG,  
Petitioner.

JOHN WINANS,  
Solicitor of and of Counsel  
with Petitioner.

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

BERTHA L. ARMSTRONG, the above-named petitioner, being duly sworn according to law, upon her oath says:

I have read the foregoing petition and know the contents thereof, and the same is true; and particularly it is true that I am not guilty of the charge made by my husband against me in his petition filed in this cause, either on the date stated therein or at any other time.

*Affidavit of Bertha L. Armstrong.*

I specifically deny it to be true that I committed any act of impropriety with David M. Tulloch, either on January 13, 1923, or at any other time.

I have filed my answer denying my husband's charge of adultery against me, and said answer is in all respects true.

My husband left me on January 13, 1923, and since then he has not supported me at all except for payments of \$10 per week which he made to me from January 13, 1923, until May 1, 1923, when he ceased making payments and since when he has paid me nothing at all, and except that I am living in the house which was paid for with joint funds of my husband's and my own, being the proceeds of the sale of a house at Richmond Hill, Long Island, in which I had a dower interest and in which house and lot the proceeds of my savings were also invested.

I am not trained in any profession, trade or occupation and cannot earn my living. Since my husband ceased sending me money, I have gotten a little money by doing sewing and by selling fruit, but this has been insufficient for my needs and I have run in debt. My health is so bad that I am unable to carry on any regular employment, even if I had the education, training or ability to do so.

In the year 1922, my husband expressed a desire to sell the house in which we then lived and in which I now live and told me that I should receive one-half of the proceeds of the sale for my interest in the property. He told me to ask \$8,000 for the house and lot. Afterwards, and during the last Spring, I secured a purchaser who was willing to pay \$8,500 for the property, but meanwhile the disagreement which has re-

*Affidavit of Bertha L. Armstrong.*

sulted in this suit, had sprung up between my husband and myself and he refused to carry out the sale. Since then I have received another offer to purchase the house from a Mr. English, one of the officials of the Central Railroad Company of New Jersey, who offered \$9,500 for this property. This offer was communicated to my husband through a broker and my husband declined to sell, unless I would sign off my entire interest and permit him to receive the whole proceeds of the sale.

My husband is employed, and for 2½ years past, has been employed, by Robert Rosenthal & Co., wholesale dealers in silks at 471 Fourth avenue, Borough of Manhattan, New York City, as a salesman upon a salary which beginning about the Fall of 1922, and continuing until the present time, has been \$60.00 per week. My husband, as long as he continued to live with me until January 13, 1923, told me that his salary was \$60.00 per week and on August 6, 1923, I overheard a conversation between Mr. Harvey D. Gouse, the managing clerk in the office of my solicitor in this case, in the course of which my husband, Robert H. Armstrong, informed Mr. Gouse that he was working upon a salary and not a commission basis, that he was then still employed by Robert Rosenthal & Co., that he had received no increase in salary since he left me and that he was now receiving the same salary that he had last told me he was receiving, but he declined to state the amount. The amount which he did state to me, the last time he said anything on the subject to me, was that he was receiving \$60 per week.

I am in frequent attendance upon my two physicians named in my annexed petition and

*Affidavit of Bertha L. Armstrong.*

I am advised by Dr. Moss, named therein, that the treatments I receive will be largely ineffectual unless I submit to a rather serious surgical operation, the expense of which will be considerable and which I am entirely unable to defray. My husband, since leaving me, has resided with a grown son who is self-supporting and who lives at Brooklyn, New York, at a street address unknown. He has no children or other members of his family or any persons other than myself who are dependent to the slightest extent upon him for support.

I have no money whatever with which to pay for my support, the medical and surgical treatment and I have already received and that which I urgently require in the immediate future, nor to pay for the service and expenses of my solicitor and counsel in this case, unless provision is made for the payment to me of such proper sums as the Court in this proceeding may find just and proper.

BERTHA R. ARMSTRONG.

Subscribed and sworn to, this 7th day of August, 1924, before me,

PHILIP H. MOSKOVITZ,  
Master in Chancery of New Jersey.

*Affidavit of Dr. Ray T. Munger.*

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

DR. RAY T. MUNGER, being duly sworn, according to law, on his oath says:

10 I am a regularly licensed and practising physician, having my office at No. 609 Watchung avenue, Plainfield, N. J., and I am now and for a number of years last past have specialized in diseases of women and the urinary tract, including the bladder.

I was consulted by Mrs. Bertha L. Armstrong at my office in Plainfield on the 5th day of August, 1924, she having been sent to me by her family physician for purposes of examination and treatment by myself as a specialist along the lines indicated above.

20 At the time and place lastly stated I examined said Bertha L. Armstrong and found that she is in urgent need of treatment by a specialist for ailments of the nature in which I specialize; it is vitally important that an X-ray picture of her abdominal regions to be taken at once in order to locate the cause of and indicate treatment for pus which I detected in the course of the examination above-referred to.

30 The taking of the X-ray and examination and the treatment that will be required will be expensive and it is absolutely necessary that she receive such examination and treatment or her health will be further seriously impaired.

I found said Mrs. Armstrong to be ill and in urgent need of the treatment indicated.

RAY T. MUNGER.

Subscribed and sworn to this 7th day of August, 1924, before me

40 PHILIP H. MOSKOVITZ,  
 Master in Chancery of New Jersey.

*Affidavit of Harvey D. Gouse.*

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

HARVEY D. GOUSE, being duly sworn, according to law, on his oath says:

I am of full age, reside at the Town of Westfield, Union County, New Jersey, and am managing clerk in the office of the solicitor of the defendant in this cause. 10

On August 6, 1923, after the filing of the petition for divorce in this cause, at the request of the petitioner and her solicitor herein, I called on the telephone the petitioner, Robert H. Armstrong, at his business address in New York City, at the office of Robert Rosenthal & Co., No. 471 Fourth avenue, in the Borough of Manhattan, City and State of New York, the telephone number at that address, which I called, being the regular listing of said Robert Rosenthal & Co., at that address and asked for Mr. Robert H. Armstrong. 20

At the time I put in the telephone call above-referred to and during the subsequent conversation between Mr. Robert H. Armstrong and myself, the defendant, Mrs. Bertha L. Armstrong, was listening at another telephone instrument in the office of her solicitor, over which she was able to hear the entire conversation which occurred between the petitioner and myself. 30

At the time and place above stated, I informed the petitioner, Robert H. Armstrong, that I was speaking in behalf of his wife, Mrs. Bertha L. Armstrong, that I was also speaking for the defendant's solicitor in the above-entitled divorce suit, about which suit petitioner already knew as the suit was in progress; I thereupon then and there asked him whether he was working on a commission basis or for a salary or whether his 40

*Affidavit of Harvey D. Gouse.*

compensation consisted on both salary and commission; to which said Robert H. Armstrong replied that he was receiving a salary but not a commission.

10 I thereupon asked him if he were still in the employ of Robert Rosenthal & Co., and he stated that he was so employed. I then and there asked said Robert Armstrong whether he would be willing to state to me the amount of salary which he received from his said employer or employers and he stated that he would not do so but that it had not been increased any since he separated from his wife prior to the bringing of this suit.

20 I then asked him if his salary had been decreased and he stated to me that it had not been decreased but that he was receiving the same salary that he had been receiving when last he resided with his wife and that he expected to continue to receive the same salary.

I again asked him if he would object to stating the amount of the salary he received and he told me that he would not do so because his wife knew what salary he had been receiving and there had been no change in the amount.

30 During the whole of this conversation the defendant, Bertha L. Armstrong, was listening at another telephone instrument connected with the same wire, line and circuit over which Robert H. Armstrong and I were talking and was able to overhear the entire conversation including everything that has been stated in this affidavit.

I then said good-bye to Mr. Armstrong and there was not at that time and never at any other time has been any further, other or additional conversation between him and me.

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HARVEY D. GOUSE.

*Affidavit of Harvey D. Gouse.*

Sworn to before me this 2nd day of August, 1924.

E. W. WITTKÉ,  
(L. s.) Notary Public.

A true copy.

THOMAS BARBER.

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*Answering Affidavit of Robert H. Armstrong.*

**ANSWERING AFFIDAVIT.**

Filed September 9, 1924.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i>  ROBERT H. ARMSTRONG, <i>Petitioner,</i>  <i>and</i>  BERTHA LOUISE ARMSTRONG, <i>Defendant.</i>	} <i>On Petition for Alimony.</i>  } <i>Answering Affidavit.</i>
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20 STATE OF NEW JERSEY, }  
 COUNTY OF MIDDLESEX. } ss.

ROBERT H. ARMSTRONG, the above-named petitioner, of full age, being duly sworn according to law, on his oath deposes and says:

1. I am sixty years of age, and on September 28, 1910, I married the defendant, Bertha L. Armstrong. This was my second marriage; my first wife having died in 1903. Mrs. Armstrong had been married before to George Heimroth, from whom she secured a divorce on the grounds of desertion.

2. At the time of my marriage to defendant, a property that I had given to my first wife, and of which she died seized, was owned by my two children, one of whom was a minor. I caused this property to be sold at a friendly foreclosure, and I bought it. I later sold it, and from the proceeds of that sale, my wife and I went to live in Dunellen, New Jersey.

3. This was about one year after my marriage to the defendant. She had no moneys of

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*Answering Affidavit of Robert H. Armstrong.*

her own at that time, and I had only the moneys received from the sale of my children's property. My wife and I lived in this property happily until shortly before the date alleged in my petition as the time when she committed adultery with David M. Tulloch.

10

4. From the time of my marriage up to January of 1920, I was a salesman employed by Arnold Constable Company. In January, 1920, I was operated on for an injury to my spine, and following this operation I was confined in the hospital until the next May. After my discharge therefrom I was weak and unable to return to my employment, and my wife and I were supported by my son for several months until February, 1921, at which time I obtained a position with Robert Rosenthal and Company.

20

5. After commencing work with Rosenthal and Company, I commuted to Dunellen for a while, but so much time was spent in travelling back and forth, that I finally took a room in Brooklyn, and only went to Dunellen once or twice a week, usually over week-ends.

6. My wife had grown quite friendly with one David M. Tulloch during the time that I was in the hospital, and I was surprised to find that he was almost a daily visitor at my home when I was in New York. They said that they were working on some kind of a patent, and that was given to me as the reason for their being together so often. In 1921 it was necessary for my wife and Tulloch to go to Washington to present the patent to some government official. They were away on this trip nearly a week. I, however, had no suspicions of anything wrong between them until the latter part of 1922 when

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*Answering Affidavit of Robert H. Armstrong.*

my wife's treatment of me was such as to make me believe that she no longer loved me. She was cold, and showed no interest in my business or health. Sometimes she was hardly civil to me. I noticed that when Tulloch called at the house nights, her entire appearance changed. Whereas  
 10 she had been gloomy and sullen with me, as soon as he came, she brightened up, and paid a great deal of attention to him. Quite frequently they would leave the room in which I was, and go out and converse with each other.

7. I had never come home to Dunellen on a Friday night, and I decided on January 12, 1923, to go home and see if Tulloch and my wife were guilty of anything wrong. I reached the house about two o'clock on Saturday morning, went in,  
 20 and opened the door of my wife's room without first giving warning that I was in the house. She jumped out of bed, and I pushed her away and turned on the light. There, alongside of her, Tulloch was lying. I took a note-book out of my pocket, and made them both sign a confession, which was as follows, and which was written by Tulloch:

30 "I, D. M. Tulloch, was found in bed with Mrs. Robert H. Armstrong on January 13, 1923, at two A. M. by Robert H. Armstrong.

(Signed) Mrs. R. H. Armstrong  
 (Resigned) Bertha L. Armstrong."

The next day I left my wife, and have never lived with her since.

8. She has continued to occupy the house, which contains seven rooms and bath, and has kept roomers. At the present time she is rent-  
 40

*Answering Affidavit of Robert H. Armstrong.*

ing out a part of the house for, I understand, thirty-five dollars (\$35.00) a month.

ROBERT H. ARMSTRONG.

Sworn to and subscribed before me  
 this 8th day of September, A. D.  
 1924.

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WILLIAM F. McCLOSKEY,  
 Master in Chancery of New Jersey.

A true copy.

THOMAS BARBER.

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*Order for Payment.*

**ORDER FOR PAYMENT.**

Filed September 15, 1924.

IN CHANCERY OF NEW JERSEY.

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ROBERT H. ARMSTRONG, <i>Petitioner,</i>  <i>vs.</i> BERTHA LOUISE ARMSTRONG, . . . . <i>Defendant.</i>	}	<i>On Petition for Divorce, &amp;c.</i>  <i>On Petition for Alimony, &amp;c.</i>  <i>Order for Payment.</i>
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This matter being opened to the Court by John Winans, of counsel with the defendant, and in the presence of Edmund A. Hayes, of counsel with the petitioner; and it appearing that due notice of defendant's application has been given to the solicitor for the petitioner, and good cause being shown by the petition of the defendant and the affidavits annexed to and filed therewith why the applicant is entitled to relief in the premises; now, on motion of John Winans, solicitor of the defendant,

30

IT IS THEREUPON, on this 15th day of September, 1924, ordered that Robert M. Armstrong, the above-named petitioner, do pay to the said Bertha L. Armstrong or to her solicitor, John Winans, a counsel fee of seventy-five dollars, within ten days after the making and filing of this order and the service of a copy thereof,

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*Order for Payment.*

which need not be certified, upon the solicitor of the petitioner.

E. R. WALKER,  
C.

Respectfully advised,

MALCOLM G. BUCHANAN,  
Vice-Chancellor.

A true copy.

THOMAS BARBER.

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*Lorin W. Treichler, direct.*

CASE.

Testimony taken on final hearing, at Chancery Chambers, State House, Trenton, New Jersey, on the 12th day of November, 1924, at 12:15 P. M., and on the 30th day of December, 1924, at 10:30  
10 A. M.

Before Hon. MALCOLM G. BUCHANAN, Vice-Chancellor.

Appearances:

Edmund A. Hayes, Esq., for the petitioner.

John Winans, Esq., for the defendant.

LORIN W. TREICHLER, a witness produced on behalf of the petitioner, being duly sworn, testified as follows:  
20

*Direct examination* by Mr. Hayes.

Q Mr. Treichler, where do you live? A 359 Mountain View Terrace, Dunellen, New Jersey.

Q Do you know where Mr. Armstrong's home is? A I do.

Q Where, in reference to your house? A Oh, about 250 feet diagonally across.

30 Q On the same street? A Yes, sir, on the opposite side.

Q Do you know B. M. Tulloch? A I never met him; I know him by sight.

Q Do you know the defendant, Bertha L. Armstrong? A I do.

Q How long have you lived in Dunellen? A Since 1912.

Q How long have you known Mrs. Armstrong? A I would say about six months or a year after  
40 she moved to Dunellen.

*Lorin W. Treichler, direct.*

Q Prior to January 13, 1923, did you ever observe Mr. Tulloch calling upon the defendant, Bertha L. Armstrong? A Not to my knowledge.

Q Prior to January, 1923? A Oh, prior; yes, sir, I have.

Q What time of the day, generally, would Mr. Tulloch come to the Armstrong house? A Well, I leave for business in the morning about ten minutes to eight, and I have seen him coming out of there in the morning and going in in the evening, between six and seven o'clock in the evening.  
10

Q How often have you seen him going into the house at those hours and coming out in the morning? A That I couldn't say, but I have seen him a number of times.

*By the Court.*

Q During what period? A Well, prior to 1923, January, 1923.  
20

Q How long prior to that? You say a number of times; in ten years, or five years, or what? A Well, I would say perhaps two or three years previous to that.

Q About how often during these years prior to 1923, did you see these calls made, as you say? A Well, it happened so often, that I didn't take any particular notice how many times it was.  
30

Q It was very frequently? A Yes, sir.

Q As often as once a week? A More often than that.

Q During this entire two or three years? A As far as I can recollect, not the entire time, no, sir.

Q During what periods was it as frequent as once a week? A I don't recollect just what period it was, but I have seen him go in there and come out very often during that period.  
40

*Lorin W. Treichler, cross.*

Q You say that occurred oftener than once a week; were there times in a period of several weeks or several months when these occurrences would be frequent, and then other times when they would not be so frequent? A At times they would be, perhaps, several times a week; in fact,  
10 I didn't pay enough attention to it to know how often I saw him come in and go out.

Q Was there any comment that you ever heard, concerning Mr. Tulloch's visits at the Armstrong home?

Mr. Winans: That is objected to as not binding on the defendant.

Mr. Hayes: In the event that there is talk in the neighborhood—

20 The Court: If you can bring it home to the defendant, I will permit it.

*Cross examination by Mr. Winans.*

Q Was Mr. Armstrong living at the Armstrong home at the time these visits took place?

A At the beginning, yes, sir.

Q When did he cease to live there? A I don't recollect the date.

30 Q Do you know what day or days of the week these visits occurred on? A I don't recollect.

Q Do you know whether or not Mr. Armstrong was there at the same time these visits occurred? A I believe he was at the beginning, but later on he was not.

Q How do you know he was not? A Because Mr. Armstrong was in the hospital.

Q How long was he in the hospital? A I don't recollect.

40 Q And with the exception of when he was in the hospital, was he living there at the same time

*Lorin W. Treichler, re-direct—re-cross.*

these visits occurred? A After he came from the hospital I believe he moved away; I don't know how long he was there.

Q You paid no attention to these visits; is that correct? A I remarked to my wife, or my wife called my attention to it a number of times.

10 Mr. Winans: I ask that that may be answered.

The Court: It was answered; he must have paid attention to it; it was your own question.

A My wife called my attention to it a number of times, and said, "There is Mr. Tulloch coming out of Mr. Armstrong's place," and, of course, I knew Mr. Armstrong wasn't there, because he  
20 was living out of the city at that time.

Q Did you know, of your own knowledge, that Mrs. Armstrong and Mr. Tulloch were partners in dealing with an invention of automobile locks?

A I did.

*Re-direct examination by Mr. Hayes.*

Q Do you know whether or not Mr. Armstrong lived in New York, or lived in—do you know whether he lived in New York or Dunellen  
30 during the year 1922? A That, I don't remember; I know shortly after he came from the hospital, I believe he moved to New York.

*Re-cross examination by Mr. Winans.*

Q Isn't it a fact, that even when Mr. Armstrong was not living there, that he came out once a week? A I believe he used to come home  
40 week-ends.

*Lorin W. Treichler, re-cross.*

Q And were not Mr. Tulloch's visits there timed so as to be there, very largely, when Mr. Armstrong was there? A That I don't recollect.

*By the Court.*

10 Q Well, you have said, Mr. Treichler, that his visits occurred certainly at times when Mr. Armstrong was not there? A I have seen him go in and out of the house during Mr. Armstrong's absence, after he came from the hospital and returned to New York, and I knew that Mr. Armstrong was not there.

Q And these visits of Tulloch's you speak of, were the visits that you have previously spoken of, occurring at six or seven o'clock at night, and leaving before eight o'clock the next morning? A Yes, sir.

Q Did you ever enter the Armstrong house? A I have been in the Armstrong house shortly after they came there; I believe it was when Mr. and Mrs. Armstrong were there.

Q And when Mr. Armstrong did come there at week-ends, or any other time, what means had you of knowing that he was at home on those nights? A I had no means, except I saw Mr. Armstrong go past my residence up to his home.

Q Is it not true, that any time when you did not see him go by your house, you had no means of knowing whether he was home that day or night, or not? A I had no means of telling whether he was home or not.

*Robert H. Armstrong, direct.*

ROBERT H. ARMSTRONG, the above-named petitioner, being duly sworn in his own behalf, testified as follows:

*Direct examination by Mr. Hayes.*

Q You are the petitioner in this case? A 10 Yes, sir, I am.

Q And when did you marry Bertha L. Armstrong? A Why, September 28, 1910.

Q Whereabouts? A Richmond Hill, Long Island.

Q Following your marriage, where did you live? A Following the marriage we lived at Cranford, and hired a house on Front street, and we wanted to get a house where we could house chickens, to get out somewhere where we could house chickens. I was a chicken fancier. We made several trips and found it was expensive; so we came out and rented a house on North Front street in Cranford, and then we would go holidays and in the evenings, trying to locate a place. 20

Q You ultimately moved to Dunellen? A Then we found a place in Dunellen, and moved there.

Q When did you move to Dunellen? A 30 1911, in April, I think it was, I can't quite recall; it was the following year.

Q Where is that property located? A 412 Mountain View Terrace, Dunellen.

Q Do you know David M. Tulloch? A Very well, sir.

Q How long have you known Tulloch? A Roughly speaking, I should judge I have known Mr. Tulloch probably six or seven years.

Q But you knew him approximately four years prior to January, 1923? A Yes, sir. 40

*Robert H. Armstrong, direct.*

Q Where did you meet him? A I met him at my own home.

Q Through whom? A Through my wife.

Q Did Tulloch visit at your house frequently?  
A Very frequently.

10 Q Did he ever live at your house? A No, sir, he never lived at my house; he had entre to the house, and my wife had a patent; Mr. Tulloch came to my house with my wife one night, and she said Mr. Tulloch understood patents; my wife had secured, through me, a patent that her son-in-law by a previous marriage had got up this device to lock a car and lock the ignition, just the same as a dial is on your safe; so she said he was going to promote it for her and help her out with it; and through  
20 that way we got acquainted and got together, and I thought everything was just business, as far as that goes. Mr. Tulloch never lived at my house; he slept at my house and had his own room in my house, just the visitor's room; and I had my room and my wife had her room.

Q When did Tulloch commence first to sleep at your house? A I should judge, probably, a year or a year and a half or two years after I knew him; after being connected with the  
30 patent. After being at the hospital I was convalescent six or seven months, and we had my wife's flivver, and we used to go to parties together.

Q When did you go to the hospital? A Why, in 1920, if I can recall, February, 1920.

Q Had Tulloch ever stayed at your home prior to that? A Probably he had, a night, but prior to that, before that time, he used to sleep at his own home down about 500 feet further  
40 north from my home, where he resided there

*Robert H. Armstrong, direct.*

when I first knew him. For the first year I knew him he didn't sleep at my house, but he was working on this patent. Mrs. Armstrong would go down there and he would come up to my place, and they had the back parlor there, and they would work over the plans developing this patent; and after we got more acquainted,  
10 he had entre to stop there over night, and they would sit up there to 11, 12 and 1 o'clock, talking patents. I would oftentimes go to bed. But prior to that, the spare room Mr. Tulloch would sleep in that, and we would go down in the train in the morning.

Q Tulloch, you say, would go down and sleep in his own house; where is that, with reference to yours? A About 500 feet or 700 feet, as near as I can recall; it might be a thousand feet.  
20

Q On the same side? A Yes.

Q Is that where his family lived? A His wife and three children.

Q You went to the hospital when? A The first of January; I went to the sanitarium first, and stayed in the sanitarium, because I was in such bad shape.

Q How long were you in the sanitarium and hospital, combined? A About seven months; the 30th of May,—it isn't seven months, five  
30 months.

Q When you came from the hospital, did you go back to business? A No, sir, I wasn't able to.

Q Where did you stay? A At Dunellen, my own home.

Q And did you continue to sleep in the same room you had occupied prior to going to the hospital? A Yes, sir.

Q And that room was where in reference to the room that Mrs. Armstrong occupied? A It  
40

*Robert H. Armstrong, direct.*

was a front room, and there was another room off the side; we occupied that room together; and that other room used to be her daughter's, who finally got married. The room for the guests was in the back, back of the front room; the guest room, that is where Mr. Tulloch slept when he stayed nights. Finally, when I went and got a position—you must remember, I hunted for a position for seven months, from that time, from May. June I wasn't able to get work; from June until February. I located a position in New York. All that time I was living in my own home in Dunellen.

Q During that time, did Mr. Tulloch stay at your house very often at night? A No, sir.

Q Where did you and Mrs. Armstrong sleep?

A In the one room, in the one bed in the front room; then finally, when I went to New York, or before that, she said she wanted a separate room; so she took the room next to it that was formerly her daughter's room or her father's room right in front; there was a heavy door between it; it didn't shut; so I noticed she had the door removed and curtains put up there. That was her room, and this was my room (indicating), and two or three months after, before this came up, she put me in the back room then, and said the guest room was in the front now; and I could see Mr. Tulloch's pipe and tobacco there; and I upbraided her, not paying a little attention to me. The spare room in the back, she pulled the carpets up and left me as bare and cool as could be, in December; there was no carpet there, but even then I passed it up.

Q When you went to work in January or February, did you come back home every night

*Robert H. Armstrong, direct.*

to sleep? A I came back home for a short time, and she suggested that I better commute; it was too long, 26½ miles; I had to be at the store at half-past eight, leaving at a quarter past six. I left at daylight and got back at dark. It was only for a short time; then she suggested I go and live with my son and come out week-ends, which I did.

Q You did that? A Yes.

Q When did you start doing that? A Why, from the time I got my position, which was sometime in February, the 15th of February, I think, I went—you must understand I—

Q After you got the job, did you start right away and live in New York and come out week-ends? A I told you, she suggested I go and live with my son; my son lived in Brooklyn, not New York. We lived there a few months, and I come out week-ends and holidays and every minute I possibly could, to get out to Dunellen; it was only a question of not being able to stand the strain of three hours' travel a day.

Q On these week-ends, what part of the house did you sleep in? A I told you, the fore part of it; I had my own room, and just about in December, prior to this act, I was put in this back room.

*By the Court.*

Q When was it your wife started using the separate room? A All this is only a guess, but I will give you the best I can. It was in December, if I remember right.

Q December of 1920? A No, sir, 1922; just prior to the act that took place.

*Robert H. Armstrong, direct.*

Q You had been occupying the same room with your wife from the time you came back from the hospital in May, 1920? A Yes.

Q For a year and a half up until December, 1922? A Yes, sir.

Q And then it was that she took the separate room alongside of the front room? A Yes, sir.

Q Then, when was it that she moved you back from the front room to the back room? A Just about the middle of December, sometime about that; or, it might probably have been the first of January.

Q How long was it after she had started sleeping in a separate room from you, that she moved you from the front room to the back room? A Now, the only way I can answer it is my own way. We had that large front room, our bedroom; then she changed that for a side room. My wife was, very nervous, and sometimes she would sleep in that off and on, but that was our chamber; but it was sometime in December that she took the spare room from the back and gave me the spare room and made that the guest room, and Mr. Tulloch slept in that room, to my knowledge, while I was sleeping in the back room, and the small room was where she was sleeping; and there was a heavy door in—

Q You have answered me. A Yes, sir.

*By Mr. Hayes.*

Q During the time that you were sleeping in the back room, do you know whether or not Mr. Tulloch ever spent a night at your house? A Yes.

Q Where would Mr. Tulloch sleep? A He had the back room, my old room.

*Robert H. Armstrong, direct.*

Q Had you ever noticed any evidence of familiarity on the part of Tulloch towards your wife? A No, sir, no, sir.

Q Did you ever observe any conduct or any actions on the part of either of them towards the other, that made you suspicious of them? A No, sir, not prior to about January 1st.

Q What year? A The year that act was, I caught her, '22, isn't it? Isn't it January '22 or '23?

Q January, 1923, the date alleged in your petition, do you mean? A 1923, yes, sir; that's it.

Q 1923? A Prior to January, we'll say, the first or second, of 1923, I didn't notice it.

Q What happened about that time that made you suspicious of her? A Around the holidays there, as I say, January 1st, Mr. Tulloch and Mrs. Armstrong, I did notice them sitting in the parlor there, and I sat in the back; I wasn't quite interested—

Q Tell everything that happened. A Well, sometime in December—my wife had never tasted lobster, and I broke her in to eating lobster and clams; when I was with the other company I used to bring them out—going down through the yard I saw lobster and clam shells during December, 1922, and I asked her and she said, "Dave was out last night, and I brought out those;" so I even then thought it was all right. Then, during the holidays there, I was treated a bit coolly, and we often had spats; but as I say, they were sitting in the front parlor, and Dave with his locks on the chair, and I was sitting back in the other room, and I got a little bit suspicious at that time; it was only by degrees. The big heavy doors were taken

*Robert H. Armstrong, direct.*

off and the portieres was put up and little portieres put up there, and the big door taken up to the attic.

*By the Court.*

10 Q When was that done? A In December. I wasn't suspicious until I saw the lobsters for several times; that was really the whole thing; and it was all grounded on suspicions.

*By Mr. Hayes.*

Q When you came home week-ends, what day did you get home? A I usually tried to leave the store as early as I could Saturday; my firm don't believe in closing—they are open holidays—

20 Q What time would you come home? A I would get home before seven Saturday evening; I would leave about five o'clock.

Q Did you ever get home any other day excepting Saturdays? A Once in probably a great while; I can't recall; I think once I came home Friday; all holidays, of course, I will be home.

30 Q On January 12, 1923, what time did you come home? A January 12 was on Friday. Do you want me to state how I got home that time?

Q Yes. A I had related to my son I saw these lobsters and one thing and another, and the coolness of my wife—

Mr. Winans: That is objected to.

A I told my son I was suspicious—

40 Mr. Winans: May the witness desist from stating what he said to his son?

*Robert H. Armstrong, direct.*

*By the Court.*

Q Go ahead. A I started out on Friday night; I was suspicious that he was coming out each Friday night, and I would see if my suspicions was well founded. So I did notice that the doors had locks on them and bolts, and you couldn't get in. That was only recently done. 10

*By Mr. Hayes.*

Q What doors had locks on them? A There wasn't any key to the locks, except in the kitchen; the front door had—we even didn't have a key to the front door. They were lost years ago. Mrs. Armstrong had four or five dogs, and when I was there, we didn't feel anybody could get in the back door or the side door. 20

Q You never locked the house up at night? A Never, no, sir.

Q When were the locks put on the doors? A About the time when my suspicions, that's what it was; the side door going into the cellar had a new lock put on it, and I tried several doors to get around, and I found out they were all locked.

Q Did you have a key? A No, sir.

Q Could you get in? A No, sir. 30

Q You couldn't get in? A No.

Q What happened on January 12th? A I said I had better take a very late train; I took the last train I could get out, which was about 12:30; that got me in Dunellen about 1:45, I should think, I don't know.

*By the Court.*

Q In the morning? A Yes, sir. So I went over for that purpose of finding out if my sus- 40

*Robert H. Armstrong, direct.*

picions were grounded. I knew I couldn't get in the doors, because I tried them. I had five dogs, and I thought they were going to bark; they usually do, but they must have been in my favor; not one of them barked. We had put two tons of coal in, or a ton of coal, and the fellow had  
 10 busted the glass in the window, and the window is about that long and that wide (indicating); so I laid my overcoat and the tippet she give me for Christmas on the porch, and slid down on the coal. This was only on suspicion; I went up in the kitchen, and I saw the new bolt was on there, on the side door; so I unscrewed this and threw it on the floor, or pulled it, really; and I went in the kitchen and took off my shoes, or I done that in the cellar, I don't know which. I took my  
 20 shoes off and my collar and necktie and went up to the room. The first thing I looked for was for her room in the dark. She wasn't in there, and I shot through this curtain room to my room, and was putting on the light when she sprung out of the bed, and Mr. Tulloch was in the bed there; and I said, "You get back there"; and she wanted to jump; I wanted to tell you about that, because that was her scheme, was to have those curtains there, and if she found me coming in,  
 30 she could jump into her bed and I couldn't prove anything. So I saw Mr. Tulloch and her, as she was just getting out of bed; and I said, "You are a nice pair"; so I said, "Dave, I don't blame you half as much as I do her"; I said, "What will I do?" I was thinking about beating them up. We have one policeman and we usually don't know where to find him. So I took a ten-cent memorandum book which I had bought for business, and you will find some notations in there. I handed  
 40 my pen to him, and I said, "Dave, will you put

*Robert H. Armstrong, direct.*

down what I dictate?" I handed him my fountain pen. He said, "Yes," so I stood right over it, I thought probably he might make trouble. I had a penknife in my hand, and I got the same penknife in my pocket. "I, David M. Tulloch, was found in bed with Mrs. R. H. Armstrong, on  
 10 January 13, 1923, at 2 A. M."

*By Mr. Hayes.*

Q Who wrote that? A David M. Tulloch; I handed him my pen and the book.

Q Go ahead. A So I says, "Here, Mrs. Armstrong, you sign that; you were caught in the act." She said, "No, I won't." "Well," I said, "I got a man outside"—I was too poor to hire one, to tell you the truth, and I bluffed it. I  
 20 said, "I got a man outside here, and if you don't, I'll take you both to the station house." Dave says, "Go on, sign." So she signed "Mrs. R. H. Armstrong." I said, "No, you sign your checks when you have an account 'Bertha L. Armstrong,' " which she has done, and it's there. What else do you want?

Mr. Hayes: I offer that in evidence.

Mr. Winans: I object, insofar as the signature of Mr. Tulloch is concerned; it is not  
 30 binding on the defendant.

The Court: It is signed by the defendant herself.

Mr. Winans: It isn't signed by Mr. Tulloch.

The Court: I will admit it.

Said book is marked "Exhibit P. 1."

Q Go on. A So she said, my wife said, "Sit  
 40 down and let us talk it over." I said, "No, you

*Robert H. Armstrong, cross.*

have talked too darned much." I went downstairs; I was bewildered. She said, "You are going to stay, aren't you?" I said, "No, I couldn't sleep with any comfort in this house." I got my coat and hat and got the milk train back to Brooklyn.

10 Q How old are you? A I am now 60 years old, January I will be 61.

Q Do you know how old Mrs. Armstrong is?

A She claims she is 16 years younger than I am when we were married.

Q What was the nature of the operation you had performed at this hospital? A I was with—

Q What was it? A I had four and a half inches of bone taken out of my shin and put in my back.

20 *By the Court.*

Q It was an operation for bone replacement?

A Yes, sir; that was February 3rd, I think, 1920, by Dr. Albee.

RECESS UNTIL 2 O'CLOCK.

30

AFTER RECESS.

*Cross examination by Mr. Winans.*

Q Mr. Armstrong, you first met Mr. Tulloch through the automobile invention, didn't you? A No, sir.

Q What was the particular occasion of your first becoming acquainted with him? A Mrs. Tulloch got interested in White Rock chickens, and my wife, in trying to sell some of them, went

40

*Robert H. Armstrong, cross.*

to Mrs. Tulloch, and I built a little house, and I went down there—

Q Down where? A To Mr. Tulloch's house.

Q Did you build a house down there? A No, the boys did, but I told them how to keep them.

Q Was that the occasion of your going there the first time? A About the first time; I might have been there before that, but I couldn't tell; I know that was the first recollection I had of going.

10

Q You knew Mr. Tulloch was a mechanical engineer? A Yes, sir.

Q And wasn't your first proposition to him, that he take an interest in this invention or patent relating to ignition locks on automobiles? A I didn't know anything about his being an engineer until Mrs. Armstrong had him up to the house; she had been down there several times; went down there and consulted Mr. Tulloch; and she asked me to go down, and I went to Mr. Tulloch's house, and he told me all about being interested in patents, and showed me some of his previous patents, such as shutting off gas and other things.

20

Q Isn't it a fact that you and Mrs. Armstrong went together to Mr. Tulloch's house the first time you ever saw Mr. Tulloch, in order to interest him in this invention? A Well, probably I did.

30

Q Did you have an interest? A I went there on account of the chickens, before the invention.

Q Did you have an interest in this invention? A Yes, prior to his taking it up, I made arrangements to buy the patents from her son-in-law's brother.

Q Whose son-in-law's brother? A My wife's son-in-law's brother was the patentee.

40

*Robert H. Armstrong, cross.*

Q What is his name? A Lawrence.

Q And you bought it from Mr. Lawrence? A I paid the deposit to bind the bargain for five dollars, and then Mr. Tulloch got interested after my wife got control of it, and we went and took it to Mr. Tulloch, and went all through it, and we paid \$100, the price set on it. I don't know but Mr. Tulloch paid the \$100; I don't know.

Q You didn't pay it? A No, sir.

Q You forfeited five dollars, didn't you? A I paid the five dollars.

Q You forfeited that? A No, the option was taken up. I could have bought the patent for \$50, and Mr. Tulloch was generous and gave a hundred dollars. I can't remember.

Q Do you know how much Mrs. Armstrong paid for her interest in it? A She didn't pay anything.

Q How do you know? A She didn't have a cent to pay for it.

Q She didn't? A No.

Q Didn't Mr. Tulloch practically support your family while you were ill? A No, sir, never; that I deny; my son supported whatever there was. She had my pay and the renting of these very rooms that she discarded; she was getting \$35 to \$60 a month, and I was getting my full pay up to the time I was operated on, which is not much—\$1,600 a year; it was about \$66 every two weeks. She only had herself to support; she never paid the taxes or dues on the house. Now, where did Mr. Tulloch support her? My son gave me \$700 when I came out of the hospital, in order to pay the interest and the taxes and the mortgage.

Q Go on. A It was \$3,000, until she made it \$3,500 to buy an automobile. No, sir, Mr. Tulloch didn't support any part of my house.

*Robert H. Armstrong, cross.*

Q Did Mr. Tulloch ever give you any money?

A He never gave me one dollar. I do remember him saying about the funeral expenses—her father died and his insurance was only \$150 on the Metropolitan, 10 cents a week. I said, "My gosh, I'm at the hospital; I got no money." I tried to force her son-in-law to pay the expenses. Mr. Tulloch gave a hundred dollars. I upbraided her for buying a \$190 casket when we could get one for \$125, when we had no money. I said, "My gosh, Lou, I got no money."

Q Who was Lou? A Well, Mrs. Armstrong; pardon me.

Q Was there an assignment of patent executed by Mr. Lawrence; there was, wasn't there?

A I believe there was, to Mrs. Armstrong.

Q To her or to her and Mr. Tulloch? A I believe they got it jointly.

The Court: This is pretty far afield about the patent; what difference does it make whether there was a joint patent or an interest in it?

Q When you got this alleged confession signed, did you, before leaving the room, say to Mrs. Armstrong or Mr. Tulloch, or both of them, "When you assign me an interest in that patent, you can have this paper back?" A What did I say?

Q (Stenographer repeats the question.) A My God, no.

Q Had you, previous to January 13, 1923, requested of Mrs. Armstrong, that she assign to you an interest in this patent? A No.

Q When was the last time you visited your home in Dunellen before the 13th of January, 1923? A The previous week, the week-end.

*Robert H. Armstrong, cross.*

Q On Saturday? A That came the previous week-end.

Q On Saturday? A On Saturday and Sunday.

Q What time did you arrive there on Saturday preceding the 13th of January? A What time I arrived there? 10

Q Yes. A As I gave the statement, about 5 o'clock; usually I tried to leave the store at 3, as near as I could, and get out at 5.

Q When you reached your home on the Saturday preceding January 13, 1923, did you say to your wife, that you came out early in order to get an automobile license; that you went to the Motor Vehicle Commissioner's branch office in Plainfield; that you got there just after 12 o'clock, that the door was slammed in your face, and that next Friday you were coming out to get the license and would be home Friday night? A No, sir. 20

Q Did you say any of those things? A No, sir; I might have gone at 12 o'clock and tried to get a license; they close up at 12 or 1 o'clock, and I thought it was 3 so I must have started out earlier that Saturday; I don't know.

Q Did you ever get any license for 1923, on that automobile? A Not that I know of. 30

Q You didn't? A I don't think so.

Q Will you tell the arrangement of the rooms on the second floor of your house at Dunellen; how many bedrooms are there? A Four bedrooms and a bath.

Q On the second floor? A On the second floor.

Q And those four bedrooms occupy, respectively, the four corners of the house? A Yes. 40

*Robert H. Armstrong, cross.*

Q With a bathroom between? A With a bathroom between.

Q Looking out toward the north side? A Yes.

Q A staircase alongside of the bathroom? A Yes. 10

Q The front of the house, which two rooms that you have referred to face out on the street in front of the house? A A large room facing the northeast, and a lesser sized room, which naturally would be termed a very large hall room, taking in the hall and the closet on the west or southwest side.

Q Are your points of the compass right? You say one front room faces northeast; would that make the other one face southwest? A No, south or west by east. 20

Q And that southeast room was the hall room, was it? A No, sir, the northeast room was the— the house was nearly facing south; the northeast room is the large room; the southwest room—

Q Will you look at that sketch (handing witness a paper) and tell me whether that approximately represents the second floor of that house, and if not, in what respects— A Well, yes, northeast; that would be southwest, I should judge (indicating). 30

Q That would be southeast there (indicating)? A There is east there; no, the house is facing south; that is the northeast corner; in other words, that is just the opposite.

Q Will you, on that diagram, please mark a letter "M" for the room which Mrs. Armstrong customarily occupied? A Before what?

Q Whatever you consider her room, mark a letter "M" on it. A (Witness does so.) 40

*Robert H. Armstrong, cross.*

Q Now, will you indicate with a letter "T" Mr. Tulloch's room? A This was the spare room; this was my room (indicating).

Q Indicate your room with the letter "A."

The Court: You have asked him to indicate, first Mr. Tulloch's room; is that the room in which he testified he found the two that night he went home? 10

Mr. Winans: I understand so.

Q That is this room? A Yes.

Q You have put a letter "T" for Tulloch? A Yes.

Q And a letter "A" for your room? A Yes, sir.

20 *By the Court.*

Q That is the back room? A That is the back room.

Q That was unoccupied? A Yes.

Q The room occupied by you was the largest of the bedrooms, wasn't it? A Yes, by the addition of the bay window, a little, that's all; about that difference.

Q There was a bay window consisting of three windows, wasn't there, carrying the side of the room out? A Yes. 30

Q And that was the side that faced the mountains, wasn't it? A Yes, it faced northwest.

Q Did you express a wish to occupy that room and state to Mrs. Armstrong that the air was better there and you liked to breathe the mountain air? A No, sir.

Q You never said that? A Oh, probably two years before, when I was under the terrible strain before I was operated on. 40

*Robert H. Armstrong, cross.*

Q Your trouble was tuberculosis? A Well, no, it was concussion.

Q You were attended by Dr. Campas? A Yes.

Q Didn't he state in your presence on one occasion when he was attending you, when you were in your room at Dunellen, that you were tubercular? A No, sir. 10

Q And that it was unsafe for you and your wife to sleep together? A No, sir.

Q That you must occupy a room by yourself, and sleep with your windows wide open? A No, sir.

Q Did you not, after that time, sleep by yourself and with the windows wide open? A After I came back from the hospital, yes, sir, he found one spot on my lung, but I never had any tuberculosis; that's why I was sent to the sanitarium; he took my sputum and it was tried a number of times and it came back negative. Up to the tuberculosis hospital they tried to find me tubercular, and they couldn't; it was eating my spine; the spine become decomposed; it was the spine. 20

Q How long were you in Bonnie Burns? A I was there on the 2nd of January and I was there to the first of February, when I fell on my face, and I went to Muhlenburg. They don't operate up at the sanitarium. They said Dr. Albee would be at Muhlenburg; I could go there and get examined. He examined me that Saturday, and he operated on the following Wednesday, making it the second or third of February that I was operated on. 30

Q Well, you were told that Bonnie Burn's Sanitarium was exclusively for tubercular conditions, tubercular patients? A No, sir. 40

*Robert H. Armstrong, cross.*

Q Do they admit any other patients there, to your knowledge, any other kind of patients? A I was sent there for observation, and then I went under X-rays there; Dr. Campas sent me there.

Q When your son went to Dunellen, you and he slept together? A What?

10 Q When your son came to Dunellen he stayed with you? A Yes, sir, I guess he did.

Q Did you ever bring lobsters home? A I probably did.

Q Isn't it a fact, that frequently when you and Mrs. Armstrong and Mr. Tulloch went on automobile rides, you stopped and bought lobsters, and you all consumed them in the house? A On two or three occasions.

20 Q And those shells were thrown out in the yard? A Yes, sir.

Q The night that you have referred to now, when you came home that Friday night, was that that same night when you had intended to get an auto license in Plainfield? A No, sir, the auto license didn't enter my head.

Q When you reached the house was the house lighted or dark? A It was dark, absolutely.

30 Q How many outer doors are there to that house? A Including the kitchen doors?

Q Including all doors that led out of the house, in the yard? A Four.

Q Those you can refer to as the front door, the kitchen door, the side door and the door leading to the cellarway? A Yes.

40 Q As to the front door, just what locks or bolts or any contrivances were on that to keep it closed? A A Yale lock; there was two keys when we bought the house, and they both disappeared.

*Robert H. Armstrong, cross.*

Q When did they disappear? A Two or three years after we lived there; we never used them. The inside you could lock the front door from the inside, but not the out.

Q Was there a bolt on that? A No.

Q Nothing but a Yale lock? A No, the lock 10 itself.

Q There was no means of fastening that door except a Yale lock, for which there were no keys at the time of this episode? A You couldn't open it with the lock outside.

Q Was there at the time of this episode—at the time of this episode there was nothing on the front door except a Yale lock and the bolt which formed part of it, which had no keys? A I don't know, except I couldn't go in when I tried 20 the door.

Q Don't you know what means of fastening the front door— A What?

Q Don't you know what means of fastening the front door there was? A I know it was locked; that's all I wanted to know; I couldn't get in; I had to slide down the coal hole.

Q Do you know whether there was anything on besides a Yale lock? A No, I won't swear 30 to it; my recollection is, there's a knob that will lock that door to the Yale lock; you could lock inside, but not out.

Q How as to the kitchen door? A There was a bolt.

Q A sliding bolt? A Yes, sir, a sliding bolt.

Q That had been on since you had owned the house? A No, there was first a little brass one, and then an iron one.

Q Was there always some bolt on that? A 40 Yes.

*Robert H. Armstrong, cross.*

Q As to the side door, what was the means of fastening that? A Regular cheap black lock with the knobs and that key was lost four or five years ago, or four years ago.

10 Q Was there any other means of fastening that side door besides the key which was lost? A Not until I discovered there was a bolt put on top there. I won't say—

Q When did you first discover that? A Some-time in the latter part of September there.

Q As to the door leading in the cellar, what was the means of fastening that? A That is the door I am talking about; that is the one that had a lock and knobs, but no keys; that had been lost four or five years; and they had no bolt, they had a hook, a hook up top; that was one of  
20 these five-cent hooks. The new things I discovered just prior to the trouble.

Q What means of fastening the side door were there? A That had the key; you could get in or out.

Q Was there a key to it? A Yes, but they were lost or swept away or thrown away two or three years after we got there; in fact, there was no keys used in that house whatsoever up to the time, or just before the trouble; there was a hook  
30 inside; you could lock it from the inside, but not the out.

Q Which door? A The side porch door.

Q Had that hook always been there since you owned the house? A That was put in by the carpenter; it was there, yes.

Q Always? A Yes; not to the cellar door; it is on the porch.

Q The only change made in the fastening appliances on the four of those doors during the  
40 period of a year or two before January, 1923,

*Robert H. Armstrong, cross.*

consisted, as you say, of placing one hook on the door leading to the closet; is that right? A Yes, and turning the bolt in the front door; it was never done before that, unless she done it while I was in New York.

Q But the bolt was always on the door? A  
10 Yes.

Q When you reached the kitchen, did you find any light burning there? A No, sir.

Q Or the gas range? A No.

Q Did you find a lunch laid out? A No.

Q Did you see a coffee pot on the kitchen range? A It probably was always on the range.

Q The gas range? A A big French range, and the gas attached to it.

Q Was that coffee hot or cold? A I don't  
20 know; I didn't use any.

Q Did you make any outcry before you started upstairs? A Why should I? No, sir.

Q Did you, on the stairs, when you went up?  
A No, sir.

Q When you reached the top of the stairs, what was the condition as to being light or dark?  
A The whole house was dark.

Q What did you use, gas or electric light? A  
30 Electric light.

Q Was there any electric light turned on? A  
No, sir.

Q You didn't use gas jets at all then? A We had gas in, and sometimes when we would have a storm and it would be shut off, we would light the gas jets.

Q Was any gas jet turned on that night upstairs? A No, sir.

Q When you reached the hall, in which direction did you first turn, towards your right or  
40

*Robert H. Armstrong, cross.*

left? Or, did you go straight ahead? A I went straight ahead into her room.

Q You came on the top of the stairs and walked across the hall? A No, I turned to my right to go into the front room.

10 Q When you turned to your right, that brought you down to what you have designated as the hall room? A I designated it as her room, yes.

Q And from there you went where? A Then I went inside the door where the curtains were, and I heard a commotion, and I turned on the light and Mrs. Armstrong hopped out of bed and Mr. Tulloch sat up—

20 Mr. Winans: I move to strike that out as not responsive.

The Court: I think it will have to stand.

Q How did you go from Mrs. Armstrong's room to Mr. Tulloch's room? A There where the curtains was.

Q When you reached Mr. Tulloch's room, did you find it lighted or dark? A Absolutely dark.

30 Q Did you direct Mrs. Armstrong to turn on her light that evening while you were there? A No, sir.

Q When did you take this penknife in your hand? A When I was getting in the room.

Q When you were getting into which room? A Into Mr. Tulloch's room.

Q Did you open the blade? A Yes, I did.

Q How long a knife is that? A (Witness produces knife.)

40 Q Is this the knife you held in your hand? A Yes.

*Robert H. Armstrong, cross.*

Mr. Winans: I offer that in evidence.

Said knife is marked "Exhibit D. 1."

The Court: Let the record show that the knife is an ordinary penknife, the handle being about three inches, and the blade about two and a half inches. 10

Q Please indicate how you held that in your hand. A I had it in the book.

Q How? A I don't know, I don't know that I had it open, but I imagine I had it open.

Q With the blade projecting in one direction or another? A I can't say.

Q Did you have any revolver with you? A No, sir.

20 Q Did you have any kind of firearm with you? A No, sir.

Q Did you state, or in the presence of Mrs. Armstrong or Mr. Tulloch that night, that you had some kind of firearm in your pocket? A Never.

Q Did you place your right hand on your right hip pocket when you entered Mr. Tulloch's room, or shortly after you reached Mr. Tulloch's room? A No, sir.

30 Q In which hand did you carry the penknife? A In my right hand; I caught Mrs. Armstrong with my left when she was jumping out of the bed, and I said "Sit down there."

Q Isn't it a fact that you met Mrs. Armstrong out in the hall when you— A No, sir.

Q And you pushed her into Mr. Tulloch's room? A No, sir.

40 Q Isn't it a fact that you ordered her to go into Mr. Tulloch's room and turn on the light; and after that you entered Mr. Tulloch's room? A No; I prevented her from going into her own 40

*Walter B. Law, direct.*

room; I said, "You sit down there;" she wouldn't do it; she sat on the chair there.

Mr. Winans: I ask that this diagram be marked for identification.

10 Said diagram is marked "Exhibit D. 2 for identification."

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WALTER B. LAW, a witness produced on behalf of the petitioner, being duly sworn, testified as follows:

*Direct examination by Mr. Hayes.*

20 Q Where do you live? A 404 Mountain View Terrace, Dunellen.

Q Where is that with reference to the Armstrong house? A Next door.

Q On the east or west side? A The east side.

Q Do you know Mr. Armstrong? A I do.

Q And Mrs. Armstrong? A Yes.

Q And Mr. Tulloch? A Yes, sir.

30 Q How long have you lived next to the Armstrong house? A About fifteen years.

Q What is your business? A Tea and coffee merchant.

Q Did you ever know of Mr. Tulloch going to the Armstrong house prior to January 13, 1923? A I have.

Q Can you say whether he was a frequent visitor there or not? A Well, I saw him several times.

40 Q What do you mean by "several times"? A Well, three or four times I have seen him.

*Walter B. Law, direct.*

Q And how near January 13, 1923, were those occasions? A Well, that I wouldn't be sure of; I should say close to that.

Q What do you mean by "close to it"? A Well, in the neighborhood of two or three weeks.

Q Can you tell what time of the day he would go in there? A Well, I have seen him on Sunday mornings. 10

Q Always on Sunday morning? A Yes, that is the only time I have seen him going in.

Q Was Mr. Armstrong home on those occasions? A Sometimes he has been, yes, sir.

Q Do you know whether or not Mr. Armstrong was living in that house in the latter part of 1922? A No, I don't believe he was.

Q Do you know whether he came home week-ends or not? A He did, but I wouldn't be sure of the dates; he did come home week-ends, though. 20

Q Did you talk to Mr. Tulloch today? A Just nodded to him.

Q You are sure that you only saw him for a matter of a few times prior to 1923, visiting at the Armstrong house? A Yes, sir.

*By the Court.*

Q Do I understand you to say you lived next door to him for fifteen years and you only saw Mr. Tulloch go there two or three times, and that was two or three weeks prior to January, 1923? A Well, yes; you see I'm not there very much. I'm living there, but, of course, I have a business and I haven't seen him there very much. 30

Q Well, maybe you haven't seen him very much, but you surprise me when you say that the only times you saw him there were the few weeks prior to January 13, 1923, when it is conceded he was a very frequent visitor there two or three 40

*Walter B. Law, direct.*

years before that, how does it come that you never saw him prior to that time? A Well, I don't know what the reason is.

*By Mr. Hayes.*

10 Q Do you spend your evenings home every night? A Yes, sir.

*By the Court.*

Q Your evenings are spent home? A Yes, sir.

Q What time do you get home? A Well, it varies; sometimes along about five and sometimes not until about ten.

20 Q And up to December, 1922, you never saw Mr. Tulloch at that house at all? A Oh, yes.

Q Well, when? A Well, I have seen him before.

30 Q Well, what you testified to before was, that you had seen him there two or three times, or a few times, and that those times had been two or three weeks prior to January 1, 1923? A Oh, I didn't exactly mean it that way, no; because I have seen him prior to that; during the time that Mr. Armstrong was living there, I have seen them together in the yard Sunday mornings.

Q Well, have you ever seen Mr. Tulloch there at the house when Mr. Armstrong has not been there? A Well, I wouldn't be sure of that; no; I wouldn't say so; I am not sure.

*By Mr. Hayes.*

40 Q Didn't you talk with me this morning about how often you have seen Mr. Tulloch visit at the Armstrong house?

*Walter B. Law, direct.*

Mr. Winans: I object to that; it is an effort to impeach the witness.

The Court: It may be an attempt to refresh his recollection.

A What?

10 Q You talked with me this morning in reference to the number of times you saw Mr. Tulloch visit at the Armstrong house? A Yes, sir.

Q Did you tell me then anything about only seeing him visit on Sundays? A No, I said I saw him a number of times.

Q And you also said to me then, that you had seen him visit there a great many times when you knew that Mr. Armstrong was not at home?

Mr. Winans: That is objected to as leading. 20

The Court: Objection overruled.

A Well, I had suspicions that Mr. Armstrong was not there; I wouldn't say he wasn't there.

Q You did tell me that this morning? A I might have.

30 Q Well, you can remember what you told me three or four hours ago, can't you? A Yes, sir, I guess I did tell you that.

Q And didn't you also say, that you didn't expect that Mrs. Armstrong was going to be here today?

Mr. Winans: That is objected to as irrelevant and immaterial, and stating a conclusion on the witness' part.

The Court: Objection overruled.

40 A Why, yes, I did say that.

*Walter B. Law, direct.*

Q Which of the two stories—now, is it so that you did see Mr. Tulloch visit at the Armstrong house on a number of occasions when you knew Mr. Armstrong was not present?

10 Mr. Winans: That is objected to as already answered.

The Court: The objection is overruled.

A Well, I have answered that; I said that I didn't think Mr. Armstrong was there, but I wouldn't be sure he wasn't there.

*By the Court.*

20 Q What you mean is, that you have known Mr. Tulloch to visit there on a number of occasions? A When I thought Mr. Armstrong was not there.

Q When you believed he wasn't there? A I couldn't swear.

Q Because you were not in the house? A That's what I mean exactly.

*By Mr. Hayes.*

30 Q Isn't it also so that the number of times you saw Mr. Tulloch visit there, is a great many more than four or five, as you put it a few minutes ago? A I should say in the neighborhood of four or five, half a dozen times; that's the number of times I have seen him there; of course, I am not sure of the exact number of times.

Q Did you ever see Mr. Tulloch cart the garbage out of the Armstrong yard? A Yes, I have.

40 Q When was that? Sunday mornings? A Yes.

*Henry Schuckmann, direct.*

*By the Court.*

Q Sunday mornings? A Yes.

Q Do they collect the garbage in Dunellen on Sundays? A He means, moving it back.

*Cross examination by Mr. Winans.*

10

Q Was the conclusion you arrived at that Mrs. Armstrong would not be here today, the result of anything that Mr. Armstrong's counsel said to you? A No.

Q The only way you had of knowing whether Mr. Armstrong was home, was through seeing him enter or leave the house, or around the premises? A Yes, sir.

Q And if he was in the house, you had no means of knowing he was there? A No. 20

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HENRY SCHUCKMANN, a witness produced on behalf of the petitioner, being duly sworn, testified as follows:

*Direct examination by Mr. Hayes.*

Q Where do you live, Mr. Schuckmann? A 30  
420 Mountain View Terrace, Dunellen.

Q Where is that with reference to the Armstrong house? A To the west side.

Q Immediately adjoining it? A Yes.

Q Do you know Mr. Armstrong? A Yes.

Q And Mrs. Armstrong? A Yes.

Q And Mr. Tulloch? A Yes.

Q How long have you lived next to the Armstrong house? A Fourteen years.

Q What is your business? A Chauffeur and 40  
gardener.

*Henry Schuckmann, direct.*

Q For whom? A Mrs. Trust.

Q She lived in this house you speak of? A Yes, sir.

Q Have you ever observed Mr. Tulloch visit at the Armstrong home? A Yes, sir.

10 Q Can you say whether he was a frequent or infrequent visitor there? A Frequent.

Q What do you mean by "frequent"? A After Mr. Armstrong went to live in New York, why, I would see Mr. Tulloch go in at night, and see him come out in the morning.

Q How many times a week or a month would you see them? A Well, I saw him go in and out regularly, coming out mornings regularly, and going in.

20 Q For how long a period? A Well, I wouldn't want to state anything definite.

Q Do you know whether it was prior to January 13, 1923, or afterwards? A That I wouldn't want to answer, unless I could answer it by saying, as I said—because I wasn't keeping track of dates and times—only when I knew Mr. Armstrong was supposed to be living in New York.

30 Mr. Winans: I move that the witness' testimony in reference to these visits be struck out; he has stated he doesn't know whether it happened before or after the alleged acts, that is, the alleged cause of action.

The Court: The motion will be denied.

Q Do you know whether Mr. Armstrong came home at any time during this period that you spoke of? A Mr. Armstrong came home at different times over the week-end.

40 Q And were the occasions that you saw Mr. Tulloch there those on which Mr. Armstrong was

*Henry Schuckmann, direct.*

there or not? A The time Mr. Armstrong came home, I didn't see Mr. Tulloch.

Q Where did Mr. Tulloch live; where is his home? A That I don't know, only from what I have been told; he lives in Elizabeth.

Q Where does his family live? A On Mountain View Terrace. 10

Q How close to the Armstrong house? A Four houses, and that may be 800 or 1,000 feet.

Mr. Winans: No questions.

*By the Court.*

Q Did you know anything about Mr. Armstrong's coming home and finding Mr. Tulloch there with his wife? A No.

Q Did you hear about it afterwards? A No, I didn't. 20

Q Well, you have heard about it today; didn't you know anything about it before today? A That's all.

Q Never had any idea of it? A No, sir.

Q Has Mr. Armstrong been going to that house within the last year or so, even at week-ends? A I haven't seen him.

Q And for how long a period has it been that you have not seen him at all? A Roughly speaking, I haven't seen him for over a year. 30

Q As long as two years? A Well, I wouldn't want to guess, but it's over a year, I am positive of that.

Q Did you know when he was away at the hospital? A I did.

Q Did you see Mr. Tulloch going to the house while Mr. Armstrong was in the hospital? A I did.

Q Did you see him go in? A I did. 40

*Henry Schuckmann, direct.*

Q And how frequently, the same as you testified to— A Very frequently, yes, sir.

Q What time would he go? A Well, I would see him coming in at night, I should judge between six and seven.

Q What time did you see him go out? A  
10 Well, I would say between seven and eight.

Q At night or in the morning? A In the morning.

Q And how long was that kept up from and after the time Mr. Armstrong was in the house? A Quite a length of time; I wouldn't say.

Q Weeks or months or years? A Well, I have noticed it for weeks.

Q Was there any reason why you would be able to see that better than the neighbor on the other side of the house? A Well, I dare say  
20 yes, because my line is carpenter work and cutting lawns and hedges, and I was generally out in the yard at seven o'clock.

PETITIONER RESTS.

Mr. Winans: I move that the supposed confession be stricken out, because the alleged adulterous act has not been corroborated and rests on the unsupported testimony  
30 of the husband, and because the making of the alleged confession itself has not been corroborated. I believe the cases are uniform that corroboration is necessary, and one case points out the fact that the confession and also the making of it must be corroborated by testimony other than itself.

The Court: Do you concede the signatures?

Mr. Winans: I will concede the signatures.  
40

*Arthur J. Hamley, direct.*

Mr. Hayes: I have a handwriting expert who says these signatures are the signatures of Tulloch and Mrs. Armstrong.

ARTHUR J. HAMLEY, a witness produced on  
10 behalf of the petitioner, being duly sworn, testifies as follows:

*Direct examination by Mr. Hayes.*

Mr. Winans: I beg to withdraw the concession of handwriting as long as the witness has been produced.

The Court: I can't do that.

Q Were you formerly the treasurer of the  
20 Dunellen Trust Company? A Cashier of the First National Bank.

Q Of Dunellen? A Yes.

Q How long had you been cashier of the bank? A Sixteen years.

Q You are not there now? A No.

Q What is your present— Do you know Mrs. Armstrong? A Yes.

Q Do you know Mr. Tulloch? A Yes.

Q Do you know his signature? A Not other  
30 than I have seen it; he never had it on file.

Q Would you recognize Mr. Tulloch's handwriting? A Yes, sir, in a way I would say yes.

Q Do you know Mrs. Armstrong's signature? A Yes.

Q During the time you have been connected as cashier of this bank, has it been your duty to acquaint yourself with customers' handwriting and signatures? A Yes, those that are depositors, yes, sir.  
40

*Arthur J. Hamley, direct.*

Q What have you to say as to those who have dealings in the bank? A No, we don't pass on the signatures of other banks.

Q I show you "Exhibit P. 1," and ask you if you know whose writing the first four lines on that paper are, five lines?

10

Mr. Winans: That is objected to; any effort to prove the handwriting of Mr. Tulloch doesn't bind the defendant, and it is only admissible to the extent of affecting his credibility if he shall be at any time offered as a witness in this hearing.

The Court: The objection is overruled.

Q The question was, if you recognized the first five lines? A Yes, sir.

20

Q You say you do? A I would say it resembles the handwriting I have seen of Mr. Tulloch's.

Q Whose signatures, whose writing is that underneath, the writing you say resembles Mr. Tulloch's? A Mrs. Bertha L. Armstrong's Bertha L. Armstrong's.

30

Q Do you recognize this? A Bertha L. Armstrong. It is a signature I have seen, although it is very nervous—it is not—I would pass it as her signature, yes, sir.

*By the Court.*

Q She has been a depositor at your bank? A Yes, sir.

Q You have seen her write? A Yes.

Q And you know her signature from having seen her write? A Yes, sir.

40

Q Do you say that is her signature? A Yes; I would say yes, to the best of my knowledge.

*Arthur J. Hamley, cross.*

Q Is there any doubt about it? A No, no doubt about it, no.

*By Mr. Hayes.*

Q Is Mr. Tulloch a depositor at your bank?

A No.

10

Q How did you acquaint yourself with Mr. Tulloch's handwriting if he is not a depositor?

A Mrs. Tulloch would receive checks from Mr. Tulloch and they would be cashed at our bank, and, of course, we would notice the signature, although we wouldn't pass upon it as genuine.

Mr. Winans: I move that the testimony as to his handwriting be stricken out. He has never, as I understand it, seen the subject write either his signature or any other thing in his handwriting.

20

The Court: The motion will be denied.

Q Can you say whether or not that is Mr. Tulloch's signature? A I would say it resembles the writing I have seen of Mr. Tulloch's, but I never had his signature on file.

Q But you have cashed checks that bore the signature of Mr. Tulloch? A Yes, on other banks.

30

*By the Court.*

Q Is there any doubt in your mind that that signature is the same signature as those which were on the checks? A No; I would say it is the same signature, the same writing.

*Cross examination by Mr. Winans.*

Q In what respect does the name of Mrs. Armstrong, as it appears on that book you hold,

40

*Arthur J. Hamley, cross.*

“Exhibit P. 1,” disagree with the usual signature of Mrs. Armstrong as you know it? A The signature resembles Mrs. Armstrong’s signature, other than I would say she was nervous, or like a person would sign if they were ill.

Q Is it written with a trembling hand? A  
10 Yes.

Q The letters are illy shaped? A Yes, sir.

Q And irregular in their contours? A Yes.

The Court: They speak for themselves.

Q You have never seen any handwriting of Mr. Tulloch’s that you know was written by Mr. Tulloch, except what somebody told you, have you? A I have seen checks drawn by Mr. Tulloch, payable to Mrs. Tulloch, or payable to the  
20 building and loan, of which Mr. Tulloch used to pay the dues, and were handed to me by Mr. Tulloch.

Q By Mr. Tulloch? A By Mr. Tulloch.

*By the Court.*

Q And those you cashed at your bank? A The checks payable to Mrs. Tulloch we would cash; the checks Mr. Tulloch would pay the  
30 building and loan dues with on the property owned by Mrs. Tulloch, they would be passed through the building and loan.

Q All these, then, went through your bank? A Yes.

Q Did, at any time, any of those checks ever come back? A No, sir.

Q Your bank although these checks having passed through these banks and your bank having incurred the responsibility in that way, your  
40 bank was never called upon to stand any loss

*Bertha L. Armstrong, direct.*

by reason of the signatures being challenged?  
A No.

PETITIONER RESTS.

Mr. Winans: I move that the alleged  
10 confession “P. 1,” be stricken out on the ground that the only attempted corroboration goes to handwriting; that there is no corroboration of the event of the alleged act of adultery to which it purports to relate, that there is no corroboration of the circumstances of the alleged signing of it, and on the contrary, that there was coercion and menacing with a penknife appears from the  
20 testimony in the case; in the testimony of the petitioner himself; and I respectfully move that it be stricken out; that appears affirmatively in the case.

The Court: Motion denied.

BERTHA L. ARMSTRONG, the above-named  
defendant, being duly sworn in her own behalf,  
30 testified as follows:

*Direct examination by Mr. Winans.*

Q Was any change made in the locks, bolts or fastenings on any of the four doors of your home at any time prior to the 13th day of January, 1923? A No.

Q Immediately before the 13th of January, 1923, what bedroom in that house did you occupy? A A little hall bedroom.  
40

*Bertha L. Armstrong, direct.*

Q I show you now "Exhibit D. 2 for identification," and will ask you to tell by what letter is indicated the room you occupied, as indicated on that map? A I don't make that letter out.

Q You indicate the room indicated by the letter "M?" A Yes.

10 Q Did you occupy that room alone? A Yes, sir.

Q How long had you occupied that room alone prior to January 13th? A Oh, possibly two or three years.

Q Previously to two years, what room had you occupied? A The both rooms, at different times.

20 Q When you say "both rooms," do you refer to the two larger rooms? A Sometimes I would take one room and sometimes the other, whichever was not rented.

Q Whichever was not rented? A Whichever was unrented.

Q Did you occupy those rooms alone, or with your husband? A Alone.

Q When did you and Mr. Armstrong occupy a room together for the last time? A I should judge it was about a year and a half or two years.

30 Q Prior to what? A Prior to the time he came out.

Q Prior to the 13th of January? A Yes.

Q Which room did you and he then occupy? A Well, I didn't occupy a room with Mr. Armstrong.

Q When was the last time that you and Mr. Armstrong occupied a room together in that house? A About two years ago.

40 Q Which room did you and he then occupy? A The large room in the back, the side.

*Bertha L. Armstrong, direct.*

Q By what letter in ink is that room represented on this diagram "D. 2, for identification;" what letter indicates that? A "A."

Q Does that diagram, "D. 2 for identification," approximately represent the location and arrangement of the second story of that house as it existed on the 13th of January, 1923? 10

Mr. Winans: I offer that in evidence. Said diagram is marked "Exhibit D. 2."

Q What was the occasion or reason for you and Mr. Armstrong beginning to occupy separate rooms? A When he was taken sick.

Q Just tell what happened in his presence that led to your occupying separate rooms. A Why, when he was taken sick he called in a physician. 20

Q Who was that? A I called in Dr. Campas.

Q Where is he? A In Plainfield.

Q Did he attend Mr. Armstrong? A Yes.

Q How many times? A Only once.

Q On the occasion of that visit, what was said between you and the petitioner, Mr. Armstrong, and Dr. Campas relative to Mr. Armstrong's physical condition? A He examined Mr. Armstrong in my presence very thoroughly, and said that there was—he found a tubercular condition on the lungs, he didn't know how severe until he was examined, and that he would have to take him to Bonnie Burn's Sanitarium; that it was very dangerous to have him around in that condition. 30

Q Did he tell you what sort of an institution that was? A Yes.

Q What? A Tubercular.

Q Was that in the presence of Mr. Armstrong? A Yes. 40

*Bertha L. Armstrong, direct.*

Q Did he say anything about Mr. Armstrong, about his habits of life or his occupying rooms with somebody else, or the kind of a room he was to sleep in? A He said that they would have more air than the room in which he was in, and he would have proper care, which I was unable to  
10 give him, if tubercular.

Q Did he say anything to you and Mr. Armstrong about you and Mr. Armstrong sleeping in the same bedroom? A He absolutely forbid it.

Q In Mr. Armstrong's presence? A Yes, sir.

Q Were you and Mr. Armstrong at that time occupying the room referred to by the letter "A"? A No, he was in that room alone.

20 Q Where were you? A In the little room, in the hall room.

Q Had you and Mr. Armstrong then been occupying the room together at that time? A No.

Q How long before that had it been when you last occupied a room together? A Possibly eight or nine months.

30 Q Why did you discontinue occupying rooms together eight or nine months before Dr. Campas came? A Because Mr. Armstrong was sick and he said I disturbed him; I woke him up and I disturbed his sleep.

Q Was there anything about windows in the room? A Yes, sir; he said he wanted the air, and he kept harping on more air all the time.

Q What was the condition of the air or the windows? A Always open.

Q Wide open? A Yes.

40 Q Winter and summer? A Yes, sir.

*Bertha L. Armstrong, direct.*

Q When did you first meet Mr. Tulloch? A Why, about six or seven years ago; I haven't the date or the year.

Q In whose company were you, if anybody's, when you first met Mr. Tulloch? A My husband's.

10 Q Will you state what the occasion was of your meeting Mr. Tulloch at that time? A Yes; I had discussed the device, that lock, with Mrs. Tulloch, and she said her husband would help me out with it, and he was an engineer; so then, when Mr. Armstrong came home, I asked him to go down with me to Mr. Tulloch's home.

Q Up to that time had you ever met Mr. Tulloch? A No.

Q You hadn't? A Never.

20 Q Who, then, went with you to Mr. Tulloch's home? A Mr. Armstrong.

Q Who introduced you? A Mrs. Tulloch.

Q Whom did she, introduce Mr. Tulloch to? A To Mr. Armstrong.

Q Did you have any conversation about this ignition lock? A Yes.

Q Had Mr. Armstrong been interested in that lock? A He had been interested and dropped it.

30 Q What had he done in connection with the lock at that time?

The Court: We are not trying the question of the lock.

40 Q As a result of the interview you and Mr. Armstrong had with Mr. Tulloch, what, if anything, was done by any of you with reference to that ignition lock? A We asked Mr. Tulloch to take it and promote it with me.

*Bertha L. Armstrong, direct.*

Q Did Mr. Tulloch do so? A Yes, sir.

Q Was that with the knowledge of Mr. Armstrong? A Yes, sir.

Q Was an assignment of that patent eventually taken? A Yes.

Q By whom, in whose name? A In my name.

10 Q Alone? A Yes.

Q Who paid for that? A Mr. Tulloch paid for it.

Q Entirely? A Yes, sir.

Q Was there any agreement entered into among any of the three parties, Mr. Armstrong, yourself and Mr. Tulloch, as to who would be financially interested in that ignition patent? A Yes.

20 Q What was that? A Mr. Tulloch was to receive half of the patent grant for his working and his money that he was to put into it, in the future.

Q How was the other half to be disposed of? A That was mine.

Q Was Mr. Armstrong to have any interest in it? A None whatever.

Q Did Mr. Armstrong, after that, do any work on that patent? A Yes.

30 Q Now, did he make any request from you, shortly before the 13th of January, 1923, with reference to an interest in the invention or patent? A Yes.

Q What did he say to you? A He wanted to know when I was going to give him an interest in it.

Q What did you tell him? A I told him I would never give him an interest in it.

Q You recall the early morning of January 13th? A Yes, sir.

40 Q Do you remember the Saturday immediately preceding that day? A Distinctly.

*Bertha L. Armstrong, direct.*

Q What time did Mr. Armstrong come home that day? A About 1 o'clock.

Q What, if anything, did he say to you with reference to an automobile license? A He told me he had to go out to Plainfield to take out the license. He went to the borough there to take out the license, and they slammed the door in his face and wouldn't let him in; they closed at 12 o'clock. 10

Q The place for automobile registration? A Yes, sir.

Q Did he say anything about any future effort to go there again? A Yes.

Q When did he say he was going to do that? A He said he would come out the following Friday, so he could get out there early Saturday morning. 20

Q Did you, prior to the 12th day of January, 1923, know whether or not Mr. Armstrong intended to come to your house in Dunellen on that Friday night? A I knew he was coming.

Q Did you have occasion to talk to Mr. Tulloch over the telephone on that Friday? A Yes, sir.

Q You know his voice? A Yes.

Q What did you say to him over the telephone on that Friday? A To Mr. Tulloch? 30

Q To Mr. Armstrong? A Oh, to Mr. Armstrong; I told him we hadn't, I told Mr. Tulloch we hadn't heard from Mr. Scroff.

Q Did you talk to Mr. Armstrong over the 'phone? A I talked to Mr. Armstrong on the 'phone, and he asked me if I heard from Mr. Scroff, a German name.

Q He was a man negotiating for taking an interest in this invention? A Yes. 40

*Bertha L. Armstrong, direct.*

Q And that involved the payment of a considerable sum of money to you and your associate? A Yes.

Q What did you tell Mr. Armstrong about that? A I told Mr. Armstrong I was sure it had gone over.

10 Q Gone over where? A He put it over, that he had got these people out to Detroit to sign the papers, and they would—

Q Do you mean it was put off? A No, that it was signed; that's the way we used to speak of it, as putting it over.

Q Was Mr. Armstrong previously informed as to this pending deal with Mr. Scroff? A Yes.

20 Q What, if anything, did Mr. Armstrong say after you told him that? A He said he was tickled to death; "You go and call Dave up and have him come out, and we'll go out and have a celebration on Saturday."

Q In response to what Mr. Armstrong told you over the telephone, did you telephone to Mr. Tulloch? A Yes.

Q Did you do as Mr. Armstrong directed you to do? A Yes, sir.

Q Did Mr. Tulloch arrive at Dunellen on that afternoon or evening of Friday? A Yes, sir.

30 Q What time? A About seven.

Q Did Mr. Armstrong arrive there that evening? A No.

Q Did you expect him? A Yes.

Q What, if any, preparations, did you make for Mr. Armstrong's coming? A As usual, I put the coffee on.

Mr. Hayes: That is objected to as self-serving.

The Court: Objection overruled.

*Bertha L. Armstrong, direct.*

Q What preparation did you make for the expected arrival of Mr. Armstrong that Friday night? A I put out a lunch for him.

Q What time did you have dinner? A About 8 o'clock.

Q Who prepared the dinner? A I did.

10 Q Who partook of the dinner? A Mr. Tulloch and I.

Q Did you wait for Mr. Armstrong? A We waited.

Q Did he come? A No.

Q When did you put lunch on? A Around midnight.

Q What did that lunch consist of? A Coffee and ham sandwiches.

20 Q Where did you put the coffee? A On the stove.

Q And the sandwiches? A On the kitchen table.

Q How did you leave the stove that the coffee was on? A I turned the light very low.

Q You left it burning? A Yes, sir.

Q Did Mr. Armstrong have his regular room in that house at that time? A Yes, sir.

30 Q With the knowledge of your husband? A Yes.

Q Did Mr. Tulloch at that time have his regular room for occupancy in that house at that time? A Yes.

Q At whose invitation? A Mr. Armstrong's.

Q Did Mr. Tulloch contribute anything in the way of money to Mr. Armstrong, or to the expenses of the upkeep of that home? A Yes, different times.

40 Q To your knowledge, what did Mr. Tulloch do? A He would bring out groceries and pro-

*Bertha L. Armstrong, direct.*

visions, rather, he would ask Mr. Armstrong if he was short of money.

Q When Mr. Tulloch asked Mr. Armstrong if he was short of money, what did Mr. Armstrong reply? A He would say, "Of course, Dave, I haven't got very much."

10 Q You know whether or not Mr. Tulloch gave any money to Mr. Armstrong at any time before the 13th of January? A Yes.

Q Do you know what sums of money he gave him? A I never kept track of it, but sometimes five dollars and sometimes ten dollars.

20 Q How often did the working on this invention or ignition lock, necessitate meetings being held between the parties interested at a time shortly before the 13th of January? A That depended how quickly we could interest other people. We would try to interest men to talk money.

Q When you interested a person, what did you do always in order to bring it to the attention of any of the others? A I always told Mr. Tulloch to come up and talk it over with me.

Q Was he working on the invention those times? A Yes.

30 Q Were you? A Yes.

Q Was Mr. Armstrong? A Yes.

Q At midnight, after you laid this lunch out, you recall going to bed that night? A Yes.

Q What time did you go to bed? A About midnight.

Q Where was Mr. Tulloch? A I presume in his room.

40 Q What time had you and he separated prior to midnight that Friday night? A I should judge about half-past eleven.

*Bertha L. Armstrong, direct.*

Q Where did Mr. Tulloch go, so far as you know, after you and he separated? A To his room.

Q Did you lay this luncheon out before or after Mr. Tulloch went upstairs? A After.

Q After laying the luncheon out, where did you go? A To bed. 10

Q Did you go to sleep? A Yes.

Q How long did you sleep? A I couldn't tell you.

Q Was the house light or dark? A I left the light in the hall, because the stairs are very treacherous.

Q Which hall? A In the upper hall.

Q You were expecting Mr. Armstrong that night? A I was expecting Mr. Armstrong. 20

Q Was the appointment for the celebration on the following day? A Yes, sir. 20

Q Still in expectation? A Yes, sir.

Q There are four doors in the house leading to the outer air? A Yes.

Q How were those four doors, with regard to whether they were locked or bolted, or otherwise? A The front door has a Yale lock.

Q Was that fastened that night? A No, it was unlocked.

Q How about the side door? A Unlocked. 30

Q How about the kitchen door? A Unlocked.

Q How about the door leading from the cellar-way outdoors? A They were all unlocked.

Q Did you always have them unlocked? A Always.

Q Did you ever have them locked? A No.

Q Did you have any keys? A The keys lasted about a year.

Q How many dogs did you keep there? A Five. 40

*Bertha L. Armstrong, direct.*

Q Any watch dogs? A Yes, sir.

Q Did anybody ever enter your house without you knowing it? A No.

Q Did the dogs bark at strangers coming? A Yes.

10 Q And did they bark when Mr. Armstrong came? A Yes; they were glad to see him and there was an awful commotion.

Q Did you hear the dogs that night? A No.

Q What was the first thing you heard unusual that night? A I heard Mr. Armstrong swearing.

Q Where? A In the hall.

Q Where was the light located; was that the upper or lower hall? A The upper hall.

Q Near the staircase? A Yes.

20 Q Can you look out of your bedroom door and look at the staircase? A No.

Q When you heard Mr. Armstrong swearing, had he yet reached a point where you could see him in the light of that electric light in the hall? A No.

Q Could you hear what he was saying? A Yes.

Q Will you state, as far as you can remember, as far as is proper to state, what you heard Mr. Armstrong say before you were able to see him?

30 A When I was first awakened by him?

Q Yes. A I heard him swearing in the hall something frightful; I can't repeat the oaths he said.

Q Does he customarily use profane language? A Yes.

Q Did Mr. Tulloch wear an overcoat and hat that day when he arrived there? A Yes.

Q Where were his overcoat and hat? A Down in the hall.

40 Q Where? A On the rack.

*Bertha L. Armstrong, direct.*

Q The lower hall? A Yes.

Q Was Mr. Armstrong's tone of voice when he was swearing on the stairs, loud enough to wake you up? A Yes.

Q Did it? A Yes.

Q What did you do? A We jumped out of bed and I ran out in the hall. 10

Q How far down the hall did you run? A Oh, about from that door—about four feet, three feet; I wouldn't want to say.

Q How near did that bring you to the head of the stairs? A Right to the head of the stairs.

Q When you stood there at the head of the stairs, were you looking down the stairs or some other direction? A Down the stairs.

Q How near were you, as you stood in that position, to Mr. Tulloch's room? A About two 20 feet away.

Q Was that to the back of you? A To the back of me.

Q Or on one side? A No, it was at the back.

Q Do you know whether or not there was any light in Mr. Tulloch's room? A There was no light.

Q Had you looked in Mr. Tulloch's room, or gone past it without looking? A I went past it without looking. 30

Q How near the top of the stairs was Mr. Armstrong when you reached the position at the top of the stairs? A His foot was on the last step.

Q Tell the conversation between you and him. A He told me, he said I—I wanted to get—he said, "You have been in bed with Dave Tulloch," he said, "You get right back in the room, I am out here for business"; and he pushed me back with his arm into Mr. Tulloch's room. 40

*Bertha L. Armstrong, direct.*

Q He pushed you back into Mr. Tulloch's room? A Yes.

Q Where was Mr. Tulloch then? A In bed, I presume; I didn't see Mr. Tulloch.

Q Was the room light or dark? A Dark.

10 Q Was Mr. Tulloch awake or asleep? A When?

Q Then? A I don't know.

Q Where did Mr. Armstrong go? A He told me to put on the electric light.

Q Had you been asleep in your own room? A Yes, sir.

Q Were you at any time that night in bed with David Tulloch? A Absolutely not.

20 Q Did you then, or at any time, commit abultery with David Tulloch? A No, absolutely not.

Q Was the bed in your room smooth or roughened by reason of occupancy? A I had been in it.

Q Did you turn on the light? A Yes, sir.

Q What was said? A He said he was going to kill us both.

Q Who? A Mr. Armstrong.

30 Q What? A He said, "If you don't do what I tell you to, I am going to kill you both."

Q What position was he in? A Standing almost in front of me.

Q Did he hold anything in either or both of his hands, his left hand? A He had a knife in his left hand.

Q You saw a knife in his hand? A Yes, sir.

Q Was that the knife? (Showing witness a knife.) A No, it looked larger than that knife.

40 Q Did you see the blade of the knife? A Yes, sir.

*Bertha L. Armstrong, direct.*

Q How did he hold it? A He held it in his hand ready to strike.

The Court: Let the record show that the witness in illustrating, used her right hand.

10 Q Was the blade of the knife resting where the thumb is or where the little finger is? A Yes.

Q Where was his right hand? A He had it on his hip; he said he had a gun, "I got you both covered," he said.

Q Do you know whether he had a gun? A No, I couldn't say that.

Q Did you notice whether or not there was anything in the hip-pocket? A Yes.

20 Q What was there? A It looked like the top part of a gun; it was corrugated; it looked like it to me in my excitement; I seen his hand right there.

Q How long had you been in the room before you heard Mr. Tulloch? A Oh—

Q Or saw him? Did you see him when the light was on? A Yes.

Q Where was he? A In bed.

Q What did he do? A Nothing.

30 Q What happened next? A Mr. Armstrong said to me, "If you go over there—" we had a desk right in front of the window—he said, "If you go over there, you take that pen and that paper and give it to Dave." I did, I handed it to Mr. Tulloch. Mr. Tulloch said he couldn't write on it; then Mr. Armstrong all during this was threatening us with oaths; I can't repeat them the way he did; he was never still a moment; and when Mr. Tulloch said he couldn't use that paper, Mr. Armstrong put his hand in 40

*Bertha L. Armstrong, direct.*

his vest pocket and throws the book to Mr. Tulloch on the bed, and tells him to "put in there what I tell you, or I am going to kill you."

Q Did you hear Mr. Armstrong dictate anything to Mr. Tulloch? A Yes, sir.

10 The Court: Let the witness tell the rest of the story without so much interference.

*By the Court.*

Q What else happened? A After Mr. Tulloch had wrote this in the book what Mr. Armstrong told him, Mr. Armstrong dictated what was to be put in the book, and then he told me to throw the book over. Of course, I was awfully frightened I expected Mr. Armstrong to  
20 kill us. I went over and got the book. He said to me, "You put your signature to that." I was frightened almost to death, and I took and put my signature to it. I put "Mrs. Robert H. Armstrong," that is, my signature, in that book; and he said, "You write it the way you do in your patent papers; you sign the same as you do there." We had options drawn up and I had to sign those options, and he wanted me to sign my name in that book the same as I did the  
30 options, which I did. "Now," he said, "you give me that book." I handed him the book. "Now," he said to me, "will you give me half-interest in this device of yours and you can have this paper back;" he said "I wish you joy; I wish you both joy," and he backed out of the room.

Q What was it that your husband told Mr. Tulloch to write in the book? A He said to him to write, as near as I can remember in the excitement; I was so terribly frightened that I  
40 can't remember the exact words; but as near

*Bertha L. Armstrong, direct.*

as I can remember, he told him he was to write in there that he was found in bed with me.

*By Mr. Winans.*

Q Had you, since telephoning to your husband that morning, learned whether or not the expected sale of this device was going through? 10  
A What?

Q Had you, since the telephone talk with your husband that morning, learned whether or not the expected sale of this patent was going through? A No; I had heard that it had gone through; after I called Mr. Tulloch up. Mr. Tulloch told me he had heard from Mr. Scroff, and that it hadn't gone through.

Q Did you say anything of that matter to Mr. Armstrong on the occasion when he had this paper signed? A I don't know whether I did or not, Mr. Winans; I was so frightened, I don't know. 20

Q Did Mr. Armstrong, shortly before the 29th of June, 1923, when this suit was started, make any request upon you about giving up your interest in the house in Dunellen, in order that he might make a sale of it? A Do you mean, in just—

Q (Stenographer repeats the question.) A 30  
Oh, yes, but it was over the 'phone.

Q And did you assent or refuse to do so? A I refused; that was on July 3rd.

Q Between the two rooms, one of which has been designated as the room occupied by you, and the other the room which Mr. Tulloch habitually occupied, was there a door or only a doorway? A There was a doorway.

Q Had there previously been a door in that doorway? A Yes. 40

*Bertha L. Armstrong, cross.*

Q When was that door removed? A Why, about six years ago.

Q By whom was it removed? A By my father and—

Q Did Mr. Armstrong, did he not know of that removal? A Oh, he knew it.

10 Q What was the reason of the removal of that door? A Because it warped, the side warped; it was in the way of the dresser; we couldn't close it.

Q Was that door moved before or after you met Mr. Tulloch? A Before.

Q Is that door now in the warped condition you have described, so far as you know? A Yes, sir.

20 Q Has there been anything but curtains at that doorway at any time within the last six years? A No.

*Cross examination by Mr. Hayes.*

Q How long has that house been built; do you know? A I don't know.

Q How long have you lived in it? A Eleven years.

Q Eleven years? A Eleven or twelve years.

30 Q When did you put this door in that you speak of? A The door was there when we moved in.

Q How long had you noticed that it was warped before you took it off? A Oh, I should judge three or four months and more, before we took it down.

Q In the beginning, it didn't give you any trouble? A Not when we went there.

40 Q Five years later it warped? A I should say it was five years; it might only have been

*Bertha L. Armstrong, cross.*

a couple of years. The house settled, and when it settled there I presume it caused a good deal of trouble in other doors, not that one particular door; the house is a new house, practically new.

Q Did you ever take any other doors off? A Yes, sir.

Q Which one? A In the back bedroom. 10

Q This door was taken off six years ago? A Yes, sir, possibly more than that.

Q You took it off because of that developed say four or five months prior to that? A Yes.

Q You had been living in the house eleven or twelve years? A No, we had been living right up to the present time.

Q The door is now up the attic in the house? A Yes, with the other door; there are two doors 20 up there.

Q Was the door too big for the door jamb; is that right? A When you go to close it it would throw it out a little bit when you can't close the door on the side and on the bottom.

Q It was too big to fit in that door jamb? A I presume that's the way you put it.

Q The thing that was the matter with that door was, that it was too big for the door jamb? A Yes, sir. 30

D Did you ever see a plane that a carpenter uses to plane off doors that are too large? A Yes.

Q Did you ever have that planed? A No, not that door.

Q What separated your room from Mr. Tulloch's room? A A curtain.

Q And you thought that was perfectly all right for your sleeping room just to be separated by a curtain? A Never gave it a thought. 40

*Bertha L. Armstrong, cross.*

Q You never thought that door could be taken down and planed and put back in place?

A Never.

Q Your husband didn't get angry with you the week before January 13th, when you told him you would not give him an interest in this business? A He didn't ask me a week before.

Q He didn't? A No, he asked me at different intervals in the last three years; I didn't say the last week.

Q Didn't I understand you to say the week before this January 13th, he asked you to give him an interest and you said "No?" A No, I don't know that I did; if I did say so, then I did.

Q Well— A When he asked me that, you must remember that Mr. Armstrong asked me that repeatedly.

Q On this occasion? A Oh, only—

Q The week prior to the 13th of January, did he or did he not, ask you to give him an interest in the patent? A Let me see, let me recollect perfectly. He came out, he came out Saturday afternoon, and it was about five o'clock. The subject was brought up, and he asked me what I was going to do for him about it; I said, "I am not going to do anything."

Q Then he did ask you on the Saturday previous to the 13th of January, to give him an interest in the business? A Yes.

Q He did? A Yes, he did.

Q And you refused? A Yes, sir.

Q Well, a short time ago, I asked you if he didn't ask you for an interest, and you said "No"; then afterwards you said, that if you said so in your testimony it must be so; couldn't you recall a minute ago whether he had asked

*Bertha L. Armstrong, cross.*

you that just as well as you could twenty minutes ago? A I recall now.

Q I ask you again, did he get angry with you because of your refusal to give him the interest in the business? A No.

Q He did not? A No, he never did get angry suddenly.

Q Did he get angry? A No.

Q He never got angry with you? A Not that I know of.

Q And you never had any trouble with him concerning this? A No; he said he thought I ought to, because he did a great deal of work for me. Oh, but I wouldn't say that. He said, "Now, you have to; I will have to have an interest; what have I got for my years for working with this patent? If this goes over with Mr. Scroff?" It is two years ago. I said "I won't give you anything, because you didn't treat me right when we purchased the house." He was to give me a half interest, which he refused to do when we went down to sign for the deed.

Q Then you wish to change that; did he or did he not get angry? A He didn't get angry.

Q And the reason you didn't give him the interest was because he hadn't given you an interest in the house? A Yes, sir; he promised me; my father and I put our money in it, and I was to have half an interest in the property; and we went to Mr. Hanley and we asked Mr. Armstrong if the deed was to be made out in both our names, and Mr. Armstrong said, "No," it was to be made in his name, in the presence of Mr. Hanley and myself and the owner of the house.

*Bertha L. Armstrong, cross.*

Q What had you contributed towards this patent that you were entitled to half an interest in it? A I had done all the work.

Q Have you contributed any money? A I paid \$5; I paid that \$5.

10 Q It was five dollars of Mr. Armstrong's money, wasn't it? A No, my own money, earned by my checks.

Q Did you have any money before Armstrong married you? A When my father died—

Q Where is this automobile that you say he went to secure a license for on the Saturday prior to January 13, 1923? A I sold it.

Q You sold it? A I sold it, certainly.

Q This car was yours or his? A Mine.

20 Q Whose name was it registered in? A Mine.

Q Whose name was it registered in in January, 1923? A In my name.

Q What did he have to do with securing an automobile license? A He went for his driving license.

Q Not for the license for the car? A Yes.

30 Q Did he? A Yes, just a moment please. Mr. McCann told me if I would make a card out and sign it, and I did and I gave that to Mr. Armstrong; I got that about the first week in January.

Q Whom did you get it from? A Mr. McCann, I think that is the inspector's name, McCann, I am sure it is.

40 Q You are sure you got it from Mr. McCann personally? A Yes, I went and got this card I got from Mr. McCann, yes, and signed it; I wrote my name on it, and the number of the motor and the number of the license that had just expired.

*Bertha L. Armstrong, cross.*

Q Why didn't you get the license from Mr. McCann? A I didn't have the money; Mr. Armstrong said he would get it.

Q Prior to Tulloch occupying the room that you have indicated on this sketch marked "D. 2," what other room in that house did he use when he stayed over night at your place? A Mr. Tulloch? 10

Q Yes. A He never occupied any other room.

Q Prior to your occupying the room you have indicated on the sketch, what room did you occupy? A Room? What do you mean? I had lived in that house all these years.

20 Q Yes. A I occupied different rooms in all those twelve years, because we would rent first one room and then we give people that I rented the rooms to, the best room, and if the others were occupied, I would sleep in there myself.

Q Who else was living in that house on January 13, 1923, besides you and Tulloch? A Would you repeat that?

Q Who else was living in that house— A There wasn't anybody in the house at that time.

30 Q Had there been anybody in the house two or three weeks prior to that time? A I wouldn't say; they come and go too frequently for me to say that; no, there wasn't anyone in the first of the new year; I am positive about that, because Mr. Tulloch came out and Mr. Armstrong for a holiday.

Q Didn't you and Mr. Armstrong occupy the room in the rear of the house when you slept together? A We slept in different rooms.

40 Q Did you and Mr. Armstrong ever occupy that room? A At any time during the whole thirteen years?

*Bertha L. Armstrong, cross.*

Q Yes. A Yes, sir.

Q When was the last time the two of you slept in that room? A About three years ago, before this came out.

Q Before this happened? A Yes, sir.

10 Q And when you separated, was that the occasion that you and he discontinued sleeping together, when he left that room? A Yes. What do you mean when we separated?

Q When you didn't sleep together nights?

A Yes, when he was sick he went out in the other room himself, in the attic; then he went up and slept in the attic for a year and a half.

Q Where did you go? A I slept downstairs in a little hall bedroom.

20 Q Who slept in the room in the rear? A It was rented at that time.

Q Then he was sleeping upstairs for a year and a half while you were sleeping in the hall bedroom? A I won't say a year and a half, I don't want to say how long he slept up there. He said I made him nervous and I disturbed him, and he said we knew there was a little tubercular condition; we didn't know that until the last.

30 Q Would you say you would have been sleeping separate from Mr. Armstrong for a year before Dr. Campas examined him, Mrs. Armstrong? A Well, I wouldn't say— Do you mean away from him entirely?

Q I mean you having one room and he having another? A I wouldn't call that living separately, because sometimes when I had that room Mr. Armstrong would come into my room. We wasn't separated at that time.

Q You weren't? A No.

40 Q He had been sleeping upstairs for practically a year, hadn't he? A In the attic.

*Bertha L. Armstrong, cross.*

Q And you were sleeping in that little room before Dr. Campas examined him? A Yes, he was sick for a long, long time before Dr. Campas was called in. We had other doctors; we had many doctors, many, many doctors.

10 Q Was Mr. Armstrong to get anything out of this proposed sale to Scroff of this patent? A No, he wasn't to get anything.

Q How long had that been pending prior to January 13th—that sale? A About three months, about September, I think it was in September, in the fall when we went over to Mr. Scroff's office in New York, with the Radiator company.

20 Q It was never necessary for you and Mr. Tulloch to go to Washington in connection with this patent, was it? A Yes, sir, it was.

Q How often did you have to go? A I went down there twice.

Q When were those occasions? A What?

Q When did you go down? A I think it was in around Easter time. I went down there to try to get in touch with Dr. Saunders, of Plainfield, wanted to interest Dr. Saunders in the patent, and he has an office in Washington; went down to the Ingersol Rand.

30 Q That was the Easter of what year? A I have forgot; I won't say what year.

Q The trouble between you and your husband— A Oh, that was before this trouble when he came out.

Q Was it the preceding Easter? A I wouldn't want to say. That has gone from my mind.

40 Q You can tell us whether it was the Easter before that January or two Easters before that time? Can't you say? A No, because I worked

*Bertha L. Armstrong, cross.*

so unceasing. I wanted to interest one party and I couldn't carry it through and I was after another. I was working day and night for five years.

Q Was it more than three years prior to January, 1923? A I can't say that.

10 Q You think it was two years, however? A I think so.

Q And was that the first occasion of your visit to Washington or the second? A My first.

Q When was the second? A The second was—I think that was in—I think that was in the fall.

Q Of the same year? A Yes, sir.

20 Q That would be the fall of 1921? A I think it was in the fall; I'm pretty sure it was in the fall. I received a telegram from the Public Service Corporation there, Mr. Armstrong read the telegram.

Q You haven't that telegram? A No, he read it and went down to the train and seen Mr. Tulloch and I off. We were to put a deal through there.

Q That was the fall trip? A Yes, sir.

30 Q Did Tulloch go with you on the Easter trip? A That is when we went down to interest Dr. Saunders.

Q Did Tulloch go with you? A Yes, sir.

Q What hotel did you put up at? A Certainly I don't know; I cannot tell you; right near the station. I paid no attention to it. I was only there over night; I paid no attention to it. My aim was out at Dr. Saunders'.

40 Q And the hotel is right near the station in Washington? A I think it was. I don't think it was very far.

*Bertha L. Armstrong, cross.*

Q Did you register when you went there?

A I did.

Q You registered? A Yes.

Q Did you stay at the same hotel both times?

A No.

10 Q Where was the other hotel? A It wasn't a hotel; it was a private family. Mr. Fredericks had told me to go.

Q Who is he? A He is there; he is one of the freeholders, and he was the one who gave me the letter to Senator Frelinghuysen to go to Washington, and told me that if I would go to a woman that kept a house it wouldn't cost me so much.

Q What is her address? A I can't tell you now what the address is.

20 Q Do you know her name? A No, I forget it; I paid no attention to the name.

Q Did Mr. Tulloch stay at the same hotel? A No.

Q He didn't? A No.

30 Q Did he stay at the same hotel? A I don't know where he went. He bid me good night; he left me, I should judge, about half-past ten. We went down there and met in Mr. Crosby's office. Mr. Crosby was to be there at seven o'clock to meet Mr. Tulloch and I.

40 Q In the morning? A No, night. Mr. Tulloch and I went to have lunch at the Pennsylvania station, and we didn't take the train I telegraphed, so Mr. Crosby waited till seven o'clock and gave us up, and when we went to Mr. Crosby's office he wasn't there. I telephoned all around and finally located a partner of his, and he said we would have to stay over, Mr. Crosby would see us, that the people he had interested on my previous trip, Mr. Lockwood,

*Bertha L. Armstrong, cross.*

he said they were on and waited for us, but they said if we would wait over Sunday, we would hold a meeting in his office on Sunday, which we did.

Q You had the appointment fixed for seven o'clock Saturday night? A Yes, telegraphed to  
10 Washington.

Q You got there late? A And they had gone.

Q And then the man asked you to stay over until the next day? A No, I got Mr. Crosby's secretary.

Q He suggested you stay over until the next day? A He told me, not to stay over, he said Mr. Crosby had left word and if I came in the office—

20 Q Was this the first or the second trip? A The second trip.

Q You hadn't intended to stay over night? A No, I had intended to go down there and take the last train back, if I could.

Q You were not prepared to stay over night, then? A No, I was not.

Q How long does it take to ride from Washington to New York, do you know? A I paid no attention to that.

30 Q You paid no attention to it. Did you have any idea how long it was going to take you to transact your business? A No.

Q Did you think it was going to take more than two or three hours? A You can never tell, because one party might want to go into every detail and know who had it before and what you had done with it on the market, etc., and sometimes we would have three or four men going to put in their money in it and each one  
40 would want to know all about it.

*Bertha L. Armstrong, cross.*

Q Did you know all that at the time you went to Washington? A Yes; and other people—

Q You knew how uncertain it was to close out? A I didn't give it a thought that far; I didn't consider that at all; I didn't care how long it took if we could put it over.

Q But you didn't go down to stay over night? A No. 10

Q Did you think it was unusual to go on a train that couldn't get you in Washington until seven o'clock or later, and with this uncertainty, and you wouldn't have prepared to take night clothes with you? A No, why should I? I never gave my ownself a thought about it; I had on my suit, and I had on a waist. In the business field, people don't care so much about their appearance to amount to all of that; I didn't care  
20 to dress all up; I went to put that over.

Q Do you remember what time you got into Washington? A No, it was after seven o'clock, because we were worried about it on the train; we were hoping he would stay and wait for us.

Q Where did you telephone? A We telephoned right in Mr. Crosby's office; he had left his door unlocked for us so we could get in when we came.

Q These dogs you have over there are very fond of Mr. Armstrong? A Yes. 30

Q They like him? A Yes.

Q And made a great fuss over him all the time? A Yes, sir.

Q Where do you generally keep them, inside or outside? A They go all over.

Q Where do you keep them at night? A In the house, absolutely.

Q Do they have the run of the house? A Yes. 40

*Bertha L. Armstrong, cross.*

Q They make a great racket whenever he comes in? A Not a great racket; they always jump up and he pats them and tells them to be quiet, and that's all there is to it.

10 Q When you said before that they always barked and made a great noise— A I said, when Mr. Armstrong came in—I didn't say they barked.

Q You did not? A No.

Q You didn't say they barked? A I didn't say they barked, that I know of.

20 Q If you did say they barked, were you mistaken? A I don't know what you are getting at; you can say a bark, or you can say a little whine they would make; sometimes they would be very quiet, and they just went up to him and he patted them.

Q When they acted very quiet, that's not what you mean when you say they usually barked and made a great noise when they saw Mr. Armstrong? A As a rule, they did, and sometimes they didn't. Dogs sometimes are like people; sometimes they'll jump all over you and you can't make them keep down on the floor, and sometimes they will jump up and wag their tail.

30 Q Did you notice whether they would make a greater demonstration over Mr. Armstrong on occasions when he was away for some time than when they had seen him every day? A No, they do the same every day.

Q The fact that he only came home week-ends didn't have any effect upon the dogs? A What do you mean?

40 Q They didn't make any more racket than they would if he walked out in the yard and came back? A Oh, no; when he walked out in

*Bertha L. Armstrong, cross.*

the yard and came back they didn't pay any attention to him.

Q Do you know how old Mr. Tulloch is?

A No.

Q Is this Mr. Tulloch sitting here? A Yes, sir.

10 Q Was the door of Mr. Tulloch's room open or closed; the door leading from the hall? A It was open.

Q Was the door leading to your room opened or closed that morning? A Open, always open.

Q Were you alarmed when you heard Mr. Armstrong downstairs that morning cursing and swearing? A I wouldn't say he was downstairs when I heard him.

20 Q You did say he was downstairs? A In the hall; you can't tell when you hear a person when you wake up out of a sound sleep, to say whether a person is in the hall or on the stairway.

Q You testified you went to the railing— A That's when I seen him.

Q You saw him downstairs in the hall; is that correct? A No, I didn't say that.

Q Where did you see him? A He had his first foot on the step.

30 Q Where was he? A At the head of the stairs.

Q You didn't have to go to the rail? A What was that? There is no railing.

Q What did you indicate when you say you moved back there and you point back of you now? A I said the top of the stairs was here, and here is my room, and here was Mr. Armstrong with one foot resting on the top of the stairs; I didn't say I looked downstairs.

40 Q Did you say you could look out of your room downstairs? A No.

*Bertha L. Armstrong, cross.*

Q You can't do that? A Of course, you can't.

Q You can or you can't? A You can't.

Q Did you recognize his face when you first saw it that night? A Oh, yes, I recognized it.

10 Q Could you tell whether he was angry, or—  
A Very angry, frightfully angry; at least, I wouldn't say he was angry; I heard his cursing, and naturally, when you hear a man curse you judge he is angry.

Q Did you have any idea what he was angry at? A None whatever, none whatever.

Q He made a terrible racket in the house?  
A I wouldn't say a terrible racket; if you hear cursing and damning, would that be a terrible racket?

20 Q It woke up the dogs? A I don't know; I paid no attention, I was so astonished at his attitude—

Q You were mistaken when you say the dogs barked? A I wouldn't say whether they barked or not that night.

Q Is Mr. Tulloch a sound or light sleeper?  
A He—I don't know anything about that.

30 Q It didn't make sufficient noise to wake Mr. Tulloch? A I don't know; he must answer that himself.

Q When you flashed on the light, didn't you notice whether Mr. Tulloch was awake or asleep?

A In the hall?

Q In Mr. Tulloch's room? A Then say what you mean.

Q Oh, I didn't know you had more than one light. Did you put on more than one light that night? A Only one light.

40 Q Then, when I asked you when you flashed on the light, did you notice whether Mr. Tul-

*Bertha L. Armstrong, cross.*

loch was awake or asleep? You know what I mean? A I kept my eyes on Mr. Armstrong's knife; I never took my eyes off that knife, except when he told me to take the paper; he has drawn that knife across my throat more than once, and not over Mr. Tulloch, either; that's not the first time Mr. Armstrong has threatened 10 to kill me.

Q I thought you said he had never got angry with you or harsh with you? A Well.

Q How far away from Mr. Tulloch was Mr. Armstrong when Mr. Tulloch signed this book?  
A I can't give you the exact—he was about, I should judge, from, say for instance that is the bed (indicating)—to take the radiator for the bed—

The Court: Just sit still and tell us in feet, if you can. 20

A It's hard, I can't tell how many feet.

*By the Court.*

Q You can do it just as well sitting down as you can standing up. We know where the radiator is? A Well, possibly; but I should judge about two and a half feet or three feet; 30 I can't say.

*By Mr. Hayes.*

Q Indicate in the room here how far away he was? A I can't do that unless I got up and could do it to my own satisfaction.

Q Indicate what you mean by two and a half or three feet, please? A Well, from here to that post (indicating).

Q To the wall? A To the wall. 40

*Bertha L. Armstrong, cross.*

The Court: That is about four feet.

Q While Tulloch was signing this paper, he was sitting up in bed? A Yes.

Q Where were you standing then? A I wasn't standing; I was sitting down in the chair; Mr. Armstrong told me to sit down and stay there.

Q How far away from Tulloch were you? A About five feet, I should judge.

Q Indicate what you mean by five feet, please? A About from here to that radiator (putting finger on newel post).

Q Mr. Tulloch's wife and family live right across the street from you, don't they? A On the next block.

Q How often had Mr. Tulloch stayed at your house before? A I don't know; Mr. Armstrong would go down in the car and bring him up from the Plainfield station.

Q Mr. Armstrong would go down to Plainfield to get Mr. Tulloch and bring him up? A Yes.

Q What day of the week would he generally do that? A When he was sick at his home he did it many times during the week.

Q Drawing your attention to five or six months immediately preceding January 13, 1923, how often would he do it? A Oh, he done it too many times; so many times, many, many, many times.

Q Any more than seven times a week? It was not more than that, was it? A No, but sometimes when he was home sick, before he had taken to his bed—

Q Was he sick and taken to his bed within six months prior to January, 1923? A No, no, no; that was long ago.

*Bertha L. Armstrong, cross.*

Q Can you tell me how many times he did it for the six months immediately prior to January, 1923? A He didn't go down after him only at nights sometimes; it would be seven or eight o'clock, Mr. Tulloch would call up on Saturday night.

Q Would he do it any other night than Saturday night? A No, because he knew Mr. Armstrong wasn't there with the car to get him home.

Q Tulloch would call up and ask Mr. Armstrong to get him? A Yes, he would call up and ask Mr. Armstrong to get him.

Q Is it true, then, that Mr. Armstrong never came home excepting on Saturday nights? A What?

Q Is it true that Mr. Armstrong never came home excepting on Saturday nights? A Well— oh, yes, he came home many a time, sometimes through the week.

Q Mr. Tulloch, you say, only went Saturday nights, and you said it was because Mr. Armstrong wasn't there any other time; how did he know that? A Well, Mr. Tulloch didn't know he was home, and Mr. Tulloch only assumed he was home Saturday nights; but he did come out during the week; sometimes he would come to go to New Brunswick or Plainfield, or going to Atlantic City or Morristown, and Mr. Armstrong would come out Tuesday or Wednesday night, and the next day he would go out to see these people.

Q How often would he do that during the six months— A I don't know.

Q More than a dozen or fifteen times? A Whenever he chose; I paid no attention to that, none whatsoever; I had no reason, there was no occasion for me to pay any attention to it.

*Bertha L. Armstrong, cross.*

Q You can't give me any idea how many times during the six months prior to January, 1923, you can't tell us? A I never could know it, how many times he come in.

*By the Court.*

10 Q Whether you could know that or not, can you answer the question? A I can't answer the question and say how many times; I can't answer that.

*By Mr. Hayes.*

Q Can you tell us how many times Mr. Tulloch stayed at your house over night for the six months prior? A No, that was the same; I paid no attention to it.

20 Q Would you say that the reason you can't tell us is because he stayed so frequently that you have lost track of the number of times? A No, because I had my mind so engrossed on other things with this patent, trying to meet parties to make some money out of it, trying my very best, those things I paid no attention to it.

Q Is it because it happened so long ago that you can't remember it? A No, I told you why I can't remember it.

30 Q And that is your answer? A Yes.

Q Didn't it occur to you, that when you knew your signature was affixed to a statement that you and Tulloch were caught in bed, it was your duty to tell whether or not Tulloch had been with you at night? A No, I wasn't caught in bed with Mr. Tulloch, and I didn't try to do anything to affect it; I did sign that paper; what I did know was, if anything should come of it is, that I would go down to Judge Demezza the next morning, if I knew Mr. Armstrong would do anything

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*Bertha L. Armstrong, cross.*

to hurt me; when it came to a trial in court, I wasn't afraid of it; I never once was afraid of that paper, or I wouldn't be right here now if I was afraid of it.

Q You considered that signature of yours amounted to nothing? A Not under those circumstances, why should it? I done nothing; why should it amount to anything? 10

Q You didn't think enough of the fact that you had signed such a paper as that as to tax your memory as to how many times he stayed at your house at night? A No.

Q Would you say he didn't stay at your house five or six times a week, or four or five times a week? A No, not as much as that.

Q Two or three times? A I wouldn't say. At different times, when we had a deal on night after night, sometimes we would have these people meet there nights. 20

Q Can you give me the names of some of the people that met there nights? A Yes.

Q Who? A Mr. Brower, of the Trust Company.

Q He came there? A Yes, sir, many, many times.

Q What time would he leave your house? A I don't know; he always came with other people. 30

Q Well, what time generally would they leave? A Different times. Some nights he got there late, and sometimes he would stay there until 1 o'clock in the morning, nearly 1 o'clock, threshing the thing out.

Q Where would they go then? A I don't know.

Q Where does he live? A In Plainfield.

Q Would they drive up in an automobile? A Yes. 40

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*Bertha L. Armstrong, cross.*

Q What would Tulloch do? A Sometimes he would stay in the house; if they left real early, he would go home; and if they stayed late, he would stay in our house.

Q Go home where? A I don't know; I presume he went home.

10 Q Where do you mean "home?" A To his house down the street.

Q And he would only do that if they left early? A Yes, sir.

Q And you mean by "early" what? A Oh, I don't know, say 12 o'clock or 11 o'clock.

Q Twelve o'clock is early and 1 o'clock is late? A Yes, you commence to feel pretty sleepy around 1 o'clock.

20 Q And if they left early, Tulloch would go a thousand feet or less down the street? A He would go home.

Q If they left at 1 o'clock, he would go upstairs to bed? A If they stayed late.

Q Is that right? A Yes.

30 Q Was there anyone else staying at that house any time any night during this six months prior to January 13, 1923, besides you and Tulloch when he stayed overnight? A I wouldn't want to say; I don't know what time that room was let; sometimes they would only stay a couple of weeks, and sometimes a month; they were furnished rooms, and they would come and go.

Q If this case is not concluded today, can you give us now the name of the hotel in Washington that you stayed at? A No, for I paid no attention.

40 Q Just a minute. What is the name of the private family you stayed with in Washington? A I don't know.

*Bertha L. Armstrong, cross.*

Q You can't tell us? A No, it's gone clean out of my head.

Q Mr. Fredericks is the postmaster at Dunden— A He is now.

Q Can you inquire from him the name of the private family you stayed with in Washington?

A I don't know. 10

Q Will you do it? A I'll try.

Q Have you any records? A Of what?

Q Any records any place that will show the dates you were in Washington? A No.

Q Have you any records any place that will show the exact dates you were in Washington? A No, no.

Q You didn't keep a memorandum of the various things? A No.

20 Q Or of the conferences? A I kept some of the letters for a long, long time, and then let them go.

Q Do you know whether Mr. Tulloch has any memorandum? A I don't know.

Continued to Tuesday, December 30, 1924,  
at the State House, Trenton, New Jersey.

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*Bertha L. Armstrong, re-direct.*

Continuation of testimony, at the State House, Trenton, New Jersey, on Tuesday, the 30th day of December, 1924, at 11:15 A. M.

Before Hon. Malcolm G. Buchanan, Vice-Chancellor.

10      Appearances same as before.

BERTHA L. ARMSTRONG (resumes).

*Re-direct examination* by Mr. Winans.

Q Do you recollect the name of the hotel at Washington which you visited on the occasion you testified to? A Yes, sir.

Q What was that? A Hotel Lyons.

20      Q How many times did you and Mr. Tulloch go to Washington? A Three times.

Q And on each of those occasions, who saw you off? A Mr. Armstrong.

Q When was the last time, to your knowledge, that any locks were ever placed on the doors of your home in Dunellen? A Never while we lived in that house.

Q You lived there how long prior to January, 1924? A Eleven years, I believe.

30      Q Did you visit Mr. Armstrong when he was at the Bonnie Burns Sanitarium? A Yes, sir.

Q Did he tell you what treatment he was going under there? A Yes.

Q What? A Tubercular.

Q Was he removed from there to a hospital? A Yes, sir.

Q What? A Muhlenberg.

Q Was an operation performed there? A Yes.

40      Q Did he tell you the nature of that operation and its purpose? A Yes, the nature of the operation.

*Bertha L. Armstrong, re-cross.*

Q What was it? A For tuberculosis of the spine.

Q From there he was removed? A To Bonnie Burns.

Q Do you know the character of the Bonnie Burns' Institution? A Yes.

Q What? A Tubercular. 10

Q Exclusively? A Yes, sir, exclusively.

Q Did Mr. Armstrong sleep in the attic of your home? A Yes.

Q Did he ever express to you his reason for so doing? A Yes, sir.

Q What was the reason? A He said he wanted fresh air.

Q Did he or not sleep with the windows open? A All the windows open.

Q Did he tell you whether or not that was a part of any treatment? A No, that was before he was removed to Bonnie Burns. 20

Q Do you know whether he slept with his windows open by advice of any physicians? A No, no.

Q When you visited Washington, did you occupy—when you visited Washington and remained there over night, did you occupy a room by yourself in all cases? A Yes, sir.

Q Have you ever had any improper relations with David Tulloch? A No. 30

*Re-cross examination* by Mr. Hayes.

Q When did you remember the name of the hotel at which you stopped in Washington? A When I went home and sat down and tried to recollect everything; it was three or four years ago.

Q Did you make an attempt to get the register from that hotel showing how you 40

*Bertha L. Armstrong, re-cross.*

registered on each of the occasions you went there? A No.

Q You are positive you stayed at the same hotel on each of your three visits; where did you stay? A In a rooming house on the last two times.

10 Q Did you find out the name of the proprietor of that rooming house? A No, I told you I called up Mr. Fredericks Friday morning, and Mrs. Fredericks took the message to him and asked him, and he had forgotten the names the same as I; it's too long to remember.

Q This family was a friend of Mr. Fredericks? A That I don't know.

Q Is Mr. Fredericks in court? A Not that I know of.

20 Q On the occasion when Mr. Armstrong slept in the attic, that was a year before the time—two years before January, 1923, wasn't it? A Oh, no.

Q When was it? A Sometimes it was quite cold and he would come downstairs, and sometimes he would go back up in the attic; there was no bedrooms there; the large bedrooms Mr. Armstrong occupied, and if anybody come in he would give it up and go up in the attic; he would go up in the attic purposely, if he could, and if it wasn't too cold for him,—sometimes it would get so cold, even if it did his lungs so much good, he couldn't stand the cold; that's what he told me; I don't know anything else.

30 Q You thought at that time that he was tubercular? A He said he was tubercular long before the doctor pronounced him tubercular; he said he knew his condition was poor, and so on; and I got him fresh eggs and milk, and we

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*Bertha L. Armstrong, re-cross.*

done all we could; and then we called in a doctor, and that seemed to be the proper—

Q On whose suggestion was it that you called in a doctor? A His own.

Q And on whose suggestion was it, that he went up to the attic? A His own.

Q When did he start sleeping in the attic? A I couldn't tell you.

Q For how long a period? A I couldn't tell you; I kept no count; he went up there when it was warm enough and wasn't so cold he would sleep up there.

Q And when it was cold, he would sleep downstairs? A Sometimes, and sometimes when the room was rented he stayed up there and had a cap on to keep his head warm.

Q He slept downstairs in the cold weather all the time except until you had a tenant to use the room that he was occupying? A At times. He done as he choosed; sometimes he wanted to go up there, and some days he would feel real well, and then again he would feel ill again, and then he would feel sick again; and he had coughs; he would have days when he would feel better, and days he would go back and wouldn't feel so well.

Q Do you recall any occasions when Mr. Armstrong gave up his room downstairs and went up in the attic to sleep because of your having need for that room? A No, I can't recall that.

Q You can't? A No, I can't recall that, because I had too many people there; I had too many other things to think of. I done the best I could; I had a sick father, and Mr. Armstrong was sick, and I wasn't paying much attention to details.

Q Did he ever have to give up his room for Mr. Tulloch? A Never.

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*Bertha L. Armstrong, re-cross.*

Q When was the last time that Mr. Tulloch slept in that house? A I don't remember that.

Q About when?

10 Mr. Winans: I object to that, unless it is confined to the period before the alleged cause of action.

A I forget all about it.

The Court: The objection is overruled.

Q Well, you can tell us approximately when the last time was that Mr. Tulloch stayed at your house overnight, can't you? A No, I forget.

20 Q Was it within a week? A I wouldn't want to say; if I had time enough to think this over, I could answer the question later on, but I wouldn't want to say now. Mr. Tulloch was at the house too much.

Q Was he there within the past week over night? A The past week?

Q Yes. A No.

Q The past month? A The past month?

Q Yes. A No?

30 Q Sure? A No, he hasn't been there, I know that. When the papers—when he sent those papers to me, I told Mr. Tulloch then I was alive to what Mr. Armstrong was trying to do; then I was aware of my danger; I didn't dream of such a thing. I said, "Now, I think you had better not come here any more until this case is settled;" I didn't dream what Mr. Armstrong's purpose was.

40 Q Prior to that, did he pay you by the week or not? A Whenever he thought we needed money, Mr. Tulloch paid us.

*Bertha L. Armstrong, re-cross.*

Q Was that room kept open for him exclusively? A Yes, sir.

Q Following the night of January 13, 1923, do you mean to say that Mr. Tulloch continued to stay there from that time until the papers were served on you? A He didn't continue to stay there; I asked him to come out on visits, and when I got around working with people, when I found it sufficiently interesting to have a meeting at the house, I called Mr. Tulloch and asked him to come up. Now, that's the best I can do for you. 10

Q It was over six months between the time that you and Mr. Tulloch signed this statement and the time that Mr. Armstrong started the divorce suit, wasn't it? A I don't know.

Q You don't know? A I think it was about that time, I am not sure. 20

Q And during that six months' period Mr. Tulloch continued to call at your house just as frequently as he had prior to the time you signed the statement? A Well—

Q Did he? A Yes.

Q And Mr. Armstrong was never in your house after the time that that statement was signed, was he? A No, not that I know of.

Q Well, you would know? A Not that I know of, unless he came there at night when I was in bed; I nailed the doors all up and I tried to keep him out. 30

Q During that six months' period was there anyone living in the house nights while you and Mr. Tulloch slept in that house together?

Mr. Winans: That is objected to.

The Court: Objection overruled.

A I don't remember. 40

*David M. Tulloch, direct.*

Q You don't know? A No.

Q Do you mean to say you don't know whether you had any boarder or roomer in that house? A It's impossible—if I had time—I can't remember—if I had time to think—I can't remember just right now.

10 Q And you have not had time to think this over since you were in court last? A I thought about the hotel; if you had asked me to think this over, I would have done so also.

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DAVID M. TULLOCH, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

20 *Direct examination by Mr. Winans.*

Q Mr. Tulloch, you were at the residence of Mr. and Mrs. Armstrong in Dunellen on the night of January 12 and 13, 1923? A Yes, sir.

Q You had gone there for what purpose? A I had gone there and taken a letter that our deal that we were going to put over had been rejected.

30 Q Was that in relation to the automobile patents? A Yes, sir.

Q Whom did you expect to meet when you got there? A Mr. Armstrong and Mrs. Armstrong.

Q Do you recall what time you reached the premises? A About 6:00 or 6:30.

Q Was Mr. Armstrong there at that time? A No, sir.

40 Q What did you do after arriving there? A Why, I told Mrs. Armstrong that the deal hadn't gone through, and we waited until about eight o'clock for dinner for Mr. Armstrong.

*David M. Tulloch, direct.*

Q At eight o'clock, did you have dinner? A At eight o'clock we had dinner, yes.

Q After dinner, what? A We talked over the patents and different interests we had together.

Q Did Mr. Armstrong arrive? A No, not at that time, but he was expected to. 10

Q Did you remain there all night? A Yes, sir.

Q What time did you retire? A About twelve or half-past twelve.

Q When you retired where did you leave Mrs. Armstrong? A Downstairs.

Q She was there when you went up? A Yes.

Q What room did you go to when you retired? A To the room that Mr. Armstrong gave me in the front. 20

Q How long before that had Mr. Armstrong assigned that room to you? A Two or three years.

Q How often during that period of two or three years had you occupied that room? A Quite often.

Q How often? A I don't know.

Q On an average of once a month? A Yes.

Q More than that? A More than that.

Q Did you do so when Mr. Armstrong was there? A Yes. 30

Q Also when he was not there? A Yes.

Q On those various occasions when you visited the place, what was your purpose in going there? A My purpose?

Q Yes. A Mrs. Armstrong and I had business together; we owned the patent, and we were producing other patents.

Q Was Mr. Armstrong in any way concerned with either the promotion or demonstration of 40

*David M. Tulloch, direct.*

those automobile patents? A Mr. Armstrong drove the Ford car and he also drove my car and demonstrated how the patents would work.

Q Was he able to drive cars of both descriptions? A The Ford car he was able to drive, but my Jordan car, in his condition he found too  
10 much labor for him.

Q What were the particular matters of discussion when you visited the house during the two or three years prior to January, 1923; what did you talk over? A Over the automobile patents; over the lock and the demonstration of it, and the people we had interested in it.

Q Whom had you interested in it, or, at least, what persons did you have interested in it that you discussed during those conferences you held  
20 during those two or three years? A Mr. Durant was interested.

Q That is, the Star automobile man? A Yes.

Q Who else? A And we had Mr.—well, I'll put it in this way: He is the backer of the Durant Corporation and lives near Plainfield; I have just forgotten his name.

Q Does it begin with an "H"? A I don't know.

Q Was he a man interested in electric light bulbs? A Yes; he is on the Stock Exchange in  
30 Wall street, and also director of the General Motors Corporation, and his father previously was.

Q Mr. Hoffheimer? A Mr. Hoffheimer is correct.

Q Did you mention those conferences? A Yes, many times Mr. Hoffheimer called up and Mr. Armstrong has taken messages from him.

Q Had you the proposition before you at various  
40 times? A Yes, sir.

*David M. Tulloch, direct.*

Q Had you any proposition that necessitated a visit to Washington? A Yes.

Q With whom did you discuss these various propositions, including the Washington proposition? A Several people in Plainfield.

Q Who at the Armstrong house? A Who at  
10 the Armstrong house?

Q Yes. A Why, there was Mr. DeGraff and a man connected with the bank in Plainfield, and two or three others.

Q Did they visit the Armstrong house for the purpose of discussing these patents? A Yes.

Q Did they meet you there? A Yes, sir, both previous to and after that note was written; in fact, quite a number of times after the note.

Q Were those meetings held by appointment?  
20 A Held by appointment at Mrs. Armstrong's home.

Q Was Mrs. Armstrong present at those conferences? A Yes.

Q Was Mr. Armstrong present at all or some of them? A No.

Q Before the month of January, 1923, was Mr. Armstrong present when any of the persons with whom you were endeavoring to promote this invention were there and had interviews? A  
30 With Mr. Hoffheimer, at Mr. Hoffheimer's home.

Q Did Mr. Armstrong go to Mr. Hoffheimer's home? A Yes.

Q Did Mr. Armstrong meet any of the persons you were dealing with at his own home? A Yes, I believe he did, yes, sir; a Mr.—I forget his name also; he lives in Dunellen, but he was an automobile man in New Brunswick.

Q When you retired that night to bed about half-past twelve, did you go to sleep? A Yes,  
40 sir.

*David M. Tulloch, direct.*

Q Can you tell how long you remained asleep?

A No, I can't.

Q What circumstances attended your waking up? A I heard a noise and some loud talking, and it woke me up.

10 Q Where was the noise and talking taking place? A In the hall.

Q Did you hear anything said? A I couldn't say what was said at first, because I just woke up.

Q Who were the persons you heard talking in the hall? A Mr. and Mrs. Armstrong.

Q Anybody else present? A No.

Q Tell the whole occurrences from that point on. A Mr. Armstrong told Mrs. Armstrong to go into my room; I heard that, and pushed her in and told her to light the electric light.

20 Q Did she do so? A She did so, and he pushed her down in the chair and told her to stay there.

Q Before that, had there been any light in your room? A No, sir.

Q Had there been any light in the hall? A Yes.

Q Do you know what room Mrs. Armstrong customarily occupied? A The one next to mine, the small bedroom.

30 Q Do you know whether or not she had retired that night? A I couldn't say.

Q After Mr. Armstrong had the light lighted in your room, what next happened? A He told Mrs. Armstrong to sit on the chair and stay there; he had come for business.

Q Did you remain in bed? A Yes, sir.

Q You didn't get up? A No.

40 Q Where was that chair located with reference to your bed? A Between the window and my bed, probably in the center of the room.

*David M. Tulloch, direct.*

Q Where was Mr. Armstrong with reference to the bed and the chair? A About four feet from the chair and three feet from my bed.

Q Was he between the two, or at some other place? A The end of the room would be the chair; here is my bed and here is Mr. Armstrong (indicating). 10

Q So that you occupied the points of a triangle? A Yes.

Q Had Mrs. Armstrong been in your room at any time that night prior to the time she entered with Mr. Armstrong? A No, sir.

Q Not at all? A No.

Q What next happened after you three parties found yourselves in that position at the points of a triangle? A Mr. Armstrong stood there with a knife in his hand. 20

Q What sort of a knife? A A pretty good sized knife.

Q With the blade open? A The blade open.

Q Did you see the blade? A Yes.

Q What did he say or do? A He said he had come there for business, and he also told Mrs. Armstrong to do what he told her.

Q What else? A He told her that he wanted me to write, and she handed me a piece of paper.

Q Who did? A Mrs. Armstrong. 30

Q And did you write? A I couldn't write on that, and then he took his book out of his pocket, and his pen, and dictated to me what I wrote.

Q Do you recall what he dictated? A I do not.

Q Whatever he did dictate, did you sign it? A Yes, sir.

Q Did you sign it willingly or under compulsion? A Under compulsion. 40

*David M. Tulloch, direct.*

Q Did he not, Mr. Armstrong, before you did that writing, utter any threats? A Yes, sir.

Q What did he say? A If I didn't write it, he would kill both of us.

Q Did he indicate by what means or method? A He said he would shoot.

10 Q Did you observe the position of his hand?

A One over here (indicating).

Q Where is your right hand now? A In my right hip pocket.

Q Where was his left hand? A He had the knife in his hand.

Q Was he facing you at the time, or have his back towards you? A No, he was partly facing me.

20 Q Were you able to see the right-hand hip pocket at that time? A No, sir.

Q Did he say anything to you about having a man downstairs? A No.

Q What did you say when he indicated that he wanted you to write something from his dictation? A I didn't wish to do it.

Q Did you say so? A Yes, Mrs. Armstrong asked me.

Q What? A She told me to write.

30 Q What did she say? A She said, "For God's sake, write what he dictates, or he'll kill us."

Q Did you do so? A I did.

Q I show you Exhibit P. 1, and ask you if that is the paper you refer to? A That is right.

Q After you had written that memorandum in Mr. Armstrong's book at his dictation, what next happened; what did you do with the book?

A I handed it to Mrs. Armstrong.

40 Q What did Mrs. Armstrong do? A He asked her to sign it.

*David M. Tulloch, direct.*

Q In what way? A He told her to put her name to it.

Q Express in his own words, as near as you can recollect, just what he said to her in placing her name there. A If I remember right, she made one signature and he wouldn't accept it; he said he wanted the signatures the same as 10 were on the patent.

Q How was the name written on the patents? A "Bertha L. Armstrong."

Q And the other signature was what? A I didn't see it.

Q Can you tell whether Mr. Armstrong resorted to any threatening or abusive language at the time he requested his wife to sign that memorandum you have written? A He said something. 20

Q What?

The Court: I suppose you are aware, Mr. Winans, that the leading nature of your questions deprives them of the weight they might otherwise have?

A I have forgotten.

Q What position did Mr. Armstrong occupy at the time he made the request of his wife to sign? A He stood about four feet from her; he 30 hadn't moved from the time he came into the room.

Q How about his hands? A They were in the same position.

Q What was that position? A The knife was in his left hand, like that (indicating), and his hand on his right hip pocket, unless when he took the note—

Q What happened after that; did Mrs. Armstrong sign? A Yes, sir. 40

*David M. Tulloch, direct.*

Q What did she do with the book after she signed? A Gave it to Mr. Armstrong.

Q Then what followed? A Mr. Armstrong left the room and said when he was leaving, when he got an interest in the patents he would return the note.

10 Q Did you know prior to that, that Mr. Armstrong had made any request for an interest in the patents? A No, I didn't.

Q Do you recall the time when Mr. Armstrong was taken to Bonnie Burns Sanitarium? A Yes.

Q Who accompanied him there? A I, Mrs. Armstrong and his son.

Q Did you have anything to do with defraying the expenses—who defrayed the expenses? A I think Mr. Armstrong's son. You mean the carriage expenses, to take him in the carriage?

Q Yes. A I did, part.

Q Did you visit him there? A Yes.

Q Did you have talks with him? A Yes.

Q Did he tell you why he was there? A A case of tubercular.

Q What was? A His condition.

Q Did he tell you whether he was undergoing treatment? A He told me he was.

30 Q Did he say what sort of treatment? A Treatment for tubercular.

Q What kind of treatment? A Having eggs and milk.

Q Did he say anything about air conditions? A Yes.

Q What? A He slept in an open ward with the windows all open.

Q Did you at any time furnish Mr. Armstrong any money? A At Bonnie Burns I gave him some change for to tip the help, and some  
40 cigars and tobacco.

*David M. Tulloch, direct.*

Q Did he tell you anything in reference to a hospital at Plainfield? A He was taken to another hospital.

Q Did you see him? A Yes, I was at the other hospital.

Q Did he tell you why he was there? A He was going to have an operation performed. 10

Q Do you know whether or not that operation was performed? A It was.

Q Did he tell you he was going to have an operation performed? A Yes.

Q He told you so? A Yes.

Q What, if anything, did he say to you with reference to that operation? A They thought it would help him.

Q Did he tell you the purpose of the operation, or what it consisted of? A I believe he did; he said it was the removal of a piece of his shin and placing it in his back. 20

Q Did he tell you anything about the condition that that bone grafting operation was to improve or correct? A I believe he did; he said it was to cure the condition he was in—oh, I forget the words he probably used.

Q Did you discuss that with him? A Yes.

Q What condition did he expect to have removed? A The tubercular of his spine. 30

Q Do you know where Mr. Armstrong slept at home in Dunellen? A Yes, sir.

Q Where? A In the garret sometimes, and in the back room.

Q Did you ever hear him express any reason why he had sometimes slept in the garret? A He said he preferred the air.

Q Did you ever go up there when Mr. Armstrong was using that as a sleeping place? A No, I never did. 40

*David M. Tulloch, direct.*

Q Do you know whether the windows of the garret were open or shut? A I don't know.

Q Did he tell you anything about it? A No—yes, he told me he slept with the windows open.

10 Q What room did he occupy when he slept downstairs? A The room back of my room.

Q Did you ever notice anything about that room when it was occupied by Mr. Armstrong with reference to the windows? A Open.

Q Would that be the case in hot weather or cold weather? A Both.

Q You recall going to Washington City in reference to some patent promotion work? A Yes, sir.

Q How many times? A Three times.

20 Q Who accompanied you? A Mrs. Armstrong.

Q Each time? A Each time.

Q Were those trips discussed before you went on them? A Yes.

Q By whom? A Mr. Armstrong, Mrs. Armstrong and myself.

Q When you left on these trips, at what point did you take the railroad train? A The first time at Plainfield.

30 Q What station did you start from after that? A Pennsylvania Station, New York.

Q Who was present at those several railroad stations when you started for Washington? A Mr. Armstrong.

Q In all three cases? A All three cases.

Q Do you recall where Mrs. Armstrong stopped while she was in Washington? A The first time at the Hotel Lyons.

Q Where did you stop? A The Hotel Lyons.

40 Q What room did you occupy? A A room on the second floor.

*David M. Tulloch, direct.*

Q A room by yourself or in company with somebody else? A By myself.

Q Have you at any time committed any act of sexual intercourse with Mrs. Armstrong? A No.

10 Q On other occasions when you went to Washington City, where did you stop? A I stopped at the hotel and Mrs. Armstrong stopped near the corner of New Jersey avenue and C street.

Q What was that? A A private house.

Q What hotel did you stop at? A The Hotel Lyons.

Q Did Mrs. Armstrong, on either of those two occasions, visit the Hotel Lyons at all? A No.

20 Q Did you ever occupy the same room with Mrs. Armstrong? A No.

Q For sleeping purposes? A No.

Q Or, did you and she ever occupy any room together on any occasion? A No, the nearest we were was in Mr. Armstrong's home, where the rooms were together.

Q Do you know anything about the removal of the door? A That was removed before I had anything to do with it; there was a curtain up.

30 Q Are you familiar with the entrance doors leading from the outside into that house? A Yes.

Q As they existed during the two or three years prior to January, 1923, and during January, 1923? A Yes, sir.

Q What were those doors? A What were they?

Q Was there a front door? A A front door.

40 Q What devices were there for the closing or securing of that front door? A All locks.

*David M. Tulloch, direct.*

Q Were those doors capable of locking? A The locks didn't work; they had no keys.

Q Was that true as to the whole time you visited that house? A Yes.

Q What other doors but the front door? A The side door and kitchen door and cellar door.

10 Q Take the side door, what was its condition as to locks or fastenings? A Just the same as any of the others.

Q Was that ever locked, to your knowledge? A Yes, I think there was a key for the side door.

Q How about the kitchen door? A No key.

Q Was there any way of fastening it? A No.

Q How about the cellar door; were you familiar with that? A Yes.

20 Q Had that used to fasten? A Yes.

Q How? A It had a latch.

Q Were there dogs kept on those premises? A Yes.

Q On the nights you slept there, do you know whether or not there was always—do you know how the house was as to the doors being fastened or not? A They never were fastened.

Q Where would the dog or dogs be kept? A Downstairs.

30 Q Loose or tied? A Loose; they used to wander around the house; sometimes they would come upstairs; sometimes one of the dogs would come in with me.

Q During the period when you made these occasional visits to the Armstrong house in Dunellen, where were you living? A I was living in New York.

Q Are you a married man or single? A Married.

40 Q During the time referred to, covered by these various visits, were you living with your

*David M. Tulloch, direct.*

wife or separated? A I was living in New York, but I used to come and visit my wife quite frequently.

Q When you had these conferences respecting the demonstration or promotion of these automobile patents, how late would those conferences last? A Sometimes quite late. 10

Q How late? A Eleven o'clock and after that.

Q Did you ever carry on any talks or remain with Mr. Armstrong late at night? A Quite often.

Q What were the occasions of your doing so? A We were talking about different subjects, talking about his health and business and what I was doing, and what he was doing—general conversation. 20

Q Did he state anything to you about a damage suit that he brought for an accident, against Arnold, Constable and Company, or anything relating to his health that was demonstrated during the course of the trial of that case? A He did.

Q What did he say? A He talked about everything—the suit against the Constables.

Q What did he say with reference to anything about his health that transpired in the course of that trial? A He said he would bring suit about being hurt. 30

Q Did he tell you what the result of the suit was? A He lost the suit.

Q Did he tell you why? A (Hesitating.) The Arnold-Constables proved he was not hurt any other place; he was sick prior to the time the suit was brought.

Q Did he tell you that? A Yes.

Q Did he tell you what the nature of the sickness was proved on that trial? A Tubercular. 40

*David M. Tulloch, direct.*

Q Did he tell you so? A Well, in a general conversation; that is what I presumed it was the way he told me.

Q I asked you what Mr. Armstrong told you? A That he had lost the suit.

10 Q For what reason? A That the Arnold-Constable proved he had not been hurt there, and that he had been sick for some time previous to that.

Q Sick with what? A With tubercular.

Q Did you and Mr. Armstrong do any drinking together late at night? A Yes, quite a little.

Q And did that have any bearing on your remaining there all night? A Yes.

20 Q What bearing? A Because it made us late; if I didn't go to New York on the 10:50, I stayed there all night, and if I had been drinking very much I didn't go down to Mrs. Tulloch's home.

Q Did you ever state to Mr. Armstrong why you didn't go home to Mrs. Armstrong after you had been drinking? A To Mrs. Tulloch?

Q Did you ever state any reason to Mr. Armstrong why you didn't go home to Mrs. Tulloch after you had been drinking? A Yes.

30 Q What reason? A Because she objected to my drinking and staying out late when I went out there, and the hours I came in.

Q When you arrived there on these various occasions when you would be there at night, about what time would you arrive at the Armstrong home? A Sometimes in the afternoons and sometimes in the evening.

40 Q When you arrived there in the evening, about what time did you arrive there? A Six or seven o'clock.

*David M. Tulloch, cross.*

Q When you arrived in the afternoon, about what time was it? A It would be Saturday afternoon.

Q All right, Saturday afternoon. A Between two and four o'clock.

Q What time did Mr. Armstrong get home? A Generally ahead of me. 10

Q What time, when you remained there all night, what time did you leave in the morning?

A About half-past seven to eight o'clock.

Q What time did Mr. Armstrong leave home in the morning on those mornings you were there? A 6:30 or 6:20.

Q Why did he leave before you did? A He had to be in New York for his business much ahead of me.

*Cross examination by Mr. Hayes.* 20

Q Do you mean that you generally arrived there on Saturday afternoon or Saturday evening? A Yes, sir.

Q Didn't you arrive there any other day than Saturday? A Yes.

Q How frequently would you visit at the Armstrong home on days in the week other than Saturday? A Oh, sometimes not for two or three weeks, and then for three or four days continuously, two or three days. 30

Q And Mr. Armstrong was there on those other days of the week? A Yes, Mr. Armstrong when he came in town, when he had to visit the local towns he came home in the evenings and took the car and went out and visited those towns, and sometimes I went with him,—such as to Plainfield or to Newark, and sometimes I left in the morning and went to New York. 40

*David M. Tulloch, cross.*

Q And that was so on most all of the occasions when Mr. Armstrong came home? A Yes.

Q And it is not so that he came home as a rule, only on Saturday nights? A No, he came home more frequently than Saturday nights.

10 Q What car did he take? A The Ford car, Mrs. Armstrong's car.

Q It was Mrs. Armstrong's car; was it licensed in her name? A Yes, sir.

Q She owned it? A Yes.

Q How did you know that? A Why, I heard them talking about it.

Q You had a Jordan car? A Yes.

Q And Mr. Armstrong had a Ford? A Yes.

20 Q When was that? A 1921.

Q And after that? A I have the car today.

Q He drove it until? A Until he said his health wouldn't allow him to drive it longer.

Q Because of his weakened condition? A Yes, sir.

Q When was this weakened condition so bad that he stopped driving the Jordan car? A What date?

30 Q Yes, what year? A After he come from the hospital.

Q That was what year? A 1922; now, I think so, I haven't paid any attention to that.

Q Was it in the summer or fall of 1922 that his condition was so weakened that he couldn't drive this car? A It was in the summer, I think, because he came from the hospital; I don't remember what day or year he came from the hospital.

40 Q But we know you signed the note—the night you signed the note was in January, 1923? A Yes.

*David M. Tulloch, cross.*

Q Was it the preceding year? A No, I think it was the year preceding that, 1921.

Q He hadn't been in the hospital for hardly a year prior to 1923, had he? A Not according to what I say now.

Q Well, that is true, isn't it? A Yes. That is one thing,—I can't remember dates. 10

Q His condition for 1922 was, that he was in pretty good health? A Yes, he was attending to his business.

Q And the time that he was in the Bonnie Burns Sanitarium was in 1921, is that right? A I think so.

Q How frequently would you bring him cigars and tobacco and money while he was up there? A When I visited him. 20

Q Would you bring these cigars in a box or one or two at a time? A I think I brought him a box one time, the same as you would to a friend at the hospital.

Q Any person having tuberculosis, you would bring a box of cigars? A Well, I don't know what he did with all of them.

Q Did you understand he had lung trouble while he was there? A I understood from the doctor that he had. 30

Q You did? A Yes. I don't know whether he smoked them or not.

Q That was in 1921, then, that Mr. Armstrong slept in the garret and sometimes in the back room? A Yes, sir.

Q That was a whole year? A If that date is correct, that's the time.

Q Where was your room? A In the front.

Q How long a time did you occupy the front room? A Two or three years. 40

*David M. Tulloch, cross.*

Q And prior to that, which room did you occupy? A I believe I slept in the back room once or twice.

Q Did you pay either Mr. or Mrs. Armstrong for the use of that front room? A No, not money.

10 Q Was it reserved for you all the time? A Mr. Armstrong took me up there one night and said, "That room is for you any time you are here, any time."

Q Mr. Armstrong said that? A Yes.

Q Prior to his taking you up there, who had slept in that room? A I don't know.

Q You slept there on some occasions prior to that? A Yes; I don't know who slept there, probably Mr. Armstrong, probably Mrs. Armstrong, probably visitors.

20 Q Prior to that time, your room was in the rear? A I had only been there twice, if I remember right.

Q On the night of January 12th—by the way, what day of the week was that? A Friday night, I think.

Q You arrived at the Armstrong home at 6:30 o'clock? A About that.

30 Q You had a special appointment that night with these people? A Yes.

Q And that was because of the rejection of an offer you had made for the sale of the patent? A They didn't know it.

Q You knew it? A Yes.

Q Who had rejected it? A A firm in Detroit.

40 Q In what manner was the news communicated to you? A Mr.—I forget his name, he represented us,—had received word from Detroit that three of the firm had rejected our offer,

*David M. Tulloch, cross.*

and three of the firm, the president and two other directors, or three others, had wanted to take it on; but they said they had all the business and all the money at that time that was necessary, and he wrote me to the effect that the deal was off.

10 Q Mr. who wrote you? A Mr. Smith. Now, I have forgot his name.

Q What business is he in? A He is with another company.

Q Is he alive yet? A Yes, he is with, you know, the American Radiator Company,—well, it's not the American Radiator Company, a radiator company, I think it's a Southern company; they are at the corner of 42nd and Broadway.

Q You know this man pretty well? A Yes.

20 Q You have the letter from him? A I did have, yes.

Q But you haven't got it now? A No.

Q Where is it? A That was left in Mrs. Armstrong's; that was on the table in my room that night.

Q Have you seen this man since the happening of this affair? A No, sir.

Q That was the only thing that brought you to the Armstrong house that night? A No.

30 Q What else was there? A Mrs. Armstrong called me up at the office and said, "We are going to have a celebration and Mr. Armstrong is coming out."

40 Q Which of the stories was it? You say you went out there under an appointment with Armstrong and his wife, to notify them of the rejection of your offer; and you also say she called you up to go and join in the celebration; which of the two was it? A I didn't say anything of the kind. I said I had a note rejecting the

*David M. Tulloch, cross.*

offer, but I also said Mrs. Armstrong called me up at my office and told me to come out that evening, that they were going to have a celebration. We were expecting an answer, but there was no answer previous, that the deal had gone through; but the deal hadn't gone through, it didn't go through, and I didn't tell Mrs. Armstrong I had the letter.

Q Then you didn't say a few minutes ago, that you went to see them about the rejection of the offer? A No, because they didn't know it had been rejected.

Q You haven't attempted to get the writer of that letter here as a witness, or to get a copy from him? A No; Mrs. Armstrong spoke to me about that, and I said he had nothing to do with it.

Q Who was to be at this celebration besides Mr. and Mrs. Armstrong and yourself? A That's all.

Q And how were you to celebrate; what were you to do? A Have dinner and talk the matter over.

Q What matter? A About putting the patents over.

Q Had you put them over? A No, I got a letter that the Detroit people had rejected the offer.

Q Let me see if I understand correctly. This celebration was arranged for the purpose of giving vent to your feelings at having successfully put over this sale of the patent? A That's the idea.

Q That's it? A Correct.

Q And how long prior to this Friday night was it that Mrs. Armstrong had completed the arrangements? A That morning.

*David M. Tulloch, cross.*

Q And when she communicated with you, did she do it by letter or telephone? A Telephone.

Q Where did she call you? A At my office.

Q Did you have an office in New York? A Yes.

Q Did she ever visit at your office? A Yes, frequently.

Q How long prior to the 12th of January was it, that you had received the letter from the man whose name you don't know in New York? A The man whose name I have forgotten; three or four days.

Q You hadn't seen her in the meantime? A No.

Q She called you up and said what? A She told me to come out.

Q What for? A That Bob was going to get a license and celebrate the putting over of our patents because she had not received any word, therefore, she thought it was all right.

Q From this Detroit firm? A Yes.

Q You had in your pocket a letter of rejection? A Yes.

Q But you didn't tell her about it? A I did not.

Q It was the only offer you had pending at that time? A Oh, we had several offers.

Q At that time? A At that time, yes.

Q Had you perfected your patent at that time? A What do you mean by "perfected"?

Q Well, had you obtained your letters patent on this arrangement? A Yes.

Q Had you any other patents pending, or applications for patents pending at that time? A At that time?

Q Yes. A No.

Q During the year 1922, what was Mr. Armstrong's practice, so far as coming from New

*David M. Tulloch, cross.*

York to Dunellen was concerned; what was his practice, so far as coming back from New York to Dunellen to stay at night? A His practice?

Q Yes. A You mean, why did he come, or how often?

10 Q How often did he come? A Why, I don't know.

Q How often did you stay at the Armstrong house during the year 1922? A Sometimes two times a week, sometimes three, sometimes not again for two or three weeks; it depended upon what business we had, that is, Mrs. Armstrong and I; and people would visit the house regarding the promotion of the patents.

20 Q When these people would come and visit at the house and you would stay there until after the 10:30 train had gone, what would you do then? A Stay all night.

Q Would you drink with these people that came to see you about the patent? A Very seldom, very seldom.

Q Was it a custom for you and Mrs. Armstrong to drink when Mr. Armstrong wasn't there? A No; I never saw Mrs. Armstrong, even when Mr. Armstrong was there, take over one or two drinks in my life.

30 Q Then it couldn't have been on those occasions that it was because of your condition that you didn't stay with your wife, could it? A Drinking conditions?

Q On the nights that people would come to the Armstrong home to take up with you the matter of the purchase of these patents? A Yes.

Q And would stay until after 10:30, and you would stay there all night? A Yes.

40 Q It wasn't due to the fact that you were in an intoxicated condition that you didn't go and

*David M. Tulloch, cross.*

sleep with your own wife, was it? A No; I haven't slept with my wife in twenty years.

Q You visited her quite frequently? A Yes, sir.

Q What do you mean by quite frequently? A Oh, different times during the year.

Q Well, every Easter and Christmas? A 10 Oftener than that.

Q Well, how often, Mr. Tulloch? A Oh, sometimes—not lately; I haven't been there since this affair arose, but once a month or once in two months, sometimes on Sundays; I have left my house about six or seven o'clock on Sunday night and said I was going down to Mr. Armstrong's, and if I didn't catch the 10:30 I would stay there all night. Mrs. Tulloch knows that.

Q All the people in Dunellen know that, don't 20 they? A Why, I presume they do.

Q Did you ever stay at your wife's house all night since you started to visit at Mrs. Armstrong's? A Yes.

Q How many times? A Quite a few.

Q How many times? A Oh, I couldn't say.

Q You don't know? A I couldn't say.

Q Your wife lives a couple of hundred feet from the Armstrong house, doesn't she? A 30 About 600 feet. I used to leave my house in the morning sometimes twenty minutes past seven, when Mr. Armstrong was in the hospital, when I would stay there all night and go up and see Mrs. Armstrong at half-past seven, and then I would catch my train at 8:03, and talk over matters and see if there was anything new, and then about Mr. Armstrong's condition. Anybody could see me going in or coming out. I saw all those gentlemen who were witnesses here. They saw me and I saw them frequently, very frequently. 40

*David M. Tulloch, cross.*

Q And you would leave for your train? A Yes.

Q Did you ever leave the Armstrong house on as much as one occasion and sleep with your own wife? A I haven't slept with my own wife in twenty years.

10 Q Not with her? A No.

Q You have in her house? A Yes.

Q How many times? A I couldn't say.

Q When? A Different times, previous to my having the room, when Mr. Armstrong give me the room, previous to that; I went home previous to my having the room.

Q That was three years ago, wasn't it? A I guess so.

Q Three or four years ago? A Yes.

20 Q Where were you living the night your wife's house got afire? A Where was I living?

Q Where were you sleeping? A In Mrs. Armstrong's house.

Q Did you go down the street and look at the house burn that night? A I didn't know there had been a fire there, no. I knew that when I got back from New York.

Q Didn't you go past the house on the way to the station the next morning? A No, I didn't.

30 Q You didn't go past the house the next day? A No, I didn't go past the house to the station that day at all.

Q What did you and Mrs. Armstrong do on January 12th between 6:30 o'clock and 12:30?

A What did we do?

Q Yes. A Talk over different matters.

Q What matters? A Matters of the lock.

Q The patent? A Yes.

Q Your patent was perfected? A Yes.

40 Q And you had had an offer from the Detroit people to sell the patent? A Yes, sir.

*David M. Tulloch, cross.*

Q And the offer had been rejected? A Yes.

Q What else did you have to talk about? A General conversations. I believe we did—I believe we did have another offer. I believe at the same time there was a doctor in New Brunswick who was also promoting for us, and he had some other people in Jersey. I guess I made a mistake. 10

Q You had somebody else? A Yes.

Q What was his name? A Dr. Reynolds.

Q In New Brunswick? A I think Reynolds; I think that's his name.

Q A medical doctor? A Yes, a medical doctor.

Q How long would it take for you and Mrs. Armstrong to discuss—

Mr. Winans: Objected to. 20

Mr. Hayes: Question withdrawn.

Q What was the date of your first visit to the Hotel Lyons in Washington? A Oh, I forget.

Q You can't remember that? A No.

Q Approximately? A No.

Q You went down there in answer to a letter in which an appointment was made for you to negotiate the sale of this patent, didn't you? A No, sir— 30

Q No? A No, sir, not on the first visit; none whatever.

Q Why did you go down there? A Why?

Q That's what I asked you. A I was going down there on my own business.

Q The first time? A Yes.

Q What else? A Yes, and I called up Mr. and Mrs. Armstrong, who were both home at the time, and said I would have an hour or so before I got my train, and they came down to the station 40

*David M. Tulloch, cross.*

and met me there with a car, and we went back and had lunch, and Mr. Armstrong and Mrs. Armstrong talked over the Washington trip I was going on. And Mrs. Armstrong had a Dr. Saunders who was interested and both of them asked me if I would take her to Washington so she could take up that portion of the work with Dr. Saunders there.

10 Q She asked that after you got to the station?  
A Yes.

Q After you got there? A While we were at the station before we had lunch.

Q And she went right on with you then? A No.

20 Q She didn't? A No, we went to Mr. Armstrong's house and had lunch and she got her bag and Mr. Armstrong drove us back to the station.

Q Can you give me the date? A No.

Q About? A No.

Q The month? A No, I don't believe I can.

Q Can you give me the year? A 1922, I think; I'm not sure; 1921 possibly. I don't remember.

Q You can't tell when it was? A No.

30 Q What did you go down for? A On private business of my own.

Q Do you have any correspondence in your office that will show when you made that visit to Washington? A I believe so, yes, sir.

Q You have that? A I believe I have.

Q Yet you didn't look that up? A No.

Q Between these two hearings? A No.

Q You sat here in court and listened to Mrs. Armstrong testify? A Yes.

40 Q When was the date of the second visit? A I don't remember.

*David M. Tulloch, cross.*

Q You don't remember that either? A I don't remember; it was later.

Q Yes, naturally. A Yes, sir.

Q And that was on the joint business of yourself and Mrs. Armstrong? A Yes, sir that was through a letter of introduction to the Secretary of War that Mrs. Armstrong had received from Mr. Weeks.

Q That was through a letter to her? A Yes.

Q Who has the correspondence showing the time that appointment was made? A I don't know; I didn't see that.

Q Did you look up your correspondence? A I didn't see anything about Mr. Weeks' correspondence. I haven't looked into the matter at all.

Q You have not attempted to find out on what business you went to Washington? A No, I haven't.

Q Did it occur to you that it was indiscreet for you, a man not living with your wife, to stay at this woman's home? A My wife knew—

Q When this man wasn't there? A My wife knew I was there.

Q Answer my question? A No.

Q Didn't it appear to you to be very indiscreet to do a thing like that? A Not at that time.

Q What time? A At that time I stayed there. It appeared to me after the note that it was indiscreet.

Q It appeared to you right after the night the note was signed that it was indiscreet? A Yes.

Q But you, notwithstanding, continued to stay there, didn't you? A Yes.

*David M. Tulloch, cross.*

Q Why? A I had business there, and Mrs. Armstrong's counsel in Plainfield told me to continue the same as we had been, the same as we always done, and I did so.

Q Somebody told you to? A Yes.

Q And you continued that up until when? A  
10 Until Mrs. Armstrong was sued.

Q And you have not been to her house since?  
A No.

Q Not at all? A No.

Q Has she been to your office? A Yes.

Q How recently was she at your office? A  
About three months ago.

Q Not since? A No.

Q You have not visited each other since  
then? A No.

Q You haven't met Mrs. Armstrong once? A  
20 Yes, sir, in a lawyer's office.

Q You haven't met her outside of that occasion? A No.

Q Where were you sitting when you wrote that note marked Exhibit P. 1? A In bed.

Q Was that a single or double bed? A  
Double.

Q And it was because this man had a knife and told you he was going to kill you if you didn't sign the note, that you signed it? A At  
30 the request of Mrs. Armstrong.

Q Just at her request? A Yes.

Q Well, didn't he put you in fear? A Yes, he did.

*By the Court.*

Q Do I understand you to say the real reason you signed it was because it was at the request of Mrs. Armstrong that night? A When  
40 he said he would kill both of us if we refused and

*David M. Tulloch, re-direct.*

Mrs. Armstrong asked me to sign it. I signed it then.

Q If I understand you correctly, it was because Mrs. Armstrong asked you to sign it, and that was the real reason you did sign it? A Yes, she said he would kill both of us. Mrs. Armstrong told me to sign it, to sign what he dictated. 10

Q You would not have signed it if she had not begged you in that case to sign it? A I don't think so.

*Re-direct examination by Mr. Winans.*

Q Dr. Saunders has been spoken of? A Yes.

Q Where did Dr. Saunders live or have his place of business? A He had an office in Washington but he lived in Plainfield. Dr. Saunders is head of the Ingersoll-Rand. 20

Q Did you hear about a man by the name of Mr. Scroff? A He is the man who wrote the letter—the Richmond Radiator letter.

Q How do you spell that? A S-c-r-e-t-u-h.

Q When you went to Dunellen on the occasions of your several visits there, how did you come up to the house from the railroad station? A Quite frequently on Saturday afternoons Mr. Armstrong would drive the car down and Mrs. Armstrong and he would meet me there. 30

Q Would that be by previous appointment? A Yes, I called them up and said I was coming out. Sometimes they knew it previously.

Q They would know it previously? A Sometimes.

Q You didn't take out these patents yourself? A No.

Q You had assignments of them? A Yes. 40

*David M. Tulloch, re-cross.*

The Court: How is this re-direct?

Q At the time of this occurrence on January 12th or 13th, 1923, you then held the patents, did you? A Yes, sir, we owned the patents.

10 Q Have you at any time worked on any improvements to those patents? A I am working now on them.

Q When did you start working on improvements to those patents? A About 1919.

Q In January, 1923, what was the condition of the improvements to those patents that you then had in contemplation? A Our idea was to have out patents so that it would lock up the car and lock up the self-starter.

20 Q And you talked that over, of course? A Yes, sir.

Q During that time? A Yes.

Q Were those improvements matters of discussion between you and Mrs. Armstrong— A Yes.

Q At that time? A Yes, sir.

*Re-cross examination by Mr. Hayes.*

30 Q Whose names were the patents taken out in? A You must excuse me; I am more forgetful of names, but the first patent was taken out in the name of Mrs. Armstrong's son-in-law's brother's name—George. I forget his name—George Lawrence.

Q Who owned the patents on the 12th of January, 1923, Mr. Tulloch? A Mrs. Armstrong and myself.

40 Q They were registered in your names? A Yes.

*Harvey D. Gouse, direct.*

Q Had Mr. Armstrong ever made a claim to you for an interest in the patents up to that time?

A Not from me.

Q Has he made a claim with you since that time? A Not from me.

Q Have you talked with Mr. Armstrong from that date to the present time? A No. 10

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HARVEY D. GOUSE, a witness produced on behalf of the defendant, being duly sworn, testifies as follows:

*Direct examination by Mr. Winans.*

Q Where do you live? A Westfield, N. J. 20

Q Did you at my request within the last few days examine the Armstrong residence at 412 Mountainview Terrace, Mr. Gouse? A I did.

Q Dunellen? A Yes.

Q With reference to the doors and locks? A Yes, sir.

Q Did you see the door— Did you examine a bedroom door upstairs? A I did.

Q Between which two rooms? A The two rooms in the front of the house. 30

Q Was that door in place on its hinges? A It was.

Q What did you find with reference to the condition of that door? A The door frame was distorted due to the settling of the building; the door was warped and was badly hung on the hinges, so that it jammed against the casing at the rear, the catch on the lock was about three-quarters of an inch out of line with the plate that receives them. 40

*Harvey D. Gouse, direct.*

Q What practical effect did that have upon the operation and fastening of the door? A The door being too close to the case in the rear would spring it back six inches, and the catch of the lock wouldn't fit the plate. It wouldn't stay closed.

10 Q It wouldn't stay closed? A No.

Q As you saw that door can you say whether or not it was possible to keep the door shut without using some other means? A It was not.

Q It wasn't? A No.

Q Did you examine the outer door leading from the house out to the front porch? A I did.

Q Did you find any lock or locks on that door? A I found a Sargeant lock on that door, a mortise lock.

20 Q Any other lock on that door? A No.

Q Was there any mark or indication on that door that any other lock had ever been on it? A There was not.

Q Describe the condition of the Sargeant mortise lock on the door? A It is a similar key to a Yale key. The keyhole was corroded and almost closed. The face of the lock, which is set in flush with the edge of the door, was brass, and that was heavily corroded, as were the screw plates to hold this lock in position. One of the screws was loose so you could pick it out with your fingers. I looked in there with a search light and the wood was discolored and decayed.

30 Q Have you had any experience in remodeling old buildings, Mr. Gouse? A I have had.

Q Are you able to tell as a result of that experience you have had, approximately the time locks have been in use on old buildings?

40

*Harvey D. Gouse, direct.*

Mr. Hayes: Objected to. The conditions of the atmosphere and other conditions would have an effect on the locks. I object.

The Court: I will let him answer the question.

A With some degree of accuracy, yes. 10

Q Can you as a result or by the use of that experience that you have had or acquired, tell whether or not that Sargeant mortise lock was placed on that door any time within the last two years? A No, it was not.

Q It was not? A No.

Q Did you examine any other door? A Yes.

Q Did you examine the side door of that house? A I did.

Q What was the condition of that door? A The side door leading to the— 20

Q Let me ask you, did you make any notes of the inspection you made? A I did.

Q Can you testify without reference to those notes, Mr. Gouse? A I think so; if I can't I'll inform you.

Q Continue? A The side door from, I believe the dining-room going to the side or front porch, has a mortise lock; that lock was firmly set in the door and there was a key to it. There was no indications that the screws or the woodwork adjacent to the lock had been disturbed at all there. 30

Q Can you tell whether or not that lock was placed on that side door at any time within the last two years? A It has not.

Q It has not? A It has not; it has all the appearance of having been placed there when the door was placed. 40

40

*Harvey D. Gouse, direct.*

Q Returning to the lock on the front door. You testified something with relation to the keyhole? A Yes.

Q Was there enough of that keyhole which remained open for a key to be inserted? A No, there was not.

10 Q You say there was not? A No, it was almost corroded close.

Q Was there on the side door any mark indicating that any other lock had ever been attached to that door or doorway, other than the one you have spoken about? A No.

Q How do you know? A The paint on the edge of that door had been spread partly on the lock there, and that was still in evidence. You could see it.

20 Q Did you examine any other door? A I did.

Q What? A The door going to the rear of the house from the kitchen—

Q The kitchen door? A Yes.

30 Q Go on. A I found a mortise lock on there, the front plate of which was badly rusted. There was no key obtainable, and about four and a half feet above the floor there was a bolt on the inside of that which was heavily coated with rust. The part that goes to the door casing into which the bolt goes when in a locked position, was rusted, and had been replaced several times. There was a number of screw holes there where it had been pulled off and replaced. The wood at these screw holes was very much deteriorated and could be chipped off with the finger nail.

Q Was there any other fastening on that door? A No.

40 Q None at all? A No.

*Harvey D. Gouse, direct.*

Q Is there— You said, I think, the front door sprung back six inches? A The one between the two rooms.

Q In the front of the house? A Yes, it sprung back about six inches, where it would remain.

10 Q Is there a door leading into the cellar passage? A There is.

Q What about that? A I will have to refer to my notes which I made at the time, if I may.

Q Go on. A (Referring to paper.) A mortise lock on the door, and an ordinary wire hook placed on the kitchen side to hold that door fast.

20 Q What, if any, indications were there with reference to age or newness as to that lock and that bolt? A The lock bore evidence of age, and the same as the other lock, it had some of the paint over on the plate of the lock on the uncovered portions—

Q The paint you refer to, was that new paint or old paint? A Old paint.

Q Can you gauge that in years? A I should judge that paint had been on there for a dozen years.

Q About the hook? A The hook was rusted and showed some age.

30 Q What do you mean by some age? A I should judge that hook had been in service there for three or four years or longer.

Q You simply went to the house for the purpose of making these inspections, in order to testify today, did you not? A Yes.

Q That's all? A There's another door.

Q Tell us about that? A The cellar outside door.

40 Q Tell us about it? A The cellar outside door has a mortise lock, and the entire front

*Harvey D. Gouse, cross.*

plate of that had been painted over; some of it had been worn off by the elements. The bare portions of the metal were rusty; the lock was loose in the door, being held by one screw not firmly imbedded, and there was a hook on that door which was rusty.

10 Q A hook on that door, too? A Yes.

Q Were there on any of the doors that you have testified with relation to, any indications of any other fastenings ever having been on there other than the fastenings you have testified to? A There was not.

*Cross examination by Mr. Hayes.*

20 Q You are the Gouse that made an affidavit in this cause some time ago? A If I gave an affidavit, yes, I'm the same one.

Q You are? A If I made it.

Q Don't you recall making one? A I don't just at this moment; yes I do, too.

Q You are a clerk in the office of Mr. Winans'? A I was at that time.

Q In his Westfield office or New York office?

A Both the Jersey and the New York office.

30 Q Did he have an office in Westfield at that time? A I don't recall whether at that time the office was at Westfield or Plainfield.

Q You don't know? A I don't remember.

Q Can you tell us whether it would be possible to lock the front door from the inside or not? A If I recall correctly there was a method of turning the bolt of that lock with a little knob.

Q When did you make your examination? A December 28th.

Q The day before yesterday? A Yes.

40 Q How many doors were there leading outside on that house, Mr. Gouse? A Four.

*Harvey D. Gouse, cross.*

Q And that was the front door? A Yes.

Q The cellar door? A Yes, sir.

Q The back door? A Yes.

Q And the door leading out of the dining room? A Yes.

Q And that is all? A Yes, sir.

10 Q And then the front door had a bolt, had a knob on that you could swing in place and bolt the front door. Is that it? A I believe that is correct, yes.

Q The cellar door was fastened from the inside by a hook, you say? A It could be, yes.

Q Well, it could be? A Yes.

Q By a hook and eye? A Yes.

Q It was right there ready to be used? A It was right there ready to be used, yes.

20 Q From your experience as a builder and remodelling and repairing the old houses, could you tell whether or not that hook had been placed there before the past two years? A The hook bore evidence of rust and an accumulation of dirt on it, that indicated to me that it had been there a certain period of time.

Q A certain period? A Some time.

*By the Court.*

30 Q By which you can tell whether it had been placed there within the last two years or before? A No, it wouldn't be possible to tell that because it might have been placed—it might have been an old hook when it was placed there.

*By Mr. Hayes.*

Q Now, the back door had a bolt? A Yes.

Q What kind? A A sliding bolt.

40 Q And that was also rusted? A Yes, sir, that was heavily rusted.

*Harvey D. Gouse, cross.*

Q And the dining room door was fastened in what manner from the inside? A The dining room?

Q Yes. A The woman at the house that I saw there had a key to do that by.

10 Q Is this the woman you see? A No, I think not.

Q Had a key that would fit this door? A Had a key—

Q This dining room door? A Had a key she called a pass key.

Q Did she try it? A Yes.

Q Did it work? A Yes, sir.

Q What method of fastening the dining room door from the inside was there? A That was the only method.

20 Q Didn't they have a button in the lock that you push? Wasn't there a fastening right above the lock itself, Mr. Gouse? A No, sir, there was not.

Q Sure? A Yes.

Q That could be put on? A No.

30 Q So that from your observation it was possible to fasten three of the locks, or three of the doors from the inside so that no one with a pass key or otherwise could make entrance from the outside? A Oh, no, that door from the dining room to the porch could be opened with a key from the outside.

Q You say now it could? A Yes, sir.

Q Well, I am excluding that. Three or four doors could be fastened from the inside so that no one could get in from the outside? A No.

Q You can't do that? A Oh, no, you can get in any door regardless of keys.

40 Q Suppose you fasten the little hook and eye of the cellar door, could you get in from the inside? A That could be pushed in.

*Robert H. Armstrong, direct.*

Q By breaking it? A Yes.

Q You would have to break it? A Yes, and you could bust in the back door.

Q You would have to burst it in? A I don't believe you would have to put more than twenty pounds pressure on it to push the bolt right out of the woodwork. 10

Q Without using physical force, you couldn't get in that house by the use of a key? A Well, no.

Q Or an ordinary instrument, could you? A No.

Q That is so? A Yes.

DEFENDANT RESTS.

20

ROBERT H. ARMSTRONG, being recalled, testifies in rebuttal as follows:

*Direct examination* by Mr. Hayes.

Q Did you tell Mr. Tulloch that you were suffering from tuberculosis in 1921 or '22? A No, sir.

30

The Court: Mr. Tulloch testified that Mr. Armstrong was suffering from tubercular, whatever that may be.

Q Did you tell Mr. Tulloch that you were tubercular or suffering from tubercular? A No, sir.

Q Did you sleep in the garret or attic of the house in Dunellen, in which your wife now lives, during the year 1921? A No, sir.

40

*Robert H. Armstrong, direct.*

Q Did you suggest to Mrs. Armstrong that she accompany Tulloch to Washington on the occasion of their first visit there? A No, sir.

Q Did you on the night of January 12th or the morning of January 13th, meet your wife in the upper hall of that house and push her into Tulloch's room? A No, sir.

Q Where did you see your wife? Where did you first see your wife after you gained entrance? A Just stepping out of the bed that Mr. Tulloch was in. As I said in my former testimony, I went to press the button because I saw her bed was all smooth—what she called her bed—so I went right through the curtain there, and I heard a commotion. The electric light was in the front part and I turned it on and she jumped out. I had the knife in my hand and had it open. I gave her a push. I said, "You get back there." She wanted to go up through and muss the bed. That was her idea all right—

The Court: Strike that out.

A I said, "You sit down there"—

The Court: Just answer the questions.

Q Were the locks on the dining room door and the kitchen door and the cellar door of that house, on those respective doors, the inside locks on those respective doors, a month or six weeks prior to January 13, 1923, Mr. Armstrong? A Yes, they were all there. The front door has a thumb screw. We had no keys; the keys were all got rid of two years before; never had a key in the house in the last year before this occurrence, anyway; even the cellar door or the side

*Robert H. Armstrong, direct.*

door had a new thumb screw; that was even gone prior to this. That's how I couldn't get in—

The Court: Well, they were all there six weeks prior?

A Yes. I went to the side door to try that to get into the kitchen. The dining room door has a thumb knob. You can lock the door from the inside irrespective of the lock itself, and the other door has that knob, irrespective of opening from the outside, and the kitchen door leading to the back had one of these sliding cheap brass bolts, that he said had deteriorated and he thought would take about thirty pounds pressure to burst in, as he has said.

Q How recently before that date did you notice those locks were put in there? A How long before that?

Q Yes. A I noticed the week before I was down there, or two weeks, that there was a new screw, a new bolt put on the door we used when we went off in the automobile together, the four of us still used. Prior anybody could walk in that side door. Our house for a year or two there was open. Now, if you lock it and jump out of the window, then you would have to get in the window. That's as near as I can tell you.

Q On the night that your wife and Mr. Tulloch signed this statement marked Exhibit P. 1, did you say anything to them about demanding an interest in the patent they had, Mr. Armstrong? A What do you think—

Q Did you? A No, sir.

Q What do you say? A No, sir, I did not.

Q Did you ever make any demands on them for an interest in that patent? A No, sir, I wasn't to get any interest unless they gave it to

*Robert H. Armstrong, cross.*

me and the thing was really not broached for six months before that.

Q Well, you didn't? A No.

Q Is it true that you were the one that told Mr. Tulloch to come to the house and use the front room that he says he was occupying on the morning of January 13th? A No, sir.

Q How did he come to use that room? A Mrs. Armstrong being interested in the lock, Mr. Tulloch living down the street—

Mr. Winans: That is objected to.

The Court: That has all been testified to.

*Cross examination by Mr. Winans.*

Q You did undergo treatment for a tubercular condition at Bonnie Burn, didn't you? A No, sir; may I state—

You have answered the question.

Q Didn't you? A No. I was sent up there for observation.

Q That is an institution that specializes in the treatment of tubercular conditions?

The Court: You asked him this upon his original cross examination.

Mr. Winans: I will withdraw the question.

Q Did you know your wife and Mr. Tulloch were going to Washington city before they went?

A On one occasion and probably two.

Q You knew? A Yes.

Q Did you object? A I did object to one of the three. I made a statement the time Mr. Tul-

*Robert H. Armstrong, cross.*

loch said he was going to Washington. My wife went and she didn't have a bag or anything. She jumped on the train and went with him and then claimed it was a business visit. That was one.

Q Any other? A The other two visits to Washington was with reference to the locks that has been testified to here, but the one when Mr. Tulloch was on his own mission she jumped on the train. I think it was between the first and second, and she claimed it was business. The third time was the only time I saw them off.

Q You knew that negotiations were pending for the promotion of these patents at the time?

A Why, certainly.

BOTH SIDES REST.

20

30

40

*Memorandum of Vice-Chancellor.*

**MEMORANDUM OF VICE-CHANCELLOR.**

Filed January 5, 1925.

IN CHANCERY OF NEW JERSEY.

10

54/24

*Between*

ROBERT H. ARMSTRONG,  
*Petitioner,*

*and*

BERTHA L. ARMSTRONG,  
*Defendant.*

*Memoran-  
dum.*

*On Final  
Hearing.*

20

Not to be published officially or unofficially.

BUCHANAN, V.-C.

30

The husband petitions for divorce on the ground of adultery. I am entirely convinced that the wife is guilty as charged, notwithstanding her denials and those of the co-respondent. The untruthfulness of their testimony was apparent not only from analysis of the testimony itself, but also from the unmistakable evidences of false swearing so constantly displayed by them in appearance, attitude, conduct and manner of testifying. All of this, in this strenuously contested suit, added to the confession signed by the wife and the co-respondent, afford ample corroboration of the truth of the husband's testimony and lead to an unhesitating conviction of guilt.

Decree will be advised for petitioner.

40

*Decree Nisi.*

**DECREE NISI.**

Entered January 7, 1925.

IN CHANCERY OF NEW JERSEY.

*Between*

ROBERT H. ARMSTRONG,  
*Petitioner,*

*and*

BERTHA L. ARMSTRONG,  
*Defendant.*

*On Petition  
for Divorce.*

*Decree.*

10

This cause coming on to be heard in the presence of Edmund A. Hayes, of counsel with the petitioner, and John Winans, of counsel with the defendant, on petition, answer and oral proofs taken in open court; whereupon, and upon duly considering the said pleadings and proofs, and hearing and considering the arguments of counsel; from all of which it now appears satisfactorily to the Chancellor that the petitioner and defendant were lawfully joined in the bonds of matrimony on or about the 28th day of September, 1910, and that the defendant has been guilty of the adultery charged against David M. Tulloch in the said petition, and that at the time the cause of action for divorce therefor arose the petitioner and defendant were bona fide residents of this State, and the said Robert H. Armstrong has continued so to be down to the time of the commencement of this action, and it further appearing that jurisdiction herein has been acquired by personal service of process upon the defendant within this State;

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30

40



*Petition of Appeal.*

**PETITION OF APPEAL.**

Served May 13, 1925.

Filed May 21, 1925.

**New Jersey Court of Errors and Appeals**

10

ROBERT H. ARMSTRONG, <i>Petitioner-Respondent,</i>  <i>vs.</i>  BERTHA L. ARMSTRONG, <i>Defendant-Appellant.</i>	}	<i>Petition of Appeal.</i>
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To the Honorable the Court of Errors and Appeals of the State of New Jersey in the last resort in all causes:

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The petition of Bertha L. Armstrong, of No. 412 Mountain View Terrace, Dunellen, New Jersey, the appellant in the above-stated cause, respectfully shows that your petitioner finds herself aggrieved by a certain decree nisi made in the Court of Chancery in New Jersey, by his Honor Edwin Robert Walker, Chancellor of New Jersey, bearing date the seventh day of January, in the year nineteen hundred and twenty-five, in a cause wherein Robert H. Armstrong was petitioner and said Bertha L. Armstrong was defendant, in these respects, to wit: that the said decree nisi adjudges and decrees that your petitioner was guilty of adultery; that the said decree nisi should have found and adjudged, but fails so to do, that your petitioner was not guilty of adultery as alleged in the petition in said cause; that said decree nisi adjudges that the petitioner-respondent above named is entitled to

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*Petition of Appeal.*

a decree dissolving the marriage between your petitioner and her husband, the said Robert H. Armstrong, whereas said decree nisi ought to have adjudged and decreed that petitioner's said husband, Robert H. Armstrong, was not and is not entitled to a dissolution of said marriage, nor to a decree therefor; that the Honorable Trial Court, upon the final hearing of the said cause in the Court of Chancery, admitted certain evidence in behalf of the petitioner-respondent which was incompetent, irrelevant, immaterial and not binding upon your petitioner, whereas the said evidence ought to have been excluded; that the said Trial Court excluded certain testimony offered by your petitioner upon the said final hearing, which was competent, relevant, material and necessary in her behalf; that the said Trial Court, upon said final hearing, received in evidence a certain alleged confession, admission, or declaration against interest, purporting to be binding upon your petitioner, which was incompetent, irrelevant and immaterial, which wholly lacked corroboration and which was not binding upon your petitioner, whereas the said Trial Court should have excluded the same; and that said decree nisi was and is in other respects illegal, not supported by sufficient evidence, or any evidence, and contrary to the weight thereof, and contrary to the law and statutes of this State and manifestly oppressive to your petitioner in the premises; and your petitioner humbly appeals from the said decree nisi and from each and every part thereof.

Your petitioner therefore respectfully prays that the said decree nisi of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden; and that she

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*Petition of Appeal.*

may have such further relief in the premises as shall be just.

Dated, May 12, 1925.

JOHN WINANS,  
Solicitor of and of Counsel with  
Defendant-Appellant,  
No. 102 North avenue, Plainfield, N. J.

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Sat below:

WALKER, C.  
BUCHANAN, V.-C.

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*Answer to Petition of Appeal.*

**ANSWER TO PETITION OF APPEAL.**

Filed April 30, 1927.

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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ROBERT H. ARMSTRONG,  
*Petitioner-Appellee,*  
*vs.*  
BERTHA L. ARMSTRONG,  
*Defendant-Appellant.*

*On Appeal  
from the  
Court of  
Chancery.*

*Answer to  
Petition of  
Appeal.*

The answer of Robert H. Armstrong, the above-named appellee, to the petition of appeal of Bertha L. Armstrong, the above-named appellant:

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This appellee, expressly reserving the right to move for the dismissal of the appeal in this cause, and not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that a decree was, on the 7th day of January, 1925, made and entered in the Court of Chancery of New Jersey, in the above-entitled cause, for the purposes in said petition mentioned, and as therein set forth, but as to the substance and form of said decree, this appellee begs leave to refer thereto when the same shall be produced.

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This appellee is advised, and believes, that the said decree is agreeable to equity, and he prays

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*Answer to Petition of Appeal.*

that the same may be affirmed with costs to be taxed in favor of this appellee.

EDMUND A. HAYES,  
Solicitor for and of Counsel with Appellee.

10 W. S. Angleman was substituted as solicitor for defendant-appellant by order made and filed September 23, 1927.

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5 OCT. 7. 1927

**New Jersey Court of Errors  
and Appeals**

Between

ROBERT H. ARMSTRONG,  
Petitioner-Respondent,

—and—

BERTHA LOUISE ARMSTRONG,  
Defendant-Appellant.

On Petition for  
Divorce  
On Appeal

BRIEF FOR PETITIONER-RESPONDENT.  
THE FACTS.

This was a suit for divorce brought by Robert H. Armstrong, charging his wife, Bertha Louise Armstrong, with adultery committed with David M. Tulloch, on January 13, 1923.

The parties were married on September 28, 1910, at Richmond Hill, Long Island, and in 1911, moved to New Jersey; taking up residence in Dunellen, Middlesex County. (p. 27.)

Robert H. Armstrong, at the time of the hearing, was sixty years of age, and the appellant, about forty-four years of age, (p. 38). The parties made the

acquaintanceship of the co-respondent, Tulloch, about four years prior to the date of the alleged acts of adultery between Mrs. Armstrong and Tulloch. Tulloch was a mechanical engineer, and one of Mrs. Armstrong's relations wanted Tulloch's advice concerning a device. As a result of negotiations, Tulloch advanced money to purchase this patent, and took the title in the name of himself and Mrs. Armstrong.

Mr. and Mrs. Armstrong resided on Mountain View Terrace in Dunellen, at No. 412, and David M. Tulloch and his wife and three children lived on the same street about five hundred feet distant from the Armstrong home, (p. 29).

There were three sleeping rooms in the Armstrong home; one in the rear, which was apart from the others, and two in the front, that were connecting rooms. Until the winter of 1922, the visitor's, or guest room, was the rear room, and Mr. and Mrs. Armstrong either slept together in a front room, or each slept in one of the front bedrooms.

During 1922, Armstrong was employed in New York, and only returned to his home on week-ends. Tulloch was an occasional visitor at the Armstrong home on week-ends, and sometimes stayed over night, but more frequently went to his own home about five hundred feet away. During the times that he did stay at the Armstrong home (that Armstrong knew of), Tulloch occupied the guest room.

In December, 1922, a change was made in the sleeping arrangements. Mr. Armstrong was assigned by his wife to the guest room, one of the front rooms was designated as the guest room, and Mrs. Armstrong used the adjoining bedroom as her boudoir.

On very frequent occasions, while Armstrong was in New York, Tulloch visited at the Armstrong house, and most generally stayed over night. This both he and

Mrs. Armstrong admit, and neighbors testify to. (Pages 23 and 58.)

For two or three successive week-ends, Armstrong noticed lobster and clam shells in the garbage pail, and for the first time suspected that Tulloch was calling at his home when he, (Armstrong) was not there. Mrs. Armstrong became indifferent to petitioner, and treated him coolly. (Page 33.)

In order to verify his suspicions, Mr. Armstrong determined to return to his home on a Friday night, and accordingly took the last train out of New York, which was about 12:30 at night, and arrived at Dunellen at about 1:45 A. M. Armstrong had previously noticed that the house, which for several years had been without locks of any description, had been fully equipped so that entrance leading outdoors was either locked or bolted from the inside. When he arrived at his home about two o'clock in the morning, he was unable to gain entrance through any of the doors, and accordingly entered through a window in the basement or cellar of the house. He removed his shoes, and gained entrance to the upper part of the house without making any noise or attracting any attention. First going to the bedroom of his wife, and finding the bed unoccupied, he went to Tulloch's room, and as he entered the room "she sprung out of bed," and Mr. Tulloch was in bed there. (Page 36.)

Petitioner thereupon handed Tulloch a memorandum book and a fountain pen, and asked him to write in the book what he, Armstrong, dictated. Tulloch accordingly wrote the following: "I, David M. Tulloch, was found in bed with Mrs. R. H. Armstrong on January 13, 1923, at two A. M." Armstrong requested his wife to sign that, and she did sign "Mrs. R. H. Armstrong," which signature was not to his satisfaction, and he caused her to re-sign her name as it was written on her checks, and she thereupon signed "Bertha L. Armstrong" underneath the words that Tulloch had written in the book. Arm-

strong left the house that night, and has never since lived with his wife. Tulloch continued to call and live in the house with Mrs. Armstrong from that time up until the commencement of the suit, when he says he discontinued living there. (Pages 137, 108 and 109.) During the time that he did live there, no one else lived in the house.

### I.

#### WAS THERE UNDUE DELAY

- (a) in the bringing of the suit,
- (b) in obtaining the Order of Reference, or
- (c) in Respondent's prosecution of the appeal

That justifies an inference of an ulterior motive?

As to the first, we shall attempt, later in this memorandum, to show that in the time that intervened between the date of the offense charged in the petition, and the actual bringing of the suit, defendant and correspondent furnished to the petitioner most important corroboration of his charge; in fact, testimony without which petitioner might not have been able to sustain his case.

As to B, the writer begs leave of the Court to refer to the files in the Court of Chancery in this case, inasmuch as by innuendo it is said that there was a reason for withholding the Order of Reference.

Defendant was represented in the Court below, as this Court has observed, by an attorney named John Winans, and through the direction of the Chancellor, the following affidavit was made and filed:

STATE OF NEW JERSEY }  
COUNTY OF MIDDLESEX } ss:

EDMUND A. HAYES, being duly sworn according to law, on his oath deposes and says:

1. I am the Solicitor for the Petitioner.
2. The defendant is represented by John Winans, whose post-office address, as indicated on the back of the answer filed by him in the above-entitled cause, is 437 North Avenue, Westfield, New Jersey.
3. On August 2, 1923, I sent Winans a copy of the Replication filed by me in this matter, and also enclosed an Order of Reference, requesting that he endorse his consent thereto, and return it to me in a stamped envelope, also therein enclosed.
4. From that date until Saturday, May 24th, I have written him twenty or twenty-five letters, telephoned him about the same number of times, and on some occasions I have been fortunate enough to actually talk with him. On each and every occasion, he has promised to sign the Order, and return it to me.
5. I have endeavored to locate him in the State of New Jersey in order that I might be able to serve notice of an intended application, but have been unsuccessful.
6. I have in my possession two letters from Winans, one dated October 15, 1923, and the other October 17, 1923, in which he says that he will consent to the entry of an Order of Reference, but does not return either of the two Orders that I sent him.
7. On May 24th, I went to the building known as 437 North Avenue, Westfield, New Jersey, which building is the Colony Inn, and inquired for John

Winans. I was informed by the proprietor that John Winans had not lived at the Colony Inn for over a year, but that he had, however, a representative in the Hotel or Inn by the name of John Gouse, who occupied room 25. I thereupon called room 25, without success, and left with the Clerk of the Hotel, Bernard Kelly, a notice of which the annexed is a true copy.

8. I know of no other way of getting service upon John Winans, and have, during the eight months that this matter has been at issue, endeavored to the best of my ability to locate him in this State, so that I might serve the required notice upon him."

Thereupon the Chancellor made an Order of Reference, reciting that it was made upon the service as set forth in the foregoing affidavit. This Order of Reference was entered on June 18, 1924, and thereupon, under the direction of the Vice-Chancellor to whom the matter had been referred, notice of application for Order of Designation was made in the same manner as had been used in the application for the Order of Reference, and an Order of Designation, fixing Wednesday, November 12, 1924, was thereupon entered, and on that day the trial of this cause was started.

As to C, it will appear from the records of this Court that on May 2, 1925, counsel for the appellant applied to this court for allowance money for the prosecution of the appeal, and for counsel fees, and for an extension of time within which to file the appeal. The first and second requests were denied, and appellant was granted additional time to prosecute the appeal. Appellant never deposited the One Hundred Dollars (\$100.00) as required by the rules, and counsel for respondent took the position that appellant had never perfected her appeal, inasmuch as she had failed to make such deposit, and in February, 1927, on the application of respondent, the appeal was dismissed. It is true that respondent did

not file an answer to the petition of appeal, but this was for the reason that it was respondent's contention that the appeal had not been perfected. The Court apparently upheld this position; otherwise, the Order for a dismissal would not have been entered. The appeal was reinstated upon appellant charging that the delay in the prosecution of her appeal was the neglect of her attorney, Mr. Winans, and respondent thereupon filed his answer.

It is respectfully urged that for the reasons mentioned above, the respondent was not guilty of any delay, and hence any innuendoes are unsupported by the facts.

## II.

### WHEREIN DO WE FIND CORROBORATION OF PETITIONER'S CHARGE?

Leaving aside, for the moment, the question of the admissibility of the paper writing, either as a confession or as an admission, we find that the facts in this case are quite analogous to those presented in the case of *Saiman vs. Saiman*, 127 A. R., page 31; 97 N. J. E., page 83.

The opinion in that case was affirmed by this Court. (See 128 A. R., 922; 97 N. J. E., 543.)

In that case, the wife filed her petition for divorce on the ground of adultery, charging that the husband was guilty of adultery with a nurse employed in the household. The direct proof was that the wife being awakened during a great storm that was raging outside, went to the husband's bedroom to ask him to investigate a noise that she heard in the lower part of the house. She testified that when she reached the husband's room and opened the door, she saw the co-respondent in bed with her husband. This the husband and co-respondent both

deny; the co-respondent saying that she also heard the same noise testified to by Mrs. Salman, and went to Mr. Salman's room to ask him to investigate it. The corroborating circumstances in this case were that the co-respondent continued to live in the household of the parties, and the Vice-Chancellor said that:

"The bedroom episode during the storm \* \* \* while hardly sufficient to found a finding of adultery, \* \* \* their subsequent continuance together, down to the time the wife put the co-respondent out \* \* \* and their living together \* \* \* during the wife's absence \* \* \* with knowledge of the charge made by the wife that for a number of years their relations had been meretricious, indicates that they had such a feeling for each other that they could not satisfy the proprieties by staying apart, and indicates further that such conduct and acts evidence strong desire, and living together, as they did, was sufficient to prove adultery."

This Court has approved of language to the effect that

"The rule of corroboration does not require categorical corroboration; the rule is satisfied if the attending proof satisfies the Chancellor that the testimony on the whole is true,"

and also

"The rule of corroboration only requires that belief in its truthfulness as must find support in the testimony of others, or of surrounding established circumstances."

In the case of *Marthese vs. Marthese*, 129 A. R., page 131; 98 N. J. E., 379, it was held that

"The test to determine whether the evidence supports the charge of adultery is that it must satisfy the human mind and leave the careful and guarded judgment of the court free from any conscientious and perplexing doubt as to whether the charge was proven or not; and that if such doubt remains after a careful consideration, it is the duty of the court to give the defendant the benefit thereof, and to refuse the prayer of the petitioner,"

and in the same case, this court cited with approval the language of the Vice-Chancellor in *Culver vs. Culver*, 38 N. J. E., 163, to the effect that

"The adultery must be proved by such facts as would constitute sufficient evidence to support the finding of adultery as would lead the guarded discretion of a reasonable and just mind to the conviction that a crime had been committed."

The courts recognize that adulterous acts are, as a rule, committed where the parties believe they are least likely to be observed, and hence eye-witnesses are rarely obtainable, and for this reason, have adopted the rule that the petitioner's testimony may be sufficiently corroborated by surrounding circumstances, in order that the injured spouse may get relief where he would be otherwise defeated for want of corroboration of facts, which it is sometimes impossible to obtain.

At this point, the writer desires to call the attention of the Court to the actions and conduct of the defendant and the co-respondent between the date of the offense charged, and the bringing of the suit.

Referring to the testimony of the defendant, (page 10), commencing at line 17), the following is found:

"Q. It was over six months between the time that you and Mr. Tulloch signed this statement and the

time that Mr. Armstrong started the divorce suit, wasn't it?

A. I don't know.

Q. You don't know.

A. I think it was about that time, I am not sure.

Q. And during that six months Mr. Tulloch continued to call at your house just as frequently as he had prior to the time you signed the statement?

A. Well—

Q. Did he?

A. Yes."

Tulloch visited "several times a week" (page 24), "frequent," "regularly" after Armstrong went to live in New York (page 58, line 10).

Tulloch, at page 137, line 24, gives the following testimony:

"Q. Did it occur to you that it was indiscreet for you, a man not living with your wife, to stay at this woman's home?

A. My wife knew—

Q. When this man wasn't there?

A. My wife knew I was there.

Q. Answer my question.

A. No.

Q. Didn't it appear to you to be very indiscreet to do a thing like that?

A. Not at that time.

Q. What time?

A. At that time, I stayed there. It appeared to me after the note that it was indiscreet.

Q. It appeared to you right after the night the note was signed that it was indiscreet?

A. Yes.

Q. But you, notwithstanding, continued to stay there, didn't you?

A. Yes."

A reference to the testimony of the neighbors, Treich-

ler, Law and Schuckmann, discloses that Tulloch regularly went into the Armstrong house in the evening, and was seen to come out regularly in the morning, and this continued not only during the time preceding the date that the petitioner found them in bed, but down to the time that the divorce suit was actually started, and the papers served upon Mrs. Armstrong, and when Mrs. Armstrong was asked the question (page 109, line 34).

"Q. During that six months' period was there anyone living in the house nights while you and Mr. Tulloch slept in that house together?

A. I don't remember."

The fact that Tulloch had a wife and family living within five or six hundred feet of the Armstrong house should not be lost sight of, nor should the court forget that Tulloch admittedly stayed in his wife's home "quite frequently," (page 133) and there is no reason given why Tulloch stayed with Mrs. Armstrong instead of going to his own home five hundred feet away except that it was "late" when he and Mrs. Armstrong finished their business.

Such action on their part would justify the same conclusion reached in the Salman case that

"Such conduct and acts evidence strong desire, and living together, as they did, was sufficient to prove adultery."

This, we respectfully contend, furnishes the strongest kind of corroboration of the act charged.

### III.

#### DEFENDANT CLAIMS NO CRIMINAL DESIRE SHOWN.

A criminal desire on the part of the defendant and the co-respondent is most glaringly spelled out by their

According to Mrs. Armstrong, the petitioner was repeatedly asking her to give him an interest in the patent, and she at all times refused to do this. Still when they thought (as she says) that they were going to make a sale of the patent, Armstrong expressed himself as being "tickled to death" (see page 72). Tulloch says Armstrong never spoke to him about seeking any interest in the patent. Mrs. Armstrong says that petitioner never got angry with her (see page 85). Then if you read page 97, it would appear that it was quite a usual thing for him to run a knife across her throat. Armstrong was very prone to become angry (see page 85). Then refer to page 96, "wherein she says: 'A. Very angry. Frightfully angry. At least, I wouldn't say he was angry. I heard his cursing, and naturally when you hear a man curse you judge he is angry.'"

Speaking of the number of times that Armstrong would go to Plainfield to get Tulloch, Mrs. Armstrong was asked:

"Q. Drawing your attention to five or six months immediately preceding January 13, 1923, how often would he do it?

A. Oh, he done it too many times; so many times, many, many times."

In answer to a question put within two or three minutes thereafter, she says:

"A. He didn't go down after him only at nights sometimes; it would be seven or eight o'clock. Mr. Tulloch would call up on Saturday nightt.

"Q. Would he do it any other night than Saturday night?

"A. No, because he knew Mr. Armstrong wasn't there with the car to get him home." (Page 99, line 10).

From all of the evidence in the case it would appear that the car was at home, but that Armstrong was only home on Saturday nights, corroborating Armstrong

again to the effect that he only came home as a rule on Saturday nights, and that Tulloch knew it.

At page 71, Mrs. Armstrong says that on the Saturday preceding January 13, 1923, Armstrong came home at one o'clock. At page 84, she says he came home at five o'clock. At page 71, he talked about the automobile license, and at page 84, he talked about the assignment of an interest in the patent. She says that Armstrong told her on that Saturday that he would be home the following Friday (which was the night that he did come home and found them in bed). His reason for coming home on Friday night was in order to get the automobile license cards. Later it develops that the car was licensed in her name, and that she had already filled out the cards.

In attempting to establish that she knew Armstrong was coming out Friday night, and that he would expect Tulloch to be there, Mrs. Armstrong, at page 72, testifies as follows:

"A. I told Mr. Armstrong I was sure it had gone over." (referring to the deal with Scroff.)

Thereupon Armstrong expressed himself as being tickled to death, and told her to call Dave up, and have him come out and they would have a celebration.

She overlooked that on page 71 she had said that on that same Friday she had telephoned Mr. Tulloch, and he told her that he "hadn't heard from Mr. Scroff."

According to Mrs. Armstrong, the celebration that she said her husband had planned was "still in expectation" (see page 75), at midnight of Friday night, whereas, as a matter of fact, she admits on page 81 that when she talked on the telephone with Tulloch in the afternoon of that day he told her that he had heard from Mr. Scroff, and that it hadn't gone through.

When asked to indicate how Armstrong held the knife, the witness unhesitatingly held up her right hand, drawing a commnet from the court (see page 79), and a few minutes later she said that he had his right hand on his hip pocket.

Tulloch's description of what Armstrong said and did when he was getting the confession signed differs extremely from that given by Mrs. Armstrong. Tulloch speaks as if Armstrong was making a "request." He says, (at page 116, at the bottom of the page), "He asked her to sign it." Then counsel later asked him:

"Q. Can you tell whether Mr. Armstrong resorted to any threatening or abusive language at the time he requested his wife to sign that memorandum that you had written?

A. He said something.

Q. What?

A. I have forgotten."

Tulloch was a very good friend of Armstrong (according to Tulloch). When Armstrong was ill in the sanitarium, suffering from tuberculosis, Tulloch used to bring him boxes of cigars (page 127).

Mrs. Armstrong, as will be seen on page 81, says that Tulloch told her over the 'phone that he had heard from Scroff that the deal hadn't gone through. Tulloch, at page 130, says:

"A. We were expecting an answer, but there was no answer previous, that the deal had gone through; but the deal hadn't gone through, it didn't go through, and I didn't tell Mrs. Armstrong I had the letter."

He makes it quite emphatic at page 131 that he didn't tell her, as is shown in the following language:

"Q. You had in your pocket a letter of rejection?

"A. Yes.

"Q. But you didn't tell her about it?

"A. I did not."

Tulloch, at page 124, says the reason he didn't go home to his own house was because his wife objected to his drinking. At page 133, when he was asked if it was due to the fact that he had been drinking that he didn't go home and sleep with his own wife, he said:

"A. No, I haven't slept with my wife in twenty years" (see page 133).

Mrs. Armstrong says that it was Mr. Armstrong who said he was going to do the killing the night the confession was signed. Tulloch, at page 139, says it was Mrs. Armstrong who told him that Armstrong would kill them.

These are the things that led the court to the eventual conclusion that the defendant and her co-respondent were telling untruths. It will be noted that in a great many instances the variances have to do with what would appear to be a pre-arranged story made to show that Armstrong was expected home that Friday night.

#### IV.

#### THE CONFESSION.

The preliminary question: "WAS THE CONFESSION VOLUNTARY?" bearing directly upon its competency as evidence, must be, according to the majority of cases, decided by the court as a mixed question of law and fact.

Underhill on Evidence, 2nd Edition, Sec. 126, at end of page 243.

The admissibility of confessions is a matter of law. State vs. Hill, 65 N. J. L., 626; 47 A. R. 814.

In the case at bar, the Court heard fully the testimony of the interested parties as to the circumstances under which the confession was made, and being satisfied that it was without collusion, and free from duress, it was admitted in evidence, and the act therein confessed to being fully corroborated by circumstances and acts that clearly indicated guilt, the decree herein appealed from was made.

“When confessions are full, deliberate, free from collusion, and corroborated, they can be treated as evidence of a high grade.”

Jones on Evidence (pocket edition), 2nd Edition, Sec. 262 at top of page 330, and cases therein cited.

It is, of course, a well recognized rule of law that a decree of divorce will not issue on the uncorroborated admission or confession of the defendant. It is likewise a well recognized rule of law that a confession shown to be free from collusion, and not made under duress, and corroborated as to the facts therein stated, is entitled to great weight.

The confession in the case at bar is a dual confession, being a confession on the part of the defendant as well as her paramour. That the confession is free from collusion needs no argument. The defense too strenuously opposes the consideration of the confession as proof at all of the alleged adulterous act to need any mention, we believe, as to whether it is made in collusion. Suffice to say, we think, that the question has not been mentioned thus far in the case. This, therefore, leaves out of this case the question of the interest of the State, as the State is only interested in seeing that the confession is not made for the purpose of fostering false evidence upon the Court and thus enabling the parties to procure a divorce.

Summerbell vs. Summerbell, supra.

First, taking up the question as to whether the co-respondent was induced by duress or coercion in the signing of the confession, we resort to an examination of the evidence of the petitioner.

His testimony is found on pages 36 and 37, and according to him, the co-respondent unhesitatingly wrote down what the petitioner dictated. There were no threats or promises of any kind made, nor, as a matter of fact is there any claim, insofar as the co-respondent is concerned, of such made, as will be seen by an examination of his testimony found on pages 116 and 117. During most of Tulloch's examination, his attorney was doing the testifying, and the answer, in most instances, was embodied in the question. When Tulloch, however, was asked to tell what Armstrong said (page 17, line 18), his answer was, "I have forgotten." Tulloch admittedly signed the statement because Mrs. Armstrong asked him, and not because of anything said by Armstrong. (See page 116, line 27; also page 139, line 10).

Insofar as the confession by the defendant is concerned, there is, of course, the recognized rule that a confession made by the wife in the presence of the husband is presumed to be procured by his coercion. This presumption may naturally be rebutted, and the rebuttal of it is not necessarily confined to direct proof, but may be found in the surrounding acts and circumstances, and especially may it be found in the demeanor, conduct, mannerisms and testimony of the parties in the trial of the case.

As pointed out in this memorandum, the defendant's testimony was a mass of inconsistency. This Court, in opinions, given in many cases of record, has pointed out that trial courts are entitled, in the weighing of the testimony, to give credence in accordance with the apparent sincerity and honesty of the statements told by the various witnesses. The learned Vice-Chancellor before whom this case was tried had full opportunity to examine, see and hear the witnesses at the time of their

recital of what happened when this confession was made. The trial judge had every opportunity to see and hear the witnesses, and was, under the rules of law, as laid down by this court, warranted in taking the story of the petitioner that the only threat he made was (if it could be considered, or called a threat) that he had an officer downstairs and would call him unless the paper that he dictated to Tulloch was signed by both parties. This Armstrong was justified in law in doing if, as a fact, the parties were indulging in sexual intercourse at the time he came upon them, and his statement that he purposed doing that was not such coercion, duress nor intimidation as brings this case within the rule of law laid down in Summerbell vs. Summerbell, 37 N. J. E., page 603. In that case, there is quite a marked distinction from the case at bar. There, from all the facts and circumstances surrounding the case, this court concluded from all the evidence in the case, that the wife was induced to sign her confession in the hope of pacifying the husband, and affecting a reconciliation. Here, there can be one of two findings; either that the confession was the result of duress practiced by the petitioner, or that it was the easiest course out for the defendant and the co-respondent from a nasty predicament. All three parties are naturally interested, and tell stories that uphold their contention of what transpired. The scales are in the balance, and it became a matter of fact as to which of the two stories was to be believed. The trial court having concluded that the confession was not obtained by duress from either the defendant or the co-respondent, and that the petitioner had met the presumption in law that he was bound to meet, that he had not coerced the wife into the signing of this confession.

We respectfully contend that the confession was admissible.

\* \* \*

For the reasons:

1. That the petitioner's story of what position he saw the defendant and the co-respondent in on January 13,

1923, has been fully corroborated, and under the authority of the Salman case, the decree is warranted;

2. That the petitioner, having sustained the burden necessary for the admission in evidence of the confession, and the same being corroborated by facts and circumstances,

THE DECREE BELOW SHOULD BE AFFIRMED.

Respectfully submitted,

EDMUND A. HAYES,

(Of Counsel with Petitioner-Respondent.)



