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Petition of Howard R. Stevens.

(Filed June 7, 1929.)

In Chancery of New Jersey

To His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey.

The petition of Howard R. Stevens of the City of Elizabeth, County of Union and State of New Jersey, respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to his present wife, Irma Elizabeth Stevens, defendant in this suit, on the 29th day of March, 1926, by C. H. Lowry, a Minister of the Gospel of the Presbyterian denomination at Bridgeburg, in the Province of Ontario and Dominion of Canada.

2. Defendant, since her marriage to your petitioner and on the following dates, to wit: December 21st, 1928, December 29th, 1928, January 3rd, 1929 and January 10th, 1929, committed adultery with Burwell Hodges in a deserted house at #538 West End Avenue, Elizabeth, in the County of Union and State of New Jersey, and on May 24th, 1929, and May 25th, 1929, the defendant committed adultery with Frank Muszar in the night time at Warinanco Park, in the Borough of Roselle, County of Union and State of New Jersey.

3. Petitioner and defendant were bona fide residents of the State of New Jersey when this cause of action arose and they have continued ever since to be bona fide residents of this state down to the date of the commencement of this action, residing in Elizabeth, in the County of Union.

4. One child was born of the marriage aforesaid, to wit: Charles Joyce Stevens, age 23 months, who is in the custody of your petitioner.

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

And your petitioner will ever pray, etc.

PETER B. COLLINS,
Solicitor for Petitioner.

JAMES T. KIRK,
Of Counsel with.

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

HOWARD R. STEVENS, being duly sworn according to law, on his oath, deposes and says that:

He is the petitioner named in the foregoing petition and that the said petition is not made by any collusion between him and the defendant, but in truth and good faith for the cause set forth in the petition.

HOWARD R. STEVENS.

Sworn and subscribed to before me this 5th day of June, 1929.

JOHN J. CARROLL,
Notary Public of New Jersey.

(L. S.)

A true copy,

FERD GARRETSON,
Clerk.

Affidavit of Peter B. Collins.

(Filed June 21, 1929.)

IN CHANCERY OF NEW JERSEY.

Between HOWARD R. STEVENS, Petitioner, *and* IRMA ELIZABETH STEVENS, Defendant.	On Petition for Divorce. Affidavit of Inquiry.

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

PETER B. COLLINS, being duly sworn according to law, on his oath, deposes and says:

1. I am the solicitor for the petitioner and the person actually entrusted with the conduct and management of this cause.

2. Before delivery of process in this cause to the Sheriff, I made diligent inquiry respecting the defendant's age, residence and occupation.

3. I was informed by petitioner, that the nearest known relatives of the defendant are Mrs. Charles F. Joyce, 2 Admiral Road, Buffalo, New York, and mother of the defendant; Mrs. Richard H. Dye, 305 Argonne Drive, Kenmore, New York, a sister of the defendant.

4. On the 6th day of June, 1929, I did, by letter, with postage prepaid thereon, directed to each of the above named persons at their said respective post-office addresses, request them to inform me

as to the age, residence and occupation of the defendant, by stating to each that a suit for divorce had been commenced against the said defendant, Irma Elizabeth Stevens, by her husband, Howard R. Stevens, and that the object of my inquiry was to give defendant notice of said suit in order that she might appear and defend the same, and enclosed in each letter, was a self-addressed, stamped envelope.

5. On or about the 17th day of June, 1929, I received a reply to the said letter directed to Mrs. Charles F. Joyce, from Charles F. Joyce who is the father of the above named defendant, a true copy of which letter is hereunto annexed and made a part hereof.

6. I believe the defendant to be a resident of Buffalo, in the County of Erie and State of New York, and that process cannot be served upon her in the State of New Jersey.

PETER B. COLLINS,
Solicitor for Petitioner.

Sworn and subscribed to before me this 20th day of June, 1929.

(L. S.) JOHN J. CARROLL
Notary Public

Letter, Annexed to Affidavit of Peter B. Collins.

CHARLES F. JOYCE CO., INC.
Insurance and Bonds
Telephone Seneca 9701
126 Pearl Street
Buffalo, N. Y.

Charles F. Joyce
President.

June 15, 1929.

Peter B. Collins,
1165 East Jersey Street,
Elizabeth, N. J.

Dear Sir:

Your favor of even date, addressed to my wife has been referred to the writer for necessary attention, and has been delayed due to the fact that I have been on a trip to California, just returning this morning. Would advise that the temporary address of Irma Stevens is 2 Admiral Road, Buffalo, N. Y., Erie County, at which point she can be served with the proposition that you mentioned in your letter of June 6th.

Please advise either her, or the writer, her father, of the date necessary for appearance as she will be represented by attorneys in the matter.

Unfortunately I am called away on a business trip leaving June 16th, and will return by the 23rd at the latest, and will give you the information at that time as to who will represent my daughter.

Yours very truly,

(Signed) CHARLES F. JOYCE.

CFJ:EW

Affidavit of Service.

(Filed June 25, 1929.)

New Jersey, }
Union County, } ss.:

Frank R. Emmons, Under-Sheriff of said County, being duly sworn according to law, on his oath says that he has inquired for Irma Elizabeth Stevens of the defendants named in the annexed process, for the purpose of serving her therewith and has not been able to find her in this County, and this deponent is credibly informed and verily believes that the said defendant cannot be found in this State.

Frank R. Emmons.

Sworn and Subscribed this 21st }
day of June, 1929, before me }

Hall B. Sims,
Notary Public of New Jersey.

On Petition for Divorce Description.

(Filed June 25, 1929.)

IN CHANCERY OF NEW JERSEY.

Between
HOWARD R. STEVENS,
Petitioner,
and
IRMA ELIZABETH STEVENS,
Defendant.

On Petition for Divorce Description.

To SAMUEL H. TOOL, Esq.,
Sheriff of the County of Union.

Dear Sir:

With citation and certified copy of the petition in the above entitled cause, I herewith deliver to you the following description of Irma Elizabeth Stevens, the defendant upon whom process is to be made.

Age,—30 years.
Residence,—2 Admiral Road, Buffalo, N. Y.
Occupation,—None.

Respectfully,

PETER B. COLLINS,
Solicitor for Petitioner.

Dated, June 20th, 1929.

Citation.

(Filed June 25, 1929.)

NEW JERSEY, to wit: The State of New Jersey to Irma Elizabeth Stevens [SEAL] GREETING: You are hereby cited to answer the petition of Howard R. Stevens a copy of which petition is herewith served upon you, by filing your answer in writing in the office of the Clerk of the Court of Chancery at Trenton, within twenty days after the 27th day of June, 1929; and in default of your so doing such order or decree will be made against you as the court shall think equitable and just.

WITNESS, his Honor Edwin Robert Walker, Chancellor of our said State, at Trenton, the 10th day of June, 1929.

FERD GARRETSON,
Clerk.

PETER B. COLLINS,
Solicitor.

Divorce Order Publication.

(Filed June 28th, 1929.)

IN CHANCERY OF NEW JERSEY.

Between

HOWARD R. STEVENS,
Petitioner,

and

IRMA ELIZABETH STEVENS,
Defendant.

Divorce Order Publication.

The petitioner, having filed his petition in the above cause and process of citation having been issued and returned according to law, and it now appearing that personal service of process upon the defendant within the state could not be made

IT IS, on this 28th day of June, 1929, on motion of Peter B. Collins, Solicitor of the Petitioner, ORDERED, that the said absent defendant do answer the petitioner's petition, on or before the 29th day of August next, or that in default thereto, such decree may be made against her as the Chancellor shall think equitable and just.

AND IT IS FURTHER ORDERED that the notice of this order prescribed by law and the rules of this Court, shall, within twenty days hereafter, be published in Elizabeth Times, a newspaper printed in Elizabeth in this State and continued therein for four weeks successively, at least once in every week; and it is ORDERED that service upon the defendant of the petition and of this order, as service substituted for personal service of process within the state be made within the said twenty

days and in the manner prescribed by the rules of the Court for such substituted service.

E. R. WALKER,
C.

Respectfully advised

NORMAN T. ROGERS, A. M.

A true copy,
FERD GARRETSON,
Clerk.

Petition of Irma E. Stevens.

(Filed July 16, 1929.)

IN CHANCERY OF NEW JERSEY.

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

The petition of Irma E. Stevens of the City of Elizabeth, County of Union and State of New Jersey, and of the City of Buffalo, State of New York, respectfully shows that:

1. On March 29, 1926, petitioner and her present husband, Howard R. Stevens, were married at Bridgeburg, Ontario, Canada, the ceremony being performed by a minister of the gospel in the presence of other witnesses.

2. On July 19, 1927, in Buffalo, New York, a male child, Charles Joyce Stevens, was born to petitioner and her said husband as the fruit of said marriage. Said child is now two years of age.

3. At the time of the birth of said child petitioner and her said husband were living in a state of separation on account of incompatibility and cruelty on the part of her said husband to her.

4. Petitioner was living with her parents in Buffalo, New York, and her said husband was living in New Jersey.

5. In October, 1927, a reconciliation was effected and petitioner and her said husband, with their said infant child, went to live together at 516 West End Avenue, Elizabeth, New Jersey, and there remained until April 13, 1929, when they moved to 811 Canton Street, Elizabeth, New Jersey.

6. On May 26, 1929, while living as aforesaid at 811 Canton Street, Elizabeth, New Jersey, the said Howard R. Stevens, petitioner's said husband, took the said child from said home for the feigned purpose of an automobile ride and has, ever since that time, wrongfully, wilfully, continuedly and obstinately deserted petitioner, and neglected and refused to support petitioner, and neglected and refused to permit petitioner to see or know the whereabouts of said child.

7. Upon said desertion petitioner was forced to look to the charity of her parents residing in Buffalo, New York, for support, and a few days after the desertion, returned to live with them where she now resides at 2 Admiral Road, Buffalo, New York.

8. Ever since the reconciliation of petitioner and her husband in October, 1927, petitioner's said husband has continuously attempted by word and act to alienate the affections of said child from petitioner and has continuously treated petitioner coldly, unkindly, cruelly and contemptuously, without just cause.

9. Petitioner is about to bring suit, in this Court, against her said husband for separate maintenance.

10. The best interest of said child will be served by entrusting him to petitioner's care at the home of petitioner's parents, Mr. and Mrs. Charles F. Joyce, in Buffalo, New York, who are ready, willing and able to furnish for said child a better home than petitioner's husband is able to support in the absence of the mother of said child. Petitioner is ready and willing and qualified in every respect to give her said child the personal care and training which the child needs and only a child's own mother is able to give.

11. Petitioner is in great need of the comfort, society and affection of her said child, of which she is now wrongfully being deprived by her said husband.

IRMA E. STEVENS,
Petitioner.

ARTHUR T. VANDERBILT,
Solicitor of Petitioner.

STATE OF NEW YORK, }
COUNTY OF ERIE, } ss.:

IRMA E. STEVENS, of full age, being duly sworn according to law upon her oath, deposes and says:

I am the petitioner in the foregoing petition named and all the facts stated therein are within my knowledge and are true.

IRMA E. STEVENS.

Subscribed and sworn to before me }
this 12 day of July, A. D. 1929. }

STUART B. ISAAC,
Notary Public
Certificate No. 51058 of A. B. Atkinson,
County Clerk of Erie County attached,
dated July 12, 1929.

(SEAL)

Answer and Counterclaim.

(Filed July 26, 1929.)

IN CHANCERY OF NEW JERSEY.

#74-71.

Between HOWARD R. STEVENS, Petitioner, *and* IRMA E. STEVENS, Defendant.	On Petition for Divorce. Answer and Counterclaim.

The answer of the defendant, Irma E. Stevens, to the petition of Howard R. Stevens, petitioner, respectfully shows:

1. This defendant admits it to be true that petitioner and defendant were married as in said petition is alleged.

2. This defendant denies that since her said marriage, and on the 21st day of December, 1928, or the 29th day of December, 1928, or the 3rd day of January, 1929, or the 10th day of January, 1929, she committed adultery with Burwell Hodges at the place named in the petition, or at any other time or at any other place. This defendant further denies that on the 24th day of May, 1929, or the 25th day of May, 1929, she committed adultery with Frank Muszar at the place named in the petition, or at any other time or at any other place. On the contrary, this defendant says that she has ever faithfully observed her obligations as the wife of petitioner.

3. This defendant admits it to be true that the petitioner and this defendant were bona fide residents of the State of New Jersey when this supposed cause of action arose as alleged in the petition. This defendant denies that she has ever since continued to be a bona fide resident of this state, but says that on or about the 31st day of May, 1929, on account of the desertion of the petitioner, her said husband, and his failure and refusal to support her, she was forced to return to the home of her parents in the City of Buffalo, New York, and ever since that time, up to the time of the commencing of this action, has been a bona fide resident of the City of Buffalo, New York. Whether said petition has, ever since said supposed cause of action arose, continued to be a bona fide resident of this state, as alleged in the the petition, this defendant is without information and neither admits or denies the same.

4. This defendant admits it to be true that one child, namely, Charles Joyce Stevens, aged about twenty-three months, was born of the aforesaid marriage, and admits that the said child is not now in her custody and says that she is without information as to the whereabouts of her said child, and neither admits or denies the allegation that her said husband is in possession of the said child. Defendant says that her said child was wrongfully and surreptitiously taken away from her by her said husband at the time of their recent separation.

This defendant therefore prays that the petitioner's petition be dismissed, with costs.

And this defendant, by way of counterclaim against the petitioner, says:

Answer and Counterclaim.

1. Defendant cohabited with petitioner for about two and one-half years from April, 1926, to April, 1927, at 80 North Broad Street, Newark, New Jersey, and 753 Elm Street, Arlington, New Jersey, and from October, 1927, to May, 1929, at 516 West End Avenue, Elizabeth, New Jersey, and 811 Canton Street, Elizabeth, New Jersey. From the beginning of their married life and continuously during their cohabitation, petitioner neglected and refused to treat petitioner kindly, but on the contrary, treated her coldly, cruelly and contemptuously. He continuously neglected and refused to take her out anywhere with him; repeatedly repulsed her attempted caresses and acts intended to demonstrate love and affection for him, saying that he didn't believe in that stuff; provided her with only meager support not in proper proportion to his financial ability; substantially always disagreed with her and disapproved of her ideas on all matters, whether important or trivial; did many kinds of unusual acts for the sole purpose of scaring, harassing and annoying her, knowing that she was in a nervous condition; always neglected to show her, by any act or word, that he admired or respected her, but on the contrary, showed, by his words and acts, that he regarded her as nothing but a cheap housekeeper and mistress.

In the early part of 1927, while defendant was pregnant, he repeatedly came home from work in the afternoons and proceeded to annoy her by running around the apartment on his hands and feet and making strange noises, and coming up behind her unexpectedly and jumping and yelling for the purpose of startling her. On one occasion, he became unjustly angry at some remark made by her and struck her in the face with his fist, causing her lip to bleed.

He always gave her barely sufficient money to buy the food for the home and pay other household bills and never paid for her clothing. During the early months of this year, 1929, while earning $260.00 per month, he provided her with $65.00 per month to buy the food for herself, himself and the baby and allowed her only what she could save from that for her clothing and recreation, and continuously complained that the food she was providing for him was not good enough. She insisted on obtaining part time employment in order to buy her own clothing, and he objected but permitted it without offering to more adequately provide for her out of his own income. He had just purchased a new 1929 Buick automobile and always dressed well and had money to spend on himself, but during some of said months, failed to furnish her with even as much as the $65.00 which he had agreed upon.

On account of the kind of treatment above described defendant left petitioner in April, 1927, and refused longer to live with him, and went to the home of her parents, Mr. and Mrs. Charles F. Joyce, and resided with them at 2 Admiral Road, Buffalo, New York. While residing there, the only child of the marriage, a son, Charles Joyce Stevens, was born on July 19, 1927. Before she left him on that occasion, he told her that if the baby should be a girl he didn't care what became of it, but if it should be a boy, he intended to have him. After learning of the birth of a son, petitioner came to Buffalo and tried to persuade defendant to go back to live with him. She at first refused, but later, on the urgent advice of her parents, she went back to live with him in October, 1927.

Upon the resumption of cohabitation on the repeated promises of the petitioner that he would treat defendant more kindly, he immediately proceeded to direct his affections to the child and to treat defendant with the same neglect and contempt as theretofore. Defendant bore up under that unhappy condition, hoping that time would improve the condition of her home, until, in the spring of this year, 1929, as a result of the said ill treatment, her health was impaired and she was on the verge of nervous collapse. Her said husband had repeatedly told her that she could leave him at any time she liked provided she didn't take the baby with her. On Saturday evening, May 25, 1929, her husband announced that he was through with her, and on Sunday morning, May 26, 1929, he, without warning and without just cause whatever, took the baby away in his automobile and ever since that time has willfully, continuedly and obstinately deserted defendant and has neglected and refused to support defendant and neglected and refused to permit defendant to see or know the whereabouts of said child.

2. Upon the said desertion, defendant was left destitute of means of support and was forced to abandon the apartment of her husband a few days later and go to the home of her parents at 2 Admiral Road, Buffalo, New York, where she now resides as an object of their charity.

3. Petitioner and defendant have both been bona fide residents of the State of New Jersey for the periods of time mentioned aforesaid and petitioner still is a bona fide resident of New Jersey.

4. Petitioner is about thirty years of age and is possessed of a 1929 Buick automobile and about $2,000.00 on deposit in bank or otherwise invested,

as defendant is informed and believes, and is earning a salary of $260.00 per month as a bookkeeper or accountant, and is able to support defendant in a manner suitable to their position.

Defendant therefore prays:

1. That petitioner may answer this counterclaim and each statement therein contained.

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

3. That petitioner may be required to pay to defendant a proper amount for counsel fees.

4. That the custody of the infant child of said marriage may be awarded to defendant.

And this defendant will ever pray, etc.

ARTHUR T. VANDERBILT,
Solicitor for and of Counsel with
Defendant and Counter-Claimant.

Writ of Habeas Corpus.

(Filed July 30, 1929.)

NEW JERSEY, to wit: The State of New Jersey to HOWARD R. STEVENS: GREETING: We command you that you have the body of Charles Joyce Stevens, by you restrained of his liberty and detained in your custody, as is said, by whatsoever name he may be called or known, together with the day and cause of his being taken and detained by you, before our Chancellor (or such Vice Chancellor as may sit for him), at the Chancery Chambers, in the Industrial Building, in the City of Newark, on the 23rd day of July, 1929, at ten o'clock in the forenoon of said day, to do, submit to, and receive, what shall then and there be considered in that behalf.

[SEAL]

WITNESS, his Honor, EDWIN ROBERT WALKER, our Chancellor at Trenton, the 16th day of July, 1929.

FERD GARRETSON,
Clerk.

ARTHUR T. VANDERBILT,
Solicitor.

Return to Writ of Habeas Corpus.

(Filed July 28, 1929.)

IN CHANCERY OF NEW JERSEY.

In the Matter *of* The Application of Irma E. Stevens for a writ of habeas corpus.	Return to Writ of Habeas Corpus.

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

The return of Howard R. Stevens of the City of Elizabeth in the County of Union and State of New Jersey, respectfully shows:

(1) That he is the father of the said Charles Joyce Stevens, infant, and as such father has the custody of the said child.

(2) That the said child has been in his custody and under his control since May 26, 1929. That he has taken the custody of said child for the reasons that on December 21, 1928, December 29, 1928, January 3, 1929, and January 10, 1929, Irma E. Stevens, his wife, committed adultery with Burwell Hodges in the City of Elizabeth in the County of Union and State of New Jersey and again on May 24, 1929, and May 25, 1929, she committed adultery with one Frank Muszar in the Borough of Roselle in the County of Union and State of New Jersey, and by reason of such acts, the said Irma E. Stevens is morally unfit and has disqualified herself to have the custody of said

child. The said child, while under the care of said Irma E. Stevens and prior to May 26, 1929, was neglected and became emaciated, the said Irma E. Stevens manifesting no loving affection for the child. That she unnecessarily beat the child making it nervous and unhappy. That on several occasions she handles the child in an immoral manner. On December 26, 1928, the said child had a severe attack of influenza and Dr. Alvin R. Eaton, Jr., was called in and attended the said child. Dr. Eaton attended the child daily from December 26, 1928, to January 24, 1929. On December 27, 1928, while the said child was confined to its bed, requiring the care and attention of the mother, Howard R. Stevens asked his wife to remain home to give the child such attention and care as it required but she declined to do so and insisted upon going to a party. She took his automobile and went away and did not return home until after one o'clock the next morning; that instead of going to the party as she stated, she went to a dance hall in the City of Newark with another woman where they met two men and remained dancing until after midnight. The said Irma E. Stevens has frequently stated that she did not want the brat or kid, referring to the said child; that she did not want to take it to Buffalo because, looking like its father, the child would disgrace her and its family.

(3) By reason of the foregoing facts and attitude and conduct of the said Irma E. Stevens, Howard R. Stevens found it necessary to take the custody of the said child for its safety, happiness and welfare; that the said Irma E. Stevens does not appear to have a high motive of life, stability of character or idealistic love and affection, such as true womanhood and motherhood should have.

Return of Writ of Habeas Corpus.

The body of the said Charles Joyce Stevens the said Howard R. Stevens has, ready this day and place as in the annexed writ mentioned, as in the within writ commanded, but the said Howard R. Stevens reserves the right to apply to have the said writ of habeas corpus set aside and quashed because the same has been improvidently issued and further because there is now pending in the Court of Chancery of New Jersey an action for divorce instituted by the said Howard R. Stevens against the said Irma E. Stevens, his wife for the cause aforesaid and under the divorce act of New Jersey, the Court of Chancery has full power and authority to provide and order for the care, custody and maintenance of the child of the said marriage without resort to habeas corpus proceeding, either under the minor's act or otherwise.

Dated: July 23, 1929.

HOWARD R. STEVENS.

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

HOWARD R. STEVENS, of full age, being duly sworn according to law, on his oath says that he is the father of Charles Joyce Stevens, infant, mentioned in the within return; that he is the person who signed the within return; that he read the same and knows the contents thereof and that the same is true to the best of his knowledge and belief.

HOWARD R. STEVENS.

Sworn and subscribed to before me }
this 23rd day of July, 1929. }

WILLIAM NEWCORN
M. C. C. of N. J.

Order for Alimony Pendente Lite.

(Filed August 5, 1929.)

IN CHANCERY OF NEW JERSEY.

Dkt. #74-71.

Between HOWARD R. STEVENS, Petitioner, *and* IRMA E. STEVENS, Defendant.	On Petition, etc. Order for Alimony Pendente Lite

This matter being opened to the Court by Arthur T. Vanderbilt, solicitor for and of counsel with the defendant, Irma E. Stevens, and in the presence of Peter B. Collins, solicitor for the petitioner, Howard R. Stevens, and Martin P. O'Connor, of counsel with the said petitioner, Howard R. Stevens, and it appearing that the parties have duly consented hereto;

It is thereupon, on this 30th day of July, 1929, ORDERED that the above named Howard R. Stevens do pay to his wife, the above named Irma E. Stevens, or to her solicitor the sum of Fifteen Dollars ($15.00) per week at the beginning of each and every week from the date of this order until the termination of this suit for her support and maintenance.

And it is further ORDERED that the said Howard R. Stevens do pay to the said Irma E. Stevens, or to her solicitor, a counsel fee of $75 and the costs of this application to be taxed.

E. R. WALKER,
C.

Respectfully advised,
JOHN H. BACKES,
V. C.

Order for Alimony Pendente Lite.

We hereby consent to the entry of an order in accordance with the above form.

PETER B. COLLINS,
Solicitor of Petitioner.

ARTHUR T. VANDERBILT,
Solicitor of Defendant.

Order of Consolidation.

(Filed August 5, 1929.)

IN CHANCERY OF NEW JERSEY.

Between HOWARD R. STEVENS, Petitioner, *and* IRMA E. STEVENS, Defendant.	On Petition for Divorce.
IN THE MATTER *of* The application of IRMA E. STEVENS for a writ of habeas corpus for her infant child, CHARLES JOYCE STEVENS.	On Petition, &c. Order of Consolidation.

The above matters being opened to the Court by Arthur T. Vanderbilt, Solicitor of the said Irma E. Stevens, in the presence of Peter B. Collins, Solicitor of the said Howard R. Stevens, on the return of the writ of habeas corpus.

It is thereupon, on this 30th day of July, 1929, ORDERED that the above matters and causes be and

the same are hereby consolidated and that the matter of the said writ of habeas corpus be continued and brought on to hearing with the final hearing in said suit for divorce.

And it is further ordered that in the meantime and until the further order of this court, the said Charles Joyce Stevens, infant, shall remain in the custody of his father, the said Howard R. Stevens.

E. R. WALKER,
C.

Respectfully advised,

JOHN H. BACKES,
V. C.

Affidavit of Peter B. Collins on Mailing.

(Filed August 6, 1929.)

IN CHANCERY OF NEW JERSEY.

Between
HOWARD R. STEVENS,
Petitioner,
and
IRMA E. STEVENS,
Defendant.

On Petition, &c.
Affidavit of Mailing.

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

PETER B. COLLINS, being duly sworn according to law, on his oath, deposes and says:

1. I am the Solicitor of the Petitioner.

Affidavit of Peter B. Collins on Mailing.

2. I have made diligent and careful inquiry in good faith to ascertain the residence and post-office address of the absent defendant, Irma E. Stevens, as the said inquiry is described in the affidavit heretofore filed in this cause.

3. On the 8th day of July, 1929, I deposited in the Post-Office at Elizabeth, New Jersey, a letter with postage prepaid thereon, directed to the defendant at her ascertained post-office address as follows: Mrs. Irma E. Stevens, #2 Admiral Road, Buffalo, New York, containing a certified copy of the Order for Publication made in this cause, a true copy of which is hereto annexed and also a certified copy of the petition for Divorce filed in this cause. I had the said letter duly registered and required of the post-office authorities a return receipt.

4. On the 10th day of July, 1929, I received the annexed return registry receipt for said letter.

5. Since the mailing of the papers set forth in the preceding paragraph, this deponent has been informed by the Clerk of the Court of Chancery, that on July 22nd, 1929, answer was filed to the petition by Arthur R. Vanderbilt, #790 Broad Street, Newark, New Jersey, who is the solicitor for the defendant, Irma E. Stevens.

PETER B. COLLINS.

Sworn and subscribed to before me this 5th day of August, 1929.

(L. S.) JOHN J. CARROLL,
Notary Public of New Jersey.

Divorce Order Publication.

IN CHANCERY OF NEW JERSEY.

Between
HOWARD R. STEVENS,
Petitioner,
and
IRMA E. STEVENS,
Defendant.

Divorce Order Publication.

The petitioner, having filed his petition in the above cause and process of citation having been issued and returned according to law, and it now appearing that personal service of process upon the defendant within the state could not be made,

IT IS, on this 28th day of June, 1929, on motion of Peter B. Collins, Solicitor of the Petitioner, ORDERED, that the said absent defendant do answer the petitioner's petition, on or before the 29th day of August, next, or that in default thereto, such decree may be made against her as the Chancellor shall think equitable and just.

AND IT IS FURTHER ORDERED that the notice of this order prescribed by law and the rules of this Court, shall, within twenty days hereafter, be published in Elizabeth Times, a newspaper printed in Elizabeth in this State and continued therein for four weeks successively, at least once in every week; and it is ORDERED that service upon the defendant of the petition and of this order, as service substituted for personal service of process within the state be made within the said twenty

days and in the manner prescribed by the rules of the Court for such substituted service.

E. R. WALKER,
C.

Respectfully advised,

NORMAN T. ROGERS,
A. M.

RETURN RECEIPT.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the fact of this card.

MRS. IRMA E. STEVENS.
(Signature or name of addressee.)

T. B. ISACE.
(Signature of addressee's agent.)
Date of delivery, July 10th, 1929.

Affidavit of Alfred Smith on Publication.

(Filed August 6, 1929.)

STATE OF NEW JERSEY, }
COUNTY OF UNION, }

ALFRED SMITH, being duly sworn according to law on his oath saith that he is Bookkeeper of The Elizabeth Press Publishing Co., Publishers of the Elizabeth Times, of Elizabeth, a newspaper printed and published in the City of Elizabeth, in said County of Union, and that the notice of which

the annexed is a copy was published in said paper on the 6th day of July, 1929, and appeared therein for 4 weeks successively, the last publication thereof being on the 27th day of July, 1929, making 4 insertions in all.

ALFRED SMITH.

Sworn and subscribed before me this 30th day of July, 1929.

(L. S.) EVAN Y. DAVIES
Notary Public of New Jersey.

IN CHANCERY OF NEW JERSEY

TO IRMA ELIZABETH STEVENS:

By virtue of an order of the Court of Chancery in New Jersey made on the day of the date hereof in a certain cause wherein Howard R. Stevens is petitioner and you are defendant, you are required to appear and plead, answer or answer to the petitioner's petition, on or before the 29th day of August, next, or in default thereof, such decree will be taken as the Chancellor shall think just and equitable.

The object of such suit, is to obtain a decree of divorce dissolving the marriage between you and the Petitioner.

Dated: June 28th, 1929.

PETER B. COLLINS,
Solicitor of Petitioner,
Post Office Address,
1165 East Jersey Street,
Elizabeth, New Jersey.

Answer to Counterclaim.

IN CHANCERY OF NEW JERSEY.

74-71.

(Filed August 9, 1929.)

Between

HOWARD R. STEVENS,
Petitioner,

and

IRMA E. STEVENS,
Defendant.

On Petition for Divorce.

Answer to Counterclaim.

The answer of the petitioner, Howard R. Stevens, to the counterclaim of Irma E. Stevens, re-respectfully shows:

1. Petitioner admits that he cohabited with the defendant from April, 1926, to April, 1927, at #80 North Broad Street, Newark, New Jersey, and #753 Elm Street, Arlington, New Jersey, and from October, 1927, to December 25th, 1928, at #516 West End Avenue, Elizabeth, New Jersey, and #811 Canton Street, Elizabeth, New Jersey, but the petitioner denies cohabitation with the defendant subsequent to December 25th, 1928. That in the petitioner's petition, he charges his wife with adultery on December 21st, 1928, but claims that prior to December 25th, 1928, the petitioner had no knowledge of the adulterous act of December 21st, 1928.

The petitioner denies that he neglected and refused to treat the defendant kindly, but on the contrary, treated her kindly with affection and respect. That she repeatedly repulsed his ca-

resses and acts intended to demonstrate love and affection for her; he denies that he provided her with only meager support, but on the contrary, claims that he supported her in a proper proportion to his financial ability; he denies that he attempted, or did unusual acts for the purpose of harassing or annoying defendant, knowing that she was in a nervous condition.

Petitioner further denies that in the early part of 1927, while defendant was pregnant, he annoyed her, by running around the apartment on his hands and feet and making strange noises, jumping and yelling for purpose of startling her, or that he struck her in the face with his fist, causing her lip to bleed.

Petitioner further denies that he gave the defendant barely sufficient money to buy the foods for the home and pay other household bills and never paid for her clothing, but claims that he provided the defendant with approximately $75.00 per month to buy food for her, himself and the baby; that he paid all other bills besides charge accounts at various stores for clothing which she purchased and charged to his account. This petitioner admits that the defendant insisted on obtaining part-time employment over his objection, but not because she was inadequately provided for out of his income. Petitioner admits that he purchased a new 1929 Buick automobile, but at her request, to be used as a family car. Petitioner admits that the defendant left petitioner in April, 1927, but not due to any improper treatment on his part, but claims that the defendant was dissatisfied and that the defendant, in conjunction with her family, broke up petitioner's home in April, 1927, when the defendant's mother took the defendant to her home to reside with

them at #2 Admiral Road, Buffalo, New York; and admits that the only child of the marriage, a son, Charles Joyce Stevens, was born there on July 19th, 1927, but denies that the petitioner stated to the defendant, that if the baby should be a girl, he didn't care what became of it. Petitioner admits that he went to Buffalo and endeavored to have his wife return to her home and after repeated efforts, defendant did return to her home in October, 1927.

The petitioner denies that after her return to him in October, 1927, said petitioner treated the defendant with neglect and contempt, but on the contrary, treated her kindly, with affection and respect. Petitioner admits that on Sunday morning, May 26th, 1929, he took the baby away in his automobile, because of the acts of adultery as set forth in petitioner's petition for divorce.

2. Petitioner admits leaving the defendant because of the said adulterous acts as charged in said petition; whether said defendant has ever since continued to reside with her parents at #2 Admiral Road, Buffalo, New York, this petitioner is without information and neither admits or denies the same.

3. Petitioner admits paragraphs numbered three and four of said counterclaim.

PETER B. COLLINS,
Solicitor for Petitioner.

Consent Order of Reference.

(Filed August 13, 1929.)

IN CHANCERY OF NEW JERSEY.

Dkt. #74-71.

Between HOWARD R. STEVENS, Petitioner, *and* IRMA E. STEVENS, Defendant.	On Petition, etc. Consent Order of Reference.

This matter being opened to the Court by Arthur T. Vanderbilt, solicitor of the defendant, Irma E. Stevens, and it appearing that Peter B. Collins, solicitor of the petitioner, Howard R. Stevens, has consented hereto:

It is, on this 13th day of August, 1929, on motion of Arthur T. Vanderbilt, solicitor of the defendant, Irma E. Stevens, ORDERED that the above entitled cause be referred to Hon. Jacob L. Newman, one of the Advisory Masters of this Court, to hear the same for the Chancellor and to report thereon to him and to advise what order or decree should be made therein.

E. R. WALKER,
C.

I hereby consent to the entry of the foregoing order.

PETER B. COLLINS,
Solicitor of Petitioner,
Howard R. Stevens.

Designation.

(Filed August 30, 1929.)

IN CHANCERY OF NEW JERSEY.

Dkt. #74-71.

Between

HOWARD R. STEVENS,
Petitioner,

and

IRMA E. STEVENS,
Defendant.

On Petition, etc.
Designation.

This matter being opened to the Court by Arthur T. Vanderbilt, solicitor of the defendant, Irma E. Stevens, and it appearing that Peter B. Collins, solicitor of the petitioner, Howard R. Stevens, has consented hereto:

It is, on this 21st day of August, 1929, ORDERED that the sixth day of September, 1929, at the hour of ten o'clock in the forenoon, at the Chancery Chambers in the City of Newark, be designated as the time and place for the hearing of the above entitled cause.

Respectfully advised,

JACOB L. NEWMAN,
A. V. *pro hac vice.*

I hereby consent to the entry of the foregoing order.

PETER B. COLLINS,
Solicitor of the Petitioner,
Howard R. Stevens.

Testimony.

IN CHANCERY OF NEW JERSEY.

74-71

Between HOWARD R. STEVENS, Petitioner, *and* IRMA E. STEVENS, Defendant.	On Petition, &c. Depositions.

Transcript of shorthand notes of testimony taken in the above cause before me, Jacob L. Newman, Advisory Master in Chancery of New Jersey, at the Chancery Chambers, 1060 Broad Street, Newark, New Jersey, on Friday, September 6, 1929, at ten A. M. and Monday, September 9, 1929, at ten A. M.

Appearances:

PETER B. COLLINS, Esq., Solicitor for Petitioner (MARTIN P. O'CONNOR, Esq., of Counsel).

ARTHUR T. VANDERBILT, Esq., Solicitor for Defendant (REYNOLDS C. MASSEY, Esq., of Counsel).

Oath of Stenographer.

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

MARION W. OGDEN, of full age, being duly sworn on her oath says, I will faithfully and truly take stenographically and reproduce in typewriting the evidence to be given in the above matter.

MARION W. OGDEN.

Sworn and subscribed to before me,
this 6th day of September, 1929.

JACOB L. NEWMAN,
A Master in Chancery
of New Jersey.

CHARLES E. SCOTT, called and sworn on behalf of the petitioner, testified as follows:

Direct examination by Mr. O'Connor:

Q. Mr. Scott, what is your business? A. Photographer.

Q. How long have you been engaged in that practice? A. Eighteen or twenty years.

Q. Where is your place of business? A. 264 North Broad Street, Elizabeth, N. J.

Q. Where do you live? A. 474 Union Avenue, Elizabeth.

Q. Have you taken any pictures at the request of the petitioner in this case, Mr. Stevens? A. Yes, sir.

Q. Have you those pictures with you? A. I have the plates. I think you have the pictures.

Q. Have you the negatives? A. Yes, sir.

Q. Where are they? A. Over there (indicating bench where he had been sitting).

Q. I show you these four photographs were these taken by you? A. Yes, sir.

Q. When? A. July 15.

By the Master:

Q. What year? A. This year.

By Mr. O'Connor:

Q. And what are they the pictures of? A. Pictures of a house on the corner, I think, or practically on the corner of Elmora Avenue and West Grand Street, Elizabeth.

Q. Four different views of that house? A. Yes.

Mr. O'Connor: I ask that these photographs be marked for identification.

Marked Ex. P-1 for identification, P-2 for identification, P-3 for identification and P-4 for identification.

Q. This picture marked Ex. P-1 for identification is what view of the house? A. Back view.

Q. I show you Ex. P-2 for identification and ask you what that view represents? A. Front view.

Q. Of the same house? A. Of the same house.

Q. I show you now Exhibit P-3 for identification and ask you what view of the house is that? A. Also front view.

Q. Of the same house? A. Of the same house.

Q. I now show you Ex. P-4 marked for identification and ask you what view of the house is that? A. That is the rear view showing west side of the house.

Q. Of the same house? A. Of the same house.

Q. That house is located where? A. West Grand Street right close to Elmora Avenue. I would not say it was right on the corner but very close.

By Mr. Vanderbilt: No questions.

Howard R. Stevens, the petitioner, being duly sworn on his oath, testified as follows:

Direct examination by Mr. O'Connor:

Q. Mr. Stevens, you are the petitioner in this case? A. Yes.

Q. And the husband of Irma Stevens? A. Yes.

Q. When were you married? A. March 29, 1926.

Q. Where? A. Bridgeburg, Canada.

Q. By whom? A. Reverend Lowry.

Q. Who is he? A. Presbyterian minister.

Q. At the time of the marriage ceremony did you receive a certificate of marriage? A. Yes.

Q. I show you this certificate of marriage and ask you whether or not you recognize that. Is that the certificate handed to you by the minister? A. Yes.

Mr. O'Connor: I offer the certificate in evidence.

Received and marked Exhibit P-5.

Q. After your marriage did you and your wife live together? A. Yes.

Q. Where did you go to live? A. 40 North Broad Street, Newark.

Q. 40 North Broad Street, Newark? A. Yes.

Q. When did you come to 40 North Broad Street, Newark? A. About the second of April.

Q. Of what year? A. 1926.

Q. How long did you reside there? A. Ten days.

Q. Boarding? A. No, housekeeping.

Q. From there where did you move to? A. 753 Elm Street, Arlington, New Jersey.

Q. Did you housekeep there and live together? A. Yes, sir, had an apartment.

Q. How long did you remain there? A. Until April 14, 1927.

Q. From there where did you go? A. At that time my home was broken up and I stored my furniture.

Q. What do you mean your home was broken up? A. My wife's parents—her mother came down and tore up my home and took her to Buffalo.

Mr. Vanderbilt: I object to that conclusion.

The Master: It is a conclusion of the witness. You had better let him explain what he means by that.

By Mr. O'Connor:

Q. You used the term "torn up", what do you mean by that? Tell us in a concise way. A. I mean I left for work that morning. I thought everything was all right. When I came home, all the dishes and the linen were gone. The blinds were pulled down. Of course, my furniture was left.

Q. Your wife went to Buffalo? A. Yes.

Q. Your wife was pregnant at that time, was she not? A. Yes.

Q. When she went to Buffalo she went to live with her father and mother? A. Yes.

Q. How long did she remain there? A. Until October 5.

Q. What year? A. 1927.

Q. Did you go to Buffalo to visit her? A. I went when the baby was born, yes.

Q. The baby was born in Buffalo? A. Yes.

Q. When was the baby born? A. July 19.

Q. Did your wife come back? A. Yes, with a lot of pleading I got her to come back.

Q. Where did you live then? A. 516 West End Avenue, Elizabeth.

Q. When did you arrive there about? A. About the 7th of October.

Q. Of what year? A. 1927.

Q. How long did you live there? A. Until April 13, 1929.

Q. April 13, 1929. After that time where did you live? A. Moved to 811 Canton Street, Elizabeth.

Q. And stayed there how long? A. Until May 25.

Q. Your wife stayed with you? A. Yes.

Q. You and your wife lived together reasonably happy until what time? A. A few months, six months.

Q. About six months, then what occurred? A. Well, she came out and said that she was only infatuated with me, that she never loved me.

Q. Anything else? A. She was always fighting me and nagging me and cursing me.

Q. Did you at any time have any suspicion about the fidelity of your wife? A. Yes.

Q. When? A. A few months or six months—she said she was corresponding with a barber in Buffalo.

Q. When was this? A. It was the end of 1926. She received a Christmas card from this man.

Q. What did you do about that? A. I didn't do anything.

Q. After that was there anything else occurred? A. Not until she returned after the baby was born.

Q. Then what occurred? A. Around April she packed her grip and stayed out all night, about April 2, 1927.

Q. What did you do about that, if anything? A. I complained about it and told her mother about it and nothing was done. I asked her where she went and she said, none of my business, why don't I follow her.

Q. What did you do? Anything else? A. No, I didn't do anything, only as I said, I told her mother on the telephone that she was staying out late at nights.

Q. Subsequent to that did you do anything to ascertain where your wife was going? A. I tried to keep her in the house.

Q. Was she accustomed to going out nights? A. Yes.

Q. Frequently? A. Around October, 1928, it was three nights a week and two nights with midnight hours she was keeping.

Q. Did you do anything about that? A. Yes, I tried to keep her in the house. I told her it wasn't nice that she had a baby to look out for. I tried to take her out. I would get somebody to stay with the baby as much as I could afford to so I could take her out.

Q. Did that correct conditions? A. No.

Q. What did you do to ascertain where she was going? A. I had Mr. Carey to make an investigation for me.

Q. Mr. Carey? A. Yes.

Q. Did he make an investigation for you? A. He did.

Q. And submitted a report to you of the investigation he made? A. Yes.

Q. Do you know of your own knowledge where your wife was going or had been subsequent to October, 1928? A. No, not until my aunt paid a visit to my home and stayed over night and she told my aunt——

Q. Not what she told your aunt, what you know of your own knowledge. A. I did not know anything until after Mr. Carey gave me a report.

Q. After Mr. Carey had submitted to you a report, did you individually make any effort to ascertain where your wife was going or had been going? A. I did.

Q. What did you do? A. I employed Mr. Carey to make an investigation for me.

Q. Did you see anything yourself? A. I did.

Q. When? A. On January 3.

Q. What did you see on January 3?

By the Master:

Q. Is that 1929 you are speaking of? A. Yes. On January 23——

By Mr. O'Connor:

Q. Which is it, the 3rd or 23rd? A. The 3rd. I had a report from Mr. Carey on the 27th of December. At that time he told me that she was meeting this bus driver.

Mr. Vanderbilt: I object to what he said.

By Mr. O'Connor:

Q. Not what he said. As a result of the information that was conveyed to you, what did you do or see? A. On the night of January 23——

Q. Wait a minute. You say January 23? A. I am wrong, January 3. On January 3 I went out on my porch and a yellow bus drove up about, I should say, 35 or 40 feet and stopped in front of this vacant house that faces West Grand Street or West End Avenue and my wife gets off of this bus and goes in the front of this old house. A few moments pass and the bus driver gets off and goes in the same direction. To satisfy myself I went down out of my flat, down on the street. I walked around the old house. I did not see anything visible on any side. Then I went back to my home and she came in at 10:33. It was 10:12 when the bus pulled up.

Q. What time was it that you saw this bus driver and your wife go into this vacant house? A. About 10:12 to 15.

Q. You say you walked around the house and saw nothing? A. That is right.

Q. Then you walked back to your home? A. Yes.

Q. After you got back to your home and before your wife got in the house, did you see her? A. Yes, I stayed on the porch until she put her foot on the doorstep and she slammed the door.

Q. You saw her on the doorstep. Where did she come from? A. From the front of the old house.

Q. You stayed on the porch then until she got up to the steps? A. That is correct.

Q. Was this a one or a two family house? A. Two family house.

Mr. Vanderbilt: Which house?

The Master: The house he lives in.

By Mr. O'Connor:

Q. The house in which you live, was that a one or a two family house? A. Two family.

Q. You were occupying what portion of the house? A. The upper flat.

Q. What porch were you standing on when you first saw your wife going in on the lot where the vacant house is located? A. On my porch.

Q. That is the upper porch? A. That is the upper porch.

Q. Where were you standing when you saw your wife leave the vacant lot on which the vacant house is located? A. The same porch.

Q. How far is that house in which you were living from the vacant house? A. It is the length of five houses.

Q. About five houses? A. Yes.

Q. How long was it between the time you first saw your wife going in on the lot and the time you saw her leave the lot on which the vacant house is located? A. She went in at 10:12 and I timed her and she came out at 10:33.

Q. When did you again see your wife outside the home? A. On the night of May 25.

Q. Where did you see her? A. At the corner of West Jersey Street and Elmora Avenue. She came out of the theatre.

Q. Who was she with? A. She hesitated on the corner for a few minutes and this scene painter Muszar came out of the side entrance and they walked up West Jersey Street.

Q. What did you do? A. I followed them.

Q. Where did they go? A. They went to Acme Street one block up. They proceeded along that on into Warinanco Park.

Q. This is the Union County Park? A. Yes.

Q. You say the man's name is Muszar? A. Yes.

Q. Do you know his Christian or first name? A. No, I do not.

Q. Do you know where he was employed? A. Yes, by the Elmora Theatre.

Q. This is in that same neighborhood? A. Yes.

Q. How far from where you saw your wife first is this theatre? A. Half a block.

Q. They locked arms and they walked up towards the park? A. That is right.

Q. Where did they go? A. They went up into the park, circulated around the little gulley, across the bridge and back to a park bench standing probably 20 yards back in the dark.

Q. Is this a very large park? A. Yes.

Q. How large a park? A. You mean the whole park?

Q. Yes. A. I imagine it covers 50 acres.

Q. Around this bench were there any trees? A. Yes.

Q. Many? A. Yes.

Q. Did you go into the park? A. Yes.

Q. How close did you get to them? A. I should judge 40 to 50 yards.

Q. What were they doing? A. Why it looked as if they were in a very embarrassing position.

Q. What was their posture? A. She was in his arms.

Q. Were they sitting up or lying down? A. I could not exactly say they were lying down but they were leaning.

Q. Was there anybody with you? A. Yes.

Q. Who? A. Mr. Thomas L. Carey, Jr.

Q. What time of night was this? A. They left the theatre at 9:15 and they were up there in the park altogether I should imagine a half an hour.

Q. How long were you there? A. I was there about the length of time they were there, probably I left sooner than they did.

Q. You did not stay there? A. Yes, until they left. Only they went another direction through the park and I went on back to my home.

Q. They went on into the park further? A. They went up a street that leads into the park.

Q. When they started to do that you left for your home? A. Yes, sir.

Q. Where is this park located? A. It is located west of Elmora Avenue, Elizabeth.

Q. In the Borough of Roselle? A. Yes.

Q. You say it is about a 50 acre park? A. I should imagine so.

Q. This was on the 25th of May, 1929? A. That is right.

Q. Was it much frequented that night? A. No.

Q. Is there much shrubbery in that park? A. Lots.

Q. How far were they when you first saw them from the edge of the park? A. When they went into it, I was possibly 50 yards back of them, possibly a little bit further.

Q. How far were they from the edge of the park? A. When they were sitting?

Q. Yes. A. It must have been 150 yards.

Q. Around the park, what is the nature of the park, around it? A. It is wooded. There are lots of big trees in the section right where they were.

Q. Around the edge of the park is what shielding it, if anything, from the street? A. Lots of shrubbery.

Q. High? A. Yes.

Q. How high? A. Twenty feet high.

Q. Then what did you do? A. I went on back to my home and sat down and read a newspaper. She came in. She jumped up in the air and said, "You have been following me." I told her, "Yes."

Q. Then what followed? A. I left my home that night.

Q. Was there an argument? A. Yes, I told her I knew lots about her.

Q. What did you do, leave the home that night? A. Yes.

Q. Where did you go? A. I slept in my automobile.

Q. Where was the child? A. In the house.

Q. Where was your automobile? A. In the garage.

Q. On the same premises? A. Yes.

Q. That morning, Sunday morning following, what did you do? A. I went downtown and got some breakfast. I went back to my home and she was throwing things out of her trunk all over the house. The baby was frightened to death. I went in and she pushed the little fellow on the floor. I picked him up and left.

Q. You haven't lived together since? A. No.

Q. You have had the custody of the baby since? A. Yes.

Q. How old is the baby now? A. Two years and one month about.

Mr. O'Connor: If your Honor please at this point there is also a situation involved in this case as to the custody of the child. A writ of habeas corpus suit has also been started and the two cases were consolidated and I suppose they will be disposed of in the same way. I don't understand that the defendant has traversed the return to that writ. My understanding is that, in the absence of traverse, that the statements in that writ stand as admitted facts.

The Master: That may be so but I will permit him to file a traverse. I think we will try this one issue. When this issue is disposed of, I think I can readily dispose of the other issue. I don't think you need go into that at this time. I think if we need any more evidence as to what disposition I should make of the custody of the child, I will give you an opportunity to produce it.

By Mr. O'Connor:

Q. There is no other instance of your own knowledge where you saw your wife in the company of other men? A. No.

Cross-examination by Mr. Massey:

Q. Mr. Stevens, when you were married and came down to New Jersey to live, how did you come? A. By automobile.

Q. Whose automobile was it? A. Hers.

Q. Did you and your wife get along all right together on that trip down? A. Yes.

Q. Nothing but kind words between you on the way? A. That is right.

Q. And when you arrived and went to your apartment at 40 North Broad Street, Newark, and during the ten days you were there, were there any unkind words between you and your wife? A. No.

Q. Isn't it true that your wife was very dissatisfied with the kind of a place that you brought her to stay temporarily? A. Yes, she made that remark. There was nothing the matter with the apartment. It wasn't what I expected.

Q. Didn't you tell her you were satisfied to stay there indefinitely? A. I did not.

Q. You wanted to stay there two or three months and you were in no hurry to get a place that both of you considered satisfactory to live in? A. I did not.

Q. How long had Mrs. Stevens lived at home just before her marriage, do you know? A. I don't know.

Q. How long do you know she was living there before? A. From the first of the year I knew that.

Q. That is a period of how many months? A. About three.

Q. You knew that she had a very good and well provided home at the home of her parents? A. Yes.

Q. That she did not know anything about the kind of a place she was coming to and that you had selected to stay when she came to New Jersey to live? A. She was willing to go any place I went, so she said.

Q. Then you went over to North Arlington to live, is that right? A. Yes.

Q. After ten days? A. Yes, sir.

Q. How soon after you moved over there were there any unkind words between you and your wife? A. Why, when she told me that she was

corresponding with the Italian barber. I might say she called him John.

Q. She told you she was corresponding with an Italian barber? A. She did.

Q. Do you remember exactly what she said? A. She said she had written him friendly letters. That is all I can say.

Q. How did such a conversation arise between you? A. She kept bringing up John, John this and John that.

Q. What did she say about John? A. She said she had been going to his barber shop in Buffalo.

Q. Did she say what for? A. I suppose to get her hair cut.

Q. What else did she say about him? A. She did not say anything.

Q. She said "John this and John that" is that all she said. You can't remember any other conversation that she had about John? A. Not until 1928. Then she got a letter from this man's wife according to her story and when I returned from work that day she said she had something to tell me but she was afraid.

Q. Let us just go back to the first time she talked about him. You said she was tantalizing you with reference to this man John as I interpret what you said? A. Yes.

Q. Can't you remember anything at all she said about him? A. She said he was a good scout.

Q. She said she was writing friendly letters to him and that he was a good scout. A. She said he was a married man.

Q. Did she say he was a particularly personal friend of hers? A. I should say so, yes.

Q. Did she say so? A. I won't say that.

Q. Did she tell you he was an Italian barber? A. Yes. She would always be telling me how good looking he was.

Q. Did you ever see any letters that she wrote to him? A. No.

Q. Or that he wrote to her? A. No.

Q. All you know is what you say she told you? A. That is right.

Q. Is there anybody else knows what she told you? A. No.

Q. As a matter of fact you knew that Mrs. Stevens did some work in the line of marcel waving before she was married to you. Didn't you know that? A. No, I did not.

Q. You didn't know that her communications with this man and every reference she had to him referred to a possible business appointment or possible reference, you didn't know that? A. No.

Q. You said she got a letter from his wife later on? A. Yes.

Q. Did you see that letter? A. She said she burned it.

Q. How did you knew she got it? A. She told me.

Q. How long after she got it did she tell you? A. I don't know.

Q. Did she tell you what was in it? A. She said it was from the barber's wife. She said she was accusing her of trying to get her husband.

Q. Did you ever have any idea where this barber was? A. Yes, in Buffalo.

Q. Could you have found him if you wanted to? A. I imagine so.

Q. You never investigated? A. I never knew this man's last name. I doubt if I could have found him.

Q. She never told you she cared anything about this barber? A. She said she liked him an awful lot.

Q. On what occasion did she tell you that? A. Just an ordinary conversation after finishing our meal she would bring the subject up.

Q. How many different times? A. Oh, thousands of them.

Q. Was that before or after her first quarrel with you? A. Why, she kept it up all the time.

Q. Was it before her first quarrel with you? A. Yes.

Q. When did you have your first quarrel with her? A. It was about the time that I knew she was friendly with this barber.

Q. When she first mentioned it? A. Yes.

Q. How long after your marriage was that? A. It was around October or November.

Q. A few months after October or November the same year is what you mean, in 1926, when you were living in North Arlington? A. Yes.

Q. How many times did you take your wife out in the evening for recreation, take her away from home, during that first six months you were living together? A. Two nights a week.

Q. Regular? A. Yes.

Q. Where would you take her? A. To a show in Newark or Arlington.

Q. Regular? A. Yes.

Q. Were those the only social occasions that you had with her excepting staying home? A. Yes.

Q. Did you have visitors in the home? A. Yes.

Q. Any of her friends? A. I don't know if she had any except Mr. and Mrs. Watson who lived downstairs used to come up and play bridge. She got acquainted with a Mrs. Scott in a beauty parlor but she did not come to the house.

Q. I am talking about your wife's friends who came to the house. A. Mrs. Watson was the only

one excepting the Habermans and Miss Lindstroth that came often.

Q. They weren't friends of hers? A. Yes.

Q. She didn't consider them so? A. She certainly did.

Q. They knew you before? A. Yes.

Q. She didn't think much of them? A. She would invite them over for weekends.

Q. Didn't she criticise their conduct and tell you she did not want them to come? A. No.

Q. Now when you had your first quarrel you say it arose out of this trouble of what she said about the Italian barber. Was that the cause of it? A. That was the beginning.

Q. Are you absolutely sure that there were no disagreements before that? A. Why, yes, there was one other thing. She scandalized the town when she was there a few months that she was a divorced woman. She went up to the beauty parlor to a Mrs. Scott and told her. This information did not come to me until the end of the year.

Q. Is Mrs. Scott here? A. I don't know.

Q. Are you telling what Mrs. Scott told you? A. No, I am telling you the information that came to me.

Q. From whom? A. My friend told me, Paul Haberman.

Q. Is he here? A. I don't know. I don't see him.

Q. What did she say about her divorce proceeding? A. She thought it was a great honor to broadcast the whole town with it.

Q. Not what she thought, what did she say? A. That is what she said.

Q. Did you hear her say that? A. No.

Q. Outside of the fact she was a divorced woman, was there anything else she said you heard of? A. No.

Q. Did you know she was a divorced woman when you married her? A. Yes.

Q. Do you know who got the divorce? A. I believe she got it.

Q. You knew she got it before you married her, didn't you? A. Yes.

Q. It is not true then that you were very contrary and unfriendly and refused to go along with your wife on almost everything that she wanted to do during the first few months of your married life when you first moved to North Arlington? A. I was willing to take her as much as I could afford, at least two nights a week.

Q. I am talking about little every day things. Isn't it a fact you were contrary to every little detail? A. No.

Q. Isn't it a fact that you were on the outs with her and objected to everything from the very first, isn't that true? A. No.

Q. When you were living in North Arlington you said her parents interfered or her mother interfered with this situation in the home, how soon did the first circumstances of that kind arise? A. I recall March 1. She wanted to get a lower flat. We were living in an upper and her sister came down.

Q. What year was that? A. '27.

Q. That was more than a year after you were married? A. Yes, two months over a year or a month over.

Q. That was the first time her parents came into the picture as far as any trouble was concerned? A. Yes.

Q. That was about getting another flat? A. Beginning of it, yes.

Q. How did the trouble arise? A. I was working in New York. They had rented a flat without

me seeing it or they had practically rented it, just a matter of taking me down to show me where I was going to live. It was down a mile or a mile and a half from the station——

Q. Did you know they were out looking for a flat? A. Yes.

Q. Did they do that with your approval? A. Yes.

Q. You were willing to get another place if a satisfactory one could be found and you knew they were out looking? A. Yes.

Q. Had they signed up? A. They made a deposit.

Q. Of how much?

The Master: Is it necessary to go into all this?

By Mr. Massey:

Q. How did the parents interfere on that occasion? A. A few—a week before the mother came down and took all the things out of the home, linens and dishes, she wrote a letter down and told her what a lemon she had married.

Q. Did you see the letter? A. Yes.

Q. Was that your first knowledge of any difficulty between you and your wife being known to the parents, that letter your first knowledge? A. No, there were things they would say when they were there.

Q. What else did they do outside of writing that letter? A. They always favored her. I was always in the wrong. She was right always.

Q. These particular things that they did, how long had you been quarreling? You had been quarreling for a period of six months at that time? A. To what time?

Q. To the time we are referring to now, around the time you got the new apartment or were looking for the new apartment. This was about a year after you were married? A. It was off and on, yes.

Q. What were the disagreements about? A. She tried to buy more furniture than I could pay for, running up bills at Bamberger's.

Q. How much money did you spend? A. Around $3,000.

Q. For furniture? A. Yes.

Q. Did she spend a lot of her own money besides? A. She spent some.

Q. You don't know how much? A. No.

Q. When you moved, where did you move to? Did you get a new apartment in North Arlington? A. No.

Q. You stayed at the same place until the time she left you and went to Buffalo? A. That is correct.

Q. What kind of quarrels had preceded her leaving for Buffalo, if any? A. Well, the first began when she cursed me.

Q. What did she say? A. Called me a son of a bitch.

Q. When? A. Around three months before. Then it was God damn liar and all those things.

Q. Three months before she went to Buffalo to stay? A. Yes.

Q. Ws anybody else there? A. No.

Q. What was the occasion? How did she come to call you that? A. I don't know.

Q. You don't remember——

Mr. O'Connor: He says he doesn't know.

By Mr. Massey:

Q. Was there anything else said? A. No.

Q. Was it in the course of a quarrel that she called you that? A. It would be some little thing that I would do that would not suit her. If I would lay my coat on the chair, if my shirt collar wasn't clean, she would start in nagging and fighting.

Q. How often had she taken trips to Buffalo to see her parents before this time she went to stay? A. About two months after we were married, I had arranged to take her down to my people and in preference to going with me——

Q. That isn't answering the question. How often did she take trips to Buffalo? A. About every three months.

Q. Who paid her way? A. I would pay her way sometimes and I suppose her father would send her money occasionally.

Q. How many times did you ever pay her way? A. I don't recollect.

Q. Do you know you did at least once? A. Yes.

Q. Was there any particular quarrel immediately preceding her leaving for Buffalo? A. No.

Q. How long had she been pregnant at that time? A. From October 19 or 20, the latter part of October.

Q. So far as you knew everything was all right between you when she left? A. I knew everything wasn't all right. She was discontented. She told me she did not care for me and wasn't going to live with me.

Q. You never told her you did not care for her? A. I did not.

Q. Did you ever talk to her about what would be done with the baby in case of a separation between you? A. Yes, on different occasions she would say if she got him she would put him in a home as she did not want to be bothered with him.

Q. What did you say? A. I told her I would not see him in any home.

Q. That is all you ever said about the baby before the baby came? A. I told her I would not give him up. On the night of January 3, when she came in from this bus driver out of the old house she came in the bathroom with bite marks on her face.

Q. I want you to tell me about this occasion when you separated and she went to Buffalo. Was there anything else said by you and her about the baby? A. There was not.

Q. You know why she left, outside of the fact that her mother wanted her to come home? A. She had a doctor in Buffalo that she wanted to treat her but I wanted her to stay with me.

Q. Didn't she have a trip to Buffalo scheduled about that time? A. No.

Q. What did you do after she left? A. I stored my furniture.

Q. What did you do with reference to her? A. I sent her money.

Q. How much money? A. I don't know, around $100.

Q. How many times did you write to her? A. Twice.

Q. How many times did you send her money?

By the Master:

Q. While she was in Buffalo? A. I think it was a couple of times.

By Mr. Massey:

Q. $100, was that all at one time? A. No, I sent the $100 for her hospital bill.

Q. That is the whole sum that you sent? A. No, I sent her a few checks after she left.

Q. Give us the whole sum that you sent her while she was up there? A. About $150 I should say, or $200, I don't know which.

Q. Did you send that by check? A. Yes.

Q. How many months' period was that? A. Three months.

Q. What did you say in your letter to her, your first letter?

Mr. O'Connor: I object, if your Honor please. The letters speak for themselves.

The Master: The letter, I suppose, would be the best evidence.

Mr. O'Connor: You ought to have the letter.

Mr. Massey: I would like to state to the Court, if I may, that we will prove by our witnesses that the letter has been disposed of.

By the Master:

Q. Do you know what the contents of that letter was? A. I told her that I was awfully sorry that she had taken those steps to leave me at a time when she should be with me.

Q. Did you say anything else in the letter? A. Not as I can remember.

By Mr. Massey:

Q. Were there any other communications? A. Yes.

Q. What other communications were there? A. A week before the baby was born I sent her $100.

By the Master:

Q. Was there anything said in that letter? A. I told her that I trusted in God that everything would come out all right.

By Mr. Massey:

Q. Did you get any letters from her? A. No, not to my recollection.

Q. She did not answer your letters?

The Master: He says not to his recollection.

By Mr. Massey:

Q. On the occasion of your going up to Buffalo, how soon after the baby was born was that? A. The baby was born, I believe, on a Tuesday, and I was alone at my office——

The Master: You weren't asked that. How soon after the baby was born did you go to Buffalo?

A. Three days after.

By Mr. Massey:

Q. After receiving notice by telegram? A. I received a letter.

Q. When you saw your wife at the hospital didn't you have a quarrel with her on the first occasion when you saw her alone? A. I did not.

Q. Didn't she go into hysterics as the result of what you told her? A. Not while I was there.

Q. Didn't you tell her you intended to take the baby away and keep him? A. I did not.

Q. Just how did the reconciliation come about? A. I went out and pleaded with her to return to me. She kept saying her father was going to take the baby and raise him. They gave him the father's full name. I had nothing to do with that.

Q. She did not want to come back? A. No.

Q. Do you know what influenced her? A. The baby, she said.

Q. Didn't her father have something to do with it? A. I think his persuasion.

Q. The father persuaded her to come back and live with you? A. Yes.

Q. When she came back, how did you get along then? A. She started fussing about the dirt, the way I cleaned the house. I had it cleaned.

Q. Was there any affection between you? A. I tried to. There was none from her to me.

Q. None from the time she came back? A. No.

Q. Isn't it true that you did not do anything during all that time to discipline the baby, but just let him do as he wanted to? A. No.

The Master: Are we going into that too? How is that material whether he disciplined the baby?

Mr. Massey: We contend that has some bearing on her right to leave him.

The Master: I don't think that is material. However, he has answered it "No" so we will let it go.

By Mr. Massey:

Q. When did you first hear of this party whom you saw in that old deserted house with her? A. About November 25.

By the Master:

Q. What year? A. 1928.

By Mr. Massey:

Q. How did you come to know about him then? A. November 15 I went on a hunting trip in Maryland. I had not had my baby down to my people. She would not go.

The Master: I don't want to go into that.

Q. How did you come to know about it? A. My aunt stayed over night on November 20 and they slept together and she told my aunt that she had met with a married man in Elizabeth; that she was discontented with me. She told her that she saw lots of him.

By the Master:

Q. As a result of that conversation you got this information about this bus driver? A. That is right.

By Mr. Massey:

Q. When did you first see him? A. January 3. I had seen him on different occasions on his bus.

Q. You knew who he was and what his name was? A. Yes.

Q. Is that man here now? A. I don't know.

Q. Would you be able to tell? A. Yes, there he sits.

Q. That is the gentleman? A. That is him (indicating Hodges).

Q. What is the name of your aunt who told you about this man? A. Mrs. James P. Coverdale.

Q. Is she here? A. No.

Q. Where does she live? A. In Oxford, Maryland.

Q. Did you try to get her to come today? A. She is sick.

Q. When you saw her on the 3rd of January on that occasion will you describe to us what kind of a night was that? A. It wasn't a cold night. It was clear.

Q. Weather clear? A. As well as I can remember.

Q. Was or was it not cold? A. Not extremely cold.

Q. In the middle of the winter? A. January 3.

Q. What kind of clothing did he have on, do you remember? A. Yes, he had on a driver's uniform, bus driver's uniform.

Q. Describe again just exactly what happened there on that occasion. A. This bus driver turned right from Elmora Avenue on West Grand or West End Avenue and stopped nearly even with the house. She gets out and goes in and a few seconds pass and he gets out and goes in.

Q. Were there any other passengers on the bus? A. No.

Q. That was the end of the line? A. Yes.

Q. Regular stop, the end of the line? A. Yes.

Q. The lights shone clear up to the front of your home? A. The dimmers, yes, I could see them.

Q. So you say that your wife was friendly with this bus driver in a wrongful way? A. Yes.

Q. Why didn't you go inside the building that night when you were there? A. I wasn't going in a dark house with floors partly torn out.

Q. The floors were partly torn out? A. Yes, I looked in there afterwards and saw the condition of the house.

Q. There were no windows whatever in the house? A. Most of them were out.

Q. You think your wife was more interested in this man than she was in you or other people?

Mr. O'Connor: I object to what he thinks.

The Master: I suppose what he thinks is objectionable. You can put the question another way and I will allow it.

Mr. Massey: I will withdraw it.

Q. Did you say you said anything to her about that night? A. She came in the house——

By the Master:

Q. Did you say anything about that to her? A. No.

By Mr. Massey:

Q. How soon after that did you say anything to her about it? A. I didn't. I tried to keep her off the bus by offering to use our car but I did not tell her about the bus driver.

Q. You did not think it was necessary to mention it to her? A. No, the time before when she got the letter from the bus driver's wife I offered to help her. She raised a rumpus.

Q. You never mentioned a letter from the bus driver's wife before? A. I tried to help her out of it.

By the Master:

Q. Am I right that you testified that your wife received a letter from a married man? A. Yes, from Hodges. I saw that letter, the letter she sent on the night of December 27 in her pocket.

By Mr. Massey:

Q. What became of it? A. She mailed it.

Q. She mailed the letter that she received from him? A. No, that she wrote to him.

Q. She received from Hodges' wife? A. No. On the night of December 27, the night she went to the dance hall. It was a rainy night and she got home at 1:40 in the morning. In her pocket

was this envelope addressed to B. Hodges, c/o Public Service Co. I found the letter. I forget whether I opened the letter or not. The next night she said, "I want to go out and get a little air." She went direct to the mail box and dropped this letter in the box.

Q. You never mentioned that letter to her? A. No.

Q. Ever since January 3 you lived with her in the same house with the baby as man and wife? A. Yes.

By the Master:

Q. Will you tell me what letter you referred to that she received from a married woman? Mrs. Stevens received a letter from a married woman. A. I did not see that letter.

Q. Who told you about it? A. She did.

Q. Where were you living at that time? A. 516 West End Avenue.

Q. In Elizabeth? A. Yes.

Q. What did she say was the contents of the letter? A. She said that this woman had accused her of trying to take her husband away from her and there was going to be trouble.

Q. Did she say who the married woman was that she received the letter from? A. Said it was the barber's wife.

By Mr. Massey:

Q. There were no letters that you referred to of the bus driver or the bus driver's wife? A. No.

Q. Didn't you know, Mr. Stevens, that the bus just stopped there a few minutes between the end of its run and its return and that it never stays there more than a few minutes? A. 15 to 18 minutes his stops amount to.

Q. The usual stops amounted to 15 or 18 minutes? A. The usual stop is around 10 minutes.

Q. On this last occasion when you saw her walking in the park with a strange gentleman how did you know who that gentleman was? A. Mr. Carey followed this man back to the theatre and got a report on the name. May I say a few months before she wanted to rent a room in my home to one of the men in the theatre but she mentioned no name.

By the Master:

Q. Did she work in the theatre? A. Yes, Elmora Theatre.

By Mr. Massey:

Q. What connection did your wife have with this theatre? A. An usher.

Q. She was an usher there? A. Yes.

Q. On this evening you saw her she had worked there during the evening as an usher? A. Yes, to my knowledge.

Q. How long had she been working there as an usher? A. From the first of April up until around the 13th. She stopped the week we moved, the week of the 13th, and then went back. About a week I think she was off.

Q. Was that the whole time you were in Elizabeth that she was working? A. That was the time that I was living on Canton Street.

Q. How many months altogether was it she was working? A. Probably six weeks.

Q. Did she have any other jobs while she was married to you? A. Yes, she worked in a beauty parlor over in Arlington when she lived there. She worked for the Dupon Company for a couple of months I believe.

Q. Doing clerical work? A. I believe so.

Q. When you saw her that evening that you followed her, did you see her come out of the theatre? A. Yes.

Q. This man was with her? A. No, he came out of a side entrance.

Q. He met her near the theatre? A. Outside. A half block in the dark.

Q. How far did they walk together to the park? A. Nearly a quarter of a mile, I should say.

Q. They come past the park on the way to her home? A. They did not this night.

Q. That is the usual way for her to come home from that theatre? A. By the park, no, it is not.

By the Master:

Q. What would be the usual route for her to come home? A. Come up Elmora Avenue to Canton Street, a distance of nearly one-eighth of a mile.

By Mr. Massey:

Q. When you saw her go into that park with this man, walking along, was she on the walk? A. When they first started, yes.

Q. You followed them all the way through. Did they stay on the walk until they got to the bench? A. No.

Q. Where did they go? A. There was a path, a gravel path that they walked first probably 200 yards and went back to this park bench in the dark.

Q. Did they walk on the path until they got near the park bench? A. Yes, on the path.

Q. On the side of the pond. There is a pond in that park, isn't there? A. Yes.

Q. On the side of the pond on which the bench is situated what other things are there in this park besides trees? A. Macadamized road.

Q. A public road for automobiles to drive through? A. Yes.

Q. Are there large trees? A. Yes.

Q. Separated far apart there were some lights there, weren't there? A. Very few lights where she was sitting. It was dark.

Q. How far could you see them? A. How far?

Q. Yes. A. I was close to that building over there (indicating) to them back of a tree.

Q. Could you see that far? A. Yes.

Q. There was no shrubbery outside of the bench, trees on that side of the park around that bench? A. No, no shrubbery.

Q. All the shrubbery was on the other side? A. On the side they entered.

Q. The bench was between the pond and the main road where autos were going? A. No, it wasn't.

Q. It was between the pond and the auto road, wasn't it? A. Between the pond, no.

Q. Wasn't there an automobile road going over that bridge? A. Yes.

Q. The bench was between that road and the pond? A. No.

Q. There were two small creeks there? A. This road you refer to circles both of them.

Q. I refer to the creek nearest the entrance where they entered the park. A. Between where they entered was a little gulley and a macadamized road and they were on the other side of the macadamized road.

Q. Didn't the road curve around and come out on the other side of the pond? A. Oh, yes.

Q. How far away was the bridge? A. The bridge was 100 yards.

Q. Who else was in the park that night? A. Mr. Carey.

Q. Anybody else? A. I did not see a soul.

Q. You didn't see that crowd of fellows on the bridge? A. I did not.

Q. You didn't hear them making a noise? A. I did not.

Q. You say 50 yards away was the nearest you were to them? A. If that is about the distance of that building.

Q. Could you see their faces from there? A. They were very close together. I could see the light of their faces at different times.

Q. You could see the light on their faces? A. No, I could not see the light on their faces.

Q. You could see the light of their faces? A. Yes.

Q. Describe to us exactly what you saw? A. This man was sitting like this (indicating half leaning position) and she was leaning back towards him to the best of my knowledge.

Q. She was leaning back towards him, is that all you can tell about it? A. That is all I can say.

Q. Were they sitting up? A. No, leaning.

Q. How was the man? What was his posture? He was sitting down, wasn't he? A. They were in several different positions.

Q. You watched them for some time? A. They were there half an hour.

Q. Was he in a sitting position? A. At first, yes.

Q. Was he in any other position? A. Yes, a leaning position.

Q. Leaning how? A. Over this way towards her.

Q. Which side of him was she on? A. She was to his right.

Q. Were you to his right? A. No, I was facing them or nearly facing them.

Q. She was to his right all the time that you were watching him, is that right? A. Yes.

Q. Tell us a little more definitely, Mr. Stevens, to what extent was he leaning? A. He was leaning over on her at a certain angle.

Q. At what certain angle? A. Do you want me to show you?

Q. Yes. A. About like this, probably a little more (indicating).

Q. At that time they were both sitting on the bench? A. Leaning.

Q. At that time they were both sitting as well as leaning on the bench? A. They started sitting.

Q. You are sure nobody else was there besides yourself and the detective? A. Yes, sir.

Q. Were they in any other position at all besides what you have told us at that time? A. No.

Q. Was it on the strength of what you saw there that you left home? A. Yes, I could stay no longer.

Q. Was that the sole basis of your leaving home, what you saw there that night? A. Yes.

Q. What was it you saw there that made you leave home? What was the worst thing that you saw there? A. I saw them in an embarrasing position.

Q. What do you mean by embarrassing? A. Leaning on one another.

Q. Was she leaning on him or was he leaning on her? A. I said he was leaning on her.

Q. Was that anything that happened that you saw? A. I could not see what was going on.

Q. That was everything that you saw? A. Yes.

Q. Have you seen this note before? A. Yes.

Q. Is this your handwriting? A. Yes, sir.

Q. And you wrote it to your wife? A. Yes.

Mr. Massey: I ask that it be marked for identification.

Note is marked Ex. D-1 for identification.

Q. When you sent that to her was when you delivered the baby to her for a ten day visit this summer? A. Yes.

Q. When you went away in May you did not tell her you were going to leave? A. No.

Q. You took the baby with you making her think you were going out for a ride——

Mr. O'Connor: I object.

By Mr. Massey:

Q. After telling her you were going for a ride and kept him away and she did not see him between that time and now excepting for the ten days by agreement to satisfy the Court he was permitted to have a visit to Buffalo this summer?

Mr. O'Connor: Mr. Massey, is that an accurate statement of the facts?

The Master: I think I understand the facts very well. It is a fact that you took the baby to Buffalo for ten days and left him in the care of your wife?

The Witness: Yes.

The Master: That was by agreement among counsel?

The Witness: Right.

By Mr. Massey:

Q. Did you ever see your wife in an embarrassing position with either of these men to whom you referred on any other occasion? A. No.

Q. Do you know of any other connections she had with them excepting what the detective told you and you saw yourself? A. I have seen her come out of the house and the bus would leave, the same bus, on one other occasion. I was down there and his bus was parked and he wasn't there. I did not see either of them go in but I saw her come out.

Q. Come out from where? A. From the old house.

Q. Was that in the daytime? A. No.

Q. At night? A. Yes.

Q. Was that on any of the dates referred to in your petition? A. The 21st, I believe, was the date that I am referring to.

Q. The 21st of January? A. 21st of December.

Q. You saw her come out that time? A. Yes, she came out of the house that night and told me she was going to give me grounds for divorce.

Q. She came out of the house that night and told you what? A. When she returned to my home she came in and said she was going to give me grounds for divorce as she was selling her soul.

Q. What is that again? A. When she came in my home she said she was going to give me grounds for divorce and she also stated she was selling her soul.

Q. Did you ever see her in the company of Hodges? A. No.

Q. Did you ever hear she was out with him at any other time except the times mentioned?

The Master: I suppose he heard from the detectives.

Q. Besides what you heard from the detectives? A. When I would take her on rides for Sundays

she would almost stretch her neck out of joint looking at every yellow bus. On April 1 we went to look at an apartment on Elmora Avenue. She saw a bus. She got out in front of the home. She said "Let's go out the back way." The yard was full of mud so I said "No." She stepped back a step to look in to see who the driver was.

Q. Isn't it true Mr. Stevens that alongside of this old house there is a corner lot? A. Yes.

Q. That corner lot is vacant with nothing on it back in December excepting some signs? A. And some bushes.

Q. Isn't it true that there was a footpath across that lot running around the side of the house to cut off the corner? A. Yes.

Q. That pedestrians used right along? A. Yes.

Q. You used it yourself? A. Yes.

Q. Your wife used it right along? A. Sometimes.

Q. In going to and from home in that direction? A. Not all times. I have seen her come around the corner.

Q. This house was how far from that footpath? A. Right beside it.

Q. Not more than two steps? A. Six feet.

Q. Is there anything to shade that house at all from the gaze of people walking along the main street there and that path? A. Yes.

Mr. O'Connor: Please fix the time.

By Mr. Massey:

Q. Any time? A. Some big sign boards out there. They set right there facing Elmora Avenue.

Q. The big sign boards are many feet away.

By the Master:

Q. Does it interfere or obstruct the view of the house from the street? A. Yes.

By Mr. Massey:

Q. It does not obstruct it from West End Avenue? A. Not down in front of the house.

Q. Nor from a position alongside of the house in the rear of the house? A. What is that?

Q. You can see clear across there (indicating on picture) easily? A. Part of the way.

Q. How long, to your knowledge, was your wife acquainted with this Frank Muszar at the Elmora Theatre? A. She was there a week and she came in and she said that one of the men wanted to make a date with her.

Q. She came in and told you that? A. Yes, and another week passed and she wanted to rent a room to one of the men and I would not allow it. She cursed me because I would not and was going——

Q. Just answer the questions. How long, to your knowledge, was she acquainted with this man Frank Muszar? A. From April 1.

Q. Was he there during all that time? A. I don't know.

Q. How long do you know that she was acquainted with him? A. I don't know.

Q. Do you know that she was acquainted with him not more than two or three days at the time these engagements were made? A. She wanted to rent a room to one of the men and I supposed it was he.

The Master: Not what you supposed.

By Mr. Massey:

Q. When did you first hear his name? A. Not until the night I followed him up in the park,

Q. Who gave you his name then? A. Mr. Carey.

Q. When did you first identify this man as an individual regardless of name? A. I did not identify him.

Q. You never did? A. No.

Q. You don't know whether she was ever out with him excepting the one or two times you mentioned within a period of a few weeks? A. She would come from the park at least three nights a week, the direction of the park instead of the direction of the theatre. That is how I knew she was there.

Q. Did you ever say anything about that? A. No, not about her being with someone. I tried to keep her out of the theatre.

Q. You tried not to suggest those things to her? A. I suggested to help her when she was writing to this Italian barber. She said if I told her father she would kill me and I didn't do anything further.

Q. Your wife often cried, didn't she, at home, during all this period of trouble? A. I don't know if she cried any more than any other woman.

Q. She was a good housekeeper? A. Very good.

Q. Took good care of the house and good care of the baby? A. No, not the baby.

Q. What was wrong with her care of the baby? A. Neglect.

Q. In what way? A. Why, cooking for him. At the time she went to the theatre from April 1 to May 25, she never gave him one bath. Of mornings I would get up and bathe the baby and change

his clothes and on Saturdays when I would return from work the baby looked as though he had not been bathed in a month and his clothes were always wet.

Q. Nobody else knew about that condition besides you and your wife? A. Yes.

Q. Who else? A. Mr. Foster knows his condition.

Q. Anybody else? A. My sister knows that she was mean towards the baby and swore at him when she visited me.

Q. How many times was your sister there? A. Once.

Q. For how long? A. A day and a half I believe.

Q. When was that? A. August, '28.

Q. Mrs. Stevens' people know about the condition there?

Mr. O'Connor: Why don't you prove it by them? Why ask this man?

The Master: I suppose he can ask if Mrs. Stevens people were there.

A. Yes.

By Mr. Massey:

Q. Did you ever call your baby by his given name? A. Yes.

Q. Isn't it true that you never called him that and called him Dinks? A. I have called him Charles and Charlie and Charlie my boy lots of times.

Re-direct examination by Mr. O'Connor:

Q. You said to Mr. Massey that on January 3 there were marks on your wife's face after she

came in the bathroom and then you were interrupted. A. Her dress was wrinkled up. Her cheeks had the appearance of bite marks on them. May I tell you what she said?

The Master: Continue.

A. She came in and she said "Howard, I am in love with another man and I want my freedom." I says "That is too bad." I said "I won't give up my baby." I went out and she undressed and when I went in her underwear was wet hanging on the chair.

Q. In addition to writing letters that Mr. Massey referred to while your wife was in Buffalo, did you send her any cards? A. I sent her flowers.

Q. When you sent her the flowers were they accompanied with a card? A. I believe so.

Q. I show you this card. Do you know whether you sent that? Did you send that card? A. No, that isn't my card.

Q. Do you know whose card that is? A. That is my wife's writing.

Q. Who did she send that to? A. To me.

Q. Where were you when she sent that? A. In New York.

Mr. O'Connor: I would like to offer the card.

Received and marked Ex. P-6.

Q. I show you Exhibits P-1, 2, 3 and 4 for identification and ask you whether or not you recognize the building in those four exhibits? A. Yes, sir.

Q. What building is that? A. That is the old building that she went into.

Q. Is that the building that you refer to in your testimony as the vacant building? A. Yes, sir.

Q. Is there any difference in the physical conditions of that building between December, 1928, and July, 1929? A. Yes.

Q. What is the physical change in the building now, if any? A. I can't say in the building.

Q. That is what I am asking you? A. No physical changes in the building, no, sir.

Mr. O'Connor: I offer these photographs in evidence.

Received and marked Ex. P-1, P-2, P-3 and P-4 respectively.

Q. Shortly or rather about the time that your wife was in Buffalo shortly after the birth of the baby, was there any expression on your part to buy a home for you and your wife? A. Yes.

Q. What response, if any, did your wife make to that suggestion? A. She said that she did not want me to put my money in a home as she wasn't going to live with me that long.

Q. Was a reference made to anything she might desire? A. She said she would like to have a nice automobile.

Q. What did you do? A. I bought one.

Q. After you bought one, what happened? A. I met her at the station when she returned from Buffalo and she cursed me and told me she hated the ground I walked on because I bought it.

Q. You say on January 3—you testified at the instance of Mr. Massey—that you continued to live in the same house with the baby as man and wife. Did you understand the question. Did you continue to live in the same house with the baby after January 3 as man and wife? A. Yes, I lived in the house.

Q. You lived in the house? A. I lived in the house but I did not sleep with her.

By the Master:

Q. When did you cease having relations with her as a wife? A. Around the middle of October.

Q. What year? A. '28.

Q. From October, 1928, until you finally separated and took the baby with you, did you ever have any relations with her as a wife? A. No.

By Mr. O'Connor:

Q. You testified your wife was an usher in this theatre? A. Yes.

Q. What was your employment? A. Employed as an accountant with the Dupont Company in New York.

Q. How long have you been employed there? A. Thirteen years.

Q. What is your salary? A. $260 a month.

Q. Was it at your request that your wife went into the theatre as an usher? A. No.

Q. What did she earn a week? A. $8.00.

Q. What were her hours in that theatre? A. From seven to eleven on three nights a week and from seven-thirty—I may say she left the house at seven and she got out at nine fifteen on three nights and three other nights she would go at seven and get home at eleven-thirty.

Q. Were there any matinees? A. One a week.

Q. What were her hours on that day? A. From one to three.

Q. Who took care of the baby during that time? A. She left it with anybody she could get.

Q. Who paid for the nurse or somebody to come in? A. She paid it out of the allowance.

Q. What was her salary per week? A. $8.00.

Q. Out of that wage she paid for somebody to take care of the baby? A. Not out of her salary, out of the money I gave her.

Q. Was there any necessity for her going to work? A. Not any.

Q. Did you refuse to provide for her? A. No.

Q. This park that you referred to, that is a sparsely settled part of Roselle Borough, is it not? A. Yes.

Q. The nearest house to the spot where your wife was sitting with this man is how far away? A. 150 yards.

Q. Mr. Massey called your attention to a crowd of fellows on the bridge. Was there any crowd of fellows on the bridge when you were there and your wife was in the park? A. Not any.

Q. What was the color of the wearing apparel this man Muszar wore that night? A. Light suit and panama hat.

Q. That accentuated the situation in the park, did it not? A. It did.

Re-cross-examination by Mr. Massey:

Q. You said you ceased having relations as man and wife with Mrs. Stevens in October, 1928, what was the reason for that? A. She went to sleeping by herself and locking the doors. On November 21 the night my aunt went home she told me—I am wrong on March 5 she returned from Buffalo. She had been away three weeks. She went in before I did and locked her door. She said she would go out and get hers and that I could do so also if I wanted to.

Q. Looking at this Exhibit P-3 at the right of that picture does that show the footpath that went through alongside of the house? A. Yes.

Q. The sign boards with reference to that picture are located where? A. To the right.

Q. That would be off the picture entirely if the picture had been taken when they were there? A. I should imagine so. I should imagine they would come out to where the telephone pole is standing.

Q. How far is the street West End Avenue from the front of the house in this picture? A. About 20 yards.

Q. Mr. Stevens, have you ever been convicted of a crime? A. No.

The Master: Now one moment. He has answered that question. That ends that unless you can produce the record of the conviction and confront him with it.

Q. How much did you give Mrs. Stevens out of the $260 a month? A. $80, $75 and $80 never lower than that, besides paying the rent and all other bills. She only paid the food out of the $80.

Thomas Carey, being duly sworn on his oath, testifies as follows:

Direct examination by Mr. O'Connor:

Q. Mr. Carey, where do you live? A. I live at 210 Mellen Place, City of Elizabeth.

Q. You are a deputy sheriff connected with the Sheriff's Office in Union County? A. I am.

Q. And you have been for how long? A. Twenty-four years.

Q. You are acquainted with Mr. and Mrs. Stevens the parties in this suit? A. I am.

Q. When did you first meet Mr. Stevens? A. On December 19, 1928.

Q. That was in connection with what? A. In connection with—he came to my office. May I tell it?

Q. What was the nature of his business? A. He had complained or in other words he wanted an investigation to find out what his wife was doing, where she was going the nights she was staying out.

Q. Did you undertake to do it? A. I did.

Q. As a result of those instructions what investigation did you make and what did it show? A. The first investigation shows that on December 21, 1928, we parked in front of Mrs. Stevens' home——

Q. When you say "we parked" whom do you mean? A. Myself and my son Tom and my son Roy. We parked in front of 516 West End Avenue, City of Elizabeth, right opposite where Mrs. Stevens lives.

Q. Then lived? A. At that time.

Q. Go ahead. A. About 8 P. M. in the evening Mrs. Stevens came out and walked down West End Avenue to Elmora Avenue. She walked down then as far as West Jersey and Elmora Avenue where the drug store is and at about 8:20 a bus came along, Public Service bus Elizabeth-Newark. She got on the bus at this point and this bus continued down Elmora Avenue towards Elizabeth and I had my son Roy Carey pull ahead of the bus and board the bus at the corner of Elmora Avenue and St. George Avenue and ride the bus down. We followed in our car. At the corner of East Jersey Street and Broad Street, Elizabeth, Mrs. Stevens alights from the bus. The bus then continued on towards Newark. Mrs. Stevens crossing over to the other side of the street, visited Levey's Department Store. She

went into Kress' store and she whiled her time away in these stores until about half past nine when she came out and on the corner of West Jersey St. in front of Liggett's Drug Store she boards the same bus on its return trip going up to the station. Previous to the bus coming to the stopping point or the station Mrs. Stevens alights at Pennington Street and walks around off Elmora Avenue on to the path and walks in to the rear of the vacant house, the bus driver continuing around on West End Avenue where he stopped his car and he comes through from the front on the path and he goes into the vacant house. Now they are in there about 15 minutes when Mrs. Stevens comes out, comes down the path to West End Avenue and to her home which is about five doors away. Hodges, the bus driver, then gets on his bus that is standing at the starting point and proceeds away towards Newark.

Q. Is the driver of that bus in the court room? A. He is.

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

The Master: Stand.

A. That is Hodges, Burwell Hodges.

Q. Referring to Exhibits P-1, P-2, P-3 and P-4 in this case, do you recognize the house? A. Yes, I do.

Q. That is the vacant house that you refer to? A. That is the vacant house on the corner of Elmora Avenue and facing on West End Avenue.

Q. Will you point out, if you can, on Ex. P-4 the point Mrs. Stevens entered the house? A. (Witness marks it with cross.)

By the Master:

Q. Is that the rear? A. That is the rear.

By Mr. O'Connor:

Q. With reference to that path and the rear entrance marked with a cross on the photograph, how did Mr. Hodges enter the house? A. From the front. Mr. Hodges comes in here from the front where his car is parked and in through here up to here.

Q. The same entrance? A. The same entrance.

By the Master:

Q. What date was that? A. That was December 21, 1928.

Q. What time of night did she enter that house? A. About 10:10 P. M.

Q. What time did he enter the house? A. He entered about 10:11.

Q. How long did you say they both remained in that house? A. Fifteen minutes.

By Mr. O'Connor:

Q. Now then when did you next see them, if at all? A. Now then on January 3, 1929, we took our position in front of Mrs. Stevens' home at 516 West End Avenue and about eight o'clock in the evening she left her home and proceeded down to Elmora Avenue. She visited a couple of stores on Elmora Avenue and then walked back Elmora Avenue to Grand and Elmora Avenue, the starting point of the bus as it proceeded towards Newark. She boarded this same bus, which was the same operator Burwell Hodges. That bus continued all the way down to Elizabeth, Frelinghysen

Avenue to Newark to Park Place. That was the end of the route. Mrs. Stevens——

Q. Park Place, Newark? A. Newark at the Tubes. Mrs. Stevens was a passenger the entire trip. When they got to Park Place there is a layover there for about seven or eight minutes. The driver, the operator Hodges and Mrs. Stevens sat in the front part of the bus until they proceeded back towards Elizabeth. Now the bus proceeded back and it went through Broad Street, Elizabeth to Elmora Avenue until the bus got on the corner of Elmora Avenue and West Grand or West End Avenue where the point is. Mrs. Stevens gets out. She is the only passenger in the bus and walks to the path in the front of the house and proceeds down to the end. Hodges turns his car around and faces it on the other side of the vacant house and he comes across, goes through the same path and goes into the rear in this vacant house. On this occasion they were twelve minutes inside this vacant house when Mrs. Stevens came out, comes back on the path and proceeds down West End Avenue to her home. The bus driver proceeds across the street and continues the trip down Elmora Avenue towards Newark.

By the Master:

Q. Did you give us the time? What time was that? A. That was about 10:10.

Q. At night? A. At night. When they reached the old house, the vacant house, that was about 10:10 P. M.

By Mr. O'Connor:

Q. Was there any other occasion? A. Now then on January 10, 1929, we took our position in

front of Mrs. Stevens' home, 516 West End Avenue, City of Elizabeth about 8:00 P. M. Mrs. Stevens comes down and walks down West End Avenue to Elmora Avenue and she walks down to Pennington Street and then walks back to the starting point. This man Hodges' trip took from Elizabeth 44 minutes from the starting point to the end with a layover at Newark of ten minutes so that one of his starting periods in Elizabeth was always 8:20. So on January 10 Mrs. Stevens boards the same bus, a Public Service yellow bus and the same driver Burwell Hodges and she continues as a passenger on that bus all the way to Newark. Now at the Tubes the only two people on the car is Hodges and Mrs. Stevens. They continue back and she is still a passenger on the way back and the bus continues all the way until it gets to Elmora Avenue and West End Avenue, the end of the route and on that occasion Mrs. Stevens steps out,—she is the only passenger in the bus—and walks in through the path, Hodges turning around on West End Avenue and facing his car towards the firehouse, he crosses the street and proceeds in the path to the rear of the house and goes in the rear where Mrs. Stevens is.

Q. What time was that? A. That was about 10:10.

By the Master:

Q. At night? A. That night of January 10.

By Mr. O'Connor:

Q. How long were they there? A. They were there that night 15 minutes.

By the Master:

Q. Did they both come out together? A. Mrs. Stevens comes out first and comes down the path to West End Avenue and proceeded down to her home which is about five houses and Hodges proceeds across the street and goes away with his bus.

By Mr. O'Connor:

Q. Was there any other occasion? A. Now on May 24, 1929, Mrs. Stevens is now an usher in the Elmora Stock Company Theatre. On the 24th together with my son Roy in our car we park in the neighborhood of the theatre. At about 9:00 P. M. that evening Mrs. Stevens and two girls came out and went to her Buick car that was parked on the corner. She was taking these two girls and drove away. She drove up a block, came around a block and came down on Pennington Street on the corner of Elmora Avenue where she let the two girls out and they go back into the Stock Company theatre. Immediately after they went in along comes this man dressed in a light suit and panama hat and mustache and he gets to the corner of Pennington Street and Elmora Avenue and he meets Mrs. Stevens who was driving her car. Then they proceeded over Elmora Avenue up to Acme Street and through Acme Street into the park and as they go into the park they turned a little to the left and then turned to the right on the driveway where the car was parked. We followed immediately behind and we parked about a city block away and threw off our lights. Their lights were off. They were there at that time from half past nine until about eleven P. M. at which time they drove back to the Elmora Stock

Company Theatre. The man who was dressed in the light suit and straw hat got out and proceeded to the theatre. The show had just let out about 11:20 and the man was removing the name of the show from the lights in the front and I had known the manager of the theatre and I said to him "Is that Mr. Thompson"? He says to me "No, that is Frank Muszar, our scene painter." That is how I know that was Frank Muszar.

By the Master:

Q. You said something about them staying in the park from 9:30 until 11:00 P. M. parked in this automobile. A. They remained in the automobile all the time.

Q. Did you make any observation or could you see what was occurring in the automobile? A. No, only the length of time the car was there.

By Mr. O'Connor:

Q. Mr. Carey, were there any other instances? A. None outside of what one of my boys will testify.

Q. Do you know anything about Mrs. Stevens being in Newark around December 26 or 27? A. Yes.

Q. Do you know of your own knowledge anything about that? A. I do.

Q. What was that? A. On the evening of December 27, 1928—

Mr. Vanderbilt: Objected to.

The Master: It may be evidential.

Mr. Vanderbilt: There is no charge of any date like that.

The Master: I will allow it.

A. Mrs. Stevens left her home in her Buick car about 8:00 P. M. proceeded over Elmora Avenue to Westfield Avenue where she picked up another lady on the corner, Mrs. Stevens driving and continued on Frelinghuysen Avenue to Broad Street, Newark where she pulled her car into the Court House Garage on Broad Street, Newark. They parked their car in this place and then came around on Broad Street, the number is 927 or 925 and they proceeded and went in, after paying the fee, into what is known as the Paradise Dance Hall.

Q. Did you go in there Mr. Carey? A. No, I didn't. My son went in.

Q. You don't know what transpired of your own knowledge? A. No.

Q. Did you see Mrs. Stevens after that? A. At midnight when the lights went out she came out with another lady and they had a couple of men with them.

Q. Do you know whether that lady was the same lady she went in with? A. It was the same lady she went in with. That same lady proceeded back to Elizabeth with her. They came out and went around and got their car. They had two young men with them. They immediately had their car brought out on the floor and they proceeded back to Elizabeth and got home about quarter to one. It was raining very heavily that night and they were driving very carefully.

Q. Did anyone that you know of go into the dance hall—that was with you? A. Yes, my son, Roy Carey.

Q. That was on December 27? A. December 27.

Q. Do you know the condition of Mrs. Stevens' baby that night of your own knowledge? A. Yes.

Q. What do you know? A. I called up Mr. Stevens.

By the Master:

Q. What night is this? A. This is the 27th. I called up Mr. Stevens and I said to him——

The Master: Never mind what you said. Tell us what you saw as a result of that talk.

By Mr. O'Connor:

Q. Did you see the baby? A. No.

Q. You only know what he told you? A. Only what he told me.

Q. This park that you refer to that you were in on May 24 last was Warinanco Park? A. Yes.

Q. One of the Union County parks? A. The largest park we have in Union County.

Q. That park is in a sparsely settled part of the Borough of Roselle? A. Yes.

Q. At the time you saw Mrs. Stevens and Muzsar in the car on May 24 how near was the nearest house? A. Oh, two blocks away, Canton Street and Acme.

Q. Were there any activities in the park that night? A. None whatever.

Q. Perfectly quiet? A. Yes, the only two cars I seen was mine, my son's and Mrs. Stevens with Frank Muzsar.

Cross-examination by Mr. Vanderbilt:

Q. Mr. Carey, you have acted as an investigator and detective for many years, haven't you? A. Yes, I have.

Q. And especially in divorce matters? A. Quite a number.

Q. And were you acting in this case as a friend of Mr. Stevens or were you being paid by him? A. I was being paid.

Q. You say that he first came to you on December 19? A. That is correct.

Q. You have mentioned several dates on which you made observations, were those the only dates on which you were engaged by Mr. Stevens or did work for Mr. Stevens? A. No, I worked continuously then for him.

Q. In other words from December 19 until May 24 you were devoting every evening to Mr. Stevens or to this case of Mr. Stevens? A. Not every evening.

Q. How many days or evenings did you devote? A. Sometimes two a week, sometimes once a week, sometimes none.

Q. How many weeks in this period from December 21 to the latter part of May did you do nothing? A. Maybe six weeks.

Q. How many weeks during this period did you devote one night a week? A. Every week one night.

Q. How many weeks—except the six weeks when you did not do anything? A. Yes, one night.

Q. How many weeks did you devote two nights a week? A. I think about five.

Q. How many weeks did you devote three nights a week? A. I don't think there was any with three nights in a week.

Q. Did you operate on any particular nights or did you pick them at random. A. Generally pick the Thursday and Friday of the week.

Q. Being engaged on other cases other nights? A. Yes.

Q. Did you make a report to Mr. Stevens after each evening's investigation? A. No.

Q. You didn't tell him——

By the Master:

Q. You mean a written or verbal report? A. Neither.

By Mr. Vanderbilt:

Q. You never made reports to him? A. Only one.

Q. When was that? A. The night of the 27th of December.

Q. The night of the 27th of December, that is the only report you made to him? A. That is the only one.

Q. You didn't make a report to him as to what you found on December 21, 1927? A. No.

Q. On January 3? A. No.

Q. On January 10? A. No.

Q. On May 24? A. No.

Q. On December 26? A. No.

Q. How often did you send him bills? A. I did not send any bills at all. He paid me a fee to investigate the case.

Q. He paid you a flat fee in the beginning? A. Correct.

Q. When he came to you on December 19 he paid you a fee that was to cover your services and your two sons' services in this investigation? A. Yes. No matter how long it might continue. That was up to me.

Q. What was that fee? A. $300.

Q. You mean to say that the only time you rendered a report to Mr. Stevens was after the evening of December 27. Is that the only report you made to him? A. Yes, as to the dance hall in Newark.

Q. That is the only thing you told him? A. Yes.

Q. How come you did not tell him about what you found on the evening of December 21? A. I

did not report to him. I made my report to myself and kept it.

Q. Did you report to yourself orally or in writing? A. I had a small report.

Q. You haven't told me yet. Did you report to yourself orally or in writing? A. In writing.

Q. How come you did not tell Mr. Stevens about what you saw on December 21? A. For the simple reason I was engaged on December 19 and I wanted to carry on my investigation.

Q. You didn't want to show results too soon? A. No, not that.

Q. What was it? A. I wanted to carry on my investigation to see what the developments in this case would be.

Q. Was it because you did not think what you saw on December 21 was of any importance? A. It was of importance.

Q. You did not think Mr. Stevens would be interested in finding out what you found out? A. Not at that time.

Q. Why didn't you think Mr. Stevens would be interested in knowing? A. I did not think he would be interested because I was to make a report and I should not be hasty about giving him a report.

Q. You regarded what you found out on December 21 as of great significance? A. No.

Q. It wasn't important at all? A. It was important but not so great.

Q. In other words you as an expert operator did not attach much importance to what you saw on the evening of December 21? A. I did attach some importance but not much.

Q. The next time that you found out anything that you told us about here was on January 3? A. That is correct.

Q. That was practically a repetition of what you had learned on the evening of December 21, wasn't it? A. Yes.

Q. You didn't tell Mr. Stevens about that? A. I did not.

Q. You didn't regard that of great importance? A. No.

Q. That was merely a repetition of the previous incident which you said was of no great importance? A. Right.

Q. So you did not report that to Mr. Stevens? A. No.

Q. The next, as I understand it, was the evening of January 10? A. January 10 is right.

Q. You did not report that to Mr. Stevens? A. No, I did not.

Q. Why didn't you report that to Mr. Stevens? A. I kept that report to myself.

Q. Why? A. I wasn't ready to turn in the case.

Q. You did not regard that of any significance? A. Yes, I did. I could only make my report. I can only testify. I can't tell how much it will amount to.

Q. You did not think Mr. Stevens was interested in what you found out? A. Yes, I did.

Q. Did you know how to reach him? A. Yes, I did.

Q. Did you know his office address in New York? A. Knew his home address.

Q. You knew you could get him on the telephone? A. Yes.

Q. You did not communicate with him at all? A. No.

Q. Did he communicate with you at all? A. Yes, he kept calling me and telling me his wife was going out.

Q. How often did he call you up? A. Two or three times a week.

Q. During this whole period from December 21 to may 24 he would call you up two or three times a week? A. That is correct.

Q. He seemed anxious about the matter? A. Yes.

Q. You did not tell him what you found out that you regarded as some importance at least on December 21, January 3 and January 10? A. No, I did not.

Q. You held that back from him? A. Yes.

Q. You had his money but still you did not tell what you got for his money? A. I thought that it wasn't ready for me to turn in the report to his attorney. He had an attorney.

Q. Did you tell his attorney about these things that you found out during this period? A. No, I did not until he got my report.

Q. Did his attorney ask you at intervals what you found out? A. No.

Q. You used to run into his attorney almost every day? A. No.

Q. Two or three times a week you would see Mr. Collins? A. I seen him quite often.

Q. You never discussed this matter with him? A. Not at all.

By the Master:

Q. Until you gave him your report? A. That is right.

By Mr. Vanderbilt:

Q. Why were you so reluctant about telling Mr. Stevens and his attorney what you had found out on these two evenings? A. Why in these cases—I thought that possibly Mrs. Stevens might see the error of her ways and change.

Q. And that is the only reason you, having been paid $300 to investigate the case, made no report to the man who had engaged you or the man whom you knew was acting as his attorney? A. I said so.

Q. That is the only reason? A. That is the only reason.

Q. Because you hoped Mrs. Stevens would see the error of her ways? A. Yes.

Q. Is that correct? You are willing to stand on that? A. Yes.

Q. In addition to being a detective you are a deputy sheriff of Union County? A. Yes.

Q. You are sworn to enforce the law? A. What law?

Q. All laws, or don't they do that down in Union County?

The Master: I guess they don't do it there.

By Mr. Vanderbilt:

Q. You know that in New Jersey adultery is a crime, don't you, Sheriff? A. Yes, I do.

Q. What significance did you attach to what you saw on the evening of December 27? A. In Newark?

Q. No, I should say December 21, down in the old house? A. You want me to give an answer to that?

Q. I want to know what significance you attached to it? A. In the first place Mrs. Stevens went into a vacant house with another man other than her husband——

By the Master:

Q. What did you figure that they went in there for? A. To commit adultery.

By Mr. Vanderbilt:

Q. That is a crime? A. Yes.

Q. You are a deputy sheriff of Union County?

The Master: He says he is.

Q. Sworn to make arrests for crimes? A. If you witness it.

Q. Did you go in there? A. I did not.

Q. When you saw the same thing happen on January 3 at the same hour under the same circumstances over the same path, did you go in? A. I did not.

Q. Why not? A. I did not know where to go first off. It wasn't until after the 10th that I decided to go in and see the condition of this house. I did not know what it was like. In places the floors were down and the windows were out and the glass was all over the floor. I would not proceed in there not knowing where I was going.

Q. In other words on December 21 and on January 3 you were held back from performing your sworn duty as an officer of the law by fear of the physical condition of that building?

The Master: I don't think you need answer that. I understand he did not make a criminal complaint for violation of the laws applicable to morals.

By Mr. Vanderbilt:

Q. Why didn't you go in? A. I didn't go in.

Q. Why didn't you?

By the Master:

Q. Have you any reason? A. I haven't any reason. I wanted to see they were in for that time and to cover the time they were in that house.

By Mr. Vanderbilt:

Q. Why didn't you go in the house on the second occasion January 3 and see what was up? A. The reason was that I thought I would continue my investigation down and allow them to go in that house.

Q. Encourage her in the errors of her ways instead of trying to stop her? A. No, sir, I told you a minute ago I wasn't going in there not knowing what the condition of the house was.

Q. You went back between the 3rd and 10th, did you look over the physical situation and see how the floors and stairs were? A. Not until after the 10th.

Q. That is the reason you did not go in on January 10? A. Right.

Q. You had your two sons with you? A. Yes.

Q. They are not afraid of the dark? A. Not at all.

Q. They did not go in either? A. No.

Q. After January 10 you say you went in the house? A. I went into the house I think on January 15.

Q. Anybody see you go in? A. Yes.

Q. Did Mrs. Stevens see you go in? A. The firemen saw me. They used to see everybody go in there.

Q. After that, although you were on the case for four months, you never saw Mrs. Stevens go in the old deserted house again? A. Do you want to know why? The bus driver was discharged about that time.

Q. You lost three chances? A. No, I didn't. The same testimony is there.

Q. You consider this testimony when you did not go in as good as if you had gone in? A. I

consider this that the time, place and opportunity was there for Mrs. Stevens with a strange man named Hodges——

The Master: Rather than go into that, won't you let me decide that point?

By Mr. Vanderbilt:

Q. You never made any reports during this whole period, either oral or written to anyone until after the 24th of May? A. Correct.

Q. The only reason you want us to believe is you wanted to give Mrs. Stevens a chance to overcome the errors of her ways? A. That was one of them.

The Master: The other reason was he wanted to finish the case.

Q. Was there any other reason? A. No.

Q. The only reason you did not go in the building was because you did not know the lay of the land? A. That is correct.

Mr. O'Connor: Figuratively speaking.

By Mr. Vanderbilt:

Q. Now this evening of May 24, did you observe what was going on in the car? A. Not outside of the car being parked with two people in it.

Q. Did you leave your car and go up near this car to see whether there was any adultery being committed in the car? A. I did not.

Q. Why not? A. I was there to see the time the car was parked and the people was in there.

Q. Do you attach anything wrong to two people being parked in a public park in Union County? A. I didn't see nothing wrong.

Mr. O'Connor: There is nothing wrong in people being parked in a public park but wrong under the circumstances I think.

By Mr. Vanderbilt:

Q. Then what was it that happened that night that gave you evidence then and there after a five months' period to make your final report and close your case? A. We did not close it until the next night. Did not submit my report until after Mr. Stevens seen with his own eyes.

Q. Why was it you reported after the incident of May 24 to Mr. Stevens? What occurred that night that made you suddenly decide to break your silence?

The Master: Because of what Mr. Stevens saw.

Mr. Vanderbilt: That did not make him report on the 24th.

Q. Did Mr. Stevens come and tell you what he saw on May 25 before you made any report at all? A. He and my son went together that night.

Q. That was because you had told him about the 24th, what you had seen? A. I did not tell him anything. It was after the 25th that I closed my investigation and gave my report.

Q. How did your son happen to be with Mr. Stevens on the 25th? A. Being in the vicinity of the theatre.

Q. Just an accident? A. He was there on business.

Q. They were there together by appointment, your son and Mr. Stevens? A. My son was there on business and Mr. Stevens came down from his home.

Q. By accident? A. And met my son there.

Q. By appointment? A. I don't know whether it was by appointment or by accident.

Q. They were there together? A. Yes, and they seen Mrs. Stevens and this man leave the theatre. I did not see them.

Q. Even up to that time you had not made any report to Mr. Stevens or his counsel? A. No, sir.

Q. Why didn't you on this evening of May 24 step up to the automobile and see exactly what was going on? A. I did not want to go up to the automobile.

Q. Were you afraid of Hodges? A. Hodges wasn't there.

Q. Were you afraid of this Italian? A. I ain't afraid of nobody.

Q. Why didn't you go up to the car? A. I didn't go. I let the people sit there and enjoy themselves.

Q. Will you tell us why you didn't go up to the car? A. No other reason, Mr. Vanderbilt, just kept track of the time they were parked there.

Q. You are absolutely positive that the night you saw them park the car was the evening of May 24? A. That is correct.

Q. What day of the week was it? A. I am almost certain it was Friday because on the 25th the theatre closed. I think, I am not positive—I will say I think it was Friday.

Q. What kind of a car was Mrs. Stevens in? A. A two seated Buick.

Q. You say during the whole hour and a half no other cars came in the park? A. No, sir.

Q. What is that a deserted village? A. A beautiful park.

Q. Who was driving the car that Mrs. Stevens was in? A. Mrs. Stevens.

Q. What was the name of the woman you saw her with on the evening of December 27? A. That I don't know. She picked her up on the corner of Elmora Avenue and Westfield Avenue and she left her off at the same corner.

Q. Would you recognize her? A. I think it is the lady on the end of the first seat.

Q. Is that the lady (identifying Mrs. Marie Hill)? A. That is the lady it seems to me to be.

Q. She went out with a lady, went to the dance hall with her and came back with her? A. Yes.

Q. You said something about two young men coming out with them, did they come out with them? A. They left them at the garage.

Q. They went and got their own car and came home very slowly in a proper fashion driving on a rainy night? A. That is correct.

Q. Now on each of these occasions did you have both sons along with you? A. Yes.

Q. Is it your custom in cases of this sort always to take a flat fee? A. Correct.

Q. Win or lose? A. Correct.

Q. Is it your custom never to make reports until the completion of the case? A. Until I think the case is closed from my opinion.

Q. Even if your client or his attorney should ask for information? A. I never had an attorney ask. I never had a client ask. They allowed me to do it.

Q. Didn't Mr. Stevens keep calling you up asking for information? A. I said he should not be excited.

Q. He would want to know what you found out? A. He would say Thursday night Mrs. came in at twelve o'clock. I said "All right, Mr. Stevens". He said "I want to know where she is."

I could not go out every time he called. I was using my good judgment in the case.

Q. Even though you had three distinct evenings on which you had some information you did not tell him? A. I did not.

Q. You didn't tell even though you used to meet Mr. Collins in the Court House? A. Mr. Collins would come in to foreclose some mortgages and he would come in to try cases.

Q. You didn't tell him? A. I did not.

Re-direct examination by Mr. O'Connor:

Q. After the conclusion of your service you did submit a report to Mr. Collins? A. Yes, I did.

THOMAS J. CAREY, being duly sworn on his oath, testified as follows:

Direct examination by Mr. O'Connor:

Q. Mr. Carey, where are you employed? A. Sheriff's Office.

Q. Elizabeth? A. Elizabeth.

Q. Did you render any service to your father in connection with this case? A. I did.

Q. When did you and what did you do? A. On December 21 I took my position with my father in front of Mrs. Stevens' house on West End Avenue. She come out of the house a little after eight. She went over to Elmora Avenue and got in a jitney bus and I followed with my car and at St. George Avenue my brother got out of the car and into the jitney bus and we followed in our car.

Q. What did you see and what did they do? A. I just followed the bus.

Q. Where to? A. Broad Street.

Q. Elizabeth? A. Elizabeth.

Q. Then you dropped it? A. I dropped it.

Q. Who was driving the bus, if you know? A. From the information I got from my brother——

Q. Never mind that. Did you get a good view of the bus driver? A. Only from the street. I never went into the bus to see him.

Q. Would you recognize him if you should see him? A. No, I wouldn't.

Q. Later that evening did you see Mrs. Stevens? A. I did.

Q. Where? A. In Elizabeth, Broad Street, Elizabeth.

Q. What was she doing? A. Getting into the same bus, which she got out of.

Q. How did you fix it as the same bus? A. At that time we took the number of the bus.

Q. What was the number of the bus, if you recall? A. I don't recall. We took the number of the bus she got off and the bus she got on was the same bus. She got on again at Broad Street.

Q. Then what did you do after she got on the bus again the second time? A. We trailed the bus up St. George's Avenue to Elmora Avenue to its stopping place where my father and my brother took it from there. I stayed in the car.

Q. Did you see anything at all? A. Except that I saw Mrs. Stevens get out at Pennington Street and walk——

Q. Walk which way? A. Over Elmora Avenue towards West End Avenue, which is where the old house is located on the corner.

Q. She walked along the sidewalk how far? A. Until she got to this path which leads to West End Avenue from Elmora Avenue.

Q. It leads past the old house? A. It leads past the old house.

Q. Did you see her go in there? A. Yes.

Q. Did you see anybody else go in there? A. No I didn't; I was in the car.

Q. Where were you when you saw her go in? A. On Elmora Avenue.

Q. Whereabouts in Elmora Avenue? A. Going north.

Q. How far were you from the corner of Elmora Avenue and West Grand Street or Jersey Avenue? A. Probably 200 feet from there.

Q. Did you actually see her go in the house or did you see her go in the lot towards the house? A. In the lot towards the house.

Q. You didn't see her going in the house? A. No.

Q. Did you see any bus driver go in the house? A. I did not.

By the Master:

Q. Did you see him going toward the house? A. No, he went around the corner.

By Mr. O'Connor:

Q. He went around the corner beyond your view? A. Yes.

Q. That is all you saw that night? A. Yes.

Q. Did you have occasion to go out with your father or brother in conjunction with this case on any other occasion? A. I did.

Q. When? A. December 27.

Q. What did you do and what did you see? A. We took our position in front of her house about a little after eight. She came out with her car, a Buick coupe. We followed the Buick coupe over

Elmora Avenue to Westfield Avenue where she picked up a young lady and proceeded to Newark to the Paradise Dance Hall.

Q. Did she go in the Paradise Dance Hall? A. She did.

Q. Did you go in? A. I did not.

Q. You don't know what they did in there? A. No.

Q. Did you see her leave? A. I did.

Q. Do you know what time it was? A. About 12:30.

Q. Where did she go? A. Went around the corner and got her car from the garage.

Q. Then from there where did she go? A. She went back to Elizabeth.

Q. Would you recognize the young lady? A. I think I would. She is sitting there (identifying Mrs. Marie Hill).

Q. When they got back to Elizabeth, what did they do? A. She let Mrs. Hill off at Westfield Avenue and Elmora Avenue and she proceeded home.

Q. That is all you know about that evening? A. That is all.

Q. When did you next go out? A. January 3.

Q. What transpired that evening? A. She met a jitney bus driver.

Q. Where? A. At his starting point, got in the bus.

Q. Just one minute she met a jitney bus driver—

By the Master:

Q. Did you recognize him then? A. No.

By Mr. O'Connor:

Q. Do you know whether or not it was the same jitney bus you had seen on December 21? A. Only on information of my brother and father.

Q. At any rate you saw her get on the jitney bus? A. Yes, sir.

Q. Which way was the bus going? A. Headed for Elizabeth.

Q. Where did she get on? A. On Jersey Avenue.

Q. How far is that from her home? A. Two blocks.

Q. Where were you? A. I was in my automobile trailing.

Q. What did you do? A. We followed her through Elizabeth into Newark to Park Place, Newark and then followed her back to Elizabeth.

Q. At Park Place, Newark, what did she do? A. She stayed on the bus.

Q. With whom was she talking? A. With the driver.

Q. The same driver? A. The same driver.

Q. How long did they lay over there? A. About a 10 minute layover.

Q. Then what occurred? A. She come back to Elizabeth.

Q. Where did she get off? A. She got off at Pennington Street.

Q. What did she do? A. She walked towards West End Avenue and West Grand Street.

Q. Where did she go? A. She went in the same path again.

Q. You don't know whether she went in the house or not? A. No, I don't. I was in my car in the rear.

Q. Did you see anybody else go in that house? A. I did not. I saw somebody come out afterwards.

Q. Did you see her come out? A. I don't remember seeing her coming out.

Q. Did you see a man come out? A. I saw a man come out.

Q. Do you know whether that man had any connection with the bus? A. He was a bus driver because he had on a bus driver's uniform.

Q. Did he board the same bus that he came in on? A. He got on the bus we had followed from Newark.

Q. Is that all you know about what transpired then? A. That is all.

Q. Were you with your father on January 10? A. I was.

Q. What transpired then? A. She came out of the house a little after eight in the evening and boarded this jitney bus on Elmora Avenue. We followed it down to Broad Street. She got out and made the rounds of the department stores and different stores on Broad Street and waited and got on the same bus and went back again on its return trip.

Q. Where did she get off on the return trip? A. Up at Pennington Street and Elmora Avenue.

Q. What did she do? A. She walked towards West End Avenue and West Grand.

Q. Did she walk in on the lot? A. Yes.

Q. Did you see her go in the house? A. I did not.

Q. Did you see her leave the house? A. I did not.

Q. Did you see anybody leave the house? A. No.

Q. Do you know what became of the bus driver? A. The bus driver later on got in his bus.

Q. Where did he come from? A. From the path by the vacant house.

Q. Where were you located? A. Located on over West Grand Street over by the Uneeda Biscuit Co.

Q. That was in front of the old house? A. About 250 feet away.

Q. That is all you know about what transpired that night? A. That is all.

Q. Were you with your father on the 24th of May? A. No.

Q. You don't know of any instance that happened in the Warinanco Park? A. On the 25th.

Q. I mean on the 24th? A. No.

Q. What do you know about what happened on the 25th? A. I know that Mrs. Stevens met a man on Jersey Avenue at the rear entrance of the theatre and walked up Jersey Avenue to Acme Street, through Acme Street into Warinanco Park and went in there and sat down on the bench with this man.

Q. Was anybody with you? A. Mr. Stevens.

Q. How did it come that Mr. Stevens was with you at that particular time? A. I went to his house that night.

Q. You went to his house for what purpose? A. To find out whether his wife was out or what was in the air.

Q. What did you learn? A. I found she was out. I said "You might as well come along." My father and brother was away somewhere's else.

Q. So he came along with you? A. He came along with me.

Q. That was the reason he was down at the Elmora Theatre with you? A. Yes.

Q. At your invitation? A. Yes.

Q. Because you were all alone? A. Yes.

Q. About half past nine you say she came around? A. He met her at the Jersey Avenue side entrance of the theatre.

Q. At the rear entrance of the theatre? A. Yes.

Q. Where was she when you first saw her? A. I first saw her on the corner of Elmora Avenue and West Jersey Street.

Q. That is a lighted public section? A. It is.

Q. Where were you then? A. I was parked on Jersey Avenue on the opposite corner.

Q. Mr. Stevens was with you in your car? A. Yes.

Q. You first saw her at the corner of Elmora Avenue and Jersey Avenue? A. Yes.

Q. You took up the trail from there? A. Yes.

Q. She walked up toward the rear entrance of the theatre? A. No, she stayed on the sidewalk. He came out from the rear entrance of the theatre.

Q. Did he walk down towards her? A. He walked towards her.

Q. Then what did they do? A. They walked up Jersey Avenue.

Q. He walked back of her? A. Walked with her.

By the Master:

Q. On the side of her or how? A. Arm in arm up the street.

By Mr. O'Connor:

Q. Where did they go? A. They went towards Acme Street.

Q. Tell us what they did. A. They went over Acme Street through the entrance of the park. They proceeded along on the lefthand side of the park around this little pool of water to a place about three-quarters of the way up from the start of the pool of water where there was a bench and a clump of trees around and we had taken our position in back of a long line of trees, trees about 20 foot high. We were on the opposite side back in from their bench. They took their position on that bench and stayed there for a while.

Q. What were they doing that you saw on the bench? A. They were loving it up there.

Q. When you say that what do you mean? A. Embracing each other.

Q. Did they continue while you were there? A. Continued for about half an hour.

Q. Did you leave first or did they leave? A. Mr. Stevens left first.

Q. Then did you leave with him? A. No.

Q. You stayed there? A. I stayed there.

Q. How long did they stay there? A. They started to retrace their steps. Mr. Stevens thought Mrs. Stevens was going home.

Q. He left? A. Yes.

Q. You stayed? A. Yes.

Q. What did you see? A. I saw them retrace their steps and go down the street next to Canton Street, then turn over the next street, I think it is Berwick Street. Then they went over Berwick Street to Canton Street. This man with the mustache, panama hat and light suit walked over to Jersey Avenue and Mrs. Stevens went up Canton Street to her home.

Q. Can you tell me while they were on the bench in the park how far they were away from the nearest house to the park? A. The park is shut off from the houses by these trees that run along there.

Q. Tall trees and shrubbery? A. Tall trees about 20 or 25 feet high.

Q. The nearest house would be how far? A. About 250 feet.

Q. Was there anything going on in the park that night? A. Nothing that I know of. There was no cars or anything in the park.

Q. Quiet? A. Quiet.

Q. People passing through? A. I did not see any.

Q. How long were you there? A. Altogether about forty-five minutes.

Q. This bench that you spoke of, where was that located with respect to the nearest roadway or driveway? A. The path they went in I understand is a bridle path for horses and on the opposite side of the pool is this hard surface road that the automobiles use. They were at least one hundred feet from the hard surface road.

Q. Would you say that that bench was in a pretty secluded part of the park? A. I would.

Q. What made it so? A. The pond there separating it from the main road.

Q. What else, if anything? A. The trees.

Q. Shrubbery? A. Shrubbery and bushes.

Q. Walks and bridle paths? A. There was just a bridle path. There wasn't any walk there.

Q. That is used for horses? A. That is used for horses.

Q. That was on May twenty? A. Fifth.

Q. You don't know what happened on May 24th? A. No.

Q. That is all you know about it? A. Yes. That is all.

Cross-examination by Mr. Vanderbilt:

Q. On December 21, January 3 and January 10 you saw Mrs. Stevens go along the path but you did not see her go in the house? A. That is correct.

Q. This path was a path which was a short cut to her home? A. That is correct.

Q. On one of these three occasions you say you did see the bus driver? A. Yes, I saw him come out from the front entrance.

Q. Did you see him come out on all three occasions? A. No.

Q. Do you recall which occasion it was you saw him come out? A. No, I don't.

Q. You never saw him go in? A. No, because he always went around with the bus to the front.

Q. You have no way of telling how long he was in there? A. No.

Q. Did you know who this bus driver was? A. Not at the time, no.

Q. At the time you saw Mrs. Stevens and him sitting in the bus at Newark, did you see anything happening there? A. No.

Q. Now coming to May 25 when you say they sat on the bench, will you just describe what their position was? A. They were loving it up in close embraces.

Q. How far were you away? A. About 250 feet.

Q. Mr. Stevens was with you? A. Yes.

Q. Were there any lights in that part of the park? A. Not in the immediate vicinity.

Q. Was it a dark night? A. Clear night.

Q. Moon shining? A. I don't remember.

Q. You could see a distance of 250 feet. Could you see their faces? A. I could not see them clearly. I could distinguish them.

Q. Were they sitting next to each other or in what position? A. Embracing each other.

Q. That is a very indefinite detail. Just describe a little bit more in detail what you mean by that. This is very important. A. That is the best definition I can give you.

Q. Were they sitting next to each other? A. They were close to each other embracing each other.

Q. This park bench was placed there by the park authorities? A. A public bench. I suppose so.

Q. Did you see them do anything besides sitting close? A. Everything.

Q. What do you mean "everything"?

The Master: Everything they did.

A. Hug one another.

By the Master:

Q. Did you see anybody kiss? A. No, I could not see that close.

By Mr. Vanderbilt:

Q. Do you know which one was doing the embracing? A. No.

Q. What kind of clothes did the man have on? A. Light suit and panama hat.

Q. What kind of clothes did she have on? A. That I don't remember.

Q. Mr. Stevens was there with you. Did you talk any? A. I suppose we did.

Q. What did you and he say to each other? A. I can't remember any conversation.

Q. You can't remember anything he said? A. No.

Q. You say he left first? A. Yes.

Q. Did anything happen after he left different to what had happened? A. Except they went across the bridge.

Q. I mean anything that was improper? A. Except that they took their place on another bench on the opposite side of the pool.

By the Master:

Q. How long did they sit there? A. They sat there for about five minutes.

By Mr. Vanderbilt:

Q. What happened there? A. There was nothing happened there.

Q. No loving up? A. No. Then they proceeded to go home.

Q. No act of adultery took place? A. I could not see any.

Q. Can't you recall any conversation between Mr. Stevens and yourself? A. I cannot.

Q. You say you just met him that night by your happening to go up to his house? A. He had called up my mother's house.

Q. That is your father's house too? A. Yes, I don't live there.

Q. Did you tell him on this occasion about any of the things that had transpired in December or January? A. I did not.

Q. Why not? A. I had no reason to.

Q. Did he tell you what he had seen? A. He was talking about his wife coming in late at night.

Q. Did he tell you anything about the old house? A. No.

Q. He never mentioned that to you? A. No.

Q. During the time you were in the park there were no cars passed by? A. No.

Q. No cars passed by and no people? A. It was around ten-thirty at night.

Q. This place where they first took their seats, there is no shrubbery around there? A. Yes, there is.

Q. On the left entrance as you go in? A. Yes.

Q. From what street? A. Acme Street.

Q. On the other side of the park where they next sat down is there shrubbery around there? A. This bench laid in there around three trees.

Adjourned until 2:00 P. M.

AFTERNOON SESSION.

ROY CAREY, being duly sworn on his oath, testified as follows:

Direct examination by Mr. O'Connor:

Q. Mr. Carey, where do you live? A. Elizabeth, N. J.

Q. Whereabouts? A. 621 Bailey Avenue.

Q. What is your business? A. I am sergeant-at-arms to Vice-Chancellor Buchanan in Elizabeth.

Q. You are also a constable connected with the Elizabeth District Court? A. I am.

Q. Now in connection with this case did you render any service to your father? A. I did.

Q. What and when did you do it? What service did you render and when did you render it? A. My first night was on December 21. I went with my father and brother in the car. We went over to West End Avenue where Mrs. Stevens lived, 516. Mrs. Stevens came out of there around eight o'clock and walked down to Elmora Avenue and got on a jitney bus, a yellow bus belonging to the Public Service, headed for Newark. She rode that bus from Elizabeth to Newark to Park Place. They laid over in the bus at the parking place in Newark.

Q. Did you ride in on it? A. No, I did not ride the bus that night. I rode in the car. The bus laid over about ten or fifteen minutes in Newark, then came on back to Elizabeth and Mrs. Stevens got off at Pennington Street. The bus continued on. Mrs. Stevens walked up Elmora Avenue to this pathway and this old vacant house and went through the pathway.

Q. The old vacant house that you refer to, I call your attention to Exhibits P-1, P-2, P-3 and P-4 and ask you if the house shown by these photographs is the one you refer to? A. That is right.
By the Master:
Q. Is that the house? A. Yes. I stayed in the car with my brother and my father went into the back of that house and what he saw there I don't know.

By Mr. O'Connor:

Q. What did you see? A. I saw the bus when it came to the parking station where it turns and this Mr. Hodges, who I found out later was Mr. Hodges, get out of the bus and go into the path.
Q. The same jitney bus driver that Mrs. Stevens rode with to Newark and from Newark? A. Yes.
Q. You saw him go upon the road? A. That is right.
Q. You did not see him go in the house? A. I did not.
Q. Did you see her go up the road? A. She went up the pathway.
Q. Towards the house? A. Towards the house.
Q. You did not see her go in the house? A. No, I wasn't there.
Q. Did you see her leave the house? A. She came out and went into West End Avenue.
Q. She came off the lot? A. She came off the lot.
Q. Did you see the bus driver? A. He came back to his bus.
Q. Did they come out together? A. No.
Q. Who came out first, if you recall? A. As near as I recollect now, I think Mrs. Stevens came out first.

Q. Where did she go? A. She walked up West End Avenue to her home which is about five or six houses up.

Q. About what period of time elapsed between the time you saw her going on the lot where the vacant house is and the time she left? A. I would say about 15 minutes.

Q. What period of time elapsed between the time the bus driver went up on the premises and the time he left, if you know? A. About ten to twelve minutes he was there.

Q. What was the difference in the time, if you recall, between the time Mrs. Stevens left and the time the bus driver left? A. A minute or two apart.

Q. What was the difference in time between the time Mrs. Stevens went in upon the lot and the time the bus driver went in on the lot? A. When Mrs. Stevens reached the path he had already parked his bus and about a minute or so after he was walking up the path.

Q. That is all you know about what happened that evening? A. On the 21st, yes.

Q. When next did you see Mrs. Stevens? A. On December 27. I went over there with the car with my father.

Q. Tell me just what occurred on December 27. A. Mrs. Stevens backed out of the yard with her coupe, went down West End Avenue to Elmora Avenue and over Elmora Avenue to Westfield Avenue where she picked up another lady. They went with the car to Broad Street Newark, opposite the City Hall where they entered the Paradise Dance Hall. They had parked their car in a garage on Hill Street. After their being there about an hour or so I paid an admission to go in and went upstairs and I saw the two of them up there.

Q. What were they doing? A. They were dancing with two young men.

Q. Do you know the men? A. No, I do not.

Q. How long did they remain there dancing? A. They remained there dancing until the closing and when they came out——

Q. What time was that? A. Twelve o'clock. They went to the garage. These two men walked around to the garage with them. They got the car and they went home in the car alone without the men.

Q. Did you follow the car? A. We followed the car back to Elizabeth.

Q. To what point? A. To Elmora Avenue and Westfield Avenue.

Q. Then did you leave it? A. It was then about a quarter to one.

Q. Quarter to one the following morning? A. Yes.

Q. Who else was in the car? A. With me or with them?

Q. With them? A. Just the two ladies when they came home.

Q. Where did the other lady get out? A. Westfield Avenue and Elmora Avenue.

Q. Then Mrs. Stevens drove where? A. She drove on home, which is about three blocks from there.

Q. You discontinued your trailing? A. Yes.

Q. Now, when next did you see Mrs. Stevens? A. On January 3rd.

Q. Where? A. She came from her home and walked down to get on the bus.

Q. What time of day? A. About eight o'clock in the evening. She walked down Elmora Avenue as far as Jersey Avenue and stood in front of a drug store until this particular bus came along.

Q. When you say this particular bus, what bus do you refer to? A. That Mr. Hodges was operating.

Q. Was the bus she got on that night the bus you referred to on December 21? A. It was.

Q. You referred to Mr. Hodges, was he driving the bus on December 21? A. He was.

Q. And also on January 3? A. Yes.

Q. What transpired? A. She got on this bus about 8:15 at the drug store on Jersey Avenue and I got on at Elmora Avenue and Rahway Avenue.

Q. How did you get up to Elmora Avenue and Rahway Avenue? A. We proceeded ahead and I got out of my car and boarded the bus. I rode the bus to Broad Street and East Jersey Street where Mrs. Stevens arose to get out of the bus. As she did she asked the driver when he was coming back. He told her he was due back at 9:50.

Q. 9:50? A. Yes. She got out of the bus. I got out behind her. She went across the street to Levy Bros. Department Store and stayed in there a while. Then she came out and went in the other stores.

Q. Where did you next see her after that? A. We were around there until she came out of Kress, which was about 9:30 or 9:35.

Q. What did she do? A. She stood there until this particular bus came along.

Q. Did any bus come along in the meantime? A. Two or three.

Q. Did she get on those buses? A. She did not.

Q. She waited for that particular bus? A. She did, driven by Mr. Hodges, 6044. His name plate was in the bus.

Q. When you refer to the name plate, do you refer to the driver's number or to the bus num-

ber? A. The driver's name and his number which hang in the front of the bus.

Q. It is a portable plate which is removed? A. Yes.

Q. She got on this bus? A. She got on this bus and went home.

Q. Did she go immediately home? A. She got off the bus at Pennington Street.

Q. What did she do? A. We had pulled ahead with my car. I got out and got in this path before she did. She walked along up into this path and went to the back of this house. In about a minute or two later in walked Mr. Hodges and they entered the back of this house.

By Mr. Vanderbilt:

Q. "They", did you say? A. Yes.

By Mr. O'Connor:

Q. Who went in first? A. They both entered together. She waited until he came.

Q. Did they go in the house? A. They went in the house.

Q. Where were you located with reference to the entrance they went in? A. I was located in the back of the house. I can probably show you better on these pictures.

Q. Referring to Ex. P-4 and Ex. P-1, you say what? A. I was over in here (indicating) this section. There is a garage from the driveway to the house next to it runs back here.

Q. How far were you? A. I would say I was about 50 to 75 feet back in here.

By the Master:

Q. Away from this house? A. Away from this house back in this section here.

By Mr. O'Connor:

Q. Was there anything between you and the entrance that screened you or hid you from her view? A. There were some trees. You can see them here but they were bare then. It was winter time. You could see the two figures standing here.

Q. Did they go into the house? A. They went into this back doorway here marked with a cross.

Q. How long were they there? A. They were there about twelve minutes.

Q. Did you see them leave? A. They came out off the steps together. Mrs. Stevens stood here a minute while Mr. Hodges went out first.

Q. Which way did he go? A. He went across from here.

Q. Describe it without the pictures. A. He went across between the billboards, proceeds to Elmora Avenue on the corner where his bus was parked.

Q. Was there an entrance leading to the front of the house? A. An entrance on the side of the house, the lefthand side of the house, speaking from the rear. She went down the path to West End Avenue.

Q. In other words, they went out in opposite directions? A. They both came out into this pathway.

Q. They went in opposite directions? A. Yes, Hodges went towards his bus and she went towards West End Avenue to her home.

Q. That is all you know about that evening? A. Yes.

By the Master:

Q. Did you see her go into her home that night? A. No, I was still in here until after she had left.

By Mr. O'Connor:

Q. When did you next see Mrs. Stevens? A. On January 10.

Q. What transpired then? A. She left her home about the same time, around eight or eight-five.

Q. Where were you? A. I was in the car with my father and brother.

Q. Where was your car parked? A. Our car was parked across the street from Mrs. Stevens' home.

Q. You saw her come out? A. Yes.

Q. What did she do? A. She walked down to Elmora Avenue and waited around a few minutes. There were two buses standing there and the first one pulled out. She did not take that one. She took the next one which Mr. Hodges was driving. She drove to Newark, Park Place, stayed on the bus and drove back.

Q. How do you know that? A. Because we followed the bus with our car all the way to Park Place, Newark.

Q. What occurred then? A. The bus pulled into the end of the line at Park Place, we pulled in behind it. She still remained in the bus.

Q. Did Hodges remain in the bus? A. Yes.

Q. Were they talking? A. They were talking. I presume they were.

Q. Did she ride back on that same bus? A. Yes.

Q. What time of the day was this? A. She had left Elizabeth between 8:10 and 8:20. She got back to Elizabeth around 10:00 to 10:05. She walked up Elmora Avenue to this pathway—that is the last I saw her—that runs off Elmora Avenue.

Q. What did she do when she got to this pathway? A. She went up into the pathway.

Q. Up on the premises where the vacant house is located? A. That is right.

Q. Where did she go, if you know? A. I don't know.

Q. Where were you then? A. I was still in the car. We followed the bus around.

Q. Do I understand you to say that when she got to the pathway she walked on the pathway towards the vacant house? A. Correct.

Q. You did not see anything after that? A. No, I didn't.

Q. Did you see Hodges? A. Hodges pulled his bus around by the firehouse and turned around. He left his bus there, got out and he went in the pathway from West End Avenue.

Q. Did you see where he went to? A. Outside of him going into the pathway That is all.

Q. Did you see her again that night? A. About 15 minutes later.

Q. Where did you see her? A. She came out of the pathway to West End Avenue.

Q. Out from the old house? A. From the pathway that leads to the old house.

Q. From the direction of the old house? A. That is it.

Q. Did you see Hodges after that? A. He came out about a minute before.

Q. How long were they in there before you saw either one of them come out? A. About 12 to 15 minutes.

Q. Where did Mrs. Stevens go when she came out? A. Went to her home on West End Avenue.

Q. Do you know where Hodges went? A. He went back to his bus.

Q. Is that all you know about it? A. I was with my father on May 24.

Q. What occurred then? A. At about nine or five minutes after nine Mrs. Stevens came out of the Elmora Theatre with two girls. They walked over to Jersey Avenue where her Buick car was parked. The three girls got in and headed towards Elizabeth. They went a couple of blocks and turned around and came to the side of the theatre. The two girls got out of the car and went into the theatre. About five minutes after that along came a man with a summer suit and panama hat. He walked from the theatre around to Pennington Street and got in her Buick coupe car. They drove off up in the direction of Roselle, New Jersey, through Acme Street and into the park. After entering the park they went about two or three city blocks down and they parked their car there.

Q. Were the lights on or off? A. The lights were off. They were parked there until ten minutes to eleven or eleven o'clock. Then they drove off. We followed them back, Mrs. Stevens letting this man out in front of the theatre and I letting my father out and continuing to follow Mrs. Stevens and she went home from there.

Q. What time of day was this? A. When he got back to the theatre it was around eleven o'clock.

Q. Is that all you know? A. That is all I know.

Cross-examination by Mr. Vanderbilt:

Q. You say on this occasion of May 24 that the lights were out? A. The car was parked with the lights out.

Q. How far were you from the car? A. When we were parked, about two city blocks, small city blocks.

Q. In front or in back of their car? A. We were in the rear.

Q. Did you get out of your car at all? A. No, we sat in our car.

Q. Were your lights off? A. Yes.

Q. How do you know their lights were off? A. Saw them put them—at least his tail light was put out. I saw that his lights went out.

Q. All you know you saw the tail light go out? A. It was put out.

Q. How do you know that? A. It would be a coincidence as the car stopped that the lights should go out.

Q. You did not get out to see whether the front lights were out? A. No.

Q. You did not drive up? A. No.

Q. You did not walk up? A. No.

Q. Why not? A. I can't tell you why. We just didn't do it.

Q. You know considerable about this sort of business, don't you? A. I know a little.

Q. Why didn't you get out of your car and walk up to the car and find out what was going on? A. I don't know. My father didn't want to do it I suppose.

Q. He was acting as the boss of the party? A. Yes.

Q. The best way to find out what was going on in that car would be to go up to it? A. I suppose it would.

Q. Why didn't you do it? A. I can't answer that.

Q. Did you ask your father to do it? A. No, I didn't do that.

Q. What did you do that one and one-half hours in this car? A. Sat and smoked.

Q. Did you have any thoughts as to what the man might be doing?

The Master: You need not answer that question as to what thoughts he had.

Q. Now on these three occasions—first of all take the time of December 27, the day Mrs. Hill and Mrs. Stevens came down to the dance hall, anything improper happen while you were in the dance hall? A. Nothing but I seen them dancing with men there.

Q. Did they dance with the same men? A. For the time I was in there. I was only in there for a half hour.

Q. That is about one dance these days. Nothing unusual about their dancing during the period of one dance? A. No.

Q. Nothing improper took place there? A. No.

Q. The various times you saw Mrs. Stevens in the jitney bus, nothing improper took place there? A. Not in the bus, no.

Q. On the first occasion, December 21, all you did was to see her go up the path? A. On the 21st, yes, I wasn't in there.

Q. You didn't see her go in the house? A. No.

Q. You didn't see her come out? A. No, I saw her leave the path.

Q. In the direction of her house? A. Yes.

Q. And you say she was there 15 minutes, did you take your watch out? A. No, I didn't time it.

Q. Were you alone? Where were you stationed on the 21st when you saw her go in the path? A. I was in the car with my brother.

Q. Where was your father? A. He had been in there to see her enter the house.

Q. Gone where? A. Up into that section of the house.

Q. You heard him testify that at no time did he venture in the house.

The Master: You don't need to characterize his testimony. That is a fact.

Q. On the next occasion January 3 she asked the same jitney driver when he was coming back? A. Yes, when she was alighting at Broad and East Jersey Streets. I was standing right behind her.

Q. Just what was it you said you saw on January 3 with respect to the path and house? A. When she returned from Elizabeth——

Q. Where was your father? A. He was in the car with my brother.

Q. He stayed in the car with your brother? A. Yes. I went into the back of this place, as I said before 50 to 75 feet away from this back entrance and waited until Mrs. Stevens came along. She entered this pathway. When she got to the back of this stoop or porch she waited about a minute or two and then along comes Mr. Hodges in his uniform. They enter this back door here.

Q. You saw them do that? A. I did.

Q. Are there any lights on the porch so you could see that? A. No, there are no lights back there.

Q. How were you able to see whether they entered? A. I could see from the reflection on the corner where there is an arc light.

Q. There was an arc light on the corner. With respect to this photograph P-4 where is the arc light? A. Right over here.

Q. To the left of the picture. With respect to this photograph P-1, where is the arc light? A. In the front of the building on the corner. The corner is about over here to the left of the rear door.

Q. Where do you see the arc light with respect to the photograph P-1? A. Off here to the right of this (indicating) on the corner there.

Q. What kind of a night was that, clear or cloudy? A. Clear night.

Q. Cold? A. It wasn't so awfully cold.

Q. Have you any idea just about what the temperature was? Was it down around zero or 50 or 40? A. No, I couldn't tell you that.

Q. You were out there standing. You ought to have a fair idea as to whether it was hot or cold? A. I had an overcoat and gloves on.

Q. Did you have to keep moving your arms to keep warm? A. No, I didn't have to do that.

Q. Did you follow them into the building? A. I did not.

Q. Why not? A. The place did not look safe enough for me to go in there.

Q. Safe enough for a little girl to go in but it wasn't safe enough for you? A. To my idea she had been in there before and knew the place.

Q. Why didn't you stand by the door? There wasn't any danger in that? A. No.

Q. Why didn't you? A. Because I didn't.

Q. You had 12 minutes to think it all out, why didn't you go nearer? A. I never spoke to Mrs. Stevens. What would I say to her?

Q. How near the door did you get? A. 50 to 75 feet.

Q. If you got near the door, you might have ventured in? A. Maybe.

Q. Why didn't you get up by the door? A. It wasn't a safe place for me to go.

Q. Why wasn't it safe? A. Just like walking into a hole.

Q. You had seen the place in the daytime? A. I never was inside of the place.

Q. The outside. What risk did any man run in walking up to this door which has been marked with a cross and standing by the door or even standing on one side of the door with the arc light to guide you to it? A. I don't think I could get there without anybody seeing me.

Q. They went into that doorway. They might have been standing in that porch way talking. A. I don't know what they were doing.

Q. Weren't you curious about it? A. No, I wasn't.

Q. You didn't want to know what they were doing? A. No.

Q. You weren't interested in what they were doing? A. I wasn't interested.

Q. Because there might be a wrong inference drawn from that, you weren't interested in going to the door and following them in and seeing what was happening? A. I didn't do that.

Q. Why didn't you? A. I didn't and I tell you candidly I don't think the place was safe.

Q .Are you so much heavier than Hodges that you were afraid to go in there? A. He probably knew it better than I did from going in there.

Q. You were there a week before, why didn't you look it up in the intervening week? A. I didn't do that.

Q. These three occasions you came up to the house on two of them you stayed in the automobile and one you came outside of the house. Why did you do that? A. I don't know that was the instructions we got from my father.

Q. Was it because you were afraid to trust one man with the auto? A. No.

Q. What was the object of keeping two men in the auto and one in back of the old house? A. That was his instructions.

Q. Even when a general suggests something dumb, don't you think you could suggest something that might be better or has he got you buffaloed? A. I don't know.

Q. Why did two of you stay in the car each time? A. That was his idea and we carried it out.

Q. On this 10th of January why didn't you get up to see what was going on at the door or inside of the door? A. Because he didn't tell me to.

Q. Don't you do anything that your father doesn't tell you? A. We don't like to.

Q. What did he tell you to do? A. We just drove the car but we saw Mrs. Stevens go in that pathway.

Q. You didn't do anything on January 3 because your father didn't tell you to go up to the house? A. On January 3 I did. He told me to go to the house.

Q. You didn't? A. I did on January 3.

Q. You didn't get within 75 feet? A. That is what I mean.

Q. You didn't go to the house, let alone go into it? A. I did not. He told me to go there and see if they entered the house and I did that. That is what I did.

Q. Although you had to stand there in the cold with your overcoat and your gloves on you made no effort, though there was an arc light there so that you could see where you were going, to go up to the back porch and see what was going on? A. No.

Q. Did you hear any conversation? A. No, I wasn't that close.

Q. You can hear a conversation a distance of 75 feet in a quiet Elizabeth neighborhood? A. Probably if you were talking with your loud voice I might.

Q. Couldn't you hear people talking? Is it noisy down there? A. No.

Q. Couldn't you have heard conversation in there? A. I don't think so.

Q. If they had been tramping around, could you hear the floors creak? A. I didn't hear them.

Q. You don't know what happened? A. I did not go in.

Q. They might have stood right there in the doorway? A. They might have.

Q. You made no effort to find out what they really did? A. No.

Q. You weren't interested? A. I wasn't.

Q. Your father, you say, was in the car all this time? A. Yes.

Q. On January 10 all you know like on the first occasion she walked up the pathway because you were in the car? A. Yes.

Q. Sort of alternated who were to be the car men and who were to be the volunteers to go to the front? A. If you want to take it that way.

Q. Did any one of you three sleuths have a searchlight? A. No.

Q. You know what these Everready lights are? A. Yes.

Q. None of you had one? A. No.

Q. You have been in this game how long? A. A few years.

Q. You never had one? A. No.

Thomas Carey, Recalled—Cross.
Jack Foster, for Petitioner—Direct.

THOMAS CAREY, recalled.

By Mr. Vanderbilt:

Q. Mr. Carey on the occasions when you saw Mrs. Stevens, as you say, go into the house, how far from the house were you standing? A. I was about 60 feet in the rear.

Q. Also Mr. Stevens testified to certain things he saw on January 3, did he ever tell you about them in his numerous conversations with you following that day as to what he had seen at the old house at that time? A. The first I heard that was this morning.

Q. In the many telephone talks he had with you he never told you that? A. Absolutely the first I heard of it was this morning.

JACK FOSTER, being duly sworn on his oath, testifies as follows:

Direct examination by Mr. O'Connor:

Q. Mr. Foster, where do you live? A. 811 Canton Street.

Q. Elizabeth? A. Elizabeth, N. J.

Q. And what is your business? A. Yard master for the Pennsylvania Railroad.

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

Q. And how far is your home from where the Stevens lived on Canton Street? A. You mean before I moved to where I am at the present time. I should imagine about 150 feet.

Q. I mean your present home is how far from where they lived on Canton Street? A. I am living right where they lived.

Q. You are living in the same apartment they lived in? A. Yes.

Q. What kind of a house is that? A. Two family house.

Q. Do you know anything about the happiness or unhappiness of the Stevens household? A. The only thing I know is when they first moved in there my little girl who is eight years old occasionally when I would come home in the afternoon about four-thirty or five o'clock she would have this little boy in with her. He had old overalls and a sweater with a safety pin at the top. I asked my wife——

Q. You can't testify to what you asked your wife. Whose little boy was this? A. Mr. and Mrs. Stevens.

By the Master:

Q. What was his condition? A. Very poorly.

By Mr. Vanderbilt:

Q. Why do you say he looked very poorly? A. Because he had an old pair of overalls on. He was dirty. His sweater was dirty. On two or three occasions I came home and he had messed in his pants. I told my wife——

The Master: You can't tell what you told your wife. Tell anything you saw.

By Mr. O'Connor:

Q. As a result of what you may have said to your wife, did she do anything that you know of? A. She changed the baby's diaper.

Q. Where was Mrs. Stevens? A. I couldn't tell you.

Q. How often did you see the baby in the condition you refer to? A. I should imagine two or three times. That is all.

Q. How long had you known them? A. Since May 10, 1929.

Q. Now, as to the home life between Stevens and his wife, do you know anything about that? A. Nothing at all.

Q. Was she quite a peaceable woman? A. On two or three occasions over there I heard voices. Of course, it was none of my business, and I did not pay any attention to what they said.

Q. Whose voices did you hear? A. I heard Mrs. Stevens.

Q. Do you recall anything she was saying? A. I could not say what she was saying. All I know it was a loud voice, and I did not pay no attention.

Q. Do you know to whom it was addressed? A. I couldn't say who was in the house.

Q. Do you know whether the language was improper or proper? A. Some was improper.

Q. What was the improper language? A. On one occasion I was in the lot, I should judge about 30 feet from the house. I heard her swearing. I don't know who she was swearing at.

Q. What was the nature of the words she was using? A. She called somebody a son of a bitch.

Q. You don't know to whom that was addressed? A. No, I could not see.

Q. Was that the only time you ever heard any swear words? A. That was the only time I ever heard it.

Q. Were you ever in Mrs. Stevens' home? A. I was when I went over with the lady who owns it, Mrs. Marslow. That is the only time I was ever in there.

Q. Was it furnished? A. Furnished very nice.

Q. Nice home? A. Nice home.

New Jersey State Library

Q. Did you ever have any talk with Mrs. Stevens after Mr. Stevens had left the home? A. Yes, sir.

Q. Was there anything said about a bus driver? A. No; the only thing she said about a bus driver was that she had lent a bus driver $50 to buy coal and medicine for his children.

Q. Did she say anything about the old house? A. The only thing was that on one occasion she said she went over by the old house to talk about getting the money back that he owed her.

Q. Is that all she said about him? A. That is all.

Q. Did she make any reference about being up in the park? A. On one occasion, I think it was on the 28th or 29th of May, she was over to my house and she was seeing if we were going to take the flat. Mrs. Marslow and Mrs. Foster and myself were sitting there. She had made a remark over there that she thought she was smart and he was dumb.

Q. Did she refer to her husband? A. She thought she was smart and her husband was dumb. She said: "I find out that he is the smart one and I am the dumb one, that he had detectives following me."

Q. Did she make any reference to being up in Warinanco Park? A. She said she had sat on the bench, but there was nothing wrong.

Q. Did she say she was with anybody? A. She said she was with some gentleman who worked up in the theatre. He was lonesome and she was lonesome, and they went over there for company.

Q. Did she at any time in any of these conversations refer to the petitioner? A. I don't know how to bring that out. She came over, and I told Mrs. Foster to go over and see if they were going

to move, that we would like to have that apartment, as my lease was out on June 1. Mrs. Foster had went over and seen her. She said she did not know yet just exactly what she was going to do, that Mr. Stevens had went away and taken the baby with him, so I says to my wife——

The Master: Never mind what you said to your wife.

A. She said she was going to have her mother come and they were going to leave. I said to her, what about the baby. She said "If he wants the baby he can have the baby because I don't want the baby myself. It looks too much like its father and it is sneaky like its father. I could not take the child and raise him with my people because my people are refined people."

By Mr. O'Connor:

Q. Was there any characterization of the child in that conversation? A. The only thing what I have just said that the child was sneaky like its father.

Q. Did you ever hear her address the child, speak to the child? A. No.

Q. After May 25 did she ever tell you that she had consulted Judge Stein as to her domestic affairs? A. She said she had went down and saw Judge Stein.

Q. Did she tell you what Judge Stein said to her? A. I don't just remember what she said that Judge Stein said.

Q. Can't you give me any idea of what Judge Stein said to her? A. She was in my home. I went upstairs. She continued the conversation with Mrs. Foster.

Q. Do you know whether it was favorable or unfavorable to her.

Mr. Vanderbilt: I object.

A. I couldn't say. I had left and went upstairs to the bathroom. I couldn't say what conversation she and Judge Stein had had. At that time I went upstairs to the bathroom.

Q. Did she speak at any time about her husband? A. The only time she had spoken about her husband was when she was over to my house that time.

Q. Did she speak affectionately or respectfully or did she speak disparagely? A. He would never take her anywhere's. She was lonesome. He was cold. She said she was affectionate and she could not live that way.

Q. Did she say anything further about him? A. No.

Q. Outside of speaking about his detectives and passions did she say anything about him otherwise? A. Nothing only that.

Q. Did she entertain any love or affection for him that you know of? A. I could not say that.

Q. Did she give the impression that she did? A. She said she was affectionate but he was cold.

Q. Outside of that did she say anything that would tend to impress you that she had any love and regard for him? A. That is something I would not want to judge.

Q. Did she say anything from which you might conclude? A. She said they had not slept together. I didn't think there was very much love.

Q. Did she say he was mean?

Mr. Vanderbilt: Of course, that is a little leading.

A. She did not say he was mean. Said he wouldn't go anywhere's, wanted to stay around the house. She said she wanted to go out.

Q. Did you ever see him on Saturdays or Sundays around the house? A. On two or three occasions I seen him hanging out wash.

Q. Did he call to you or speak to you? A. He hollered over to me one Saturday afternoon he was washwoman, was doing the family washing.

Q. That was his day off? A. I don't know what it was.

Cross-examination by Mr. Vanderbilt:

Q. How long have you known Mr. and Mrs. Stevens? A. Since May 10, 1929, when they moved in there.

Q. When was it that she moved away from this house where you knew her? A. Mr. Stevens went away on a Sunday morning, on the 27th and on the 28th I told Mrs. Foster to see if we could not get the flat, that my lease was out June 1.

Q. You really didn't know them but about two weeks? A. Correct from May 10, 1929.

By the Master:

Q. Until about June 1? A. Until about June 1.

By Mr. Vanderbilt:

Q. At the time you were in the house did the house look as if it had been given good housekeeping attention? A. The finest in the world. I made that remark myself she was a fine housekeeper.

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

Q. Then you as a proud father know that when children are young these accidents you refer to will happen? A. Naturally.

Q. Even the most devoted mother might leave her child and that trouble might ensue. You can leave them all dressed up nice and clean in charge of some one and in five minutes they can get all dirty? A. As far as Mrs. Stevens' character is concerned, she is a perfect lady. I don't know anything about her.

Q. The child can get in very bad condition in a few minutes as far as clothes go? A. Yes.

Q. Would you say that she was guilty of neglect? A. She was in that way. I think she should take care of her child instead of leaving it in charge of an eight year old girl.

Q. Isn't it reasonable for a woman to want to run out once in a while? A. My wife went out and she took her children with her.

Q. When was this occasion that she told you about the bus driver, having loaned him $50 to buy coal and medicine for his children? A. I could not say now if it was on the night of the 28th or the night of the 29th.

Q. After her husband had left? A. After her husband had gone, yes.

Q. She was still somewhat upset by that situation? A. Yes.

Q. She knew he had been following her? A. She had made that remark.

Q. She did not attempt any concealment about the fact that she had talked to the bus man? A. She said she had lent this man $50, that he was in hardship, to buy coal and medicine for his children. She said that is why she went over there. She did not want to be seen on the corner talking to him so she went over to the old house. She said they did not enter the house. They just stood on the outside of the house.

Q. She told you that in the presence of Mrs. Foster? A. Mrs. Foster and Mrs. Marslow.

Q. She did not act as if she had anything to be ashamed of or anything to cover up? A. She took it as a joke.

Q. I think I may have misunderstood you once or twice. Did she say the child was sneaky or that it looked sneaky? A. She said the child was sneaky like its father.

Q. She might have said it looked sneaky? A. She said it went around sneaky, snooping.

Q. That was said after the husband had left? A. This was on a Monday.

Q. Do you know whether she went down to see Judge Stein as the Juvenile Court Judge of Union County or in his capacity as counselor? A. I don't know anything at all about it.

Q. She did complain that her husband would never take her anywhere, that he was cold and she was lonesome? A. That is it and she wanted affection.

Q. At the time you saw Mr. Stevens hanging out the wash did he seem to be irritated or put out about it or was he responding to one of those emergencies which sometimes arise? A. He looked as if he had come out of the wash tub.

Q. And glad to get it over? A. Yes, glad to get it over.

JAMES H. HILL, being duly sworn on his oath testifies as follows:

Direct examination by Mr. O'Connor:

Q. Mr. Hill, where do you live? A. Chestertown, Md.

Q. What is your business? A. Work in a clothing store.

Q. Clothing store there? A. Yes, sir.

Q. You are a married man? A. Yes, sir.

Q. Brother-in-law of Mr. Stevens? A. Yes, I married his sister.

Q. Did you ever visit the Stevens' home? A. Yes, sir.

Q. When was the last time? A. Last August.

Q. You came to stay how long? A. We were there—we came to stay two or three days, three or four days.

Q. How long did you stay? A. We went home a day sooner than we expected to.

Q. Why? A. Conditions seemed to be a little unsettled. We got in a mess and we pulled out.

Q. In what way were they unsettled? A. Mrs. Stevens seemed to be very unpleasant.

Q. To you or to her husband? A. More to her husband.

Q. How did she manifest that? A. As soon as he would come in the house she was nagging at him about every little thing.

Q. What form did that nagging take? A. I don't know, most anything.

Q. Was she in an angry mood? A. She seemed to be.

Q. Did you see anything that would provoke that? A. No, I couldn't see anything he was doing to cause it to be that way.

Q. What was she nagging about? A. I don't know, most anything really.

Q. What sort of language did she use? A. She sort of swore at the kid while we were there.

Q. How did she speak of him? A. Called him a dirty little brat.

Q. Is that what you mean by swearing? A. That is bad enough. Of course, it isn't real downright swearing.

Q. Was there any curse word used in addressing the child or addressing her husband? A. She called her husband a dirty skunk right before my wife and me.

Q. How many days were you there? A. I am not real positive. We got there either Wednesday or Thursday and we left Saturday morning.

Q. Sooner than you expected? A. Yes, Mr. Stevens and I intended to go to a baseball game Saturday afternoon but we decided it was best to go on home.

Q. How was the child cared for during the time you were there? A. She was always fussing at him, was always nagging at him, never seemed to have any patience with him at all.

Q. Do you know anything else about their home conditions? A. That is about all I know.

Q. How many children have you got? A. I have one.

Q. How old is it? A. Nearly nineteen months.

Q. This was in August, 1928, that you visited there? A. Yes, sir.

Q. You say she would strike the child? A. Yes, it wasn't any trouble for her to smack him when she felt like it.

Q. What do you mean by that expression "smack him"? A. Just smack him for just the least little things that I did not think a child should be smacked for.

By the Master:

Q. With the flat of her hand? A. Just gave him one whack at a time, just smack him around the face like that.

By Mr. O'Connor:

Q. Once or repeatedly? A. If you hit him on the face once that was plenty.

Q. I am just trying to find out what the situation was.

Cross-examination by Mr. Vanderbilt:

Q. Did she keep the child in good condition while you were there? A. She did fairly well. It seems as though when his father would come home he took full charge of him.

Q. They did not have any maid in the house? A. No.

Q. What was the occasion of her referring to the child as a dirty little brat? A. I don't know. She just did not seem to care anything about him.

Q. There must have been something happen, some occasion for her calling him that. It did not come out of a clear blue sky? A. I don't know why she was like that.

Q. What was the occasion of referring to her husband as a dirty skunk? A. Because she did not care anything about him. That is the way I took it.

Q. How did she happen to say that? A. I don't know what it was. Something he did that she did not like.

Q. You don't know what that was? A. No, I don't.

Q. If you can remember she called him a dirty skunk you certainly should remember what the occasion was, whether it was justtified or unjustified on her part? A. No, I don't remember just what it was. It was just some trivial thing. I know that.

Q. You say that she was continually nagging him. Won't you please specify just what form the nagging took and what it was about? A. I don't know. Mrs. Stevens and I sat up one night after they went to bed and talked the thing over. I told her why didn't she quit nagging at Howard.

Q. You told her that? A. Yes.

Q. What did she say to that? A. She just did not care anything about him, all the love was gone. I said "That don't make conditions any better, your keeping nagging at him."

Q. Was that all the conversation was had between you on that occasion? A. That is about all.

Q. Did she tell you why she didn't care anything about her husband? A. No, I don't recall that.

Q. She did not give you any reason why she did not care about him? A. She said he was dirty and did not keep himself in good condition.

Q. Anything else? A. That was about all, I think.

Q. Say anything about he was cold to her? A. No, I don't recall she did.

Q. Say anything about she was lonesome? A. No.

Q. Say anything about his never taking her out anywhere? A. No, she never said anything about that.

Q. How long did she and you talk over this thing? A. I expect we talked half an hour.

Q. In that whole period she did not give you any reason why she did not care for him? A. No.

Q. She did not talk uncivilly to you, did she? A. No, she did not nag at me any.

Q. What did he do that would make her nag? A. What did he do?

Q. Yes. A. She would find fault where he put things in the room. "What did you put that up there for?"

Q. In other words she would have the room all tidied up and he would want to put things where she did not want them to be? A. I did not see where he was messing it up very much.

Mr. O'Connor: Petitioner rests.

IRMA E. STEVENS, the defendant, being duly sworn on her oath, testified as follows:

Direct examination by Mr. Massey:

Q. Mrs. Stevens, had you quarreled at all with Mr. Stevens before you married him? A. Yes, once about the occasion where he was found in this roadhouse and he would not give me any explanation about it. He told me that he was caught in a raid in a roadhouse and I wanted an explanation——

The Master: Am I to pass on that whether before they were married he committed adultery.

The Witness: No not adultery.

The Master: Am I interested in that? You may have a purpose.

A. My father sent people down around the locality where he was found. We sent a man down, a detective, to find out in the neighborhood if there was anything like that on record. There was nothing in Somerville, New Jersey. This is where he said this thing took place.

By the Master:

Q. That he had been in a place that was raided? A. Yes, sir. I broke off with him. He said he would not explain to me why he was caught and I would have nothing more to do with him.

The Master: Don't you think we are going a little too far?

A. We made up again and we were married in March, the 29th of March. We left Buffalo in my car. My father gave me a car for a wedding

present. We rode down in my car. On the trip down I did all the driving. We were in deep ruts and I was terribly nervous and he got nervous. He had my wedding hat. He wanted to throw the hat out of the car. "I am sick to death of holding this hat." I said, "Howard, how can you throw that hat out? That is my wedding hat." We arrived in Newark to 40 Broad Street at night. I did not know where we were going or what kind of a place he was taking me to. I went up to a furnished apartment. Really, when I stepped into the hall I thought I would die, it was so dirty. We went up the stairway and went back to the back of the building. It wasn't in the front part; it was on the back part, living room, kitchen and bed-room and the living room walls were hanging with cobwebs. In the kitchen the scum was thick on the window sills. I said, "Why did you take me from a nice home and put me into a place like this?" He says, "This is all right for three or four months." I said, "I can't stand it. You know what a nice home I have been used to." He said, "For three or four months it will be all right." I said, "If you want to stay here for a few months, all right." Three days after we moved in I went out into the kitchen to get some bread from the bread box, and the cockroaches that came out of the bread box in that pantry. They just came out by the thousands. Well, I was just sick to my stomach because I lived always in a clean place. When he came home that night I said, "I can't stand this any more. You have got to get me out of here." He said, "You had better stay right here. This is good enough for you." I said, "If you don't take me out of here I will leave you this minute." He finally decided to take me out the next Saturday and

look for a flat. He had the afternoon off and we went to look at this flat. We rented the apartment at 756 Elm Street, Arlington.

When we went down to Bamberger's to buy our furniture he did not have any cash on his person. I had $165 that my father had given me with the car as a wedding present, a check besides for the $165. Bamberger's said they would not give us the furniture unless we would make a down payment in cash. I said, "All right, we will take my check that I got from my father and put it down on the furniture." That was the first payment. That was the only reason we could get our furniture into the flat on Elm Street.

Q. Do you know how much rent he paid for the Broad Street apartment? A. $15 a week.

Q. How much money was he earning? A. He was earning $170 a month.

Q. Then you rented the flat in Arlington. How much rent did you pay there? A. $60 a month, the same as we were paying for the furnished apartment on Broad Street.

Q. After you moved to North Arlington and were settled in a place which was more satisfactory to live in, did you have any complaints there? A. Yes, we had quarrels.

Q. When were the first quarrels and tell us about them? A. Right from the beginning. I said, "Howard, you have got to take me out. I can't stand it. I am lost here. I have gone away from my family, my mother." We were together every place. He took me then to this place.

Q. Speaking of the North Arlington place? A. Arlington. He put me down and he never took me anywheres. He would take me to the show once in a while. I would take my car out and go with the girl downstairs. We used to go every

place together. He would refuse to take me out. He was always tired when he came home at night and he would lie down on the couch and sleep for the whole evening. At eleven o'clock he would be wide awake when I was ready to go to bed and was tired. When he got into bed he kept jiggling and moving around and I could not sleep. I could not get any rest. That was all right. I still slept with him. That continued all summer. I worked for a week in this Miss Scott's that he named as a marceller. I earned $40 in ten days, but I did not like the woman that I worked for. She wasn't my kind. She tried to get me to go out with her. I said, "No, I am not that kind. I will not go out with you," and the work was hard. It was standing on my feet and then at the end of the day I had to do all my own housework and cook his dinners. I would stop on the way home from work and get my provisions in and get a good supper every night for him after working all day long. And I cleaned. I quit that job after ten days. I then went to work for the Dupont Co. Worked there two months, doing the same thing, keeping my house and cooking for him. Then in October I became pregnant.

Q. October of what year? A. 1926. The same year I was married to him. I became pregnant and morning after morning I would beg him not to cook pork sausages. His father used to send him about ten pounds of pork sausage at a time. He would hang this pork sausage up in the attic. I told him that it made me so sick to my stomach I could not stand it. When a woman is pregnant the first three months are terrible.

The Master: You need not go into that.

A. (Continued.) He said, "I will have my pork sausages regardless. I am going to eat and I am going to have them." It kept going on all winter long. Then we went to his home for Christmas time and I went to my home at New Year's. My father and mother gave a party for us. At this party I was having a wonderful time. We were singing with my old crowd. We just were enjoying ourselves with my mother and all my friends. I was standing by the piano singing. I sing quite a bit. Some of the ladies who were standing there singing sat down and I kept singing with the men and when we got up to our room that night he just made my life miserable, saying I was a common woman; that no decent woman would stand up there with all these men. I was in my own home.

The Master: You need not explain.

He told me I was no good, only a brazen thing like me would do such a thing. I went out of the room crying. I went back to bed and he left the next night.

And in the meantime I went to see my doctor in Buffalo. That was one of the main reasons I wanted to go to Buffalo. I wanted to see this Dr. Potter. He is a well known doctor, known all over the world. My sister has had children by him and I wanted the same doctor. He did not want to go down to see the doctor. My sister insisted that he go to see the doctor. At that time my condition was quite serious. I had seen a doctor in Newark, Dr. Burpeau. He told me if I wasn't careful I would have a miscarriage, so I wanted to see this other doctor in Buffalo, and he told me the same thing and he showed my husband the condition, my physical condition. Then we went out of there and my sister talked to him. I don't know what

they were discussing, but I know she was talking to the doctor. She never told me. We never discussed those things. We were not that kind. We went out of there and he stayed that night with me, but he did not care about me. He still wanted me to come across to him that night and I said, "You know I am not in any condition to come across to you." I said, "I can't stand it. You know I will lose the baby if you do that to me." Then he got sore and he would not talk to me and he left the next day, not being very nice to me at all at any time. I stayed home two weeks. At the end of two weeks I went back again. I was so unhappy all the time, I did not know what I was going to do in that condition. A couple of times he would come in—three or four times he would come in quietly, make a grab at me like that (indicating) on my arm and scare me half to death. On another occasion I was laying down on the couch and all of a sudden he jumped up and got down on all fours and started running around and barking like a bear. I said, "Howard, what is the matter with you? You frighten me to death." I said, "This is the end. I can't stand any more." I had written my mother that I was not happy with him.

By the Master:

Q. You went back to Buffalo? A. Then I left him. I came home. My mother came down. I 'phoned my mother on a Tuesday morning and she said——

The Master: You can't tell what your mother said.

—that I was to come home. She came down to ride back with me in the car. I packed my clothes and left.

Q. During the time that you had been living together up to the time you left the place in North Arlington was there any period of time at which Mr. Stevens treated you kindly? A. At no time. He never did.

Q. You have told us what the effect of his actions were on you, but you have not told much of the details of what he did and said to you. Tell us about that. A. Why, he neglected me. He did not pay any attention to me. He would ignore me. He would scare me to death.

The Master: I think she has told us that in quite detail with meticulous particularity, how he grabbed her and went around on all fours and barked when she was in that condition.

Q. Is there anything more that you have not told us that he did or failed to do? A. He failed to stop frying the pork sausages. He would not stop that. He said he was going to have them regardless. I told him at all times if he did not stop it I would leave him. I could not put up with it. He said, "All right, he would stop it" but he did not. On the Monday night before I left him he stayed out until eight o'clock. I had gotten the supper all ready. He stayed out until eight o'clock. When he came in I said, "Where have you been?" He said, "That is none of your business." I said, "It is none of my business, I cooked my dinner and have it all ready for you and then you say it is none of my business." I said, "Can't you explain where you were?" He said, "I won't tell you anything." I said, "All right, you will find out whether it is my business or not, putting up with all that."

Q. Mrs. Stevens, in that period of time can you remember any time or part of that period in which you and Mr. Stevens were friendly to each other, he treated you with love and affection? A. Never. He has never come up to me and put his arms around me and kissed me, never at any time except when we went to bed and then he would make it a business proposition more or less.

Q. When you left for Buffalo was Mr. Stevens home? A. No, he wasn't at home.

Q. Did he know you were going? A. No, he didn't know I was going.

Q. Had you threatened to go? A. Yes, I had threatened time and time again to go if he did not change.

Q. After you got up there, how soon did you hear from him? A. The following Monday. I left a note telling him I was going home. When I got home the following Monday—I got home on Good Friday, the following Monday after Easter I got a letter demanding me to let him know what I was going to do. I wrote him a letter back telling him I was in no condition at that time to know what I was going to do.

Q. Was there anything else in his letter? A. Not a thing. Not one word of affection. My sister and my mother and Mrs. Smith who was living with us saw that letter.

Q. Where is the letter now? A. I don't know. I destroyed the letter.

Q. What was the nature of your reply? A. I told him I did not know what I was going to do. I am in no condition to state or tell what I was going to do.

Q. How soon after that did you hear from him? A. I did not hear again except that I got a check with absolutely nothing in it but the check and

the envelope. Not one word or letter along except these checks.

Q. When was it you got the checks? A. About the latter part of April I got a check for $50. One check was $50 and another check was $50. That is all I can recall that he sent me was the two checks each for $50.

Q. When did you get the next message from him?

By the Master:

Q. That was the time you were in Buffalo? A. Yes. From the time I mentioned that Monday until the time I heard from him the Sunday after the baby was born when he came to Buffalo to see the child and myself.

By Mr. Massey:

Q. Had you sent him word of the birth of the child? A. I insisted. I said he had a right to know—he is the father—that his son was born.

Q. When he came, what happened? A. When he came he talked to me and he left me quite——

Q. What was the nature of your interview together? A. He said he was going to have that baby by hook or crook. He said he was going to get that baby from me. I said, "How can you get him when I have him?"

Q. Had he talked previously about the child? A. He said if it was a girl he did not care what happened to it, but if it was a boy he was surely going to have it, but I had forgotten that when he came up to get me.

Q. On how many occasions had he mentioned the baby? A. Two or three times. If it was a girl he did not care what happened to it. If it

was a boy he was going to have it. He has always wanted a son. He said he always wanted a son.

Q. What happened to you? How were you affected by the interview? A. I was very much upset. I was hysterical. There was nobody there. My mother came in and found me all upset, crying and laughing.

Q. Was your husband there? A. No, he had left to go home.

Q. How soon after he had left did she come in? A. I don't remember that. I know he had to leave to go to New York. I think it was on the 9 o'clock train. My mother came in about ten minutes afterwards.

Q. Was anyone with you while he was in there with you? A. No witnesses at all.

Q. When did you next see him after that? A. He started to write me letters then. His letters were always, "When are you coming back?" and I would say that I wasn't coming back. I told him I had had enough, that I could not see my way clear to come back. He came up three different occasions. The last occasion he did not want to see me, he wanted to see my father. He got my father down in his office——

By the Master:

Q. Were you there? A. No.

Q. Don't tell us about that then. A. After my father came home he brought Mr. Stevens with him. My goodness, sugar would melt in his mouth, he was just wonderful to me. My father treated me very coolly and I could not understand it. He would not talk to me. He would not say anything, and I could not understand it. My mother and my father thought that I ought to

return to him, so I said, "All right, if you think that I ought to go back to him and I owe it to my son to go back to him and try it again." So I went back to him. That was in October.

Q. 1927? A. Yes.

By Mr. Massey:

Q. Before that time had you ever had any words with your husband about the Italian barber in Buffalo? A. Yes, in Arlington he asked me about this Italian barber and I told him exactly the truth, that I had done work for that man, not in his shop, but in my own home. I was a marceler before I was married to him. This barber had a beauty shop in the back part of his barber shop. This man did not have a marceler and he asked me if I would operate his beauty parlor for him. I said, "No, I would not go in no barber shop."

The Master: Tell us what you said to your husband.

A. I told him I had dealings with him in a business way. He went to Norwalk and he wrote me a letter telling me he was doing very well. This barber sold out his business and went to Norwalk to work for his brother.

Q. He wrote you a letter? A. The friendly letter that I got from him was that he was doing nicely and much better than in that line of work in Buffalo. I wrote a letter back to him. I told him I was awfully glad to hear that he was doing so nicely, that he could provide for his family so much better. His wife must have gotten that letter that I wrote to him because she wrote me a letter back. He must have boasted. I don't know why he should do that.

The Master: Don't draw so many conclusions.

She wrote back and said I was trying to get her husband. Of course I was terribly upset.

The Master: Don't tell your feelings.

I was so upset I told Mr. Stevens about it that night. I said just as I am telling you. There was nothing between us, just a friendly feeling. I wrote to the wife the explanation, which was satisfactory, for I never heard from her again.

Q. Mrs. Stevens, did that have anything to do with the entanglements between you and your husband? A. After that he never bothered about that. He just let that drop.

Q. Was that the first thing that you quarreled about? A. We were quarreling all the time. We did not quarrel just about the barber. This was later in the summer.

Q. Then when you came back from Buffalo to live with him again, how did you get along? A. Terrible.

Q. Where did you go to live? A. At 516 West End Avenue, Elizabeth.

Q. Tell us his conduct toward you when you first came back? A. When I arrived from Buffalo—I had driven down—when I arrived here my mother was with me. He greeted me—I never expected the greeting I got from that man.

The Master: Don't characterize.

He just did not say anything, just looked daggers at my mother and me so of course I had to explain. He said, "Why did you bring your mother," I said "Do you want me to drive down all alone?" He said, "You did not need her. I

did not want her." I turned to my mother and I told my mother right then that I did not think I would return to Mr. Stevens. We had come down to rent the flat on West End Avenue. This was before I went back to him finally. We drove down with some of the things in the car. We were going back again. I turned to my mother and said——

By the Master:

Q. In the presence of your husband? A. Yes, I said, "Mother, can I stand it? Can I stand it?" Then he went away from the car. I said to my mother——

The Master: You can't tell what you said to your mother if he wasn't present.

A. "Can I stand it?" Then we went to a hotel here and he stayed with me that night. We rented another room so he could stay with me. I left my mother and went in his room and stayed with him that night. Of course, you know what happened between man and wife and it was all settled so I came back with him. I came back. My father brought me down. He did not go to Buffalo. My father paid my railroad fare home down to Elizabeth. He met me at the train and he grabbed the baby right away. Of course, he kissed me but not a thrilling kiss or anything like that, just kind of a little peck on my lips just to get it over with but he grabbed the baby. Any way he grabbed the baby and we went along. We went home. He promised to clean the house before I went in the place—promised to get a cleaning woman and when I went into that place it was terribly dirty. It was filthy so I took my clothes off and put on my working clothes and went to

work. I cleaned and I cleaned the whole place thoroughly. He helped me but he would not use any soap. I took soap and used soap on the woodwork in the house.

By Mr. Massey:

Q. Leave out the things that don't involve difficulties. A. He got sore at me because I would go over the work that he had done. When we started to clean he said I did not appreciate anything that he did for me. I said, "Of course I did. When you promised to have a woman clean and you did not and now you are helping me to clean and I am not satisfied with it."

Q. What other things did you quarrel about? A. We quarreled about everything. He would not keep himself clean. I would have to tell him to take a bath. I would have to take his underwear out of the bathroom. He would hang his underwear in the bathroom for a week and the perspiration smell was terrible; I could not stand it. I would take his underwear and put it in the dirty clothes. He would go to the clothes basket and get his dirty underwear and say to me "You mind your own business. I will change my underwear when I feel like it." I said, "Howard, you really do smell of perspiration. You ought not do that." That was another reason I quarreled. I was trying to keep him clean. I did not want everybody to think he was going around dirty and I was neglecting to wash his clothes.

Q. What other things did you quarrel about? A. About the baby.

Q. What were the occasions of quarreling about the baby? A. He would always think that I was pretty strict with the baby. You know when you have a child you have to train them from the be-

ginning of time to do things or they will never do what you want them to do. I would try to train him on the chair and all different things. He would not do a thing.

Q. Tell us some of the things. A. When he got old enough to sit up to the table he would take food and throw it from one end of the room to the other and I would slap his paddy. I would say, "Charles, you mustn't do that," and he would fret and cry and Mr. Stevens would tell the baby "Never mind Dinks, that is only your mother. Don't pay any attention to that." What can you do in a case like that?

Q. What did he do to discipline the baby? A. He did not do anything. He never said "No" once. The baby would go in and play with the lamps. I had some nice lamps. He took a lamp off my dresser and threw it down on the floor one night and broke it. Naturally you have to slap him. He would have broken everything in my house if I didn't. He went to my bedroom and took this lamp and broke it. I had punished the baby and put him in his room and shut the door. When Mr. Stevens came in I told him he had been naughty and he should not touch the baby. He still went in that room and picked the baby out of the crib and said "I won't have my baby crying like that." I said, "He just broke my lamp." He said, "That doesn't make any difference, I won't have him crying."

Q. What things during that period of time that you were living on West End Avenue—that is where you came to from Buffalo? A. Yes.

Q. During the period of time you were living there what things did Mr. Stevens do to be nice to you? A. I don't recall any right now.

Q. Do you think there were any? A. He was never considerate of me, never in any way, shape

or manner, of my physical condition or any other way.

Q. Did you go out together socially? A. Never. I will say that we went out to a show at the Elmora Theatre that he spoke of, a stock company. Every Monday they would give guest tickets out. You would get a programme every time you went. In this programme would be a little slip. You would hand that to the ticket taker and she would give the tickets, one seat for nothing and one seat you had to pay for. The occasions that we went out together was when he could get a seat free for me. He never spent a nickel. Once we went down to the Regent. It was 35c.

Q. How much money was he making during that period? A. $260 a month.

Q. During that entire period of time how much did you have to run the house on? A. $60 a month except in two different months. He got $230 at first. Then he got a raise the first of January.

Q. What year? A. 1929. He gave me a check for $80 in January because he got this raise. That was the first month. The second month he gave me another check I think for $80. The next month it was $70. Then he started to pay me on the 1st and 15th. He would give me $40 the first of the month. He would say "I want to use this money. I don't want to take all the money out of the bank and make my bank account low so that there won't be anything left at the end of the month." I said, "I am willing to do everything that I can to help you. That is all right. I want to help you. If you want to use the money, that is all right. He started then giving me $40 on the first. Then when the 15th would come around he would give me $20.

Q. Did you get any other money except that for the baby or yourself? A. No, I didn't.

Q. During that whole period? A. Not from him.

Q. What was the average you received over that period of time you were on West End Avenue? A. Then he started me with the $60 again.

Q. When you were over in Arlington, how much did you receive? A. $60 a month, the same as I got over in Elizabeth.

Q. On an average how many times did you go out with him?

The Master: Don't you think you have pursued your examination sufficiently and given the Master evidence enough for him to decide what the family life was between these people? I think so.

Mr. Massey: I will withdraw the question.

Q. Mrs. Stevens, have you had any friendships with other men during the period of your married life? A. No, I had no friends. I knew of this Mr. Hodges as they are speaking of, just a speaking acquaintance and the reason for this is one day I got on the bus with Mrs. Peterson—she lived downstairs with me—she was going to Paterson to spend the week-end with her father and mother and I rode down on the bus that afternoon with her so she would not have to take the ride alone. It was a hot day so I thought I would ride. I did not get off the bus because I had the baby with me. We were alone at Park Place.

By the Master:

Q. Who was alone? A. Mr. Hodges and the baby and I were on the bus alone at Park Place.

By Mr. Massey:

Q. Why had you gone for a bus ride? A. I went with Mrs. Peterson to keep her company. She was going to see her father and mother in Paterson to spend the week-end, so I rode down there with her.

By the Master:

Q. She got off? A. She got off in Newark and I stayed on the bus, instead of getting off the bus and getting on to another bus I stayed on the bus as I had the baby with me. When we got down to Park Place the bus lays over about six minutes at the end of the line. Then while we were waiting there the baby was quite restless, very restless, so I let him down on the floor and he went up to this Mr. Hodges, and Mr. Hodges said to him, "Hello, there. How are you?" Says, "My, but you are a nice little boy." He said, "I have got one like that, just like you at home." He asked me how old the baby was and he started to talk to me then and asked me about the baby. I told him the age and all the questions he asked me. I rode home again on the same bus and got off the same time.

By the Master:

Q. When was that? A. That was in September.

Q. September, 1928? A. Yes, '28. Different times I rode on his bus. I rode on a good many buses. He would always speak to me and I would speak to him. Naturally after talking like that. He generally asked me how the baby was and I asked him how was his baby. He had three children.

Q. Was this the September conversation? A. No, this is another conversation that I had. I went home in October. I spent six weeks at home doctoring with my doctor. He found a very bad condition there.

Q. In Buffalo? A. Yes. I have a letter from him showing I was in a very sick condition physically.

The Master: I think you had better keep the witness under control.

By Mr. Massey:

Q. When was the next time you saw Mr. Hodges? A. Not until I came back from Buffalo.

Q. When was that? A. About the first of November. I saw him again on the bus. He told me his children were sick and that he had moved; that they did not have any coal in the house and he didn't know how he was going to get by without some extra help from somebody. I said, "Well, isn't that too bad." I said, "It certainly is a shame. Don't you know anybody you could go to to lend you some money?" He said, "No." He asked me to lend him $50 and I said, "Lend you $50. What makes you think I have it?" He said, "You dress nicely. You look as though you had plenty." He said "Couldn't you lend it to me?" I said, "How will you repay the money?" He said, "I will pay back $5.00 on the first day of each month." I went to the bank—I said, "If it is for your wife and three children who need help, I will give you the money now but you must pay me back $5 on the first of December." Well, I did not see Mr. Hodges for a long time afterwards and he did not make any effort to see me.

By the Master:

Q. Did you give him the $50? A. I gave him the $50.

Q. What bank did you draw it out of? A. I drew $75 out of the Elmora State Bank and I got a note from that bank, a three months' note and I had to pay back a certain amount every month.

By Mr. Massey:

Q. Did you have any money besides what your husband was providing? A. Yes, I had money in the bank. When I married I had $500. When I left I had $69.50.

Q. Go on with Mr. Hodges. A. I loaned Mr. Hodges $50 for his wife and his family. On the first of December I thought I would hear from him. I did not hear from him. I got kind of anxious why it was he promised to pay me the money but he did not do it. I did not see him for a long time. Then on the 21st day of December, as they are saying, I rode down on his bus.

Q. How can you remember the day? A. It was just before Christmas and I went down to do some Christmas shopping.

Q. What time of the day was that? A. This was in the evening I went down because I could not get out in the daytime. I would not leave my baby and I could not take him with me. This evening I went downtown to do some Christmas shopping. On this trip down I was on his bus, I got on his bus but coming home I did not expect to see him. When I stepped on the bus I did not make any arrangements to see this man.

Q. Did you talk to him on the way down? A. No, only to say "Hello" and ask him how he was and how his family was and he asked me how my family was. That was all there was to it. Then

I got on his bus coming home. There is a little store on Elmora Avenue and Pennington Street that I ordered some things from, a little piano and a telephone that I wanted to give the baby for Christmas. I had been going in this store trying to find out whether they had the things. I ordered a certain kind of piano. I went in on the 21st of December to see if they had that piano and they told me "No," so I bought a couple of packages of candy, five cent candy. This path that he is explaining was a short cut home. I went in that pathway and looking down on the ground—it wasn't so nice, kind of humpy—I had to watch my step where I was walking. I got up to this old house and I saw this man standing up on the other side. I kind of drew back. I was kind of afraid to go on. I saw then it was Mr. Hodges and he was using that place like lots of bus drivers used it and I walked very slowly and then he came down and we started talking. I said to him "When are you going to pay me that money that you owe me?" Then he started to explain that he had no money but he said he expected Christmas presents of money from home, that he would pay me the first of January from the Christmas presents that he would get at Christmas time and I went home.

Q. How long was it on that occasion you were talking to him? A. Not more than five minutes.

Q. Where were you standing? A. I was standing on the back of the house near the porch.

Q. Where were you with reference to the porch? A. I just stepped off the path next to the stair case. There is a little stair right here in the back. I stepped up beside the stair. While I was standing there with Mr. Hodges talking we heard this awful racket so I looked to the front. I was

on the side. You can look right through that house to the front of the house. There was a man ran across the porch. He looked the same figure that my husband looked on this front porch. We said goodbye to each other and I said I will see you again about the $50 and I went home. That night my husband was laying on the couch sleeping, supposed to be. I shook him. He did not wake up and I shook him again. I said, "Howard, what is the matter with you?" He is a very light sleeper and whenever I shook him he always woke right up. He opened his eyes wide brightly, just as wide as though he had just been pretending but he did not say a word to me. I said, "You had better get to bed. You are squirming around and keeping everybody else awake." At that time we were sleeping together because the baby had the other room. If he slept with Mr. Stevens he would keep him awake and if he slept with me he would keep me awake so we both slept together at that time. Now what else do you want to know?

Q. Did you see Mr. Hodges after that? A. On the 3rd of January I saw Mr. Hodges.

Q. Was that the next time you saw Mr. Hodges? A. The next time I saw Mr. Hodges after the 21st of December.

Q. How do you know it was the 3rd of January when you saw him? A. Because it was after the first and he had promised to pay me on the first of January.

Q. Are you sure it was the 3rd? A. It was after the first. That is all I know. It was some time between the first to the tenth.

Q. Tell us about that. A. On that occasion I asked him again when he was going to pay me back the money. We were standing outside the house. We weren't inside the house together. We weren't inside. We stood outside talking.

Q. Was it an accident that you met him there? A. No, he said to me when I got off the bus, "Will you please meet me where I saw you before and I will try to make an explanation why I am not giving you the money back." I said, "All right, I will meet you there but not for long." He said, "I haven't got long to stay. So we went in there and I asked him again. I said, "I am getting sick of your stalling me all the time."

Q. You went in where? A. In the back. I got off the bus at Pennington Street. I came up Elmora Avenue and I came through this path, this short cut to home.

Q. Did you ever walk around on the pavement? A. Yes, once in a while I did, when I was not too tired.

Q. Which way did you usually go? A. Through the path.

Q. Which way did he come in that second time? A. The front way.

Q. In from the other direction? A. In from the other direction.

Q. He drove his bus up and parked? A. Yes and he came in the other direction. He told me again that he did not have the money; that he was financially embarrassed and he did not have the money to pay me. I said to him, "Are you kidding and stalling me? I am getting provoked about it." And from then on I did not see him. Mind you I only loaned him this money. I did not give it to him.

Q. How long were you in there that night? A. About five minutes.

By the Master:

Q. You say in there. What do you mean? A. Along the path. I was there five minutes because

he told me he wanted to go over to the diner on Elmora Avenue and get a cup of coffee, that he was cold.

By Mr. Massey:

Q. Were you ever inside of that house? A. I never was inside of that house.

Q. Did you ever meet Mr. Hodges in that vicinity at any other time? A. Never saw Mr. Hodges any place except on his bus previous to that time.

Q. At any time since, before or in between did you ever see him along that path? A. Never.

Q. Did you ever talk to him along the street? A. Never.

Q. The only other place you ever talked to him was where? A. Beside the step by that house. I did not want to stand on the corner.

Q. The only other place beside that was where? A. On the bus.

Q. After that how many times did you see Mr. Hodges? A. I did not see him again. I never saw him again. After that last time in January I never saw him again.

Q. Until when? A. I never saw him again.

By the Master:

Q. Until today? A. Until today.

By Mr. Massey:

Q. You saw him within the past week? A. Yes, I went to see his wife and I called on his wife and explained the matter to her. I asked her if she got the money.

By the Master:

Q. You went there, I suppose, for the purpose of procuring him as a witness? A. That is the only time I saw him from January until last week.

Q. He never paid you the $50? A. No, sir.

By Mr. Massey:

Q. Did you ever care for Mr. Hodges as a friend of yours? A. It wasn't a case of friendship. It was a case of charity. I helped him when he needed it. I wasn't giving him this money.

Q. Now on one occasion in December you have been accused of going to a public dance hall and dancing with other men. Do you remember that occasion? A. Yes, I do know the occasion.

Q. Tell us about that. A. On the 27th of December I had a quarrel with Mr. Stevens.

Q. You said the 27th, how do you identify that date? A. Because the baby was sick and I had the doctor for him.

Q. How do you know the baby was sick on that day? A. It was between Christmas and New Year's that the baby was sick with the grippe.

Q. Could it have been the 26th or the 28th?

The Master: We are all clear on the Paradise Dance Hall affair.

A. I had had a quarrel with Mr. Stevens previous to that going out because I had a doctor come in to examine my baby and he told me we must keep the baby in bed; that he must not be handled. I had worked all day long with him.

By the Master:

Q. You went out to this dance? A. Because I was cross with Mr. Stevens because he would not do as the doctor told me. He took the baby out of the bed and was holding him in his lap. I told him——

Q. As a result of that you went to the dance hall? A. I went to the dance hall.

By Mr. Massey:

Q. Who went with you? A. Mrs. Hill.
Q. Who is Mrs. Hill?

The Master: There is no evidence of any adultery in connection with the dance hall. No evidence except how she danced with men.

By Mr. Massey:

Q. What were the names of the men with whom you danced?

The Master: If you know.

A. Yes, I do. Mr. Walters. He worked in the Kresge Department Store in the radio department.

Q. Where did you meet him? A. I met him at this dance hall. He gave me his card and told me if I ever wanted to buy a radio to come and see him. I only danced two dances with him that evening. I did not dance with anybody else.

Q. Did you ever go out with any other men besides your husband during your whole married life socially? A. Never.

Q. Was there any exception to that? A. Except Mr. Muszar. He worked in the Elmora Theatre. The previous Saturday night we walked together in the park. I was staying on late that night. I had to work late.

By the Master:

Q. You were an usher? A. Yes. I went to work because Mr. Stevens did not give me enough

money to provide clothing for me. The only thing he ever bought for me was a coat. I wanted to buy myself a white hat and coat—I was planning to go home—and I wanted to look nice before my people. I talked to this Mr. Muszar. I did not even know his first name. I had never met him. The Saturday night before I left the Elmora Theatre—the occasion that he mentioned about me wanting to rent this fellow a room—it wasn't the same man. It was the ticket taker. We moved into Elmora on Canton Street and the rent was $10 more. I had three bedrooms and I thought if I could help out in money matters I would do so. I thought it would be an easy way to make some money and I would not have to work any more. I thought I would not go back to the show. He refused to let that man have a room. Then there was a girl who lived all alone in Elizabeth. She asked me if I would let her have a room. I said "No". I did not like her. She wasn't the kind of a girl I wanted in my home. Mr. Muszar —I knew him the Saturday night previous, a week before I left the Elmora Theatre.

By Mr. Massey:

Q. What month was that? A. In May.

Q. While you were on Canton Street? A. Yes. The Saturday night that he mentions about this Mr. Muszar I had not been out with him. He says that this man has a mustache——

> The Master: You don't need to try to contradict everything in this case. Just tell us about the happening, if any there be, with Mr. Muszar.

A. I took a walk from the theatre. I met him and we walked up Jersey Avenue to Acme Street

through the park and around a pond but before we walked around the pond there was an automobile came through the park. They put the brakes on the car so hard just as if they got alarmed. I thought there was an accident. I turned to Mr. Muszar and I said, "Why, I guess there was an accident". When I turned around I saw Mr. Stevens. I saw his face just as plain as I see your face following me in the park. I turned to Mr. Muszar and I said, "My husband is following us but just let us continue our walk as though he wasn't there". We walked around this pond. I said, "I am going to sit down on the bench. I want a piece of candy, do you?" He said, "No". He stood up. There was no one on the bench with me. I said, "You try to find my husband, will you, please?" He stood up and kept looking for Mr. Stevens. He said, "I will look for you". So we sat there for five minutes. I sat there and Mr. Muszar was standing. Then we went out of the park and we went down the street this side of Canton Street. I don't know the name of the street and I went down Berwick Street. I turned around again and saw a man. It was a little dark and I could not see the outline of him, a man standing back watching us all the time we walked down the street to Berwick Street.

Q. Was there anybody else in the park that night? A. There is a bridge there and on this bridge there was about five fellows all laughing and talking, as we were there. There were other people going through the park. It wasn't a dark place. The road ran through there and automobiles were going through all the time and Mr. Muszar did not even sit down on the bench. He never even kissed me. We weren't that close enough to do that.

Q. Were you ever in that park with Mr. Muszar at any other time? A. No.

Q. When did you last see Mr. Muszar? A. The Saturday night that I said goodbye when we came out of the park. Then on the next Monday morning I saw him. He was terribly upset.

Q. Do you know where he is now? A. No.

Q. Have you ever heard from him? A. The show closed that following Saturday. My mother came on a visit and I never saw him except on the Monday following.

Q. Have you ever been out in a friendly way with any other men during the whole time you were married? A. Never.

Adjourned until Monday, September 9, at 10:00 A. M.

Hearing continued on Monday, September 9.

IRMA E. STEVENS, continued.

By Mr. Massey:

Q. Mrs. Stevens, in between the time of these offenses that are charged in December, 1928, and January, 1929, and the time in May, 1929, when your husband left, did you live together as man and wife? A. We did.

Q. In your home? A. We did.

Q. Did you have marital intercourse at that time? A. We did.

Q. On one or more occasions? A. More occasions.

Q. On two or several? A. Several.

Q. How long before the separation was the last of such occasions? A. One week.

The Master: You don't set up condonation as a defense in the pleadings.

Mr. Massey: We are going to prove that and at the end of the testimony we will amend our pleadings.

Q. It has been said that you stayed out all night one night during the time that you were living with Mr. Stevens, is that true? A. Yes.

Q. Will you tell us about that occasion? A. We had had a quarrel and I packed my grip and with Mrs. Peterson and myself we went down to Newark and I registered at the Robert Treat Hotel and I spent the night alone there. The next morning I had breakfast in the grill room. I got on a bus and I came home. Mrs. Peterson went up in my room with me and saw just where I was going to stay.

Q. Do you remember the date? A. No, I can't remember the date.

Q. Can you remember approximately when it was? A. I know it was the only time I ever had stayed out all night.

Q. It has been said that you went out often in the evenings and stayed late, is that true? A. Yes.

Q. How often? A. Maybe once or twice a week.

Q. On such occasions what did you do? A. I always went to the movies or to Chapter meeting. I am a member of the Eastern Star and used to go to Lucinda Chapter, which met every Tuesday.

Q. Was your husband informed as to where you went? A. I told him I was going to go to Lodge.

Q. Did he ever object? A. I never told him I was going to the movies. He asked me but I did not think it was necessary to tell him so I did not tell him.

Q. During the whole time of the year and one-half approximately that you lived in Elizabeth how many times did he take you out in the evening? A. Not more than eight times.

Q. Did he ever object to your going out alone and ask you to stay home? A. On one or two occasions but not any more than that.

Q. Who took care of the child? A. He did. The baby would be usually in bed or getting ready for bed.

Q. On this evening of Friday, May 24, you told us you were not in the park with Mr. Muszar on that evening. Where were you that evening? A. On Thursday night, that is the 23rd, I was talking to Mr. Muszar and I told him that I was going to go to the movies the next evening.

The Master: Never mind what you said to Mr. Muszar. You were asked where you were on that night, on Friday evening. What night is that, May 24?

A. May 24. We took a ride out towards Westfield. We rode for an hour.

By the Master:

Q. Who is that? A. Mr. Muszar and I rode for an hour. I said "It is getting late." I turned the car and came back into Elizabeth. I left Mr. Muszar out at the corner of Jersey and Elmora Avenue, saying good night to him at that corner and I drove directly home.

By Mr. Massey:

Q. Were you in the park at all that evening? A. No, I wasn't in the park at all that evening.

Q. Whose automobile was it? A. Mr. Stevens' automobile.

Q. Did he know you had the car that evening? A. Yes, he knew I had it. He parked it over on Jersey Avenue before I took the car.

Q. For what purpose did he park it there? A. He knew I wanted to use the car that evening. I told him I wanted the car to go to the movies.

Q. Did you have his consent to use the car? A. He left it for me.

Q. How did it happen you took Mr. Muszar out for a ride? A. We were going to go to the show together and it got too late.

Q. Why did you make an appointment with Mr. Muszar to go to the show together? A. Because I was going alone and he was in town alone and we did not see any harm in going to the picture show together.

Q. Were there any other occasions when you had an appointment with Mr. Muszar? A. Never.

Q. On Saturday evening, the following evening, did you have an appointment with him? A. No.

Q. How did you happen to walk with him that evening? A. I met him on the street.

Q. Where did you meet him? A. Around the corner.

Q. In that park in which you sat down on the bench, are there any buildings near by in which people are living? A. There is a big apartment on the corner of Canton Street and the entrance of the park.

Q. How far is that from the bench where you were sitting? A. I could not just exactly tell.

Q. Is it in plain sight? A. Yes, it is in plain sight of the park.

Q. Is it as much as a block away? A. Just about a block and a half away.

Q. How did it happen that Mr. Muszar did not sit down on the bench that night? A. Because

previously of sitting down on the bench we saw Mr. Stevens.

The Master: I think she explained that.

Q. Mrs. Stevens, did you ever at any time threaten your husband that you would be unfaithful to him? A. Never.

Q. Did you ever tell him of any intent or any desire on your part to seek to be intimate with any other man? A. No.

Q. Did you ever purposely select the bus of this man Hodges to ride in? A. Not that I can remember.

Q. On how many occasions did you ever ride to the end of the line and back in his bus? A. About four times or five times.

Q. Did you ever ride in other buses to the end of the line and back? A. Yes.

Q. Mrs. Stevens, is it true that you used less care in taking care of the baby than in taking care of the house? A. No, sir.

Q. Did you ever knowingly leave the baby with soiled clothing? A. Never.

Q. Wet clothing? A. Never.

Q. Did your husband ever call your attention to your neglect of that kind? A. Never.

Q. During the time when you were in Elizabeth and your husband only took you out about eight times you said, did you ever ask him to go out oftener with you? A. Always.

Q. Did you ever try to become reconciled with him? A. Yes, I have.

Q. And to obtain his love? A. Yes, I have.

Q. In what way did you try to do it? A. I used to go up and put my arms around him and go to kiss him. He would turn from me. He would not even return my kiss. He would not have anything to do with me.

Q. What would he say on those occasions? A. He said "When you get through swearing at me."

Q. Did you swear at him? A. If you call "hell" and "damn" swearing.

Q. Often? A. No and not directly to him. When I would get excited I would say "Damn it, I am getting tired of it."

Q. Did you use that language very frequently? A. No.

Q. Was it a daily occurrence? A. No.

Q. Did he ever use that kind of language with you? A. No.

Q. Did he ever use abusive language? A. Never.

Q. Did he ever abuse you physically, I mean strike you or anything else to do you any harm? A. Yes, he has.

Q. Do you remember any particular occasion? A. Yes, I do. In May, 1928 I went home and visited my people. When I came back he was in the kitchen and I was also in there sprinkling clothes and I said to him I wanted some money so he handed me $8 on that occasion I said to him, "Why, Howard, I will have to have more money than that. I can't live on $8.00." He said, I can't give you any more until the first of the month." I said "You know I live well at home. I have got to have more money than that." He said, "Well, I can't give it to you." I said "You have got a hell of a nerve to make me come back here and hand me $8.00 to live on when you know I had everything at home." He got very angry and he struck me right across the mouth and cut my lip open. Then I got hysterical. He knocked me against the pantry door. The pantry door was open. Then I left the kitchen and I went in towards the bathroom and he grabbed me and got

me around the neck like this (indicating) and was choking me.

Q. Did anyone else know of the happenings of that evening? Did anyone else know of the abuse you just spoke of? A. The only thing. The people downstairs heard this awful crash.

Q. How do you know that?

Mr. O'Connor: I object, if your Honor please.

By the Master:

Q. Did they tell you they heard it? A. They told me the next day.

By Mr. Massey:

Q. Did you receive this note Ex. D-1 for identification when the baby was turned over to you during your last separation? A. Yes.

Q. Is the contents of that note true, the statements true? A. No.

Mr. Massey: I offer it in evidence. Received and marked Ex. D-1.

Cross-examination by Mr. O'Connor:

Q. Mrs. Stevens, you were married prior to the time you married Mr. Stevens? A. Yes, I was.

Q. And immediately after your marriage where did you go? A. I stayed in Buffalo.

Q. After you were married? A. I came down here.

Q. Immediately after the ceremony in Canada you came down to Elizabeth or rather to Newark? A. Yes, sir.

Q. How long did it take you to drive down? A. About two days.

Q. And the only difficulty you had was over this hat? A. Yes, sir.

Q. In those two days? A. Yes, sir.

Q. It did not make you very angry? A. It hurt me. It did not make me angry.

Q. You got over it quickly? A. Yes.

Q. You came into Newark in the nighttime? A. Yes, sir.

Q. Had your husband previously arranged for the apartment at 40 North Broad Street, Newark? A. It was 80 Broad Street.

Q. Had he previously arranged for it? A. Yes.

Q. Had he seen it? A. He lived in there.

Q. How long had he lived in it? A. He told me a week.

Q. And when you got down there you did not like that apartment? A. No.

Q. That made you angry? A. Yes, I told him he certainly had a nerve to take me down to a place like that.

Q. Is that the way you spoke to him, that he had a nerve, immediately after your marriage, two days after your marriage? A. Yes, I said, "You have a nerve to bring me to a place like this."

Q. You were angry when you said that? A. Not so angry.

Q. You mean to say he brought you to this house for the purpose of making it disagreeable to you? A. No.

Q. Why do you mention it as an element of abuse and cruelty? A. He refused to move.

Q. How long did you stay there? A. Ten days.

Q. I thought you testified the following Saturday you went out in the afternoon to look for an apartment? A. We did.

Q. You made arrangements to move within three or four days after arriving there? A. About four or five days after that.

Q. He was willing to accommodate himself to your desires and to provide quarters for you that were agreeable? A. He refused at first.

Q. At first he refused, but finally agreed? A. Because I told him I would leave him if he didn't.

Q. You would leave him if he didn't, notwithstanding the fact that he might not have been able to provide other quarters, you would have left him. Is that true? A. Yes, I would have.

Q. You went out to Bamberger's to buy furniture. How much furniture did you buy? A. A living room suite, three piece.

Q. What did it cost, the entire furniture bill? A. About $1500 all told.

Q. He bought that, didn't he? A. Yes.

Q. The fact that you paid on account of that $165, was there anything in that transaction that showed him to be unkind to you? A. Yes, he would hardly talk to me. He would not look at the furniture. He did not want to bother.

Q. You and he agreed upon what you wanted and you bought it? A. Yes.

Q. How long were you there? A. The afternoon.

Q. So that the discord that afternoon between you did not last very long. It enabled you to buy all the furniture you wanted, $1500. A. Not all I wanted.

Q. How much more did you want? A. It was not like what I was used to.

Q. In other words you wanted this man to furnish a home such as your father had and you were accustomed to? A. I could not expect it from a man who was only earning $170.

Q. What grievance have you to make of the fact that you paid $165 and the fact that he happened to be without any cash that afternoon. Was there anything wrong about that? A. No.

Q. Weren't you willing to share with him what you had? A. I certainly was.

Q. When you paid the $165 who paid the balance of $1340? A. He did.

Q. You got your $165 back? A. Finally.

Q. You insisted upon getting it? A. No.

Q. You got it? A. I got it.

Q. Finally, what do you mean by that, after your insistent demands upon him for payment? A. No, sir.

Q. You went with him, did you not, to the Elm Street house in Arlington? A. Yes.

Q. You saw the quarters? A. Yes.

Q. You were satisfied with them? A. Yes.

Q. What made you dissatisfied later on? A. His treatment of me.

Q. I am speaking now of the quarters? A. I did not complain about the quarters, not the 756 Elm Street quarters.

Q. You said that you wanted to go out evenings? A. Yes.

Q. You had a lot of time on your hands, didn't you? A. Yes.

Q. You had a car and you went where you wanted to in the car in the daytime? A. Yes.

Q. You took the lady who lived below you? A. Yes.

Q. You went to the theatre in the evening once in a while? A. Very seldom.

Q. Once in a while you testified to? A. Yes.

Q. He went with you? A. Yes, sometimes.

Q. And the only thing that you testified to was that he was tired when he came home at night. Was he tired or not if you observed? A. He would lay on the couch and sleep all evening.

Q. But he wasn't tired when he got into bed? A. No.

Q. What do you mean by that? A. Nothing.
Q. What do you mean by that?

The Master: The Court will draw the inference.

Q. Did you object? A. Yes.
Q. You objected to his conduct in the bedroom? A. Yes.
Q. While you lived in the Elm Street home? A. Yes.

By the Master:

Q. What was objectionable about his conduct in the bedroom? A. He wanted intercourse so often.

By Mr. O'Connor:

Q. That you objected to? A. Yes.

By the Master:

Q. You were married, weren't you? A. Yes.
Q. You had been married before, hadn't you? A. Yes.

By Mr. O'Connor:

Q. How long had you been married then when you objected to it?

The Master: It was in the Arlington house that they went to soon after they were married.

A. I did not object to it at first. It was afterwards when he kept at it all the time.
Q. I am speaking about the Arlington home, the Elm Street house, did you object to inter-

course with him in that home? A. When I was pregnant I did.

Q. Did you object to intercourse with him in that home? A. Yes.

Q. How long did you live there? A. For a year.

Q. You became pregnant the following October? A. Yes, not after I left the Elm Street house. I was pregnant when I was living on Elm Street in October.

Q. You became pregnant in the October following your marriage? A. Yes.

Q. You moved into the Elm Street house how long before that? A. In May.

Q. Or April? A. In April.

Q. You objected to intercourse after you became pregnant, did I understand you to say that? A. Yes.

Q. How long afterwards did you first object? A. Two months afterwards.

Q. You mean to tell us that is the truth? A. That is the truth.

Q. That two months after you became pregnant you objected to intercourse? A. Yes, sir; that is the truth.

Q. While you lived in the Arlington home, shortly after you became pregnant you went home? A. Yes, sir.

Q. You were homesick any way, weren't you? A. Yes.

Q. You wanted to get back home? A. Yes.

Q. Wasn't that the principal reason for going back home? A. No.

Q. You had consulted your doctor down here, Dr. Burpeau? A. Yes, sir.

Q. And you say your primary reason was to consult Dr. Potter, is that it? A. No, I had al-

ready consulted Dr. Potter in January when we visited my folks. Mr. Stevens and I had already consulted Dr. Potter but we were quarreling so much.

Q. Then you went home because you were homesick? A. No, sir.

Q. What did you go home for? A. He acted so funny. He would come up to me and grab a hold of me and scare me half to death. The last occasion I told you about when he ran around on all fours and started to bark like a dog. I could not stand it.

Q. What circumstances brought that on? A. I was sitting in the living room. I though at the time he was a dope fiend.

Q. Is that the first time you thought that? A. No, it wasn't.

Q. You thought so before? A. About four or five months before that.

Q. Have you finally concluded whether he was or was not? A. I haven't yet.

Q. You haven't any love or affection for this husband of yours, have you? A. I don't hate him.

By the Master:

Q. You weren't asked that. That is a perfectly proper question and you can answer it yes or no? A. No, I don't love him.

By Mr. O'Connor:

Q. You don't love him? A. No.

By the Master:

Q. When did you cease to love him? A. When I left him the first time.

Q. That was what date, please? A. It was on the Monday following that I left him.

Q. What year and what month? A. It was before the baby came.

By Mr. O'Connor:

Q. Your husband at the time you were living in the Arlington home was earning about $170 a month? A. Yes.

Q. You knew that? A. Yes.

Q. He was paying about $60 a month rent? A. Yes.

Q. And he managed to maintain that home and provide for you? A. Yes.

Q. During the year or about the year that you stayed there? A. Yes.

Q. While you were there you went to work? A. Yes, sir.

Q. Went to work because you had time hanging heavily on your hands? A. No, sir.

Q. Why did you go to work? A. Because I wanted to buy things for the home to make it more attractive.

Q. How much money did you earn while you lived in the Arlington home? A. I made $40 in ten days.

Q. What else did you earn while you lived in the Arlington home? A. In the Arlington home, I worked three months and I made $75 each month.

Q. You made $40 in ten days? A. Yes.

Q. You worked for Miss Scott? A. Yes.

Q. You did not stay there very long? A. I did not like her.

Q. She wasn't your kind, you said? A. No.

Q. What kind was she? A. She was not like I was.

Q. She wasn't like you, how did she differ? A. She was running out nights. I know she was having men come to her place there and stay all night.

Q. How do you know they stayed there all night with her? A. Because I did.

Q. Aren't you drawing on your imagination when you say that of this woman? A. She had the reputation.

Q. Not what she had the reputation of. I am not asking you that. A. I just did not like her. I didn't like the conversation. She would talk dirty and all that so I left.

Q. You stayed there ten days? A. Yes, I was hired for that period and I told her I would stay that long.

Q. After you left there, you went to the Dupont Company. What did you do there? A. I did checking.

Q. Checking of what? A. Invoices.

Q. You earned $75 a month? A. Yes, sir.

Q. Why did you leave there? A. Because I got tired and I wanted to go home to pay a visit.

Q. Between the time you went to work for Mrs. Scott and the time you quit at the Dupont Company because you wanted to go home, what did you buy for the home? A. I bought lots of things.

Q. What did you buy? A. I bought a buffet mirror.

Q. Where did you buy it? A. At Bamberger's.

Q. What did you pay for it? A. I bought a table. $40 doesn't go very far.

Q. How much did you pay for what you bought at Bamberger's? A. I paid $25 for a table.

Q. What did you pay for what you bought? A. I can't remember that.

Q. How is it you remember so distinctly what you earned and how long you worked and yet these

items you purchased you can't recall the amount of? A. I bought my own clothes. He never bought me anything but one coat all the three years that I was living with him.

Q. When you went home and the baby was born, your purpose in going home was to have the baby born home? A. No, sir.

Q. Wasn't it? A. No, sir, not at that time.

Q. That would not be unnatural for a woman to want to be near her family at such a time, would it? A. I would not have left for that reason.

Q. That wasn't the reason you went home. What was the reason? A. It wasn't for the reason of having my baby at home. It was because Mr. Stevens did not treat me the way he should treat me the time I was carrying the baby.

Q. While you were home, as I recall, you testified he sent you two $50 checks. A. That I can remember.

Q. Do you deny that he sent you more? A. No.

Q. I show you four checks, the first one dated April 30, 1927 to your order for the sum of $85 and endorsed by you, do you deny you received that check when you were home? A. No, I received that check.

Q. Don't you recall that? A. It was only in an envelope.

Mr. O'Connor: I ask that that check be marked for identification.

Check is marked Ex. P-7 for identification.

Q. I show you another check dated July 12 payable to your order for the sum of $100. Do you recall that check? A. Yes, it is my signature but I don't recall it.

Q. You got the money, didn't you? A. I must have.

Mr. O'Connor: I ask that that check be marked for identification.

Check is marked Ex. P-8 for identification.

Q. I show you another check dated September 7 for $40 and endorsed by you, to your order, you got the money on that check, didn't you? A. Yes.

Q. You remember that now? A. Yes.

Mr. O'Connor: I ask that that check be marked for identification.

Check is marked Ex. P-9 for identification.

Q. I show you another check dated five days afterwards, September 12, and endorsed by you, for the sum of $50. You got that check, didn't you? A. Yes.

Mr. O'Connor: I ask that that check be marked for identification.

Check is marked Ex. P-10 for identification.

Q. You got more than two $50 checks, didn't you? A. Yes.

Q. You were in the hospital at home at the time the baby was born? A. Yes.

Q. In addition to that your husband paid the hospital bills? A. No, sir.

Q. You deny that? A. Absolutely.

Q. While you were in the hospital your husband sent you flowers, didn't he? A. Yes, sir, after he called on me and saw how many flowers I had.

The Master: You weren't asked that.

Q. He sent you flowers, didn't he? A. Yes.

Q. In appreciation of those flowers that he sent you, you sent him this little card of acknowledgment, did you not? A. Yes, I did.

Q. So that he wasn't very unkind or cruel, was he, or inconsiderate? A. Not at that time.

Q. But you have testified that he was never considerate. Now then, along the lines of love and affecting that this man was manifesting towards you, do you recall addressing this letter to him from Canada on August 1, 1927? A. Yes, sir.

Mr. O'Connor: I offer that letter.
(Received and marked Ex. P-11.)

Q. Do you know a woman or friend by the name of Mrs. O'Brien? A. Yes.

Q. Who at one time resided at 1805 St. Clair Street, St. Paul? A. Yes.

Q. How long have you known her? A. For about five years.

Q. Is she a friend of yours? A. Yes, sir.

Q. Do you recall writing this letter to her under date of January 22, 1929? A. Yes.

Q. You wrote that letter? A. Yes.

Q. What did you mean when you wrote to Mrs. O'Brien, saying: "My but I do get lonesome for the sight of my mother and dad. I would give anything to be living in Buffalo. Of course, I have a nice baby and husband also, also a home, but still home in Buffalo means a lot to me." A. Yes.

Q. The time you wrote this letter was subsequent to all these occurrences of unkindness and lack of affection which you testified to that your husband manifested towards you. Why then did

you address a letter like that to a friend of yours? A. Do you think I would tell her?

Q. Why did you say anything about your home life if it wasn't happy? A. I wouldn't tell her it wasn't.

Q. If it wasn't happy, why weren't you silent? A. I don't know.

By the Master:

Q. You admit that was untrue, that statement. Is that your reply that it is untrue, what you wrote in the letter, namely, you did not have a nice husband and your home life wasn't pleasant, is that right? A. I didn't say that my home life wasn't pleasant.

Q. Whatever you did say, was it the truth or was it not the truth? A. It was not the truth.

By Mr. O'Connor:

Q. Referring again to the letter you wrote Mrs. O'Brien, marked Exhibit P-11, you said this: "I think if he was a girl (referring to the baby) it would be different. Howard is never too tired to play with him or take care of him. He sure is a great help, gives him a bath, washes his clothes (sometimes), feeds him, tends him on Sunday, also Saturday afternoon. That leaves me free to do as I please, which usually means to go shopping." That is the unkind husband that you have been testifying about? A. I did not say he was unkind to my baby.

Q. He was abusive to you. He relieved you of your household duties so that you were free to do as you pleased, do you deny that? A. When he was indifferent to me and never showed any love for me.

Q. You finally moved to 516 West End Avenue, Elizabeth, and you lived there until May 25, 1929? A. No, April 13 we moved.

Q. And April 13 of what year? A. 1929.

Q. You say that the first time you met Mr. Hodges was one day you were accompanying Mrs. Peterson to Newark? A. Yes, sir.

Q. And that you did that just to keep her company? A. Yes, sir.

Q. That was when? A. In about September.

Q. That was what year? A. 1928.

Q. When was your baby born? A. July 19, 1927.

Q. You met Hodges in September, 1928? A. Yes.

Q. And you had the baby with you? A. Yes, sir.

Q. Your acquaintance, you say, sprung up through the activities of the baby? A. Yes.

Q. Now the baby was how old then? A. A year and two months.

Q. Was the baby walking then? A. Yes, sir.

Q. Able to walk around the bus? A. Yes, sir.

Q. He walked early? A. No.

Q. How long had he been walking? A. Not very long.

Q. How long? A. I can't remember.

Q. What part of this bus were you sitting in? A. The first seat.

Q. Where was Mr. Hodges sitting while the bus was laying over? A. In his seat, in the front seat.

Q. The baby was able to toddle around the bus and walked up to the driver's seat without help? A. Yes.

Q. This 13 months' old baby— A. No, he wasn't 13 months old.

Q. Well, 14 months' old baby was able to walk up to the driver's seat without help? A. Yes, I think he did. I am not sure.

Q. Don't you know whether he did or not? A. He was walking but I can't remember whether it was in September that we took the ride.

Q. You don't know now that it was in September? A. No, I can't remember whether it was September.

Q. Are you as clear on all your dates as you are on this particular one? A. I only remember that we started our conversation with the baby, about the baby.

Q. You said the baby was walking around the bus and finally approached Mr. Hodges and he patted the baby on the head? A. Yes. Not patted him on the head. He was talking to him.

Q. He noticed the baby? A. Yes, he was talking to him.

Q. September was the first time that you met Mr. Hodges. That is what you testified to on your direct examination. Now you are not sure whether it was September. It may have been later? A. I have ridden on his bus many times.

By the Master:

Q. You weren't asked that. You were asked whether you met Mr. Hodges in September, 1928, and you so testified on your direct examination. Is that correct or do you now say you are not sure about the date? A. I am quite sure it was September.

By Mr. O'Connor:

Q. The latter part of September? A. Yes, the latter part.

Q. Are you sure it was the latter part? A. I am sure it was in September.

Q. The latter part? A. I am sure it was in September. I am not sure about the date.

Q. When did you next meet Mr. Hodges? A. I rode on his bus off and on.

Q. Many times? A. Not many times, no.

Q. Several times? A. When I go downtown.

Q. Three or four times? A. Yes.

Q. Not any more? A. Maybe five or six.

Q. In the daytime or in the evening? A. Sometimes if I would be going out of an evening I would ride on his bus.

Q. Not over five or six times. You mean in the daytime? A. No, in all the time.

Q. Not over five or six times, is that right? A. Yes.

Q. Those five or six times you rode from about where you lived to the shopping district in Elizabeth, is that right? A. No, I would come home with him.

Q. In riding some of the times it was from about where you lived to the shopping district in Elizabeth? A. Yes, or into Newark.

Q. Some of the times were from Newark back to your home? A. Yes.

Q. Some of the times were from the shopping district in Elizabeth back to your home? A. Yes.

Q. Now, on some of these occasions did you always make it your business to find a seat in close proximity to Mr. Hodges? A. No, I used to sit in the first or second seat.

Q. And sometimes in some other seat? A. Yes, there wasn't any particular place that I sat.

Q. You would not always engage him in conversation? A. Not during the rides I wouldn't because you are not allowed to talk to the operator when you are in motion.

Q. That was the condition of affairs between you and Mr. Hodges up to about November 1? A. Yes.

Q. And yet with that so-called casual acquaintance do you mean to tell me that you arranged with Mr. Hodges to loan him $50? A. Yes, sir.

Q. On such a casual acquaintance as that? A. Yes, sir.

Q. Notwithstanding the fact that you say your husband did not give you money to provide clothes? A. I had that money in the bank.

Q. You had the money in the bank. Where did you get the money? A. From my father.

Q. At that time you were complaining to your husband about not having money to buy clothes and he only bought you one coat, yet you had money that on a short acquaintance of meeting a man four or five times you would loan him the sum of $50. A. I did not say I did not have clothes and that I was without clothes to put on my back. He had three children.

Q. On that short acquaintance you loaned this bus driver $50? A. He told me his children were sick.

The Master: One moment. He asked you whether you loaned the $50 to him?

A. Yes.

Q. You never knew him before September? A. I said I had ridden on his bus but I had never spoken to him.

Q. You only met him three or four or five times on rides into Newark and to the shopping district of Elizabeth or vice versa? A. Yes, but when we got to the end of the line——

The Master: Just a moment. You weren't asked anything more.

Q. Now when December 1st rolled around you were supposed to get $5.00 repayment? A. Yes, sir.

Q. He was going to pay you $5 the first of each month? A. Yes, sir.

Q. In other words, you were going to wait 10 months from November, 1928, within which to get the $50 back? A. No, sir.

Q. You said you were going to get $5 on the first of each month? A. On the first of each month and the first of December of that same year he was supposed to pay $5.00.

Q. You were to get $5.00 on the first day of each month until you were paid in full? A. Yes, sir.

Q. You did not get anything? A. No, sir.

Q. So when the 21st of December came around you went out that evening to do some Christmas shopping? A. Yes, sir.

Q. And you rode down on Mr. Hodges' bus? A. Yes, sir.

Q. And when you got down to Broad Street and East Jersey Street, Elizabeth, you got off? A. Yes, sir.

Q. And you did some shopping and other errands around Broad Street? A. Yes, sir.

Q. You managed to come back on his bus? A. I didn't manage it. I stepped on his bus.

Q. Now this was when you lived on West End Avenue? A. Yes, sir.

Q. And you got off his bus on Pennington Street? A. Yes, sir.

Q. Which is one block south of West End Avenue? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. And when you got off you went into this toy store? A. Yes, sir.

Q. And you had ordered a piano? A. Yes, sir.

Q. Toy piano and also a toy telephone? A. Yes, sir.

Q. Was this baby talking then? A. No.

Q. You wanted a telephone for your baby? A. He liked to talk on the telephone. He liked to have someone talk to him on the telephone. He liked the telephone.

Q. After you did your business in this toy store you had to cross over Pennington Street to the other side? A. Yes, sir.

Q. Which was the northeast corner of Pennington Street and Elmora Avenue? A. I don't know whether it is north or south or where.

Q. Right on the corner of Pennington Street and Elmora Avenue there are several stores? A. Yes, sir.

Q. Up the street a little ways on Pennington Street there is a barber shop and a real estate office occupying store buildings? A. Yes, sir.

Q. How far would you say they are from the corner of Pennington Street and Elmora Avenue? A. You mean the real estate office and the other stores?

Q. Yes. A. They are about two or three doors from there.

Q. Two or three doors? A. Yes.

Q. Two or three doors from there is a concrete driveway right in the back of your house? A. Yes.

Q. So that about six doors from that corner is this driveway? A. Yes, sir.

Q. How many feet would you say those six stores amounted to to this concrete driveway? A. About half a block.

Q. About half a block? A. Yes.

Q. Right in this concrete driveway along the iron fence was a path? A. Yes.

Q. And that path led directly into your house? A. Yes, sir.

Q. Isn't that true? A. Yes, sir.

Q. So that the shortest route from the corner of Pennington Street and Elmora Avenue was six doors up and into this driveway to the rear of your house, isn't that right? A. Yes, sir.

Q. Now, then, why didn't you take that route which you had been accustomed to taking instead of going around and along Elmora Avenue and into this dark secluded spot upon which this vacant house was located? A. We weren't allowed to use that entrance.

Q. You had used that entrance? A. Yes, sir.

Q. You knew you were privileged to use it. You knew it was a worn pathway, didn't you? A. Yes, but we weren't allowed to go through there.

Q. You had gone through there? A. In the daytime, yes.

Q. Who ever stopped you from going through there? A. The woman in the house who lived there.

Q. What was her name? A. My mother was there at the time she stopped us. They had a No Trespassing sign on the path.

Q. At any rate you did not go through there? A. No.

Q. As you had frequently done on other occasions? A. I had frequently gone through the other place.

Q. You walked into this pathway leading to this old vacant house not for the purpose of meeting Mr. Hodges? A. No, sir.

Q. He just happened to be there when you went through? A. Yes, sir.

Q. Was that the night that your husband ran across the porch? A. I wasn't sure it was my husband but I thought it was.

Q. Where were you when you saw him running across the porch? A. When I heard him get up.

Q. Where were you? A. Standing beside the step.

Q. You saw him, didn't you? A. When I heard the noise.

Q. You saw him, didn't you? A. Not the first thing. I was standing alongside the step and got around and saw through the house this man or someone who ran across the front porch. We heard the noise——

By the Master:

Q. When you say "we" who do you mean? A. Mr. Hodges and I. We were standing there talking.

By Mr. O'Connor:

Q. You say you looked through the house and you saw this form going across the porch. Where were you then? A. I was standing alongside of the foot of the steps.

Q. What were you looking through? A. Through the house.

Q. What part of the house? A. From the back to the front.

Q. Where were you looking through, the doorway? A. The doorway of the back stoop.

Q. Where did you see his form on the front porch? A. It was all open, just except the rooms. The windows were out and the doors were out.

Q. What part of the porch did you see his form? A. He ran across the front porch.

Q. Whereabouts on the porch did you see his form? A. On the front porch.

Q. Whereabouts? A. About the middle of the front porch.

Q. That porch was sort of an ell porch, wasn't it, running along part of the front of the house and then along the side? A. Yes.

Q. Now then was it the middle of the porch that you saw him? A. Yes, sir.

Q. I show you Ex. P-2 and ask you to tell me what part of the porch you saw the form. A. Right through that window.

Q. You are not quite sure on this? A. I was standing on the back porch and I looked through and saw this form.

By the Master:

Q. You were asked where you were looking through and you pointed to some place where you looked through, will you point it out to me? A. Right through here somewhere.

By Mr. O'Connor:

Q. Right in here. You say it was the middle of the house. A. Yes.

Q. He was on the porch, you know that. He could have been in here, couldn't he? A. I said he was in the middle of the front porch. I know it was the middle of the front porch. I could not see the porch when I was in the back.

Q. You have finally concluded you could not see the porch when you were in the back? A. No.

Q. Can you tell me now after proper reflection where you saw him on the front porch? A. I must have seen him in the front.

Q. Will you just point to where on the porch you saw him.

The Master: Mark it please.

A. Right in here.

Q. You notice there is a vestibule. Was he right on the edge of that vestibule? Is that what you mean? A. Yes, he had stumbled over the step. I heard someone stumble over the step. I went to the side and looked through when I heard this man stumble.

Q. When you said he was at these two front windows as shown on Ex. P-2, that is wrong, isn't it? A. Yes, sir.

Q. So that he wasn't running then, was he? A. I heard him run across the front porch.

Q. You didn't see him running? A. No.

Q. When you saw him he was doing what? A. Just standing. When he first got up on the porch he stumbled. He was standing trying to get his balance. Then we heard this running across the front porch.

Q. You were very much afraid when you entered there and saw this man standing in the back as you entered there? A. Entered where?

Q. This old house, entered upon the lot of the old house? A. I did not see him until I got up nearly to him.

Q. You became very much scared? A. I kind of drew back.

Q. You stayed there talking to him a little while? A. Yes.

Q. And the reason that you went out that night was because the baby occupied your time and attention during the day, is that right? A. You mean——

Q. I say the reason you went out on December 21 was because the baby prevented you from going out during the day? A. Not on the 21st of December, no. I went to do some Christmas shopping.

Q. Now then on January 3 you arranged to meet Mr. Hodges again? A. I did. When I was

on the bus I arranged to meet him in that same place.

Q. In that same place? A. Yes.

Q. What was the idea of going in there to meet Mr. Hodges? A. Well, I didn't want to be seen talking on the street with that man.

Q. You did not want to be seen talking to him on the street. What would there be improper to being seen talking with Mr. Hodges? A. Nothing, only I did not want the neighbors talking about me.

Q. When you loaned Mr. Hodges $50 because of the needs and wants of his family, you were interested in him? A. I wasn't interested in him.

Q. What was there in the fact that you should speak to Mr. Hodges on the street that would make the neighbors talk? A. Meeting a bus driver on the corner, a girl like me.

Q. What is there about you with such a charitable heart as to loan this man $50 to make you ashamed to meet him on the street? A. Nothing about me.

Q. Didn't you know that your neighbors would talk more about you if you went into this lot and met this man? A. I did not think of it at the time. I did not think anything about it.

Q. Around the premises on which this house is located, there were a number of signboards, were there not? A. Yes.

Q. How high were they? A. Quite high.

Q. Not so high the street light would shine over the top of them? A. I suppose the rays would reflect themselves in there to some extent.

Q. Passersby along the corner could not see you in there? A. Sure they could.

Q. In spite of those signs? A. Not from the street. You could see from the pathway. There was a public pathway there.

Q. There was a pathway there. There is no doubt about that. A. Sure.

Q. You say there was a public pathway there? A. Yes.

Q. That was private property, wasn't it? A. Everybody used it. Mrs. Peterson has used it. Mrs. Aaron has used it.

Q. Do you know of anybody who used to go there to meet a Mr. Hodges or any other man? A. No.

Q. But you did use it for such purposes? A. Yes, you couldn't see as plain in there as you could on the street.

Q. No, I imagine not. A. No.

Q. When you went into this pathway you were looking down on the ground? A. Yes.

Q. Why were you looking down on the ground? A. So I could find my way through.

Q. Was it so dark? A. It was uneven. You don't think I am going to stumble and fall, do you?

Q. You had to be careful to select your steps in going along that pathway, didn't you? A. Right there, yes.

Q. On the last examination you said the time you went in on January 3 he said to you "Mrs. Stevens, if you will go into the old house or on the premises, I will explain why I am not paying you the money." A. He said, "Meet me in the same place where I saw you before and I will explain."

Q. I will do what? A. "I will explain to you why I am not paying you the money back."

Q. When he got in there the explanation was he was financially embarrassed and did not have the money? A. Yes.

Q. What was there to prevent you from getting that story on the bus? A. I don't know. He wanted to see me there to tell me.

Q. You didn't say to him "Well now, Mr. Hodges, there is no reason why you can't tell me now why you are not paying this money back." You did not say that to him? A. I did not ask him or talk about it.

By the Master:

Q. Did you say that to him? A. I would not discuss things like that on a bus.

Q. Do you think it more appropriate to discuss that in a dark out of the way place than in the bus? A. It wasn't a dark out of the way place.

Q. Did you think it more appropriate at night time to go in near this house, on the threshold, and discuss this matter with him than in the bus? A. Yes, I did. I did not see any wrong.

By Mr. O'Connor:

Q. Will you tell me what was there about it that made it improper to discuss the return of the money in the bus when the arrangements for the loan were made in the bus? A. The arrangement was made in the bus when we were at the end of the line.

Q. Yes, at the end of the line. If the arrangement to loan the money and all the conversation about how you could loan him $50 and his telling you of the needs of his family and the illness of his children was made in the bus and you made the arrangement to loan him the money and listened to his tale of sympathy, why then couldn't you have listened to his explanation about the non-payment in the bus instead of seeking the

shelter of an old vacant house in the shadows of the darkness? A. I never thought of it so.

Q. Mrs. Stevens, did you go to Mr. Hodges' family and see whether his story was true or not before you loaned him the $50? A. No.

Q. Did you go to his wife and see whether she was in want or in need? A. No.

Q. Did you go to anybody to find out whether he had one child, two children or three children? A. He talked to me all the time about them.

Q. All this time he was working, wasn't he? A. Yes, sir.

Q. On the bus as a driver of a bus? A. Yes, sir.

Q. Steadily employed? A. Yes.

Q. How do you know he was steadily employed? A. Only that he told me he was.

Q. Who told you? A. Mr. Hodges told me.

Q. Notwithstanding that fact he was in great need, had no money for coal and medicine for his children? A. Yes, sir.

Q. You made no inquiry to ascertain the truthfulness of his story to you? A. No.

Q. You relied on his representations? A. Yes.

Q. You had implicit faith and confidence in what he said? Naturally or I would not have loaned him $50.

Q. A matter of seeing this man several times on the bus, you as a passenger, you grew to know him so well that you had implicit faith and confidence in what he said. Do you mean to tell us that story? A. I believed him when he told me that.

Q. Now then, on December 27 you did go to the dance hall here in Newark and danced? A. Yes, sir.

Q. Where did you tell Mr. Stevens that you were going that night? A. I did not tell him.

Q. Didn't you tell him you were going to some lodge meeting, the Eastern Star? A. I don't remember.

Q. You might have told him that? A. I don't remember.

Q. But you may have told him that. You won't deny that you didn't tell him? A. I don't know one way or the other.

Q. But instead of going there you picked up Mrs. Hill? A. Yes, sir.

Q. She was then a single woman? A. She was not.

Q. Was she married then? A. She was.

Q. She runs a beauty shop in Elizabeth? A. Yes.

Q. You had arranged to meet Mrs. Hill? A. Yes, sir.

Q. When did you make the appointment? A. I don't remember.

Q. A day or two before? A. I don't remember.

Q. Or over the telephone that day? A. I don't remember.

Q. At that time your baby was sick and you had a doctor attending him and he was attending him every day, wasn't he? A. No, sir.

Q. Every other day? A. No, sir.

Q. He had been sick for how long? A. That day I believe.

Q. That day only? A. I don't remember but I think that day only or the day before. He wasn't sick a few days I know that and he wasn't sick three days.

Q. Now you went to this dance hall by reason of the appointment that you made with Mrs. Hill? A. Yes, sir.

Q. Is that right? A. I don't remember whether we arranged to go to the dance hall.

Q. You made an appointment to go out with her? A. Yes.

Q. After you met her you made up your mind where you would go? A. Yes, sir.

Q. In your direct examination you testified the reason you went out this night was because you quarreled with your husband. Then that isn't so, is it? A. I went out with Mrs. Hill twice.

By the Master:

Q. Which is the fact? Was it because you quarreled with your husband or was it because of your prior engagement that you went out with Mrs. Hill? A. I don't remember. I don't remember that.

Q. But you do remember on last Friday afternoon testifying that you went out because you had a quarrel with your husband? A. On one occasion that I went out with Mrs. Hill——

Q. You did so testify? A. I must have made a mistake when I said that. I made a mistake about that.

By Mr. O'Connor:

Q. You testified at the same time that the quarrel arose over the fact that he had picked up the baby out of the crib when the doctor said the baby should have remained in bed? A. Yes, sir.

Q. That was the night you went out with Mrs. Hill? A. On one of the occasions.

Q. You have been out with her on several occasions? A. Twice I have been out with her.

Q. Your testimony on Friday is rather uncertain in your own mind as to the truth? A. Yes, it is uncertain. I will admit I don't quite remember. We went out twice together.

Q. The doctor came to see the baby? A. Yes.

Q. And the doctor came to see the baby because the baby was sick and so sick that you thought the baby needed the attention of a doctor? A. Mr. Stevens did.

Q. The baby was in bed all day? A. No.

Q. You said that the doctor insisted on the baby staying in bed? A. That evening he insisted on his staying in bed.

Q. The doctor came in the evening? A. Yes.

Q. The doctor said the baby should stay in bed. Why should the baby stay in bed? A. Because the doctor said so.

Q. Then the baby was pretty sick? A. I found out he was sick from what the doctor told me. He hadn't been in bed all that day.

Q. Your baby was sick? A. Yes.

Q. And pretty sick, so sick that he had to stay in bed? A. The doctor said it would be better to stay in bed.

Q. He had a temperature? A. Yes.

Q. Do you know what the temperature was? A. No, he didn't tell me. He didn't take the temperature of the baby.

Q. Notwithstanding that your baby was sick in bed and you said "I had worked all day with him" you went out to a dance hall and danced until after midnight, leaving that baby home, didn't you? A. Yes.

Q. That was the reason that your husband objected to your going out because your duty was home and not on a dance floor over here in Newark dancing in the company of Mrs. Hill and Mr. Walters, wasn't it? A. Yes.

Q. You left that dance hall that night at what time? A. I don't remember.

Q. After midnight? A. I don't remember.

Q. You don't deny it? A. It wasn't closed. I was waiting for Marie; she was dancing all evening.

Q. You danced with Walters that night? A. Two dances and I sat on the side lines all the rest of the evening.

Q. Do you now think that it was the proper thing for you to in the light of the fact that your baby was sick and under the attention that you spend the evening with another woman and strange men dancing in Newark? Do you now think it was proper conduct on your part?

Mr. Vanderbilt: I object what she now thinks. I don't think it is up to her to characterize her own testimony.

Mr. O'Connor: I will withdraw it.

Q. Mrs. Stevens, on May 24 you mentioned nothing about your automobile ride with Mr. Muszar on your direct examination. A. Yes, sir.

Q. I presume you overlooked that Friday? A. Yes, sir.

Q. You had made, as I understand, an appointment to go to a show? A. Yes, sir.

Q. When did you make the appointment? A. Thursday night.

Q. Previously? A. Yes, sir.

Q. You took your car? A. Mr. Stevens' car.

Q. You drove it? A. Yes, sir.

Q. And it was a family car, was it not? A. Yes.

Q. You drove the car frequently? A. Yes, sir.

Q. As a matter of fact he bought the car at your request, didn't he? A. No, sir.

Q. If he didn't you were agreeable to the purchase of it? A. Not of that car, I wanted a Ford.

Q. Didn't you have a Ford prior to that time? A. An old Ford.

Q. You drove that? A. Yes, sir.

Q. Where did you ride to with Mr. Muszar? A. Where did I go? I went out towards Westfield, the other side of Westfield. It was dark and I don't know the places out there. I drove for an hour.

Q. What time did you meet him? A. I met him around the corner.

Q. Corner of where? A. Corner of Elmora Avenue and Pennington Street just as the detectives said that I met him.

Q. Then you drove out towards? A. I went to a gasoline station. I went up Pennington Street. The gas tank was always empty. I went to the gasoline station to fill the tank. If you want me to, I will tell you just exactly what I did on Friday night.

The Master: Wouldn't it be better to answer questions rather than go into the history.

Q. Where did you go? A. We went for a ride for an hour out. It got to be about eleven o'clock.

Q. What time was it when you started for the ride? A. It was about ten o'clock.

Q. In the evening? A. Yes.

Q. What time did you leave your home? A. I was working.

Q. You were working? A. Yes, sir. I took the car because I wanted to go to the movies.

Q. You were working where? A. At the Elmora Theatre.

Q. You got through there when? A. About quarter after nine.

Q. Your purpose was to go out for a ride with Mr. Muszar? A. Not at that time.

Q. You were going to go where? A. Not when I left the show I did not expect to go for a ride. I expected to go to the theatre, but I went to the gasoline station. He wanted to pay for the gasoline, but I would not let him. I paid for the gasoline. I found I had left my glasses back in the theatre. I said, "I will have to go back and get my glasses. I can't go to a show or any place without them." I went back to get my glasses and by that time it was too late to go to a show.

Q. The hour was rather late, half past nine, to go to a show? A. Surely.

Q. How did you ever think you were going to a show when you did not get released from duty until after nine? How did you expect to go to a show at that hour? A. I only want to see the main picture.

Q. Finally you concluded to take the ride? A. Yes, we said, I said, "Are you in a hurry to go home?" He said, "No, I planned to go to the show."

Q. Where did you go? A. We went out towards Westfield. We rode until I got to a road where I could turn around.

Q. What time did you get back, eleven o'clock? A. No, twelve o'clock, because I rode an hour out and I rode an hour coming back.

Q. You were out until after midnight? A. Yes. We were talking. He was talking about his wife and I was talking about my husband.

Q. He was a married man? A. Yes, he was down here alone. He came from Indianapolis. He had been here six weeks.

Q. How long had you known him? A. Just a week.

Q. Knowing this man just a week you felt free to go out with him? A. Certainly.

Q. And also for a ride out of the city? A. Certainly.

Q. Having just known him a week? A. Certainly, he had been a gentleman every time and all the time I had known him. He showed me he was a gentleman.

Q. You weren't in the park at all? A. I wasn't in the park at all, sir.

Q. Were the lights on your automobile on all the time? A. When I was going down West Grand Avenue I saw this gentleman back here, one of the detectives pass me by on West Grand Avenue. The two of them turned around and glared at us and I said to Mr. Muszar, "Why, isn't that funny? I wonder if we have a blow-out."

By the Master:

Q. Wait a minute. You weren't asked that. A. We stopped the car and he went around it.

By Mr. O'Connor:

Q. Do you know what mileage showed on the speedometer that night? A. No.

Q. About? A. No.

Q. You don't know how far you drove? A. No.

Q. Then a few days later or rather the next night, May 25, you met Mr. Muszar again? A. I did not meet him.

Q. You came in contact with him at the theatre? A. I was talking to him at the theatre.

Q. You left the theatre with him? A. No, sir.

Q. How did you and he meet and where did you meet? A. We met on Jersey Avenue as I was going towards home.

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Q. You were coming out of the rear entrance of the theatre? A. No, sir.

Q. Where? A. I was coming from Elmora Avenue and he was standing there. I did not expect to meet him.

Q. He was standing waiting for you? A. No, he had been talking with another fellow.

Q. Do you know who the fellow was? A. Yes, he was one of the men from the show.

Q. Do you know where he is now? A. No, sir, I do not. The show is closed.

Q. How long has the show been closed? A. I left on a Friday and the show closed the Saturday following.

Q. He linked arms with you? A. No, sir, he did not touch me except when I crossed the street.

Q. You walked up to the park? A. Yes, sir.

Q. Which is walking away from your home? A. No, sir.

Q. You didn't have to go into the park to get home? A. We got talking and decided we would take a walk because it was warm.

Q. When did you decide to take the walk? A. As we were walking home.

Q. When you got to a point where you would have gone directly home, then you decided to take a walk? A. Yes.

Q. Who invited the walk? A. I don't remember.

Q. Do you think you could have? A. We were talking. We had not finished our conversation. He said, "Are you tired?"

Q. You walked on into the park? A. Yes.

Q. You walked how far into the park? A. Just around the pond.

Q. Is the Warinanco Park a very large park? A. Yes, it is a very large park.

Q. It is surrounded with what? A. A great big apartment house and on one side on the left as you go in there is some shrubbery.

Q. How tall is this shrubbery that you speak of? A. Not very tall.

Q. And trees? A. Yes.

Q. Are they tall? A. Yes.

Q. The foliage—was that the season of the year — A. It was out.

Q. You can't see these apartment houses that you speak of by reason of the trees and shrubbery except possibly the third or fourth story? A. That is it.

Q. What time of night was this? A. About half-past nine or ten.

Q. What time did you get home? A. About ten or a little after. We just walked through the park and came right home.

Q. You sat down in the park? A. I sat down five minutes to find Mr. Stevens.

Q. You were in from the entrance that you took, that is the entrance that you entered, how far in the park were you? A. From the entrance of the park there is a nice road.

Q. There are roads all around. You can drive around this park? A. Yes.

Q. And bridle paths? A. Yes.

Q. Large areas of trees? A. Yes.

Q. And shrubbery? A. There was no shrubbery in where we were.

Q. What is there beautiful about the park? A. It is a very pretty spot.

Q. The pond? A. And shrubbery back of it.

Q. And the trees? A. And the trees.

Q. It was quiet? A. It was quiet.

Q. Nothing was going on in there? A. Yes, people were going through there all the time, automobiles were going through all the time.

Q. Now and then? A. There were boys standing on the bridge.

Q. What made it quiet? A. It was just quiet.

Q. The boys were on the bridge. They were hollering. Was that quiet? A. They weren't hollering. They were talking and laughing but I could not hear them where we were sitting.

Q. You were sitting quite removed from them? A. I could see them and they could see me.

Q. You said that Mr. Muszar was standing up all the time? A. He was, sir.

Q. Now you testified, "He stood up. There was no one on the bench with me. I said, 'You try to find my husband, please'." Do you recall that? A. Yes, you look around and see if you can find my husband.

Q. Did he go away from you? A. He went and stood the other side of the tree.

Q. How far away did he go? A. Just around the side of the tree.

Q. He did not make a very diligent search? A. I said I wanted to find him. I sat and looked on the bench. I wanted to try and find him.

Q. He stood up and kept looking for Mr. Stevens. Now if he stood up where did he get up from? A. He stood up all the time.

Q. What do you mean he stood up and looked for Mr. Stevens? He was sitting down up to that time? A. No, sir, I did not say that he sat down at any time.

Q. Did you tell Mrs. Marslow and did you tell Mrs. Foster that he was sitting alongside of you with his hand on your leg? A. No, sir, I did not. I told about Friday night that we stopped for a minute and I was crying. If you want to hear that.

Q. Then, Mrs. Stevens, why was it, if you wanted to take a walk, what was the necessity of walking in the park that hour of the night? Why didn't you walk out on the streets, on the sidewalks, in around your home and around the theatre? A. Wouldn't you like to go in the park at night?

Q. No. A. You wouldn't, some people do and that is my reason.

Q. I don't doubt it. A. Absolutely.

Q. Why didn't you walk—this was a strange man whom you knew only a week or ten days, why didn't you walk out on the thoroughfares? A. It was a public park.

Q. Why didn't you walk out before the world? A. I was on my way home. We were at the entrance and we continued on into the park.

Q. You wanted to be alone in the park? A. No, sir. It didn't mean anything to me whether I was alone in that park with any man. I tried to explain that to my husband and he would not let me tell it. He would not give me a chance. He just said I was a damn sneak and he would not talk to me and he left.

Q. Now, Mrs. Stevens, you said you had intercourse with your husband, cohabited with him, from January, 1929, to May, 1929? A. Yes, sir.

Q. At the same time on Friday you testified that he would not have anything to do with you. What do you mean by that? A. He would not talk to me. He ignored me. I would start to say something and he would turn to his baby and he would not even talk to me. That is what I mean.

Re-direct examination by Mr. Massey:

Q. Mrs. Stevens, the testimony was that you went to live at 40 North Broad Street and you

said you went to live at 80, do you know what 40 North Broad Street is like? A. It is a nicer looking place than where he took me.

Q. You testified on Mr. O'Connor's examination that you objected to intercourse with your husband? A. Yes, sir.

Q. Did that happen at any time before your pregnancy? A. No, sir.

The Master: I think we have gone into that, only at the time of the pregnancy. That is what she says. Don't let's go over it again and again.

Q. You testified that you ceased to love him at the time you separated the first time, was there any time that you loved him? A. I liked him or I would not have gone back with him. No one could have forced me to go back. I liked him.

Q. Did you try to patch things up and become reconciled? A. Certainly.

Q. What prevented it? A. He would be so indifferent to me. I would go up to him and put my arms around him and he would push me off. All he did was make a fuss over the baby all the time.

Q. Mrs. Stevens, you have been shown some checks which you received while you were in Buffalo after you left the first time. Do you remember receiving any money beside the $85 check prior to July?

The Master: The checks speak for themselves.

A. I received the checks but they were to pay me back for the money I had loaned him in the beginning.

Q. There is one check that is dated before July 19, can you remember the receipt of any other money before the baby was born? A. No.

Q. In what period of time was that? A. I don't remember that.

Q. How many months were you up there before the baby was born? A. Four months.

Q. When he came up to visit you after the baby was born, did he treat you kindly then? A. Well, we were talking and he got me all upset. I was hysterical when he left.

Q. Did he try to become reconciled? A. No, he did not make any effort. He just asked me when I was coming back and I said I did not know.

Q. Didn't he say anything to you to persuade you to come back? A. He said to me "Won't you come back?" He asked me if I wouldn't come back and I said I did not know whether I would. He said, "I will get the baby by hook or crook" and I forgot all that when I returned to him. He is trying to get rid of me.

Q. Mrs. Stevens, when you did this foolish act of lending $50 to Mr. Hodges, was that a very unusual thing for you to do?

Mr. O'Connor: I object to that.

The Master: I don't think it makes any difference whether it was usual or unusual.

Mr. Massey: I think whether she had done it on other occasions——

The Master; No, I am not going into the charity of this woman in lending men money or loaning individuals money. I don't think that has anything to do with it. You may have an exception.

By Mr. Massey:

Q. On these occasions when you went out to the dance hall and when you were out with Mr. Muszar, do you know why you did those things making yourself a subject of criticism?

Mr. O'Connor: If your Honor please, is that redirect?

The Master: I don't see how that is important why she did it. I have got to draw the inference, not what she thinks she wanted to do them for. She has given an explanation as to why she went to the dance hall.

By Mr. Massey:

Q. This letter that has been marked for identification and was sent to Mrs. O'Brien, was that letter mailed by you? A. Yes.

Q. Are you sure about that? A. Yes, sir.

Q. Do you know your husband happened to get it? A. No, sir, I was very much surprised when I saw the letter.

Q. Do you know whether he had it at any time before Mrs. O'Brien got it? A. No. There is no stamp on it.

Q. There is nothing in that letter you are ashamed of? A. No, not a thing. Why should he tamper with my mail.

Q. Do you know whether you gave it to him? A. I did not give it to him, no sir.

Eva Joyce Dey, being duly sworn on her oath, testifies as follows:

Direct examination by Mr. Massey:

Q. Mrs. Dey, where do you live? A. 305 Argonne Drive, Kenmore, New York.

Q. Are you married? A. I am.

Q. When did you first meet Mr. Stevens? A. The summer before they were married. That was the summer before March, 1926.

Q. When did you first see them after they were married? A. They were married in March and Mr. Dey and I came down in July on our vacation, the latter part, sometime after the 10th.

Q. Did you stay at their home in Arlington? A. We stayed from half past three in the afternoon until half past eleven the next day.

Q. Were there any difficulties in the home? A. We came at half-past three. Mrs. Stevens was getting dinner. It was a very hot day. I was in the living room. I did not have very much clothing on. My husband was with me. Mr. Stevens came in about quarter of six. This was after a period of three months and instead of going directly to the kitchen to greet his bride, he sat down and talked with us. After a little Mrs. Stevens came out and said "Why, Howard, aren't you going to kiss me," and with that he did. He had been in the house about fifteen minutes.

Q. Any other thing unusual happen? A. The next morning I got up. It was ninety in their kitchen. During the night my husband had taken three cold showers.

The Master: We are not going into the climate.

Q. Did anything occur in the house? A. I am trying to tell you. The next morning she came out with a dress on with her neck all bundled up. I, of course, asked her why she had on such a dress. I couldn't even put on my dress, it was so hot. She showed me where her neck was all bruised on both sides.

Q. Was there anything else that you observed? A. We left at half-past eleven.

Q. When was the next time you saw them? A. They came to Buffalo together.

Q. They came up to Buffalo in January? A. That was the time she testified to that they went down to Dr. Potter.

By the Master:

Q. Did you go with them? A. He refused to go.

Q. You went with her to Dr. Potter? A. Yes.

Q. Did anything unusual occur between them on that occasion? A. Yes, sir, she had talked to my mother——

Q. I didn't ask you about that. A. She has gone into it.

Q. I know, but what I want to know is if anything unusual occurred between her and her husband? A. No, sir, only that I spoke to the doctor about her condition.

By Mr. Massey:

Q. Were you there on the occasion of the New Year's party? A. Yes, sir, I was there.

Q. Was there any friction or unhappiness? A. I lived across the street. I was there when she sang and my mother played and we were all there.

Q. Was there any other incident of unhappiness on the occasion of that visit to Buffalo? A. I don't know. I did not live there.

Q. Did you visit them again? A. I visited them in March when she was pregnant.

Q. That was in Arlington? A. Yes.

Q. Did anything unusual happen at that time? A. There was constant quarreling. He said he would look for a flat and my sister would go all day long and then he would refuse to go and see the place she had procured. She only found one that was anything like what she had been accustomed to. There was no deposit paid at the time. The deposit was paid after I left and went home and was forfeited. There was another occasion where he had entertained Paul Haberman. She was quarreling and I told him we weren't accustomed to entertaining people of that class in our home. We had never entertained any gentlemen in our home unless our parents were home. We had never been left alone. Even when I was engaged to my husband I was never left alone with my husband.

Q. Did you tell him all this? A. He went home at ten o'clock and I told him that we were not in the habit of having such guests in our home. I told him that plainly. I told him that because she was not accustomed to such company.

Q. What did he say? A. He said, "That would be all right." But he forced her to entertain him later, so she said.

Q. When was the next occasion? A. I left and I have never visited them since. That was in March. Then the next time—I never saw him until he came to the hospital.

Q. At any time during their married life did you ever see him treat her in a manner you would call kindly? A. No, sir, I never did. He never gave any affection unless she did first and then he always was cold and unresponsive.

Q. Were you present at the time he first saw her after the baby was born in Buffalo? A. I was present that day. I spoke to my parents——

By the Master:

Q. All you were asked was: Were you present? A. I was.

By Mr. Massey:

Q. Was there anything unusual about her relation to him? A. No, sir, she was very kind and good to him considering what had gone before.

Q. Was there anything unusual about his treatment of her at that time? A. He just simply had the baby all the time. He paid no attention to anyone but the baby.

Cross-examination by Mr. O'Connor:

Q. Mrs. Dey, you were married considerably before your sister? A. I have been married 12 years.

Q. You were living away from home? A. I was living across the street from my parents.

Q. You and your sister did not get along? A. We never had any open disruption at any time.

Q. You have had some disruption nevertheless? A. Not that I would call open quarreling.

Q. She was very hard to get along with? A. No, sir, I would not say she was.

Q. You always got along with her? A. Yes, I did.

Q. Were you in the hospital when he came to see the mother, his wife? A. I was not there. I have a child myself.

Q. How long was he there? A. He was there from the morning until about seven at night. He left early and had had no dinner.

Q. How long were you there? A. I was there between four and six in the afternoon.

Q. The baby was born a week before? A. I was there when the child was delivered.

Q. About a week before? A. On a Tuesday.

Q. You say he devoted all his time to the baby in preference to the mother? A. He held the baby.

Q. This little baby about four days old did not spend very much time out of the nursery? A. It was in the room all the time because of the unusual condition that the father was not there when it was born.

Q. They have a nursery in this hospital? A. It is a maternity hospital.

Q. The baby is only brought out during feeding time or for a little while? A. No, sir, not under those conditions. The baby was out all the time I was there.

Q. How long? A. Between four and six.

Q. You mean to say that little four days' old baby was out of the nursery from four to six o'clock? A. Yes.

Q. Lying alongside of its mother? A. No, sir, in his arms most of the time.

Q. You heard your sister testify that she did not love him and had not loved him for a considerable time preceding the birth of the child? A. Yes, sir, I heard it.

Q. How did you expect a man to respond to a woman who had entertained no love and affection for him? A. May I ask you, are you married?

Q. Yes. A. And have you children?

Q. Yes.

The Master: Just try this case as it should be. You are to be asked questions and answer them, and not ask them.

A. I don't think she did that way. She had always

been kind to him up until the time she left him. She was afraid of him.

Q. You think she was mistaken when she said she did not have any love and affection for him? A. I think she did not care for him.

Q. Were you there when he frightened her to death? A. No, sir.

Q. You don't know anything except what you heard? A. No, sir; I do not.

By the Master:

Q. You may answer this or not. From the time your sister was married, don't you feel from your observation that they were temperamentally unfit to live together? A. I certainly do.

Q. Didn't you feel and know that she was of an entirely different character and makeup from this man? A. I certainly do.

Q. Didn't you feel from your observation of the situation between the parties that there was very little affection between them from the time of their marriage up until they finally separated? A. Not all the time.

Q. When do you think there ceased to be that mutual love and admiration which should exist between a husband and a wife. About what time did that cease? A. When she left him. That was the Good Friday they came home before Easter when she left him. I don't know the date.

Re-direct examination by Mr. Massey:

Q. During the period of time she was separated from him do you know of any attempt on his part to get her to return? A. The letter was written which she spoke of. I read the letter demanding to know what she was going to do. There was no regret in it.

Q. Were you in constant touch with her? You did not live home? A. No, sir.

Q. Do you know of any other communications? A. I saw one check that came in a blank envelope addressed to her for $50.

Q. Do you know her condition with reference to him? A. She was looking constantly expecting he would come up and see her and try to effect a reconciliation.

Q. Did you see them together after she went back to Elizabeth? A. Yes, I did.

Q. Can you say whether or not you observed any act on her part to become reconciled? A. Yes, according to my idea.

Q. What did she do? A. She had moved into this place. We came through. We spent about an hour there at that time on our way to Washington on our vacation, Mr. Dey and myself alone. She was there scrubbing and cleaning trying to get his home into condition so that they could go back together and be happily reconciled. We went out of their place on a Sunday at 12:30 in a driving rain storm. He never spoke one word about our staying to dinner. She was afraid to say it because she knew there was that enmity between her husband and me and she did not want to increase it. She would rather stick with him and let us go out of a Sunday noon.

KATHERINE PETERSON, being duly sworn on her oath, testifies as follows:

Direct examination by Mr. Massey:

Q. Where do you live? A. 516 West End Avenue, Elizabeth.

Q. Are you married? A. Yes.

Q. Living with your husband? A. Yes.

Q. Where did you live at the time Mrs. Stevens lived at 516 West End Avenue? A. I lived downstairs.

Q. Below them? A. Yes.

Q. During the period of about a year and a half that they lived there, did you become acquainted with Mrs. Stevens? A. Yes.

Q. And Mr. Stevens? A. Yes.

Q. Did you have social engagements at which you would be together? A. Occasionally.

Q. With the two of them? A. We played cards together.

Q. Did you go out with Mrs. Stevens when he was not present? A. Just occasionally. Perhaps to the movies once or twice.

Q. Do you remember an occasion when you went to Paterson and she went on the bus with you? A. Yes.

Q. How far did she go with you? A. I stepped off the bus at the Public Service Terminal, Newark, and she stayed on. She said she would ride alone.

Q. Do you know who the driver of that bus was? A. No.

Q. Did you go out with her on any other occasions for the evening? A. No.

Q. Did Mrs. Stevens speak to the driver on the bus while you were with her? A. Not on the way down.

By the Master:

Q. You did not go up with her? A. No, I proceeded to Paterson.

By Mr. Massey:

Q. As she got into the bus, did she speak to him? A. No, I did not notice.

Q. Do you remember an occasion when you went to the Robert Treat Hotel with her? A. Yes.

Q. Can you tell us about when that was? A. I imagine it was about a year ago. I don't know just when. I think it was in the early spring.

The Master: You can call her attention to the date.

By Mr. Massey:

Q. Was it April, 1927? Is that about right? A. Yes, that is about right.

Q. What happened that evening? A. We left Elizabeth in the afternoon with the intention of going into Newark to shop. She had had a quarrel with her husband and she said she was going away.

By the Master:

Q. Were you present when they had the quarrel? A. No.

Q. Don't tell us what she told you? A. I said "What do you plan doing? I am going to Newark." She had packed up her clothes and I said "I am out for the afternoon," I was going shopping.

Q. You went with her to Newark? A. Yes.

By Mr. Massey:

Q. And you went to the Robert Treat? A. Yes. She engaged a room and then we went out to the shopping section and I left her about half past five in the afternoon and I took the bus home.

Q. Did you ever see her husband take her out in the evening? A. Yes.

Q. Many times? A. I don't know about when they were first married how often he took her out but later on my husband and I would stay home evenings and they would ask us to mind the baby while they went to the theatre.

Q. How many occasions do you think that happened? A. That happened quite a few times in succession. That was when the stock company was playing over on Elmora Avenue. Otherwise I don't remember.

Q. Do you remember an occasion in May, 1928 hearing a crash upstairs in the evening? A. Yes.

Q. What did that sound lilke.

Mr. O'Connor: It was a crash, as I understand it.

The Master: If she can tell us.

A. It sounded to us as though chairs were falling. That is all I can say.

By Mr. Massey:

Q. What time in the evening was it about? A. It may have been about eleven o'clock. I know we had retired.

Q. Did you ever notice any friction or trouble between Mr. and Mrs. Stevens? A. I have heard raised voices.

Q. Do you know of any unhappiness on the part of Mrs. Stevens? A. Only what had been told me.

Q. Over what period do you know of things having been told you? A. Since I first moved there, things have been told me about unhappiness.

By the Master:

Q. You mean by Mrs. Stevens? A. Yes.

By Mr. Massey:

Did you ever notice the way Mrs. Stevens treated Mr. Stevens with reference to whether it was kindly or unkindly? A. I have never seen anything wrong.

Cross-examination by Mr. O'Connor:

Q. When you were going to Paterson did Mrs. Stevens make arrangements in advance to go with you? A. No, not that I was aware of.

Q. Did she accompany you to the bus? A. Yes, with the baby.

Q. She wasn't invited to accompany you, was she? A. She suggested it because it was a very lovely day and warm.

Q. And rode along with you? A. Yes.

Re-direct examination by Mr. Massey:

Q. Did you notice at any time the way Mrs. Stevens took care of her baby? A. I always thought she took very good care of her baby.

Q. Did Mrs. Stevens tell you at any time about her incidents with Mr. Muszar that have been related here at the trial?

Mr. O'Connor: What is the object of that?

Mr. Massey: The object is that she had no purpose of concealing these things. She freely told them immediately after they happened.

The Master: I don't think that is competent but I will allow it.

By the Master:

Q. Did she ever tell you anything about Muszar? A. Simply that she had walked in the park with the man that evening she was trailed. That is all I ever heard.

Re-cross examination by Mr. O'Connor:

Q. When did she tell you that? A. That was perhaps two or three days after Mr. Stevens left with the baby.

Rose Ehrenberg, being duly sworn on her oath, testifies as follows:

Direct examination by Mr. Massey:

Q. Mrs. Ehrenberg, did you live next door to Mrs. Stevens when she lived on West End avenue? A. Yes, sir.

Q. During the year and a half she was there? A. Yes, sir.

Q. Where was your apartment with reference to hers? A. Upstairs, my apartment was upstairs.

Q. Right alongside of her upstairs apartment? A. Yes, sir.

Q. Could you see into her apartment from any of your windows? A. From the kitchen windows.

Q. Were you acquainted with her personally? A. We used to talk through the windows.

Q. With Mrs. Stevens? A. Yes, and with Mr. Stevens also.

Q. You were living there with your husband and family? A. Right.

Q. Did you ever at any time have occasion to observe the way Mrs. Stevens took care of her baby? A. I think she took good care of him.

Q. Was the baby ever in your home? A. Once in a while.

Q. On what occasions? A. When she went out to the beauty parlor she left him with me.

Q. Did you ever have occasion to know how she kept her house? A. Very clean.

Q. Did you have any knowledge of how often Mr. Stevens and Mrs. Stevens went out together? A. I never bothered looking over and asking things like that, whether she goes out with him or not.

By Mr. O'Connor:

No questions.

By the Master:

Q. Did she keep the baby as clean as the house? A. I think she did.

ELLA WATSON, being duly sworn on her oath, testifies as follows:

Direct examination by Mr. Massey:

Q. Mrs. Watson, were you living with your husband in the same house in Arlington that Mr. and Mrs. Stevens lived in when they were there? A. I was.

Q. Your apartment was below theirs? A. Yes, that is right.

Q. Did you become acquainted with both of them during that period of time? A. I did.

Q. Just how well acquainted did you become? A. Very well acquainted.

Q. Did you visit them in their apartment? A. Yes.

Q. They visited you in your apartment? A. Yes, that is right.

Q. Can you tell us of anything unusual in their attitudes towards each other during that period of time? A. I think they were very unhappy and very distant.

Q. What things did you see that made you think that? A. For a bride and groom they were very cold.

Q. Could you tell which one was responsible for that condition?

The Master: I don't think that is quite fair. She can tell what she saw, but she can't place the responsibility.

By Mr. Massey:

Q. Did you see them go out together? A. Very little.

Q. Do you know of any occasions where she complained about his not going out with her? A. Yes, Mrs. Stevens often told me that she wished her husband would go out with her.

Mr. O'Connor: If he wasn't there, I move to strike it out.

The Master: Strike it out.

By Mr. Massey:

Q. Did you and Mrs. Stevens go out together occasionally? A. Yes, Mrs. Stevens and I did go out together.

Q. Did Mr. Stevens ever object to her going out on such occasions? A. Not to my knowledge.

Q. Were any of those occasions in the evening? A. No, I don't recall any.

Cross-examination by Mr. O'Connor:

Q. Did you live underneath Mr. and Mrs. Stevens? A. Yes, I did.

Q. She had a car? A. Yes.

Q. You and she went out for a ride once in a while in the afternoon? A. Yes, in the afternoon.

BURWELL HODGES, being duly sworn on his oath, testifies as follows:

Direct examination by Mr. Massey:

Q. Mr. Hodges, are you a married man? A. Yes, sir.

Q. You are living where now? A. 249 West Linden Avenue, Linden.

Q. In the latter part of 1928 and the early part of 1929, where were you living? A. Spring Street, Elizabeth.

Q. How many children are there in your family? A. Three.

Q. Was your wife here in court Friday all day with you? A. She was.

Q. Is she going to be here today? A. She went on a new job this morning. She is going to start work. I believe I can have her here this afternoon.

Q. Has she been sent for? A. No, she hasn't.

Q. Are you acquainted with Mrs. Stevens? A. I wouldn't call it an acquaintance. I know she made a loan to me. That is about all.

Q. You know who she is? A. I know who she is.

Q. When did you first know who she was? A. The way I come to know her was through her child. She was on the bus one day at the Tubes. Her little boy come up around where I was sitting to drive the bus. Kid fashion, everything interested him. He is the same age as my little boy so I took a fancy to him. She started to talk, telling me about the baby. I told her about mine. That was all there was to that meeting.

Q. You were a regular employee of the Public Service at that time? A. Yes.

Q. What were your hours? A. I used to start between two and three.

By the Master:

Q. In the afternoon? A. Yes, until twelve and one in the morning.

By Mr. Massey:

Q. How many buses are there on that particular route that you were on at that time? A. Eight Public Service and four independent.

Q. What was your regular time of layover at the end of the line out at West End Avenue? A. During rush hours they allowed us 23 minutes. The same way at night. It would be ten minutes if you got through the traffic. If you did not get through the traffic it was in and out.

Q. Do you remember about when this first occasion was when you became acquainted with Mrs. Stevens? A. What time.

Q. About what?

By the Master:

Q. The date? A. The latter part of the summer or the fall of the year.

By Mr. Massey:

Q. Do you know how many occasions, how often you had occasion to speak to her on the bus after that? A. She would get on and say "Hello". I would see her pass the bus stand afternoons. She would be going by with the little boy and I would speak to her and him and have a little chat. That is about all.

Q. Do you remember an occasion when she lent you $50? A. Yes, sir.

Q. Remember about when that was? A. I know it was in the fall of the year before Christmas.

Q. Tell us the circumstances leading up to that loan. A. Before that I used to tell her what hard luck I used to have driving a jitney bus. I had quite a struggle on my salary with three children. She offered to help me. She said she had old clothes of her little boy's that he could not wear and she would let me take them home. My wife is proud. She would not want to accept it but she offered to help right along, even as much as buy coal and lend me money and it was refused but she kept offering it to me and finally I accepted the offer and she loaned me $50.

Q. What was the particular occasion, any occasion of particular need at that time? A. Christmas was approaching at that time and we did not have much coal in the bin. I did not get any overtime and I did not think the kids would have a very good Christmas.

Q. Do you remember an occasion when she asked you to return the money? A. She asked me, yes. I tried to make payments. I told her the way things were I could not just then. She asked me another time, and——

Q. Do you remember an occasion shortly before Christmas——

Mr. O'Connor: Why don't you let him answer?

The Master: Do you want to say anything more?

A. No.

By Mr. Massey:

Q. There was an occasion shortly before Christmas which has been named as December 21 where she particularly asked you to return this money. Do you remember that occasion? A. That spot they have there by the old house we used that place back there as a toilet. There was a lot of times we would come in there we would have only a minute.

Q. What place back of the house? A. Back in there far enough to get out of sight of the street. On one of these occasions I was coming out and Mrs. Stevens was going through the path and she stopped me and asked me about paying the money. It was a minute or about two or three minutes. Somebody went through the path one time. I know we stepped back off the path to allow them to go by.

Q. Did you go in that house at any time? A. I never was in there.

Q. How far off the path did you step? A. We stepped off the path in back of the house.

Q. How far off the path are the back steps? A. Matter of two feet.

Q. Have you ever been in that house? A. Never been in the house. I don't know what it looks like.

Q. How many times altogether did you ever talk to Mrs. Stevens in that path, alongside the path and in the vicinity of that house? A. That time and I met her one other time when I was back there. That was after that.

Q. Remember when that was with reference to Christmas and New Year's? A. After the first of the year because she wanted the money back.

Q. Do you remember how it happened that you met her there at that time? A. Only that I went back to use the place as a toilet and was coming back to my bus.

Q. Do you know how long you talked to her? A. On each occasion it wasn't over three minutes or four minutes.

Q. Do you know why you did not talk about those things on the street where your bus was standing instead of back in there? A. I pulled up to the end of the line and went in there to use the toilet.

Q. Do you know any reason why she did not ask you that on the street? A. Only that she did not want to ask me in public. That is the only way I can look at that.

Q. Did you ever know of any misconduct of Mrs. Stevens of any kind? A. I can't criticise Mrs. Stevens. She is a fine lady.

Q. Did you ever have any improper relations with her? A. No, sir, I have a wife of my own.

The Master: You weren't asked that.

Q. Do you still owe her the $50? A. I do.

Q. What became of the $50? A. I used the $50 to buy coal. That is what she gave it to me for.

Q. Did your wife know that Mrs. Stevens loaned you the money? A. She knew I had an extra $50.

Q. Did she know where you got it? A. She knew I had the $50 from Mrs. Stevens.

Q. At the time you got it? A. No, she did not know at the time.

Q. How soon afterward did she know? A. As soon as I told her about it. I don't know when that was.

Cross-examination by Mr. O'Connor:

Q. How long after you got it did your wife learn that you got it? A. Only a while ago during the past summer.

Q. During this past summer? A. Yes.

Q. Do you know from whom she heard it? A. I told her about it.

Q. She called it to your attention first, didn't she? Your wife brought it to your attention first? A. Yes.

Q. You didn't say anything to your wife about it until your wife had called you to account? A. Yes.

Q. Now you met her in the summer of 1928 or the early fall of 1928, you are not clear on that, are you? A. In that period some time.

Q. You met her altogether between the time you first met her and the 3rd of January about how many times? A. I could not say exactly.

Q. Quite a number of times? A. I don't know. I would see her on the corner in the afternoon. I would see her on the corner as she would be going down the street just as a passerby to say "Hello" to.

Q. What date did she loan you the $50, can you fix the date? A. I know it was before Christmas.

Q. I know that. When was it? A. The correct date I could not tell you.

Q. About? A. Around the first of December.

Q. About the first of December. What makes you fix that date in your mind? A. Well, I know that she wanted to help me out over Christmas.

Q. Has she ever been to your home? A. She has, yes.

Q. I know she has been there this last summer. Was that the first time she ever came there, last summer? A. Yes.

Q. How did it come about that you were telling her your domestic difficulties and wants? A. I used to see her there with her boy and tell her "I never could give my children as much as her child had, dressed nice".

Q. She was dressed nice and looked nice? A. Whenever I seen her she was.

Q. She offered you the money several times? A. Not many.

Q. She offered you money a couple of times? A. She offered me clothes.

Q. How much money did she offer you? A. She did not set any price.

Q. She offered to help you? A. Yes.

Q. You refused it? A. Yes, I did.

Q. Did you ask her for $50? A. No, she offered to help me.

Q. You never asked her to help you? A. No.

Q. She offered you the $50? A. Yes.

Q. You say you think you got it about December 1? A. Yes.

Q. After December 1 and you got the $50 when was the next time you saw Mrs. Stevens? A. In reference to the payment.

Q. When did you next see her? A. I could not say. I know I used to see her up there walking by and getting on the bus.

Q. Were you talking to her? A. A lot of times that I saw her she would be on the opposite side

of the street. I would never run and holler and jump out the bus to attract her attention.

Q. When did you next see her after she gave you the $50? A. What do you mean, see her on the street?

Q. Yes. A. I used to see her—I guess the woman was out shopping.

Q. Not what you guess. Where did you see her? A. I saw her one time in back of this house.

Q. Only one time? A. Twice to my knowledge.

Q. When did you see her after you got the $50? A. That is hard to say right when I would see her.

Q. You can't fix the time? A. No.

Q. With reference to Christmas Day can you fix the time or with reference to the 21st day of December can you fix the time or with reference to the first day of January can you fix the time? A. It was along in that period of time that I saw her.

Q. Where did you see her? A. She was coming through this path.

Q. Do you mean to tell me you did not see Mrs. Stevens from the time you got the $50 until you saw her coming through the path about ten or eleven o'clock? A. I see her on the bus or walking along the street.

Q. You saw her almost daily? A. Oh, no.

Q. You saw her two or three times a week?

Mr. Massey: I object to the question.

The Master: Counsel may make his question a little better.

By Mr. O'Connor:

Q. When did you meet Mrs. Stevens after you got the $50? A. I never made what you call a date.

By the Master:

Q. When did you see her to talk with her on your bus? A. She never talked with me about the money.

Q. When did you see her to talk about anything? A. When she was going through the path.

By Mr. O'Connor:

Q. When she was going through the path? A. Yes.

Q. When was that? A. That was December, some time before Christmas.

Q. That was the first time that you met her to speak to her? A. No, I spoke to her on the street but I can't state the time.

Q. Mrs. Stevens says she did not see you from the time she loaned you that money until December 21, when she ran across you in the path? A. I know I used to see her but I don't know what time it was.

Q. Did you see her to talk to between the time you got the money and the time you saw her in the path? A. No.

Q. She didn't ride on your bus during that time? A. I can't say that she didn't. I never made special note when she rode on the bus or when I saw her on the street.

Q. You want us to believe that you may have talked to her and you can't recall it?

By the Master:

Q. That is the fact? A. That I may have talked to her and can't recall it, no.

Q. Will you say that you never saw her to speak to from the time she gave you the money until you met her in the path on December 21? A. I never saw her to speak to.

By Mr. O'Connor:

Q. How long were you talking to her in the rear of the old house? A. A matter of three or four minutes.

Q. Were you there before she came through? A. Yes. I was coming out and she was walking through the path.

Q. As you were coming out? A. From the back of this old house. We used that place for a toilet.

Q. You used it for a toilet on this particular night? A. Every night we wanted to use it we went back there regardless of the time.

Q. How far did you park your bus from the Elmora Gasoline Service Station? A. We were told by the Public Service Company to pull up Elmora Avenue and to make the turn there and park our bus.

Q. Will you answer the question?

(Question repeated by stenographer.)

A. Across the street.

Q. You have been in there, haven't you, the Elmora Gasoline Service Station? A. I can't say that I have, no.

Q. You mean to tell me you have never been upon those premises? A. I have passed through it to go to the wagon.

Q. To what wagon? A. Elmora Diner.

Q. You know that right across the street from where you parked that they had toilet facilities, don't you? A. A lot of times I did not have time to go across.

Q. You had time this night? A. I always used the place.

Q. You used the Elmora Gasoline Service Station, too, didn't you? A. No.

Q. You have used it? A. I don't think I have.

Q. You know they have the facilities there. Did you buy gas there? A. I never bought any gas there.

Q. How far away from the fire house did you park your bus? A. The fire house laid right down the street.

Q. How far away? A. 300 feet.

Q. Now, on all these occasions when you parked your bus 300 feet away from the fire house, where did you turn? A. We used to turn there and go around to the other side.

Q. You turned there because there is a large street area right in front of the fire house? A. That is where we turned.

Q. Did you ever go in there to use the toilet facilities? A. No.

Q. There is a railroad station right on Elmora Avenue, isn't there? A. We have about ten minutes sometimes.

Q. Now listen to the question. Isn't there a railroad station there? A. Yes.

Q. Did you ever go in there to use the toilet? A. I never went in there.

Q. It just happened then that you were going in the back of this old house to urinate when Mrs. Stevens came along? A. I was coming out.

Q. You were coming out but you did not get very far out? A. I was to the path.

Q. You were in the path? A. I used to go right across.

Q. You were in the path? A. Yes.

Q. And the path ran around the west side of the house, didn't it? A. Yes.

Q. How far away from the steps were you? A. We stepped off the path.

Q. On Ex. P-4 there is the path, where were you? A. Right here (indicating cellar entrance).

Q. You were off this path at the point you designated on P-4. There were a lot of billboards weren't there in the front of this property? A. There was, yes.

Q. So that you could stand at that point on the path and be screened from the street? A. No.

Q. Where did you urinate on those premises that night? A. Back over here where we could see somebody walking through that path.

Q. That is on the east side of the house? A. Yes.

Q. When you were on the path at this point you have indicated the billboards and foliage and trees shielded you from passersby and pedestrians on Elmora Avenue, didn't they? A. People used to walk through this path.

The Master: He didn't ask you that.

Q. As you stood here there was a large billboard on the west side of the premises? A. Yes.

Q. There was shrubbery in back of the billboard? A. Yes.

Q. Which shielded you from the view of pedestrians on Elmora Avenue? A. They were on the other side of the billboard.

Q. The billboard helped to shield you from the pedestrians on Elmora Avenue? A. If they were walking in front of the billboard, yes.

Q. How long was this billboard along Elmora Avenue? A. I couldn't say.

Q. You have been traveling around there how long? A. I don't notice how long a billboard is.

Q. How long have you been around that vicinity? A. I drove that line about a year.

Q. You can't tell me what the billboard conditions were on Elmora Avenue, the length of them? A. There were two billboards. I don't know how long they are.

Q. How long were those billboards? A. I couldn't tell you.

Q. About how long is the frontage of this property on Elmora Avenue? A. I never measured it. I could not even tell you on a guess. I don't know.

Q. You say you were only there three or four minutes on this pathway? A. Yes.

Q. You remember letting Mrs. Stevens off the bus that night? A. I can't say that I do, no.

Q. Do you remember Mrs. Stevens riding from her home to Broad Street on your bus at that time? A. She rode my bus downtown. I remember seeing her on the bus.

Q. Do you remember her asking you when you expected to return on one occasion? A. One time she asked me about when I would return the money.

Q. What is that? A. One time she asked me about when I would return the money.

Q. On the bus? A. No, she asked me in the back of the house.

By the Master:

Q. You were asked when she rode in the bus and was about to alight she asked what time you would return with the bus on the return trip. Do you remember that? A. No.

By Mr. O'Connor:

Q. Do you remember ever taking her down to Broad Street on your bus in the evening and having her return on your bus about ten o'clock at night the same night? A. No.

Q. You don't remember that? A. No.

Q. Do you remember the night that you said to her "I will meet you in the same place that I

met you before'' referring to the old house, and ''I will explain to you why I am not paying you back.'' A. Yes.

Q. You met her that night when you said that to her?

Q. You met her in back of the old house? A. Yes, sir.

Q. What did you say to her after you got her in the backyard of this house? A. I told her circumstances at the time were hard. I was hard up.

Q. Did you say anything else? A. I told her I would like to pay it.

Q. Did you say anything else? A. That is all it amounted to.

Q. Do you mean to tell me you invited her in back of this old house screened from public view at between ten and eleven o'clock at night to tell her that? A. Positively.

Q. Why couldn't you have told her that on the bus? A. People ride those buses.

Q. What was there about this transaction that you were ashamed of? A. Have you any pride?

Q. Sure. Did you have any pride when you took the $50? A. Positively.

Q. You got the $50 from her? A. Yes.

Q. On the bus? A. No.

Q. Where was it that you got the $50? A. She brought it up from the Elmora Bank.

Q. Where were you when you got the $50? A. On Elmora Avenue.

Q. On Elmora Avenue you were standing on Elmora Avenue and took the $50 in cash from her? A. Yes.

Q. And you mean to tell me that you could not explain to her on Elmora Avenue in a few words what you explained to her instead of taking her

back of the old house? A. You know what they think of a bus driver, don't you?

Q. Have you always thought that way? A. The fellows I associated with there wasn't so wonderful.

Q. Do you think you were any different? A. I tried to be different, I having a wife and children.

Q. What were you discharged for? A. I was accused of taking two fares from the Public Service and putting them in my pocket and there are thousands more the same way.

Q. How were you so much above your compatriots, your fellow employees? A. Well, as soon as they were through they go out and chase around and I went home where I belonged.

Q. You took $50 from this woman? A. Yes.

Q. Do you know whether the other bus drivers took money from women?

Mr. Massey: Objected to as immaterial and irrelevant.

The Master: I don't think you can go into that.

By Mr. O'Connor:

Q. You say you took it because she gave it to you? A. Yes, sir.

Q. Because you needed it? A. Yes, sir.

Q. You took it home and gave it to your wife and explained to her the circumstances and told her the woman gave it to you? A. Yes.

Q. Your wife made no inquiry about it, did she?

By the Master:

Q. Didn't you testify just a few minutes ago that you never told your wife a thing about that

$50 until last summer? Didn't you say that? A. Yes. I told her I got it from a friend of mine.

By Mr. O'Connor:

Q. You told her that this summer, this last summer? A. Yes.

By the Master:

Q. Let us get it straight on the record. That is what you told your wife immediately after you got it? A. I told her that I got the $50 from a friend of mine. It was a man friend at the time.

Q. Right after you received it? A. Yes.

Q. The time you told her the truth about the transaction was last summer? A. Yes.

By Mr. O'Connor:

Q. Then you told her the truth about it after she told you that Mrs. Stevens had been to her? A. No, I was there at the time.

Q. Mrs. Stevens came to your house in your presence and in the presence of your wife, is that right? A. Yes.

Q. She then started to tell her story? A. Yes.

Q. And told about this divorce action? A. Yes.

Q. And about how you had been named? Is that right? A. Yes.

Q. Then it was that you first told your wife? A. Mrs. Stevens at the time she gave me the $50 gave it to me under those conditions that I tell my wife where I got it, what it was for. She even wanted to come to my house and hand it to my wife.

By the Master:

Q. You didn't want her to do it? A. My wife is proud. She would not take the money. She would not accept charity. That is how she feels about it.

By Mr. O'Connor:

Q. You didn't have quite so much pride as your wife? A. She offered to help me.

Q. You were willing to accept the money from this woman? A. She kept telling me that she would like to help me out, that she has done things like that before.

Q. Your wife knew nothing about the $50 you got from this woman until last summer when this woman came over and told the story. Isn't that right? A. Yes.

Q. You had previously told your wife that you got the $50 from a man friend? A. Yes.

Q. In that you lied to your wife, didn't you? A. Yes.

Q. You lied to your wife, but you want us to believe your story now? A. There was nothing to it.

Q. There was so much to it that you lied to your wife then, didn't you? A. I lied where I got the money.

Q. You kept her under that lie until you could not turn, until you were faced with the story from the woman from whom you got the $50? A. Yes.

Q. She told her herself? A. Yes.

Q. Now during all this time that you got this $50 from this woman you say you never have paid it back? A. No.

Q. You never paid a dollar of it back? A. No.

Q. Although you worked from the time you got it up to March 7, 1929, for the Public Service, is that right? A. Yes.

Q. During that time you never paid one nickel of it back? A. No.

Q. How did you agree to pay it back? A. I told her I could give her $5.00.

Q. You told her you could give her $5.00 when? A. Every week.

Q. And not the first of every month, is that right? A. She said to make it convenient for myself.

Q. And you made it convenient by not making any payment at all? A. When I was discharged from the Public Service I never saw the lady.

Q. You got this money in 1928. In September, 1928, what were you earning a week? A. $38.

Q. Once in a while you get in some overtime? A. No, sir. When I first went with the company I did. They were short of men.

Q. Was your family hard pressed at that time? A. Yes.

Q. Had you any prospects of increasing your salary with the Public Service beyond $38 a week? A. No.

Q. How did you expect to pay this woman $5 a week if $38 wasn't sufficient to keep your family on? A. I had possibilities of some overtime.

Q. Possibilities of overtime that never matured? A. Because they had too many men.

Q. Was your wife working? A. No.

Q. Was she working at this time? A. No.

Q. When did she go to work? A. She is going to work now.

Q. Are you working? A. Yes.

Q. Where are you working? A. Standard Oil.

Q. She persisted in your taking some money, didn't she? A. Not persisted. She kept offering me.

Q. She kept offering to help you? A. To help me out, not myself, my children.

Q. You didn't ask her to help you? A. She wanted to help my children. She did not want to help me.

Q. She wanted to befriend your family? A. She wanted to help them out.

Q. Was there any of the family sick? A. The children were.

Q. In need of the care of a doctor? A. Yes.

Q. You could not afford the doctor? A. I paid the bill.

Q. So that you didn't need any money from her for that reason? A. We needed it for coal and clothes.

Q. How long have you lived in Linden? A. About last spring.

Q. Where did you move from to go to Linden? A. Elizabeth.

Q. How long had you lived in Elizabeth? A. I lived there about three years in Elizabeth.

Q. You had a number of friends. Are any of your relatives in Elizabeth? A. No.

Q. Where are your relatives? A. My mother is dead and my father is in New York state, the upper part of New York state.

Q. Is he working there? A. I couldn't tell you. I have not heard from him in a long time.

Q. Have you any brothers and sisters? A. None at all.

Q. Has your wife any brothers and sisters? A. She has a brother.

Q. Where is he? A. I believe he was in New York when he was working. I think he is out of work now.

Q. You say you believe he was in New York when he was working, you don't know where he is? A. No.

Q. What did you do prior to the time you drove for the Public Service? A. I was with the Yellow Cab.

Q. You are a taxicab driver? A. Yes.

Q. How long had you been working in that capacity? A. About three weeks.

Q. Prior to that time, what were you doing? A. I was in New York State.

Q. Doing what? A. With the Motor Parts Co.

Q. Whereabouts in New York State? A. Poughkeepsie.

Q. In some service station there? A. No.

Q. What company were you working for? A. Quality.

Q. What street are they located on? A. Washington Street.

Q. What number? A. 25.

Q. It is true, then, that you worked for the Public Service from March, '27 to March, '29, is that right? A. That is right.

Q. You were discharged? A. Because of two nickels.

Q. Because of two nickels they caught you with? A. That is what they claim.

Q. What did you leave the taxicab company for? A. To go on this Public Service bus.

Q. On January 10 you invited her into the back of this old house to tell her—— A. I told her I would try to explain.

Q. That you weren't able to pay——

Mr. Massey: I object to that question because it is not consistent with the evidence.

By the Master:

Q. Was that on January 10? A. January 3.

By Mr. O'Connor:

Q. That is true, isn't it? A. Yes.

Q. Was there anybody on your bus when you said that to her? A. There was passengers on this bus.

Q. You were able to say that to her in the presence of people without affecting your pride? A. I did not yell it out.

By the Master:

Q. You did say it? A. But I didn't yell.

By Mr. O'Connor:

Q. When was the next time that you were in back of that house after January 3? A. I used to go back there every day.

Q. In the evening? A. In the course of my night's work.

Recess until two P. M.

AFTERNOON SESSION.

ELIZABETH M. JOYCE, being duly sworn on her oath, testifies as follows:

Direct examination by Mr. Massey:

Q. Mrs. Joyce, you are the mother of Mrs. Stevens? A. I am.

Q. Do you live in Buffalo? A. I do.

Q. When did you first meet Mr. Stevens? A. It was in the spring of the year before they were married, 1926, I believe.

Q. Was Mrs. Stevens living at your home then? A. She was.

Q. Were you present at the wedding? A. Yes, I was.

Q. When did you see them after the wedding? After the occasion of the wedding? A. I think it was the latter part of June, about two months after, I believe.

Q. Where was it that you saw them together? A. Well, I saw them in Arlington when we came up from Philadelphia.

Q. Have you visited their home? A. Yes.

Q. Who was with you then? A. My husband.

Q. How long did you stay on that occasion? A. I think just a few days.

Q. What was the situation with reference to their happiness at that time? A. Irma was not happy. She was not satisfied. She was disappointed.

Q. Were there any specific difficulties in the way of actions or conversations during the time you were there? A. There was no open quarrel that I witnessed at that time.

Q. The next time after that June, 1926, that you saw them was when? A. I was there in the fall.

Q. In Arlington? A. Yes.

Q. Is there anything particular to relate with reference to their happiness at that time? A. Yes, Mr. Stevens seemed very cold to Irma and seemed to have a grievance against her because she had mentioned to one of the neighbors, I believe it was Mrs. Scott, about her having been divorced, He could not seem to forgive or forget it. He did not like it because she had told it. He was very much incensed and had been for some time.

Q. Do you remember anything that he did or said? A. I talked with him the whole evening. He was disappointed. He did not want it to be known. I tried to tell him that I did not see where there was anything to hide just being divorced. I couldn't see where it was such a disgrace. It wasn't a divorce for any very terrible reason. There were lots of people divorced. I have seen women's pictures in the paper announcing their divorce. I did not see where he had any just cause to feel so abused and grieved because she had told about her divorce. I talked with him all evening.

Q. Was that just on one evening? A. This time was just this one evening that we spent the evening talking. When I got all through I did not seem to have gotten anywheres with him.

Q. How long did you visit them at that time? A. I don't just recall. I haven't paid any particular attention. I never thought there was anything out of the ordinary. Thought they were just family disagreements.

Q. The next time you saw them together was where? A. I think it was in January when they came home.

Q. Is that the occasion which has been mentioned when there was a New Year's party? A. Yes.

Q. Were there any difficulties between them? A. There wasn't any the first evening but the first morning, New Year's morning, when I saw Irma I noticed she had been crying. I said "What is the matter?"

By Mr. O'Connor:

Q. Was Mr. Stevens around then?

By the Master:

Q. At the time this conversation took place? A. He was in the house but I don't believe he was in the room.

Mr. O'Connor: I object.

The Master: The objection will be sustained.

By Mr. Massey:

Q. Leaving out conversation between you and your daughter when he was not present, will you tell us what appeared to be the difficulty? A. It was just the same coldness. There was no love. I never saw an expression of love come from him in any of my visits. Even when Irma approached him and kissed him he would draw back. He would not push her but he would draw back.

Q. On the occasion when she left him in Arlington and came home to live what did you have to do with her leaving? A. On Tuesday morning she telephoned me from Arlington. She said, "Mother I am coming home." I said, "Why, what is the matter?" She said, "I can't stand it any longer and I am coming home." I said, "How are you coming?" She said, "I am going to drive the car." I said, "Irma, you can't drive the car home alone."

The Master: These are conversations that are really not admissible.

By Mr. Massey:

Q. Leave out the conversations. A. She was coming home and I went down to drive home with her. I left Buffalo that night.

Q. Did you have anything to do with persuading her to come? A. I did not.

Q. Did you object to her coming? A. Not at that time.

Q. When she arrived home what was her condition? A. She was a wreck. She was very nervous.

Q. How soon after she arrived home did you receive word from her husband? A. Just in a day or so she received a curt note asking her explanation and wanted to know her plans.

Q. Was there any expression of affection or desire to be reconciled?

Mr. O'Connor: She hasn't said she saw the note.

A. I did read the letter.

The Master: I think she implied she did see the note.

A. Yes, I read the letter.

By Mr. Massey:

Q. Do you know of all the other communications which she had with him during the period of their separation? A. There weren't any letters exchanged between them.

Q. Any other communications? Other than the money? A. I don't recall how many checks that he sent her. I know she did receive some. She was looking for a letter but she never got one. I remember distinctly the one check coming, I think the first check he sent after this letter.

The Master: You weren't asked that. You were asked whether there were any other communications.

A. We were disappointed there was no letter in it.

By Mr. Massey:

Q. How do you know that she was looking for a letter? A. You can always tell if there is anyone in the house that is watching all the time for the letter carrier.

The Master: We will assume she was looking for the letter.

A. I knew she was looking.

By Mr. Massey:

Q. What was her general condition? A. She was very nervous and not a bit well, very temperamental.

Q. On the occasion when he came to visit her first after the baby was born, were you present in the hospital when he saw her first? A. No.

Q. Do you know what her condition was as a result of his visit? A. Yes.

Q. What was it? A. We came in the room towards evening, I think it was around six o'clock and she started to cry at once. She says, "Oh mother, he is going to take my baby away from me." I said, "Never mind, don't get upset about that now. We will see about that later."

Q. Were you present when he tried to persuade her to go back to live with him? A. No, I never heard him.

Q. Do you know whether or not she objected to going back with him? A. I don't think she would have ever returned if we had not persuaded her.

Q. Did you try to persuade her? A. I did, so did her father.

Q. Was there anything except your persuasion that had anything to do with her deciding to go back to him? A. I think she still cared for him.

I think there was a feeling of affection there for him.

Q. When she went back to live with him he had procured an apartment in Elizabeth before she went, is that right? A. Yes.

Q. Did you go down with her? A. Yes, I came down before they had secured this apartment. We drove down to look for this apartment, and we drove because she had taken some of her dishes and her linens to Buffalo when she separated from him, and we drove these down in the car.

Q. The baby did not go down on that occasion? A. No, we had a nurse.

Q. What was Mr. Stevens' attitude towards Mrs. Stevens when you came down to look for an apartment? A. It wasn't very agreeable. He was mad because I was there.

Q. Did he say or do anything? A. He just would not hardly look at me. He did not want to speak to me if he could help it.

Q. In your presence did he show any signs of affection to Mrs. Stevens? A. No, just to greet her with just a formal kiss.

Q. After the apartment had been selected, what happened? A. Then Irma came down, and, of course, I wasn't there for some little time.

Q. When she came down to stay, you weren't with her? A. No, I did not come down with her.

Q. Who was with her? A. Her father.

Q. Her father and the baby and herself? A. Yes.

Q. When did you first see Mr. and Mrs. Stevens after that? A. I did not see Mr. Stevens until way in the spring, but I was at their home. I saw Mrs. Stevens in November.

Q. You paid a visit when he was not there? A. He went down home hunting the latter part of November, the middle of November.

Q. You paid a visit to her at that time? A. We stayed with her while he was away.

Q. The next occasion that you saw her when he was at home was when? A. It was in May. It was just after that time that she spoke of when he struck her.

Q. 1928? A. I don't remember the date. I remember the occasion, but I don't remember the calendar date.

Q. How long did you stay on that occasion? A. I don't remember whether I was there a week or just a few days. I came down to take her home.

Q. Did she go home with you? A. No; she wrote me describing this quarrel that they had and told me how he struck her. She said: "I am not going to stay." So I took her at her word, and I came down. When I came down I looked around and I did not see anything disturbed. I said: "I thought you weren't going to stay!" She said: "Oh, mother, I can't go away. I could not take the baby away from him. It would kill him. I couldn't do that to him."

Q. Did you see him on the occasion of that visit? A. Yes, I did.

Q. How did they get along together? A. It was the same as ever. He would come in at night from work and start to play with the baby and act so foolish with the child. It is all right to pay attention to a child. He paid so much attention that you sort of looked away and thought, why, how unnecessary.

The Master: I don't think we want to go into that.

By Mr. Massey:

Q. Did he show any signs of affection? A. Not for Irma; I never saw any.

Q. After that, when did you see them together? A. I don't remember whether I was down there again or not in May. I don't remember my visits after that. We visited frequently, and I never made any special note of them. I don't think I was there again.

Q. Now, shortly before the occasion of May 24 or 25 or 26, when the separation took place, did you have any communications with Mr. or Mrs. Stevens? A. I did. I talked to Mr. Stevens on the telephone on the night of May 18.

Q. What was the occasion of that telephone conversation? A. He answered the telephone. He said, "I knew I should not have answered. I thought it was you telephoning but Irma is out." I said, "That is all right, Howard, I can talk to you." He said, "All right." I said, "How is everything getting along?" He said, "Oh, fine." I said, "What do you think about Irma coming home for a visit for ten days or two weeks?" He said, "All right." There was a slight hesitation and I said: "Would you rather I would come down and stay there rather than leave you alone?" He said, "No. I think Irma would enjoy it better to go to Buffalo." So I thought everything was all right. He seemed very happy. He seemed very much elated that night when I talked to him.

Q. Do you know how long that was before the separation? A. That was a week before. That was eight days before.

Q. There was a short cut from Pennington Street to Elmora Avenue to the Stevens' home which has been spoken of in the testimony. Did you hear that reference? A. Yes, I did.

Q. Do you know the short cut? A. Yes, I was on that sidewalk that was referred to. I was in

Elizabeth the time this woman objected to our using this sidewalk that was spoken of before. That was nearer another home and she said, "This is no public thoroughfare. I don't——

The Master: I don't think we want her conversations. She objected to your using it. That is the important thing.

A. I have been over that path many times.

By Mr. Massey:

Q. Did Mr. Stevens ever mention to you any dissatisfaction with her conduct outside of the home? A. No, he didn't. I do recall having visited there one time with Mr. Joyce, with my husband. We sat there—at that time we were in their living room. He complained then about Irma's actions. He could not put up with it very much longer. He could not stand it.

Q. What did he say was wrong with her? A. Everything was wrong. There was nothing that she did that pleased him.

Q. Did he ever complain about her going out, any wrong action outside of the home? A. Never mentioned a wrong action about her, no, never.

Q. When you had this telephone conversation with Mr. Stevens that you refer to as being shortly before the last separation, was Mr. Joyce present? A. Yes, he was. He was in the house.

Q. Did Mr. Stevens ever have any talk with you with reference to the name of the baby? A. Yes, he was very much incensed about naming the baby after his grandpa and thought the baby should have been named after him. If he had been there the baby would have been named after him, but they had to give the name to the doctor and he wasn't there.

Q. Did he ever object after the first occasion? A. He never called the baby by its given name. Always called him Dinks or Boy or Sonny. I never heard him address him as Charles.

Cross-examination by Mr. O'Connor:

Q. Mrs. Joyce, Mr. Stevens arrived in Buffalo how long after the baby was born? A. On the Sunday following the Tuesday.

Q. The baby was born on Tuesday? A. Yes.

Q. He arrived the following Sunday? A. Yes.

Q. And the baby was named when? A. Before that.

Q. Before when? A. I would say two days after the baby came.

Q. And Mr. Stevens wasn't consulted about the name to be given the baby? A. No, he wasn't under the circumstances.

Q. You say it was imperative to give the name immediately? A. The doctor wanted the child's name.

Q. The doctor wanted to know? A. Yes.

Q. You just simply gave the child a name? A. Yes.

Q. It wasn't imperative that you had to give the child a name then? A. Only to give the birth certificate.

Q. The doctor had to make his return, didn't he? A. Yes.

Q. The name was not essential to the return. The fact of the birth and the parents was all that was necessary? A. I don't know enough about that. It did not use to be that way when my babies were born.

Q. Now, Mrs. Joyce, your daughter was a very nervous woman? wasn't she? A. High strung, always high strung, very nervous.

Q. You had a great deal of trouble in controlling her? A. No, I never had any trouble.

Q. It was at your instance and at the instance of your husband that she came back to Mr. Stevens the several times that she went away? A. Yes, we persuaded her. Yes, we did.

Q. You did that in the light of all the facts that you are now testifying to, isn't that so? A. Yes, I did.

Q. And you felt that that was the proper thing, to go back and live with him? A. I thought to give it one more trial, yes.

Q. You admonished her about controlling her temper, didn't you? A. Naturally.

Q. And naturally because she had a temper that was hard to control? A. She was quick tempered. I know that she was quick tempered and she did not mean all the things she said.

Q. You wrote her to that effect? A. I probably did.

Q. On October 31, 1928, didn't you write her from Buffalo a letter in which you stated that to be the case? A. I don't recall.

Q. Will you please look at that letter and tell me whether or not you wrote that letter to your daughter? A. That is my writing.

Q. That is the letter you sent? A. That is my writing, yes.

Q. In this letter you began to grow impatient with her, didn't you? A. I may have, I often did with this quarreling. Who wouldn't?

Q. In this letter, quoting from it, you said "It is very nerve racking to have a pain anywhere all the time." A. Yes.

Q. In other words your daughter was drawing upon her imagination in your estimation? A. No, her physical condition was not good.

Q. There was nothing serious about her physical condition? A. It is very painful.

Q. You refer to the visit to Dr. Potter? A. Yes.

Q. He said that she had just taken a little cold and would yield readily to treatment? A. No, she isn't well now.

Q. When you wrote this letter didn't you refer to a talk with Dr. Potter and didn't you communicate to her in this letter what Dr. Potter had said? A. I don't remember what is in the letter.

Q. Maybe you can refresh your memory by referring to the letter on the last page. A. Yes.

Mr. O'Connor: I would like to offer this letter in evidence.

Received and marked Ex. P-12.

Q. You weren't advising your daughter to go back to live with Mr. Stevens if you knew that he was unkind to her and was not treating her properly? A. Well, I thought it could be overcome. I thought they could adjust themselves to each other.

Q. There was nothing serious standing in the way of your daughter returning to Mr. Stevens, was there? A. Nothing very serious.

Q. It wasn't of much moment in your mind but what you thought it could be easily overcome? A. No, I didn't think it could be easily overcome.

Q. You felt it was worth while trying? A. I did.

Q. But there was no abuse of your daughter by Mr. Stevens? A. There was according to her conversations, not that I heard.

Q. You did not see him do anything that was wrong? A. Not that they should separate.

Q. Surely you would not have counseled and advised your daughter to live with Mr. Stevens if there was anything wrong, would you? A. Wrong in which way?

Q. In any respect. You would not submit your daughter to unkindness, to cruelty or to abuse? A. No, I would not.

Q. You weren't submitting your daughter to abuse when you advised her to go back? A. I did not think so.

Q. When they finally separated and Stevens had left the home in May, 1929, you came down? A. Yes.

Q. And you went to the apartment? A. Yes.

Q. It was a nice apartment, wasn't it? A. Yes.

Q. It was nicely furnished? A. Yes.

Q. Nice comfortable home? A. Yes.

Q. Good furniture? A. She would not have any other.

Q. It was good furniture? A. Yes, it was.

Q. It was a nicely appointed little apartment, wasn't it? A. Yes, she had bought a lot of things to put into this place and he refused to pay for it.

Q. You don't know that? A. I am only supposed to tell what I know. I know she had bought a lot of things for this new home. She bought pads for under the rugs, bought a dresser and curtains. She had the home fixed up very attractive with every thought of making her home attractive.

Q. Do you know where she bought those things, Mrs. Joyce? A. Some were bought at Bamberger's.

Q. Do you know she had a charge account at Bamberger's? A. Yes.

Q. Do you know that Mr. Stevens paid the charge accounts monthly? A. He didn't pay for those because she sent them back.

Q. He had charge accounts in Bamberger's and he met the charges monthly? A. He tried to.

Q. You say that when she went back to Buffalo on a trip with you she drove the car all the way? A. When do you mean?

Q. On one of the trips back to Buffalo you referred to you said she was a wreck when she got back? A. I don't mean just at that time. I meant during that four months' period.

Q. You told Mr. Massey when he asked you what her condition was when she arrived in Buffalo that she was a wreck. A. I meant that she was tired of course.

Q. If she were a wreck when she arrived, that wasn't unusual? A. No.

Q. That was a two days' drive? A. Yes.

Q. Was she pregnant at that time? A. Yes.

Q. It was quite an undertaking? A. Yes, it was.

Q. She had gone up to Buffalo a short time before that when she drove all the way? A. No, not before.

Q. She drove back from Buffalo to Elizabeth again, didn't she. A. (no answer).

Q. Don't you remember arriving in Elizabeth when you say Mr. Stevens just merely nodded to you? A. That was after the baby was born. That was six months after.

Q. He just merely nodded to you? A. Yes.

Q. You never had any trouble with Mr. Stevens? A. Yes.

Q. Serious trouble? A. Oh, nothing serious. He was always complaining to me.

Q. There wasn't anything real serious between you? A. Not on my part but I think there is on his.

Q. You think that Mr. Stevens became a little bit disappointed in the fact that your daughter

had been divorced? A. Not that she had been divorced. He knew she was divorced but he did not want it known.

Q. He did not want it known? A. No.

Q. You don't blame him for that, do you? A. I don't see any great wrong about it, nothing to make your home life miserable for months.

Q. It really is nobody's business? A. No.

Q. He did not want to make it anybody's business in keeping it quiet. You say he just merely nodded to you when you and your daughter came down and made a great fuss over the baby? A. The baby wasn't with us.

Q. He greeted his wife by embracing her? A. No, he just kissed her.

Q. Where did this take place at the railroad station or in front of the house? A. I think it was in the hotel. I don't just remember the location.

Q. In the lobby of the hotel? A. I think it was in one of the side rooms.

Q. Down around the lobby? A. Yes.

Q. Did you ever think of the fact that probably Mr. Stevens did not care to be too demonstrative in his affections in that particular place? A. Yes, that is why I did not pay any particular attention to him. That was his manner. He was very cold.

Q. That is, he appeared to you to be very cold, is that it? A. Yes.

Q. But at the hotel you engaged the room for yourself that evening? A. We had engaged a room before we saw him.

Q. Which you occupied? A. I did.

Q. They got along so well, your daughter and her husband, that they went to their room in the hotel? A. Yes.

Q. They occupied that all night? A. Yes.

Q. There was no break there that evening, nothing to indicate but that they were getting along? A. None whatever that night.

Q. You thought that was a very proper thing to do, for them to go to their room and occupy it? A. Certainly.

Q. After the final separation, in May, you called at the apartment on Canton Street, I think it was. A. That is where they lived.

Q. Do you recall coming down from Buffalo after Stevens had left? A. Yes.

Q. When you got there, did you meet anyone besides Mrs. Stevens? A. No.

Q. Well, do you recall saying to Mrs. Marslow or Mrs. Foster or Mr. Foster or one of them or Mrs. Kahler that it was the best thing that ever happened for her to get rid of that scrub, referring to Mr. Stevens? A. No, I never spoke to anyone. I never used that expression.

Q. I am asking you whether you did say that? A. I may have said during the conversation that it is the best thing for you to be rid of him. I may have said that.

Q. Now, then, with reference to his attentions to the baby, do you really mean to tell us that you seriously criticize his attentions to the child? A. No. If Mr. Stevens could be with the child all day, I would be satisfied, but it is no fun for Mrs. Stevens to try to train him and then for Mr. Stevens to let him do as he did.

Q. That isn't the question. You mentioned in your testimony that Mr. Stevens seemed to be unduly attentive to the child to the extent he was pitiful. A. He was.

Q. What was it that the father did with reference to the child that made a third person feel pitiful? A. If you are sitting at a table and a

baby is sitting in a high chair and he throws a spoon across the table and you don't know how many dishes he is going to break, you have to correct him.

Q. Mrs. Joyce, you have raised a family, haven't you? A. I raised two children.

Q. You have reached an age in life where you haven't got the patience that you did have when you were a real young woman? A. That is true.

Q. You can't stand small children. You can't bear with them to the same extent that you could when you were a real youg woman? A. Maybe, but I still love children.

Q. I am not saying that you don't, but they must conform to your present wishes? A. Oh, no, not necessarily.

Q. When your children were small, you often found that occurrence at the table? A. Never without correction.

Q. Little babies throw a spoon or a piece of bread or upset a bowl of soup, don't they? A. Not without being corrected.

Q. How old was this little baby at the time? A. It was in the late summer, over a year.

Q. Would you criticise a little child for that?

Q. We must also realize they are little children. A. I didn't say he did anything unforgivable.

Q. The fact that Mr. Stevens was silent when the baby threw the spoon across the table, was that what you had reference to? A. I think it did not show very good training.

Q. You think a year old baby should have the head of a twenty-one year old person? A. May I speak just a word. I think when a mother tries to correct a child I think the father should agree with the mother, especially in front of the child. If they don't agree, they can talk it over by themselves.

Q. You spoke about his attentions to the child were so pitiful that it would make you turn away, what do you mean by that? A. Oh, I can't describe it. Sometimes you see things that make you disgusted. In other words, the father playing with the child was trying to reduce himself to the level of that little child.

Q. Haven't you done the same thing? A. Possibly, but not to such an extent. It was nothing to speak about, nothing to break a home up and I didn't try to break it up.

Q. There was really nothing of any moment in that? A. Not considerable.

Q. Don't you recall that Mr. Stevens called you on the phone in Buffalo and told you that Mrs. Stevens was going out nights and didn't he solicit your aid? A. He never called me. He wrote to me.

Q. He wrote to you then. He told you about her going out nights, didn't he? A. She always went out nights.

By the Master:

Q. Did he tell you? A. I don't recall. I would have to read it.

By Mr. O'Connor:

Q. You wouldn't say that he didn't? A. I wouldn't say that he didn't or that he did or there was anything unusual if he did.

CHARLES F. JOYCE, being duly sworn, on his oath testifies as follows:

Direct examination by Mr. Massey:

Q. Mr. Joyce, you are the father of Mrs. Stevens? A. I am.

Q. Were you present at the wedding? A. I was.

Q. After the occasion of the wedding when did you first see them? A. You mean directly after the wedding at the Buffalo Consistory?

Q. After they had come to New Jersey to live when did you first see them together? A. Some time after. I don't recall when.

Q. Do you recall any occasion that you did see them after that? A. Several.

Q. Where did you see them after that? A. I saw them in Arlington and I saw them in Elizabeth and I saw them in Buffalo.

Q. On the occasions when you saw them in Arlington, did you make any observations as to how they were getting along together? A. I did.

Q. What did you observe? A. My observations were that they were very much mismated.

Q. When they separated and she came to Buffalo to stay pending the birth of the child, did you see her daily during that period of time? A. Every day.

Q. What was her condition then? A. Very temperamental.

Q. Do you know about all the communications that she received from him during that period of time? A. No, I do not.

Q. Do you know of any communications? A. I never seen any communications from him at any time.

Q. Didn't you see this letter which has been referred to? A. I did not.

Q. Do you know whether or not she was anxious to receive any? A. She appeared to be anxious to receive any communication he saw fit to send her.

Q. What made you think that? A. Her remarks to her mother from time to time and to her sister.

Q. After the baby was born do you remember the occasion of his coming up to see the baby? A. I do, very distinctly.

Q. What happened on that occasion? A. He came to Buffalo and I think he went to the hospital first. I don't recall whether I met him first in my office or not. He went to the hospital and I came in as I recall shortly after he had gotten there and he was laying on the foot of the bed sleeping and Irma was crying.

Q. That was in the hospital? A. Yes.

Q. Was there any conversation at that time? A. I did not hear any.

Q. Afterward did you take any part in the reconciliation? A. I have always advised my daughter to attempt a reconciliation if it was at all possible.

Q. Just what part did you take in the actual reconciliation? A. I advised her that she should make every attempt to do more than her part to keep together the home and to furnish the proper surrounding for the child.

Q. Did you confer with him about it when he was up there? A. I wrote him about it. When he came into the hospital he took me to task immediately for the naming of the baby after me. I advised him that I had nothing to do with the naming of the baby. I did not know a thing about it. The baby was named before I knew anything about what had happened.

Q. On the occasions when you visited them in Elizabeth, what did you observe about how they were getting along together? A. Conditions did not seem to improve any over what they were in Arlington.

Q. Did you observe the manner in which he treated her? A. I did.

Q. Things showing a presence or absence of affection? A. A most decided absence.

Q. Did you ever on the occasion of your visits see him show affection toward her? A. Nothing other than to kiss her.

Q. In his conversations and in his other actions did you ever see anything? A. I did not.

Q. Did you have occasion to observe how she took care of the baby when you visited her? A. First class in every way that I could see.

Q. On the occasion of the telephone conversation which Mrs. Joyce referred to shortly before the final separation, were you present? A. I was on the extension of the same telephone in my home.

Q. You heard the conversation? A. Heard the conversation as given by my wife.

Q. What was the general trend of that conversation? A. My wife was anxious to ascertain from him as to whether it would be agreeable for her to come to Buffalo with the baby for a short visit and he said it was perfectly agreeable to him and that he had no objection to it. He thought it would be a fine thing for Irma and would relieve any mental strain that she might be under.

Q. Can you say anything about how she treated him on the occasions of your visits to their home as indicating the presence or absence of affection? A. I did not see any great appearances of affection on either party's side although my daughter kept the home and the baby in first class shape, equally as clean and as nicely as my home is kept.

Q. Did you see anything indicating to you an honest attempt to become reconciled on her part? A. I think that Irma tried to the best of her ability to reconcile the entire situation.

Q. What was there she did or said that made you think that? A. Offering to get any meals for him or anything that he might want for his meals to try to please him in that way, keeping his clothes in better condition than he kept them in, keeping the house clean and tidy, keeping the child clean. All those things are done by a wife in my judgment for the purpose of reconciling the situation between herself and her husband which is only her duty.

Q. Did he ever complain to you about her conduct outside of the home? A. Never. He never did. If I may say also any time she ever came to Buffalo he never paid one dollar of any of the expense. The number of times she came up there I always paid it myself so he was under no expense for those trips.

Q. Did he ever complain to you about her spending too much time in Buffalo? A. No.

Q. What was his attitude, if you observed, toward the child as compared with his attitude toward his wife? A. His entire affection was given to the child.

Q. Did you ever hear anything said or done in your presence by him indicating that? A. You mean any indications of his affection for the child?

Q. As compared to his affection for the wife? A. When I brought the baby down from Buffalo. I came down with my daughter and my grandson and I went on into New York. He met them at the Newark station of the Lehigh and if I recall correctly, he did not even kiss my daughter but he

took the baby in his arms and loved the life out of him.

Cross-examination by Mr. O'Connor:

Q. Mr. Joyce some of these visits to Buffalo, and there were several of them, your daughter went there unbeknown to Mr. Stevens? A. My daughter went to Buffalo unbeknownst to him, never that I knew of. It was always agreed between them.

Q. You knew that your daughter had in mind leaving Mr. Stevens around the fall of 1928? A. There had been talk of leaving each other ever since they were married up until today.

Q. The talk was on the part of your daughter to you? A. No, they did not talk to me very much about that because I don't believe in divorces.

Q. You knew that your daughter was discontented down here? A. I did.

Q. You knew she wanted to be in Buffalo? A. Not until it became impossible for her to stay here with him.

Q. What did he do that made it impossible for her to stay here that you know of? A. Well, there are several things. One of them was he never took her out anywhere's.

Q. You were down here during their married life? A. Yes.

Q. You mean he did not take her out during the time you were here? A. That I was here. She asked him to take her out and he would not and we were there to take care of the baby.

Q. Do you know why he said he would not go? A. No, I can't fathom anyone's mind that deep.

Q. November 6, 1928, you wrote your daughter a letter? A. In answer to a letter.

Q. You wrote your daughter a letter? A. Yes.

Q. Do you recognize this letter? A. Yes, that is my letter. I don't know what is in there. That is my dictation and my signature.

Mr. O'Connor: I ask that that be marked for identification.

Letter is marked Ex. P-13 for identification.

Q. In this letter which I have submitted to you and which has been marked P-13 for identification you said this:

"I note from your conversation that Howard is going down home on the 17th and is going to take the baby with him and you expect to come to Buffalo if he does go, and of course you know mighty well that you are welcome. On the other hand I want to caution you against doing anything that is foolish as while I know your frame of mind particularly from your letters and your talks with your mother, at the same time you have got a situation confronting you that is not the easiest one to dispose of and while life, of course, is made up of likes and dislikes, at the same time we have certain obligations that take precedent over our own personal feelings. You may not think it yourself but I know that you have got a wonderful baby and that in itself should be sufficient to warrant you giving very, very careful thought to making any moves that in the after years will reflect on you and cause you many a heartache. Supposing that you gave up the ship now and deserted the baby and Howard and in after years the baby grew up to be a very fine man, would it not be within the bounds of reason for you to have many a heartache with the thought constantly in front of you that you had not done your duty by him

as his mother? Personally you know that both your mother and I want you to be happy and contented, particularly you because we know that Eva is all right but you have blazed the trail for yourself and if you throw your hands up now, it is simply an acknowledgment that you do not know what you want or want to do and is a most decided sign of weakness, that even your very best friends could not overlook. I am asking your mother to send you a clipping out of last night's paper which I think is very appropriate and you should give careful thought to the advice contained in it. Everyone has their trials to bear, this including me as well as your mother, and you know that those situations can all be solved if the right effort is put forth in it.

I do hope that you will do nothing that will make you appear foolish or ridiculous not alone with your friends but ours also.

I will probably be in New York sometime the early part of next week and will let you know definitely just when although I will not be able to stay with you as John Weisenheimer will be with me and we will be busy most of the time.

I hope that you will give heed to the advice I am giving you in this letter because if there is anyone that I do not want to see make a bad move it is you because I think you have work cut out ahead, work to overcome the frame of mind that you seem to be in and I am sure that you are big enough to do it. There is only you and Eva with your families that your mother and I really have to live for and it does seem as though you ought to go slow and be careful in what you do and say. The old adage that "A close mouth is a wise head" is one of the most applicable sayings that I can quote to you and I cannot impress it upon your

mind any too strongly. Kiss the baby for me and give my regards to Howard.

Dad."

Q. Why did you write that letter to your daughter? A. My daughter had practically told me that his sister in Maryland was trying to get that baby. She also told me that she thought that Howard was trying to force her into the position of deserting that child so that he could get the child and be rid of her in that way letting his sister take the baby and bring him up.

Q. That was your sole reason? A. That was my sole reason. That is the only thing that actuated me.

Q. You haven't any other explanation? A. That was the principal reason. There had been several things that had transpired.

Q. I am not criticising you for writing the letter. It is a splendid letter if I may say so and I congratulate you on writing such a letter but you had in mind that your daughter was likely to throw up the ship, throw up her hands and leave the ship and you were admonishing her not to leave that husband and that baby? A. She asked me my advice as she always had and I gave it to her.

Q. I appreciate that. I think you gave splendid advice.

BEATRICE HODGES, being duly sworn on her oath, testifies as follows:

Direct examination by Mr. Massey:

Q. Mrs. Hodges, you are the wife of Mr. Hodges who has testified in this case? A. Yes.

Q. Do you remember in the fall of 1928 an item of $50? A. I remember the money.

Q. Will you tell us about that item of $50? A. All I can tell you my husband brought it home. I asked him where he got it and he told me he borrowed it.

Q. Do you know when it was? A. Either the latter part of October or the month of November.

Q. What was the financial condition in your home at that time? A. We really did need the money.

By Mr. O'Connor:

No questions.

Irma E. Stevens, the defendant, recalled.

By Mr. Massey:

Q. Mrs. Stevens, you have just heard a letter written by your father to you concerning the possibilities of your leaving your husband and the child? A. Yes.

Q. Can you tell us the communication from you which brought that letter from your father? A. I had written my people and told them that Mr. Stevens was going home.

Mr. O'Connor: May I ask if she has the letter she wrote?

A. No, I haven't the letter. I wrote to my father and told him that Mr. Stevens was going to take the baby home and I wasn't going to go with him because I wanted to rest. I thought I needed a rest for that week. Then when I got that letter from him I decided I would go down to Milling-

ton, Maryland, to visit the place with him for his vacation. Then he had received a letter from his sister and in this letter—I had found it in his clothes,——

Mr. O'Connor: I object to her reciting the contents of the letter.

A. I am giving the reason I did not go.

The Master: Don't tell us about the letter. You did not go.

A. No, I did not go because I was cross at his sister and that is the answer.

By Mr. Massey:

Q. Why were you cross at his sister? A. Because in this letter she had thanked him for an insurance policy that he had sent her and also in the letter she said "If things were only different, how happy you would be Howard." I knew if I went down to Maryland under those circumstances I would quarrel with his sister and I did not want to do that. I did not want to cause his vacation to be an unhappy one.

Q. Do you know what kind of an insurance policy it was? A. A life insurance policy.

Q. On whose life? A. On his life.

Q. Payable to whom? A. Mrs. Hill.

Mr. O'Connor: There are a few questions that I would like to ask Mrs. Stevens that I omitted to ask on cross-examination.

The Master: You may ask them.

By Mr. O'Connor:

Q. Mrs. Stevens between May 25 and 31, 1929, did you state to Mrs. Foster and Mrs. Marslow

that you had been intimate with a bus driver, that he was a married man and had a family, and that you went to the old house on the corner of Elmora Avenue and West Grand Street with him? A. No, sir, I told them the same story I told today.

Q. Did Mrs. Foster say to you "Why didn't you go to a hotel or a room" and you remarked that you did not have time for that or did not think of it? A. No.

Q. And that you gave the bus driver $50? A. I told her that I gave the bus driver $50 and explained to her all about it.

Q. Do you recall having conversations about the matter with Mrs. Marslow and Mrs. Foster between May 25 and 31? A. Yes, I do.

Q. Where did these conversations take place? A. In my home. I told the three of them everything I have done just as I have told it on the witness stand.

Q. Did you say at the same time that you had a lover in the Elmora Theatre and that he was also a married man and had a child and that you had been going up into Warinanco Park and spending the time loving and kissing but that you did not do anything else? A. No.

Q. Did Mrs. Foster say that you should have been ashamed of yourself? A. No.

Q. That the place for you was home with your baby? A. No.

Q. And you remarked that you did not get any pleasure out of that? A. No. I was beside myself.

Q. Just answer my questions please. Did you say that you had consulted Judge Stein and told him of your troubles? A. Yes.

Q. And that he told you that you had done a great wrong and that Mr. Stevens had ground for a divorce? A. Yes, I told them that.

Q. And that he would probably get custody of the baby. Did Judge Stein tell you that? A. No, he didn't say about the custody of the child.

Q. Did he say you did a great wrong? A. No.

Q. Did he tell you your husband had no doubt grounds for divorce? A. Yes.

Q. You told Mrs. Marslow and Mrs. Foster that? A. Yes.

Q. Did you also say to them at the time that you tried to get Frank Muszar on the telephone for two days to put him next, in order that his wife would not find out and have their home broken up? A. No, sir. I never knew those people until the Tuesday. I never even met them until they came in to rent my flat.

Q. Did you say anything in that conversation about your father? A. I don't recall, no.

Q. Did you say that you did not like children, and were sorry this had happened? A. No, sir; she knows different than that.

Q. I am just asking you, did you or did you not? A. No, sir.

Q. And that you thought that your husband was the dumbest man on earth, and that you were the smartest woman, but had come to the conclusion that you were a damn fool? A. I said I was a dumb-bell.

Q. That you were a dumb-bell? A. Yes.

Q. You did say that, didn't you? A. Yes, sir.

Q. May I ask you why you said that? A. Because I had found out all these things about him.

Q. What things? A. That he had been doing to me. He had had these detectives following me.

Q. In other words, he had these detectives following you, and you concluded that he was smart and you were not quite so smart? A. Because I did not leave. If I had been sneaky, I would not have been doing these things I am telling you.

Q. Did you say in connection with any proceedings that your husband might take that he would never find you to serve papers on you and that you would not contest a divorce, as your husband knew too much? A. No, sir.

Q. And that you did not want the brat of a kid to take home? A. No, sir.

Q. That it looked like its father, and would disgrace your family? A. No, sir.

Q. Did you say you thought more of a dog than you did of your husband? A. Why, no.

Q. Did you say that you did not sleep with your husband? A. Yes.

Q. And that you had not slept with your husband? A. From the 13th of April I had not slept with my husband.

Q. And did you tell Mrs. Marslow and Mrs. Foster that you did not sleep with your husband from the 13th of April? A. Yes.

Q. Didn't you tell me on cross-examination that you had intercourse about a week before? A. Yes, I did, sir.

Q. So that what you told Mrs. Marslow and Mrs. Foster was not true? A. I did not sleep with him all night.

By the Master:

Q. You heard that question. You can answer that yes or no. Was it true what you told Mrs. Marslow that you had had no relations with your husband from the 13th of April? Was that true, and did you so say it? A. I don't remember.

By Mr. O'Connor:

Q. You don't remember? A. No.

Q. Do you recollect in that conversation saying that when you wanted a good loving that you went out with your boy friend? A. No, sir. No, sir.

Q. That is all.

By Mr. Massey:

Q. When you went to see Judge Stein and he gave you advice, did you tell him anything that you have not told here about the facts in your case? A. No, sir.

HOWARD R. STEVENS, recalled.

By Mr. Vanderbilt:

Q. When did you retain Mr. Carey as an investigator? A. It was around the middle part of December, I believe.

Q. What arrangements did you make with him? A. I told him the situation at home, that she was going out and staying late at night. She would not tell me where she was going and I told him I wanted him to make an investigation.

Q. What financial arrangements did you make with him? A. I was to pay him $300.

Q. Did you pay it to him then?

By the Master:

Q. At the time you engaged him? A. Not all of it.

By Mr. Vanderbilt:

Q. By check? A. Yes.

Q. When did you pay the next installment? A. I think the following week I paid him the re-

mainder, one check for $200, as far as I can remember.

Q. You are not sure of it, are you? A. I think that is what I did.

Q. What did you say was the date you made these arrangements with him? A. Around the latter part of November.

Q. When did you next hear from him? A. Why, he called me on the telephone the night she was in the dance hall. That was the only communication I had with him until the first of June.

Q. The only time you heard from Mr. Carey was when he called you up the night your wife was in the dance hall?

The Master: You need not answer that question.

By Mr. Vanderbilt:

Q. What was the night you say you were on the porch of the old house? A. I haven't said I was on the porch of the old house.

By the Master:

Q. His own house? A. Yes.

By Mr. Vanderbilt:

Q. What was that night? A. January 3.

Q. Didn't you call Mr. Carey up to tell him what you had seen that night? A. No.

Q. What was the date on which you say your wife came home at night and you found her underwear wet? A. January 3.

Q. Did you tell Mr. Carey that? A. I didn't have sufficient evidence to know something was wrong.

Howard R. Stevens, Recalled—Direct.

Q. You did not call up the detective and tell him anything about that? A. No.

Q. You did not think that it was important? A. He was handling the matter for me.

Q. Didn't you think if you had some information you ought to tell it to him? A. He was to tell me.

Q. You weren't curious to know whether he had been out that night? A. Yes, I was curious.

Q. Why didn't you ask him? A. I was leaving it up to him, as I said before.

Q. You mean to say you left it from the latter part of November until the end of May with only one inquiry to see what you were getting for $300? A. I did.

Q. What sort of an education have you had, if I may ask. What is your training? A. I went to high school and business college.

Q. Did you tell your counsel what you found out, as you say, on the evening of January 3? A. No.

Q. You never told him? A. No, sir.

Q. Referring now to Mr. Collins? A. Yes.

Q. Various letters have been referred to, one which Mrs. Stevens sent to Mrs. O'Brien, where did you get hold of that? A. I opened the letter.

Q. Before it was mailed? A. Yes.

Q. What did you do with it after that? A. I kept it.

Q. Did your wife give it to you to mail? A. Yes.

Q. You did not do it? A. No.

Q. When was that? A. In January.

By the Master:

Q. 1929? A. 1929.

Howard R. Stevens, Recalled—Direct.

By Mr. Vanderbilt:

Q. What date in January? A. I don't just remember.

Q. Tell us whether it was before or after January 3? A. I don't recall.

Q. Before or after January 10? A. I don't recall.

Q. You haven't the kind of mind that would put those things together? A. No, I have had so much on my mind.

Q. You mean in connection with what? A. My home life.

Q. You had so much on your mind when you received this letter to mail which you stole? A. She stole a picture of mine.

Q. She gave it to you to keep? A. No.

Q. How did you get these other letters of hers? A. Laying around the house.

Q. Laying around on the dining room table? A. That is right. I picked them off the dining room table or the bureau.

Q. I made a good guess. You don't mean to say that you picked these various letters off the dining room table or her bureau? A. I do. Others off the table.

Q. The dining room table? A. The kitchen table or the stove.

Q. She kept her letters on the stove? A. Yes.

Q. What kind of a stove? A. A gas stove.

Q. For how long a period had you been purloining her letters? A. Ever since she told me that she cared nothing for me and she was threatening to leave me every few days or evenings.

Q. When was that? A. Back in '28, early part of '28.

Q. You have been watching her since the early part of '28, is that right? A. I don't say I have

been watching her. I have been looking at the correspondence. Her mother and father were writing letters about me.

Q. On the evening of May 25 when you saw her in the park you were so enraged you went out and slept in the garage all night? A. Yes.

Q. This evening you say you saw Mrs. Stevens going into the house where did you see her go? A. I saw her go in from the front of the house.

Q. Where did you see her come out? A. Come out from the front.

By Mr. O'Connor:

Q. I don't think you mean to say you saw her go into the front of the house and come out from the front of the house? A. I saw her go in the road.

Mr. O'Connor: That was the original testimony, Mr. Vanderbilt. If your Honor please, if there is no objection I would like to offer the four pictures which have been marked Ex. P-1, P-2, P-3 and P-4 for identification.

The Master: They will be received.

Mr. O'Connor: I would like to offer in evidence this little card the envelope of which is post dated Buffalo, August 8, 1927. I would also like to offer in evidence the letter marked P-11 for identification addressed to Mr. Howard R. Stevens by his wife.

Mr. Vanderbilt: I think, your Honor, possibly we should have had a chance to have these before us when the witnesses were being examined for the purpose of our cross-examination.

The Master: How could you cross-examine the witness on them. If you want to recall any witness I suppose I will have to give you a chance.

Mr. O'Connor: I merely had them marked for identification on your case. I couldn't offer them in evidence on your case. I offer in evidence letter marked Ex. P-11 for identification. I offer in evidence letter marked Ex. P-12 for identification. I offer in evidence letter marked Ex. P-13 which Mr. Vanderbilt has seen.

REBUTTAL.

HOWARD R. STEVENS, recalled.

By Mr. O'Connor:

Q. Your wife testified that you lived with her and cohabited with her and had sexual relations with her to within a week of your final break-up on May 25 or 26? A. That is untrue.

ANNA MARSLOW, being duly sworn on her oath, testified as follows:

Direct examination by Mr. O'Connor:

Q. You live in Elizabeth? A. Yes.

Q. You were the landlady who owned the house in which the Stevens lived on Canton Street? A. Yes.

Q. Did you happen to be in the Stevens' home between May 25 and 30, 1929? A. Yes.

Q. At what time of day? A. In the evening.
Q. Who was present? A. Mr. and Mrs. Foster.
Q. And yourself? A. Yes.
Q. Anybody else? A. Nobody else.
Q. Was Mrs. Stevens there? A. Oh, sure.
Q. How long were you together? A. About an hour or an hour and a half.

Mr. Vanderbilt: I think, your Honor, he is going to ask the questions that he asked Mrs. Stevens and I object.

The Master: He put those questions all to her and he has a right to ask her whether she said such and such.

Mr. Vanderbilt: That is laying the ground work. That doesn't mean that he can come back and lead on those very questions.

The Master: That is the way I understand the law. That he can. I have indicated my view and I don't think we want to go into this whole situation again.

Mr. Vanderbilt: May I have my objection noted to that method of examination?

The Master: You may.

Defendant's counsel prays an exception which is hereby signed and sealed accordingly.

By Mr. O'Connor:

Q. Was there anything said by Mr. Stevens about a bus driver? A. Yes.

Q. She testified that she did not say that she had been intimate with a bus driver, a married man, who had a family and that they went into the old house on the corner of Elmora Avenue and West Grand Street. She says she never said

that to you. Did she or didn't she? A. She did, sir.

Q. She denies that Mrs. Foster——

Mr. Vanderbilt: My objection goes to all this line of questioning.

The Master: Oh yes, the whole line.

Q. She denies that Mrs. Foster asked her why they did not go to a hotel or get a room and she remarked that she did not have time for that or did not think of it. Did she say that or not? A. That wasn't in my presence. I don't know.

Q. She denies that she said that she had a lover at the Elmora Theatre. Did she say that or not? A. Yes.

Q. She denies that she said that he was a married man with one child. Did she say that or not? A. I don't know about the child but I know she said he was a married man.

Q. She denies that she said at that time that she had been going up to Warinanco Park and spent the time loving and kissing. Did she say that or not? A. Can I say something?

By the Master:

Q. Did she say that? A. Yes, she said it.

By Mr. O'Connor:

Q. But when she said it, she said she did nothing wrong? A. She said she didn't do nothing wrong.

Q. She said she didn't do wrong? A. Yes.

Q. She denies that Mrs. Foster said "You should be ashamed of yourself, that your place was home with the baby." Did she say that? Was

that said or not? A. Mrs. Foster said it. I heard what they said.

Q. She denies that she said that she didn't get any pleasure out of that. Did she say that or not? A. Pardon me, I don't understand.

Q. Do you understand me with reference to that question? A. No.

Q. Did Mrs. Foster say to Mrs. Stevens "You should be ashamed of yourself. Your place was home with the baby" and Mrs. Stevens say "I don't get any pleasure out of that"? A. Yes.

Q. Did Mrs. Stevens say that she told her troubles to Judge Stein? A. Yes.

Q. She denies that she said that Judge Stein told her that her husband had grounds for divorce and would probably get the custody of the child. Was that said by Mrs. Stevens or not? A. She said Judge Stein said her husband has now got grounds for a divorce.

Q. She denied trying to get Frank Muszar on the telephone for two days to put him next in order that his wife would not find it out and have his home broken up. A. I didn't hear it.

Q. She denies that she said that she didn't like children. A. That wasn't in my presence.

Q. She didn't say that in your presence? A. No.

Q. She denies that she said that her husband would not find her to serve papers on her in any proceeding he brought against her. Did she say that or not? A. I didn't hear it.

Q. How long have you known Mr. and Mrs. Stevens? A. Since the 13th of April.

Q. Nineteen what? A. Nineteen twenty-nine.

Q. From that time on up to May, 1929, they lived at your house? A. They talked with me the first of April but they moved into my house the 13th of April.

Cross-examination by Mr. Vanderbilt:

Q. Just what time of day was this conversation? A. With Mrs. Stevens, twice, about four o'clock in the afternoon and about nine until half past ten in the evening.

Q. On Saturday? A. No, not on Saturday.

Q. What day? A. It was, I guess, Monday. I am not sure. I guess Monday.

Q. That was the day after her husband had left her? A. Yes.

Q. What she told you was what her husband had accused her of? A. She told me what her husband's detectives saw her in the park sitting with a man; that the man hugged her and patted her legs and said "Don't worry, honey, everything will turn out all right."

Q. Who said that to her? A. Mrs. Stevens told what the man said to her. For this Mrs. Stevens was sore and he went away.

Q. Didn't she tell you the various things that her husband had accused her of before he cleared out that night? A. No.

Q. Did she tell you about any conversation she had with her husband before he left? A. Before she took the flat in my house, I said, "Mrs. Stevens, I want you should take a lease for a year."

Q. I want to know what happened in May. I judge from the way you smile you don't like Mrs. Stevens. A. I love her. She is a wonderful housekeeper. She did not do nothing bad to me.

Q. That is the reason you smile at me? A. I got such a nature always when I talk I smile.

Q. But you didn't smile at counsel when he examined you? A. I don't have to be afraid for nothing.

Q. As a matter of fact were you friendly with Mrs. Stevens? A. I didn't know Mrs. Stevens. I know only what she talked to me from the first of April. Then she moved in and Mr. Stevens brought the check to me on a Saturday and I did not see Mrs. Stevens until she called me there was something wrong in the bathroom. I am the landlady and I take care of everything. When I came here she started to tell me something about how she was going to leave and leave the baby with her husband. I said, "Mrs. Stevens, it isn't right you should leave your husband." She said "My mother wants me to but my father don't." She says "Mrs. Marslow, if I would be with you, I would be a good girl".

Q. She was going to leave the baby with her husband? A. I said, "Who is going to take care of the baby?" She said "My husband takes care of my baby always."

Q. Even in the daytime? A. I don't know.

Q. You knew that wasn't true. The husband did not take care of the baby in the daytime. A. I don't know.

Q. He went to work, didn't he? A. Maybe he lives on his interest, I don't know.

Q. You don't mean to say you don't know whether he went to work or not? A. I know this. She says always he takes care of the baby.

Q. Did you ever see him on Saturday afternoons or Sundays around the house? A. I never saw him until I came to Mr. Foster's for rent. Mr. Foster lived in my house and Mr. Stevens was there and they wanted to introduce me. I said, "I had the pleasure of meeting Mr. Stevens when he brought me a check for the rent."

Q. Who first talked to you about testifying in this case? A. Mr. Stevens asked me "Mrs. Mars-

low, will you go and tell what Mrs. Stevens told you?''

Q. When did you first tell Mr. Stevens what you knew? A. When Mr. Stevens was by Mr. Foster.

Q. When was that? A. I guess that was in June, the 15th of June, because I collect the rent from Mr. Foster in June, the 15th of June.

Q. How did you come to tell all this to Mr. Stevens? A. Mr. and Mrs. Foster were present and they are good friends with Mr. Stevens and they told Mr. Stevens what I heard everything about what Mrs. Stevens told us.

Q. Was Mrs. Stevens excited when she told you all these things? A. She laughed and joked and Mr. and Mrs. Foster laughed and we had a pleasant evening.

Q. She thought it was funny? A. She thought it was funny.

Q. She thought it was funny all these things you told about? A. Absolutely.

Q. Mrs. Foster and you laughed and joked with her? A. I did not have to worry.

Q. You thought it was funny? A. I did not.

Q. You are laughing about it now? A. That hurts me when a couple don't live nice. Really in my heart I did not laugh. It is nothing to laugh about when a couple don't live right.

Q. Will you tell us in your own way just what the conversation was, please. A. Between whom?

Q. What you heard, what Mrs. Stevens said, what you said? A. Mrs. Stevens told us how she went with a man, theatre man, I don't know his name and how she went to Warinanco Park. She was lonesome and the man is lonesome and she offered him or he offered her to go for a walk so they went to Warinanco Park and they were sit-

ting on a bench. He was a real gentleman. He hugged her and patted her legs and says, "Don't worry, honey, everything will turn out all right."

Q. She didn't tell you anything wrong was done? A. She said there wasn't nothing wrong. She told us about the driver. She said, "My husband is a dirty sneak. He wants to know where I am going." "I know a jitney driver. He is a poor man. He sees I am going out dressed nice. He wanted I should lend him a couple of dollars so he could buy medicine for his children and coal. I lent him $50." I asked her, "Mrs. Stevens, did you give your husband's $50 to the bus driver?" She said "No, my parents are sending me money." This was the conversation and she left because we left too.

Q. Did she say anything about having done anything wrong with the bus driver? A. No.

MARGARET FOSTER, being duly sworn on her oath, testified as follows:

Direct examination by Mr. O'Connor:

Q. Do you know Mr. and Mrs. Stevens? A. Yes, but not so well. I am not so well acquainted with them.

Q. When did your acquaintance begin? A. April 23.

Q. You are living now in the flat they occupied? A. Yes.

Q. Do you recall about the 25th of May Mrs. Stevens being in your apartment? A. Yes.

Q. Who else was present? A. Mrs. Marslow and my husband. The first time nobody was there.

Q. You were present, of course? A. Yes.

Q. What was said there, Mrs. Foster? A. Well, she come in. It was the first I seen her. She said she was in trouble. I talked to her like anybody would. Of course, I thought it was her husband's fault first. She told me "The dirty sneak took my baby. I am going to Judge Stein to see what I can do". And she left the house. She came back at three o'clock and she sat in my apartment crying. She said she had told Judge Stein everything and he said "Mrs. Stevens, your husband has grounds for a divorce and he can take the baby too." Then I says, "What did you go to him for?" She said she was there once before.

Q. Was there anything said about a bus driver? A. She told me she met the bus driver over in the old house.

Q. She denies that she told you that she met a bus driver in the old house. A. She could not deny it. She told me.

Q. Was there anybody present? A. Mrs. Marslow was present.

Q. She denies that you said "Why didn't you go to a hotel?" A. I certainly said it. I thought he was a cheap guy if he couldn't afford to take her to a room. I certainly said it.

Q. She denies that she said she had a lover at the Elmora Theatre? A. She said that too.

Q. She denies that she said he was a married man and had one child. A. It might be a mistake about the child. She said he was a married man.

Q. She said that? A. She said that.

Q. She denies she said to you that she went up to Warinanco Park and spent the time loving and kissing. A. She said that. She said the detectives were after her and they were sitting on the bench

and he was just loving her up and had his hand on her leg.

Q. Was there anything said about doing wrong? A. No, she didn't say there was anything wrong done.

Q. She didn't say there was anything wrong done? A. No.

Q. She denied there was any wrong doing to you? A. Yes.

Q. She denies that you said to her "You should be ashamed of yourself, that the place for you was home with your baby." A. She couldn't deny it. That is what I told her and that is what I thought. She has a nice baby I know.

Q. She denies that she said that she tried to get Frank Muszar on the telephone for two days to put him next in order that his wife would not find out and have their home broken up. A. She was on the telephone when I went in there. She said "I just tried to get him this evening and I tried at five o'clock this morning to put him next so his wife would not find this out."

Q. She denies that she said that she did not like children. A. She said she didn't like children.

Q. Did she say that she thought her husband was the dumbest man on earth? A. She said she thought he was the dumbest man on earth and that she was the smartest woman but she found out he was a wise guy and she was a damn fool.

Q. She denies that she said at the same time that her husband would not find her to serve papers on her and that she would not contest a divorce as her husband knew too much. She denies that. A. She certainly told me that right in her sitting room, sitting on her big sofa.

Q. Was there anybody present? A. No, not that I know of.

Cross-examination by Mr. Vanderbilt:

Q. How many talks did you have along these lines with Mrs. Stevens? A. Just from about the 23rd until the time she left that afternoon.

Q. How do you fix it as the 23rd of May? A. I know it was Thursday and Friday because I had a girl in the house helping me.

Q. What day of the week was it you had the first talk? A. Monday or Tuesday.

Q. What has Thursday or Friday got to do with it? A. I had this girl come because I wanted to move on Saturday.

Q. You place the date of the conversation as what date in May? A. I just couldn't place that.

Q. It is rather important that you should. A. It was on Monday or Tuesday, between that and Saturday.

Q. Monday or Tuesday of the last week of May? A. Yes.

Q. What was the date on which you had your conversation when Mrs. Marslow was present? A. That was when we went over to look at the apartment.

Q. That was the same week? A. That was the same week.

Q. Which was the first occasion? A. The one I had in my apartment when she went over to Judge Stein's.

Q. All she told you was that she was in trouble and she was going to Judge Stein and she came back and said he told her her husband had grounds for divorce. A. She told me it all.

Q. Did she repeat it all again when Mrs. Marslow was present? A. I don't know whether Mrs. Marslow heard that. She heard about the time she went to the bus driver and over in the park

but about Judge Stein, Mrs. Marslow wasn't in my house.

Q. I am referring to the conversation in which she told about the bus driver and the episode in the park, where did that take place? A. Over in her parlor in front of Mrs. Marslow and my husband.

Q. Your husband was there too? A. Yes.

Q. The conversation at which all these things that Mrs. Marslow testified about and which you testified about with the bus driver and with the theatre man were all in Mrs. Stevens' parlor with Mrs. Marslow and Mr. Foster there? A. First in my home and then we went over to her home.

Q. You were all three present with her? A. Yes.

Q. Making four altogether? A. Yes.

Q. When you talked about these things and she told you about these things, did you laugh about it? A. She laughed and I laughed.

Q. Did Mr. Foster laugh too? A. I suppose he did. I didn't look at him.

Q. Did she say anything about whether or not she had done anything wrong with the theatre man? A. She didn't say she didn't have nothing wrong.

Q. She said she didn't do anything wrong? A. All she said was he was loving her up and patting her legs.

Q. Did she say whether or not she had done wrong with the bus driver? A. No, she didn't say, only loaning him the money.

Q. Did she say she went in the old house? A. She didn't say she went in.

Q. Did she say she was on the walk or path? A. She didn't say that to me.

Q. She said distinctly to you that she had not done anything wrong? A. Yes.

Q. Your husband was there through this conversation? A. Yes.

Mr. O'Connor: The only additional evidence I have would be with respect to the child. I don't know whether it is necessary to offer that.

The Master: I don't think it is necessary.

Mr. O'Connor: Under those circumstances I rest.

Mr. Vanderbilt: We rest.

The Master: I will make my report tomorrow.

Exhibit D-1.

The least that you can do is to give my baby some kind treatment. He is broken to his nursery chair and hope that he does not have to be broken all over again when he is returned to me.

Exhibit P-1.

(*Opposite*) ☞



Exhibit P-2.

(*Opposite*) ☞



Exhibit P-3.

(*Opposite*) ☞



Exhibit P-4.

(*Opposite*) ☞



Exhibit P-5.

CERTIFICATE OF MARRIAGE

THIS IS TO CERTIFY that I solemnized the Marriage of HOWARD R. STEVENS and IRMA E. STEVENS at Bridgeburg in the Province of Ontario, on the 29th day of March, A. D. 1926.

WITNESSES:

Eva Joyce Dye (Mrs. Richard H.)
Richard H. Dye.

C. H. Lowry
(Name of person solemnizing marriage.)
Bridgeburg
(Address.)
Presbyterian.
(Denomination.)

Exhibit P-6.

To THANK YOU
for the flowers you sent to me
When I was ill;

They brightened many hours, and bloom
In Memory's garden still.

Irma.

Exhibit P-7.

THE FIRST NATIONAL BANK.

South River, N. J. Apr. 30, 1927.

No. 223

Pay to the order of Irma E. Stevens..... $85.00
Eighty-Five ..... Dollars

HOWARD R. STEVENS.

Exhibit P-8.

THE FIRST NATIONAL BANK.

South River, N. J. July 12, 1927.

No. 249

Pay to the order of Irma E. Stevens..... $100.00
One Hundred ..... Dollars

HOWARD R. STEVENS.

Exhibit P-9.

THE FIRST NATIONAL BANK.

South River, N. J. Sept. 7th, 1927.

No. 274

Pay to the order of Irma E. Stevens..... $40.00
Forty ..... Dollars

HOWARD R. STEVENS.

Exhibit P-10.

South River, N. J. Sept. 12, 1927.

No. 277

Pay to the order of Irma E. Stevens..... $50.00

Fifty ..... Dollars

Howard R. Stevens.

Exhibit P-11.

Erie Beach, Ont.
Canada, Aug. 1st, 1927.

Dear Howard:

First thing I want to do is to thank you for the lovely roses you sent me while I was in the hospital. They certainly were beautiful. Your son is now lying in the swing and I'll tell you he likes being spoiled. Has only three people to wait on him. The only trouble with him he has turned nights into days and visa versa, which of course means he keeps every one else awake.

We came over here on Sunday both arriving O. K. and I am gaining my strength back rapidly. The first day I got up, I fainted which wasn't so good, as I skinned both knees and elbow, but they have all healed up so am none the worse now for it. I gave tootie a bath for the first time this morning. He sure is sweet. They performed an operation on him last week, so have to be very careful how I handle him. Never saw anyone so hungry as he is all the time. Seems as tho he just finishes eating when he wants to eat again.

I understand Howard how you feel about my returning to you, but I have told you plainly when

you were in Buffalo and as yet I have not changed my mind. You told my father that they were too good to me, well perhaps, but I like it and will not go back to the kind of treatment you think I ought to get. I am used to consideration and cannot get used to the way of being treated otherwise. When I was home before I didn't realize it, but since spending a whole year with you I know the difference. Of course Howard I can't blame you entirely. I know you can't force a person to love anymore than to force a person to live with you. As far as the baby is concerned, it will be fairer to him if we do not live together. The constant quarreling would make him a nervous child the same as it used to Eva and I, but now everything is changed at home so why should I have to live in it again by living with you. Can't you see yourself we are not one bit alike. The things you do get on my nerves and I know I get on yours so why not face the matter squarely and not keep kidding yourself that the baby will make all the difference in the world. He will be only something more to fight about.

You can come and see the baby anytime you like and I will be only too glad to let you, seeing you flatly refused to come here and live, I see no other way out of it, but you'll have to spend money in doing so.

I am getting quite tired now and as it's feeding time for Charles, I will close

With kindest regards to you,

IRMA

xxx These are from Tootie.

Exhibit P-12.

516 West End Ave.
Elizabeth, N. J.
Jan. 22, 1929.

Dear Mrs. O'Brien and all:

Well we are having our second snow storm tonight and it certainly seems like home. My but I do get so lonesome for the sight of my mother and dad. I would give anything to be living in Buffalo. Of course I have a nice baby and husband also home, but still home in Buffalo means a lot to me.

Chas. Joyce is such a little rascal into everything. He does not talk much but walks or rather runs all over, climbs onto the chairs then onto the tables if near. I have a time trying to train him not to touch things. My hubby is crazy about him and the baby is over him. He prefers him anytime to me. I think if he was a girl instead 'twould be different. Howard is never too tired to play with him or take care of him. He sure is a great help, gives him a bath, washes his clothes (sometimes,) feeds him and tends him on Sundays also Sat. afternoons that leaves me free to do as I please which usually means to go shopping.

Hope none of you had the flu this year. All of us were ill with the grippe, but nothing serious.

Did you know my sister has a little boy now. Two months old. Everyone I know is either having a baby or had one. It seems to be in the air. Thank goodness I'm not. I don't want any more altho I dearly love them. I had it too hard. Had the same doctor Eva always had, but even so was bad enough. I have never been real strong since. My back never stops aching so that isn't so pleasant.

Exhibit P-12.

You knew Mrs. Gilman had a boy now too, didn't you? I would just love to know what has become of Mrs. Campbell and her two children.

Lorraine must be quite a young lady by now. Eleven or twelve years is it? It seems years since I saw you all and I suppose it will seem twice as long before I ever do. Hope someday to get to California again. If I do will stop in St. Paul. Will you folks ever get east as far as New York. We are only an hour and a half by train. Howard commutes every day as he works in N. Y., but it is terrible hard on him. Write me sometime, always glad to hear from you. With love to all

IRMA

Mrs. H. R. Stevens.

Exhibit P-13.

November 6, 1928.

Mrs. Howard Stevens,
516 West Jersey St.,
Elizabeth, N. J.

Dear Irma:

The Wilsons were at the house Sunday night when your mother phoned you and they stayed there until after midnight so you can see that we were pretty well tied up, but we played the radio most of the evening so that filled in the time pretty well.

I note from your conversation that Howard is going down home on the 17th and is going to take the baby with him and you expect to come to Buffalo if he does go, and of course you know mighty

well that you are welcome. On the other hand I want to caution you against doing anything that is foolish as while I know your frame of mind particularly from your letters and your talks with your mother, at the same time you have got a situation confronting you that is not the easiest one to dispose of and while life of course is made up of likes and dislikes, at the same time we have certain obligations that take precedence over our own personal feelings. You may not think it yourself but I know that you have got a wonderful baby and that in itself should be sufficient to warrant your giving very, very careful thought to making any moves that in the after years will reflect on you and cause you many a heart-ache. Supposing that you gave up the ship now and deserted the baby and Howard and in after years the baby grew up to be a very fine man. Would it not be within the bounds of reason for you to have many a heart-ache with the thought constantly in front of you that you had not done your duty by him as his mother? Personally you know that both your mother and I want you to be happy and contented particularly you because we know that Eva is all right but you have blazed the trail for yourself and if you throw your hands up now it is simply an acknowledgment that you do not know what you want or want to do and is a most decided sign of weakness, that even your very best friends could not overlook. I am asking your mother to send you a clipping out of last night's paper which I think is very appropriate and you should give careful thought to the advice contained in it. Everyone has their trials to bear, this including me as well as your mother and you know that those situations can all be solved if the right effort is put forth in it.

Exhibit P-13.

I do hope that you will do nothing that will make you appear foolish or ridiculous not alone with your friends but our's also.

I will probably be in New York some time the early part of next week and will let you know definitely just when although I will not be able to stay with you as John Weisenheimer will be with me and we will be busy most of the time.

I hope that you will give heed to the advice I am giving you in this letter because if there is anyone that I do not want to see make a bad move it is you because I think you have work cut out ahead of you to overcome the frame of mind that you seem to be in and I am sure that you are big enough to do it. There is only you and Eva with your families that your mother and I really have to live for and it does seem as though you ought to go slow and be careful in what you do and say. The old adage that "a closed mouth is a wise head" is one of the most applicable sayings that I can quote to you and I cannot impress it upon your mind any too strongly.

Kiss the baby for me and give my regards to Howard.

x x x

DAD

Exhibit P-14.

Palace Hotel,
Bruxelles.

Buffalo, Oct. 31/28

My dear Irma:

We are all sorry to hear that you are not feeling well, and the only thing I can say is if you can't stand it you had better come home. It is very nerve racking to have a pain any where all

the time, so I think that is why everything annoys you so much. If you would only take some decided step it would be better for all concerned. I can imagine how you feel when you see H. make such a "simp" of himself over the baby, but what's the difference, that sort of thing is never returned and some day he will be the disappointed one. We had quite a snow storm Monday, I was supposed to meet your dad at the bridge at two o'clock. I got there ten minutes early and he was a few minutes late. I was cold at least my feet were. I wore my fur coat. If I had worn my artics I'd have been O. K. We came near having a quarrel over the house, but everything was arranged satisfactorily, and I had my ideas carried out. They were going to have only one entrance into the bathroom and that from the dining room. You can readily see how that would be. I was afraid we would have snow before they got the roof on, but the weather is much improved. I had Mary two days this week to get the storm windows cleaned. Mr. Simon put them on Tuesday afternoon and took the swing down so we are ready for the winter now. I spent Monday evening at home. It seemed rather strange to have a night at home. I ironed yesterday morning and took Betty down town in the afternoon. She is a terror to go shopping, not as good as she used to be. Last evening the Court's had a joint card party at the Lafayette Hotel. It only cost me $1.90, some expensive card party for me. I won the prize at our table. Three handkerchiefs. I gave a prize that cost $1.19. It was not very well attended and they didn't make enough money, they more than cleared expenses, but not half the people came that were expected. I'm going to a Luncheon at May Young's today at one o'clock. They are talking about election and are all going to sup-

port me if I run, but I'm up a tree, I like being an officer, but am not crazy about the responsibility that goes with a matron's job. I suppose I'll get into it and then be groaning ever after. Something like you in that respect eh!, such is life.

I have three beautiful roses on the desk out of our garden. I picked them before the frost killed them and they have opened up and are so fragrant and such a pretty color. I haven't written to Aunt Fanny yet, she'll think we are sick of her and don't want her friendship any more. We still have sister with us and she is alright. Hasn't been sick since the first day. Lizzie's rug is fine, nearly finished and for once it doesn't end up. Dad is going to give her a couple of dollars for it. She doesn't want to do anything but finish the rug. I've sent the check and ordered the American sent to you for two years. Did that last week. Eva just 'phoned said she will eat with us tomorrow night as she has several meals coming to her. We ate dinner with them Sunday. We had such a time getting Wilson's Sunday. Then after we had our dinner, they called us and so we had two dinners in one day, which was too much for us. Eva talked to Dr. Potter and he said you must have taken a little cold as everything seemed to cleared up, but it being your weakest spot, the cold would naturally settle there. I hope you are feeling better, but for pity's sake, don't lose all your self control. Remember if you don't control your temper it will master you, so don't be a slave to such a weakness. It's better to give up than ruin your health. Take it easy and go out in the fresh air (how do you like that and the pen slipped.) I must get busy now.

Love and kisses to you both

from

Mother.

Note the stationery from Brussells.

New Jersey State Library

Conclusion.

(Filed September 11, 1929.)

IN CHANCERY OF NEW JERSEY.

74-71.

Between
HOWARD R. STEVENS,
Petitioner,
and
IRMA ELIZABETH STEVENS,
Defendant.

On Petition for Divorce.

Conclusions.

September 6th and 9th, 1929.

PETER B. COLLINS, Solicitor for Petitioner.
ARTHUR T. VANDERBILT, Solicitor for Defendant.

NEWMAN, A. M.:

The evidence in this case is quite voluminous, and there was considerable testimony which convinced me that from the beginning of the married life of the petitioner and the defendant up to the time of the separation, their union was a complete failure, as the parties were temperamentally unsuited to each other.

The petitioner was rather cold, indifferent, neglectful, morose, and of a totally different character and makeup from the defendant, she being optimistic, generous, full of life, and desirous of companionship and affection, which feelings were not reciprocated by the petitioner. The result was inevitable, that there should be constant friction

between the parties, and the mutual love that should exist in the marital relationship was soon shattered. I am satisfied from the evidence of this case that the defendant is guilty of the offense charged in the petition, and I find that she was guilty of adultery on the third day of January, 1929, with Burwell Hodges, at the time and place mentioned in the petition, and also guilty of the same offense with Frank Muszar on the twenty-fifth day of May, 1929, at the time and place mentioned in the petition, and I will advise a decree for the petitioner according to the prayer of the petition.

At the close of the case the defendant, through her solicitor, expressed a desire to amend her Answer, so that the same would set up, in addition to the defenses already set up therein, condonation and connivance. I stated I would treat the case as if these defenses had been well pleaded, and have so considered the case, and do not find that either condonation or connivance has been sustained by the evidence.

I also feel that the defendant, not being a resident of the State, and considering all the circumstances which have been adduced upon the trial, the welfare of Charles Joyce Stevens, the child of the marriage, requires that he shall remain in the petitioner's custody for the present, and the order for custody should provide for visitation and access by the defendant.

Order for Leave to Amend Answer.

(Filed September 23, 1929.)

IN CHANCERY OF NEW JERSEY.

Dkt. #74-71.

Between HOWARD R. STEVENS, Petitioner, *and* IRMA E. STEVENS, Defendant.	On Petition for Divorce. Order for Leave to Amend Answer.

This matter having come on for final hearing in the presence of Peter B. Collins, Esq., solicitor of petitioner, and Arthur T. Vanderbilt, Esq., solicitor of defendant, and a motion having been made for leave to amend the defendant's answer; and the reasons for the motion having been heard and considered:

It is, on this 21st day of September, 1929, on motion of Arthur T. Vanderbilt, Esq., solicitor of defendant, ORDERED that the defendant be and hereby is given leave to amend the answer by adding two paragraphs as follows:

5. Petitioner, with full knowledge of the circumstances upon which he based his charge that defendant committed adultery on December 21, 1928, December 29, 1928, January 3, 1929, and January 10, 1929, continued to cohabit with her as man and wife for many months thereafter and thereby condoned such supposed offenses.

6. Petitioner, with full knowledge, in December, 1928, and in January, 1929, of circumstances

upon which he based his charge that defendant committed adultery on December 21, 1928, December 29, 1928, January 3, 1929, and January 10, 1929, concealed from defendant his knowledge of her supposed wayward tendencies and wayward acts, and never warned her of his dissatisfaction with her conduct, but instead of warning her, lay in wait for a period of more than five months, giving her opportunity and encouragement to repeat the acts which he charges to be improper. By such conduct petitioner connived to procure and consented in advance to any commission of adultery by defendant during the entire period from December, 1928, to May 26, 1929, with intent to rid himself of his obligation to her and to procure for himself the exclusive possession of the child of their marriage.

And it is further ordered that petitioner be and he hereby is given leave to file a replication denying said defenses.

Respectfully advised,

JACOB L. NEWMAN,
A. M.

Amended Answer.

(Filed September 23, 1929.)

IN CHANCERY OF NEW JERSEY.

DKT. #74-71.

Between

HOWARD R. STEVENS,
Petitioner,

and

IRMA E. STEVENS,
Defendant.

On Petition for Divorce.

Amended Answer.

The amended answer of the defendant, Irma E. Stevens, to the petition of Howard R. Stevens respectfully shows:

1. This defendant admits it to be true that petitioner and defendant were married as in said petition is alleged.

2. This defendant denies that since her said marriage, and on the 21st day of December, 1928, or the 29th day of December, 1928, or the 3rd day of January, 1929, or the 10th day of January, 1929, she committed adultery with Burwell Hodges at the place named in the petition, or at any other time or at any other place. This defendant further denies that on the 24th day of May, 1929, or the 25th day of May, 1929, she committed adultery with Frank Muszar at the place named in the petition, or at any other time or at any other place. On the contrary, this de-

fendant says that she has ever faithfully observed her obligations as the wife of petitioner.

3. This defendant admits it to be true that the petitioner and this defendant were bona fide residents of the State of New Jersey when this supposed cause of action arose, as alleged in the petition. This defendant denies that she has ever since continued to be a bona fide resident of this state, but says that on or about the 31st day of May, 1929, on account of the desertion of the petitioner, her said husband, and his failure and refusal to support her, she was forced to return to the home of her parents in the City of Buffalo, New York, and ever since that time, up to the time of the commencing of this action, has been a bona fide resident of the City of Buffalo, New York. Whether said petitioner has, ever since said supposed cause of action arose, continued to be a bona fide resident of this state, as alleged in the petition, this defendant is without information and neither admits or denies the same.

4. This defendant admits it to be true that one child, namely, Charles Joyce Stevens, aged about twenty-three months, was born of the aforesaid marriage, and admits that the said child is not now in her custody and says that she is without information as to the whereabouts of her said child, and neither admits or denies the allegation that her said husband is in possession of the said child. Defendant says that her said child was wrongfully and surreptitiously taken away from her by her said husband at the time of their recent separation.

5. Petitioner, with full knowledge of the circumstances upon which he based his charge that

defendant committed adultery on December 21, 1928, December 29, 1928, January 3, 1929, and January 10, 1929, continued to cohabit with her as man and wife for many months thereafter and thereby condoned such supposed offenses.

6. Petitioner, with full knowledge, in December, 1928, and in January, 1929, of circumstances upon which he based his charge that defendant committed adultery on December 21, 1928, December 29, 1928, January 3, 1929, and January 10, 1929, concealed from defendant his knowledge of her supposed wayward tendencies and wayward acts, and never warned her of his dissatisfaction with her conduct, but instead of warning her, lay in wait for a period of more than five months, giving her opportunity and encouragement to repeat the acts which he charges to be improper. By such conduct petitioner connived to procure and consented in advance to any commission of adultery by defendant during the entire period from December, 1928, to May 26, 1929, with intent to rid himself of his obligation to her and to procure for himself the exclusive possession of the child of their marriage.

This defendant therefore prays that the petitioner's petition be dismissed, with costs.

ARTHUR T. VANDERBILT,
Solicitor of Defendant.

Decree Nisi.

(Filed September 23, 1929.)

IN CHANCERY OF NEW JERSEY.

74-71.

Between

HOWARD R. STEVENS,
Petitioner,

and

IRMA E. STEVENS,
Defendant.

On Petition for Divorce.

Decree Nisi.

This cause coming on to be heard in the presence of Peter B. Collins, solicitor of the petitioner and Arthur T. Vanderbilt, solicitor of the defendant, on petition, answer and amendment thereto, counterclaim, answer thereto 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 March 29, 1926, and that the said Irma E. Stevens, defendant, has been guilty of the adultery charge against her on the third day of January, 1929, with Burwell Hodges and on the twenty-fifth day of May, 1929, with Frank Muszar at the time and place mentioned in said petition, and that at the time the cause of action for divorce therefor arose, the said Howard R. Stevens and Irma E. Stevens were bona fide residents of this state and the said Howard R. Stevens continued so to be down to the time of

the commencement of this action, and it further appearing that the defendant could not be served personally with process within this state, and that (the petitioner being at the time of the commencement of this action a bona fide resident of this state) jurisdiction has been acquired by publication of notice to the defendant of this suit followed by notice to the defendant without this state, as service substituted for personal service within this state pursuant to the order heretofore made in the Court in this cause for that purpose and as prescribed by law and the rules of this Court as well as by the appearance, answer and counterclaim of the defendant.

And it further appearing that on the 30th day of July, 1929, it was ordered that the above named petitioner, Howard R. Stevens, pay to his wife, the above named Irma E. Stevens, or to her solicitor, the sum of Fifteen Dollars ($15.00) per week at the beginning of each and every week from the date of said order until the termination of this suit.

And it further appearing that on the 30th day of July an order was entered consolidating with this suit the matter of a writ of habeas corpus granted on the petition of Irma E. Stevens for the custody of Charles Joyce Stevens, the infant child of the marriage, and adjourning the hearing on said writ of habeas corpus until the final hearing of this cause;

It is thereupon, on this 21st day of September, 1929, by his Honor, Edwin Robert Walker, Chancellor of the state of New Jersey, ORDERED, ADJUDGED and DECREED that the said Chancellor by virtue of the power and authority of this Court, and of the acts of the legislature in such case made and provided, doth hereby Order, Adjudge and

Decree Nisi.

Decree that the said petitioner, Howard R. Stevens, and the said defendant, Irma E. Stevens, be divorced from the bonds of matrimony for the cause aforesaid, and the said parties and each of them be freed and discharged from the obligation thereof unless sufficient cause is shown to the Court why this decree should not be absolute within three months from the date hereof.

And it is further Ordered, Adjudged and Decreed that the order for alimony made in this cause on the said 30th day of July, 1929, be and the same is hereby vacated.

And it is further Ordered, Adjudged and Decreed that the writ of habeas corpus issued on the 16th day of July, 1929, and heretofore consolidated with this cause be and the same is hereby dismissed.

And it is further Ordered, Adjudged and Decreed that Charles Joyce Stevens, infant child of said marriage, remain in the custody of his father, the said Howard R. Stevens, subject to the privilege and right of his mother, the said Irma E. Stevens, to visit said child at the place of his domicile in the State of New Jersey upon giving ten days' notice, by mail, to the father, Howard R. Stevens.

And it is further Ordered, Adjudged and Decreed that the defendant's counterclaim be and the same is hereby dismissed.

E. R. Walker,
C.

Respectfully Advised,

Jacob L. Newman,
A. M.

Notice of Appeal.

(Filed September 23, 1929.)

IN CHANCERY OF NEW JERSEY.

DKT. #74-71.

Between

HOWARD R. STEVENS,
Petitioner,

and

IRMA E. STEVENS,
Defendant.

On Petition for Divorce.

Notice of Appeal.

Defendant, Irma E. Stevens, hereby appeals from a certain decree *nisi* for divorce from the bonds of matrimony and the order for custody of her infant child, made by the Chancellor on the advice of Jacob L. Newman, Esq., Advisory Master *pro hac vice,* in the above entitled cause on September 21, 1929, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in All Causes.

ARTHUR T. VANDERBILT,
Solicitor of Defendant.

I conceive that there is good cause for appeal in the above entitled cause.

ARTHUR T. VANDERBILT,
Of Counsel with Defendant.

September 21, 1929.

Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

(Filed September , 1929.)

Between HOWARD R. STEVENS, Petitioner-Respondent, *and* IRMA E. STEVENS, Defendant-Appellant.	On Petition for Divorce. On Appeal from Court of Chancery. Petition of Appeal.

To the Honorable Court of Errors and Appeals in the Last Resort in all Causes:

The petition of Irma E. Stevens, the defendant, appellant in the above entitled cause, respectfully shows that:

1. Petitioner finds herself aggrieved by a certain decree *nisi* for divorce from the bonds of matrimony and for custody of the infant child of her marriage made in the Court of Chancery by the Hon. Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date September 21, 1929, in a certain cause in said Court of Chancery wherein Howard R. Stevens was petitioner and the said Irma E. Stevens was defendant, in this respect, to wit:

That said decree *nisi* orders, adjudges and decrees as follows:

First: "that the said petitioner, Howard R. Stevens, and the said defendant, Irma E.

Stevens, be divorced from the bonds of matrimony for the cause aforesaid, and the said parties and each of them be freed and discharged from the obligation thereof unless sufficient cause is shown to the Court why this decree should not be absolute within three months from the date hereof."

The cause aforesaid is recited in said decree as follows:

"that the said Irma E. Stevens, defendant, has been guilty of the adultery charge against her on the 3rd day of January, 1929, with Burwell Hodges and on the 25th day of May, 1929, with Frank Muszar at the times and places mentioned in the petition."

Second: "that the order for alimony made in this cause on the 30th day of July, 1929, be and the same is hereby vacated."

Third: "that the writ of habeas corpus issued on the 16th day of July, 1929, and heretofore consolidated with this cause, be and the same is hereby dismissed."

Fourth: "that Charles Joyce Stevens, infant child of said marriage, remain in the custody of his father, the said Howard R. Stevens, subject to the privilege and right of his mother, the said Irma E. Stevens, to visit said child at the place of his domicile in the State of New Jersey upon giving ten days' notice by mail to the father, Howard R. Stevens."

Fifth: "that defendant's counterclaim be and the same is hereby dismissed."

And petitioner appeals from the decree *nisi* of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous in that

1. It orders, adjudges and decrees that the said petitioner, Howard R. Stevens, and the said de-

fendant, Irma E. Stevens, be divorced from the bonds of matrimony for the cause aforesaid and the said parties and each of them be freed and discharged from the obligation thereof, unless sufficient cause is shown to the Court why said decree should not be absolute within three months from the date thereof.

2. It further orders, adjudges and decrees that the order for alimony made in this cause on the 30th day of July, 1929, be vacated.

3. It further orders, adjudges and decrees that the writ of habeas corpus issued on the 16th day of July, 1929, and theretofore consolidated with this cause, be dismissed.

4. It further orders, adjudges and decrees that Charles Joyce Stevens, infant child of said marriage, remain in the custody of his father, the said Howard R. Stevens, subject to the privilege and right of his mother, the said Irma E. Stevens, to visit said child at the place of his domicile in the State of New Jersey upon giving ten days' notice by mail to the father, Howard R. Stevens.

5. It further orders, adjudges and decrees that the defendant's counterclaim be dismissed.

6. In and by said decree *nisi* it was not adjudged that the defendant is innocent of the adultery charge against her on the 3rd day of January, 1929, with Burwell Hodges, and on the 25th day of May, 1929, with Frank Muszar.

7. In and by said decree *nisi* it was not adjudged that on or about May 26, 1929, the petitioner, Howard R. Stevens, without any just cause

whatever, deserted defendant, and ever since that time has wilfully, continuedly and obstinately deserted defendant, and has neglected and refused to support defendant.

8. In and by said decree *nisi* it was not adjudged that petitioner provide such suitable support and maintenance for defendant and for the infant child of the marriage as the nature of the case and the circumstances of the parties render suitable and proper.

9. In and by said decree *nisi* it was not adjudged that petitioner be required to pay to defendant a proper sum for counsel fees.

10. In and by said decree *nisi* it was not adjudged that the custody of the infant child of said marriage be awarded to defendant.

11. The finding of fact that the said Irma E. Stevens, defendant, has been guilty of the adultery charge against her on the 3rd day of January, 1929, with Burwell Hodges is not supported by evidence sufficient in law to warrant such a finding of fact.

12. The finding of fact that the said Irma E. Stevens, defendant, has been guilty of the adultery charge against her on the 25th day of May, 1929, with Frank Muszar is not supported by evidence sufficient in law to warrant such a finding of fact.

13. The evidence presented at the hearing gives rise to an unavoidable conclusion that the petitioner, Howard R. Stevens, condoned the supposed offense of adultery alleged to have been

committed on January 3, 1929, and the trial court should so have found.

14. The evidence presented at the hearing gives rise to an unavoidable conclusion that the petitioner, with full knowledge, on January 3, 1929, of circumstances upon which he based his charge that defendant committed adultery on said date, instead of warning defendant of her supposed wayward tendencies and wayward acts, connived to procure and consented in advance to any supposed offense of adultery on May 25, 1929, and the trial court should so have found.

15. The Advisory Master permitted petitioner's counsel to ask the following question of the rebuttal witness, Anna Marslaw, over the objection of defendant's counsel and permitted the witness to answer the same as follows:

> "Q. She testified that she did not say that she had been intimate with a bus driver, a married man, who had a family and that they went into the old house on the corner of Elmora Avenue and West Grand Street. She says she never said that to you. Did she or didn't she? A. She did, sir.
>
> Q. She denies that she said that she had a lover at the Elmora Theatre. Did she say that or not? A. Yes.
>
> Q. She denies that she said that he was a married man with one child. Did she say that or not? A. I don't know about the child, but I know she said he was a married man.
>
> Q. She denies that she said at that time that she had been going to Warinanco Park and spent the time loving and kissing. Did she say that or not? A. Can I say something?
>
> By the Master:
>
> Q. Did she say that? A. Yes, she said it.
>
> Q. Do you understand me with reference to that question? A. No.

Q. Did Mrs. Foster say to Mrs. Stevens 'You should be ashamed of yourself. Your place was home with the baby' and Mrs. Stevens say 'I don't get any pleasure out of that'? A. Yes.

Q. Did Mrs. Stevens say that she told her troubles to Judge Stein? A. Yes.

Q. She denies that she said that Judge Stein told her that her husband had grounds for divorce and would probably get the custody of the child. Was that said by Mrs. Stevens or not? A. She said Judge Stein said her husband has now got grounds for a divorce.''

16. The Advisory Master permitted petitioner's counsel to ask the following questions of the rebuttal witness, Margaret Foster, over the objection of defendant's counsel and permitted the witness to answer the same as follows:

''Q. She denies that you said 'Why didn't you go to a hotel?' A. I certainly said it. I thought he was a cheap guy if he couldn't afford to take her to a room. I certainly said it.

Q. She denies that she said she had a lover at the Elmora Theatre? A. She said that too.

Q. She denies that she said he was a married man and had one child. A. It might be a mistake about the child. She said he was a married man.

Q. She said that? A. She said that.

Q. She denies she said to you that she went up to Warinanco Park and spent the time loving and kissing? A. She said that. She said the detectives were after her and they were sitting on the bench and he was just loving her up and had his hand on her leg.

Q. She denies that you said to her: 'You should be ashamed of yourself, that the place for you was home with your baby.' A. She couldn't deny it. That is what I told her and that is what I thought. She has a nice baby I know.

Q. She denies that she said that she tried to get Frank Muszar on the telephone for two days to put him next in order that his wife would not find out and have their home broken up? A. She was on the telephone when I went in there. She said 'I just tried to get him this evening and I tried at five o'clock this morning to put him next so his wife would not find this out.'

Q. She denies that she said that she did not like children? A. She said she didn't like children.

Q. Did she say that she thought her husband was the dumbest man on earth? A. She said she thought he was the dumbest man on earth and that she was the smartest woman but she found out he was a wise guy and she was a damn fool.

Q. She denies that she said at the same time that her husband would not find her to serve papers on her and that she would not contest a divorce as her husband knew too much. She denies that? A. She certainly told me that right in her sitting room sitting on her big sofa.''

ARTHUR T. VANDERBILT,
Solicitor for and of Counsel
with Defendant-Appellant.

Answer to Petition of Appeal.

(Filed October 2, 1929.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

HOWARD R. STEVENS,
Petitioner-Respondent,

and

IRMA E. STEVENS,
Defendant-Appellant.

On Petition for Divorce.

On Appeal from Court of Chancery.

Answer to Petition of Appeal.

The answer of Howard R. Stevens, the above named respondent to the petition of appeal of Irma E. Stevens the above named appellant.

This respondent, 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 certain Decree *Nisi* was, on the 21st day of September, 1929, 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 *Nisi,* this respondent begs leave to refer thereto when the same shall be produced.

This respondent is advised and believes that the said Decree *Nisi* is agreeable to equity; and therefore prays that the same may be affirmed with costs to be taxed in the favor of this respondent.

PETER B. COLLINS,
Solicitor for Petitioner-Respondent.

MARTIN P. O'CONNOR,
Of Counsel with Petitioner-Respondent.

46 FEB.T.1930

New Jersey Court of Errors and Appeals

Between

HOWARD R. STEVENS,
Petitioner-Respondent,

and

IRMA E. STEVENS,
Defendant-Appellant.

ON PETITION FOR DIVORCE.

ON APPEAL FROM THE COURT OF CHANCERY.

BRIEF FOR DEFENDANT-APPELLANT.

Statement of the Case.

Petitioner, Howard R. Stevens, filed a petition for divorce alleging that defendant, Irma Elizabeth Stevens, committed adultery on five distinct occasions with two persons named in the petition. Defendant filed an answer denying the acts of adultery alleged in the petition. Defendant also counterclaimed for separate maintenance and the custody of their child, alleging that petitioner had wrongfully deserted her; had failed to support her and had wrongfully taken their child from her possession. Petitioner in his answer to defendant's counterclaim admitted the desertion and the taking of their child, but alleged that said acts were justified.

At the final hearing, Advisory Master Jacob L. Newman permitted defendant to amend her answer by adding the defenses of condonation and connivance.

The petition alleged that defendant committed adultery on December 21st and 29th, 1928, Jan-

uary 3d and 10th and May 24th and 25th, 1929. No evidence was introduced supporting the charge that adultery was committed on December 29th, 1928.

The Advisory Master in his conclusions (S. C., p. 322) found defendant guilty of having committed adultery on January 3, 1929 and May 24, 1929, inferentially finding that the other charges were not supported. In view of the Advisory Master's findings and in view of the fact that the only testimony with reference to the other charges was the uncorroborated, conflicting and highly improbable stories of the detectives, we will devote most of our discussion to the charges relating to January 3, 1929 and May 25, 1929.

No direct evidence of adultery was offered at the hearing. The only circumstantial evidence was that offered by petitioner himself and detectives hired by him to watch defendant for the purpose of obtaining evidence. The detectives were engaged in December 1928 and continued their activities through a period of six months. Their testimony was highly improbable. They not only contradicted each other and contradicted petitioner on every material point but they also testified as to things which, admittedly, *could not* have been seen by them. The testimony of petitioner himself, moreover, showed that it was physically impossible for him to have seen what he testified to.

In substance, petitioner attempted to show that on January 3, 1929, in the dead of winter, defendant alighted from a Public Service bus and walked along a short well-worn path, which was a short-cut to their home. In walking along this path it was necessary for her to pass a deserted house in which the floors were torn up and all of the windows were broken. Petitioner and his detectives attempted to show that she was seen entering this

house, followed by a bus driver, from which he infers adultery was committed. Defendant and the bus driver emphatically deny having ever been in the house, although defendant admits walking along the path, and admits that she talked with the bus driver for a few minutes. But the conversation was with reference to a sum of money loaned by defendant to this bus driver and has no bearing on petitioner's charges.

The case is barren of any evidence tending to indicate that defendant or the bus driver entertained any criminal desires. There is absolutely no evidence of affection or manifestation of desire.

Petitioner and one of his detectives next attempted to show that on May 25, 1929, defendant and Frank Muszar, a theatre employee, entered a public park and sat on a park bench for half an hour. Petitioner testified that he watched them from a distance of fifty yards and could see the light on their faces and that they sat there, his arm encircling her. He testified that he could not see whether they kissed. He and his detectives both testified that they saw no act of adultery, although they watched them continuously from a vantage point. The detective testified that he watched defendant go home alone.

Defendant admits walking through the park, but denies that Muszar had his arms around her or otherwise manifested any physical desire, and emphatically denies that any act of adultery was committed. The testimony of petitioner himself shows that defendant knew she was being followed by her husband while in the park. It is difficult to see how a reasonable man could find, even from petitioner's own testimony, that an act of adultery was committed on that occasion.

Petitioner testified that he saw defendant enter the vacant house as early as December 21, 1928. He further testified that he knew all of the al-

leged facts furnished by him at the hearings as early as January 3, 1929. Nevertheless, he testified that he lived with her "as man and wife" until May 25, 1929. Defendant testified that petitioner and she continued their marital relations until shortly before the separation in May, 1929. Petitioner, on re-direct examination testified that he lived with defendant, but denied having marital relations. Petitioner admitted that although he suspected, as early as December, 1928, that his wife might commit adultery he never said anything to her, but engaged detectives to watch her while he continued to live with her.

The Master decided that neither condonation nor connivance was shown and advised a decree divorcing the parties and dismissing defendant's counterclaim.

The evidence showed that defendant took good care of her child and was a capable wife and mother. Nevertheless, the Master awarded the custody of the child to petitioner with the unusual proviso that defendant may visit her child upon giving 10 days' notice.

Defendant appeals from the decree granting the petition for divorce, dismissing defendant's counterclaim and awarding the custody of their child to petitioner.

Specification of Grounds of Appeal.

The grounds of appeal as set forth in the petition of appeal (S. C. pp. 333-339) may be summarized as follows:

1. The finding that defendant committed adultery on January 3, 1929, is not supported by evidence sufficient in law to warrant the finding.

2. The finding that defendant committed adultery on May 25, 1929, is not supported by evidence sufficient in law to warrant the finding.

3. The evidence called for a finding that petitioner condoned the alleged offense of January 3, 1929, and the finding to the contrary was unwarranted by the evidence.

4. The evidence called for a finding that petitioner connived to procure and consented in advance to the alleged acts of adultery and the finding to the contrary was unwarranted by the evidence.

5. The decree was erroneous in divorcing petitioner from defendant, in dismissing defendant's counterclaim for separate maintenance and in awarding the custody of their child to petitioner.

6. The decree was erroneous in failing to adjudge that defendant was innocent of the charges that she committed adultery on January 3, 1929, and May 25, 1929, in failing to adjudge that petitioner provide maintenance and support for defendant, and in failing to award the custody of their child to defendant.

POINT I.

The Advisory Master erred in his conclusion that defendant committed adultery on January 3, 1929.

The only testimony in support of the charge that defendant committed adultery on January 3rd is that of petitioner and of detectives employed by him to obtain evidence for the purpose of this suit. Before considering the testimony presented on behalf of defendant it is our purpose to consider in detail the testimony presented on behalf of petitioner, to point out the inconsistencies and obvious falsehoods therein and to note the improbabilities of the stories of petitioner and his detectives.

(A) Testimony of Petitioner, Howard R. Stevens.

Petitioner lived at 516 West End Avenue, Elizabeth, the front porch of his house facing West End Avenue. Five houses away near the intersection of West End Avenue and Elmora Avenue stood a vacant house, the front of which faced West End Avenue. There were several houses between the petitioner's and the vacant house. There was a well traveled path which cut diagonally from Elmora Avenue to West End Avenue and went close by the vacant house on the side farthest away from petitioner's house. This path served as a short-cut for people walking from Elmora Avenue to their homes on West End Avenue.

From this layout of the houses, it is apparent that from the front of petitioner's house he might see one enter the front of the vacant house but could not possibly see one enter the back of that house. Nor could he possibly see one walking along the path near the rear of the vacant house.

Petitioner testified that on January 3, at 10:12 P. M., defendant alighted from a bus *at West End Avenue* and went into the *front* of the vacant house from West End Avenue. He said:

> "My wife gets off this bus and goes in the front of this old house." (S. C., p. 43, ll. 25-27.)

He then testified that she came out of the front of the old house. (S. C. p. 44, ll. 8-10.) His repetition of this shows that there can be no question of a slip.

Roy Carey, one of the petitioner's detectives, testified that at the same time and place petitioner alludes to in his testimony, he trailed defendant in the bus. He testified that at the very moment

petitioner saw her alight from the bus at West End Avenue and enter the front of the house, he saw her alight from the bus at Pennington Street (a street which ran into Elmora Avenue, a block or more away from West End Avenue), walk along the path and *enter the rear* of the house. (S. C. p. 121, ll. 10-20.)

It would be physically impossible for petitioner to see defendant enter the rear of the vacant house from his position on the front porch of his house. And it would be physically impossible from his position on Elmora Avenue, for Roy Carey to see her enter the front of the house.

Thomas J. Carey, another detective and brother of Roy Carey, testified that defendant alighted from the bus at Pennington Street and walked into the path from the rear of the house (S. C., p. 107, ll. 25-30). He testified that although he was watching her actions, he did not see her go in the house (S. C., p. 107, l. 30).

Thomas Carey, another detective engaged to obtain evidence against defendant, and the father of Roy and Thomas J. Carey, contradicted his sons and testified that defendant alighted from the bus on West End Avenue and went into the path from the front of the vacant house and into the rear (S. C., p. 85, ll. 1-30).

Roy Carey testified that his father was in an automobile on Elmora Avenue on the night of January 3rd (S. C., p. 128, ll. 17-20).

> "Q. Where was your father? A. He was in the car with my brother."

Thomas J. Carey testified he was in the car on the night in question and accordingly could not see whether defendant entered the house (S. C., p. 107, l. 30). How then could Thomas Carey possibly see whether defendant entered the house?

The testimony of Roy Carey that his father remained in the automobile on January 3rd, conclusively proves that his father relied solely on his imagination and made his wishes the foundation of his testimony, when he said he saw defendant enter the vacant house.

Petitioner testified that after he saw defendant and a bus driver enter the front of the vacant house, he left his house and walked around the vacant house. To quote:

> "I walked around the old house. I did not see anything visible on any side. Then I went back to my home and she came in at 10:33. It was 10:12 when the bus pulled up" (S. C., p. 43, ll. 30-33).

We must admit that it is beyond the bounds of our imagination to conceive of a husband so calmly viewing his "wife and her paramour" enter a vacant house; nonchalantly walk around to see if "all's quiet" and then peacefully return home. If he were an "irate" husband he would, of course, have been outraged and would have expressed his emotions; if he were a "watchful waiting" husband, awaiting his opportunity to obtain real evidence, what could be a more opportune moment for an entrance into the house?

He walked "around the house", yet he testified that he did not see his worthy detectives so ably performing their mission. He said he did not see anything visible on any side (S. C., p. 43, ll. 30-31). And the detectives never mentioned seeing Stevens or any other witness present on that occasion. The only possible inference is that they were not watching as they said or that Stevens was not there as he said.

Mayhaps, we are too incredulous; honesty requires us to say that our imagination fails us in this alleged situation.

Petitioner timed his wife's alleged visit to the vacant house. He testified that she was there about twenty-one minutes (S. C., p. 44, ll. 38-39). His detectives also state that they timed her; their result was twelve minutes (S. C., p. 85, l. 23).

Petitioner was asked why he did not go into the vacant house when he saw his wife enter. He gave the novel reason that the floor was torn up, although in his next line of testimony he states that he learned that the floor was torn up *afterwards* (S. C., p. 63, ll. 25-30).

When defendant came home on the night of January 3rd, petitioner testified that he said nothing to her (S. C., p. 64, l. 12). Here again our imagination fails us.

Petitioner gave the extraordinary testimony that from December 27, 1928, until May 25, 1929, he never communicated with his detectives; never gave them the important information which he alleges he had and never inquired of them whether they had any information (S. C., p. 288). The detectives, on the other hand, testified that petitioner would call them several times a week and inquire as to their progress (S. C., p. 94, ll. 38-42). Once again we are asked to believe unbelievable testimony. The detectives testified that although petitioner called them often they did not tell him anything about their progress (S. C., p. 95, l. 10). Might we suggest that the detectives' testimony was moulded to circumvent the defenses of condonation and connivance?

Petitioner testified that the detectives gave him a report on December 27th with reference to defendant's activities with a bus driver (S. C., p. 42, ll. 20-40 and p. 43, ll. 10-12). His detectives deny having ever told petitioner of the bus driver before May, 1929 (S. C., p. 92, ll. 33-40). Petitioner testified that he paid his detectives $300.00 in installments (S. C., p. 287, ll. 30-40). The de-

tectives testified that he paid it all in the beginning (S. C., p. 92, ll. 25-26 and p. 94, ll. 1-8). Why so many falsehoods even on items which could have been truthfully told without damaging their case?

Petitioner testified that after he had seen his detectives' report referring to the bus driver he found a letter written by defendant to the bus driver (S. C., p. 65, ll. 1-10). He then testified that he does not recall whether he opened it (S. C., p. 65, ll. 1-10). Imagine this "irate" husband or this "spying" husband failing to remember whether he opened a letter from his wife to her alleged paramour.

In this connection we wish to call attention to petitioner's repeated inability to testify consistently. He first testified that the letter in question was received from the bus driver's wife (S. C., p. 64, l. 19); then that the letter was received from the bus driver (S. C., p. 64, ll. 25-27) and, lastly, that it was not received from the bus driver or the bus driver's wife, but instead was sent to the bus driver (S. C., p. 65, l. 1).

Petitioner on direct examination testified that he never saw anything suspicious with reference to his wife until January 3rd (S. C., p. 42, ll. 30-40). On cross-examination he testified that he saw his wife leave the vacant house on December 21, 1928; that on that night she came out of the house and told him she was going to give him grounds for divorce (S. C., p. 72, ll. 1-20).

Petitioner's testimony, contradicted in every material detail by his hired detectives, presents a highly improbable story and it is difficult to see how it could reasonably be believed. On his direct examination, petitioner testified that he saw his wife and the bus driver enter the vacant house through the front after seeing his wife alight on West End Avenue. Admittedly, he could not have seen her if she entered from the rear, but his

detectives testified that she entered from the rear which is from Elmora Avenue. Clearly, then, the petitioner's story is not only not corroborated, but is contradicted by his own hirelings. Petitioner then testified how he calmly walked around the house and subsequently his wife came out of the front of the vacant house and went directly to her home.

On direct examination he said nothing about a bite mark on his wife's cheek or a wrinkled dress and quite obviously he had not told his counsel of it; else it would have been brought out on direct examination (S. C., p. 43, l. 10, to p. 44, l. 39). He testified that he made no comment to his wife about his observations of that evening, in fact, he told nobody, according to his testimony, until he volunteered the information on cross-examination (S. C., p. 58, ll. 8-12, and S. C., p. 64, ll. 1-20). Here again petitioner's testimony fits in with the improbability of his entire story and was obviously thought of for the first time on the witness stand. This incensed husband sees his wife enter a vacant house with a bus driver, looks around the house, sees his wife come in, notices a cheek bite and does not say a word. In fact, he continues living with his wife for five months thereafter without saying a word to her or to any one else. Again, we find it impossible to believe that a human being would act as he states he acted, if the facts he alleges were true. Petitioner's story is emphatically denied by defendant and is not corroborated in any respect.

Petitioner offered no evidence whatsoever to prove that defendant entertained any criminal desire with reference to the bus driver or that the latter manifested any desire for her.

(B) Testimony of the three detectives.

The only evidence offered to prove the alleged adultery on January 3, in addition to the evidence of petitioner, was that offered by detectives, Carey and his two sons, hired by petitioner to obtain evidence. These detectives after watching defendant for over six months could furnish no evidence whatsoever as to any criminal desire between defendant and the bus driver, and could offer no direct evidence of adultery. The only purpose of their testimony was to prove that on January 3, 1929, defendant and the bus driver entered the vacant house. As has already been indicated, their testimony can not possibly be believed.

Roy Carey testified that he was the only one of the three detectives that went out of their car, which was parked on Elmora Avenue, some distance away and back of the rear of the old house (S. C., p. 128, ll. 18-20). His brother, Thomas J. Carey, admitted he could not and did not see defendant enter the back door of the house (S. C., p. 107, ll. 30-32).

Roy and Thomas J. Carey testified that defendant alighted from the bus at *Pennington Street* and went into the path towards the house *from the rear* (S. C., p. 107, ll. 20-33; p. 121, ll. 10-20). The father, Thomas Carey, testified that she alighted from the bus at *West End Avenue* and went into the path *from the front* of the house and toward the rear (S. C., p. 85, ll. 12-30); thus contradicting his fellow detectives on the most vital bit of evidence in their case.

Roy Carey testified that his father, his brother and he trailed defendant to Elizabeth. He testified that she alighted at Elizabeth and waited for this particular bus to return (S. C., p. 120, ll. 20-30). Thomas Carey testified that she traveled on the bus to the end of the line in Newark, remained

on and took the trip back on the same bus (S. C., p. 85, ll. 1-12). Thomas J. Carey testified that she went to Newark and returned on the same bus (S. C., p. 107, ll. 12-16). It should be noted that Roy testified that defendant alighted at Elizabeth and waited for *this* bus to return (S. C., p. 120, ll. 12-38). His father and brother deny this by their testimony that she rode to Newark and back on the same bus.

Roy Carey testified that on December 21, 1928, his father had been in the vacant house (S. C., p. 127, ll. 38-40). Yet his father testified, finding it convenient to do so, that he was never in the vacant house until after January 10 (S. C., p. 97, ll. 10-25).

A reference to several excerpts of the detectives' stories will show that in addition to the numerous inconsistencies, their testimony was highly improbable.

Thomas Carey, the chief detective, testified that from December 27th until May 24th he made no report of any sort to petitioner or his attorney despite the fact that petitioner telephoned him several times a week and despite the fact that he saw petitioner's attorney on numerous occasions (S. C., pp. 94, 95). When being pressed on cross-examination as to the reason for his reluctance in divulging his information he said:

> "Why in these cases—I thought that Mrs. Stevens might see the error of her ways and change" (S. C., p. 95, ll. 35-40).

That from a paid detective whose business was to obtain evidence from which petitioner could obtain a divorce; need any comment be made?

He further testified that the only occasion on which he notified petitioner was that on which he saw defendant dancing at a dance hall (S. C., p. 92, ll. 33-38). He could not explain why he should

report that insignificant incident and at the same time withhold the alleged evidence on which this action is based. Petitioner contradicted Thomas Carey's testimony that he never gave petitioner a report with reference to the bus driver and also contradicted his story that petitioner inquired of him several times a week, in fact he gave the extraordinary testimony that he heard nothing from his detectives from December 27, 1928, until May 24, 1929 (S. C., p. 288, ll. 10-15).

Thomas Carey admitted that he never went into the deserted house, although according to his testimony he had ample opportunities of confronting defendant and the bus driver therein. We cannot conceive of a hired detective viewing a couple enter a vacant house several times without once confronting them in an attempt to obtain real evidence.

Here we have three detectives testifying that on various occasions they saw defendant and a bus driver enter a vacant house. Admittedly, they wanted evidence to adjudge her guilty of adultery. If their testimony were true, is it possible to believe that they would not have "raided" the "party", at least once? The only reason advanced for their failure to do more than look on from a distance is absurd. Thomas Carey testified that he did not know the condition of the interior of the house. His son Roy testified that he had been into the house (S. C., p. 127, ll. 38-40). But even if he had not been into the house, can it possibly be believed that three detectives would fail to seize such an opportunity, if the opportunity really had arisen?

Thomas Carey testified that he went into the house on January 15th. He further testified:

> "Q. Anybody see you go in? A. Yes.
> Q. Did Mrs. Stevens see you go in? A. The firemen saw me. They used to see everybody go in."

If that testimony was true they would have seen defendant go in, if she ever did. Of course, the failure to produce them as witnesses indicates that they never saw her go into the vacant house. How improbable it would be for defendant to go into the vacant house if she wanted to commit adultery, in view of the fact that the firemen would see her. There is certainly nothing secluded about a house under an arc light opposite a fire house and alongside a well traveled path.

Roy Carey testified that on the night of January 3rd, he was the only one who left the automobile and that he hid about 75 feet from the back entrance of the house (S. C., p. 128, ll. 10-20). Assuming, for the moment, that he was telling the truth, it is evident that he was the only one who could possibly have seen defendant enter the back door of the house. His brother admitted he did not see that and could not have seen that for he was in the car.

Roy Carey testified that:

> "Q. Your father, you say, was in the car all this time? A. Yes.
> Q. On January 10th, all you know like on the first occasion she walked up the pathway because you were in the car? A. Yes" (S. C., p. 132, ll. 18-22).

He further testified:

> "Q. Where was your father? A. He was in the car with my brother" (S. C., p. 128, ll. 17-18).

His brother, Thomas J. Carey, testified:

> "Q. You don't know whether she went in the house or not? A. No, I don't. I was in my car in the rear" (S. C., p. 107, ll. 30-32).

Can there be any doubt that it was physically impossible for Thomas Carey and Thomas J.

Carey, his son, to see defendant enter the house; yet the father testified that he saw her enter (S. C., p. 85, l. 30).

May we further point out that Roy testified she entered the house from the rear. This would make it physically impossible for petitioner to see her enter. To meet that situation petitioner testified that she went in through the front (S. C., p. 85, ll. 1-30). The father, seated in the car in the rear along Elmora Avenue could certainly not have seen her enter the pathway from the front on West End Avenue, but that did not prevent him from so testifying.

Roy Carey's story is so highly improbable that it can not be believed. He testified that he saw defendant enter the back door of the vacant house. He then gave this remarkable testimony:

> "Q. They went into that doorway? They might have been standing in that porchway talking. A. I don't know what they were doing.
>
> Q. Weren't you curious about it? A. No, I wasn't.
>
> Q. You did not want to know what they were doing? A. No.
>
> Q. You weren't interested in what they were doing? A. I wasn't interested" (S. C., p. 130, ll. 10-20).

He further testified:

> "Q. Although you had to stand there in the cold with your overcoat and your gloves on you made no effort, though there was an arc light there so you could see where you were going, to go up to the back porch and see what was going on? A. No (S. C., p. 131, ll. 30-37).
>
> Q. They might have stood right there in the doorway? A. They might have.
>
> Q. You made no effort to find out what they really did? A. No.

Q. You weren't interested? A. I wasn't.
Q. You have been in this game how long?
A. A few years" (S. C., p. 132, ll. 12-32).

A hired detective, being paid to obtain evidence to prove defendant committed adultery "wasn't interested" in seeing whether defendant went into the house or merely stood in the doorway, and "wasn't interested" in what was going on.

Roy Carey furnished no explanation why two men should remain in the car at a distance where they could see nothing, and only one advanced to within 75 feet from the house (S. C., p. 130, ll. 30-40).

We have reviewed in detail the evidence presented on behalf of petitioner to prove that defendant committed adultery on January 3, 1929. We find it difficult to understand how, from the bundle of falsehoods, it is possible to determine which testimony, if any, should be given credence. Without relying upon the principles of law applicable or on the testimony presented on behalf of defendant (which will be reviewed later) it is apparent that the Master erred in his conclusion that defendant committed adultery on January 3, 1929.

Reference to pertinent principles of law, however, renders it even more evident that the Master's finding that defendant committed adultery on January 3, 1929, is unwarranted in law.

(1) The law of this State is well settled that the evidence must be very clear and satisfactory to justify a finding that adultery has been committed.

> "To justify a decree for divorce on the ground of adultery, the evidence of the defendant's guilt must be clear and satisfactory. A full and explicit denial of the charge by

> the defendant and her alleged *particips criminis* should be regarded as decisive in a case of doubt. Reed *v.* Reed, 17 N. J. Eq. 101." Cartan *v.* Cartan, 93 N. J. Eq. 175 (E. & A. 1921).
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> "Under the settled rule of our court, the burden is upon the petitioner to prove the guilt of defendant beyond a reasonable doubt, if he is to prevail against her in his suit. Gray *v.* Gray, 100 N. J. Eq. 71 (Ch. 1926)."

In the leading case of *Berckman* v. *Berckman,* 17 N. J. Eq. 453 (E. & A. 1861) (a suit for divorce on the ground of adultery) our court of last resort said at page 454:

> "The charge made by the complainant, if true, is known to our law as a crime; consequently this prosecution partakes strongly of the nature of a criminal proceeding so much so as to place the complainant under the necessity, not only of placing a decided preponderance of testimony in favor of the charge, but of *proving* it to the satisfaction of this court, beyond a reasonable doubt."

The Court held (p. 459):

> "I feel constrained to say that the evidence is not of that safe, satisfactory and reliable kind, which is necessary to justify me in condemning this woman to perpetual infamy and disgrace."

Could any reasonable mind say that the evidence presented by petitioner is of that "safe, satisfactory and reliable kind, necessary to justify this court in condemning defendant to perpetual infamy and disgrace"?

The doctrine of the *Berckman* case has been repeatedly approved by our highest court.

> *Marchese* v. *Marchese,* 98 N. J. Eq. 379, 129 Atl. 131 (E. & A. 1925).

Naylor v. *Naylor,* 6 N. J. A. R. 1375, 143 Atl. 377 (E. & A. 1928).

(2) The testimony presented on behalf of petitioner was furnished solely by petitioner and detectives hired by him.

It is, of course, well settled that petitioner's uncorroborated testimony, even if it were credible, would be insufficient to warrant a decree of divorce.

In the case of *Garcin* v. *Garcin,* 62 N. J. Eq. 189, 205 (Ch. 1901) the court said:

> "Some courts, particularly in New Jersey, have an inflexible rule never to grant a divorce on the mere uncorroborated testimony of a party. 2 Bish. Mar. & D, Par. 284. The accuracy of this statement is apparent in the following line of cases: Woodworth *v.* Woodworth, 6 C. E. Gr. 251; Palmer *v.* Palmer, 7 C. E. Gr. 88; Tate *v.* Tate, 11 C. E. Gr. 55; Shafto *v.* Shafto, 1 Stew. Eq. 34; Doughty *v.* Doughty, 5 Stew. Eq. 32; Sandford *v.* Sandford, 5 Stew. Eq. 420; Franz *v.* Franz, 5 Stew. Eq. 483; McShane *v.* McShane, 18 Stew. Eq. 341; Herold *v.* Herold, 2 Dick. Ch. Rep. 210; Weigel *v.* Weigel, 15 Dick. Ch. Rep. 322; Moak *v.* Moak, 48 Atl. Rep. 394."

In our case, not only was petitioner's incredible story not corroborated, but was contradicted by his detectives.

And the law is well settled in this state that the testimony of detectives should be closely scrutinized and should not be relied upon unless it is corroborated.

In the case of *Sargent* v. *Sargent,* 114 Atl. 428 (Ch. 1920) affirmed in 114 Atl. 439 (E. & A. 1921) the court said:

> "I think this case a striking example of the reason for the rule that, while the testimony of detectives, paid spies and household

> servants is competent, it should be scrutinized carefully, and should not be relied on unless it is corroborated. Cane *v.* Cane, 39 N. J. Eq. 148-150; Hurtzig *v.* Hurtzig, 44 N. J. Eq. 329, 334; 15 Atl. 537; McGrail *v.* McGrail, 48 N. J. Eq. 532, 22 Atl. 582, reversed 49 N. J. Eq. 348; 25 Atl. 963; Brown *v.* Brown, 63 N. J. Eq. 348, 50 Atl. 608; Farrow *v.* Farrow, 70 N. J. Eq. 777, 60 Atl. 1103; Slack *v.* Slack, 89 N. J. Eq. 589-594, 105 Atl. 894."

The same doctrine is stated in *Rupp* v. *Rupp*, 97 N. J. Eq. 201 (Ch. 1924).

In our case the detectives contradicted each other and petitioner on the essential facts and even when taken separately their stories were highly improbable. If Roy Carey is believed, then he is the only one who could have seen defendant enter the house. His testimony would therefore be entirely uncorroborated. If we believe petitioner's testimony that he saw defendant enter through the front from West End Avenue, then the detectives could not possibly have seen her enter the house and accordingly his testimony would be uncorroborated. How, under the requirements of our law that the proof be very clear and satisfactory and under the rule that petitioner's and detectives' testimony must be credibly corroborated, can the Master's conclusion be justified?

Thus far, we have refrained from referring to the denials of defendant and the bus driver and to the circumstances corroborating their testimony. We have shown that even without considering the testimony presented on behalf of defendant, the Master's finding cannot be justified.

(3) It is well established that a divorce will never be granted on proof as contradictory and unreliable as that presented on behalf of petitioner.

In *Allen* v. *Williams,* 33 N. J. E. 583, 584 (E. & A. 1881) the court said:

> "Upon a careful review of the case in this court, we have concluded that the decree should be affirmed, but we place this result on the ground that the principal testimony on each side is so untrustworthy, as well on account of the bad character of the witnesses as of the great improbability of their narrations, that it is not sufficient for the purpose of founding a conclusion of the guilt of either the husband or the wife of the offense charged."

It is obvious that, under any view of the present case, the testimony presented on behalf of petitioner was highly unsatisfactory and could not be the basis of a finding that defendant committed adultery.

(4) All of the testimony on behalf of petitioner was directed towards proving that defendant entered the vacant house. No direct evidence of adultery is offered and accordingly petitioner must rely upon the doctrine that adultery may be proven circumstantially. But the law of New Jersey is established that before adultery can be inferred from circumstantial evidence petitioner must prove by clear and corroborated evidence (1) an opportunity, plus (2) a criminal desire. *Grundy* v. *Grundy,* 92 N. J. Eq. 687 (E. & A. 1921.)

All of petitioner's evidence was offered to prove "opportunity." As has already been shown, his proof in that respect fails completely.

Furthermore, there is absolutely no proof to show a criminal desire between defendant and the bus driver. There is absolutely no evidence in the case to show that defendant had any affection for the bus driver, or that he harbored any desire for her. The petitioner and his three de-

tectives watched defendant for over six months; not once did they ever see defendant or the bus driver manifest any physical attraction for each other. The detectives testified that they saw defendant talk to him on the bus. That is as far as their evidence goes. During the six month period there were no letters written. Petitioner did testify that he had a letter written by defendant to the bus driver. But:

> "no evidence of what he saw having been offered, the inference, of course, is that he saw nothing wrong." *Sargent* v. *Sargent,* 114 Atl. 428, affirmed in 114 Atl. 439 (N. J. E. & A. 1921).

Petitioner will undoubtedly contend that his testimony as to some of defendant's alleged declarations is some evidence of desire. This testimony was entirely uncorroborated and highly improbable. Our court has uniformly held that to sustain a petition for divorce, where adultery is sought to be inferred, the proof as to "desire" must be corroborated as well as the proof of "opportunity."

In *Van Dyke* v. *Van Dyke,* 99 N. J. E. 896 (E. & A. 1926) the court said:

> "There was no proof of adultery produced by the petitioner, and there was no sufficient corroboration of any acts sufficient for the court to say there was any criminal desire on the part of the defendant although numerous opportunities existed to gratify such desire did it exist."

There are numerous decisions of our courts holding that, in a situation such as ours, adultery would not be inferred even if "opportunity" had been proven by petitioner.

In *Johnson* v. *Johnson,* 99 N. J. Eq. 190 (Ch. 1925) the court refused to grant a petition for divorce in the absence of any substantial evidence indicating a criminal desire. The language of the court is so pertinent to our case that we take the liberty of quoting at length.

> "There was no evidence of any expressions of illicit affections, no holding of hands, no embraces, no kisses, no improper or indecent personal conduct, and no love letters at any time during the acquaintance of this man and woman. When they were found in the hallway their persons were not in contact, the one with the other, no articles of clothing were disarranged—in fact, even the woman's hair and hat were not disturbed. The utmost that the paid operative could say against their conduct was that they walked arm in arm and were laughing and talking with great apparent animation and amusement coming to and return from the boat.
>
> Of course, this case falls into the category of those where the petitioner relies upon circumstantial evidence to prove his charge. In this he has failed. The opportunity to commit adultery on the morning of the 23d of July was ample, the defendant and Olsan having been alone in the hallway for a period of twenty or twenty-five minutes; but the proofs are utterly lacking to convince any reasonable and impartial man of any criminal desire. That the woman was shockingly indiscreet in entering the hallway of the boarding house on a night in the middle of summer, when she could not even advance the excuse of inclemency of weather, is apparent. That her conduct was enough to arouse suspicion in the bosom of any husband is equally certain. But indiscretion is not punishable, and courts of justice do not act upon suspicion. For what purpose she entered this building I do not know, but it is certainly not proved that she accomplished her purpose if that purpose was to commit adultery.

> From the time of the establishment of this court its members and the members of the court of errors and appeals have said and reiterated that adultery is a serious charge, to be proved only by strong, clear and cogent evidence."

In *Torrens* v. *Torrens,* 1 N. J. A. R. 142, 118 Atl. 332, affirmed in 94 N. J. Eq. 481 (E. & A. 1922), the court held that adultery would not be inferred from the fact that a man lived in defendant's apartment, where he testified that he merely boarded there.

In *Bradfield* v. *Bradfield,* 100 N. J. Eq. 546 (E. & A. 1926) on evidence infinitely more compelling than that presented by petitioner, a divorce was not granted.

In *Jacoby* v. *Jacoby,* 6 N. J. Misc. 86, 140 Atl. 454 (Ch. 1928) the court in no uncertain terms condemned the type of testimony offered by petitioner in this case and refused to grant a divorce.

In *Lee* v. *Lee,* 77 N. J. Eq. 91, 93 (Ch. 1910) the court dismissed a petition for divorce on testimony far more convincing, credible and persuasive than that offered on behalf of petitioner.

> "On behalf of the petitioner, there is produced his own evidence and that of his brother and a cousin, and of a private detective. With respect to each of these instances, some of these witnesses testify that they saw the defendant with a man, unknown to them, enter the place in question, at night (or, in one instance, in the afternoon), and remain there for a considerable period of time, when they saw them emerge, or in one instance, I think, they failed to see them come out at all. They swear that these were hotels or houses of bad repute; and the man accompanying her, went to some room within the place mentioned and there committed adultery. No witness, other than those just mentioned, corroborates this testimony. *There*

> *was no confronting of the defendant upon any of these occasions.* No person from any of these places is produced to testify that the woman was at any of the places mentioned at the times named. There is no evidence, except inference, that the defendant and the unknown man entered any bedroom or other place (apart from casual inspection) where the act of adultery could reasonably be supposed to have been committed. But, laying aside these omissions of proof, I was, and still am, unwilling to find a defendant guilty of adultery under all the circumstances disclosed with respect to these charges in this case."

May we call the court's attention that as in the *Lee* case petitioner and his detectives never confronted defendant on the occasions they profess to have seen her enter the house.

In *Cooper* v. *Cooper,* 82 N. J. Eq. 581 (Ch. 1913) affirmed in 82 N. J. Eq. 660 (E. & A. 1914) the Court said:

> "There is no testimony indicating that she was amorously inclined toward the co-respondent and disposed to commit the crime charged against her. While the two had many opportunities to gratify the lustful desire, yet there is no evidence manifesting that the defendant had such desires towards Bumstead, the co-respondent. There is no evidence of lust or of lewdness on the part of the defendant. She is not shown to be depraved. She was a flirt and a fool, but not a criminal."

See also *McKenna* v. *McKenna,* 84 N. J. Eq. 190 (E. & A. 1914).

Can it be said that, even if defendant had gone into the house as petitioner attempted to prove, she was any more than indiscreet? Admittedly, indiscretion, no matter how gross, is not sufficient to sustain a charge of adultery. *Grundy* v. *Grundy,* 92 N. J. Eq. 687, (E. & A. 1921).

(5) Lastly, we wish to refer to the established doctrine of our courts that in an action for divorce on the ground of adultery the petition should be dismissed unless the facts proven are such that they cannot be reconciled with the innocence of defendant.

In *Frost* v. *Frost*, 85 N. J. E. 571, 576 (E. & A. 1915), the court said:

> "The facts proven must be such as cannot be reconciled with probability and the innocence of the parties."

In *Sargent* v. *Sargent*, 114 Atl. 428 (Ch. 1920); 114 Atl. 439 (E. & A. 1921), the Court said:

> "If the circumstances, taken both singly and together, admit of two interpretations, that interpretation which favors innocence should be adopted (*Berckmans* v. *Berckmans*, 17 N. J. Eq. 453; *Culver* v. *Culver*, 38 N. J. Eq. 163; *Hurtzig* v. *Hurtzig*, 44 N. J. Eq. 329, 15 Atl. 537; *Luderitz* v. *Luderitz*, 88 N. J. Eq. 103, 102 Atl. 661), and this rule our courts have followed in determining the evidence insufficient to establish adultery in many cases. *Osborn* v. *Osborn*, 44 N. J. Eq. 257, 9 Atl. 698, 10 Atl. 107, 14 Atl. 217; *Brown* v. *Brown*, 63 N. J. Eq.348, 50 Atl. 608; *Farrow* v. *Farrow*, 70 N. J. Eq. 777, 60 Atl. 1103; *Letts* v. *Letts*, 79 N. J. Eq. 630, 82 Atl. 845, *Ann. Cas.* 1913A, 1236; *Earl* v. *Earl*, 81 N. J. Eq. 444, 86 Atl. 940; *Cooper* v. *Cooper*, 82 N. J. Eq. 581, 91 Atl. 731; *Id.*, 82 N. J. Eq. 660, 91 Atl. 732; *McKenna* v. *McKenna*, 84 N. J. Eq. 190, 96 Atl. 890."

We have shown that even without considering the emphatic denials of defendant and the bus driver and the circumstances corroborating their denials, the Master's findings that defendant committed adultery was entirely unjustified. Considering now the testimony presented on behalf of

defendant, it becomes even more evident that the Master's conclusion was unwarranted in law.

Defendant testified that she was never in the vacant house (S. C., p. 169, ll. 9-10). She testified that she never had any improper relations with the bus driver and was in no way intimate with him (S. C., p. 162, ll. 20-35). The bus driver corroborated her in every detail, testifying that he had no more than a casual acquaintance with defendant (S. C., p. 239, ll. 1-31).

These denials by defendant and the alleged *particeps criminis* must control in our case.

> "A full and explicit denial of the charge by the defendant and her alleged *particeps criminis* should be regarded as decisive in a case of doubt. *Reed* v. *Reed,* 17 N. J. Eq. 101;" *Cartan* v. *Cartan,* 93 N. J. Eq. 175 (E. & A. 1921).

Defendant not only denied any wrongdoing but amply explained her casual acquaintanceship with the bus driver. Her neighbor, Mrs. Peterson, was going to Elizabeth and defendant with her baby went along to keep her company (S. C., p. 163, ll. 1-10). This is corroborated by Mrs. Peterson (S. C., p. 228, ll. 25-28). At the end of the journey there was a six-minute stop. While waiting for the return trip the bus driver played with her baby and told defendant about his three children. On her trips to Newark, she occasionally came on the same bus and naturally enough inquired about his babies. On one occasion she inquired as to the babies and he told her that his baby was sick and that his money was not holding out. She offered to help him if she could and loaned him $50.00, which he promised to repay shortly. Defendant was accustomed to alight from the bus at Pennington Street, do some shopping and then proceed home. The shortest route home

was across the well traveled path from Elmora Avenue to West End Avenue on which her home was located. The path led past a vacant house. The path was traveled by all of the people in the vicinity and was of the type generally seen throughout our cities and towns. There was an arc light nearby and the path was clearly visible from the streets.

The testimony of petitioner himself adequately displays that there was nothing improper or unusual in using the path. He testified as follows:

> "Q. Isn't it true Mr. Stevens that alongside of this old house there is a corner lot? A. Yes.
>
> Q. That corner lot is vacant with nothing on it back in December excepting some signs? A. And some bushes.
>
> Q. Isn't it true that there was a footpath across that lot running around the side of the house to cut off the corner? A. Yes.
>
> Q. That pedestrians used right along? A. Yes.
>
> Q. You used it yourself? A. Yes.
>
> Q. Your wife used it right along? A. Sometimes." (S. C., p. 73, ll. 10-22.)

The pictures (Exs. P. 1-4, S. C., pp. 305-311) show foliage and leaves and petitioner's testimony refers to bushes. Of course, in mid-winter (January) there was little foliage surrounding the house.

There was a bus station at the intersection of West End Avenue and Elmora Avenue and the buses stopped for several minutes before the return trip. The drivers used the lot, in the rear of the vacant house, as a lavatory (S. C., p. 238, ll. 12-31). On one occasion while defendant was walking along the path towards home, the bus driver came from the lot in the rear of the house and said "hello". She replied and spoke with him a few minutes and asked when she could ex-

pect the return of some of her money. He told her he would pay some of it soon. On January 3rd, defendant happened to board a bus driven by the co-respondent bus driver on her way home from Newark. He told her that he would see her along the path and explain why he had been unable to pay her. She saw him along the path and spoke for a few minutes and then proceeded home. Counsel for petitioner repeatedly asked why she did not receive the explanation on the bus. The satisfactory explanation given by both defendant and the bus driver, and the very natural reason, was that she did not wish to be seen talking about that on the bus, in the presence of other passengers.

It is from this meeting that the detectives and petitioner have, by their imagination, to state it kindly, attempted to weave an act of adultery. If defendant wished to falsify her story she would have denied having talked with the bus driver along the path. But she truthfully admitted that she did talk to him there.

In practically every case where petitioner attempts to prove adultery by circumstantial evidence, the defendant can do little more than deny the criminal act. Therefore, the improbabilities of the petitioner's conclusion is of utmost importance in support of defendant's denial. Consider how improbable petitioner's story is and contrast that with the probability that defendant's testimony was true. Petitioner would have us believe that defendant by appointment arranged to commit adultery with the bus driver in this vacant house on January 3rd. It must be remembered that the interior of the house was torn up and the windows were all out and it was mid-winter. Certainly that would be an unusual place to choose in mid-winter. Petitioner would have us believe that defendant arranged to meet the bus driver to com-

mit adultery, though she hardly knew him, had no affection for him, nor had he evidenced any for her. Even prostitutes do not pursue their profession in such animal fashion.

The testimony is devoid of even the slightest evidence of affection between defendant and this bus driver, and it is undisputed that after January, defendant never saw him again until shortly before the hearings (S. C., p. 169, ll. 30-40).

Petitioner produced the most extraordinary witnesses in an attempt to prove that defendant admitted that she was friendly with the bus driver. And Marslow was offered for that purpose by petitioner. On direct examination, puppet like, she answered leading questions, over objection, as petitioner wanted her to (S. C., pp. 292-295). On cross-examination she told the truth and testified in accordance with the testimony of defendant. May we quote from her testimony on cross-examination?

> "Q. She didn't tell you anything wrong was done? A. She said there wan't nothing wrong. She told us about the driver. She said, 'My husband is a dirty sneak. He wants to know where I am going.' 'I know a jitney driver. He is a poor man. He sees I am going out dressed nice. He wanted I should lend him a couple of dollars so he could buy medicine for his children and coal. I lent him $50.' I asked her, 'Mrs. Stevens, did you give your husband's $50 to the bus driver?' She said 'No, my parents are sending me money.' This was the conversation and she left because we left too.
>
> Q. Did she say anything about having done anything wrong with the bus driver? A. No" (S. C., p. 299, ll. 3-21).

Similarly, Margaret Foster, followed as she was lead (S. C., p. 299-301), but changed her testimony on cross-examination to substantiate de-

fendant's testimony. She testified on cross-examination as follows:

> "Q. Did she say whether or not she had done wrong with the bus driver? A. No, she didn't say, only loaning him the money.
> Q. Did she say she went in the old house? A. She didn't say she went in.
> Q. She said distinctly to you that she had not done anything wrong? A. Yes" (S. C., p. 303, ll. 32).

Petitioner testified that on January 3rd, defendant came home with bite marks on her face, a wrinkled dress and wet underclothing (S. C., p. 76, l. 40 to p. 77, l. 15). This testimony is entirely uncorroborated and is denied by defendant and, accordingly, is of little weight here. But it is so obviously false that we wish to comment on it. It is significant to note that this testimony was not brought out on direct examination, but was volunteered on cross-examination. Petitioner testified that he never told his counsel or any one else about his observations of that evening (S. C., p. 64, ll. 1-16; p. 288, l. 34; p. 289, l. 27). If it were true, can there be any doubt that he would have mentioned it before. He testified that he said nothing to his wife after seeing all this alleged evidence (S. C., p. 64, ll. 1-16). It should be noted that he testified to seeing this on the night he said he saw defendant enter the vacant house with the bus driver. In fact, he testified that he continued to live with his wife and said nothing (S. C., p. 65, ll. 12-13). And to cap all this absurd testimony, he testified that he left home because he saw his wife "petting" in the park on May 25th. How can it be believed that this man who would desert his wife because he saw her "petting" would say nothing and continue living with her for five months after seeing her enter a vacant house with another man and come home with cheek

bites and wet underthings? We have previously pointed out that all of petitioner's testimony with reference to January 3, 1929, was incredible and improbable and feel no necessity for continuing with further discussion pertaining to it.

As contrasted with the improbability and proven incredibility of the testimony presented on behalf of the petitioner, we have defendant's reasonable explanation as to how she happened to be talking to the bus driver. That $50 was loaned to the bus driver is corroborated by the testimony of the bus driver's wife (S. C., p. 282, ll. 1-15). The testimony of defendant and the bus driver was straight-forward and in line with the probabilities.

Assuming that with the knowledge defendant now has, she realizes that talking to a bus driver near a path might be considered indiscreet, it certainly is not criminal. It would be disastrous to hold that a married woman dare not speak with a strange man except in the presence of her husband.

Admittedly, the marriage in our case was not a happy one. As the Master said:

> "The petitioner was rather cold, indifferent, neglectful, morose, and of a totally different character and makeup from the defendant, she being optimistic, generous, full of life, and desirious of companionship and affection, which feelings were not reciprocated by the petitioner. The result was inevitable, that there should be constant friction between the parties, and the mutual love that should exist in the marital relationship was soon shattered."

It might be noted in passing that the Master in reaching the above conclusion must have found that petitioner was not truthful when he testified that he was amorously inclined towards his wife

but that she repulsed his advances (S. C., p. 61, ll. 11-12).

But if every unhappy marriage was the basis of a divorce, was the basis of condemning the woman to eternal infamy, and justified proceedings such as this on evidence such as that presented on behalf of petitioner, it would spell the disaster of our family system.

If this court believes that:

> "(1) The evidence is of that safe, satisfactory and reliable kind, which is necessary to justify in condemning the woman to perpetual infamy and disgrace." *Berckman* v. *Berckman,* 17 N. J. Eq. 453 (E. & A. 1864);

that the evidence leaves its guarded judgment free from:

> "doubts as to whether the charge be proved or not." *Berckman* v. *Berckman,* 17 N. J. Eq. 453, 454 (E. & A. 1864);

and lastly that the facts as proven:

> "cannot be reconciled with probability and the innocence of the parties." *Frost* v. *Frost,* 85 N. J. Eq. 577, 576 (E. & A. 1916),

the finding of the Master should be sustained; otherwise it is respectfully submitted that the Master erred in his conclusion that defendant committed adultery on January 3, 1929.

POINT II.

The Master erred in his conclusion that defendant committed adultery on May 25, 1929.

The petition alleged that defendant committed adultery with Frank Muszar at Warinanco Park, Elizabeth, on May 25, 1929. In support of this allegation petitioner and one of his detectives

testified that they saw defendant and Muszar enter Warinanco Park, walk about 150 yards into the park and sit on a park bench. Petitioner testified that he watched defendant and Muszar for half an hour; that he was about 40 to 50 feet away straight before them and that they appeared to be embracing (S. C. p. 45, l. 39; p. 46, l. 13). The detective testified he was with Stevens, but was 250 feet away from where defendant was seated (S. C. p. 113, l. 20). Petitioner testified that he saw no act of adultery committed, although he watched them from the moment they entered and for one half hour thereafter (S. C. p. 70, ll. 28-39). He testified that he then left the park. The detective testified that he remained after defendant and Muszar left, followed them, saw them part and followed defendant home. He also testified that he saw no act of adultery committed (S. C. p. 114, l. 1; p. 115, l. 11).

That constituted the testimony presented on behalf of petitioner. From that testimony the Master found that defendant committed adultery. How could the act of adultery have been committed even if every word testified to by petitioner and his detective were true? Both testified that they saw no act of adultery, although defendant was carefully watched from her entry into the park until her arrival home.

Is it not obvious that if an act of adultery was committed or if there was an attempt to commit adultery or even if the parties were in a position in which adultery could have been committed, the detective and petitioner would necessarily have seen and would have testified to that fact? Petitioner and detective were out seeking evidence to prove defendant committed adultery; could a conclusion be more obvious than that if defendant and Muszar had acted at all as though

adultery was being committed, petitioner and his detective would not have hesitated to so testify. On the contrary, the testimony of petitioner and detective conclusively shows that even if their testimony was true, the worst that occurred was some "petting."

Petitioner testified:

> "Q. You watched them for some time? A. They were there half an hour."

He continued:

> "Q. Which side of him was she on? A. She was to the right.
>
> Q. Were you to his right? A. No, I was facing them or nearly facing them.
>
> Q. She was to his right all the time that you were watching him, is that right? A. Yes" (S. C., p. 76, ll. 1-5).

The detective testified as follows:

> "Q. Were they sitting next to each other or in what position? A. Embracing each other (S. C., p. 113, ll. 29-30).
>
> Q. No act of adultery took place? A. I could not see any" (S. C., p. 115, ll. 10-11).

The detective testified that he watched them leave the park and go to their respective homes. He testified:

> "I saw them retrace their steps and go down the street next to Canton Street, then turn over the next street, I think it is Berwick Street. Then they went over Berwick Street to Canton Street. This man with the mustache, panama hat and light suit walked over to Jersey Avenue and Mrs. Stevens went up Canton Street to her home" (S. C., p. 111, ll. 19-26).

Even if we were to assume that "desire" was proved; that "opportunity" was established; that

the testimony of petitioner and his detective was credible and that no rules of law required that proof be clear, corroborated and inconsistent with innocence, we submit that the proofs in this case clearly established that no act of adultery was, in fact, committed. Under these circumstances, it is, of course, clear that the finding that defendant committed adultery was erroneous.

See *Bradfield* v. *Bradfield,* 100 N. J. Eq. 546 (E. & A. 1926).

Defendant admitted walking through the park with Muszar, but denies that he sat on the bench; that he had his arms around her or otherwise manifested any physical desire for her. She denied having ever manifested any physical desire for him or having ever committed adultery (S. C., p. 173). She testified that she saw her husband watching her in the park (S. C., p. 173, ll. 12-14) and petitioner admitted that on defendant's return home that evening she told him that she saw him following her (S. C., p. 47, ll. 13-17). How unbelievable it is to think that defendant went into the park and knowing that she was in full view of her husband, committed adultery. Several witnesses produced by petitioner testified that defendant had told them that there was nothing wrong done in the park (S. C., p. 299, ll. 1-4).

Petitioner testified that he could see the light on defendant's face at a distance of 50 yards (S. C., p. 69, ll. 19-20). He testified that there was no shrubbery around the bench (S. C., p. 68, ll. 17-20), and that there was a macadamized road near the bench on which they were seated (S. C., p. 68, ll. 1-7). The detective testified that the night was clear and that he could see a distance of 250 feet (S. C., p. 113, ll. 27-29). He testified that there was a house 250 feet away (S. C., p. 111, ll. 33-35).

From all of the foregoing testimony, it is apparent that this was not a secluded part of the park. How improbable it would have been for defendant to choose that as a place to commit adultery with so many more secluded parts of the park available. How much more probable is defendant's testimony that she was lonesome and merely took a walk. As the Master said in his conclusions:

> "Petitioner was rather cold, indifferent, neglectful, morose, and of a totally different character and makeup from the defendant, she being optimistic, generous, full of life and desirous of companionship and affection, which feelings were not reciprocated by the petitioner" (S. C., p. 322).

Defendant admittedly was lonesome; but that is not evidence of criminal desire. She walked through a park with a man other than her husband; but that is not adultery. If it were then few marriage vows would be deemed unsullied.

Admittedly, defendant when she walked through the park knew that her husband was watching her (S. C., p. 47, ll. 13-17). Under the circumstances possibly it was indiscreet to walk through the park, but indiscretion is not adultery.

As has already been stated, proof of adultery must be very clear and convincing. The facts proven must be such as cannot be reconciled with innocence.

See *Frost* v. *Frost,* 85 N. J. Eq. 571, 576 (E. & A. 1915).

In *Sargent* v. *Sargent,* 114 Atl. 428 (Ch. 1920) affirmed in 114 Atl. 439 (N. J. E. & A. 1921), the court said:

> "If the circumstances, taken both singly and together, admit of two interpretations, that interpretation which favors innocence should be adopted (*Berckmans* v. *Berckmans,*

17 N. J. Eq. 453; *Culver* v. *Culver,* 38 N. J. Eq. 163; *Hurtzig* v. *Hurtzig,* 44 N. J. Eq. 329, 15 Atl. 537; *Luderitz* v. *Luderitz,* 88 N. J. Eq. 103, 102 Atl. 661), and this rule our courts have followed in determining the evidence insufficient to establish adultery in many cases. *Osborn* v. *Osborn,* 44 N. J. Eq. 257, 9 Atl. 698, 10 Atl. 107, 14 Atl. 217; *Brown* v. *Brown,* 63 N. J. Eq. 348, 50 Atl. 608; *Farrow* v. *Farrow,* 70 N. J. Eq. 777, 60 Atl. 1103; *Letts* v. *Letts,* 79 N. J. Eq. 630, 82 Atl. 845, *Ann. Cas.* 1913A, 1236; *Earl* v. *Earl,* 81 N. J. Eq. 444, 86 Atl. 940; *Cooper* v. *Cooper,* 82 N. J. Eq. 581, 91 Atl. 731; *Id.,* 82 N. J. Eq. 660, 91 Atl. 732; *McKenna* v. *McKenna,* 84 N. J. Eq. 190, 96 Atl. 890."

As has been stated under Point I of the brief, the testimony of petitioner or his detectives is insufficient unless credibly corroborated. All of the discussion under Point I is pertinent here to show how unreliable and incredible petitioner's or his detective's testimony is. It is difficult to believe that petitioner saw another man embrace his wife for half an hour, while he calmly watched. It is even more difficult to believe that he left home because he saw his wife embraced by another man when on his own admission he lived with her for five months after discovering, according to his testimony, much more damaging evidence on January 3rd. The thought is compelling that if defendant had done any improper act in the park, petitioner and his detective would have confronted her. If he were an irate husband, he certainly would have spoken to her; if he was a freedom-seeking husband, he would have grasped at the opportunity of obtaining real evidence, if there was any to be obtained.

The State of Case is devoid of any evidence to show that defendant and Muszar ever manifested any physical attraction for each other, besides that offered to prove the charge of adultery on

May 25th. Petitioner's and the detective's testimony as to that day is incredible, but even if it were credible, it fails to furnish sufficient evidence of desire and negatives all opportunity. From the evidence presented could any court say that the

> "evidence is of that safe, satisfactory and reliable kind, which is necessary to justify it in condemning this woman to perpetual infamy and disgrace?" *Berckmans* v. *Berckmans,* 17 N. J. Eq. 453 (E. & A. 1864).

And could any court say that the facts as proven

> "cannot be reconciled with probability and the innocence of the parties?" *Frost* v. *Frost,* 85 N. J. Eq. 571, 576 (E. & A. 1916.)

Lastly, could any court say that the facts as proven leaves the guarded judgment of the Court free from

> "doubts as to whether the charge be proved or not?" *Berckmans* v. *Berckmans,* 17 N. J. Eq. 453, 454 (E. & A. 1864.)

Of course, the obvious answer to all of the foregoing queries is "No", and necessarily calls for the conclusion that the charge that defendant committed adultery on May 24th is not proved.

It is respectfully submitted that the Master erred in his conclusion that defendant committed adultery on May 25th, 1929.

POINT III.

The Master erred in his conclusion that the defenses of connivance and consent were not established by the evidence.

Our courts have firmly established the doctrine that:—

> "If a husband sees what a reasonable man could not see without alarm he is called upon to exercise a peculiar vigilance and care over her, and if he sees what a reasonable man could not permit and makes no effort to avert the danger he must be supposed to see and mean the result." *Atha* v. *Atha,* 94 N. J. Eq. 92, 702 (Ch. 1923), affirmed in 95 N. J. Eq. 275, (E. & A. 1923).

And it is, of course, settled that if he fails to act when he sees what a reasonable man could not see without alarm, and adultery ensues, his petition for divorce will not be allowed.

In *Delaney* v. *Delaney,* 71 N. J. E. 246, 252 (E. & A. 1906) the Court said:

> "By the twenty-second section of our Divorce act (Revision of 1902, p. 509), it is enacted:
>
> " 'If it appear to the court that the adultery complained of shall have been occasioned by the collusion of the parties and done with the intent to procure a divorce, or that the complainant was consenting thereto, then no divorce shall be decreed.'
>
> "This language, 'that the complainant was consenting thereto,' is quite as broad and should be given the same effect as the common law rule of connivance in defeating a divorce.
>
> "It is not necessary to find words or statements of the petitioner indicating connivance or consent. If his conduct indicates an in-

> tent, or even a willingness, that the act of adultery may take place, or even culpable negligence in not preventing it, the maxim *volenti non fit injuria* applies, and the decree will be denied.
>
> "If the conduct of the petitioner was such as to impute to him a desire that his wife should drift into lewdness, and he, with the belief that she had a tendency in that direction, did nothing to guard her against it, or to protect her from it, then connivance and consent may be inferred."

In *Heddon* v. *Hedden,* 21 N. J. E. 61, 74 (ch. 870) the Court said:

> "It is sufficient to show that he knew of the visits of his wife to this establishment and of the character and intention of Clark. If he knew this, his standing by without interfering, and permitting it to go on, is sufficient acquiescence and connivance to deprive him of his right to divorce. It is, in law, consent."

It is submitted that even if petitioner's testimony were truthful and that defendant had committed adultery the foregoing rule of law would require dismissal of his petition.

Petitioner testified that he heard of the bus driver as early as November 25, 1928 (S. C., p. 61, l. 30); that he noticed her coming out of the vacant house on December 21, 1928; and that, at that time, she told him that she was going to give him grounds for divorce (S. C., p. 72, ll. 1-22). To use the language of our cases, what could be a clearer example of "seeing what a reasonable man could not see without alarm"; yet petitioner testified that he said and did nothing except send detectives out to procure evidence against her. Petitioner testified that he saw defendant enter the vacant house with the bus driver on January

3rd; that he walked around the house and then went quietly home. He then gave the remarkable testimony that when she came he said nothing to her, and for five months thereafter lived with her and still said nothing to her. His testimony was as follows:

> "Q. Did you say anything about that to her? A. No.
>
> Q. How soon after that did you say anything to her about it? A. I didn't" (S. C., p. 64, ll 8-13).

He, accordng to his testimony, knew probably as early as November, 1928, and certainly as early as December, 1928, that his wife was likely to stray; yet he did nothing and said nothing to warn her or withdraw her from the influence of her alleged paramour. For six months (*i. e.* until May 25th) he lived with her, presumably as man and wife and never mentioned to her the alleged indiscretions. Instead of attempting to aid her, he hired detectives to watch her while he lived with her. He was called upon by his duty as husband to exercise vigilance and care; but instead he maintained an attitude of "all's well", while his detectives were attempting to obtain evidence. Can there be any doubt that petitioner not only did not want to protect his wife but wanted to rid himself of her and pursued what he deemed the most effective method.

Petitioner testified that as early as December, 1928, he commenced opening her mail, looking for evidence, but never once advising her that he thought it improper to correspond, regardless of the contents of the letter (S. C., p. 64, l. 35, to p. 65, l. 10). He permitted his wife to obtain a position as usher in a theatre, though he believed that his wife was in danger (S. C., p. 66, ll. 18-22).

A reading of petitioner's testimony cannot help but show that he failed in his duty. Instead of

averting the danger he invited it. If the result he desired did happen, he is deemed, in law, to have consented to it.

It is respectfully submitted that the Master erred in his conclusion that the defenses of connivance and consent were not established by the evidence.

POINT IV.

The Master erred in his conclusion that the alleged offense of January 3, 1929 was not condoned.

Petitioner testified, in effect, that he knew, on January 3, all of the facts which he now presents to support his charge of adultery. He admits nevertheless that he continued living with defendant until May 25, 1929 (S. C., p. 65, ll. 11-13).

Under the law of this state it is clear that if petitioner indulged in the marital relation with defendant after January 3rd he thereby condoned any offense that may have previously occurred.

> " '2 Bish. Mar & D, sec. 26 (6th ed.) : Where the husband comes into possession of the fact and proof that his wife committed adultery, then if he has marital intercourse with her, the law presumes that he condoned the offense and refuses him divorce.' The above is the well settled law of this state." *Frost* v. *Frost,* 85 N. J. Eq. 57 (E. & A. 1915).

The fact that petitioner and defendant lived together for five months after the alleged offense raises a strong presumption of condonation.

> "Affected as they are by the presumption of condonation, due to his continued residence in the same house with his wife for months after he learned of her guilt." *Cartan* v. *Cartan,* 93 N. J. Eq. 180 (E. & A. 1921).

Defendant testified that petitioner had intercourse with her on several occasions after January 3, 1929 (S. C. p. 174, ll. 28-30). On cross-examination petitioner testified as follows:

> "Q. Ever since January 3rd you lived with her in the same house with the baby as man and wife? A. Yes" (S. C., p. 65, ll. 11-13).

On redirect examination he testified that he never had intercourse with his wife after October, 1928 (S. C. p. 79, ll. 10-13).

It is difficult to see how the uncorroborated denial of petitioner can overcome the presumption and testimony of defendant that the parties cohabited. It is significant to note that on direct examination petitioner admitted living with defendant as "man and wife," but on redirect examination explained his prior answer and denied having had intercourse since October, 1928. In view of the numerous inconsistencies in petitioner's testimony; his willingness to testify as to things not within his power of observation; the improbability of his denial of marital relation and his story generally; and in the light of the direct testimony and the presumption that cohabitation did take place, it is clear that the Master was not justified in his conclusion that the alleged offense of January 3rd was not condoned.

It is respectfully submitted that the Master erred in his conclusion that the alleged offense of January 3, 1929, was not condoned.

POINT V.

The decree is erroneous in that it adjudges (1) that petitioner and defendant be divorced; (2) that defendant's counterclaim for separate maintenance be dismissed, and (3) the custody of the child be awarded to petitioner.

If this court adjudges that the Master's conclusions were erroneous in that defendant did not commit adultery or that if such offense was committed it was consented to or condoned, then it is obvious that the decree is erroneous in decreeing that petitioner and defendant be divorced.

And if the decree divorcing the parties is erroneous it is equally clear that the lower court was in error in dismissing defendant's counterclaim for separate maintenance. The pleadings admit and it was established at the hearings that petitioner deserted defendant on May 25, 1929, has refused to support defendant, and that the desertion and refusal to support have continued to date. It was also established at the hearings that defendant is dependent upon petitioner for support.

A dismissal of the petition for divorce therefore calls for a decree in favor of defendant on her counterclaim.

In *Atha* v. *Atha,* 94 N. J. E. 692, affirmed 95 N. J. E. 275, the court said:

> "Before the institution of this suit Mr. Atha left his wife, went to the home of his parents, and wrote to her that he would never thereafter live with her. His suit for divorce having failed, he must properly provide for her."

Lastly, if the decree divorcing the parties is erroneous, the decree is also erroneous in awarding the custody of the child to the petitioner,

rather than to defendant. No authorities need be cited for the proposition that *prima facie,* the mother is entitled to the custody of the child. In addition, the evidence displayed that defendant was a capable mother and is the proper person to have the custody of the child.

Conclusion.

It is respectfully submitted that the decree be reversed with costs to defendant-appellant; that the cause be remanded with directions that the petition be dismissed, and a decree be entered in favor of defendant-appellant on the counterclaim; and that the custody of the child be awarded the defendant-appellant.

Respectfully submitted,

Arthur T. Vanderbilt,
Of Counsel with Defendant-Appellant.

46 FEB.T.1930

New Jersey Court of Errors and Appeals

Between

HOWARD R. STEVENS,
Petitioner-Respondent,

and

IRMA E. STEVENS,
Defendant-Appellant.

On Petition for Divorce.

BRIEF FOR PETITIONER-RESPONDENT.

History of the Case.

The petitioner-respondent filed his petition for divorce alleging that on December 21, 1928, December 29, 1928, January 3, 1929, and January 10, 1929, the defendant-appellant had committed adultery with Burwell Hodges in a deserted house on No. 538 West End Avenue in the City of Elizabeth, this State, and on May 24, 1929, and May 25, 1929, she had committed adultery with one Frank Muszar in Warinanco Park in the Borough of Roselle in this State. The appellant answered the petition denying the charges and filed a counterclaim setting up desertion on the part of her husband and praying for separate maintenance and support. The respondent answered denying the desertion.

Following the commencement of the divorce action, the appellant caused to be issued a writ of habeas corpus to obtain custody of the child although the Court has full power to make all orders

necessary concerning a child's care, custody and maintenance in the divorce proceeding (P. L. 1907, par. 481, Sec. 25). However, the respondent filed his return to the writ setting up that the defendant had been guilty of adultery as charged in the petition for divorce; that she manifested no love and affection for the child and had failed to give it the care and attention required, and by reason of these facts the child's welfare required it to be left with the father. The return to the writ was not traversed, consequently the return is to be taken as true.

Richards vs. *Collins,* 45 N. J. E. 283.

On the return of the writ the Court left the child in the custody of the father (S. C., p. 24). At this juncture of the proceedings the causes were consolidated and referred to the Advisory Master who heard the cases on September 8th and 9th last and advised a decree *nisi* for the petitioner-respondent adjudging the wife guilty of adultery on January 3, 1929, and on May 25, 1929; dismissed the counterclaim and awarded the father custody of the child subject to the right of visitation of the mother.

At the close of the case, appellant applied for and was granted leave to file an amended answer setting up condonation and connivance. Such amended answer was filed.

From the decree the wife appeals assigning and arguing as appears by the brief six grounds or specifications of causes for reversal.

A reference to the character situation and conduct of the parties is necessary to a proper understanding of the case, and particularly to ascertain its appearance before the Trial Court and finally in determining what weight should be given to the testimony.

The parties were married on March 29, 1926, at Bridgeburg, Canada, at which time respondent was earning $170.00 per month (S. C., p. 148, l. 20) as accountant employed by the Dupont Company at New York City. Almost immediately following the marriage the wife quarreled with the husband (S. C., p. 147, l. 10) and this continued up to the time of their separation.

She complained about the home he provided for her (S. C., p. 147, ll. 10 to 40). She testified (S. C., p. 181, l. 20):

> "Q. When you got down there you did not like that apartment? A. No.
>
> Q. That made you angry? A. Yes. I told him he certainly had a nerve to take me to a place like that.
>
> Q. Is that the way you spoke to him, that he had a nerve, immediately after your marriage, two days after your marriage? A. Yes. I said, 'You have a nerve to bring me to a place like that.' "

Such testimony was obviously given for the purpose of showing her husband to be inconsiderate, cruel and abusive, but when she was asked (S. C., p. 81, l. 30):

> "Q. You mean to say he brought you to this house for the purpose of making it disagreeable to you? A. No."

The wife was evidently of a faultfinding and quarrelsome disposition, but the husband, to accommodate her desires and to provide quarters for her more agreeable to her liking, in the next few days made arrangements to move (S. C., p. 181, l. 40) to a house in Elm Street, Arlington (S. C., p. 183, ll. 10 to 20).

She continued to find fault, complaining, when they went to buy furniture, that he had no money

with him and she paid the first installment of $165 (S. C., p. 148, l. 10).

On cross-examination it appeared that she bought $1,500.00 worth of furniture; that he paid for it; that they spent the afternoon selecting it (S. C., p. 182, ll. 10 to 40). Yet she endeavored to give the impression on direct examination that her husband was indifferent to her wants and comforts (S. C., p. 148, ll. 1 to 10). After moving into the Arlington home her complaints did not cease. She testified: "He put me down and never took me anywhere," but finally admitted that he did take her to "a show once in a while". She further testified: "I would take my car and go with the girl downstairs. We used to go every place together" (S. C., p. 148, ll. 35 to 40).

On cross-examination (S. C., p. 183) she testified she wanted to go out evenings:

> "Q. You had lots of time on your hands, didn't you? A. Yes.
>
> Q. You had a car and you went where you wanted to in the car in the daytime? A. Yes.
>
> Q. You went to the theater in the evenings once in a while? A. Very seldom.
>
> Q. Once in a while you testified to. A. Yes.
>
> Q. He went wtih you? A. Sometimes."

She further testified he was never affectionate or kind to her (S. C., p. 153, l. 10). She admits deserting him (S. C., p. 153, ll. 10 to 20). She assigns no reason for it, but notwithstanding this desertion, she received two checks from him of $50.00 each (S. C., p. 154, ll. 1 to 10), but on cross-examination, however (S. C., pp. 189 and 190), she admitted when confronted with the checks that she had received several from her husband aggregating $275.00, following her desertion of him and at which time he pleaded with her to return

(S. C., p. 40, ll. 10 to 30). In addition to this, he sent her flowers which she acknowledged (S. C., p. 191, ll. 1 to 10).

The husband testified she was always fighting, nagging and cursing him (S. C., p. 41, l. 15). A neighbor, Mr. Foster, heard her curse and swear in her home (S. C., p. 135, ll. 10 to 20).

In the light of her testimony and her labored and highly colored effort to make it appear that her husband was abusive and cruel, she wrote a letter to a friend as late as January 22, 1929, in which she said, amongst other things, she "had a nice baby and husband also" (see Exhibit, p. 316, Ex. P-12). Her father, appreciating her faults and evident intention to disregard her duty to her child and husband, wrote her under date of December 6, 1928 (p. 318, Ex. P-13), amongst other things, as follows:

> "Suppose you gave up the ship now and deserted the baby and Howard (her husband) and in after years the baby grew up to be a very fine man, would it not be within the bounds of reason for you to have many heart-aches with the thought constantly in front of you that you had not done your duty by him as his mother? Personally, you know that both your mother and I want you to be happy * * * but you have blazed the trail for yourself and if you throw your hands up now it is simply in acknowledgment that you do not know what you want or what to do and is a most decided sign of weakness that your best friends could not overlook."

This letter indicates that the father knew the daughter's purpose was to leave her child and husband and he was urging her not to take such a course.

In addition to the foregoing, Mrs. Joyce, mother of the wife, testified (p. 267, ll. 30 to 40):

"Q. There was nothing serious standing in the way of your daughter returning to Mr. Stevens, was there? A. Nothing very serious.

Q. It wasn't of much moment in your mind but what you thought it could be easily overcome? A. No, I didn't think it could be easily overcome.

Q. You felt it was worth while trying? A. I did.

Q. But there was no abuse of your daughter by Mr. Stevens? A. There was, according to her conversation, not that I heard.

Q. You did not see him do anything that was wrong? A. Not that they should separate."

Again, on p. 268, ll. 1 to 10, she testified:

"Q. Surely you would not have counseled and advised your daughter to live with Mr. Stevens if there was anything wrong, would you? A. Wrong in what way?

Q. In any respect. You would not submit your daughter to unkindness, cruelty or to abuse? A. No, I would not.

Q. You were submitting your daughter to abuse when you advised her to go back? A. I do not think so."

In the light of the testimony, the wife's story could not be accepted as the truth on that branch of the case wherein she charges abuse and cruelty. Her story of abuse and cruelty was a highly distorted effort to make it appear that her husband was responsible for the difficulties in which she found herself. It was a labored effort on her part to discredit her husband and make him appear in a false light before the Court. Her conduct on the witness stand served still greater to accentuate the fact that she was endeavoring to enlarge on minor differences that had arisen during her married life and to detract from the evidence which went to establish the charges of adultery. A fair

reading of the testimony discloses the fact that she was wilfully false. Her charges of cruelty, unkindness and neglect are shown to be false and untrue by her letter to her friend. She has deliberately misstated the facts. One who goes contrary to her own knowledge is equally liable to do the same repeatedly and is not to be reckoned with at all. Here we have a conscious falsehood and "*falsus in uno, falsus in omnibus.*" *State* v. *Samuels,* 92 N. J. L. 131.

No greater credit can be given to her testimony on the issues of adultery than can be given to it on charges of abuse, cruelty and desertion. Her own testimony left the case free from doubt.

POINTS.

I.

The Advisory Master erred in concluding that she was guilty of adultery on January 3, 1929.

This is the first ground urged by the respondent-appellant to reverse the decree. First there were grounds on which the husband might well be suspicious of his wife. She was corresponding with a barber in Buffalo (S. C., p. 41, l. 50; p. 50, ll. 1 to 10). The wife before her marriage worked as a marceller in this man's barber shop at Buffalo (S. C., p. 51, ll. 10 to 20). The barber's wife had evidently intercepted her letters and accused her of "trying to get her husband" (S. C., p. 51, ll. 10 to 20). The wife in her testimony admitted this correspondence, and also to receiving a letter from the barber's wife (S. C., p. 156, ll. 10 to 40; p. 157, ll. 1 to 15).

She admitted remaining out all night, and refused to explain where she had been (S. C., p. 175,

ll. 10 to 20). She stated that she stayed at the Robert Treat Hotel all night, although this was uncorroborated; that she went out often in the evenings and stayed late; that she did not tell him she went to the movies, although he had asked her where she was going at night; she "did not think it necessary to tell him" (S. C., p. 175, ll. 10 to 40). While there was no occasion for it, she obtained employment in a Miss Scott's beauty shop. She worked there a week, but later said ten days, notwithstanding she did not think very much of the proprietor, who tried to induce her "to go out with her". Later, with still no good reason for it any more than to satisfy the desire to be outside of her home and away from her husband and child, she procured employment as an usher at $8 a week in an Elizabeth theatre (S. C., p. 66, ll. 20 to 30), where she worked from 7 P. M. to 11 P. M. three nights a week and from 7 P. M. to 9 P. M. on three nights each week and from 1 P. M. to 3 P. M. in the afternoon once a week (S. C., p. 79, ll. 20 to 35), during which time the child was left with whom she could get to care for it (S. C., p. 79, l. 40).

The husband testified that on April 2, 1927, the wife packed her grip and stayed out all night and refused to give any explanation where she had been. She then began to stay out nights, and the husband endeavored to keep her home (p. 42, ll. 1 to 10). The husband's testimony is, and it is not denied:

> "Q. Was she accustomed to going out nights? A. Yes.
>
> Q. Frequently? A. Around October, 1928, it was three nights a week and two nights; it was midnight hours she was keeping.
>
> Q. Did you do anything about that? A. Yes, I tried to keep her in the house. I told her that it wasn't right; that she had a baby to look out for. I tried to take her out. I

would get somebody to stay with the baby as much as I could afford so that I could take her out.

Q. Did that correct conditions? A. No'' (p. 42, ll. 1 to 15).

On page 41 the husband testified that his wife had said that she was only infatuated with him, but that she never loved him (p. 41, ll. 1 to 15).

It is plain to be seen that the wife's conduct not only made it natural for her husband to feel dissatisfied and equally natural for his suspicion to be aroused. He first complained to her mother (S. C., p. 41, ll. 20 to 40). He tried to keep her home (S. C., p. 41, l. 40). He at last endeavored to point out the wisdom of remaining home but without avail (S. C., p. 42, ll. 1 to 20). This testimony is not denied.

She was asked on cross-examination (S. C., p. 186, ll. 24 to 30):

''Q. You haven't any love or affection for this husband of yours, have you? A. I don't hate him.

By the Master:

Q. You weren't asked that. That is a perfectly proper question and you can answer it, yes or no. A. No, I don't love him.

By Mr. O'Connor:

Q. You don't love him? A. No.

By the Master:

Q. When did you cease to love him? A. When I left him the first time.

Continued on page 187, ll. 1 to 10:

Q. That was what date? A. It was on Monday following the time I left him.

Q. What year and what month? A. It was before the baby came. The baby was born July 19, 1927'' (S. C., p. 40, l. 26).

Confronted with this state of affairs, the husband consulted the witness, Thomas Carey, a deputy sheriff of the Sheriff's Office of Union County (S. C., p. 81, ll. 30 to 40) to make an investigation.

Mr. Carey testified that he first met the wife coming out of her home No. 116 West End Avenue, Elizabeth, at about 8 o'clock in the evening of December 21, 1928; that she walked to west Jersey Street and Elmora Avenue and got on a Public Service bus operating between Elizabeth and Newark; that he followed her in his car and with him were his two sons, Thomas J. Carey and Roy Carey; that she got off the bus and visited a few stores. She got on the same bus on its return trip; that she got off at Pennington Street while the bus continued along Elmora Avenue; thence to West End Avenue (the street on which the wife lived) where it stopped. The bus driver left his bus and walked to the vacant house entering by way of the front of the lot while the wife entered the lot in the rear using a path which led to the house and thence entered the rear of the vacant house where she remained fifteen minutes with the bus driver. This was about ten o'clock at night (S. C., pp. 82, 83, 84). The driver of the bus was Burwell Hodges who was so identified in the Court room by the witness.

At the intersection of Elmora Avenue and West End Avenue is an old vacant house, which is referred to by the witness Carey, much out of repair which was surrounded on Elmora Avenue in part by a large tall billboard and on the premises around the house is tall shrubbery, tree and untrimmed hedge which secluded anyone on the premises from view from the highway. The rear entrance of this house is shown in Exhibit P-1. P-2 is the front view. P-3 is the front view showing to some extent its setback from the street.

P-4 is a more direct view of the rear of the house and shows the path referred to in the testimony.

As to this particular date of December 21, 1928, Roy Carey, a constable employed at the Elizabeth District Court and who is Sergeant-at-Arms at the Chancery Chambers at Elizabeth, corroborated his father's story as to seeing the wife get off on Pennington Street and walking up Elmora Avenue to the pathway and thence towards the old house. He also saw the bus driver, Hodges, get out of his bus and enter the path leading to the rear of the house. He saw them leave the old house separately. The witness remained in his automobile and was unable to say that he saw them actually enter the house on this particular day.

Appellant calls attention to the fact that the witness, Roy Carey, testified that on December 21, 1928, the appellant rode to Newark on the bus. He did so testify and was evidently confused as to the dates when the wife did ride to Newark on the bus. To be correct, it was January 3, 1929, that she rode into Newark and not December 21, 1928, but it is clear from his testimony that she got aboard the bus on Elmora Avenue; that later in the evening the wife got off the bus at Pennington Street and walked along Elmora Avenue to the path leading to the old house. The witness Roy Carey did not actually see her enter the house. But in addition to this and as proof of the truthfulness of what Thomas Carey and his two sons testified to as seeing on December 21, 1928, the wife admitted than on December 21, 1928, she got on Hodges' bus; that she did some shopping; that she rode back on his bus; that she entered the path leading to the old house and met the bus driver (S. C., pp. 165, 166).

The Advisory Master did not find the wife guilty of adultery on December 21, 1928, but this evidence is referred to for the purpose of show-

ing her desire to seek the company of the bus driver and to meet him clandestinely at the old vacant house at night time.

As to the proof of adultery on January 3, 1929, the witness, Thomas Carey, testified that he saw the wife leave her home at about 8 o'clock in the evening; that she got aboard the bus driven by Hodges; that the wife continued on the bus on its trip to Newark; that she remained in the bus during the layover at Newark and returned on it to Elizabeth, Hodges continuing to drive it; that when she alighted from the bus in Elizabeth in front of the premises on which the old vacant house is located that Hodges turned his bus and then crossed the street and entered the premises and went into the vacant house in the rear, where Hodges and the wife remained for about twelve minutes; that the wife came out and proceeded to her home and the bus driver then followed, crossed the street and entered his bus. This was at 10 P. M. (S. C., pp. 84, 85). Roy Carey was with his father on January 3, 1929. He testified that he saw the wife enter the house with Hodges; that they remained for about twelve minutes; that he saw them leave, and when she came out she went down the path to West End Avenue (S. C., pp. 121, 122).

The son, Thomas J. Carey, testified that on January 3, 1929, he saw the wife get off the bus; that he followed her to Newark; that she remained in the bus and returned on it to Elizabeth; that while in Newark she remained talking to the bus driver; that she entered the path leading to the old house; that the witness remained in his automobile and consequently did not see her enter the house; that he saw the bus driver come out; that he was the bus driver and got on the same bus which he and Mrs. Stevens were riding (S. C., pp. 107, 108).

As to the occurrences on January 3, 1929, the husband testified that on January 3 he stepped out on his porch, being the upper porch of a two-family house; that a yellow bus drove up and stopped in front of the old house; that he saw his wife get out and enter the premises on which the old house is located; that the bus driver did the same thing; that to satisfy himself he went down and walked around the old house, but saw no one, and returned to his home and stood on the porch; that he saw his wife leave the front of the premises where the old house is located; that she was in the premises from 10:12 P. M. until 10:23 P. M.; that this vacant house is only five houses removed from where he lived (S. C., pp. 43, 44).

The Court's attention is called to the wife's conduct subsequently on January 10, 1929. She was not found guilty of adultery on this date, but her conduct is material in showing her disposition and her relationship with the bus driver.

Thomas Carey testified that on January 10, 1929, he saw the wife leave her home at No. 516 West End Avenue at about 8 P. M.; that she boarded the bus driven by Hodges and rode to Newark; that during the lay-over at Newark she remained in the bus with Hodges; that she returned on the bus to Elizabeth to its starting point on Elmora Avenue and West End Avenue; that she alighted from the bus and went to the rear of the old house; that Hodges, after turning his bus, went to the rear of the house. This occurred at 10:10 P. M.; that the wife came out first and proceeded to her home; that Hodges came out and went to his bus (S. C., pp. 85, 86, 87).

Thomas J. Carey testified that on January 10, 1929, he saw her going towards the old house; that he did not see her leave but that he saw the bus driver leave by the path leading from the vacant house; that he was 250 feet away (S. C., p. 108).

Roy Carey testified that on January 10th, at about 10 o'clock in the evening the wife walked along the pathway leading to the old house; that the witness followed the bus; that Hodges came from the bus and entered upon the path leading to the house; that about fifteen minutes later the wife came out along the same path; that Hodges followed a few minutes afterwards; that they were in there from 12 to 15 minutes (S. C., p. 123, ll. 10 to 40; p. 124, ll. 1 to 40).

The wife and Hodges were the only witnesses called as to what occurred on December 21st, January 3rd and January 10th.

The wife testified that she knew Hodges since September, 1928; that she only had a speaking acquaintance with him (S. C., p. 162, ll. 20 to 30; p. 163, ll. 30 to 40); that she next saw him November 1st when on this short acquaintance he asked her for $50.00 to help him and his family. At the same time he commented how "nicely she dressed", manifesting an uncalled for and undue familiarity which indicated something more than a mere speaking acquaintance which was emphasized by the fact that she said she then loaned him $50; that she borrowed the money on a three months' note. This defendant loaning $50.00 to Hodges seems incredible and especially by a woman who wanted additional money for herself which prompted her to go to work as an usher in a theatre for $8.00 a week; that on the night of December 21st, she got on the bus driven by Hodges; that she returned on this bus (about 10 P. M.); that on the way home at this hour she entered on the path leading to the old house where she met Hodges, as she claimed, by surprise; that she stepped off the path next to the staircase; that she stepped up beside the staircase talking to Hodges; that he talked about his inability to re-pay the $50.00 (S. C., pp. 166, 167).

She admits she met Hodges again on January 3rd in the old house by arrangement while riding on Hodges' bus. Her testimony is (S. C., p. 168, ll. 1 to 10):

> "Q. Was it an accident you met him then? A. No, he said to me when I got off the bus, 'Will you please meet me where I saw you before and I will try and make an explanation why I am not giving you the money back?' I said, 'Alright, I will meet you there but not for long'. He said, 'I haven't got long to stay'. So we went in there (meaning the old house) and I asked him again, I said, 'I am getting sick of your *stalling me* all the time'."

The bus driver entered the premises one way, she another way and they say they were in there 5 minutes.

They met as agreed and she testified (S. C., p. 168) "He told me again that he did not have the money; that he was financially embarrassed and that he did not have the money to pay me." I said to him, "Are you *kidding and stalling me?*"

On cross-examination, she testified she met Hodges the latter part of September (S. C., p. 194, l. 40); that she rode with him from her home to the shopping district and sometimes to Newark and returned with him (S. C., p. 195, ll. 20 to 30). She further testified:

> "Q. Now, then, on January 3rd you arranged to meet Hodges again? A. I did, when I was on the bus. I arranged to meet him in the same place.
>
> Q. In that same place? A. Yes.
>
> Q. What was the idea of going in there to meet Hodges? A. Well, I didn't want to be seen talking on the street with that man.
>
> Q. You did not want to be seen talking to him on the street? What would there be improper to be seen talking there with Hodges?

A. Nothing, only I did not want the neighbors talking about me'' (S. C., p. 202, l. 40; p. 203).

''Q. What was there in the fact that you should speak to Hodges on the street that would make the neighbors talk? A. Meeting a bus driver on the corner, a girl like me?

Q. Did you not know that the neighbors would talk more about you if you went into the house and met this man? A. I did not think of it at the time'' (S. C., p. 203, ll. 1 to 30).

On cross-examination, she further admitted that around the premises (old house) there were a number of sign boards, quite high; pedestrians on the street could not see her on the premises (S. C., p. 203, ll. 30 to 40); that she couldn't see as plain in there as on the street (S. C., p. 204, l. 15).

The bus driver, according to his own testimony, on January 3rd, while on the bus stated to her: ''Meet me in the same place where I saw you before and I will explain.'' And she met him there as agreed and that he then and there simply said ''He was financially embarrassed and did not have the money'' (S. C., p. 204, ll. 35 to 40). Yet she arranged to loan the money while riding on the bus, and listened to the bus driver's tale of sympathy (S. C., p. 205, ll. 30 to 40). Still she had to seek the shadows of darkness in this old vacant house to listen to his explanation of inability to pay (S. C., p. 206, l. 1).

She never inquired about Hodges' family or made any effort to ascertain their need, if any. Hodges was steadily employed (S. C., p. 206). Her whole story of the occurrences on January 3rd and also as to what transpired on the other days in question was nothing more than a shallow, transparent story conceived by herself in a desperate attempt to avoid the charges made

against her. The most credulous could not accept such a story as the truth. Her own testimony left the case free from all doubt as to who was telling the truth, and compelled the Court to come to the conclusion that she was guilty.

The co-respondent Hodges was called by the defendant as a witness. Before becoming a bus driver he was a taxi driver (S. C., p. 254, l. 10), and was dismissed by the Public Service for stealing fares (S. C., p. 254, l. 25; p. 249, l. 15). He, of course, attempted by his testimony to corroborate the defendant wife at least to some extent.

He said, "she kept offering me (the money)" (S. C., p. 252, l. 40). She kept telling him that she would like to help him out (S. C., p. 251, l. 14). She offered him $50.00; he never asked for it (S. C., p. 241, ll. 20 to 30). The wife said, "He asked me to lend him $50.00" (S. C., p. 164, l. 30). He said, "He got the money from her about Decembert 1st" (S. C., p. 240, ll. 1 to 10). She said it was about November 1st after she returned from Buffalo and that he was to pay back $5.00 on December 1st (S. C. p. 164, ll. 15 to 30). She offered him the money several times (S. C. p. 241, l. 20).

On December 21st, she, not being paid by him, attempted to call him to account (S. C., p. 166, ll. 20 to 30) as he promised to pay her on December 1st.

He was untruthful to his own wife (S. C., p. 251, l. 30). He further testified that as to January 3rd, while on the bus he said, "I will meet you in the same place and explain to you why I am not paying you" (S. C., p. 247, l. 40; p. 248, ll. 1 and 2).

When asked (S. C., p. 248, l. 20):

> "Q. Do you mean to tell me you invited her to the back of the old house, screened from possible view between 10 and 11 o'clock at night to tell her that? A. Postitively.

Q. Why couldn't you tell her that on the bus? A. People ride those buses."

There was no proof that anyone was on the bus at the time, and further, if they were, their meeting at the old house was worse than his explanation might be if made on the bus. His testimony was a weak attempt to corroborate the wife.

The story of the bus driver and of the wife was not consistent or within the range of reason.

II.

The second point is that the Advisory Master erred in his conclusions that the defendant committed adultery on May 25, 1929.

The petition charges adultery on May 24th and 25th.

While it is true that the defendant was not found guilty of adultery on May 24th, the evidence on this occasion is important in showing her relationship to and her conduct with Muszar the corespondent named in the petition.

The witness, Thomas Carey, testified, that on May 24th at about 9 P. M. the defendant met a man (Muszar); they got into an auto and proceeded to Warinanco Park where they parked. The lights on defendant's auto were put out and they were together in this auto from 9:30 P. M. until 11 P. M.; that they drove back to the Elmora Theater.

Roy Carey was with his father on May 24th (S. C., p. 25, l. 1) and saw the same things which his father testified to (S. C., p. 25, l. 30).

The defendant, of course, denies the facts testified to by Carey and his son, but she admits being with Muszar in an auto (S. C., p. 176, ll. 20 to

40). She made an appointment to meet him to go to a show (S. C., p. 177, ll. 10 to 20).

On cross-examination she gives a more detailed account of what occurred. She admits starting together for a ride with Muszar at 10 o'clock at night (S. C., p. 211, l. 30), but she got through work at 9:15 and was then going to see a movie (S. C., p. 211, l. 40; p. 212, ll. 1 to 15).

She got back from the ride at midnight (S. C., p. 212, l. 30). "It was dark. I didn't know the places out there" (S. C., p. 211, l. 10).

While she denied she was in the Park as testified to by Carey, she admits being in an automobile with Muszar from 10 o'clock until midnight. She met him at the corner just as Carey said (S. C., p. 211, l. 15).

As to May 25th on which day the Court found her guilty of adultery with Muszar with whom she had been on May 24th, the night before, Thomas J. Carey testified that on May 25th he called at the petitioner's home to see if the defendant was out (S. C., p. 109, ll. 10 to 25), and on learning she was out he invited the petitioner to come with him; that the petitioner went with him; that at 9:30 P. M. she met the defendant at the side entrance of the theatre (S. C., p. 109, ll. 30 to 40); they walked arm in arm up the street and entered the Park and sat on a bench in a clump of trees (S. C., p. 110, ll. 15 to 40); that they were embracing each other (S. C., p. 111, ll. 1 to 15). They were in a secluded quiet section (S. C., p. 111, ll. 30 to 40; p. 112, ll. 1 to 20). They were there about forty minutes.

The petitioner Stevens testified that he saw his wife leave on May 25th (S. C., p. 44, l. 44) that they went to Warinanco Park (S. C., p. 45, ll. 1 to 40); that petitioner got within 40 or 50 yards of them; that defendant was in Muszar's arms; that he could not say exactly whether they were

lying down or whether they were leaning; that they were in several positions; that Muszar was leaning over toward her (S. C., p. 69, ll. 30 to 40; p. 70, ll. 25 to 40).

That when she came home she had accused him of following her. A quarrel followed. That he left the house and slept in his auto that night. The following morning he returned; that the defendant was throwing things around the house; that the child was frightened; that he picked up the child and left and that they had not since lived together.

The testimony with relation to May 25th was on a Saturday night.

The wife testified, "The Saturday night that he mentions about Mr. Muszar, I had not been out with him" (S. C., p. 172, ll. 30 to 33). The next moment she testified that she went to the Park with him (S. C., p. 173, ll. 1 to 10); they sat down on a bench (S. C., p. 173). Later she said Muszar did not sit down on the bench (S. C., p. 173, l. 40); that she had not seen Muszar since. She was asked:

> "Q. Were you ever out in a friendly way with any other man during the whole time you were married? A. Never."

In this she was not telling the truth for on December 27th, proof shows that she was in Newark at the Paradise Dance Hall until midnight dancing with a man by the name of Walter (S. C., p. 206, l. 40).

As further proof of this woman's conduct and of her actions tending to deceive her husband and to disregard her home and her child as well as affording a means to determine what weight and credibility can be given to her testimony, the Court's attention is called to the following occurrences which, taken into consideration, with all the

other testimony make it clearly appear that she lacks stability of character and domestic love and affection which might be expected in true womanhood and motherhood, and has no ideal or a very high motive of life.

It appears on December 27, 1928, she left her home in her automobile at about eight o'clock in the evening and that after picking up another woman, drove to Newark and went to the Paradise Dance Hall; that at midnight she came from the dance hall with her woman companion and two men; that she got into her auto and with her woman friend drove home (S. C., p. 88, ll. 30 to 40; p. 89, ll. 1 to 4).

Roy Carey testified that on December 27th he entered the Dance Hall (S. C., p. 118, ll. 30 to 40); that the defendant was dancing with some man until midnight (S. C., p. 109, ll. 1 to 40).

On direct examination, the wife, when her attention was called to the night of December 27th, admitted she went to the dance hall; that she had a quarrel with her husband before she went; that it was the quarrel which moved her to go; that the baby was sick (S. C., p. 179, ll. 10 to 40); that she went with a Mrs. Hill and danced that night with a man by the name of Walter (S. C., p. 171, ll. 1 to 25).

On cross-examination, she testified (S. C., p. 206, l. 40) she did not tell her husband where she was going.

> "Q. Did you tell him you were going to some lodge meeting? A. I don't remember" (S. C., p. 207, l. 1).

Her companion was a Mrs. Hill, who conducted a beauty shop (S. C., p. 207, l. 10).

> "Q. You had arranged to meet Mrs. Hill? A. Yes, sir.

Q. When did you make the appointment? A. I don't remember" (S. C., p. 207, ll. 19 to 20).

"Q. You went to the dance hall by reason of the appointment you made with Mrs. Hill? A. Yes, sir.

Q. Is that right? A. I don't remember whether we arranged to go to the dance hall" (S. C., p. 207, ll. 30 to 40).

"We made an appointment to go out with Mrs. Hill" (S. C., p. 208, ll. 1 to 2).

It will be seen on direct examination she testified that she went out that night because of a quarrel she had with her husband. Later, her story was because of an appointment with the Hill woman and not a quarrel.

At the time she went, her baby was sick and confined to bed under the care of the doctor (S. C., p. 209, ll. 1 to 40).

"Q. Notwithstanding that your baby was sick in bed and you said, 'I had worked all day with him', you went to a dance hall and danced until after midnight, leaving that baby home, didn't you? A. Yes, sir.

Q. That was the reason your husband objected to you going out, because your duty was home and not on a dance floor in Newark dancing in the company of Mrs. Hill and Mr. Walter, wasn't it? A. Yes, sir" (S. C., p. 209, ll. 20 to 40).

The brief for appellant refers to a number of cases, but they have no application to the present case. The proofs, character, situation and conduct of the parties in the instant case are substantially different from those found in the cases cited by appellant, consequently, the conclusion must necessarily be different.

In the instant case, the proof unquestionably shows:

First: That the wife, when observed, was found in the company of Hodges; she selected his bus for his company; she rode to Newark and returned with him for no other purpose than to be with him. There is no other explanation.

Secondly: She met him clandestinely at night at this old vacant house, a lonely, unfrequented place, where they remained together on December 21, 1928, January 3rd and January 10, 1929.

The case on the part of the petitioner meets the rule of law, (1) proof of inclination or a criminal desire, and (2) proof of an opportunity to commit the act. *Black* vs. *Black,* 32 N. J. Eq. 228.

As to the charges of adultery with Muszar, it also appears that she met Muszar by appointment. She was out riding with him until midnight, as she admits, in some lonely place she failed to identify. The witness Carey and his two sons testified, as it has been observed, that she was in the automobile with Muszar in Warinanco Park for a long time and the lights on the car were out. She, of course, denies, that she was in the park on May 24th, but she agrees with Carey and his two sons that she met Muszar at the point they testified to. She also admits that she was out in the automobile until midnight with Muszar. The point is that she sought his company, and again on May 25th she met him and went to Warinanco Park; that she walked there with Muszar arm in arm. The place they stopped at, in the Park, was a lonely, secluded and unfrequented spot. The testimony which has been referred to in connection with the incidents on May 24th and May 25th unquestionably shows that she was guilty of the charge of adultery on May 25th as found by the Advisory Master. The Advisory Master's findings are supported by the proofs, and his con-

clusions, having seen the witnesses and heard them testify, is always accepted with great weight by this Court. *Cartan, et al.* vs. *Phelps, et al.*, 109 Atl. Rep. 291.

The habitual conduct of the wife in meeting Hodges and Muszar in the particular circumstances and in the light of her explanation necessarily leads the most guarded mind to the conclusion that she was guilty of the charges as found by the Advisory Master. Surely, the proofs in the case are not reconcilable with innocence or mere acts which are frequently termed acts of indiscretion.

The petitioner's testimony as to what occurred on January 3rd and May 25 is corroborated not only by the witnesses Carey and his two sons, but by surrounding circumstances. The rule of corroboration does not require categorical corroboration. *Meek* vs. *Meek,* 92 N. J. Eq. 23; *Coe* vs. *Coe,* 97 N. J. Eq. 58; *Orcutt* vs. *Orcutt,* 94 N. J. Eq. 303; *Smith* vs. *Smith,* 6 N. J. Eq. 59.

III.

The Master erred in his conclusion that the defenses of connivance and consent were not established by the evidence.

At the conclusion of the case, connivance and consent was set up as a defense by an amended answer. It is now urged by the appellant that inasmuch as the petitioner heard of the bus driver as early as November 25, 1928; that he noticed her coming out of the vacant house on December 21, 1928, and that she told him at that time that she was going to give him grounds for divorce, that these facts establish connivance and consent, and it is argued, based on these facts, that he did and said nothing to warn her. That it was his

duty to exercise vigilance and care and protect her from going astray.

It will serve no good purpose to again repeat the testimony bearing on this question which is set out in this brief. Sufficient it is to say that the testimony discloses the fact that the husband in the month of October, 1928, at the time the wife began to stay out at night, tried to reason with her to remain home; that he appealed to her parents; that they, in turn, endeavored to advise her, but without result. Her want of love and affection for her husband is beyond question. Her selfish desire for pleasure filled her with deceit and for disregard of her home and of her child and her husband; her cursing and swearing aggravated the situation. The evidence plainly shows that she was obstinate, indifferent to the wishes of her husband, the welfare of her child, and a proper appreciation of her parents; that she was intolerant of the views and advice of those near to her. In other words, she could not be controlled. The proofs clearly show that the husband did his utmost to correct conditions. What was his duty where reason failed? There is no proof of connivance or the slightest evidence showing that the husband resorted to subtle means or otherwise to bring about the downfall of his wife or that by his indifference it can be fairly said that he gave consent.

Reference is made by appellant to the fact that she was allowed to work as an usher, etc. The proof is quite clear that she sought employment in beauty shops and as an usher in a theatre and elsewhere of her own volition. She tried to give the impression that it was because of necessity. The evidence is clear that the husband was earning a reasonably fair salary for his work; that he had furnished a good and comfortable home, and that he fully and amply provided for his family.

That she was obliged to go to work by reason of necessity doesn't quite accord with the comment of the bus driver "that she was always dressed nicely" and with the further fact that her means enabled her "to loan the bus driver fifty dollars."

IV.

The Master erred in his conclusion that the alleged offense of January 3, 1929, was not condoned.

In support of this ground assigned for reversal of a decree, appellant says, "the husband knew on January 3rd all of the facts which he now presents to support his charge of adultery and that he continued to live with her until May 25, 1929." *This is not a correct statement of the evidence and appellant's reference to the testimony does not support it.*

The husband knew, of course, what he saw on January 3rd, namely, he saw the bus driver stop his bus; that the wife entered the old house followed by the bus driver; that the husband did not enter the house because of its condition (S. C., p. 63, ll. 1 to 30); and he walked around the house but saw nothing (S. C., p. 43, ll. 20 to 30). It may be he did not enter the house because of the danger.

On cross-examination he was asked (S. C., p. 65, l. 11):

> "Q. Ever since January 3rd *you lived with her in the same house with the baby* as man and wife? A. Yes."

The question was so put with the principal part of it made up of and with the emphasis on "you lived with her in the same house with the baby"

as to leave the witness to believe that this was the thought behind the question and little attention therefore given to the phrase "as man and wife," and of course the witness answered yes. This feature of the case, however, was not overlooked and was properly developed. On re-direct examination (S. C., p. 78, ll. 30 to 40):

> "Q. You say on January 3rd—you testified at the instance of Mr. Massy—that you continued to live in the same house with the baby as man and wife. Did you understand the question? Did you continue to live in the same house with the baby after January 3rd as man and wife? A. Yes, I lived in the house.
>
> Q. You lived in the house? A. I lived in the house but I did not sleep with her.
>
> By the Master:
>
> Q. When did you cease having relations with her as wife? A. Around the middle of October.
>
> Q. What year? A. '28.
>
> Q. From October, 1928, until you finally separated and took the baby with you, did you ever have any relations with her as wife? A. No."

On this question of continued cohabitation, the Court's attention is also called to the testimony of the petitioner (S. C., p. 80, ll. 25 to 30).

The case was tried on September 6th and 9th. The defense of condonation seems to be an afterthought. The order for leave to file an amended answer was not taken until September 21, 1929, after which an amended answer setting it up as a defense was filed. However, condonation is a conclusion of fact and not of law and must be proved by the defendant upon whom the burden of showing condonation rests. *Warner* vs. *Warner,* 31 N. J. Eq. 225. The defendant has not established this defense.

V.

The decree is erroneous in that it adjudges (1) that petitioner and defendant be divorced; (2) that defendant's counterclaim for separate maintenance be dismissed, and (3) the custody of the child be awarded to the petitioner.

The only argument advanced to sustain this ground is that the counterclaim should not have been dismissed because it was established that the husband deserted the wife on May 25, 1929. It is, of course, true the husband left the wife after the occurrences on May 25th, wherein her adultery was established, and the Court so found. In the light of this, there was no abandonment of the wife or refusal of support within the meaning of Section 26 of the Divorce Act of 1907.

As to the custody of the child, it was awarded to the father, subject to the right of visitation on the part of the mother. The moral delinquency of the mother primarily disqualified her from having custody of the child. Her neglect of it and her remarks concerning it show a want of proper regard and love for the child and were no doubt of great importance in influencing the Court, and above all, the welfare of the child, in view of all the circumstances, was what moved the Court to award the father the custody of the child. Neither the mother nor the father has advantage over one another in equity on the determination of who shall have the custody of the child. It is the child's welfare that must be considered.

It should also be noticed that the mother resides in Buffalo, N. Y., while the father is within the jurisdiction of the Court.

The fact that ten days' notice is to be given by the mother to the father of her intended visit to

the child is commented upon by the appellant. The decree was signed on notice, according to the practice of the Court. The ten-day provision was for the mutual benefit of the parties, the wife being in Buffalo and the husband in New Jersey. It is a reasonable regulation, in the light of all the circumstances imposed by the Court.

In conclusion, it is respectfully submitted that the decree of divorce should be affirmed.

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