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Petition.

(Filed Aug. 27, 1929.)

IN CHANCERY OF NEW JERSEY.

To his Honor EDWIN ROBERT WALKER, *Chancellor of the State of New Jersey:*

The petition of Harry Baldanza, of the City of Long Branch, in the County of Monmouth and State of New Jersey, respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to his present wife, Josephine Baldanza, on April 20th, 1924, by Father Rossi, at the Roman Catholic Church at Passaic, New Jersey.

2. On August 6, 1929, and on August 24th, 1929, defendant, Josephine Baldanza, committed adultery with one John D'Appoli, in the City of Long Branch, Monmouth County, New Jersey.

3. Petitioner was a bona fide resident of this State when this cause of action arose as aforesaid, and has ever since, for more than two years next preceding the commencement of this action, continued to be such resident, residing continuously in the City of Long Branch, Monmouth County, New Jersey.

4. Two children were born of said marriage, Mary Grace Baldanza, age five years, and May Baldanza, age eighteen months, now in the custody of 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 he may be awarded the custody of said children, and that he may have such further relief as may be just.

And your petitioner will ever pray, etc.

QUINN, PARSONS & DOREMUS,
Solicitors of Petitioner.

STATE OF NEW JERSEY, }
COUNTY OF MONMOUTH, } SS.:

HARRY BALDANZA, being duly sworn according to law, upon his oath deposes and says:

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

HARRY BALDANZA.

Subscribed and sworn to before me
this 26 day of August, 1929.

SARAH PORTNER,
Notary Public of New Jersey.

(Seal.)

Answer and Counterclaim.

IN CHANCERY OF NEW JERSEY.

(Filed Oct. 11, 1929.)

The answer of Josephine Baldanza, defendant, to the petition of Harry Baldanza, petitioner:

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

2. The defendant denies that on August 6th, 1929, and on August 24th, 1929, that she committed adultery with one John D'Appoli in the City of Long Branch, Monmouth County, New Jersey, and on the contrary states that she never committed adultery with any person either at the place alleged in the petition or elsewhere.

3. The defendant admits it to be true that petitioner was a bona fide resident of this State and has been for more than two years next preceding the commencement of this action, and has continued to be such resident, residing continuously in the City of Long Branch, Monmouth County, New Jersey; but defendant denies that a cause of action has arisen in favor of petitioner.

4. The defendant admits that two children were born of said marriage, Mary Grace Baldanza, age five years, and May Baldanza, age eighteen months, but denies that said children are in the custody of petitioner, but on the contrary states that said children are in the custody of defendant.

And the defendant, Josephine Baldanza, by way of counterclaim, exhibited against the petitioner, says:

1. That defendant, Josephine Baldanza, repeats paragraph One (1) of the petition and makes same part of this counterclaim.

2. That after her said marriage she and petitioner went to reside in the City of Long Branch, in the County of Monmouth and State of New Jersey, and at the present time she resides in the City of Passaic, County of Passaic and State of New Jersey, having been driven by force from her home by the conduct of petitioner.

3. There was born to her and her said husband, as the fruit of their marriage, two children, to wit: Mary Grace Baldanza, age five years, and May Baldanza, age eighteen months.

4. That on August 25, 1929, said petitioner deserted this defendant, accusing her of having committed adultery as alleged in his said petition for divorce, although she gave her husband no cause for his action and has ever been and still is a true and faithful wife to the petitioner.

5. The defendant further charges that in January, 1925, petitioner struck her on the head while pregnant with Mary Grace Baldanza, with an electric lamp, causing her to fall to the floor as a result of the force of said blow.

6. This defendant shows and charges that petitioner struck her in the eye because she refused to live with petitioner's relatives, and she charges and shows that petitioner's brother Louis Baldanza struck her in the face with an ash tray, and she charges and shows that Louis Baldanza, Andrew Baldanza, brothers of petitioner, and Dominick Polizolo, a brother-in-law of petitioner, called her a "bum" and a "prostitute" and spat at her, all of said charges and accusations being committed in the presence of petitioner, without remonstrance on his part and with his open approval.

7. This defendant further charges and shows that petitioner locked her in a bedroom for three

days without either food or drink, for no justifiable reason whatsoever.

8. That petitioner made a criminal complaint against her, accusing her with having committed adultery, which complaint was dismissed and the defendant was found not guilty by Judge Rosen on August 28, 1929. Said trial took place in the County of Monmouth, New Jersey.

9. That ever since, petitioner has abandoned her without justifiable cause and separated himself from her, he has refused and neglected and still does refuse and neglect to maintain and provide for her and her two infant children.

10. That she is now destitute and dependent for her support and maintenance and that of her infant children upon her own exertion, as the petitioner does not contribute any amount to her whatsoever.

11. That the defendant, Josephine Baldanza, further shows and charges that the petitioner conducts a bakery shop and grocery business in the City of Long Branch and derives an income therefrom of Two hundred and fifty ($250.00) Dollars per week; that petitioner is the owner of a house located at No. 41 Prospect Street, Long Branch, valued at Thirty-five thousand ($35,000.00) Dollars, and that the only encumbrance thereon is a mortgage of Ten thousand ($10,000.00) Dollars; that petitioner is the owner of a bakery shop and garage valued at Twenty thousand ($20,000.00) Dollars which has no encumbrance thereon; that petitioner is the owner of a bungalow on Poole Avenue, in the City of Long Branch, valued at Three thousand ($3,000.00) Dollars which has no encumbrance thereon; that petitioner is the owner of a house situate at No. 330 Poole Avenue, in the

City of Long Branch, valued at Five thousand ($5,000.00) Dollars upon which there is an encumbrance thereon of Two thousand ($2,000.00) Dollars; that petitioner is amply able to maintain and provide for her and her two infant children of the marriage in a manner suitable to their station in life.

The defendant, Josephine, is without adequate relief in any other Court, and therefore prays:

1. That the petitioner, Harry Baldanza, answer fully each and every allegation of this counterclaim.

2. That he be ordered to provide suitable support and maintenance for her and the two infant children of the marriage, to be paid or provided by him or made out of his property.

3. That the petitioner give reasonable security.

4. That his estate, property and effects may be sequestered to compel his performances of any decree as shall be equitable and just.

5. That the petitioner be ordered to pay her a reasonable counsel fee to defend this action and to prosecute this counterclaim, and that she be awarded a sufficient sum weekly for her support and that of her two children during the pendency of this suit.

And your petitioner, as in duty bound, will ever pray, etc.

VIVIANO & KEHOE,
Sol'rs. of Josephine Baldanza,
Defendant.

JOSEPH F. S. FITZPATRICK,
of Counsel.

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

JOSEPHINE BALDANZA, of full age, being duly sworn according to law, upon her oath deposes and says:

That she is the defendant in the above entitled cause and that she has filed a counterclaim to said action.

She further states that she has read the answer to said petition and the facts set forth in her counterclaim and that the matters therein stated are true to the best of her knowledge and belief.

JOSEPHINE BALDANZA.

Sworn and subscribed to before me
at Paterson, N. J., this 10th day
of October, 1929.

JEANETTE SWEETMAN,
A Notary Public of New Jersey.

(Seal)

Answer to Cross-Petition.

IN CHANCERY OF NEW JERSEY.

(Filed Dec. 20, 1929.)

The answer of Harry Baldanza, the above named petitioner, to the answer of Josephine Baldanza, the above named defendant, as in the nature of a cross-petition:

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

2. This petitioner, as defendant in said cross-petition, denies that the cross-petitioner was driven from her home in Long Branch, New Jersey, as alleged, by the force of petitioner. As to the other statements contained in said paragraph, petitioner has no knowledge or information and leaves defendant to her proof.

3. Petitioner admits paragraph 3 of the counterclaim.

4. Petitioner denies that on the 25th day of August, 1929, he deserted the defendant as alleged, but on the contrary on said date the defendant left the bed and board of petitioner, and petitioner further denies that the defendant has ever been and still is a true and faithful wife.

5. Petitioner denies the allegations of paragraph 5.

6. Petitioner denies the allegations of paragraph 6. More particularly he denies that he struck the

defendant in the eye, or that his brother Louis Baldanza struck the defendant with an ash tray. He further denies that his brothers therein named ever called the defendant a bum or a prostitute, or spat at her, in the presence of petitioner.

7. He denies paragraph 7 of the counterclaim.

8. He admits so much of paragraph 8 of the counterclaim as alleged that a criminal complaint was made against the defendant, accusing her of having committed adultery, but alleges that said complaint was dismissed and the defendant found not guilty because of the fact that an adjournment was refused the petitioner for the purpose of producing witnesses to testify as to the adultery charge.

9. He denies that ever since, as alleged in said paragraph 9 of said counterclaim, he has abandoned the defendant without justifiable cause and separated himself from her, or that he has refused and neglected and still does refuse and neglect to maintain and provide for the defendant and her two infant children; but on the contrary he states and alleges that he has made adequate provision for the children of said marriage.

10. Petitioner denies so much of paragraph 10 of the counterclaim as alleged that the petitioner has not contributed any amount to the defendant, but states that he has made adequate provision for the support and maintenance of her infant children and that she is not now destitute or dependent for their support.

11. Petitioner denies the allegations of paragraph 11 of the counterclaim except as hereinbelow

mentioned. Petitioner is the owner of property at 41 Prospect Avenue, Long Branch, New Jersey, which is valued at $21,000.00. There is a $10,000.00 real estate mortgage against the same and a judgment lien in the sum of approximately $5500.00. Petitioner is further the owner of a bungalow in the City of Long Branch which is valued at approximately $3,000.00 and against which there is a mortgage of $2,000.00 held by the Long Branch Trust Company. He is further the owner of No. 330 Poole Avenue in the City of Long Branch, New Jersey, which is worth approximately $1500.000. Petitioner is employed at the present time at a salary of $35.00 a week.

This petitioner prays that the cross-petition of the defendant may be dismissed and that this petitioner may have the relief prayed for in his petition.

HARRY BALDANZA,
Petitioner.

QUINN, PARSONS & DOREMUS,
Solrs. for Defendant in Cross-Petition.

Replication.

IN CHANCERY OF NEW JERSEY.

(Filed Dec. 20, 1929.)

The petitioner, Harry Baldanza, by way of replication to the answer filed herein, says he denies the new matters raised therein and joins issue upon the same.

QUINN, PARSONS & DOREMUS,
Solicitors of Petitioner.

Replication.

IN CHANCERY OF NEW JERSEY.

(Filed Dec. 27, 1929.)

The defendant, Josephine Baldanza, joins issue on the answer of the petitioner to the counterclaim.

VIVIANO & KEHOE,
Solicitors of Defendant.

Order of Reference.

IN CHANCERY OF NEW JERSEY.

(Filed Dec. 13, 1929.)

It is, on this 12th day of December, Nineteen hundred and twenty-nine, on motion of Viviano & Kehoe, solicitors of defendant, Josephine Baldanza,

ORDERED that the above stated cause be referred to Hon. J. F. Fielder, one of the Vice-Chancellors, to hear the same for the Chancellor, and to report thereon to him and advise what order or decree should be made thereon.

E. R. WALKER,
C.

I hereby consent to the entry of the above order.

QUINN, PARSONS & DOREMUS,
Solicitors of Petitioner.

Testimony.

IN CHANCERY OF NEW JERSEY.

Between HARRY BALDANZA, Petitioner, and JOSEPHINE BALDANZA, Defendant.	On Petition for Divorce.

Transcript of shorthand notes of testimony taken on final hearing in the above stated cause, March 25 and May 15, 1930, at Chancery Chambers, Jersey City, before His Honor James F. Fielder, Vice-Chancellor.

APPEARANCES:

HON. JOHN J. QUINN and JOSEPH A. FEDER, Esqs., for petitioner.

HON. JOSEPH F. S. FITZPATRICK and SALVATORE D. VIVIANO, Esq., for defendant.

PETITIONER'S CASE.

JOSEPH M. COX, sworn as a witness on the part of the petitioner, testifies as follows:

Direct examination by Mr. Quinn.

Q. You are the Recorder of the Borough of Deal in Monmouth County? A. I am.

Q. I show you a paper purporting to be signed Josephine Baldanza and ask you if that is your signature? A. Yes.

Q. Was it sworn to before you as a Justice of the Peace? A. Yes, sir.

Q. Will you state the circumstances surrounding the signing of that document? A. Some time in August of last year I was called on the phone by Miss Castle, saying that there was a party who wanted to make a statement——

Q. As a result of something that Miss Castle said to you did Mrs. Baldanza come to your office? A. Yes.

Q. Had you ever seen her before? A. No, sir.

Q. Did you know her? A. No.

Q. State what took place. A. She came to my home about 9 o'clock that night and after a conversation she said she wanted to make a statement in writing under oath because she was having trouble with her husband and he would not talk with her. Well, I told her that she was not obliged to make a statement and I advised her as to the law, and she insisted on making the statement.

Q. What advice did you give her as to the law? A. I told her, in the first place, I did not know what she was going to say, and it might be used against her, and if she made it she would have to make it voluntarily. She said she wanted to make it. I did not question her at all. I took her voluntary statement as she gave it to me.

Q. The information contained in the paper was given to you by her? A. It was.

Mr. Quinn: I offer this paper in evidence and ask to have it marked.

Mr. Fitzpatrick: I wish to cross-examine first.

Cross-examination by Mr. Fitzpatrick.

Q. What time of night was this? A. 9 o'clock.

Q. She was brought there by Miss Castle, was she? A. She came with Miss Castle.

Q. Whom did you have the conversation with that you spoke of—Mrs. Baldanza? A. Yes.

Q. Did she know you before? A. No.

Q. Who did? A. Miss Castle.

Q. You say you advised Mrs. Baldanza as to the law? A. I did.

Q. Are you a lawyer? A. I studied law, yes.

Q. Where? A. In Boston.

Q. Are you a lawyer? A. I am not a member of the bar.

Q. But you took it upon yourself to kindly advise Mrs. Baldanza? A. I did.

Q. You never saw Mrs. Baldanza before in your life? A. I did not.

Q. In what room in your house was this signed? A. In my upstairs bedroom.

Q. In your bedroom? A. Yes.

Q. Miss Castle brought Mrs. Baldanza to your home, didn't she? A. She came with her.

Q. Did you invite Mrs. Baldanza— A. I didn't know they were coming until——

Q. Who suggested that a statement was to be made? A. Miss Castle called me up. I was out at dinner. I told her I would be there at 9 o'clock. When I arrived there Miss Castle and Mrs. Baldanza were there.

Q. In the house? A. Yes.

Q. And who spoke first? A. I don't know. It might have been Miss Castle.

Q. Is it not a fact that this statement was dictated by Miss Castle? A. Oh, no, absolutely not.

Mr. Fitzpatrick: I have no objection.

(Marked Exhibit P-1.)

SAM ZOL, sworn as a witness on the part of the petitioner, testifies as follows:

Direct examination by Mr. Quinn.

Q. You are a photographer in the City of Long Branch? A. Yes.

Q. How long have you been engaged in that business? A. Seven years in Long Branch.

Q. I show you a photograph and ask you if that correctly portrays the condition existing on that street in the vicinity of Norwood Avenue? A. Yes.

By Mr. Fitzpatrick.

Q. Did you take this photograph? A. Yes.

Q. When did you take it? A. Last week, Saturday.

Q. Last week, Saturday? A. Yes.

Q. What is it a picture of? A. A street.

Mr. Fitzpatrick: I object. There is nothing in the case which shows that it has any bearing on it.

By Mr. Quinn.

Q. It is a picture of what street? A. Archwood Avenue, between Wall Street and Cedar Street.

By Mr. Fitzpatrick.

Q. Are you reading? A. I don't remember the names of the streets there. It is away out of town. It is on the outskirts some place.

Q. You did not know this street in 1929, did you? A. No.

Mr. Fitzpatrick: I object to the picture as taken in 1930. The condition of the street may have changed materially.

The Court: Do you offer it?

Mr. Quinn: Yes, I offer the picture in evidence.

The Court: Objection overruled.

(Marked Exhibit P-2.)

By Mr. Quinn.

Q. I show you another picture and ask you if that was taken by you? A. Yes.

Q. Does that correctly portray the condition existing there? A. Yes.

Q. You took it when? A. The same day. It was taken the same day.

Q. What does it show? A. That shows a street here with hedges around it.

By the Court.

Q. What street? A. I cannot remember the name so good—Archwood Avenue.

Q. The same location? A. Yes.

Q. From another point of view? A. Another point of view, yes.

By Mr. Fitzpatrick.

Q. Was this picture taken at the same time as the other? A. Yes.

Q. 1930? A. Yes.

Mr. Fitzpatrick: I object upon the ground that the witness does not know the location.

Mr. Quinn: I will have it marked for identification.

(Marked P-3 for Identification.)

HARRY BALDANZA, the petitioner, sworn as a witness in his own behalf, testifies as follows:

Direct examination by Mr. Quinn.

Q. You are the petitioner in this case? A. I am.

Q. You were married April 20, 1924, at Passaic, New Jersey? A. Yes.

Q. After that where did you live with your wife? A. Long Branch.

Q. Have you lived there ever since the time of your marriage? A. Yes.

Q. Up to the present time? A. Yes.

Q. You charge in your petition that your wife on August 24, 1929, committed adultery with one John Napolitano in the City of Long Branch? A. Yes.

Q. Will you state when you first knew that your wife knew John Napolitano? A. March 28, 1929.

Q. How do you know that? A. He came in my store——

Q. Who did? A. John Napolitano.

Q. Go ahead. A. And tried to sell us some line of vegetables.

By the Court.

Q. Had you known him before that? A. I seen him there.

Q. Did you know his name? A. Yes, sir.

By Mr. Quinn.

Q. Go ahead. A. And I make the deal. I buy a few stuff I needed, and my wife was in the same store at the same time, and as soon as he went out she says, "What a nice looking fellow that is." She was in back of the counter when she said that and

I was in the middle of the store, and she came in and she grabbed and swung around just as though she was——

Q. What did she do? A. That is what she did.

By the Court.

Q. What did she do? A. She said, "What a nice looking fellow that is." John Napolitano she meant.

Q. What did she do? A. She swing around her arms.

Q. Then what? A. I say, "What is the idea? What foolish idea have you got?" She went back in the kitchen. That was all there was that day.

By Mr. Quinn.

Q. Did you ever speak to her again about John Napolitano? A. Yes, I did.

Q. When? A. In the latter part of March.

Q. What year? A. 1929.

Q. What did you say to her? A. I told her I did not like the idea he comes in the store and talks to her all the time like that.

Q. Who came into the store? A. John Napolitano.

Q. What did she say to you? A. She said, "You got a bad mind all the time."

By the Court.

Q. Did he come into the store again after the first time you told us about? A. The second time.

Q. This was the second time he came there? A. Yes.

By Mr. Quinn.

Q. That was the second time you spoke to your wife about it? A. Yes.

Q. What the Court wants to know is how many times he came to the store. A. Pretty near every day.

Q. Before you spoke to her? A. After I spoke to her.

Q. He came once, the first time? A. Yes.

Q. You spoke to her another time about not liking him to come to the store? A. I did not like him to come there.

Q. How many times had he been there up to that time? A. Three or four times.

Q. What did he do when he got there? A. Well, he was talking in confidence to her, always "Josie, Josie." I did not see any other men coming in my place and saying "Josie" like that, in confidence with her.

Q. He called her "Josie"? A. Yes, sir.

By Mr. Quinn.

Q. Did you speak to her again after the last time you have just mentioned? A. I did.

Q. Did she ever go out nights when you were not home? A. Yes, sir.

Q. Did you ever come home at night and find that your wife was not there? A. Yes, sir.

Q. How frequently, between March and August of 1929, would you come home nights and find her out? A. About two times a week—one time a week.

Q. Did you speak to her about that? A. I did not like the idea she was coming so late night times.

Q. What did she say and what did you say? A. She said, "My gosh, I work every day in the week. I like when I get through to go out for an hour or so."

Q. Would she tell you where she had been? A. She always told me wanting to buy a dress.

Q. Anything else? A. The next time she says she is going to buy a pair of stockings—always an excuse to go out.

By the Court.

Q. What time did she go out? A. She used to leave the store—she used to tell me—I was out of the place—I am delivering bread out of town. She used to tell me she was going out from the store ten minutes to eight.

Q. And getting back when? A. She came back 9 o'clock, sometimes half-past nine.

By Mr. Quinn.

Q. Do you know what time she actually left the store and the time she told you she went out around 8 o'clock? A. Yes.

Q. Do you know that of your own knowledge? A. No.

Q. On August 24, 1929, did you follow your wife?

Mr. Fitzpatrick: I object upon the ground that it is leading.

Q. Did you follow your wife on any occasion? A. I did.

Q. What date? A. August 24, 1929.

Q. What time of evening did you start to follow her? A. Twenty minutes to eight.

Q. Who was with you? A. Miss Castle, Mascia and Mr. Everingham and I.

Q. And where did you first see her on that evening? A. That evening I took her down myself on Second Avenue and I left her there. She told me she was going to make a visit to somebody.

By the Court.

Q. Where is Second Avenue? A. Long Branch.

Q. Whereabouts on Second Avenue? A. 171.

Q. What is there, a store or a house? A. A house, a private house.

Q. You took her to somebody's house? A. Yes. She wanted to go to pay a visit to somebody that was sick.

Q. Whose house? A. Sam Grandi's.

By Mr. Quinn.

Q. Go ahead. A. And I went around the corner. I left my car there and I went in front of this Sam Grandi's house.

Q. Go ahead. A. She left there. About twenty minutes she stayed in the house, and she walked down Broadway and I saw her get in John Napolitano's car.

Q. Who else was in the car? A. Nobody, only him.

Q. Was Miss Castle and Everingham with you all the time? A. Yes.

Q. Go ahead. A. They were with me all the time until we got on Broadway, and then they left the car. She walked down and they followed her on foot and I stayed in the car, and then she went back towards the beach.

Q. After she got in the car, where did they go? A. They went to West Long Branch.

Q. Go ahead. A. A very lonesome street, no houses around there.

Q. What street? A. It is Cherry Street.

Q. Cherry Street? A. I cannot think of the name of the street—Archwood Street.

Mr. Fitzpatrick: The witness is referring to something. I want to find out what the memorandum that he has is.

Q. What is that that you are looking at? A. I wrote down the name of the street.

Q. When did you write it down? A. That time, the next day.

Q. Is this the same paper that you wrote it on? A. Yes.

Mr. Fitzpatrick: May I see the paper?
The Court: All right.

By Mr. Fitzpatrick.

Q. Is that in your writing? A. No, it is not my writing.

Q. You did not write it down? A. Somebody else wrote it for me.

By the Court.

Q. You said you wrote it down. Did you write it down or not? A. I didn't write it. Somebody wrote it for me.

Q. Who wrote it down? A. Miss Castle.

Q. The only way that you know the name of the street is what Miss Castle told you? A. I went up and saw the name of it.

Q. Miss Castle told you? A. I know the place, the street. The same night it was dark. The next day I went to see it.

The Court: Strike out the testimony that the name of the street was Archwood Street.

Q. What time did they get there? A. They got there about ten minutes after nine.

Q. Who was with you? A. Miss Castle, Mr. Everingham, Mr. Mike Kola and I.

Q. How did you get there? A. With the car following them. They pulled in between the big high hedge.

Q. You mean alongside of the hedge? A. No; they drove between two high hedges, the driveway to the ball field, and we were on the corner, and they went back there again and they parked for twenty minutes. After that they started off away from there and they went to Broadway and Third Avenue, Long Branch. She got off of Napolitano's car. And that is all I seen that night.

Q. You went back home? A. I went back home before she got home.

Q. You got home before she did? A. Yes.

By Mr. Quinn.

Q. Then what happened? A. I asked her, "Where have you been?" She said, "You mean to make a visit to somebody else, go in and go out? I stayed there an hour and a half and I took a walk up and down Broadway a couple of times."

By the Court.

Q. That is what she told you? A. She told me that. I say, "Are you sure about that? Were there any lights on that Broadway where you went?" She was puzzled. She didn't say anything. So the next morning I started to have a little argument with her. I told her, "What are we going to do about it? Are you coming to your mother's today?"

Q. You said that to her? A. Yes.

Q. "What are you going to do" about what? A. I started to question her why she was coming home so late night times.

By Mr. Quinn.

Q. What did you say to her about her mother's? A. I took her to her mother's.

Q. What did she say to you about Napolitano? A. She did not want to come.

Q. Did she say anything to you about Napolitano?

Mr. Fitzpatrick: I object.

The Court: Objection sustained.

Q. Go ahead and tell it in your own way. A. I told her the best thing, to go home to her mother. As soon as we got there——

By the Court.

Q. You went with her? A. Yes; I drove her down there; I drove the car.

Q. Go ahead. A. As soon as we got there I explained to my mother-in-law all about it.

Q. What did you say? A. I told my mother-in-law.

Q. Told her what? A. I told her she was going around with another man.

Q. Did you name the man? A. Yes; John Napolitano.

Q. Tell us what you said. A. I told my mother-in-law that she was going around with John Napolitano and she was having intercourse with John Napolitano, and her mother asked her was it true, and she says it is. When her mother and her brother was there and she admitted it, her mother and brother chased her out of the house.

Q. Her mother was present when she said yes it was true? A. Yes, her brother and her mother.

Q. They chased your wife out of the house? A. They chased her out of the house and I was left there. My mother-in-law told me that she was going to come up to my house and take care of my children and take care of me, and "Do not bother with her any more."

By Mr. Quinn.

Q. Who said that? A. My mother-in-law, her mother.

Q. What reply did your wife make to your mother-in-law at that time?

Mr. Fitzpatrick: I object upon the ground that this was said to the wife. He testified the wife was already chased out of the house.

The Court: I don't know.

A. After the mother knew all about it, she got chased out.

By the Court.

Q. When was it your mother-in-law said she was going to come over to take care of your mother and you—before or after your wife was chased out? A. After.

Q. Your wife was not there? A. My wife was not there, no, sir.

By Mr. Quinn.

Q. At the time that you told your mother-in-law about the intercourse with John Napolitano, where was your wife? A. She was there at that time.

Q. How close to you? A. Right in the same room. She was there and she admitted and she started to cry and she said she wanted to be pardoned, to take her back to the house again.

Q. As a result of that, you say your mother-in-law put her out of the house? A. Put her out of the house. She said, "You are not a daughter of mine for doing that to your husband."

Q. Then where did your wife go? A. She went out from the house and she went down to Miss Castle.

Q. When did you see your wife next after she went out of the house? A. I didn't see her any more.

By the Court.

Q. You never saw her? A. I didn't see her until she came back in my house.

Q. When did you see her next? A. The 27th of August.

By Mr. Quinn.

Q. She came to your house? A. She came to my house.

Q. What did you do? A. I was out of the house and I found out that she was in my house.

Q. Then what did you do? A. I got her arrested.

Q. Did you see her again after that, after you had her arrested? A. No, sir.

By the Court.

Q. You had her arrested August 27th? A. August 26 or 27—27th it must have been.

Q. What charge did you make against her when you had her arrested? A. The charge was I did not want her in the house.

Q. What was the charge you made against her when you had her arrested—for assault and battery, or for robbing you, or for adultery? A. I cannot explain you.

Q. You had her arrested for something. What charge did you make against her to have her arrested? A. The only reason, because she went out with Napolitano having intercourse. I didn't want to have her in my house any more.

By Mr. Quinn.

Q. When you had this conversation with your mother-in-law, where was that? A. In Passaic City.

Q. In Passaic? A. Yes.

Q. I show you P-2 for Identification and ask you if that shows the place? A. That shows the place where she was that night.

Q. In the automobile? A. In the automobile with John Napolitano.

Q. I believe you said she drove to a ball field? A. Yes.

Q. Does that picture show a ball field? A. Yes; right here.

Q. What is the opening that leads to the place that you designate as the ball field? A. A big hedge about 10 feet high on both sides of the street.

Q. Will you show the Court just where the automobile drove in there? A. (Indicating) Right in here.

Q. From this street did you see any part of the automobile after they drove in? A. Yes; the back of the automobile.

Q. I show you P-3 for Identification and ask you if that shows the condition at the place where you saw your wife drive in an automobile with John Napolitano? A. Yes; just the street.

Q. That shows a hedge there? A. Yes.

Q. What do you say as to the condition of the hedge now and in the summer time, in August? A. It could be double in the summer time, I imagine.

Q. Not what you imagine. What was the difference between the hedge now and then? A. With the hedges on it shows much darker.

Q. I show you a letter in an envelope addressed to Mrs. Josephine Baldanza and ask you if you have seen that before? A. No, sir.

Q. Have you seen that before?

Mr. Fitzpatrick: I object upon the ground that he has already answered the question.

The Court: Objection overruled.

A. I see it now. Before I opened the trunk I didn't see it before.

Q. What trunk did you see it in? A. Her trunk; my wife's trunk.

Q. Was it locked or unlocked? A. All the time locked.

Q. Who had the key? A. She had the key. I never seen that trunk open.

Q. I show you a photograph and ask you if you have seen that before? A. Yes, sir.

Q. When did you see that? A. He has been working with me.

Q. When did you see that photograph before? A. Inside the envelope, with the letter.

Q. With the same letter? A. Yes.

Q. Do you know the man in the picture? A. Yes.

Q. Who is it? A. Joe DiSantis.

Q. Did you ever see that man before? A. Yes.

Q. Did you ever see him around your place? A. He worked for me.

Q. How long did he work for you? A. About three years.

Mr. Fitzpatrick: I ask now, to save time, that the testimony as to this letter and DiSantis be stricken from the record because there is nothing in the petition charging anything about DiSantis.

The Court: Motion denied.

Q. When did you find that photograph of DiSantis and the letter in your wife's trunk? A. The 28th of August, 1929.

Mr. Quinn: I ask to have this letter and picture marked for identification.

(Letter is marked P-4 for Identification; photograph is marked P-5 for Identification.)

By the Court.

Q. How do you happen to have this letter and the photograph? A. I tried to open the trunk and I could not open it.

Q. Go ahead. A. And I bust it open; I was suspicious.

Q. Where was the trunk? A. Upstairs in the bedroom.

Q. In whose house? A. My house.

Q. What else was in the trunk? A. Clothes and other letters.

Q. Other letters? A. From the family.

Q. And other letters, did you say? A. Yes.

Cross-examination by Mr. Fitzpatrick.

Q. What day was this that you followed your wife in the car? A. 24th of August, 1929.

Q. Did you have to look at a paper to verify that date, or did you know that date yourself? A. Certainly.

Q. You do? A. Yes.

Q. What time of the night was it? A. Ten after eight when I got home. Twenty minutes after eight when she left.

Q. Did she leave alone? A. Yes, sir.

Q. Didn't you take her? A. I took her down to the place——

Q. She did not leave alone? A. I took her down to the place. Then I left her.

Q. Did you ask her— A. (Interrupting) She wanted to go.

Q. Did you ask her to go to— A. (Interrupting) She wanted to go.

By the Court.

Q. Did you ask her to go? A. No.

By Mr. Fitzpatrick.

Q. Did you know this family that she visited? A. Yes.

Q. You did not go up with her? A. No.

Q. There was a sick person there that night, was there not? A. Not very sick. She came out of the hospital.

Q. There was a person who had been sick? A. She had been sick.

Q. Who was she? A. Mrs. Grandi.

Q. Then you knew your wife was visiting there? A. Yes.

Q. You knew the Grandis? A. Yes.

Q. You did not visit them? A. No.

Q. Did you wait for your wife at the door? A. She knows I went home.

Q. Answer the question. Did you wait for your wife at the door? A. No.

Q. You went around the corner, didn't you? A. Yes.

Q. How far away from the house did you go? A. About 300 feet.

Q. Around the corner? A. Yes.

Q. You could see her coming out, could you not? A. Yes, I did.

Q. At 300 feet away, around the corner, you could see her? A. I parked on the corner and then I went back.

Q. Where were you when she came out? A. In front of Grandi's house.

Q. You saw your wife coming out? A. Yes, sir.

Q. Did she speak to you? A. No, sir.

Q. Did you speak to her? A. No.

Q. How far away from her were you when she came out of the house? A. 20 feet.

Q. 20 feet? A. Yes.

Q. Did you have old lady's clothes on then? A. No, sir.

Q. When did you put them on? A. I never had them on.

Q. Didn't you go down to the beach and put on old lady's clothes? A. No, sir.

Q. Were you not on the beach on your knees looking for your wife? A. No, sir.

Q. With an old lady's dress on? A. No.

Q. Didn't Mr. Everingham tell you to get up out of that? A. No.

Q. Didn't Mr. Everingham find you on the beach crawling on your hands and knees? A. No, sir.

Q. Where was your car when Mrs. Baldanza came out of the house? A. Around the corner.

Q. Did she walk? A. She walked.

Q. How far did she walk? A. To Broadway.

Q. How far is that from Grandi's house? A. Three or four blocks.

Q. Where were you all that time? A. In Miss Castle's car.

Q. Where was your car? A. Parked, I said.

Q. Around the corner, and where was Miss Castle and Mr. Everingham when Mrs. Baldanza came out of the Grandi house? Where were they? A. I believe——

Q. Were they in front of the house? A. No.

Q. Where were they? A. Around the hedge somewhere.

Q. Where? A. Around the dark place, so they would not be seen.

Q. Were there dark places around the Grandi house? A. Yes.

Q. Where were you? A. I was with Miss Castle.

Q. You testified that you were directly in front of the house, about 20 feet away from the house. Was Miss Castle 20 feet away from your wife, too? A. Yes.

Q. Standing on the sidewalk? A. Yes.

Q. And Mr. Everingham? A. Down further.

Q. Your wife walked three or four blocks? A. Yes.

Q. Where did you go then when your wife walked away? A. We followed with the car.

Q. You were not in any car, were you? A. I was in the car.

Q. Didn't you say that you were standing in front of the house? A. I got in the car after that.

Q. Where was it that you got into the car? A. On Second Avenue.

Q. What street was Grandi's house on? A. Second Avenue.

Q. How far away from Grandi's house was it? A. About 50 feet.

Q. Then your wife came out and you walked to the car? A. Yes.

Q. You knew where she was going, didn't you? A. No, I didn't know where she was going.

Q. Didn't you? A. No.

Q. You did not ask her to ride home with you, did you? A. No, I did not ask her to ride home.

Q. Why didn't you ask her to ride home with you? A. She said she was going down to do some shopping.

Q. When did she tell you that? A. Saturday night.

Q. You did not testify to that on direct examination. You testified that she went to visit a sick woman, and she visited the sick woman, didn't she? A. Yes.

Q. And she came out. When did you testify that she wanted to go shopping? When did she say that to you? A. When did she say that to me?

Q. Yes. A. Saturday night.

Q. Where? A. Home.

Q. When was she to go shopping? A. The same time.

Q. Was she to go shopping or was she to go to the Grandi house? A. After she went to the Grandi house she was going to go shopping.

Q. You were 20 feet away from her and you allowed her to go shopping by herself? A. Yes.

Q. In other words, you had detectives there with you—you had Detective Everingham and Miss Castle? A. Yes.

Q. Who employed them? A. I did.

Q. How much did you pay them? A. $10.

Q. How many times had you employed them before that time? A. I cannot remember.

Q. You don't remember? A. No.

Q. Did you ever have them before that night? A. Certainly.

Q. How many times? A. Three or four times.

Q. Don't you know how many times? Did you pay them $10 each time? A. Yes.

Q. Only $10? A. Yes.

Q. What were they supposed to do for that? A. To watch her when she was out.

Q. Were they watching her all the time? A. They were watching her all the time.

Q. Day and night? A. No, sir.

Q. How long were they watching her? A. When she was going out.

Q. Were you anxious to get rid of your wife? A. No, sir.

Q. But you thought she was going somewhere that night to do wrong, did you? A. Yes.

Q. You did not protect her, did you? A. I did.

Q. You protected her by following her with detectives? A. I used to tell her before not to go out with somebody else.

Q. That particular night did you protect her when she came out of that house?

Mr. Quinn: Objected to.

Mr. Fitzpatrick: Question withdrawn.

Q. Mrs. Baldanza walked three or four blocks from the Grandi house to where you say she got in a car? A. Three long blocks.

Q. Were they lighted? A. Yes.

Q. Many people on the street? A. Plenty.

Q. Crowded, was it not? A. Not so crowded.

Q. How far away were you from her in the crowd when you were going through the crowded section? A. Right back of her.

Q. On the sidewalk? A. In the gutter.

Q. How far from her? A. 10 feet.

Q. The sidewalks were crowded? A. Not crowded on Second Avenue.

Q. You just testified before it was crowded. Was it or was it not crowded? A. Some places was crowded and some places was light.

Q. Where did she get in the car? A. On Broadway.

Q. What part of Broadway? A. Between 94 Broadway, I think it was.

Q. How do you remember that number? A. I pass it every day. I know just the number she got in the car.

Q. Was it on the corner? A. No, sir; in the street.

Q. You were only 10 feet away from her? A. Yes.

Q. Did you make any attempt to stop her from getting into this car? A. Beg pardon?

Q. Did you try to stop her from getting in the car? A. No.

Q. How do you know it was Napolitano's car? A. I seen him.

Q. Do you know his number? A. Yes.

Q. What is the automobile number? A. 2845.

By the Court.

Q. Is it a car which you had seen before? A. Yes.

Q. How many times? A. Three or four.

Q. And he was in the car that night? A. He was in the car.

By Mr. Fitzpatrick.

Q. What kind of a car was it—open car or sedan? A. Sedan.

Q. Anybody else in the car? A. No.

Q. How many could it hold? A. Five-passenger car.

Q. Only Napolitano was in it? A. Only Napolitano was in it.

Q. Did Napolitano drive fast after that? A. Not so fast.

Q. He did not drive so fast? A. No.

Q. How far behind the car were you when you followed it? A. Sometimes 15 feet, sometimes 20 feet; it all depends on how fast he goes.

Q. Maccio was with you? A. Maccio, yes

Q. And Everingham? A. Yes.

Q. And Miss Castle? A. Yes.

Q. And you had the lights on your car? A. Sure.

Q. You had the headlights on, didn't you? A. On Broadway, before we go from there.

Q. When you were following the car? A. Yes.

Q. You had your headlights on? A. Yes.

Q. You were only 20 feet away? A. Yes.

Q. And you were never more than 20 feet away? A. Not more than 20 feet.

Q. You were not more than 20 feet? A. Yes.

Q. How far did the car go from Broadway when Mrs. Baldanza got in it until you say they were in the ball field? A. Ten minutes.

Q. You followed them for ten minutes and you were only 10 or 15 feet behind them? A. Sometimes 20 feet.

Q. But you were pretty close to them? A. Yes.

Q. Were the lights shining in the car? A. No.

Q. They were not shining? A. No.

Q. Whose car was it you were riding in? A. Miss Castle's car.

Q. What kind of a car is it? A. Chevrolet.

Q. And the lights did not shine 20 feet? A. No.

By the Court.

Q. Were you in an open or closed car? A. Sedan.

By Mr. Fitzpatrick.

Q. You rode ten or fifteen minutes, you say? A. Yes.

The Court: He said ten minutes.

Q. Did you drive along the shore? A. One block.

Q. One block on the shore? A. Yes.

Q. Then where was the rest of the driving—on what road or street? A. Where they parked?

Q. No, where you were driving. A. Chelsea.

Q. All the time on Chelsea Avenue? A. No, they first were on Second Avenue.

Q. He took her in the car on Broadway? A. Yes.

Q. Where there are lots of people? A. Yes.

Q. Then he went through a lot of dark streets with her in the car? A. Yes.

Q. Now, did they drive off the road? Did Napolitano drive off the road? A. On what side—where?

Q. At the end of the ten minutes. A. No; straight.

Q. He did not go off the road at all? A. No, sir.

Q. Any time? A. No, sir.

Q. Then, he did not drive to the ball field? A. At the end, when they got to it.

By the Court.

Q. He asked you if they got off the avenue, and he said "at any time." A. When he got there he stopped.

Mr. Fitzpatrick: Stand up, Mr. Napolitano.

By Mr. Fitzpatrick.

Q. (Pointing to man standing up) Is that the man you mean? A. Yes.

Q. Is that the man who had intercourse with your wife? A. Yes.

Q. Did you see him have it? A. I did not see him have it.

Q. How do you know he did?

Mr. Quinn: Objected to.

The Court: Objection sustained. He has testified to facts that he says he saw.

Q. You told the Court that you told Mrs. Baldanzo's mother that she had intercourse with Napolitano, didn't you? A. Yes.

Q. Now, what did you say to Mrs. Baldanzo up there in Italian? Is it a fact that you called her a prostitute and a whore to her mother? A. Yes.

Q. That is what you did—you called her a prostitute and a whore, didn't you? A. Yes.

Q. You did not say she had intercourse with Napolitano? A. That is what it meant.

Q. You said she was a prostitute and a whore? A. I said she had intercourse with Napolitano.

By the Court.

Q. The question he is asking you is, did you tell your wife's mother that your wife had intercourse with Napolitano? A. Yes.

By Mr. Fitzpatrick.

Q. Is it not a fact that what you did say was that she was a prostitute and a whore?

The Court: He said that he also told her that she had had intercourse with Napolitano.

Q. Who was present? You did not tell the Court who was present at the time you told Mrs. Baldanza's mother that. Who was present? A. Miss Castle, Mr. Maccio and Mr. Everingham.

By the Court.

Q. You also said that your wife was there, too? A. Yes; her mother, her brother, Mr. Everingham, Miss Castle, Mr. Maccio, my brother.

By Mr. Fitzpatrick.

Q. That is Sunday the 25th, is it? A. Yes.

Q. And this famous ride in the automobile was had on Saturday the 24th, the night before? A. The night before.

Q. Your wife was home at ten minutes to ten, was she not, Saturday night? A. 10 o'clock.

Q. Did you write down the time that she came home? A. I looked at the watch.

Q. Where was the watch? A. In the store.

Q. What did you say to your wife when she came in at 10 o'clock? A. I says, "Where have you been?" She says, "Well, I stayed at Mrs. Grandi's an hour and a half, then I walked on Broadway a couple of times up and down."

Q. They were out there twenty minutes, you say, do you? A. Yes.

Q. Where were they for the rest of the time? You watched them for twenty minutes in another car? A. Yes.

Q. What did you see? A. I saw them sitting in the dark, without lights, in the field.

Q. You were back of them for twenty minutes? A. Yes.

Q. You never went near the car to see what was going on? A. No.

Q. You were satisfied of what was going on. Didn't you know what was going on in that car? A. Anybody understands what was going on in the car.

Q. Were the lights in the other car on or off? A. Off.

Q. What about the lights on your car? A. Out, too.

By Mr. Fitzpatrick.

Q. When did you put them out? A. When we were on Second Street, just as soon as we——

Q. You told us before that when you were following that car the streets were dark and that you had lights on. When did you turn your lights off? A. As soon as they went off Sims Avenue, West Long Branch.

Q. What street did you turn off? A. Cherry Street. I mean——

Q. Which do you mean? A. The street on the picture.

Q. Don't you know the name of it? A. I forget.

Q. You parked behind that car for twenty minutes and you knew your wife was in that car, you say?

The Court: He says that, and he said it at least three times.

Q. You made no attempt to get your wife out of the car?

The Court: He has already said that, too.

Q. When did you decide to leave there? A. When they left.

Q. When they left? A. Yes.

Q. You did not follow them any more? A. As soon as we followed——

By the Court.

Q. Your car was stopped in this street? A. Yes.

Q. Right near the entrance to the hedge? A. Yes; we passed right by there.

Q. You went beyond the hedge? A. We passed right by. We saw them stop. We went around the corner and we parked about 75 feet.

Q. You went around the corner and parked your car? A. Yes.

Q. Then you came back? A. No, I did not get off the car. We went back.

Q. Their car went in through the opening in the hedge? A. Yes.

Q. Did your car go past that opening? A. Yes.

Q. And did you stop and park the car? A. We went around the block.

Q. You went around the block? A. Yes, sir.

Q. And then came back again to the same place? A. The same place.

Q. Which side of the opening in the hedge—the side from which you were coming or beyond the opening in the hedge? A. Opposite where she came.

Q. Where was your car when they came out through the opening of the hedge? They had to pass your car to go out, didn't they? A. No, because we kept far away from the driveway.

Q. When they came out of this opening in the hedge and came down the street again, did they go back the same way in which they had come? A. No, they went on another street.

Q. They went down— A. (Interrupting) They backed out from the hedge and they went down.

Q. They did not come along again the same way they had gone? A. No, they did not come the same way. They drove to another street and then they went back again.

Q. Where does that road lead to? A. It leads to Norwood Avenue.

By Mr. Fitzpatrick.

Q. You went all the way around, did you? A. Yes.

Q. Did you watch on the other side? A. We went back in the same street again.

Q. You came back again? A. Yes.

Q. You were going back and forth? A. Once we went around.

Q. Who was with you?

The Court: He said they were all with him.

Q. Did Miss Castle or Everingham get out of the car? A. No.

Q. When did you get your car that night? A. When we got off on Third Avenue.

Q. You went down to Grandi's house? A. Not to Grandi's house.

Q. It was only 20 feet from Grandi's house. Did they ride you back to Grandi's house?

The Court: He parked his car about 200 feet from Grandi's house and came back and stood about 20 feet in front of the house.

Mr. Fitzpatrick: I am trying to bring out where he got his car after the trip to the baseball field. When did he get his own car.

The Court: All right.

A. Half-past nine.

Q. You went back for your car at half-past nine? A. Yes.

Q. Did Miss Castle drive you back? A. Mr. Everingham got off at Third Avenue. Miss Castle drove me down to my car.

By the Court.

Q. After your wife and Napolitano had gone into the baseball field, you went on in your car and then came around the block near the opening of the hedge, is that right? A. Yes.

Q. Did anybody get out of your car? A. No.

Q. And you stayed there for about twenty minutes? A. Yes.

Q. All of you sitting in your car? A. Yes.

Q. Nobody got out and went into the opening in the hedge? A. No.

Q. How do you know the lights on the other car were put out? A. I seen them.

Q. When did you see that? A. When we passed by there were no lights on the car.

Q. When you passed by the opening in the hedge? A. Yes.

Q. Could you see the other car? A. Certainly.

Q. No lights? A. No lights.

Q. Did they come back through the opening in the hedge? A. Yes; they backed out.

Q. How far was your car from the opening in the hedge? A. 75 feet.

Q. And all of you were sitting in the car? A. Yes.

Q. None of you had gotten out? A. No.

Q. When they came back through the opening in the hedge, you say they did not pass your car? A. No.

Q. What did you do after they had gone? A. Followed them.

Q. You followed them again? A. Yes.

Q. For how long did you follow them? A. For about another ten minutes.

Q. Where to? A. To Third Avenue and Broadway, Long Branch.

Q. Was she still in the car with Napolitano? A. Yes.

Q. Did you see her get out of the car? A. Yes.

Q. Where did they stop and where did she get out? A. The corner of Broadway and Third Avenue.

Q. About the same place where she got on? A. Yes.

Q. After she got out of the car, what did Napolitano do? A. He went.

Q. He drove away in his car? A. He drove away in his car.

Q. Did you follow him? A. I did not follow him.

Q. What did you do? A. I went back to my car and went too.

Q. What do you mean, you went back to your car? A. I went to my car that I had parked.

Q. When you drove up to the ball field you were not in your own car? A. No.

Q. You were in Miss Castle's car? A. Yes.

Q. You had left your car where? A. Near Second Avenue, near Grandi's house.

By Mr. Fitzpatrick.

Q. (Showing witness) Is that your signature? A. No.

Q. Do you know what that signature is? A. No.

Q. Can you read that? A. No.

Q. You cannot read English, can you? A. No.

Q. Did you make a complaint against Mrs. Baldanza for adultery in Long Branch? A. Yes.

Q. Did you make a complaint against Napolitano? A. Yes, sir.

Q. You made a complaint against Napolitano? A. No, I did not make a complaint against him.

Q. Why didn't you make a complaint against him? A. Because.

Q. Why? A. Because I did not want to make a complaint.

Q. Why? A. Why should I?

Q. Was it perfectly all right for him to have intercourse with your wife? A. She had to protect herself.

Q. She had to protect herself? A. Yes.

Q. Not you? A. No.

Q. You are not obliged to protect her? A. No.

Q. You were not concerned whether Napolitano did have intercourse with her or not. Now, who was with you when you signed the warrant? A. When I signed the warrant?

Q. You were in the police court? A. I don't remember.

Q. You remember all right. A. I do not.

Q. Tell us which one of your brothers was with you. You know very well. A. Yes.

Q. Who was it? A. Joseph Baldanza.

Q. Who made this statement to the Court? Did you make this statement? A. I made the statement.

Q. What was the statement you made to the Court? A. What was this, when I got her arrested in the house or when I sued her for divorce, which is it? A. Look at it.

The Court: He says he cannot read it.

A. This is the statement I want to put her out of the house.

Q. You wanted to put her out of the house? A. Read that to me. I do not know what that is.

Q. (Reading) "One Josephine Baldanza, of 411 Broadway, did on the 24th day of August, and on divers other days, with one John Napolitano"—is that his name? A. That is what I understand.

Q. "She then and there committed the act of adultery." Did your brother Joe tell you to go and make that complaint? A. No, sir.

Q. Well, now, this complaint was made how many days after the happening? A. The 27th, when she got back home.

Q. She was home how long? A. Two days, I think.

Q. Don't you know? A. One day.

Q. One day. Was that complaint made on a Monday? A. One day and one night, Tuesday.

Q. Do you know where she was? A. Yes.

Q. Where were your children? A. Over in my house.

Q. How many times have you seen your children since this action started?

Mr. Quinn: I object to that as immaterial.

Mr. Fitzpatrick: Question withdrawn.

Q. Joe Baldanza was with you when you made that complaint?

The Court: He said he was.

Q. Who else? A. Mascia.

Q. Was Everingham? A. No.

Q. Was Miss Castle? A. No.

Q. Was Mrs. Baldanza arrested on this charge? A. Yes.

Q. Was she tried? A. I don't understand.

Q. Did she come to court after she was arrested? A. Sure.

Q. Did you testify against her in court? Did you go to court in Long Branch? A. Yes.

Q. What happened to the case?

Mr. Quinn: I object.

The Court: Objection sustained. The record will show.

Q. Are you in business down there? A. Yes.

Q. What business? A. I am not in business.

Mr. Quinn: I object to this line of examination in the nature of proof on the counterclaim.

The Court: We will take up that question when we decide that he must support her.

Q. On the night of the 24th of August, how did your wife come home? A. In a bus.

Q. Is the driver here in court? A. Yes.

Q. Did he come into your store? A. Yes.

Q. Did you talk to him? A. Yes.

Q. Did you sell him anything? A. No, sir.

Q. What was the conversation you had with him? A. No conversation with him.

Q. What did he come in for? A. He bought a bottle of beer.

Q. What kind of business do you run? A. Grocery, fruit and bakery business.

Q. You deal in beer? A. Grocery store has got beer.

Q. Then he did have a conversation. He asked for a bottle of beer. Was there anybody else there? A. No, sir.

Q. Did you see your wife get off his bus? A. Yes.

Q. In front of the store? A. Yes.

Q. Where did Everingham and Miss Castle go? A. I don't know.

Q. They were out looking for her? A. They were watching for her.

Q. They were watching, were they? A. Yes.

Q. Your wife came home on the bus? A. Yes.

Q. Did you see her get on the bus? A. I saw her get off the bus.

Q. What did you do after you left Everingham and Miss Castle? A. I went to get my car to go home.

Q. You did not follow her? A. No.

Q. You testified directly on direct examination that Napolitano first came into your store about March? A. Yes.

Q. How many times a week did he come in—three or four times a week? A. Yes.

Q. He was there to sell vegetables? A. Yes.

Q. He sold vegetables every day? A. Not every day he came in. He asked if I wanted vegetables.

Q. Altogether how many times was he in your place? A. Well, I told you about three times a week.

Q. The time your wife threw her arms around you after she told you that he was a nice fellow, what did you say to Napolitano? A. Napolitano was gone.

Q. He came in later? A. Three times a week.

Q. You didn't say anything to him? A. Yes.

Q. What did you say to him? A. I told him not to come in the store any more.

Q. Did you tell him why you did not want him to come into the store? A. I did not tell him why. I says, "I don't want anything from you any more."

Q. You merely told him you did not want to do business with him? A. Yes.

Q. You did not say you had any suspicions? A. No.

Q. You were afraid of Napolitano? A. Certainly.

Q. He is a big fellow? A. Yes.

Q. You would not take a chance of telling him he was doing wrong with your wife? A. No, I wouldn't take a chance.

Q. Did you at that time accuse your wife of any improper actions—at the time that she threw her arms around you, did you accuse your wife of any improper relations with Napolitano? A. I don't get the question.

Q. Did you say she was bad that time? A. No.

Q. Did she tell her she was bad? A. No.

By the Court.

Q. Now, you did? A. I did, after the night of the 24th.

Q. He asks you, "Did you tell her she was bad?" A. Not until the 24th of August.

By Mr. Fitzpatrick.

Q. That was the first time? A. Yes.

Q. You wanted to sue for a divorce? A. Certainly.

Q. (Showing witness) Did you sign that affidavit, that you knew the contents of the petition? A. Yes.

Q. And that the contents of the petition are true? A. Yes.

Q. Why did you set out in that petition that your wife committed adultery on August 6th? A. August 6th?

Q. Yes. You don't know anything about August 6th, do you? A. No.

Q. You do not know what that affidavit contains or what that petition contains? A. The detective told me just what she done on August 6th.

Q. Who told you? A. The detective.

Q. What detective? A. Miss Castle.

Q. Did you know that was in your petition? Did you know that you charged your wife with adultery on August 6th? A. I didn't sign anything before August 24.

Q. You do not know anything about August 6th? A. Not of my own knowledge. I know what they told me.

By the Court.

Q. Did they tell you anything about your wife's actions prior to August 24? Had these detectives told you anything about what your wife was doing before August 24? A. Yes.

By Mr. Fitzpatrick.

Q. What did they tell you of her actions before August 24? A. They seen her going in John Napolitano's car.

Q. When did they tell you that? A. The next day she went out.

Q. When was that? A. I cannot remember the dates.

Q. You cannot remember. Was it August 6th? A. No.

Q. You do not know when it was? A. No.

Q. How many times did they see John Napolitano's car? A. Three times.

By the Court.

Q. When did you first hire these detectives? A. I hired the detectives about the 18th or 20th of July.

By Mr. Fitzpatrick.

Q. You did not want to get rid of your wife, did you? A. No.

Q. You did not want to get rid of her? A. No.

Q. Your brothers did, didn't they? A. No.

Mr. Quinn: I object.

The Court: I will allow that to stand.

Q. Your brother did? A. No, sir.

Q. Why do you get excited? A. Because you are asking such foolish questions. I was sleeping with my wife, not my brother.

Q. What was the last time you had marriage relations with your wife? A. 12th of August.

Q. It was not the 23rd or 24th of August? A. No, sir.

Redirect examination by Mr. Quinn.

Q. When you spoke to your wife and told her to stop seeing Napolitano, what did she say to you?

Mr. Fitzpatrick: I object unless the time is fixed.

A. She said, "Don't be so foolish. Don't be so bad minded."

By Mr. Fitzpatrick:

Q. When did she tell you that? A. Around the 2nd of July.

Q. Was that the time that she threw her arms around you? A. No.

Q. How did you come to say that to her at that time? A. Because she told me that she was going to leave home ten minutes to eight night time.

Q. What day was that? A. 2nd of July. She was going out to do some shopping.

Q. Was that Saturday night? A. I cannot remember; and I was supposed to come home half-past eight or 9 o'clock. On account I was short of bread, I got home before. I got home about twenty minutes to seven and she was already leaving the store.

Q. She had already left the store? A. Yes.

Q. Who was in the store? A. The helper.

Q. Who was the helper? A. Frank.

Q. You did not know where she went, did you, that night? A. No, I don't know where she went.

Q. Going back to the night of the 24th, I just have one or two questions to ask you. Didn't you put on a woman's gown that night? A. No, sir.

Q. Didn't you go around the corner in a woman's dress? A. No.

Q. Did you have a woman's dress on searching for your wife? A. No.

Q. At no time? A. No, sir.

Q. Did you ever search the beach for your wife? A. No.

Q. Are you sure? A. Certainly.

EMMETT EVERINGHAM, sworn as a witness on the part of the petitioner, testifies as follows:

Direct examination by Mr. Quinn.

Q. You are a constable? A. I am.

Q. Not a detective? A. Not a detective.

Q. You do work for Miss Castle? A. Yes, sir.

Q. Calling your attention to August 24, 1929, were you employed on that day? A. I was.

Q. What did you do? A. Well, we went from Long Branch——

Q. Who? A. Miss Castle, Mascia and I, in a car went to Second Avenue and directly in front of 172 Second Avenue is a—I don't know whether it is a deserted church—some sort of a dilapidated building, anyway, a vacant building with a large hedge and a grass plot in front, and I secreted myself behind the hedge and saw Mr. Baldanza bring his wife in his bakery car to 172 Second Avenue, and she went in the house. She was in there exactly twenty minutes and came out and when she went down Second Avenue towards Broadway I followed on foot and followed her to Broadway. She made several detours up and down Broadway, and finally came back and walked over Second Avenue towards the beach, in front of 74 Broadway, got into this car M18245, which was a very light green car.

Q. Go ahead. A. And I was on foot at that time and Miss Castle's car was on Second Avenue. She brought it around the corner and I jumped in the car and I followed them on down to Ocean Avenue, south on Ocean, up Chelsea and so on up to West Long Branch, and then they turned into Archwood Avenue and went in the street where the hedge is.

Q. Describe the conditions around Archwood Avenue? A. Well, from Wall Street—I do not recall the name of the other cross street south of that—there is a tall hedge, I would say roughly 9 or 10 feet high, full of foliage. Half way the center of the block there is a void or vacant place in the hedge. As I recall, there was an old barn on the north side of the opening in the hedge, and they pulled in this driveway.

Q. Describe the condition of the place at that point—are there any houses? A. Not a house; no; not a house.

Q. Any electric lights? A. Possibly two or three.

Q. Was it dark or light? How far is it from Norwood Avenue? A. I would say four blocks west of Norwood.

Q. How many feet? A. That must be a thousand or fifteen hundred feet.

Q. You say they pulled in this open space? A. Yes.

Q. Lights on or off? A. They turned the lights off as they drove in.

Q. What did you do after you saw them drive in? A. Drove up to Wall Street, in front of the entrance to the ball field, back to the other street and turned around and drove on the left and drove up to probably 75 feet of the opening and remained there with the rear end of the other car in full view.

Q. Were you in full view from where you were? A. From where we were, in full view of the other car.

Q. Were their lights on or off? A. Off.

Q. Approximately how long did you stay there? A. Twenty minutes.

Q. Then what happened? A. They backed out and went in the opposite direction from us, out to Wall Street and continued on on Norwood Avenue to Broadway, to the corner of Third Avenue, and Mrs. Baldanza got out and went across the street into Warner's stationery store, and then we left and went on back.

Q. I show you P-2 for Identification and ask you if that portrays the section where you saw this car in question? A. That is it, yes.

Q. Is the opening shown in this picture that you saw them drive in? A. It is. That is taken from the inside of the field out. That is the first I have seen that photograph.

Cross-examination by Mr. Fitzpatrick.

Q. On the night of the 24th you saw Mr. Baldanza in an old woman's dress, didn't you? A. Not in a dress.

Q. It was an old woman's costume of some kind, was it not? A. I cannot say, but it was some costume he had, a long coat, but whether it was a woman's or not, I don't know.

Q. Where was he when you saw him? A. He was in the grass plot. I was crawling mostly on my hands and knees.

Q. Then you were in the grass? A. I was there and he was in the same field as I was, but I did not know he was there.

Q. Then you got out of the car? A. Yes; I testified to that.

Q. I understood Mr. Baldanza to testify that nobody got out of the car? A. At that point.

Q. Whose car was he in? A. He must have been in Miss Castle's car.

Q. Were you in Miss Castle's car? A. At Broadway I got back into it. I went on foot from the house.

Q. You did not drive from the Grandi house in the car? A. No, I did not.

Q. You walked all the way? A. I walked all the way; yes.

Q. Twenty minutes, was it, you walked to the field? A. No; no; you misunderstand me.

The Court: He said he walked from the Grandi house to where their car was parked and then got in their car and followed Mrs. Baldanza.

Q. Didn't you testify that you— A. I think you misunderstood me. I followed the lady, when she came out of the house, down Second Avenue to Broadway on foot and detoured around on Broadway and then back to 94 Broadway, and then I got in Miss Castle's car at that point and went in the car over to West Long Branch.

Q. How near was that car to the point where you saw Mrs. Baldanza get into the car? Did you see her get into the car? A. I did.

Q. Where—94 Broadway? A. 94 Broadway.

Q. The license number on the car was 18245? A. Yes.

Q. Then you went around to this famous spot and you got out of the car again, did you? A. No; I did not.

Q. Did Baldanza? A. No.

Q. Where was he when he was in this garb; was it on the beach? A. No; he was in front of 172 Second Avenue. As I said before, there is a vacant house with high grass; it had not been cut in some time. I did not know Mr. Baldanza was there. As she came out and started to go away, I started to follow her and I almost fell over Mr. Baldanza.

Q. What did you say to him? A. I don't know as I passed any remark.

Q. Didn't you tell him to go home and get that dress off him or he would be put in jail? A. No; I did not.

Q. Don't you remember telling me, in the presence of two other men, that you told him to go

home or he would be arrested for having that exterior on? You remember having a conversation with me? A. Yes.

Q. In the Berkley-Carteret? A. Yes.

Q. We had a long conversation? A. We did.

Q. At that time you told me that Mr. Baldanza was on the beach in a woman's garb? A. No; I didn't tell you that. I never said he was on the beach.

Q. What is there about that picture that you identify? A. The high bushes.

Q. That condition exists all along the road there, does it not? A. It does.

Q. What is there about that picture that identifies it with this particular episode? A. Just a general view. This one here shows the opening.

Q. Is that the only opening on that road like that? A. So far as I know.

Q. Do you know that street pretty well? A. Well, I have been there half a dozen times.

Q. Following the same people? A. No.

Q. Following other people? A. No; I cannot say that I ever followed other people, but I live in that vicinity and I go up that way.

Q. I thought you lived in Bradley Beach? A. I live in Asbury Park.

Q. Have you always lived in Asbury Park? A. Well, it is called Neptune. It is really a suburb of Asbury Park.

Q. That is miles away from Long Branch? A. About seven miles.

Q. So that you did not live in that vicinity at all. You won't say that along that road pictured in here, that that is the only spot where there is a hole in the hedge? A. I would not swear to that.

Q. What is there about that picture that enables you to identify it? A. I saw that at the Berkley-Carteret; I recognize it here again.

Q. Here is an opening in a hedge that might be miles long in that street? A. There is no other identically the same.

Q. What is there particularly about that one that you identify so distinctly? A. As I said before, it is a general picture.

Q. How far in from that opening was that car parked? A. The rear end was just—the rear end was like that—that would be headed in this way, just as much as he would be this way—75 feet.

Q. You were in back of that car and to the outside of the hedge, were you; you were to the rear of the other car and to the outside of the hedge? A. They were crossways.

Q. How could you see— A. (Interrupting) You could see like the tail light. The whole rear was exposed in the clear; you could see absolutely.

Q. You were never in front of that car, were you? A. No.

Q. You were outside the hedge how far away? A. 75 feet; approximately 75 feet.

Q. What did you see happen in there when that car was parked inside the hedge? A. Nothing. I saw the two people in the car when they drove it, but after that I saw nothing.

Q. Was the end of the car on the sidewalk or beyond the sidewalk or was it inside the hedge? A. Well, I suppose the end on the sidewalk.

By the Court.

Q. Was it extending out behind the hedge? A. Yes; a little of it.

By Mr. Fitzpatrick.

Q. Could you see the people in the car, in the dark? A. Not after they went in; no; no, they were hidden from view; the rear of the car I saw.

Q. You saw the rear of the car? A. Yes.

Q. There was a window in the rear of the car. Was it the rear, at the side or the back rear? A. At the corner.

Q. Could you see the whole side of the car? A. No; we could not see up to the driver's seat, and they were in the front seat when they drove in.

Q. You stopped? A. We drove around and came back and stopped.

By the Court.

Q. And waited for twenty minutes after you stopped? A. Yes.

By Mr. Fitzpatrick.

Q. Did anybody get out of the car at all? A. No.

The Court: Out of whose car?

Mr. Fitzpatrick: There was only the one car there.

The Court: They were in one car and the people following were in another car.

Q. Did anybody get out of the car in which you were? A. No.

By the Court.

Q. You saw nobody get out of either car? A. I saw no one get out of either car. I didn't see them after they drove in back of the hedge.

(At this point recess is taken until 2 o'clock in the afternoon. After recess witness resumes stand and cross-examination continues as follows:)

By Mr. Fitzpatrick.

Q. Who employed you in this case? A. Miss Castle called me up. I had been working for Miss Castle a year and a half ago and made several arrests.

Q. What did she tell you on the 24th of August? A. She gave me no orders.

Q. Where did you meet her? A. In my house. She came to me in her car.

By the Court.

Q. When were you employed by her in this matter? A. The first night I was out was July 19, on this case.

Q. The husband did not employ you? A. Not directly; no.

By Mr. Fitzpatrick.

Q. Did you have any conversation with him? A. No.

Q. Did you August 24? A. Oh, yes; I had met the man and talked to him.

Q. Did you meet him on the night of August 24, after you left Archwood Avenue? A. He was in the car with me.

Q. I mean did you have any conversations with him after that, that night? A. We stopped back to his house, while he was undecided what he was going to do, or something to that effect. Shortly after that we went home.

Q. Were you and he in the car with Miss Castle when you saw a woman get out of this car on Broadway? A. Yes.

Q. Where on Broadway was that? A. Third Avenue. Broadway and Third Avenue.

Q. You had followed them how long before that? I mean how long a time was covered in your following her from the beginning that night up to the time you stopped following her on Broadway? A. She came out of the house at 8.40, and that was possibly a quarter of ten.

Q. You left her on Broadway after she got out of the car. Why didn't you follow her from there? A. From their home?

Q. Yes. A. Well, Mr. Baldanza wanted to get his car and get home. He wanted to be home when she came in.

Q. You were watching her after that? A. I went to the corner of Bath and Prospect Avenues.

Q. Why were you watching her? A. To see how she came home.

Q. How did she come home? A. She came home on a bus.

Q. Did the bus leave her right at the door? A. I could not say.

Q. You were on this case again the next morning? A. I was called the next morning.

Q. What time the next morning? A. I was called the next morning.

Q. What did you do the next morning? A. Went to Passaic.

Q. You took Mrs. Baldanza there? A. No, sir.

Q. Didn't you take her there? A. I did not.

Q. You rode in the car with her? A. I got into her husband's car at Red Bank.

Q. Did you use a gun on her? A. I have not used a gun; I never had a gun in view.

Q. Did you show her a pair of handcuffs? A. I had a pair of handcuffs.

Q. You carried them in your hand? A. I did from one car to the other.

Q. And why did you do that? A. I always do. They were heavy in my pocket. I had them lying on the seat in Miss Castle's car and when I got up I picked them up and had them in my fingers and got in the other car.

Q. Did you hear the conversation before Mrs. Baldanza, the respondent's mother, in her home in Passaic? A. Yes.

Q. Did you hear what was said? A. Yes. Part of it was in Italian which I did not understand.

Q. What did you hear in English? A. Well, her brother—they began to talk in Italian when I first went in.

Q. "They" means whom? A. Mr. Baldanza.

Q. Which Mr. Baldanza? A. Well——

By the Court.

Q. The petitioner here? A. Yes, and his brother Joe and Mr. Andrew Baldanza, Mr. Mascia and Mrs. Baldanza's brother and also her mother were in the house and they were all talking at once, more or less excited, and Miss Castle requested them to talk in English, which they did from time to time.

Q. What did you hear in English? A. Her brother asked Miss Castle to tell him what we had seen, and she told him the times we had followed her and what we had seen, and he turned to her sister, Mrs. Baldanza, and asked her if that was the truth, and she said yes. He said, "Is it all true?" She said, "Yes." He immediately told her

to go out of the house, she was no longer a sister of his.

Q. You never saw her do anything wrong, did you? A. If you mean——

Q. Did you ever see Mrs. Baldanza do anything wrong?

The Court: Maybe it was wrong for her to be out in a car with another man.

Q. Did you ever see her do anything immoral or unmoral with your own eyes? A. No. I will say no to that question.

By the Court.

Q. Have you seen any acts of affection between the defendant and Napolitano? A. Well, in a way affectionate, she had her head on his shoulder and he had his arm around her in the car. I could see that after they got in the car. I would call it a very affectionate manner.

By Mr. Fitzpatrick.

Q. Didn't you tell me when I talked with you the night of December 6, 1929, that you never yourself saw Mrs. Baldanza do anything wrong or anything immoral? A. You asked me whether I could say there was sexual intercourse, and I said no.

Q. Didn't I ask you if you had ever seen Mrs. Baldanza do anything wrong, and didn't you say that you never saw anything wrong, but that she admitted to you she had kissed Napolitano? A. She made that statement that she had kissed this man and he had kissed her.

Q. But you never saw her do it, did you? A. I could not swear that she actually kissed him. No; I would not say that. I know they sat in a very affectionate manner.

Q. When had you first seen this man? A. Earlier in the evening, in Long Branch, in front of the store this man worked in; his car was in front of the place. I went in the store and bought cigarettes.

Q. That same night? A. That same night earlier.

Q. You went there? A. I went there.

Q. You were sent there, were you not, to his house? A. I was employed to get whatever evidence I could——

By the Court.

Q. Were you sent to the store? A. Well, I don't know hardly how to answer.

Q. You either were or you were not? A. Well, I asked to be taken around there so that I could get a look at the man. I had never seen the man before.

By Mr. Fitzpatrick.

Q. Whom did you ask? A. Miss Castle.

Q. When did you ask her? A. That night. Mr. Mascia was in the car with me and he saw the man in the store and he pointed him out to me that he was the man.

Q. Mr. Mascia said that? A. He pointed him out that he was the man.

Q. Where did you pick up Mr. Mascia? A. At his home in Asbury Park.

Q. Was Miss Castle with you? A. She first got me and then went to his residence and got him and went to Long Branch.

Q. What store did you go in? A. On Union Avenue.

Q. Was it his store? A. I don't know whether he owns the store or waited on it.

Q. He was pointed out by Mascia as the man? A. He was pointed out by Mascia as the man.

Q. What did Mascia do? A. We drove up and he said he was in the store now, and we drove to the next corner. I got out of the car and I went in the store and bought cigarettes.

Q. What kind of a store was it? A. Well, it is a little grocery store.

Q. Where was he? A. He was in the store.

Q. Whereabouts in the store? A. Behind the counter.

Q. Waiting on the counter? A. Yes.

Q. What time was this? A. Possibly 6 or 7 o'clock—7 o'clock.

Q. Now, you know whether it was six or seven. A. I would say seven.

By the Court.

Q. What date was this? A. The 24th, the same day.

Q. This was Napolitano who was pointed out to you? A. Yes.

Q. Had you ever seen him before? A. No; I had not seen him before that.

Q. Had you not seen him with Mrs. Baldanza before? A. I did. On the night of the 17th of August I just got a mere glimpse of him going up in the car when she got in the car down on Union Street near Second Avenue, but I couldn't say who he was or anything about it.

By Mr. Fitzpatrick.

Q. When did you get the number of the car? A. The night I went in and got the cigarettes.

Q. Where was the number? A. I got it off the license plates.

Q. You did not know it was his car? A. Well, it was pointed out—well, that is the car.

Q. It was pointed out as his car? A. Yes.

By the Court.

Q. It was the same car they were in on August 24? A. Yes.

By Mr. Fitzpatrick.

Q. When did you take the number? A. That night.

Q. At the store? A. Yes, sir.

Q. That was the only time you had seen the number? A. Well, I had seen it before—that number was on another car previous to that and transferred to this new car; they bought a new car.

Q. Who bought the new car? A. I don't know the owner.

Q. You do not know that that car that you saw in front of that store was Napolitano's car? A. No, but he was driving it.

Q. He was in the store? A. At that time. Later on, 9 o'clock, he was driving the car and Mrs. Baldanza got in the car with him.

Q. Did you check up the number yourself? A. I did.

Q. What was the number? A. 18245.

Q. Did you write it down? A. I did.

Q. Have you got it down on paper before you? A. I have not.

Q. How do you remember it so well to-day? What year was it? A. 1929.

Q. How do you know? A. Because it was last August.

Q. What color was the license plate? A. (No answer.)

Q. You can remember the year and number and anything like that, but you cannot remember the color? A. I could not tell you this year's color.

Q. You have a car yourself and you don't know the color? A. I am frank to admit that.

Q. Do you know the number on your car? A. No.

Q. Do you know the number on your car last year? A. My number at that time was 2220.

Q. Have you your memorandum book in your pocket that you used on this case? A. No. I have got some notes down in a memorandum book.

Q. Are they here with you? A. I have two or three notes here. I had a pad that I wrote down—a little pad.

The Court: You are merely asked whether you have a book with you, with any entries with regard to this case.

Q. Is the number in that book? Have you the book with you?

The Court: He says he has it in his pocket.

Q. How long a time elapsed between your leaving with Miss Castle and Mr. Baldanza on this road where the car was parked and your seeing Mrs. Baldanza get out of a bus? A. That is up in the field you are asking?

Q. Yes. From the time you left them at the field until the time you left her when she got out of the car? A. About thirty minutes.

Q. Between the time she got out of the car— A. No, sir; in about ten or fifteen minutes. On Second Avenue and Broadway you have reference to?

Q. From the time you saw her get out of this car until she got home fifteen minutes elapsed? A. Fifteen or twenty minutes. I would say fifteen minutes.

Q. And where were you all that time? A. I went down back to Mr. Baldanza and walked down to the corner of Bath Avenue and Prospect Avenue.

Q. Do you know that section pretty well? A. No.

Q. I thought you testified before that you did? A. I am talking about where Mr. Baldanza lives. That is in Long Branch. The other is West Long Branch.

Q. You know around Long Branch pretty well? A. Well, yes, and no. I have lived around Asbury Park twenty-five or twenty-six years, and I am up there more or less every week, but not like I would if I was living in that district.

Q. Is this place where the so-called ball field is, a pretty well developed section in Long Branch? A. No, sir.

Q. No residences around there? A. Not near it.

Q. How far away is it from Shadowlawn? A. Three or four blocks.

Q. Is it not opposite Shadowlawn? A. No, sir; absolutely. I think Mr. Guggenheimer's place——

Q. It does not border on Shadowlawn? A. No.

Q. You are sure of that? A. Yes, sir. I would say it was three long blocks west of Shadowlawn, on the opposite side of the street.

Q. Who has paid you for your services in this case? A. Mr. Baldanza has not given me the money direct; he sent some money by Miss Castle.

Q. How much have you received in this case? A. To date?

Q. Yes. A. I could not tell you.

Q. How much do you expect? How much do they owe you? A. Not a cent.

Q. How much per day? A. $10 a day.

Q. How many days did you work on it? A. I would say six days.

Q. And after Mrs. Baldanza got home that night, the 24th of August, the next morning you were in Mascia's house, were you, on this case? A. On Sunday morning?

Q. Yes; Sunday morning or Saturday night, or was it the following Wednesday? A. We stopped there and got him on the way to Long Branch, but I was not in his house.

Q. Did you not have a conference in Mascia's house two or three days after? A. I never had a conference.

Q. You didn't tell me and Mr. Gregory that you had a conference at Mr. Mascia's house? A. I never had any conference. I have been over to Mr. Mascia's.

Q. You were there after the 24th? A. Yes.

Q. This case was discussed there, was it not? A. Not in the terms you are trying to bring out.

Q. You don't know what terms I am trying to bring out. The case was discussed? A. Yes; it was discussed.

Q. Do you know what is in my mind? A. No; I do not.

Q. You are anticipating what I am going to ask you.

The Court: Never mind that.

Q. What night was it you were in Mascia's house after the 24th? It was within a week, was it not? A. I don't know. I don't know whether it was that week or the following week or not.

Q. What was the occasion of your going to Mascia's house? A. I am not even positive that I was there after that.

Q. You are not positive that you made the statement that you were there? A. No; I am not.

Q. To Mr. Gregory and myself? A. I am not even positive of that.

Q. Are you positive that you met Mr. Gregory and me? A. Yes, I am; much to my sorrow.

Q. Why do you regret it? Did you tell us something that you should not have told us? A. No, indeed. I am here to tell the same thing.

Q. Do you know where you were on the 28th of August, 1929, the day of the trial of Mrs. Baldanza at Long Branch for adultery? A. I was in or near Asbury Park.

Q. You were not asked to come there? A. I knew nothing of it.

Q. You did not know that they were going to put up some charge against her? A. I did not.

Q. You were one of the main witnesses, were you not?

The Court: He says he didn't know anything about it.

Q. Do you recall in your conversation with me asking whether or not any lawsuits were going to arise out of this transaction between you and Mr. Baldanza? A. I asked whether——

Q. Do you recall asking me, in the Berkley-Carteret, on the night of December 9, whether or not any lawsuits were going to arise out of this

transaction between you and Mrs. Baldanza? A. I asked you whether there was not anything——

Q. Do you recall that conversation? A. I do.

Q. You were a little bit anxious about a lawsuit, were you? A. (No answer.)

Q. Do you know of any other detective occupied on this case besides you and Miss Castle? A. I heard that they had a man one night, I believe.

Q. Who was he, do you know? A. No.

Q. Do you know of a policeman being engaged on it? A. No, sir.

Q. Do you remember any rubber check being given by Baldanza? A. No; I do not.

Q. You did not get any rubber checks, did you? A. No; I never did. I got the cash.

By the Court.

Q. You took up this case on the 19th of July? A. The first night I was out on it.

Q. That was the first night you were out on it? A. Yes.

Q. Did you follow the trail of Mrs. Baldanza any night prior to the 24th of August? A. Yes.

Q. What nights or what days? A. The 17th is the only one that she met this man.

Q. I did not ask you that. I asked you how many times you trailed her? A. The 19th of July, the 17th of August, the 23rd of August and then the 24th of August.

Q. Three times besides the 24th of August? A. Yes.

Q. Did she meet any man on any of these three occasions? A. On the 17th she met——

Q. Who was the man she met on that occasion? A. Mr. Napolitano.

Q. Do you recognize him now in court as the man she met on the 17th? A. I recognized him the night I went in the store as that man.

Q. Where did she meet him? A. On Union Avenue, near Second.

Q. What did they do? A. They got in the car and went away.

Q. In whose car? A. Mr. Napolitano was driving the car.

Q. Were they alone? A. They were alone.

Q. Did you follow them that night in the car? A. I did not. I was on foot. I lost them at that point.

Q. What acts of affection did you see between these two people, Napolitano and Mrs. Baldanza? A. When she got in the car——

Q. This is the 24th of August? A. The 24th of August. She sat up real close to him.

Q. They rode on the front seat together? A. They rode on the front seat together. After they got on at Second Avenue, going down he had his arms around her and she was lying with her head over his shoulder.

Q. Is that all? A. That is all, continuing in that condition until they went over in the field.

By Mr. Fitzpatrick.

Q. Did you go to Mrs. Baldanza and tell her to get a lawyer? A. No.

Q. Telling her that she was in bad hands? A. No.

Q. Didn't you recommend a certain lawyer? A. She called me——

Q. You didn't call her? A. I did not.

Q. Where were you? A. Where was I? She called my house three or four times in one day.

Q. What day was that? A. On Monday, the 26th, and my wife told me when I came home at night, and then Mrs. Baldanza called me and begged me to come down. She was crying.

Q. You went down? A. I did. I went down to her.

Q. What did you tell her when you saw her? A. She wanted me to take her to Long Branch, to her home, and I refused to do that. It was not my case. I called Miss Castle and got Miss Castle to come over there. I would not take her to Long Branch, to her home, because I was afraid it would only end in trouble.

Q. Where was she at that time? A. She was on some avenue in Asbury Park.

Q. Who brought her there? A. She went there in Miss Castle's car.

Q. Miss Castle brought her there? A. In her car.

Q. Who paid for the room?

The Court: What room?

Mr. Fitzpatrick: The room in Asbury Park, on Sunday, the 25th.

The Court: I don't know that anybody occupied any room on the 25th of August.

Q. She was in a rooming house, was she not? A. She went there.

Q. You were there when she was brought there? A. I was never in the house in my life.

Q. Where were you? A. I was in the car.

Q. You knew where she was? A. I knew where she was.

Q. Who brought her there? A. I told you she went there in Miss Castle's car.

By the Court.

Q. You got there before Mrs. Baldanza got there? A. We brought her back from Passaic after her people had driven her out from the house. We took her and got her a room in Asbury Park and we left her at that room. I was never in the house.

By Mr. Fitzpatrick.

Q. She called you up and asked you to take her home? A. She asked me to take her to her home.

Q. You would not take her because it was Miss Castle's case? You thought it would be against ethics? A. I didn't want to have anything to do with it. I had nothing to do with it beyond——

Q. Not outside of trying to pin a crime on her, you didn't have anything to do with it? A. I didn't try to pin a crime on her. I acted like a father to that woman.

———

VIOLET VANDENSCHOTTEN, sworn as a witness on the part of the petitioner, testifies as follows:

Direct examination by Mr. Quinn.

Q. You have a rooming house at Asbury Park? A. Yes.

Q. August 25th last, was Mrs. Baldanza there? A. Yes.

Q. Whom did she come there with? A. Miss Castle brought her.

Q. What time of day or evening did she get there? A. Between half-past four or a quarter of five.

Q. Did you have any conversation with Mrs. Baldanza? A. No, sir.

Q. Did you hear any phone conversation carried on by Mrs. Baldanza? A. I did, yes; on Sunday.

Q. What was that conversation?

Mr. Fitzpatrick: I object. This witness cannot testify to any conversation.

The Court: Objection overruled.

A. She called her husband's telephone a number of times and she tried to talk with her husband, but her husband, I think, refused. Whoever answered the phone said Mr. Baldanza would not talk. Then she called also her boy friend's sister.

Mr. Fitzpatrick: I object to that.

By the Court.

Q. Whom did she call? A. I could not tell. She called a telephone number and she told me that it was where her boy friend lived, and he lived with his sister, and she told this party that she wanted to tell the boy friend, John, not to go to the store because there was trouble at the house.

Cross-examination by Mr. Fitzpatrick.

Q. You and Miss Castle are very friendly, are you not? A. No, sir.

Q. Were you a witness in her divorce case? A. No, sir; I did not know Miss Castle had a divorce case.

Q. What kind of a house do you keep down there? A. I have a rooming house, and a boarding house and restaurant in the summer time.

Q. How many rooms in the house? A. Eleven rooms.

Q. Who engaged this room? A. Miss Castle came there and asked me did I have a good room. I said I had one single room left and she said something about Mrs. Baldanza——

Q. Did you ask Mrs. Baldanza why she should want a room? A. Miss Castle said she was the party who wanted the room.

Q. You did not ask Mrs. Baldanza? A. I did not know who Mrs. Baldanza was.

Q. Who paid for the room? A. Miss Castle paid for a week's board.

Q. How much did she pay? A. $18 for a week's board.

Q. How did she come to do that? A. I don't know. I asked her, "How long are you going to stay?" She said, "I don't know." I said, "Do you want it by the day or week?" We ask a different price by the day or week. She took it by the week because it was cheaper.

Q. Is Miss Castle accustomed to come there and bring women and pay a week's board in advance? A. No, sir.

Q. Is this the first time it was done? A. The first time it was done in her life.

Q. When was the conversation that you testified to? A. Sunday night.

Q. How long after Mrs. Baldanza got there? A. Well, let me see: Either that Sunday night or Monday. When was the 26th? The 26th she told me. That was on Monday.

Q. You testified before it was the same night? A. Not the same night. Sunday night she came.

Q. At 5 o'clock? A. It was a quarter to five. I asked, "Do you want supper?" She said, "No, I am going out for supper with Miss Castle." She went in the car with Miss Castle then and she came back

to the house about ten-thirty, I should judge, or a quarter of eleven.

Q. She was in the house all that night, was she? A. Yes.

Q. Between 7 and 10 o'clock? A. No; she was out between 7 and 10 o'clock.

Q. Did you hear Mrs. Baldanza call Mr. Everingham? A. Yes; she made a telephone call.

Q. I asked you if you heard Mrs. Baldanza call Mr. Everingham? A. Yes.

Q. Mr. Everingham came there? A. I did not see Mr. Everingham.

Q. Miss Castle did come there that night? A. Yes; she came there that night.

Q. What was said by Miss Castle? A. She just asked did I have a room.

Q. I mean when Mrs. Baldanza telephoned Everingham? A. That was on Monday morning she telephoned Mr. Everingham.

Q. Was not that telephoning done on Sunday night? A. No.

Q. Monday morning? A. Monday morning.

Q. She telephoned Everingham? A. Yes.

Q. Did he come? A. I cannot tell you. He did not come to the house; I did not see him.

Q. Did Miss Castle come? A. No.

Q. You did not see Mrs. Baldanza out in front with Mr. Everingham that night? A. No.

Q. Nor with Miss Castle? A. No.

Q. You did not see Miss Castle on Sunday? A. She brought her home about 10.20 at night and she came up on the porch, and she introduced Mrs. Baldanza to another lady who sat on the porch with me, and Mrs. Baldanza sat on the porch alongside me for a while.

Q. Miss Castle was very solicitous of Mrs. Baldanza's welfare? A. She seemed to be very nice to her.

Q. And when was the telephone conversation that you mentioned before, the second telephone conversation? A. On Monday night.

Q. Which is it—on Monday morning or Monday night? A. Monday night. She was there only two nights.

Q. What time? A. Well, I don't know. I could not tell you. It was after supper.

Q. Where were you when the telephone conversation was had? A. She was on the porch and she asked me could she telephone and I said, "Yes," and I went right in with her.

Q. And you stayed there? A. I stayed right there.

Q. And did you stay there on Miss Castle's advice? A. No; I did not. She asked me would I stay there. If her husband would not talk to her, would I talk to him.

Q. Would you talk to whom? A. To her husband.

Q. But the other telephone conversation I am interested in— A. She just simply called this boy friend's sister, whatever he was.

Q. What number? A. I could not tell you. I have the slips.

Q. You have the slips? A. Yes; I got them from the telephone company.

Q. You know it was her boy friend? A. I only know what she told me.

Q. Mrs. Baldanza came there very happily? A. She did not seem to be very happy, and she cried a whole lot; she cried all day Monday.

Q. Why did you make a memorandum of her telephone calls? A. I did not make any memorandum.

Q. You saved the telephone slips? A. I did not save them.

Q. Didn't you? A. When Miss Castle found out that the trial was coming up she asked me could I get the slips from the telephone company, and I got them.

Q. And you got them for her? A. Yes.

Q. Did you check up the telephone number; how did you know what the telephone number was, or where it was? A. Because it is there on the slip.

Q. It is a Long Branch telephone? A. A Long Branch telephone.

Q. Do you know whether it is to the husband or anybody else? A. No.

Q. You do not know that the boy friend was called? A. I only know what she told me. I took her word for it. She also called her sister in the store.

Q. You were paid $18? A. Yes.

Q. Did you give back to Mrs. Baldanza the difference between— A. (Interrupting) No; I did not.

The Court: What difference does it make?

By the Court.

Q. Did you have any conversation with Mrs. Baldanza about her troubles, while she was there? A. She talked. I just listened.

Q. What did she tell you? A. She just said that she had trouble, that she was out with a fellow and she got caught.

Q. Did she tell you who the fellow was? A. No; she did not.

Q. Did she tell you what night she was out with this fellow and got caught? A. No, sir.

Q. She didn't tell you how long it was before the time she came to your house? A. She just simply said she had been to her mother's house and her mother had thrown her out, and she asked Miss Castle to bring her to Asbury, but that was all.

MARIE CASTLE, sworn as a witness on the part of the petitioner, testifies as follows:

Direct examination by Mr. Quinn.

Q. You conduct a detective agency at Asbury Park? A. Yes.

Q. Were you hired by Mr. Baldanza to watch his wife? A. Yes.

Q. What was the first night that you went out on this job? A. The first time I went out was the 19th of July.

Q. Who was with you? A. I had Mr. Everingham with me that night.

Q. What did you find that night? A. That night Mrs. Baldanza got——

By the Court.

Q. Did you see her with anybody? A. Yes.

Q. Just get down to the meeting. A. On the 19th of July she met him on a car on Union Avenue, but I could not get the number of the car.

Q. When you say "a car," do you mean an automobile or a trolley car? A. An automobile; and when she got into this car my car was parked somewhere else. By the time I got my car——

Q. Who else was in the automobile that she got into? A. This gentleman that is in the back of the room, Mr. Napolitano.

By Mr. Quinn.

Q. You saw him that night? A. That night; yes, sir.

Q. What was the next time you saw them? A. Then on the night of August 3 I was down there alone and I saw her——

By Mr. Fitzpatrick.

Q. Down where alone? A. Down at Mr. Baldanza's. Mr. Baldanza brought his wife down to the ocean front and I followed her and she went down to the pier, down at the Caterpillars there. She kept walking back and forth. There was nothing occurred that night. On August 6th I went down to Long Branch and Mr. Baldanza brought his wife to Third Avenue. I had Mr. Mascia with me that night and not Mr. Everingham, and that night we followed Mrs. Baldanza and she went into several stores, and finally she went down to Union Avenue. That is the night we lost her. She had gotten into a car and she went to—she got in this car of Mr. Napolitano. At that time Napolitano was running the car.

By the Court.

Q. She got into this car on Union Avenue. Was Napolitano in the car? A. Yes.

By Mr. Quinn.

Q. Continue. A. The car continued south on Second Avenue; it went to the same place in West

Long Branch as the night of the 24th, and they stayed there only for about five minutes. No lights out that night. Why they stayed only a short time I do not know.

Q. Go ahead. What else did you see? A. That was the night of the 6th. On August 23 I was with Mr. Everingham that night. Let me see: Yes, on the 23rd I was with Mr. Everingham, and that night she went to Liberty Street. Then she went down to Union Avenue and I lost her there. I didn't know where she had gone to. On August 24——

Q. (Interrupting) Up to that time had you told Mr. Baldanza about this? A. On the night of the 6th Mr. Mascia was with me, and I reported every time after that on the case; I reported to Mr. Baldanza.

Q. What did he say when you told him? A. Mr. Baldanza told me he could not believe it; he wanted to come and see it. So he went with us on August 24th.

Mr. Fitzpatrick: I object to what Mr. Baldanza said to her, as not binding on the defendant.

The Court: I will allow it to stand.

Q. Go ahead. A. On August 24th, Mr. Harry Baldanza wanted to come along with us. So he told us that his wife wanted to see a woman at 171 Second Avenue, Long Branch, so we went down to 171 Second Avenue, Long Branch, and saw Mr. Harry Baldanza taking his wife to that address. She was only in there about twenty minutes. She went there around 8.10. She came out of there 8.30. When she came out of the house she walked down Second Avenue, going north to Broadway.

At Broadway I was in my car and I followed behind her, and I parked my car on Second Avenue, facing Broadway. I then got out of the car and started to trail Mrs. Baldanza. She went up Broadway and in around Liberty Street, down Union, back to Second Avenue, out to Broadway, and out Broadway in front of the tire store, 94 Broadway, she got in a car. The car number was 18425, Monmouth license. This car she got into continued immediately up to the ocean-front. At the ocean-front they went to Chelsea Avenue, down Chelsea Avenue to Second Avenue, over Second Avenue; they went to Cedar Avenue; from Cedar Avenue they went to Archwood Avenue, and when they came down Archwood Avenue, it was very lonesome and very dark; there were high hedges there.

Q. How high are the hedges, would you say? A. At least 10 feet, if not more; and they went down there and they came to a driveway; they parked their car in there. We continued on—Mr. Harry Baldanza, Mr. Mascia, Mr. Everingham and I—we passed the car and we went down Wall Street; we went north on Wall Street; we went down Monroe west and we came back on Hollywood south and parked our car at Archwood Avenue, about, I should say, between 50 and 75 feet away from the car.

Q. Were there any lights on this car in which Mrs. Baldanza was? A. There were lights before they turned down toward Archwood Avenue.

Q. When you turned back and parked your car, were there any lights on their car? A. There were no lights when they parked in this driveway.

Q. Were there any lights on your car? A. No, sir; I had them out when I came down on Cedar

Avenue; when I had turned in Cedar down to Archwood Avenue I was driving without lights.

Q. How long did Mrs. Baldanza and Napolitano remain there in this place, in the field into which they went? A. They remained there, I should say, at least twenty minutes, because I recall looking at my watch. Mr. Harry Baldanza looked at my watch also. They stayed there twenty minutes. They backed out. As he backed out he must have stepped on the foot brake because the light reflected in the back, but no lights in the front. As he pulled out he drove toward Wall Street, going east.

Q. Was that the same direction in which they had come? A. No, sir; they came in the opposite direction. They came in this way (indicating), and went out that way (indicating). That would be going east. Then on Wall Street they went south and then continued over to Broadway and down Broadway to Third Avenue. At Third Avenue she got out of the car. When she got out of the car Mr. Harry Baldanza and Mr. Mascia and I remained in the car. Mr. Everingham got out of the car. I then took Mr. Harry Baldanza down to where he had his car, so that he could go home. I went back up to Norwood Avenue and remained there with my car parked.

Q. Are there any electric lights on this street near the ball field? A. No, sir; there is one light about—there is a light on the far side, on Hollywood Avenue.

Q. How far away? A. Well, I should judge that would be about 500 feet, at least. It is a very small light; it is very high.

Q. Are there any houses in the near vicinity of the place where that car was parked for twenty minutes? A. There is a house on the other side of Archwood Avenue.

Q. I show you P-2 for Identification, and ask you if that correctly portrays the place where you saw the car parked for twenty minutes? A. Yes.

Q. Does it show the opening that they went in? A. This is the way the picture would show. They came this way. They parked here. They backed out here. They went this way, because right here there is an old—something from a car that is burned.

Q. I show you P-3 for Identification, and ask you if that also correctly portrays the true condition there? A. Yes, because the hedge is high toward Wall Street. They came in this way. They went in that way; they headed in that way; they backed out this way, and they came this way.

Q. You have mentioned that automobile? A. Yes; it is right here; it shows in both pictures.

Q. The opening in the high hedge is right where you see this old frame of an automobile? A. Yes.

Q. Was that automobile there on August 24? A. Yes, that is, as I remember it. Another thing, when you come down that street—I have often traveled around that vicinity in Long Branch, but I never knew the name of the street—there are sign posts there. So the following day I went down and looked at the name of the street. I had Mr. Harry Baldanza with me, that is, not Sunday; I think it was Monday; I went down and looked at it, and there was a house on the far side of Wall Street, and I inquired the name of the street, and that is how I know what name it is—Archwood Avenue.

Q. Did you go to Passaic with Mr. Harry Baldanza? A. Yes; on Sunday morning I got a telephone call, would I mind going to Passaic. I did not——

Q. As a result of that telephone call you went to Passaic? A. Yes.

Q. To whose home, do you know? A. I went in my own car. I had Mr. Mascia and Mr. Everingham in my car, and Mr. Harry Baldanza had his wife and his brother Andrew in his car.

Q. Where did you go? A. We went to Mrs. Baldanza's home.

Q. Tell us the conversation that took place there between Mrs. Baldanza and any of the others. A. When we arrived at Mrs. Baldanza's home, Mr. Mascia started to talk in the Italian language and he spoke to his mother-in-law and then——

Q. Mascia? A. I mean Mr. Harry Baldanza. Pardon me. He spoke to Mrs. Baldanza's mother, and also there was a young man there who is not in the court room now, which was her brother. I said to Mr. Harry Baldanza: "You are talking in a language we do not understand. Will you please talk English," so from that he talked in English. Her brother came over and said to me, he says, "What is this I have to know about my sister?" I said, "I am very sorry. I cannot give you all the details, but I will tell you as much as I possibly can." So I told him of the night of the 24th. He then said to his sister, "Is this true what this lady says?" She says, "Yes." He says, "Every word of it is true?" She said, "Yes," and he went to reach over the table and she jumped up and he said, "Get out of my house. You are no sister of mine"; and the mother hit herself on the breast. She said, "You kill me. I kill you." She turned around to Harry Baldanza and she said, "Why don't you cut the neck off?" And she started off in Italian. I told him I would not let them put their hands on her. With that she ran to the bathroom and

hollered, "Save me. Save me." The brother followed her to the bathroom. I put my hands across the door and I said, "I will not allow you to put your hands on this woman."

Mr. Fitzpatrick: At this point I ask that the testimony as to what was said in Italian be stricken from the record, because the witness has not said that she understands the Italian language, and she has testified that it was in Italian.

The Court: Motion denied.

Q. Will you tell us what Mrs. Baldanza said with reference to this occurrence, if anything? A. To her mother, do you mean?

Q. Yes. A. She had admitted that this was true.

Q. Tell us in her language, as you recall it, what she said, not what she admitted, but what she said. A. She said, "It is true," and she nodded her head at the same time, and she said in the English language, "Yes; that is true."

Q. Can you give her exact words in reply? A. No; I cannot do that. She was speaking partly in the Italian language, but the words in English she used were, "Yes; it is true." She said, "Save me." That is all she said in the English language while she was there.

Q. Was there any reference made to the number of times she had been out with this man, and what did she say with reference to the number of times she had been out and what happened when she was out?

Mr. Fitzpatrick: When and where was this?

The Court: This is the morning of August 25th, at the mother's house.

A. At the time her brother asked her: "Is this really true?" She turned around and said: "Yes, but it only happened twice." He said: "Do you mean to tell me that you were out with this man unbeknown to your husband and that you went and did wrong?" She said: "Yes, but it only happened twice."

Q. Did you take the defendant and put her into your car? A. She got into our car and she begged to be taken. I said: "No; you cannot get into my car." I went back to Mr. Baldanza and I said: "Mr. Baldanza, your wife is in my car. She will not get out. I will not put my hands on her." He went out and spoke to her in Italian language. Then he spoke in the English language. She said: "I want to go back to Long Branch." So her husband said to me: "You can take her back, but not to my house, to any place she wants to go." She said: "If I stay here they kill me. My mother even would do that."

Cross-examination by Mr. Fitzpatrick.

Q. You were very sympathetic with Mrs. Baldanza? A. Well, there is a certain womanly instinct that one woman feels for another.

Q. You consider it womanly instinct when she tried to get out of the car, to push her back with a gun? A. That I absolutely deny. I had no gun with me.

Q. You did not have a gun? A. No, sir.

Q. The fact is the car stopped at Red Bank on the way to Passaic? A. Yes, sir.

Q. What was the occasion of your coming up to the car in which Baldanza was; why did you stop there? A. In the first place, we were behind them in the car. Mrs. Baldanza you could see from our car——

By the Court.

Q. The question is: Why did you stop at Red Bank? A. That is what I was coming to. The husband beckoned to me to drive up alongside his car. I drove up alongside it. He said to me: "Miss Castle, please tell my wife who you are. She is afraid." I told her who I was, and then she still was talking in the Italian language to her husband. He then said——

By Mr. Fitzpatrick.

Q. That is far enough. A. You want to know why?

Q. I asked why you stopped there. Now, as a matter of fact, Mr. Everingham rode from Long Branch to that point in your car? A. Yes.

Q. You saw him get out of your car and get into the other car? A. Because Mr. Harry Baldanza asked him to come in his car.

Q. What for? To keep her in the car? A. No. Because she was afraid to ride in that car.

Q. Did you see the handcuffs in Mr. Everingham's hands? A. Yes.

Q. Did he hand you a gun? A. No.

Q. He did not hand you a gun? A. Absolutely not.

Q. There was no gun that you had at all any time that day? A. Not that day.

Q. Who gave you the money to pay for this woman's room? A. I always carry money.

Q. Who gave you the money to pay for this woman's room? A. The money was my own money that I used to pay for that room.

Q. When was it paid back to you? A. I should say, two or three days later.

Q. How much money was paid to you on this date? A. I will have to figure up how many days I worked on it.

Q. You remember the number of the automobile very well, don't you? A. Yes; I am just figuring up the days. Oh, about six or seven days I was on the case. That would be $60 or $70.

Q. You were paid only $60 or $70? A. Every day I worked on the case.

Q. Mr. Everingham testified that you paid him and he says he was paid— A. (Interrupting) He was not every day with me on the case. Sometimes I was with Mascia and sometimes I was alone.

Q. Who employed you—Mascia or her husband? A. Mr. Harry Baldanza employed me.

Q. Mr. Harry Baldanza? A. Yes.

Q. On the night of the 24th you state that you saw Mrs. Baldanza first where? A. On the night of the 24th we saw her first at Second Avenue, at 171.

Q. And the husband told you beforehand that he was going to take her there, didn't he? A. Yes, sir; he did.

Q. That is why you were there? A. Absolutely.

Q. It was all fixed? A. Not what you call fixed. If we know where our party is going, it is better to be there than to trail from the house.

Q. Were you riding on the night of the 24th? A. I was part of the time on the sidewalk, near the house, opposite, and then I was at the corner in my own car.

Q. Where were you when Mrs. Baldanza came out of his car? A. I was then in my own car, around the corner.

Q. Around the corner? A. Yes.

Q. Who told you she came out? A. Why, I could see it, with my car facing Second Avenue. I could

not help seeing the car. She was coming towards me.

Q. She came towards you? A. Yes.

Q. How did you get Everingham in your car? A. Mr. Everingham was on Second Avenue and then when she came out he started on foot and he remained on foot until she got into the car of Napolitano.

Q. Where was her husband? A. Mr. Harry Baldanza?

Q. Yes. A. Mr. Harry Baldanza was somewheres near Mr. Everingham, and then after a while he was walking along east.

Q. Did he have any of your disguises? A. I never use disguises.

Q. Did he? A. We do not use disguises.

Q. You heard Mr. Everingham testify this morning? A. I didn't hear him say anything about a disguise.

Q. Did you hear him testify? A. I heard him testify.

Q. Didn't you hear him testify to the garb of Mr. Baldanza?

The Court: No. He said he had on a long coat, but he could not tell what kind of a coat it was. There is nothing in his testimony at all relating to disguise.

Q. When did you go on this case first? A. July 19th.

Q. Who was with you? A. On July 19, Mr. Everingham was with me.

Q. Did you hear Mr. Everingham testify that the first night he was on the case was August 17? A. He was on it on July 19th and the 17th.

Q. You say it was July 19? A. July 19 and August 17th. I might have the date wrong——

Q. How did you come to get into this case? A. Mr. Harry Baldanza——

The Court: She says she runs a detective agency and she was employed on this case.

Q. Where is your office? A. 412 Ocean Park Avenue, Bradley Beach.

Q. You say you went through this famous street very frequently? A. Yes. It is a regular lovers' lane.

Q. Regular what? A. It is a regular lovers' lane.

Q. It is? A. Yes.

Q. You knew just where to find her? A. Yes.

Q. Do you know Mr. Gregory? A. Yes.

Q. Did you have any conversation with him about this case? A. Yes; he came to my house to see me.

Q. Do you remember what you said to him? A. I certainly do remember.

Q. What did you say?

The Court: No; not that.

Q. Did you tell him you were sorry you were in this case? A. No; I did not say that.

Q. Did you tell him that you had nothing on this woman? A. No; I did not say that either, because that would be ridiculous.

By the Court.

Q. Never mind the "because." A. No; I never said that.

By Mr. Fitzpatrick.

Q. Where were you between the time that the car left the parking place and——

The Court: What parking place?
Mr. Fitzpatrick: Archwood Avenue.

Q. Where were you between the time that the car left the parking place, Archwood Avenue, and where Mrs. Baldanza got out of the car? A. Where was I?

Q. Yes. A. In the car.

Q. Following them? A. Yes. Do you mean I was walking on Second Avenue to Archwood? That is quite a trip.

Q. Did you get out of the car at Archwood Avenue? A. No, sir; I remained in the car.

Q. I asked you where you were? A. I told you in the car.

Q. Did you follow them constantly? A. Yes.

Q. Where did they go? A. You mean after they backed out?

Q. Yes. A. I told you——

Q. I am asking you where they went. A. To Third Avenue, Long Branch.

Q. How far is that? A. Do you want me to count the blocks?

By the Court.

Q. In minutes. A. I should say about ten minutes driving about twenty-five miles an hour.

By Mr. Fitzpatrick.

Q. Ten minutes? A. Yes.

Q. What time was it they got there? A. They got there, oh, in the neighborhood of—let me see; I will tell you just in a minute—oh, I should think they left there around 9.30—somewheres near that.

Q. Where were you when Mrs. Baldanza got home? A. I was in Norwood Avenue.

Q. What were you doing there? A. I was waiting there to see whether she was coming home on Norwood Avenue or whether she was coming on Bath Avenue.

Q. The fact is that you had not seen Mrs. Baldanza that night at all.

The Court: What do you mean by that?

Q. What was the reason for waiting at that point? A. To see which way she came.

Q. What difference did that make? A. Because I followed her so often. Sometimes she came home Norwood Avenue; sometimes she came home Bath Avenue.

Q. You were in the divorce case of a woman who employed you, Mrs. Vanwart, were you not?

Mr. Quinn: I object.

The Court: What is the object?

Mr. Fitzpatrick: Community of interests and also the methods used in that case.

The Court: Objection sustained.

Q. Why didn't you raid the car the night you saw it? A. In the first place, we had no warrant; in the second place, Mr. Harry Baldanza said that he did not want us to go to the car because he did not know whether Mr. Napolitano had a gun, and he did not want to have trouble on his hands.

Q. Do you have to have a warrant to look in a car? A. When we first try to get a complaint we have to have some evidence before we proceed.

Q. I asked you: Did you have to have a warrant to look in the car the night it was parked on Archwood Avenue?

The Court: Whether she did or did not, she thought so.

Q. You very obligingly took Mrs. Baldanza to the justice's house, too, didn't you? A. I took her to Judge Cox, if that is what you have reference to.

Q. Did she ask you to take her to Judge Cox? A. She asked me to take her to some justice of the peace where she could make a statement; she wanted to tell her husband the truth; she wanted to tell him everything, because she knew she could not reach him; she could not get in the house. I told her it might be used in a divorce proceeding against her. She said she did not care, because she wanted to have her children; that she would bring her children up not to sin as she had sinned.

Q. She did not put that in the statement? A. No.

Q. Did you take that statement? A. Absolutely not.

Q. Did Mrs. Baldanza make it? A. Mrs. Baldanza told her whole story to Judge Cox.

Q. Did she tell you about being in Archwood Avenue? A. Probably she did not know the name of it as well as I did.

Q. Is this the first and only time you ever had a statement drawn up before a justice? A. Yes.

Q. You knew him pretty well, didn't you? A. Usually when I want a thing done I go to a man I know. He is the only judge that will not issue a warrant on a complaint unless you have the absolute evidence.

Q. Did he issue a warrant? A. No, sir.

Q. Why didn't he? A. In the first place, we never had seen anything on which to get a warrant until the night of the 24th.

Q. This was the 25th? A. Yes. In the second place, Mr. Harry Baldanza did not want to have a warrant issued, because he did not want to have the disgrace on his wife and children, he told me.

Q. He did get a warrant? A. He did, but I don't know——

Q. You testified in that proceeding? A. Yes, but I did not know that Mr. Harry Baldanza was going to get a warrant out. That I did not know.

Q. I am not asking you that. A. You asked me a minute ago.

Q. You testified in that proceeding, didn't you? A. Yes; I did.

Q. What was the result of the proceeding?

Mr. Quinn: Objected to.
The Court: Objection sustained.

Q. You did not compel Mrs. Baldanza to go to the Justice's house, did you? A. Certainly not.

Q. You did not compel her to go to the rooming house? A. I certainly did not. She asked me if I could not find a place for her.

Q. You did not compel her to go to Passaic? A. No, sir; I did not. I did not even know anything about Passaic until I was called upon.

Q. I want to ask you who asked Mr. Everingham to get out of your car in Red Bank? A. Mr. Baldanza asked him to come in the car. Mr. Fitzpatrick, I told you that before.

Q. Why did he ask him to come into the car? A. I don't know why he asked him. I know he asked him to come into his car.

Q. Did you say to her: "Get to blazes back into that car"? A. No.

Q. "Or I will use this," showing her your gun? A. No.

Q. Didn't Mrs. Baldanza scream, didn't she get up and didn't you threaten her with the gun at Red Bank? A. No.

Q. She was peaceful and quiet? A. I would not say peaceful and quiet. She was talking with her husband. You could see her hands going.

Q. She was not trying to get out? A. At Red Bank she made a move as though she was getting up in the car, as if she wanted to get out, and Mr. Harry Baldanza beckoned me to come up.

Q. Who was holding her that time? A. I could not say. I saw nobody holding her.

Q. When you saw her make a move to get out, she did not get out? A. No, sir; she did not.

Q. Why didn't she get out? A. We drove alongside on that side where she was and stopped.

Q. You got out of the car too, didn't you? A. No, sir.

Q. Didn't you get out and talk to her? A. No, sir; my car drove up alongside the door where she was.

Q. She could not get out on your side? A. Yes; she could have gotten out there. There was a lot of space between my car and her car.

Q. Who rode in your car up to Passaic? A. From Red Bank Mr. Mascia was riding in my car.

Q. Where were the handcuffs then? A. I guess they were with Mr. Everingham. I saw him take them and put them in his pocket when he left my car.

Q. When did he leave your car? A. We stopped at Red Bank and he got out of my car.

Q. Did he have those handcuffs in your car when he reached around— A. He usually carried them on certain cases.

Q. Did you ever direct him to use them? A. No; I never had occasion to.

Q. He always had them exposed in your car? A. He usually carries——

Q. He had them out in his hands? A. No; I told you he had them in my car. He left my car and took them with him. I think he put them in his pocket. I did not see what he did with them.

Q. Did you say anything to Mrs. Baldanza's mother up at Passaic? A. No, sir; I didn't talk to her, only that I told her that she must not put her hands on Mrs. Baldanza.

Q. What? A. Only that I told her she must not put her hands on her.

Q. Did Mrs. Baldanza, the mother, speak in English at all? A. Yes; just what I have told you, in a broken English. She says: "Why didn't you cut the neck off?" That is what she told the husband; and she was getting at her all the time, and she said: "You kill me. I kill you."

Q. You dragged Mrs. Baldanza out of that house? A. I never put my hands on Mrs. Baldanza.

Q. You had the gun in your hand all the time?

The Court: Do not keep on telling the witness she had a gun when she says she did not have a gun.

Q. How many times did you see Mrs. Baldanza in the car with Mr. Napolitano? A. On the 17th, on the 19th of July, on the 6th of August, on the 17th of August we missed them, and on the 24th of August.

Q. How close were you ever to Napolitano before to-day? A. I went in the store to buy some groceries at one time.

Q. The night Mr. Everingham was there? A. I was there also that night, but not in the store. I was outside the store that night, but previous to that I was in the store and he waited on me, and also a lady.

Q. Did you have a conversation with him? A. No, sir. I heard him have a conversation. I heard him say he did not want to go into a certain thing unless the other party——

The Court: Strike it out.

Q. What was the occasion for your going into the store where Mr. Napolitano was? A. I wanted to get a good look at the man.

Q. Why? A. Because that was the man that had been going around with Mrs. Harry Baldanza.

Q. How did you know it was? A. Because I had shadowed his car and I found out the number was 18245, and I had called up the Registration Department in Trenton, and I had found out that the car was owned by a man named Santarelli. Mr. Napolitano has an express truck and does not have a sedan.

Q. So the man's name was Santarelli? A. The car belonged to Santarelli; yes, sir.

Q. When you saw this car with that number, 18245, previous to your going to the store where Napolitano was, you did not know whether it was Napolitano or not? A. Previous to when?

Q. Previous to your going to the store? A. It was in the early part of July I went in the store, before I even started to shadow the case.

Q. You were told by Baldanza that Napolitano was the man? A. I saw there was a car with that number, somebody driving that car, and I saw who was the driver. I went in the store and I saw just one man.

Q. You saw this car in front of the store that night, didn't you? A. Yes.

Q. You did not see Napolitano driving it that night? A. The night I went to buy the groceries?

Q. The night that you— A. That was in the afternoon I bought the groceries.

Q. Was the car there then? A. The car was standing out in front of the door.

Q. How did you come to go there? A. Because I had been informed by Mr. Harry Baldanza that that is the car his wife goes out in.

Q. Did he give you the number? A. He told me —yes, he had been watching—the number of the machine; they had another detective on this case before I was on it.

Q. When did you make out the memorandum that Mr. Harry Baldanza took out of his pocket this morning? A. He asked me would I please write down the dates, or something—I do not recall any more what I did write on it. I said, "Can you read English?" He said—I cannot really remember whether——

Q. When did you write it down? A. I don't know. It might have been a couple of days ago; it might have been a week ago; I don't know which. I asked him if he could read it——

Q. Who gave you the name and number of that car—Baldanza? A. Mr. Harry Baldanza gave me the number of the car.

Q. Harry Baldanza? A. Yes.

Q. And you checked up with the Motor Vehicle Department? A. At Trenton, yes.

Q. You found out that Santarelli was the owner? A. Mr. Santarelli was the owner.

Q. Who came back from Passaic in your car with you? A. Mr. Everingham, Mrs. Baldanza and I.

Q. Mascia didn't come back with you, did he? A. No, sir.

Q. Harry Baldanza didn't come back with you, did he? A. No, sir.

Q. Have you watched Mrs. Baldanza since the night of the 24th of August? A. No, sir.

Q. Did you have anything to do with having Mr. Baldanza making the affidavit that she committed adultery with Napolitano on August 6th?

The Court: What affidavit?

Mr. Fitzpatrick: The affidavit attached to the petition.

A. Mr. Baldanza knew nothing of it until I showed it to him.

Q. Didn't you tell him about what you saw on August 6th? A. Yes, sir. He knew about August 6th. We reported it to him.

Q. When did you testify before as to August 6th?

The Court: This afternoon is the only time she testified here.

Q. You did not say anything about a car that night, did you, August 6th?

The Court: She testified that that same car went to the same place and stayed only a few minutes with the same people in it.

Q. About how many times did you see Napolitano outside of the night you visited him in the store? A. I told you several nights they were out that I saw them, but only on the night of the 24th——

By the Court.

Q. When he says: "How many times did you see him," that means anywhere, not necessarily with Mrs. Baldanza. A. On the 24th of August, on the 17th of August, on the 6th of August. On the 19th of August I saw her get into a car and lost her.

By Mr. Fitzpatrick.

Q. You never saw him other than in the car, except the one time that you visited the store? A. I never saw him where?

Q. Other than in the car. A. I saw him in the store, yes, and I saw him on his truck.

Q. You saw him in the store once, didn't you? A. No; I saw him more than once—many times. I have a lot of business to attend to in Long Branch.

Q. You remember before that you saw him in the car—give me the dates that you saw him in the store. A. The dates I saw him in the store?

Q. Yes. A. I would have to look up the records of other cases.

By the Court.

Q. How many times? A. About five or six times.

By Mr. Fitzpatrick.

Q. But you do not remember the dates, do you? A. Probably if I looked up some other cases that I had that night when I went there.

Q. Was he involved in the other cases? A. No, sir.

Q. Why did you go in his store if he was not involved in the other cases? A. Because I was in that neighborhood.

By the Court.

Q. What you mean is, that four or five times you say you saw him in the store or around the store? A. Yes.

Q. This was after you were employed on this case, is that it? A. That is correct.

Q. Did you at any time see any act of familiarity between the defendant and Napolitano? A. The only thing I have seen is when Mrs. Baldanza got in the car on the 24th and they were riding down Second Avenue, you could not help but seeing because the light——

Q. Never mind that. What did you see? A. I saw Mr. Napolitano's arm around Mrs. Baldanza and she seemed to be pulled down into the seat with her head on his shoulder.

Q. They were riding in front of you? A. Yes.

Q. They continued that way until where? A. They continued that way up to Archwood Avenue.

Q. And did you see anything more than that after they came to Archwood Avenue and turned into the driveway? A. I only saw the lights go out.

Q. Did you see anything in the car after that, after they drove into the field? A. No, sir; I did not see anything in the car.

By Mr. Fitzpatrick.

Q. You saw nothing August 6th, did you?

The Court: She has already told us what she saw.

Fred Scialla, sworn as a witness on the part of the petitioner, testifies as follows:

Direct examination by Mr. Quinn.

Q. During the summer of last year did you work for Baldanza in his bakery shop? A. Yes.

Q. Do you know this man Napolitano? A. Yes.

Q. Where did you see him during the summer? A. I saw him in the store.

Q. Frequently? A. About two or three times a week.

Q. About what time would he come in during the day or evening? A. I saw him in the store half-past eight.

Q. Morning or evening? A. In the morning, and in the afternoon, too.

Q. Would Mrs. Baldanza be there? A. Yes.

Q. What would happen when he would come in? A. Well, I seen them talking. When I used to go in the store, they never used to talk any more.

Q. When you came in the store they would stop talking? A. Yes.

Q. Did she ever say anything to you about him? A. No, sir.

Q. Did you ever have a conversation with Mrs. Baldanza about him or any other man? A. Yes.

Q. When was that? A. 1927.

Q. What was that conversation? A. Her mother came up to me——

Q. As a result of what her mother told you, you talked to her? A. Yes.

Q. What did you say to her? A. (No answer.)

By the Court.

Q. In 1927 you had some talk with Mrs. Baldanza? A. Well, first with her mother and then with her.

Q. What conversation with Mrs. Baldanza, the defendant in this suit, did you have? This was in 1927 you say? A. Mrs. Baldanza's mother came—

Q. Don't tell anything you said to her mother or that her mother said to you. I only want to

know what you said to Mrs. Baldanza, and what she said to you? A. Harry's wife, yes. I told her: "Why don't you cut it out with Joe?"

By Mr. Quinn.

Q. Joe who? A. DeSantis.

Q. Did you know Joe DeSantis? A. Yes.

Q. Joe DeSantis is the man represented in P-5 for Identification? A. Yes.

Q. What did she say when you told her that? A. She said to me: "Who told you that—the old lady? She better mind her own God damned business."

Cross-examination by Mr. Fitzpatrick.

Q. Were you ever convicted of crime? A. If you find out——

Q. Were you ever convicted of crime? A. No, sir. No, sir; just carrying a concealed weapon.

Q. That is all you were convicted of? A. Yes, sir.

FRANK GRAZIANO, sworn as a witness on the part of the petitioner, testifies as follows:

Direct examination by Mr. Quinn.

Q. How old are you? A. Sixteen.

Q. During the summer last year did you work for Mr. Baldanza? A. Not all the summer.

Q. What part of the summer? A. Well, I was away from July to September.

Q. You worked for them? A. No; I was away.

By the Court.

Q. Not when you did not work there. When did you work there? A. I was working; I always have worked for two and a half years.

By Mr. Quinn.

Q. Listen to the question: Were you working for Baldanza last summer? A. Not all the summer.

Q. What part of the summer were you working for him? A. Well, about——

By the Court.

Q. In June? A. I was working in June; yes, sir.

By Mr. Quinn.

Q. Any part of July? A. Well, the first week in July.

Q. Did you know Napolitano? A. Yes, sir.

Q. Did you see him there in the store? A. Yes, sir.

Q. How frequently? A. Well, about every other day.

Q. What time of the day or evening would he come there? A. Well, he would come in the morning, about 8.30, sometimes 9 o'clock.

Q. Would Mrs. Baldanza be there? A. Yes.

Q. What would happen when he came there? A. Well, he started selling vegetables, started to talk. I was never able to hear what they were talking about, what their conversation was.

Q. What would happen with respect to your presence; what would she do? A. She would send me to do something else; send me to wash ice cream——

Q. Were the shades up at the time he was there? A. That was in the store.

Q. Were the shades up? A. There are no shades in the store.

Q. Any other part of the building? A. That is the only part he was in then, the store.

By the Court.

Q. You never saw them together in any other part of the place than in the store? A. Yes; in the kitchen.

By Mr. Quinn.

Q. How frequently would you see them there? A. Well, he was only in there about two times.

Q. Where would Harry be on those occasions? A. He would be out delivering bread on the road.

Q. Delivering bread to customers? A. Yes.

Q. Would the shades be up when they were in the kitchen? A. No, sir. He was in there one time eating strawberry shortcake.

Q. Would anybody else be in the room with them at that time? A. No, sir. I was in there for a while. I went in the store.

Q. Did Mrs. Baldanza ever have any talk with you about what to say to her husband about it? A. About being in the kitchen, do you mean?

Q. Yes. A. Well, no; she never told me anything about it.

Q. Did you ever see them together any other place in Long Branch? A. No, sir; not that I remember; only in the store and in the kitchen.

Q. Outside of the store and kitchen you never saw them anywhere else? A. No, sir.

(No cross-examination.)

JOSEPHINE TODARO, sworn as a witness on the part of the petitioner, testifies as follows:

Direct examination by Mr. Quinn.

Q. Did you work at the Baldanza store? A. Yes, sir.

Q. In the summertime? A. Yes.

Q. In the summer of last year? A. Yes.

Q. Do you know this man Napolitano? A. Yes, sir.

Q. Did you ever see him in the store? A. Yes, sir.

Q. How frequently? A. Two or three times a week.

Q. Did you see him there in the daytime or evening? A. Daytime.

Q. Always in the day? A. I don't remember what day.

Q. Did Mrs. Baldanza go out any of the evenings that you worked in there? A. Yes, sir.

Q. At what time, approximately, would she go out? A. Well, about 5 o'clock.

Q. In the afternoon? A. Yes.

Q. What time would she return in the evening? A. Well, I do not know just what time she would come back.

Q. Do you recall any hour of the night or evening of last summer that she came back? A. After 9 o'clock.

Q. After 9 o'clock? A. Yes.

Q. Did she say anything to you as to what you should say to her husband? A. She told me in case he came home to tell him she just left.

Q. Did you ever tell Harry that? A. Yes, sir.

Q. What did you do there—take care of the children? A. Sometimes I would take care of the children.

Q. On these occasions when she went out and did not return until after 9 o'clock, what did you do? A. She told me to come and take care of the children and put them to sleep and after I put them to sleep I would go.

Q. Did she tell you why she wanted you to tell her husband she just left? A. No, sir.

Cross-examination by Mr. Fitzpatrick.

Q. Who paid you when you worked? A. Mrs. Baldanza.

Q. How much did she pay you? A. Sometimes 75 cents on Saturdays.

Q. Was it only on Saturdays that you were there? A. Sometimes on a week day.

Q. You were not working steady there? A. No, sir.

Q. How many times did you work there? A. I don't remember how many times.

Q. Do you know when you went there? A. On Saturdays, Wednesdays and Sundays sometimes.

Q. You went to school? A. Yes.

Q. You were not going to school at the time? A. No, sir.

Q. What time did you come there to work? A. Well, sometimes right after 8 o'clock in the morning on Saturdays. Sundays I would be there about 9 o'clock or 10 o'clock in the morning.

Q. Did you ever see any fighting there? A. No, sir.

By the Court.

Q. If you only worked there on Wednesday and Saturday and sometimes on Sunday, why do you say Napolitano came there three or four times a week? A. Well, sometimes I would see him there. I would be around the store almost every day. I live around the corner.

Q. You do not mean to say that you saw him there three or four times a week. You were not working there three or four times a week, were you? A. I would be there almost every day. I only did work for her sometimes.

By Mr. Fitzpatrick.

Q. Did you know what Napolitano's business was? A. Vegetable selling.

Q. He used to come there to sell vegetables? A. Yes, sir.

Q. That was always what brought him there, was it not? A. Yes, sir.

By the Court.

Q. How did they act when they were together? A. Just talk. They would talk to each other.

Q. Just talking to each other? A. Yes, sir.

Q. Did you ever see them anywhere else than in the store? A. No, sir.

MARJORIE CALABRETTO, sworn as a witness on the part of the petitioner, testifies as follows:

Direct examination by Mr. Quinn.

Q. Did you work at the store, too? A. I worked for her, taking care of the children.

Q. When would you do that? A. Almost every day.

Q. Did you ever take care of them in the evening during the summertime? A. Yes, sir; I and Josephine Todaro.

Q. Did you ever see Napolitano there? A. In the daytime I would—in the afternoon around half-past three or 4 o'clock.

Q. Were you in the room when he would be there? A. While I would take care——

Q. When he would be in the room with Mrs. Baldanza would you stay in the room with them? A. Sometimes I would be there.

Q. On other occasions why would you not stay there? A. Because the baby would go outside and I would have to go out for her and do other things for her.

Q. Did you ever see them together anywhere else? A. Yes; I went out with her one night and we went down on the beach; we were walking down there. She met him on the sidewalk and he sent me for ice cream, and I got the ice cream and brought it to them. She gave me hers and he threw his away.

Q. Then what did you do? A. I ate mine.

Q. What did he do? A. Just talked with her. They were talking, yes, and I was looking at the water.

Q. How long did they stay there together at the beach? A. Fifteen or twenty minutes.

Cross-examination by Mr. Fitzpatrick.

Q. What time of day was this? A. Nighttime.

Q. What time? A. About seven or half-past seven.

Q. Dark? A. Quite dark.

Q. How old are you? A. Fourteen.

Q. Were you down on the beach alone? A. No; I was with her.

Q. Your father bought Mrs. Baldanza's furniture, didn't he? A. Yes.

Q. He bought it from Mrs. Baldanza's husband, didn't he? A. Yes.

Q. Did he buy her trunk, too? A. No.

Q. He did not buy her trunk? A. No.

Q. Did you live in that house? A. No.

ALBERT MAZZATTO, sworn as a witness on the part of the petitioner, testifies as follows:

Direct examination by Mr. Quinn.

Q. You are a druggist in Long Branch? A. Yes.

Q. Are you near the Baldanza bakery shop? A. In the same building.

Q. Do you know Napolitano? A. Yes.

Q. Did you ever see him there? A. I did not know him then. I knew him since he came around the Baldanza store.

Q. Did you see him there at the store? A. Yes.

Q. How frequently would you see him there? A. Oh, three or four times a week; oftener than that sometimes.

Q. Did you ever see Mrs. Baldanza there, too? A. Yes.

Q. Would Harry Baldanza be there on those occasions when you saw him there? A. No; not all occasions.

Q. When he was not there, who else would be there besides him and Mrs. Baldanza? A. Well, the clerks sometimes, but at this time that I seen Napolitano and Mrs. Baldanza together, the clerk was not employed there. I think the clerk was off during the summer.

Q. Did you ever see them in the kitchen? A. Yes.

Q. When was that, about? A. The time of day or time of year?

Q. Both. A. I seen them in the kitchen 6 o'clock. I remember distinctly, because that was my supper hour, and they were eating, this Napolitano and Mrs. Baldanza, were eating homemade strawberry shortcake, with a nice white tablecloth spread over the table, and white napkins.

Q. Anybody else in the room except those two? A. No, sir.

Q. How long did they stay in the kitchen? A. I was asked to come in and have a drink of wine, and I did; I left there and how long they stayed, I don't know.

Q. Who asked you? A. Mrs. Baldanza asked me.

Cross-examination by Mr. Fitzpatrick.

Q. You say you saw Napolitano a number of times come there. Where were you? A. I worked in the adjoining store.

Q. Could you see through the wall? A. I am not always confined to the drugstore.

Q. Did you go out in the street and look to see who went in the baker shop? A. No, sir. It was

in the summertime and I did not always stay in the store.

Q. You used to go into the store next door? A. Next door?

Q. Yes. A. Sure.

Q. When you went in the store, would you go through the back way, through the kitchen? A. I went through either way.

Q. You often went through the kitchen? A. I often went through the kitchen.

Q. What caused you to go through the kitchen of the Baldanza house? A. I had known the Baldanzas for five years.

Q. Who gave you permission to go through that kitchen; what right did you have in Baldanza's kitchen? A. That privilege was extended to me.

Q. By whom? A. Mr. Baldanza.

Q. Mrs. Baldanza? A. Mr. Baldanza.

Q. How did he extend it to you? A. As a friend; as a close friend.

Q. As a close friend, come into the kitchen any time? A. Yes.

Q. You saw Napolitano eating strawberry shortcake? A. Yes; and I remember——

Q. You ate it yourself? A. I ate some, too.

(Salvatore D. Viviano sworn as interpreter.)

MARY BALDANZA, sworn as a witness on the part of the petitioner, testifies as follows, through the interpreter duly sworn:

Direct examination by Mr. Quinn.

Q. You are the mother of Harry Baldanza? A. Yes.

Q. Did you ever have a conversation with his wife about John Napolitano? A. Yes.

Q. What was it? A. After I saw him several times, when I saw him several times insulting, and that she was not to mind her own business and he was insulting her, calling her "Josephine, Josephine."

By the Court.

Q. Where? A. In the store.

Q. How else was he insulting her? A. Nothing else—"Josephine, Josephine." He was calling "Josephine, Josephine." What he wanted to tell her, I don't know.

By Mr. Quinn.

Q. Did you ever speak to her about John Napolitano? A. Yes, sir; I did.

Q. What did you tell Josephine about Napolitano? A. I came up to her and I said to her, "Josephine, you must excuse me. I do not like your confidence with this man because he is too drunk with passion." She said, "What can I do?" I said, "What do you mean, what can you do? You will not do something. Something will happen.

You read the newspapers every day and magazines and you see how many things happen. Three years ago happened about that man that was selling corsets and they killed the husband." Then I told her there was another——

Q. What did you say about Napolitano? A. I was giving her all the different examples.

Q. After you gave the examples to Mrs. Baldanza, what did Mrs. Baldanza say? A. I don't know. You cannot——

Q. After you spoke to Harry's wife about John Napolitano, what did Harry's wife say to you? A. She says, "I do not know. What do you take me for—a bad woman?"

Cross-examination by Mr. Fitzpatrick.

Q. You do not like Mrs. Harry Baldanza? A. Yes; she loves me greatly and I love her also, and that is the reason why I told her.

Q. You now live in Mrs. Baldanza's home? A. No; a little distance.

Q. Who lives in Mrs. Baldanza's apartment now? A. No one.

By the Court.

Q. When was it that you had this talk with Mrs. Baldanza, and told her that you did not like her confidence in this man? A. In the month of June. I cannot remember more precise.

Q. Last year? A. Last year.

By Mr. Fitzpatrick.

Q. When you had this conversation with Mrs. Baldanza, did you tell Harry, your son? A. No;

I did not. I was waiting for the husband to come and remonstrate with me.

Q. Is your husband living? A. No; I have no husband.

Q. You mean Harry Baldanza, when Harry came? A. Yes. I have not said anything to my son.

Mr. Quinn: I offer in evidence the letter in the envelope marked P-4 for Identification.

Mr. Fitzpatrick: I object to the letter. I have not had a chance to examine it.

The Court: The petitioner says he found it in her trunk.

Mr. Fitzpatrick: All right. No objection.

(Letter heretofore marked P-4 for Identification is marked Exhibit P-4.)

Mr. Quinn: I also offer in evidence the photographs.

Mr. Fitzpatrick: I object upon the ground that they have not been properly identified.

The Court: Objection overruled.

(Photographs heretofore marked P-2 for Identification, P-3 for Identification and P-5 for Identification, are marked respectively, Exhibit P-2, Exhibit P-3 and Exhibit P-5.)

(Petitioner Rests.)

DEFENDANT'S CASE.

SAMUEL C. MORRIS, sworn as a witness on the part of the defendant, testifies as follows:

Direct examination by Mr. Fitzpatrick.

Q. You are employed where? A. Long Branch Trust Company.

Q. The Long Branch Trust Company was subpoenaed by the defendant to produce records of the account of Harry Baldanza? A. Yes, sir.

Q. Have you produced the records of Harry Baldanza? A. Yes; I have a transcript of the account here.

Q. You also have the record of Baldanza Brothers, Incorporated? A. Yes.

Q. In which Harry Baldanza is a member? A. Yes, sir.

Q. Your supoena asked you to produce all the records, but you produce only a transcript of the ledger? A. Yes, sir.

Q. Of those two accounts? A. Yes, sir.

Mr. Fitzpatrick: I offer the transcripts in evidence.

Mr. Quinn: I object to them. I do not see what relevancy they have in this case at this time.

The Court: Mr. Fitzpatrick is doing this so that he will not have to bring this witness back.

Mr. Quinn: I will consent to it for that purpose, so that the witness will not have to be brought back.

By the Court.

Q. Are these copies of the account? A. Yes.
Q. You can leave them with us? A. Yes.

The Court: Let them be marked in evidence Exhibit D-1.

(Marked Exhibit D-1.)

JOSEPH MCGARVEY, sworn as a witness on the part of the defendant, testifies as follows:

Direct examination by Mr. Fitzpatrick.

Q. You are chief of the Police Department? A. Chief of the Police Department of the City of Long Branch.

Q. Are you familiar with the petitioner, Harry Baldanza? A. Yes.

Q. Did you order the arrest of Mrs. Baldanza on a warrant last August? A. I believe I did.

Q. Do you know who made the arrest? A. Lieutenant Wardell and Detective Carl A. Huhn.

Q. Did you know Mrs. Baldanza before that? A. I did.

Q. What was the occasion of your talk with Mrs. Harry Baldanza? A. Mrs. Baldanza came into my office one day, I believe about 1927, and complained——

Mr. Quinn: I object to any conversation.
The Court: Objection sustained.

Q. Was she marked? A. Yes.
Q. In what way? A. She had a black eye.

Mr. Quinn: I object to that for this reason, that the cross-bill is based upon actual desertion, not extreme cruelty.

The Court: Objection overruled.

By the Court.

Q. The date of this? A. In the year 1927.

Q. What time of the year? A. Some time in the late fall of the year 1927.

Q. She had a black eye? A. Yes.

By Mr. Fitzpatrick.

Q. Did you see her any other time? A. Yes.

Q. When was that, approximately? A. When she was arrested.

Q. Did she have any marks on her then? A. I do not recall.

Q. Was that one time the only time you saw her marked? A. That is the only time.

Q. Didn't she have occasion to seek assistance from the Police Department on a number of occasions?

Mr. Quinn: Objected to.

The Court: Objection sustained.

Q. Did Harry Baldanza discuss his family affairs with you? A. Yes.

Q. Did he seek any assistance from you? A. He did.

Q. What was the assistance he sought? A. Mr. Baldanza and his brother came to me with his cousin, a man named Mascia. He came to my office the first part of August, 1929, and when he brought his family troubles to me I told him that the Police Department could not do anything for him, to go and see a lawyer.

Q. Did he make any complaint about his wife's conduct? A. Yes.

Q. What did he ask you to do? A. He wanted someone to get evidence against his wife.

Q. Did you give him any name? A. I gave him the name of a party to go and see.

Q. Whose name did you give him? A. Sam Barnes.

Q. Did Mr. Barnes work for Mr. Baldanza? A. No.

Q. Did he do anything in the case? A. I believe he did.

Q. What did he do?

Mr. Quinn: I object.

The Court: How does this witness know anything about it?

Q. Do you know whether he did anything in the case?

Mr. Quinn: Objected to.

The Court: Objection sustained.

Q. At the time he discussed his affairs with you did Mr. Baldanza make any accusation against his wife as relating to Napolitano? A. Yes.

Q. Did he mention Napolitano? A. Yes.

Q. What did he say regarding Napolitano? A. He accused Napolitano of breaking up his home.

Q. Who was with him? A. His brother and Mr. Mascia.

Q. Who made the arrangements with you to secure the detective? A. I referred Mr. Mascia to Mr. Barnes.

Q. Was it Mr. Mascia that asked for assistance? A. Yes.

Q. It was not Mr. Baldanza? A. No.

Cross-examination by Mr. Quinn.

Q. When was this complaint made about Napolitano breaking up his home? A. In the first part of August, 1929.

Q. That was by Baldanza? A. Yes.

WILLIAM D. CRAWFORD, sworn as a witness on the part of the defendant, testifies as follows:

Direct examination by Mr. Fitzpatrick.

Q. What is your occupation? A. Clerk in the Police Department of Long Branch.

Q. You were subpoenaed to produce the record of the police court on the complaint made by Harry Baldanza against Mrs. Josephine Baldanza for the crime of adultery? A. I was.

Q. Have you produced such record? A. Yes.

Q. Is this the complaint? A. Yes; that is the complaint.

Mr. Fitzpatrick: I offer the complaint in evidence.

Mr. Quinn: I object to the mere offer of the complaint.

The Court: I imagine that they are going to follow it up by some further record. Objection overruled.

Mr. Quinn: I will concede that there was a complaint made.

Mr. Fitzpatrick: I am offering it in evidence.

Mr. Quinn: We will consent that the complaint go in.

(Marked Exhibit D-2.)

Q. Mr. Crawford, does the complaint show the disposition of that matter?

Mr. Quinn: Objected.
The Court: Objection sustained.

Q. What was the disposition of the case?

Mr. Quinn: I object.
The Court: Objection sustained.

By the Court.

Q. Have you any record here that shows the disposition of the case? A. Yes.
Q. What is it? A. The complaint was dismissed.
Q. I asked you if you had any record here? A. The docket.

The Court: Produce the docket.

By Mr. Fitzpatrick.

Q. I show you the criminal docket of the City of Long Branch, page 241, wherein is reflected the case of Harry Baldanza, complainant, against Josephine Baldanza, or rather, the State against Josephine Baldanza, on the charge of unlawful intercourse with one John Napolitano, and I ask you what was the disposition of that particular matter by the Court? A. The defendant was found not guilty.

Mr. Quinn: I object to any record of the disposition upon this complaint as not material, and as having no bearing on the issue.
The Court: Objection overruled.

Q. What was the disposition of it? A. The defendant was found not guilty and the complaint was dismissed.

Q. Who was the judge that sat? A. Joseph F. Rosen.

Q. He is the Recorder of the City of Long Branch? A. He is; yes.

Q. In that particular action was a warrant issued? A. Yes.

Q. A warrant for the arrest of Mrs. Baldanza? A. Yes.

Q. Was she arrested? A. She was.

Q. Was she held? A. She was held to bail temporarily, yes.

Q. Does the record show that she was held to bail? A. No, sir; it does not. Yes, sir; it does.

Q. What bail was she held in? A. $200.

Q. Pending the hearing? A. Yes, sir.

Q. And the hearing was had before Judge Rosen and the case was dismissed? A. Yes, sir.

By the Court.

Q. What is the date of the hearing? A. August 28th was the date of the hearing.

By Mr. Fitzpatrick.

Q. On what date was the complaint or warrant issued? A. August 27, 1929.

Q. Does the record show whether or not any evidence was offered in that proceeding? A. No, sir; I do not know that it does. It shows that the defendant waived indictment and trial by jury.

Q. The defendant waived indictment and trial by jury, and the hearing was had before Judge Rosen? A. Yes, sir.

Q. Is there any record there to show that the defendant entered any defense? A. No, sir; I don't think there is.

Q. And the charge was dismissed? A. Yes, sir.

Q. Do you know whether or not there was a charge made and a warrant issued for the arrest of Napolitano for illegal intercourse with Mrs. Baldanza?

The Court: Was there a warrant issued?

Mr. Fitzpatrick: Not that I know of.

The Court: Is it admitted that none was issued?

Mr. Quinn: None was issued.

Cross-examination by Mr. Quinn.

Q. There were two witnesses sworn in that proceeding? A. Two or more; yes.

Q. What does your record show? A. Two.

Q. That is all? Then, there wasn't any more? A. I don't think so.

Q. There was a request made for an adjournment and Judge Rosen would not grant that request and dismissed the proceedings; isn't that what occurred? A. I could not say; no, sir.

Q. Don't you recall that a request was made for adjournment so that other witnesses could be produced?

Mr. Fitzpatrick: I submit the record is the best evidence.

By the Court.

Q. Did you keep that record yourself; did you make it up? A. No, sir; I did not.

By Mr. Quinn.

Q. You were present at the hearing? A. Yes, sir; I was.

Q. Don't you recall the request being made of Judge Rosen for an adjournment so that other witnesses could be procured and that Judge Rosen denied the request and just dismissed the complaint? A. That is correct, I believe.

CARL HUHN, sworn as a witness on the part of the defendant, testifies as follows:

Direct examination by Mr. Fitzpatrick.

Q. Do you know Mrs. Baldanza? A. I do.

Q. Did you have occasion to go to her home? A. Yes.

Q. When? A. On August 27th.

Q. What for? A. To serve a warrant for her arrest.

Q. What did the warrant charge? A. Adultery.

Q. Was she arrested by you? A. She was.

The Court: The petitioner admits that she was arrested and tried.

Q. Did you see Mrs. Baldanza on any other occasion than that at the police station? A. After she was arrested I saw her.

Q. I mean preceding that? A. Preceding that, no.

(No cross-examination.)

FRED WARDELL, sworn as a witness on the part of the defendant, testifies as follows:

Direct examination by Mr. Fitzpatrick.

Q. Do you know Mrs. Baldanza? A. I do.

Q. Did you ever see her on any occasion previous to August 24, 1929? A. I do not recall ever seeing her before that, no; that is, even to know who she was.

Q. You knew her, didn't you? A. No, sir; I cannot say that I did.

Q. You never saw her in the police station making a complaint? A. I might have seen her in there before; I did not take any special notice.

Q. Did you ever notice any marks on her body?

The Court: He does not appear to have ever seen her.

(No cross-examination.

(At this point adjournment is taken to May 15, 1930, at 10 o'clock in the forenoon.)

(Court met pursuant to adjournment this 15th day of May, 1930.)

(Appearances as heretofore.)

JOHN NAPOLITANO, sworn as a witness on the part of the defendant, testifies as follows:

Direct examination by Mr. Fitzpatrick.

Q. Where do you live? A. 244 Central Avenue.

Q. What is your business? A. Fruit business.

Q. Do you know Mrs. Baldanza? A. Yes, sir.

Q. Do you know Mr. Baldanza? A. Yes; I do.

Q. How did you come to know them? A. Well, I go around their store selling fruits and vegetables. That is how I know them.

Q. Did you ever sell to Mr. and Mrs. Baldzana? A. Yes.

Q. Over what period of time were you selling? A. Any time, in the morning and in the afternoon.

By the Court.

Q. When did you commence selling? A. In the morning.

Q. What month, what year? A. 1929.

Q. For how long? A. I sold three or four months.

Q. How many times a week? A. A whole lot of times, most every day I used to go there and sell.

Q. For how long did you go there? A. Four or five months, I guess.

By Mr. Fitzpatrick.

Q. Were you friendly with Mr. Baldanza? A. Yes.

Q. Did you ever take Mrs. Baldanza out in the car? A. Never.

Q. You were here at the last day of the trial? A. Yes, sir.

Q. Do you recall August 24, 1929? A. What day?

By the Court.

Q. The day he asked you about, August 24, 1929. A. No; I do not.

By Mr. Fitzpatrick.

Q. What do you do at night? A. I work in the store helping my cousin out, grocery store.

Q. Is that store open every night? A. Yes.

Q. Open Saturday nights? A. Yes, sir.

Q. Was it open on Saturday nights during the month of August, 1929? A. Yes; every Saturday night it is open.

Q. How late did you work? A. About 12 o'clock every Saturday night.

Q. 11 or 12 o'clock Saturday night? A. Yes, sir.

Q. Were you working August 24, 1929? A. Yes, sir; every Saturday I am working.

Q. Did you, on August 24, 1929, take Mrs. Baldanza in an automobile? A. No, sir.

Q. Did you ever have Mrs. Baldanza in an automobile? A. No, sir.

Q. Are you the owner of automobile license M-18245? A. No.

Q. Did you ever with an automobile or otherwise have Mrs. Baldanza in an automobile on Archwood Avenue?

Q. Did you have her on Archwood Avenue, in Long Branch, in an automobile, on the night of August 24, 1929? A. No.

Q. Your relations with Mrs. Baldanza and her husband at all times were the best relations?

Mr. Quinn: Objected to as leading.
The Court: Do not lead the witness.

Q. Did you sell any vegetables or any groceries of any kind to Mr. Baldanza after August 24, 1929? A. I don't remember that.

Q. You don't remember? A. No.

Q. Can you recall the last time that you sold him vegetables? A. I cannot remember.

Q. Did Mr. Baldanza ever have you arrested for having committed the crime of adultery with his wife? A. No, sir.

Q. Did he ever complain to you about your committing adultery with his wife? A. No.

Q. Did he ever charge you with any wrongdoing with his wife? A. No.

Q. Did he ever tell you to keep away from his wife? A. No.

Q. Did you ever see Mr. Baldanza after August 24, 1929? A. I don't remember that.

Q. You don't know whether you did or not? A. No.

Q. Have you been in his store in 1930? A. 1930, no.

Q. Did you ever embrace Mrs. Baldanza in her store? A. No, sir.

Q. Did you ever kiss her? A. No, sir.

Q. Did you ever talk in an affectionate way to her? A. I talked to her on business.

Q. On business? A. On business, yes.

Q. Was there anybody else present, as a rule? A. Sure, there was a lot of people coming in and out.

Q. Did you ever see Mrs. Baldanza's mother-in-law in the store on any occasion—Mr. Baldanza's mother? A. Yes.

Q. Did you ever in her presence say anything improper to Mrs. Baldanza? A. Never.

Q. Did Mrs. Baldanza, the mother of Mr. Baldanza, ever say anything to you because of improper actions on your part? A. No.

Q. Or improper relations? A. No.

Cross-examination by Mr. Quinn.

Q. Do you remember when Mrs. Baldanza stopped living with her husband and went to Passaic? A. No.

Q. You don't know that she went to Passaic? A. I know she went to Passaic, but I do not know when.

Q. You know she went to Passaic? A. I heard about it.

Q. How do you know that? A. People told me that; everybody said that.

Q. You do not recall whether you were in the store after August 24, 1929? A. No.

Q. Did you go there the week before August 24, 1929? A. I don't remember.

Q. Do you remember where you were on August 24, 1929, in the evening? A. Yes; I was in the store. In the evening I am always in the store.

Q. Do you mean to say you have worked every Saturday night during the year 1929 until 11 o'clock at night in that store of your cousin? A. Yes; I do.

Q. Do you remember approximately the last time you were ever in the Baldanza store? A. Not night time. In the daytime I was there.

Q. Is it not a fact that after August 24, 1929, the night that you and his wife were out together, that you stopped going there at that time? A. I never was out with her.

Q. Is it not a fact that on August 26, Mrs. Baldanza sent word to you to keep away from the store because Harry knew what happened? A. No. I was not there anyway.

Q. You received word from Mrs. Baldanza, directly or indirectly, that Harry knew what had happened between you and his wife? A. No.

Q. You say you were going every day to the store of Mr. Baldanza? A. I used to go, yes.

Q. Why were you going every day? A. I used to sell stuff.

Q. What other store did you go to every day to sell stuff? A. All the stores down there.

Q. Name one store that you used to go to every day? A. I used to go to Pietes.

Q. Where? A. Next store from him.

Q. When you were going every day to Baldanza's store you would stay there hours at a time? A. No, sir.

Q. Is it not a fact that you selected a time to go to the Baldanza store when Mr. Baldanza was out on the route? A. Yes; I was there, sure.

Q. You would go there when Mr. Baldanza was out on his route? A. Sure; I used to go there any time, if he was there or was not there.

Q. Didn't you select a time when he would not be there? A. No.

Q. Is it not a fact that 90 per cent. of the times you have been there have been times when he was not in the store? A. He was there most of the time.

Q. Is it not a fact that when you would go there, that you and Mrs. Baldanza would go out in the kitchen and remain alone? A. No, sir.

Q. Is it not a fact also that when you would go to the store, Mrs. Baldanza would send the children out of the place where you and she would be? A. I don't know she was in the store all the time.

Q. Do you ever recall any occasion, when the many boys and girls who used to work there were sent out of the store by Mrs. Baldanza when you came there? A. No.

Q. In an affidavit signed by Mrs. Josephine Baldanza she has stated that on this night in question, that you were on Norwood Avenue and stayed ten to twenty minutes. Do you recall being there? A. No, sir.

Q. She also states that you made an appointment to be with her on several occasions? A. No.

Q. "I have kissed him and he has kissed me." That never happened? A. No, sir.

Q. You don't own a car yourself? A. No, sir.

Q. Your cousin Santarelli owns a car? A. Yes.

Q. You have driven his car? A. Yes.

Q. On many occasions? A. No.

Q. He gives you permission to drive his car? A. Once in a while.

Q. And you have gone out evenings in that car? A. Sometimes, sure.

Q. Then, you do go out nights in that car? A. Not on Saturday night. Saturday night I am always in the store.

Q. When did you first know that this alleged intercourse or alleged meeting between you and Mrs. Baldanza was on a Saturday? A. What do you mean?

Q. Who told you that you were charged with being out with Mrs. Baldanza? A. People told me. I heard it from people in the city.

Q. What person told you? A. I don't know that. I heard it from people. That is all I know.

Q. You don't know the name of any person who told you that you were charged with going out with Mrs. Baldanza? A. I know some people——

Q. (Interrupting) You do not know the name of any person who told you that you were charged with being out with Mrs. Baldanza? A. No.

Q. Didn't you talk with Mrs. Baldanza the night of the 26th about it? A. No.

Q. Did you talk to any of her brothers and sisters about it? A. No.

Q. Did you go to Passaic and talk to any of them? A. No.

Q. Have you talked to Mrs. Baldanza since August 24, 1929? A. No.

Q. Have you not talked with her about this case? A. No.

Q. Have you sent any message to her about it? A. No.

Q. Has she sent any message to you about it? A. I got the card to come here.

Q. What? A. I got called to this case.

Q. Subpoena? A. That is what I know.

Q. Up to the time you got the subpoena you had talked with no one about the fact that you were charged with having committed adultery with her on August 24th? A. No.

Q. What kind of a car is this car of your cousin's? A. First it was a Pontiac. Then he changed it to an Oakland.

Q. That was a pleasure car? A. Yes; a pleasure car.

Q. Do you know where Norwood Avenue is? A. No.

Q. How long have you lived in Long Branch? A. About a year.

Q. A year before August 24, 1929? A. About fifteen months now.

JOSEPHINE BALDANZA, the defendant, sworn as a witness in her own behalf, testfies as follows:

Direct examination by Mr. Fitzpatrick.

Q. You are the defendant in this case, Mrs. Baldanza? A. Yes.

Q. You have two children? A. Yes.

Q. Children of the petitioner Harry Baldanza? A. Yes, sir.

Q. When were you married? A. I was married April 20, 1924.

Q. When was your first child born? A. April 18, 1925.

Q. When was the second child born? A. February 19, 1928.

Q. Since your marriage have you always lived at Long Branch? A. Yes.

Q. In a home provided by your husband? A. Yes.

Q. Have you had a home provided for you since the time you were married? A. Well, not since the time I was married; no.

Q. With whom did you live when you first were married? A. With my husband's mother and a married brother and a single sister.

Q. What married brother? A. Mr. Joseph Baldanza.

Q. Were there any business relations between Joseph Baldanza and your husband at that time? A. Yes; I understood they were in partnership.

Q. In what kind of business? A. Bakery and groceries.

Q. What was your husband's trade? A. He used to go out on the truck delivering bread.

Q. Was he a baker? A. Yes, he did both.

Q. Immediately after your marriage did your husband operate a bakery? A. Well, yes, alone, for a year after we were married.

Q. Did you work in that bakery? A. Yes, sir.

Q. What did you do in the bakery? A. I helped the baker as a second.

Q. As a what? A. As a second.

Q. What do you mean by "a second"? A. I used to beat the dough and I used to help them to put it into boxes. Then I used to go out to them and help the other baker to put it in the oven.

Q. After the bread was baked did you have any duties? A. Only helping to put it in boxes and take it out and put it in the other room.

Q. In addition to that did your husband operate a store? A. Yes.

Q. What kind of a store? A. Grocery store.

Q. Did you work in the store? A. Yes.

Q. How long did you work in the grocery store from the time of your marriage to August 26, 1929? A. Up to August 26th——

Q. Well, from the time of your marriage, all of that period, did you work constantly in the store? A. Yes.

Q. Every day? A. Every day.

Q. How many hours? A. Well, I would say about eight hours.

Q. Eight hours a day? A. Yes.

Q. Besides that did you maintain a home for your husband? A. I did.

Q. How many employees did he have on an average during that time? A. In the winter——

The Court: In the bakery or grocery?

Q. In the bakery. A. In the winter time he would have four or five and in the summer time about nine, including the truck drivers.

Q. Besides working in the bakery shop and in the grocery store and maintaining a home for your husband, was there any other duty imposed upon you? A. I kept boarders when I had the bakery shop.

Q. Boarders? A. The bakers.

Q. Did you have to provide meals for the bakers? A. Yes.

Q. Up to what time or how late in your married life did you bake and cook and provide food for the bakers who were employed by your husband? A. Up to December, 1929.

By the Court.

Q. December, 1929? A. 1928.

By Mr. Fitzpatrick.

Q. When did your trouble with your husband start? A. Well, it started right after we started living with his folks.

Q. How long was that after you were married? A. I would say the very next two weeks.

Q. Who were the relatives that lived with you? A. My husband's mother, his brother Joseph Baldanza, his wife Mrs. Baldanza, and his sister Millie Baldanza.

Q. You all lived together in one house? A. We all lived together.

Q. Did you all eat together? A. Yes.

Q. Who did the cooking? A. Sometimes his mother did and sometimes her daughter and I would help at times.

Q. What was the first trouble you had? A. My mother-in-law did not like to see me dress up in silk clothes.

Q. How long after your marriage was that? A. Two weeks.

Q. Did she complain about your dress? A. Yes.

Q. What did she say? A. She told me it was not proper around the house, around the store, to wear silk clothes. So I says to her, I says, "Right

after my marriage I am not to wear good dresses, except the old ones?" She says, "It doesn't make any difference what you think, you will have to wear old dresses." I did not like the idea——

Q. What were the dresses that she objected to? A. They were my clothes when I was single.

Q. You had them when you were married? A. Yes.

Q. How soon did real serious trouble begin? A. Three months after I was married.

Q. Where? A. In my mother-in-law's home.

Q. How did it happen? A. My mother-in-law accused me of doing something not to have any children because the third month she noticed—I don't know how to say it—she noticed I was not showing any sign of having a child.

Q. How long after marriage was that? A. Three months.

Q. She accused you of doing something to prevent childbirth? A. Yes.

Q. Three months after your marriage? A. Yes.

Q. In whose presence did she accuse you? A. In the presence of my husband, in the presence of Joseph Baldanza and the daughter.

Q. What did your husband say? A. My husband didn't say anything.

Q. He did not protest against it? A. No.

Q. Did he accuse you further himself at the time? A. No, he did not.

Q. Did any of the others say anything; what did you do when this accusation was made? A. I started to cry and I denied it. I used to have my bedroom upstairs. I left the people and I went upstairs to my bedroom; I was crying. After a short while my husband came upstairs and he says to me, "They want to talk to you downstairs."

Q. Meaning whom? A. His brothers wanted to talk to me. So I went down. As soon as I came in the doorway—I forgot to mention to before Dominick Peluso was there—as soon as I came in the doorway Dominick Peluso said to me, "She looks like a prostitute."

Q. Dominick Peluso is who? A. My husband's sister's husband; a brother-in-law.

Q. A brother-in-law of your husband? A. Yes.

Q. Who was present when he said that? A. My husband and his brothers and his mother.

Q. Did your husband object to that? A. No, sir.

Q. Was anything else said by any other person there? A. I started to cry and I would not take that word from him, so I answered him back, and so my mother-in-law said, "Do you see how she answers back?" Louis Baldanza got up and took an ash tray that was on the table and came after me and struck me and at the same time he says, "You are not good enough for my brother."

Q. Did he hit you? A. He struck me; yes.

Q. With what? A. With an ash tray.

Q. Louis? A. Louis Baldanza; yes, sir.

Q. Was your husband there at that time? A. Yes; he was present.

Q. Did your husband protest against his striking you? A. No; he made no attempt to stop it.

Q. What happened after that? A. After that I started to cry. I ran into one of the other bedrooms in back of the store. They came after me. So then I ran upstairs again.

Q. Who came after you? A. Louis and his mother, and I ran upstairs and I locked the door and they did not bother me for the rest of the day.

Q. You stayed in the room for the rest of the day? A. Yes.

Q. Did your husband come near you? A. At night when he came to bed.

Q. How long a time did you remain in that room at that particular period? A. Well, all day; I would say from 2 o'clock in the afternoon until the next morning.

Q. When was the next time that trouble started that you recollect? A. I got a letter from Louis Baldanza threatening me that if I would not do what superiors told me—I don't know who he meant unless he meant himself—if I would not do what superiors told me he would come and beat me up, the way he threatened. It would take him only two hours from Passaic to Long Branch.

Q. Was that sent to you? A. Yes.

Q. Have you got the letter? A. I have the letter, yes.

Q. Is it in Italian? A. Yes.

The Court: Have you a translation of it?

Mr. Fitzpatrick: No, your Honor; it is the original letter in Italian.

The Court: What is the date of it?

Mr. Fitzpatrick: 9/4/24. It was mailed in Passaic, May 9, 1924.

Mr. Quinn: If it is not offered in evidence, I move to strike out any testimony as to its contents.

The Court: The witness' testimony as to what the letter contains may be stricken out.

Q. After you received this letter what happened? A. I showed it to my husband. I sat down at the desk and I wrote a letter back to him and I told him that there wasn't any need of doing that because I was trying my best to please his people.

Q. How long was May 9, 1924, after your marriage? A. About a month.

Q. About a month after your marriage? A. Yes.

Q. You testified as to what happened about three months after your marriage. What was the next time that you remember trouble being raised? A. The next time was in 1925. I was pregnant with the first child when he struck me. I started crying and I wanted to call a doctor and they would not let me.

Q. What was the next experience you had in the way of trouble? A. After the child was born we used to have arguments in the store with his brother Joseph.

Q. After the first child was born? A. Yes. We used to have arguments with his brother Joseph in the store.

Q. Was his brother a partner of his at that time? A. Yes; he was. I refused to eat downstairs with them. I wanted my own home. I wanted a kitchen for myself and they would not let me have it. So my husband, when I went upstairs to my room, locked me up and he says if I was not ready to eat with his folks downstairs, I would not get anything, and when I made up my mind to go downstairs, then he would let me out. I said, "No; I will stay here. You can starve me if you want to, but I won't go downstairs." I was upstairs three days. The third day he said, "Are you ready to go down?" I said, "No."

Q. Did he bring any food to you the three days you were upstairs? A. No, sir, nor on the third day, but on the next day they brought a cake and a small bottle of milk.

Q. Who did? A. Mrs.——

Q. Is she in court to-day? A. Yes.

Q. She brought you a cake and a small bottle of milk? A. She brought me a cake and a small bottle of milk.

Q. Did your husband finally establish a separate home for you? A. Yes; he did.

Q. When? A. In 1925, right after that argument.

Q. Did his relations continue in partnership with your husband up to the time you were driven away from home? A. No.

Q. When did the partnership cease? A. As far as I can remember, in 1926.

Q. Did your husband buy his brother's share of the business? A. I could not understand it. I wanted my husband to make business papers. There was no papers made. I was afraid of everything, I never questioned him.

Q. From the time you went down there in 1924 and worked in the bakeshop, up to the time you left your husband, how much money did he allow you? A. As far as I can remember, only once he gave me an allowance of $25.

Q. For how long a time? A. For about a month or two.

Q. When was that? A. In 1926.

Q. What were you supposed to do with that allowance of $25? A. Then we had the baker shop to ourselves. I was supposed to mark down on paper every item that I paid, how much I paid. I was supposed to buy stuff for the bakeshop, which amounted to $14 or $15 a week.

Q. Out of the $25? A. Out of the $25. So, when I used to complain that I used all the money for the butcher, for the vegetables, he said, "What are you doing with the money?" I says, "I will write down everything I spend. I don't get any money

to spend foolish." He said, "You will have to give me an account." So when I said, "I want more money," he stopped giving me $25 a week and he says when I want anything to ask him for it.

Q. Did your husband keep his money in bank? A. Yes, sir; he did.

Q. How many times did you receive money in checks? A. I never received a check.

Q. You worked in the store? A. Before they separated, and then I used to help when we had our own grocery in back of the bakeshop. I used to take orders in the daytime. I used to help him out.

Q. Did you work in the store after he bought his brother's share of the business? A. No; I did not.

Q. You did not work in the store? A. No.

Q. When did you stop working in the store? A. I won't say exactly; it must have been around 1926.

Q. That was the bakeshop? A. The store, when I stopped working in the store. In 1926 he took the bakeshop and his brother took the store.

Q. Did you work in the bakeshop after that? A. Yes, sir; I did, continuously.

Q. Up to what time? A. Up to 1927.

Q. Did he pay you any salary for working in the bakeshop? A. No, sir; he never did.

Q. Was your work exactly the same as the assistant bakers? A. Yes.

Q. You worked as any assistant baker? A. Yes. When I was supposed to rest I would go upstairs and do my own cooking, and then when the other baker called me, I went down.

Q. Did you have access to the money in the store? A. Yes; he used to bring his money home nights and he used to put it in the safe.

Q. Did you have access to it? A. Well, I could have opened the safe, but I never took any without his permission.

Q. Did you ever deposit moneys for him? A. I made out slips for him, but I never went to the bank.

Q. Daily or weekly? A. Weekly.

Q. And did you deposit the money? A. No, sir; I did not deposit any. He deposited his own money. I would help him count up the money and make the slip.

Q. What was the real reason in your mind for the trouble arising between you and your husband?

Mr. Quinn: Objected to.

The Court: Objection sustained.

Q. Previous to August 24, 1929, can you recall the last argument with your husband? A. It was in February, 1929, that I had the last argument with my husband.

Q. What was that argument about? A. In December his brother wanted to go out of the place—

Q. December of what year? A. 1928. His brother wanted to go out of the place. He wanted to sell everything to my husband. I says to my husband, "No."

Q. He wanted to sell what? A. Everything, the business, the building, the property.

Q. At that time he had an interest in the property? A. Yes.

Q. While your husband operated the bakeshop? A. Yes.

Q. The brother wanted to sell the business and property to your husband? A. Yes. I says, "Harry, we have enough money saved up and the share that you will get from this property, let us

get out of here. We will go in business for ourselves."

Q. Why did you suggest that? A. I wanted to get away from his folks and I wanted to live alone. I thought that we could get along better. So they always had an idea I wanted to go back to Passaic to live. My husband says, "No. I don't want to go to Passaic." I says, "We are sixty miles from Passaic and sixty miles from Long Branch"—I don't want to be near my folks or his folks.

Q. Your folks lived where? A. Passaic. He said, "No." He insisted on buying. When he insisted on buying I did not object any more. So my husband says to me, "How about we run the store and my sister Jessie?"

Q. Jessie is his sister? A. Yes, I said, "Harry, as long as we are taking over the store I will try to manage and make that extra money for ourselves." I says, "You know I never get along with your folks. I have always respected your sister Jessie. She has been very nice to me. When your folks are far away we get along well." So I supposed they must have talked it over between the mother and himself. He insisted on giving the store to his sister. One day he came up. I said, "No; I won't sign any papers." He started to beat me. He gave me a black eye and hit me over the head with his belt. So I went to a doctor and he treated my eye and my head, and from there I went home. I think this was on a Wednesday. On Friday——

Q. The following Friday? A. On the following Friday I says to my husband—I tried to get around him in a nice way. I says, "Let us talk the thing over. I will try to help you out in everything I can," and he finally saw it in my way. He said,

"All right, we will take a chance and try. They are waiting for me to get tired of it. They are only giving me one month's time."

Q. Who did he mean? A. He meant his folks. He said, "You will soon get tired of it." I says, "No; I won't get tired of it." We were affectionate towards each other and his mother came in. She came in the kitchen. Of course I remained. I do not know whether she had heard me with my husband or what. So she didn't stay long and she went down and Andrew Baldanza came over. He used to come over every two weeks for groceries.

Q. That is, his brother? A. His brother, yes. This was on Friday night after we put the children to sleep I always used to do half of my cleaning so I would not have to do it on Saturday. I was cleaning out the icebox and the door from the kitchen downstairs was open. So my mother-in-law says—I could hear her voice—she says, "With her affection and her hugging and her kissing she gets what she wants, but she is not going to have the best of me." When I heard that I did not know what to say. I did not want any more argument. So I closed the door. So I heard one of the brothers say, "Well, we are through with her. She thinks she is going to have the business, but wait until we are through with her." So with that I closed the door. I never thought anything of it——

Q. That was in February? A. In February.

Q. Was there any later argument? A. No; there was not; not after that.

Q. Now, during the period of the arguments, from the time they began in 1924, in April or thereabouts, in 1924, after your marriage, down to August 24, 1929, did your husband directly or indirectly charge you with any wrongdoing? A. No; my husband never said anything to me.

Q. Did he ever accuse you of any relations with Napolitano? A. No.

Q. Did he ever accuse you of being out with anybody else? A. No; he never mentioned that to me.

Q. Who was at your home on August 24, 1929? A. My sister was down.

Q. Her name? A. Mrs. Nobile. She had been there about three weeks or a month before that for a vacation, and then she went away. So I said to her, "Come down for the baby parade," which was supposed to be on August 27th, in Asbury. She says, "Yes; I never seen any."

Q. What was the occasion of Mrs. Nobile's visit? A. She came there to see the baby parade on Tuesday.

Q. This was what date? A. When she came it was August 24, on a Saturday.

Q. Did she stay overnight? A. She stayed all day and all night.

Q. Where were you at 6 o'clock on August 24, 1929, or thereabouts? A. I was either in the store or in the house.

Q. Did you go out? A. Yes; I did.

Q. What time did you go out? A. About 9 o'clock or a little after nine.

Q. What was the occasion for your going out? A. I was going to see a sick woman.

Q. Did you go with anybody? A. I went with my husband.

Q. How did you come to go to see this sick person? A. She had been operated on; and she was a friend of mine.

By the Court.

Q. How did you come to go to see her? A. Well, I asked my husband if he would not take me in the middle of the week and he says to me——

Q. How did you happen to go that night? A. My husband told me I could go that night; he would have time to take me down.

By Mr. Fitzpatrick.

Q. Was he in the store that time? A. He came in a quarter of nine.

Q. He said that you could go that night? A. Yes, sir.

Q. Did he take you? A. Yes, sir; he took me.

Q. Who was the sick person? A. Mrs. Grandi.

Q. Is she in court? A. Yes, sir.

Q. Where did she live? A. On Second Avenue.

Q. Long Branch? A. Yes, sir.

Q. Near what street? A. Between Chelsea and Morris, I believe. I don't know just exactly.

Q. Did you go to her house? A. Yes, sir.

Q. Who took you? A. My husband.

Q. Did you walk there? A. No, sir; we rode down.

Q. In a car? A. In a delivery truck.

Q. Did he have a car at that time? A. Yes, sir; he did.

Q. He took you down in the delivery truck? A. Yes.

Q. Did you go into Mrs. Grandi's house? A. Yes; I did.

Q. Did he go with you? A. No, sir.

Q. What time did you get to her house about? A. About ten after nine—between ten after nine and a quarter after nine.

Q. Was Mrs. Grandi in? A. Yes.

Q. How long were you there? A. About twenty minutes.

Q. Did your husband wait for you? A. No, sir.

Q. And he did not go in with you? A. No; he did not.

Q. Did he have any excuse or reason for not going in with you? A. No. He said he was going to a hotel to make an account.

Q. Did he say what hotel? A. No; he did not tell me.

Q. What do you mean by making an account; what did you understand him to mean? A. Well, his brother was supposed to have been delivering bread——

By the Court.

Q. What did you understand your husband to mean? A. To figure up, to make an account for the money.

By Mr. Fitzpatrick.

Q. To make an account of what? A. Of groceries that he had sold him, to get paid.

Q. That he had sold to this hotel? A. Yes.

Q. He did not mention the name of the hotel? A. No; he did not.

Q. When you left Mrs. Grandi's house your husband was not waiting for you, was he? A. No; I didn't see him.

Q. Did your husband say he would return for you when he left you there? A. No.

Q. Was there any discussion with him about how long you would be in her house? A. No; there was not.

Q. There was no discussion as to where you would go after you left her house? A. No.

Q. Did he ask you? A. No, sir; he did not.

Q. When you left Mrs. Grandi's house where did you go? A. I went down Second Avenue.

Q. That was the street that Mrs. Grandi lived on? A. Yes; I continued walking on Second Avenue and when I got to the corner of Broadway and Second Avenue I turned to my left and I was walking up Broadway looking at the different stores.

Q. Broadway is a busy street? A. Yes; I looked at the different stores and I looked to see whether he was coming along with the truck.

Q. Who? A. My husband. I thought he would come along with the truck.

By the Court.

Q. Please do not wander. You walked around and you looked at the stores? A. Yes.

Q. Then what? A. From Second Avenue I crossed to Third Avenue; crossed Third Avenue and I waited for a bus. Before that I went into Werner's and bought a book—a stationery store, and when I came out of the store I waited on the corner of Third Avenue for a bus.

By Mr. Fitzpatrick.

Q. How long did you wait on that corner? A. About five minutes.

Q. Did you get a bus? A. I did.

Q. Where were you going in the bus? A. To go home.

Q. Did you go home? A. I did.

Q. Where did you get on the bus? A. On the corner of Third Avenue and Broadway.

Q. Who was driving that bus? A. Mr. Mascia.

Q. Is he in court? A. Yes.

Q. Where did you get off the bus? A. In front of my house.

Q. In front of your house? A. Yes.

Q. At what time? A. I would say about 10 o'clock.

Q. Where did you go? A. Well, he told me——

Q. Where did you go? A. Right in the store.

Q. Did anybody else go in the store? A. Yes.

Q. Who? A. Mr. Mascia came into the store to buy a bottle of beer.

Q. Did he buy a bottle of beer? A. He did.

Q. Did he drink it? A. He did.

Q. Was it beer or near-beer? A. Well, it was beer, I guess.

Q. Who was in the store when you and Mr. Mascia went in? A. When I went in the store my husband was there and my sister, Mrs. Nobile.

Q. Mrs. Nobile? A. Yes.

Q. Was there any conversation between anybody while Mr. Mascia was in the store? A. Well, we talked, and we asked Mr. Mascia if he would take my sister down to Asbury Park to see the baby parade.

Q. Was your husband there during the conversation? A. Yes; he was there.

Q. Did your husband say anything to you about being out that night and having intercourse with a man? A. No, sir.

Q. Did he say anything; did he charge you with being on Archwood Avenue that night? A. He did not.

Q. Did you have intercourse with John Napolitano that night? A. No, sir.

Q. Did you have intercourse with anybody else? A. No, sir; never.

Q. Were you ever unfaithful to your husband during your married life? A. No.

Q. Mr. Mascia left soon after your arrival? A. After a while he did.

Q. That was after 10 o'clock? A. That was after 10 o'clock.

Q. Did your husband have any conversation with Mascia while he was there? A. Yes, sir; they were talking.

Q. Do you remember what the substance of the conversation was? A. Well, he seemed rather anxious to get him out of the store.

Q. To get whom out of the store? A. Mr. Mascia.

Q. What did he say? A. Well, he started to tell him what time he got up, he was wishing to go upstairs to bed, and he told Mr. Mascia he gets up early; so Mr. Mascia stayed a while and he left.

Q. When he left what happened, if anything? A. Well, we stayed around the store and we were going upstairs.

Q. You and your husband? A. Yes; the children were already in bed.

Q. Any argument? A. No argument at all.

Q. Any charge made against you? A. No. When we were upstairs the telephone rang and I answered the telephone and it was Mr. Mascia.

Q. Is he here in court? A. Yes, sir; there he is. He called up and I answered the telephone.

Q. Who called whom? A. He called up the house and I answered the telephone. So he says to me, "I want to talk to Harry." He meant my husband. I said, "All right." So my husband started to talk to him and I heard my husband say, "Oh, yes, hasn't anybody come for her yet?" He says, "All right, I will be right down." He says to me, he is going to get my mother-in-law. He says to me, "They took her down to Asbury Park and nobody has gone to take her home, and I will have to go." I says, "All right." He has done that a lot of other times. I didn't think anything of

it. So with that I went to bed. My sister slept in our spare room and I slept in my regular bedroom. I must have falled asleep, because it was a long time after I heard a knocking on the door——

Q. Did your husband go out when he told you he was going out? A. He did.

Q. What time did he get back? A. It was rather late. I should say about 12 o'clock.

Q. Were you in bed at the time? A. Yes.

Q. Your sister was in bed? A. Yes.

Q. Was anything said about your doing anything wrong? A. Nothing at all.

Q. Was there any argument with your husband about Napolitano or anybody else that night? A. No, sir; nothing.

Q. Your husband occupied the same bedroom with you that night? A. No; he did not.

Q. Why? A. Because when he knocked on the door he came in with his brother Andrew Baldanza.

Q. When you let him in his brother Andrew was with him? A. Yes; at 12 o'clock it was.

Q. Was he there early in the evening? A. Yes; he was.

Q. Was he there when you and your sister went up to bed? A. No.

Q. He was not there after you got off the bus, was he? A. No; he was not.

Q. There was only your husband and your sister and you? A. Yes.

Q. You and your sister went to bed and your husband went out? A. Yes.

Q. When your husband returned at 12 o'clock Andrew Baldanza was with him? A. Yes.

Q. Did Andrew Baldanza stay? A. He did.

Q. Where did he sleep that night? A. In the spare room. I asked my sister to sleep with me.

Q. You asked your sister to come and sleep with you? A. Yes.

Q. Where did your husband sleep? A. My husband and Andrew slept in the spare bedroom.

Q. Was there anything said in the nature of argument in the presence of Andrew Baldanza? A. No.

Q. Did he charge you with anything that night? A. He did not.

Q. The following day was Sunday? A. The following day was Sunday.

Q. What did you do Sunday morning? A. I got up as usual and I went downstairs in the store.

Q. Did you work in the store that morning? A. Yes.

Q. Did you leave the store that morning? A. No; I was in the store all that morning. I was not even in the kitchen. We were very busy.

Q. Did you have your dinner there? A. No.

Q. Did you leave there that day? A. I did not leave. They put me out.

Q. What time? A. About 11 o'clock.

Q. How did you come to leave there? A. Andrew Baldanza came into the house and he said to me—

By the Court.

Q. He was in the house? A. He came to me while I was in the store. In the morning before I got up they went out with my husband. I didn't see them.

By Mr. Fitzpatrick.

Q. What time did you get up? A. 7 o'clock.

Q. And were they out at that time? A. They were out.

Q. Did you go in the room where they were? A. No; I did not.

Q. How did you know they were out? A. I didn't hear them get up after I did. I could see if there was anybody there.

Q. Did your sister get up with you? A. She got up a little later.

Q. You went down and opened the store? A. Yes.

Q. What happened between you and Andrew Baldanza at 11 o'clock? A. At 11 o'clock Andrew Baldanza came in the store.

Q. Was your husband there? A. No. He has a machine. He said, "I would like to get my girl a present; I want to go up and buy her a dress." He said: "Put on your hat and coat." I said: "I am very busy. I cannot really leave." So he went in the kitchen and when he came out there was no one there. So he says: "Come on, there is nobody here now." In the meantime my husband had come in.

Q. Where was your sister? A. My sister was in the kitchen. I noticed he went into the kitchen and he was talking to my sister. Then he came out again and he says: "Come on; there is nobody here now." In the meantime my husband came in and I told him about it.

Q. Told him what? A. That Andrew wanted me to go out and buy a dress.

Q. What did your husband say? A. He didn't say anything. I said: "If you say, I will go with him." So I went upstairs and got on my hat and coat and went in the front of the store, on the side of the house; there was a Buick there. So I noticed my husband was sitting in the car.

Q. Was Andrew Baldanza with you? A. Yes; he was with me all the while. I got in the car and

he drove, and Andrew Baldanza, he stayed in the back with me.

Q. Where were you going, as you understood? A. As I understood, we were supposed to go to Broadway in Long Branch.

Q. Where did you go? A. Well, they took me to Passaic.

Q. When did you discover that you were not going to Broadway? A. We were past Red Bank.

Q. Was anything said? A. When they started to take the road towards Red Bank—when we were leaving Red Bank, I said: "Where are you going to?"

Q. Whereabouts in Red Bank did you ask that question? A. Right near the bridge.

Q. That leads out of Red Bank? A. Yes.

Q. The main road? A. Yes.

Q. What did you say? A. I said, "Where are you going?" So Andrew Baldanza says to me: "For going out last night with somebody, we are going to take you to your mother's. We hate you for a long time. We want to get rid of you. Now is our chance. You are not going to stay in Long Branch any more. We are going to get rid of you now."

Q. Your husband was at the wheel? A. Yes.

Q. Your husband did not protest against that, did he? A. No, sir.

Q. Did he say anything? A. He did not utter a word.

Q. Did you make any demand to go home? A. I denied that. I called them a liar and everything. I says to my husband: "It is not true. You know it is not true." My husband, he knows it ain't true——

By the Court.

Q. Do you mean it was your belief he knew, or did you say that to your husband? A. I said that to my husband.

Q. That is what you said to your husband? A. No. I says, "You know what I have done for you," and I started to cry.

By Mr. Fitzpatrick.

Q. Did you try to get out of the car? A. Well, I am coming to that. I did; yes.

Q. Did you try to get out of the car? A. I did.

Q. Was the car stopped? A. It stopped.

Q. Your husband was at the wheel? A. Yes.

Q. And it stopped where? A. Right at Red Bank.

Q. Near the bridge? A. Yes.

Q. What happened then? A. Andrew Baldanza grabbed me by the arm and he pushed me back and started to push me. I was trying to get out when he pushed me back. My husband stopped the car, and there was another car behind, and it parked alongside us.

Q. Which side? A. On the left side.

Q. What happened? A. A man and a woman—

Q. Do you recognize them in court? A. Yes; I do.

Q. Who are they? A. That woman there, Miss Castle——

Q. The woman standing up? A. Yes.

Q. And Mr. Everingham? A. Yes.

Q. (Indicating) Is that the man? A. Yes.

Q. They were in this other car? A. Yes.

Q. Who else was in that car? A. Mr. Mascia.

Q. Who else? A. No one else.

Q. Three of them? A. Three of them.

Q. What happened when the car pulled up alongside the car in which you were? A. She came out of the car and she pulled me in, she pushed me back in the car and she says, "You are under arrest," and she showed me a badge.

By the Court.

Q. She pushed you, you say? A. I was trying to get out of the car and she pushed me into the car and Andrew Baldanza kept me back also. She says, "You are under arrest." She said, "Give me those handcuffs."

By Mr. Fitzpatrick.

Q. To whom did she say, "Give me those handcuffs"? A. I presume Mr. Everingham.

Q. Were there handcuffs in evidence? A. Yes; I saw them. She tried to put them on my hands.

Q. What else was done? A. So she had a revolver in her hands. She also shoved that into me when she pushed me.

Q. She pushed you with the revolver? A. Yes; so I got in the car. When I got in the car my husband came alongside and they put Mr. Everingham in the back to see that I did not get out of the car, and Andrew Baldanza took the wheel.

Q. What did she tell you when she pushed you into the car? A. She said, "You are under arrest," and she showed me a badge.

Q. She showed you a badge? A. Yes.

Q. Did you think that you were under arrest? A. Well, I was never arrested before.

Q. What happened then? A. So they drove on to Passaic, to my mother's house.

Q. Did you go to your mother's house willingly? A. Well, on the way from Red Bank to my mother's house——

Q. Did you go to your mother's house willingly? A. No, sir.

Q. How were you gotten there? A. When we parked in front of my mother's house——

Q. How did you get to your mother's house? A. They brought me in the house.

Q. Who? A. Miss Castle and Andrew Baldanza.

Q. They brought you in? A. They brought me in.

Q. How? A. They had me by the arms.

Q. What kind of a house did your mother live in? A. In a two-family house.

Q. Upstairs or downstairs? A. On the first floor.

Q. When you got inside, who was in there? A. My mother.

Q. Is your mother in court? A. Yes.

Q. Who else? A. And my brother came in.

Q. Is he in court? A. Yes.

Q. What happened in the presence of your mother? A. Andrew Baldanza threw me in front of my mother and started back. He said: "There is the bum, your daughter," in Italian.

Q. Do you remember the Italian words? A. Yes.

Q. Did the Italian words that he used express the word "bum"? A. Not exactly.

Q. What did the words express? A. "Son of a bitch." That was the exact Italian word he used.

Q. And he said to your mother in Italian: "There is the son of a bitch daughter of yours"? A. Yes.

Q. Was your husband there at the time? A. Yes.

Q. Miss Castle was in the room? A. Yes.

Q. Did she have anything to say or do in the room? A. I don't know whether she talked or not, because I went by my husband and I was pleading with him not to believe what they were saying.

By the Court.

Q. Just answer the question. Did Miss Castle say or do anything in the room? A. I didn't hear her say anything; no.

By Mr. Fitzpatrick.

Q. How long did you observe the pistol from the time you got in the car in Red Bank— A. Well, just the time that she was pushing me in the car with it and then again when she came out of my husband's automobile and brought me into my mother's house.

Q. Did she take the pistol with her? A. Yes.

Q. Into your mother's house? A. Yes.

By the Court.

Q. You mean she walked into the house with the revolver in her hand? A. Yes.

By Mr. Fitzpatrick.

Q. Did you see her dispose of the pistol in the house; did she put it away that you recall? A. I do not recall that.

Q. What did your mother say when Andrew Baldanza presented you in that language to her? A. I don't know what he said really, because I was crying, and I didn't pay any attention really to what they were saying.

Q. Did you plead with your husband in your mother's house? A. I did.

Q. What was your plea? A. I was pleading with him not to believe it, that it was not true, and when they seen that he was softening towards me, his brother Andrew Baldanza and Miss Castle grabbed me again and took me out.

Q. Andrew Baldanza and Miss Castle dragged you out? A. Yes.

Q. Did you resist them? A. Yes; I didn't want to go with them. They brought me into Miss Castle's car.

Q. Then where were you taken? Did you try to get out of Miss Castle's car? A. I did.

Q. What happened then? A. That was in front of Pappa's restaurant when they had stopped and I tried to get out.

Q. Where is that restaurant? A. In Passaic.

Q. Did you try to get out of Miss Castle's car in front of your mother's house? A. Yes.

Q. Were you able to? A. No; I was not able to get out.

Q. Did the car stop anywhere after you left your mother's house? A. Yes.

Q. Where? A. In front of Pappa's restaurant on 2nd Street, Passaic.

Q. What happened there? A. Miss Castle and Mr. Everingham went in to eat and I was in the car with Andrew Baldanza. So I tried to get out of the car and Andrew Baldanza grabbed me and kept me in the car. He says, "If you make a scene in front of here, I am going to put an end to you." He was going to kill me right there. So I was scared of him and I stayed in the car.

Q. Did you have any idea where they were going to take you to? A. No; I did not.

Q. Did anybody tell you where they were taking you to? A. No.

Q. Before you left Passaic, did Miss Castle and Mr. Everingham return to the car? A. They did.

Q. Where were you taken? A. They took me to Asbury Park.

Q. Where? A. To a rooming house.

Q. The rooming house of this lady that testified? A. Yes.

Q. What street is that on, if you recall? A. I do not recall what street it is on.

Q. Did you ask to be kept there? A. No, sir.

Q. Who made the arrangements for your being kept there? A. Miss Castle.

Q. Did she pay for the room? A. She paid for the room.

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

Q. How long did she pay for the room? A. For a week.

Q. Before she left, before Miss Castle left, did she say anything to you? A. Yes, sir; she told me not to go out of there, and she says I was kept under watch—no matter what I did somebody was watching me.

Q. She warned you not to leave? A. Not to leave.

Q. When was that; what time were you taken to this place, Sunday, August 25th? A. It was about half-past 10 or 11 o'clock.

Q. At night? A. Yes.

Q. Were you taken anywhere else that night? A. Yes; before that they took me to a man's bedroom.

Q. Before you went to this rooming house with this woman after you left Passaic, they took you some place else, didn't they? A. They stopped on the road and took me to some man's house.

Q. What time about was that? A. 10 o'clock at night.

Q. Do you know where that place was? A. No; I do not.

Q. You have no idea of the location? A. No.

Q. I show you Exhibit P-1 and ask you if that is your signature? A. Yes.

Q. When did you sign that? A. I signed that on August 25, 1929, in this man's bedroom.

Q. Did they tell you who he was when they took you to his house? A. No.

Q. Did anybody tell you? A. No.

Q. Did Miss Castle or Everingham or Andrew Baldanza tell you that they were taking you to this man's house? A. No.

Q. When they took you to this house, to what part of the house did they take you? A. Up to his bedroom.

Q. On the upper floor? A. Yes.

Q. What did they say, if you recall? A. I do not recall they said anything, only I sat down, and I was crying, and Miss Castle went around and there was a little desk, and she was talking to the man.

Q. Who asked you to sign that paper? A. She said: "Are you ready to sign?" She told me I would get my children if I would sign this paper.

Q. Did she tell you what the paper was? A. No, sir.

Q. Did she read it to you? A. No; she did not.

Q. Did this man that was there read it to you? A. No; he did not.

Q. Who else was in the room? A. Mr. Everingham.

Q. Did he read it? A. No.

Q. Did you have an opportunity to read it yourself? A. No, sir.

Q. Did they tell you to read it? A. No, sir.

Q. Did you have any idea of what you were signing? A. I thought I was signing to get my children.

Q. That is what Miss Castle told you? A. Yes. I had been crying all day for my children.

Q. They took you without your children in the morning? A. Yes.

Q. And you signed that with absolutely no knowledge of a word that it contained? A. No, sir.

Q. Where did they take you after that? A. After we went out of this man's house she took me to the boarding house.

Q. You signed that on Sunday night? A. On Sunday night.

Q. Not the 26th of August, 1929, did you? A. No, sir; I signed that on Sunday night.

Q. Did this man tell you who he was? A. No; I had no conversation with him.

Q. Did he ask you to swear to that statement? A. No, sir.

Q. Didn't he ask you any questions at all as to whether you knew what it contained? A. I did not have two words with the man.

Q. You had no conversation at all? A. No conversation at all.

Q. Who did the talking? A. Miss Castle. She told me to come by the desk. She said: "Are you ready?" I got up and went by the desk where he was sitting——

Q. Where did you go after you left the house? A. To the boarding house.

Q. To the same boarding house? A. Yes.

Q. Did you call anybody on the phone that night? A. No, sir.

Q. Did you stay there all night—Sunday night? A. Yes.

Q. Did you call anybody the next day? A. Yes; I did.

Q. Did you call Napolitano's sister on the telephone? A. No, sir.

Q. Do you know if Napolitano has a sister? A. I do not know what he has.

Q. Did you call anybody that day on the telephone? A. I did.

Q. Who did you call? A. I called my husband for my children.

Q. Whom did you get? A. His sister answered the phone.

Q. Didn't you get your own sister? A. I did not.

Q. What did you say to his sister on the phone? A. I told her I wanted to talk to my husband. So his sister, Jessie, said: "Do not make any noise, Harry is very angry just now. If you stay there he will get over being mad and he will come and see you."

Q. His sister told you that? A. Yes.

Q. Did you tell her where you were? A. No, sir; I did not.

Q. That was on what date—Monday the 26th? A. On Monday, yes.

Q. Did you leave there Monday? A. No; I did not.

Q. Did you see Miss Castle or Everingham on Monday? A. I did see Miss Castle.

Q. What time Monday morning? A. She told me—no—she told me the next morning she was bringing the children.

Q. On Monday morning she told you— A. Sunday, when I was supposed to sign this paper, she says, "If you sign that I will see you get the children on Monday morning."

Q. Did she come to the boarding house on Monday? A. She did.

Q. What time? A. About half-past ten.

Q. Did she bring the children with her? A. No, sir.

Q. Did you have any conversation with her? A. She brought me some clothes. I said, "What am I going to do with these?"

Q. Your own clothes? A. My own clothes. I says, "Where are the children?" She says, "Your sister took them to Passaic."

Q. Did she tell you to stay there? A. Yes.

Q. Did she say how long to stay there? A. No, she didn't say. She just told me to stay there.

Q. Did you see Everingham that day? A. I did.

Q. On Monday? A. On Monday.

Q. The 26th? A. Yes.

Q. What time did you see him? A. I saw him in the afternoon.

Q. What time? A. I would say about 2 o'clock.

Q. How did you come to see him? A. I called him up.

Q. What did you call him up for? A. Because I wanted him to take me home and tell my husband that it was not true. I said: "If you really followed me you know it is not true." I pleaded with him over the telephone and Mr. Everingham says, "All right, I will stop over with the car." So I sat on the porch looking for the car to come up. When he came he signaled for me to walk down.

Q. To walk down from the house? A. Yes.

Q. Toward what? A. Towards the lake. I sat in his car and I started to cry and I says, "Mr. Everingham, please take me"; and he was real nice about it. He says, "No; you have not done anything wrong, but you cannot be in your husband's brother's house. They hate you. They tried to put you out Saturday night and I would not let them. I told them that if they would throw you out on

the street Saturday night I would not have anything to do with the case." He said to me, "I will take you home if you want me to, but when you get to the house his brothers are going to give you a good beating because they do not want you there."

Q. Did you go home that day? A. No; I did not.

Q. Did Mr. Everingham leave you? A. He says, "I cannot do anything without Miss Castle." He says, "I will have to see her."

Q. Did he leave you after that? A. He did.

Q. Did you see Miss Castle again? A. I did.

Q. Before he left? A. Before he left, yes.

Q. How did she come to be there? A. He called her up.

Q. He called her after he had the conversation with you? A. Yes.

Q. She came there? A. She came there.

Q. What did she say when she came there? A. She says to me: "Didn't I tell you to stay in the boarding house? Why did you want to disobey me and call Mr. Everingham?" I says, "Miss Castle, I want to go home." She says, "You cannot go home yet." She says to Mr. Everingham—she started to swear at him—she said: "You had no business to take her out of the house." Mr. Everingham said: "She pleaded with me over the telephone." With that she grabs me by the arm and she takes me back to the boarding house.

Q. She grabbed you by the arm and pulled you back to the boarding house? A. Yes.

Q. When did you leave the boarding house? A. On Tuesday morning.

By the Court.

Q. You got there Sunday night and you left there the next Tuesday morning? A. Yes; the next Tuesday morning.

Q. Sunday night and Monday night and you left Tuesday morning? A. Yes.

By Mr. Fitzpatrick.

Q. Did you see anybody or try to see anybody else before leaving there? A. I did.

Q. Whom did you try to see? A. Mrs. Nobile.

Q. Did you succeed in seeing her? A. Yes.

Q. How did you get her? A. In the afternoon she came there.

By the Court.

Q. What afternoon? A. Monday afternoon.

Q. To the boarding house? A. To the boarding house.

By Mr. Fitzpatrick.

Q. Mrs. Nobile came to the boarding house without your having got in touch with her? A. No; I had not gotten in touch with her.

Q. What was done? A. I told her the conversation I had with Mr. Everingham.

Q. What was done between you and your sister that afternoon? A. Nothing. I was crying and telling her just what had happened.

Q. Did you sister stay with you? A. No; she did not.

Q. She left? A. She left.

Q. Was there any telephone conversation with anybody else by you? A. No; there was not.

Q. When did you leave there? A. On Tuesday morning.

Q. Alone? A. With Mrs. Nobile.

Q. Did she come back on Tuesday morning? A. She came back on Monday night.

Q. She met you in the afternoon and went away and came back Monday night? A. Yes.

Q. Did she stay with you Monday night? A. Yes; she did.

Q. Where did she stay with you—in the rooming house? A. Yes; in the rooming house.

Q. You left there the next morning? A. The next morning.

Q. Where did you go? A. I went for a——

By the Court.

Q. Where did you go? A. To a lawyer.

Q. Yourself? A. With Mrs. Nobile.

Q. From there where did you go? A. From there I went home.

Q. From the lawyer's office in Long Branch? A. No; Red Bank.

Q. To your husband's house? A. To my husband's house.

Q. This was on Tuesday morning, August 27th? A. Yes.

Q. Was your husband there? A. He was not home; no.

Q. Who was home? A. My mother-in-law and my sister-in-law and Joseph Baldanza.

Q. What did they say, if anything? A. I cannot recall, but my sister-in-law says: "Didn't I tell you to stay away? Why don't you stay nice and quiet instead of making a scene?" I says, "You had no business to put me away and keep me away." I says, "This is my home"——

Q. Did you go to your room? A. I did.

Q. What happened after that? A. That day, when Joseph Baldanza saw me go in the house, he took his hat and coat and went out.

Q. What happened that day? A. They had me arrested.

Q. Who had you arrested? A. I believe it must have been my husband.

Q. Were you arrested? A. I was.

Q. Charged with what? A. With adultery.

Q. Were you convicted of it? A. No, sir.

Q. Were you tried? A. I was tried.

Q. And acquitted? A. Yes.

Mr. Quinn: I object to this method of proof.

The Court: The record is the best evidence of what happened. Strike out that she was tried and acquitted.

Q. What property did your husband own at the time of your being driven from home, August 24, 1929?

Mr. Quinn: That is objected to as immaterial.

Mr. Fitzpatrick: We filed a counterclaim for separate maintenance and support.

The Court: Suppose we let that go for the present and get at the merits of this charge.

Q. Do you know anybody by the name of Joseph DeSantis? A. Yes, sir.

Q. How did you know him? A. He was employed by my husband.

Q. In what capacity? A. As a baker.

Q. For what period of time? A. I don't remember exactly.

Q. Do you know when he was last employed by your husband? A. 1926.

Q. I show you an envelope marked Exhibit P-4, addressed to Mrs. Josephine Baldanza, 411 Prospect Street, Long Branch, with a postmark of Union City, N. J., and ask you if you ever saw that envelope or the letter which that envelope contained? A. No, sir; I never received that.

Q. Did you ever receive any letters of any kind from Joseph DeSantis? A. No, sir.

Q. Did you ever have any telephone conversation with Joseph DeSantis? A. No, sir.

Q. Did you have any friendly relations with Joseph DeSantis? A. No, sir.

Q. Did you have any improper relations with Joseph DeSantis? A. No, sir.

Q. Did you ever commit adultery with Joseph DeSantis? A. No, sir.

Q. Did you ever commit adultery with any man? A. No one.

Cross-examination by Mr. Quinn.

Q. You stated when, on August 25, they took you to your mother's home in Passaic, that you did not want to enter your mother's home willingly and they dragged you? A. Yes; they dragged me.

Q. Why didn't you want to enter your mother's home? A. There was no reason; I was willing to go into my mother's house.

Q. You have testified that when you got to Passaic, in front of your mother's home, that you did not want to enter it and they dragged you? A. Yes; because I wanted to go home.

Q. Please tell us why, when you got directly outside of your mother's home in Passaic, you did not want to go in then? A. I did not testify that I did not want to go in.

Q. Can you give us any reason why you were not willing to go in? A. No, sir.

Q. Is that the way you want the record to stand? A. Yes.

Q. Is not this the reason, that having taken you from Long Branch to your mother's home in Passaic, your husband told you that he was going to deliver you back to your mother because you had committed adultery and he would not live longer with you? Isn't that the reason why you didn't want to go to your mother's home? A. My husband never said such a thing.

The Court: The question is rather long and involved.

Q. Didn't your husband tell you that he was taking you to your mother's home because you had committed adultery with this man? A. No, sir.

Q. Didn't he tell you that he was taking you back to your mother and leaving you there? A. He did not.

Q. Then when you got to Passaic, is not that the reason you did not want to go into your mother's home, because you knew what he was going to do? A. No, sir.

Q. Now, you testified that after you got to your mother's house they said, "There she is," calling you a certain name? A. Yes, sir.

Q. Then you testified that you could not remember what your mother said to them when they called you such a name? A. Yes.

Q. Do you mean to tell us— A. I cannot recall what my mother said.

Q. Did they not say, in the presence of your mother, that you had committed adultery with this

man and that your husband was bringing you back to your mother's home?

Mr. Fitzpatrick: I object to that.

Q. Didn't our husband say that he was bringing you back to your mother because you had committed adultery with this man? A. My husband did not say that.

Q. What did he say? A. My husband did not talk in the house.

Q. Who did say they were bringing you back to your mother? A. No one said they were bringing me back, only when they brought me in they pushed me to my mother saying, "Here is your daughter," using that word.

Q. After a conversation between our mother and all the persons who were there, didn't your mother then put you out of the house after you had admitted to her that it was— A. (Interrupting) I did not admit any such thing, and she did not put me out of the house.

Q. Didn't you admit to your mother that you had committed adultery? A. No, sir.

Q. And after you made that admission, didn't your mother put you out of the house? A. No, sir.

Q. You testified that you did not want to come back and they dragged you out of the house and took you back to Long Branch? A. Yes.

Q. Why didn't you want to come back to Long Branch? A. Because after they had done that to me I wanted to stay with my mother.

Q. Did you stay with your mother? A. No, sir.

Q. Why didn't you? A. Because they took me out.

Q. Your brother was there? A. My brother was there.

Q. And your mother was there? A. My mother was there.

Q. And who else? A. Miss Castle, Mr. Everingham, Thomas Mascia and my husband.

Q. You lived about a half a block from the police station, didn't you? A. No, sir.

Q. It is a thickly populated part of Passaic? A. Well, populated.

Q. Very busy? A. I would not say very busy.

Q. Did you make any outcry? A. I was crying.

Q. Did they take you out of that house into a busy street— A. They took me out.

Q. What did your brother do? A. He stayed in the house.

Q. He didn't say a word, did he? A. No.

Q. Is it not a fact that your brother also told you to get out of the house after you had admitted to your mother that you had committed adultery with this man? A. My brother did not say anything to me.

Q. Is it not a fact that our brother offered no interference when you left the house because of the fact that you had committed adultery? A. I didn't say anything going out.

Q. When they were taking you out did you ask your brother to save you from that condition? A. I did not.

Q. Why not? A. I was telling them to leave me alone.

Q. Why didn't you ask your brother to help you when these people were dragging you out of the house? A. I was crying.

Q. Why didn't you ask your brother to help you? A. I could not think of what I was going to do and say in such a condition.

Q. Could you not think of calling for help? A. No; I was just hollering they should leave me alone.

Q. Your brother made no effort whatever to save you? A. No, sir.

By the Court.

Q. When you were at Passaic in your mother's house somebody said why they were there, why they brought you there? A. Yes.

Q. That was Andrew? A. Andrew.

Q. And what did he say was the reason he brought you there? A. He says they had found me in a hotel the night before with some other man.

Q. Did your mother ask you if that was true? A. No.

Q. Did your brother ask you if it was true? A. I don't remember him asking any questions.

Q. Did you say it was true or untrue? A. I said it was not true.

Q. Did either your brother or your mother order you out of the house? A. No, sir.

Q. Why didn't you stay if you wanted to stay? A. I wanted to stay and they took me out.

Q. You mean they forcibly took you from the room in which you were? A. Yes.

Q. And your mother and brother were standing by? A. Yes, because they were——

Q. They stood by and did nothing? A. They did nothing.

Q. Was there anybody else there with your mother and your husband other than your party? A. No—one niece, and she had gone out when the—

Q. When you got in the house, in your mother's house, there was nobody at your mother's house

except your party, the people who had come with you, and your mother and— A. (Interrupting) And a niece, twelve years old.

Q. Does your mother occupy the whole house? A. Yes, sir; at that time my sister was living there.

Q. Was she there? A. No.

Q. She was in Long Branch? A. She was down to visit me.

Q. And it was what time on Sunday night that you got to Passaic? A. It was Sunday afternoon, between 12 and 3 o'clock, I should say.

Q. Between 12 and 3 o'clock? A. Yes, sir.

Q. And you got to the house where you signed the paper at 10 o'clock? A. Yes.

Q. How long was it you stayed at your mother's house? A. About ten minutes.

Q. Then minutes? A. Only ten minutes.

Q. And then you went from your mother's house to some place in front of a restaurant? A. Yes.

Q. In Passaic? A. Yes.

Q. And you got there at the restaurant between 3 o'clock and half-past three? A. I guess about that time.

Q. How long did you stay in that automobile in front of the restaurant? A. It must have been about twenty minutes.

Q. Miss Castle and Everingham went into the restaurant? A. Yes.

Q. And left you in the car with Andrew? A. Yes.

Q. You two were in the car alone? A. Yes.

Q. It was an open car, was it? A. It was a sedan.

Q. And the windows of the car were all down, were they not? A. No; they were closed.

Q. Closed in August? A. Yes, sir; except the window where she was driving.

By Mr. Quinn.

Q. People were going back and forth where the car was waiting, were they not? A. No; there was no one around.

Q. It is a thickly populated district of Passaic, is it not? A. Where do you mean?

Q. The place in front of the restaurant. A. No; that is not thickly populated.

Q. There are a lot of stores close to each other, are there not? A. No.

Q. Are there not other stores near that restaurant? A. There is Irving's store a little further up.

Q. What street? A. Jefferson Street.

Q. Is there not another restaurant within 25 feet? A. Do you mean——

Q. By the name of Plaza? A. I believe there is.

Q. It is thickly— A. (Interrupting) I didn't see any people.

By the Court.

Q. You know that section? A. Yes.

Q. You lived in Passaic? A. I did.

Q. Is it a built up street with houses on both sides and stores and buildings? A. Buildings.

Q. On both sides of the street? A. Yes.

Q. In that block in which you were standing? A. Yes.

By Mr. Quinn.

Q. When they first took you to your mother's home, they told you they were going to leave you there? A. No; they did not say that to me.

Q. Don't you know they brought you there to leave you there——

Mr. Fitzpatrick: I object to this line of examination.

Q. Did you tell your mother you did not want to go back with these people? A. No, sir; I did not.

Q. Why not? A. I did not talk to my mother. They did not give me a chance.

Q. When you heard them tell your mother— A. (Interrupting) I was starting to talk to my mother and Miss Castle said: "Shut up. Keep quiet." Can I say more?

Q. Go ahead. A. Then I went to my husband and I started pleading with him. His brother Andrew saw that my husband was going to make up with me, so he grabbed me from my husband.

Q. Up to this time had your mother said anything? A. No; she was crying.

Q. Nor had your brother said anything? A. No.

Q. Do you know why your mother was crying? A. No.

Q. Was it not because of the fact you admitted to her that you had committed adultery? A. No.

Q. Is not that the reason that she said nothing further? A. No.

Q. Was not that the reason? A. No, sir.

Q. You were taken back to Asbury Park to the home of Mrs. Vandenschoten? A. I believe that is the name.

Q. (Indicating) That is the lady? A. Yes.

Q. When you got there you made some telephone calls, didn't you? A. No; I did not.

Q. Later on you made some telephone calls? A. Yes, sir; the next day.

Q. And you called Long Branch? A. Long Branch.

Q. Did you also call Passaic? A. I do not recall that I did.

Q. Didn't you call some friend of yours in Passaic? A. I don't remember.

Q. I show you a telephone slip with the telephone number 662-R Passaic. You made that call? A. I don't remember making that call.

Q. Did you or did you not—are you sure? A. I am not sure. I told you I don't remember.

By the Court.

Q. Do you know what that number is? A. That is upstairs in my mother's house.

Q. What do you mean, "upstairs in your mother's house"? A. The second floor.

Q. I asked you if your mother lived in that house alone and you said she did? A. On the first floor.

Q. The rest of the house is occupied by somebody else? A. Yes.

Q. How many people? A. Four people upstairs; husband and wife and two children.

Q. Is it a two-story house? A. Two-story house.

Q. Your mother lived on the first floor?

Mr. Fitzpatrick: She testified on direct examination that her mother lived on the first floor.

By Mr. Quinn.

Q. Theer are houses right next to each other, right along? A. There is.

Q. The houses are all close together? A. Yes.

Q. Do you recall whether or not you made that call on your mother? A. I don't remember.

Q. Does Mr. Everingham know your mother? A. I don't think so.

Q. I show you another telephone slip, dated August 26, Long Branch 1288, and ask you if you made that call? A. No, sir.

Q. Are you sure? A. I am positive. I don't know that number.

Q. Is it not a fact that Long Branch 1288 is Mr. Santarelli's number, where this man Napolitano lived and worked? A. I don't know.

Q. You don't know Santarelli's number? A. No.

Q. Where does Santarelli live? A. Judging from the address they had on the truck, it was Central Avenue.

Q. 244 Central Avenue? A. I don't know.

Q. I show you a telephone slip and ask you if you have ever called F. Santarelli, 244 Central Avenue, Long Branch 1288? A. No, sir.

Q. You heard Mrs. Vandenschoten testify that on this morning you went to the telephone and that you told her that you were going to call your boy friend up at Long Branch? A. I heard her testify to that.

By the Court.

Q. You did not tell her to call anybody for you? A. I did not; no.

By Mr. Quinn.

Q. I again show you that telephone slip, dated August 26, 1929, and I ask you if that call, Long Branch 1288, was not made by you? A. No, sir.

Q. Did some other person in Mr. Santarelli's employ, other than Napolitano, the man named in this suit, ever commit adultery with you? A. No, sir.

Q. Did you also tell Mrs. Vandenschoten that theer had been trouble about your boy friend and that you were calling him up to tell him not to go around to your husband's house? A. No, sir.

Q. What telephone calls do you remember making down there? A. I made two—1908.

Q. What others? A. I don't remember the number, but Mr. Everingham, I looked that up in the book—I don't know what the number is.

Q. Did you also call 1903? A. Two or three.

Q. Are you sure— A. I called up 1908, trying to get my sister.

The Court: What is the date on this slip?

Mr. Quinn: August 26, 1929, 362-R; August 26th—that must have been Monday night.

By the Court.

Q. Did you call your mother up on Monday night? A. I don't remember.

By Mr. Quinn.

Q. Why didn't you call police headquarters if you wanted to get permission to call up other places at Mrs. Vandenschoten's? A. Because I felt I was under arrest.

Q. Did someone tell you that you were under arrest? A. Yes.

Q. Did you think because of that you could not call up police headquarters? A. I didn't think I could.

Q. Although you were given permission to call up any other place you saw fit— A. (Interrupting) I only called one place that I remember.

Q. Why didn't you call on someone to help you to get out? A. That is why I was calling my sister.

Q. Where was she? A. I left her in my husband's house.

Q. That was the only one you called up in Long Branch? A. Yes.

Q. In the envelope which is dated August, 1926, addressed to Mrs. Josephine Baldanza, Long

Branch, N. J., is a picture, which is also marked Exhibit P-5—is that the gentleman? A. I know him.

Q. Is that the gentleman?

Mr. Fitzpatrick: I object to that.

A. Who do you mean?

Q. You tell me. A. This young man was employed by my husband as a baker.

Q. What is his name? A. Joseph DeSantis.

Q. You have known him quite some time? A. Only when he was working for my husband.

Q. How do you account for the fact that this letter and his picture should have been in your trunk?

Mr. Fitzpatrick: I object to that. There is no evidence that that letter was found in her trunk.

The Court: Oh, yes, there is.

A. That letter was never in my trunk.

Q. How do you know? A. Because I know what I had in my trunk.

Q. Do you positively deny that that letter was ever written to you? A. That letter was never written to me.

Q. Do you know this man's handwriting? A. Well, no; I don't know.

Q. What? A. No.

Q. Look at it and see if it is his handwriting? A. I don't know if that is his handwriting or not.

Q. Have you ever seen his handwriting before? A. No.

Q. Do you know of any reason why he would send a letter to you, addressed to your home on Pros-

pect Street, and also enclosing a picture in that letter? A. No, sir.

(At this point recess is taken until 2 o'clock in the afternoon. After recess witness resumes stand and cross-examination continues.)

Q. I show you Exhibit P-1, being letter or statement signed by you in the presence of Judge Cox on the 26th day of August, 1929——

Mr. Fitzpatrick: Counsel has just made a statement to the effect that he shows a statement signed by her on the 26th of August. The testimony is to the effect that she signed it on Sunday, the 25th.

The Court: There is a dispute as to the date. Reframe your question and say "apparently sworn to on the 26th of August, 1929."

Q. I show you Exhibit P-1, the statement signed by you in the presence of Judge Cox, tested on the 26th of August, but which you say you signed on the 25th. Did you see who wrote that statement? A. No, sir; I did not see who wrote it.

Q. It covers the entire page, practically. Did you see anyone writing it? A. No, sir; I didn't see anything.

Q. What were you doing at the time? A. I was sitting in the chair crying.

Q. Where was Miss Castle? A. With Judge Cox.

Q. What was Judge Cox doing? A. They were talking.

Q. Did you see Judge Cox writing? A. Well, I won't say I did, because I had my head in my hands.

Q. Judge Cox has testified that he wrote this in his own handwriting and read it to you before you signed it. You say that was not done? A. That is not so.

Q. In this statement it says: "I, Josephine Baldanza, being of full age, on my oath say I have known Joe Napolitano for a period of three months; that during that time I have met him several times and gone with him riding in his motor car at night." You say you have never been out with him? A. I was never out with him.

Q. "Without the permission and unknown to my husband"? A. I never was out without the permission of my husband.

Q. You also say that you had been with him in the vicinity of Norwood Avenue. Do you know where Norwood Avenue is? A. Yes; I do.

Q. You have been in that section? A. Norwood and Broadway.

Q. Have you only been on Norwood near Broadway? A. Near Broadway.

Q. You have never been in any other part of Norwood Avenue? A. Except I have been——

Q. You mean you might have been without knowing it? A. No; I would not know.

Q. Might you have been there when you did not know it? You also state that you were with him "within the vicinity of Norwood Avenue in the City of Long Branch, for periods lasting between ten and twenty minutes." That is not so? A. That is not so.

Q. "I have met him by appointment made by telephone"? A. I never had any telephone conversation.

Q. Do you know whether Mrs. Vandenschoten knew this number? A. I don't know.

Q. Did you ever discuss that with her? A. No, sir.

Q. Do you know who made the telephone call from her house on the evening of the 26th to the place where he worked in Long Branch? A. No, sir.

Q. And even though in this statement under oath you stated you had made appointments with him by telephone, you now say you never made any call from Mrs. Vandenschoten's house? A. No, sir; I never did.

Q. You also said: "I have kissed him and he has kissed me"? A. That is not so.

Q. That has never happened? A. No.

Q. You say that Judge Cox and Miss Castle were talking together— A. May I ask a question?

The Court: You mean the night the paper was signed?

Q. You say they both talked together the night the paper was signed? A. Yes.

Q. How long were they talking together? A. About ten minutes.

Q. And after they stopped talking, was this paper then submitted to you? A. No, sir; not right away.

Q. How long after? A. A few minutes after.

Q. What took place during those few minutes between the time they stopped talking and the time they submitted the paper to you? A. I said once before I was crying; I was not watching them.

Q. How long were you there? A. In all, twenty minutes.

Q. You said in your direct examination, on one occasion, you said to your husband: "We have

got enough money saved up," and you wanted to do something with that money; is that correct? A. Yes.

Q. So that during the course of your married life, you knew just how much money your husband had saved? A. Yes.

Q. He had told you about it and consulted with you about it? A. Yes.

Q. There was never any difficulty on your part by reason of what he made and what he had in the bank? A. What do you mean?

Q. You said: "We have saved enough money"? A. Yes.

Q. You had a part in saving it? A. No; I did not. I had to help with the work.

Q. Is that what you meant by "we"? A. I always thought if the husband had money, we worked together.

Q. What bank did you keep the money in? A. I didn't keep it. My husband kept it in the Hobart Trust Company.

Q. Where? A. The Hobart Trust Company, the Long Branch Trust Company.

Q. Have you money in the Hobart Trust Company? A. No, sir.

Q. You saw your husband's bank account on different occasions? A. I did.

Q. And your husband would be out on the road, would he not, part of the day? A. Yes; he would.

Q. Would he come back late at night? A. About half-past eight or 9 o'clock.

Q. Sometimes he was later than that? A. Sometimes earlier than that.

Q. And during the entire time you had access to what money came into the store? A. Yes.

Q. You had access to the cash register? A. Yes.

Q. Do you mean to say, in view of that circumstance, that you never had enough money from your husband or from his business, when you were in the store and he was out on the road? A. What time are you referring to?

Q. I am referring to any time. A. My husband always counted it every night and marked it down on the book.

Q. If at times you would need to use money, you could go to the cash register? A. No, sir; I asked him for the money.

Q. You mean when he came home at night you would ask him for money? A. If I needed it; yes.

Q. I call your attention to the night of the 24th of August, 1929. You said that you asked your husband to take you down to your sick friend, Mrs. Grandi?

Mr. Fitzpatrick: I object upon the ground that she has testified that she did not ask him.

By the Court.

Q. Your husband took you down in his car? A. He did.

By Mr. Quinn.

Q. You said that you left there about 9.10? A. Yes; around that time.

Q. Is it not a fact that you left a few minutes after eight and arrived at Mrs. Grandi's home about a quarter after eight? A. No, sir.

Q. Is it not a fact that you remained in Mrs. Grandi's home from a quarter after eight until approximately 8.30, then leaving her home? A. No, sir.

Q. Is it not a fact that on that occasion you went down there to see Mrs. Grandi, that you went there with the purpose of staying there only a few minutes and then left to meet this John Napolitano? A. No, sir.

Q. Is it not a fact that within a short time after you left the Grandi home, which was approximately 8.30 o'clock, that you then went and met Napolitano? A. No, sir.

Q. Is it not a fact that after you met Napolitano and went out to a certain point in Norwood Avenue, you came back and went into a book store? A. No, sir.

Q. Is it not a fact that after that you met the taxi driver or the bus driver, Mr. Mascia? A. I was in his bus; yes.

Q. And he took you home, arriving there about 10 o'clock? A. Yes.

Q. Is it not a fact that the same bus driver, Mr. Mascia, has brought you home from the vicinity of the Long Branch station on other occasions? A. Long Branch station?

Q. The vicinity of Long Branch station. A. On what other occasions?

Q. Any other occasions. A. No, sir.

Q. Has he ever on any other occasion, except August 24, brought you home in his bus? A. Yes.

Q. From what point? A. On Broadway.

Q. Only on Broadway? A. Only on Broadway.

Q. Has he ever picked you up at any other places except Broadway and brought you home around ten or half-past ten in the evening? A. No, sir.

Q. Or around nine or nine-thirty in the evening? A. No, sir.

Q. Is it not a fact that on other occasions you have been with this man? A. With which man?

Q. With Napolitano. A. No, sir.

Q. And then came home in the bus of Mr. Mascia? A. No, sir.

Q. How frequently would you go home in Mr. Mascia's bus? A. I never went frequently.

By the Court.

Q. Is that the only time you came home in his bus? A. I was on his bus a few other times before that. I was in his bus towards Christmas the year before when I did my shopping and came home on the bus, if he happened to come along. I used to get on his bus when he came along.

By Mr. Quinn.

Q. The night of the 24th, you said that your husband was very anxious to get the bus driver out of your store? A. Yes, sir.

Q. Was your husband nervous? A. Well, I would not say nervous; no.

Q. Was he excited? A. No; he was not excited.

Q. What did he say to the bus driver in trying to get him out of the store? A. He told him what time he got up mornings and that he had to go to bed because he got up early in the morning, and he was asking this fellow what time he got up in the morning.

Q. Have you gone out of your home after supper time and left the children there to be cared for by other persons in the neighborhood? A. No, sir.

Q. Do you recall the testimony of the girls at the last hearing, who said that they had taken care of the children while you were out? A. They never took care of the children.

Q. Do you recall their testimony? A. I don't remember it; no.

Q. You say they never took care of the children? A. No.

Q. Do you recall the testimony of the one girl who said that when you came home to tell your husband that you had gotten home around 8 o'clock? A. No, sir.

Q. Were there no occasions when you were out and left your children in the care of others in the evening? A. No, sir; I would not say. There was only one time I left them at home with my mother-in-law.

Q. Did you ever say to any of those who worked in the store that if Harry asked what time you came in to tell him that you came in around 8 o'clock? A. No, sir; I never said that.

Q. What time did you go out evenings? A. Well, I never went out many times evenings, except if I had to go to the store.

Q. During the three months that you knew this man Napolitano, you went out evenings during that period? A. About three or four times.

Q. What time would you go out? A. After my husband came home.

Q. Where would you go? A. I had to go shopping.

Q. At 9 o'clock? A. 9 o'clock. I made an appointment—if it is necessary I can prove it—I called up the Bluebird Shop on Broadway asking if she had new dresses coming in; I used to buy all of my clothes there; I told her I cannot come up until my husband comes, and she said, "I will come back and open the store." And I went to the store and she did not have my size. She told me she would order it. She came and brought it home and my husband was present.

Q. What time was that? A. About half-past eight.

Q. Any other occasion? A. On another occasion I went out when my uncle died; I went out to look for a black dress.

Q. Where? A. Broadway.

Q. What time of night? A. About 9 o'clock.

Q. What store was open when you went out? A. All the stores were open.

Q. What store did you go to? A. I don't know the name of the stores—wherever I could get the dress.

Q. Did you buy a dress? A. No, sir.

Q. Can you recall any store that you were in at that time, at 9 o'clock? A. I don't know their names.

Q. Is it not a fact that all the stores on Broadway close at 6 o'clock, except Saturday night? A. No, sir; there are Jewish stores open all evening.

Q. On what other occasions did you go out alone without your husband? A. On one occasion I took a walk with a young girl——

Q. Who? A. A little girl who used to take care of the children.

Q. What is her name? A. Margaret Calabretti.

Q. That is the little girl who testified? A. Yes.

Q. She used to work there? A. She used to take care of the children.

Q. When you were out she would take care of the children? A. No, sir.

Q. When would she take care of the children? A. During the day.

Q. Never at night? A. Never at night.

Q. Do you recall her testifying that she took care of your children at night when you were out at night? A. No, sir.

Q. Is she the little girl who testified that she went with you— A. She is the little girl I had with me down on the beach.

Q. Talking with Napolitano? A. I don't know whether I had met him or not.

Q. That night the little girl was there? A. Yes, sir.

Q. And you met Napolitano? A. I don't remember. I met lots of people.

Q. Will you say that you were not talking with him? A. I might have talked to him.

By the Court.

Q. You know whether you ever met him down on the beach or not? A. I think it was. I did meet him on the beach. I was taking a walk with the little girl.

By Mr. Quinn.

Q. Now, the little Calabretti girl testified that on that night that you were on the beach you sent her to buy ice cream while you talked with him? A. I did not send her to buy ice cream.

Q. Did the little girl go away? A. She went away; yes.

Q. Who sent her? A. This fellow that I was talking to, Mr. Napolitano.

Q. What did he send her for? A. To get three cones.

Q. One for you and one for the child? A. Yes, and one for the fellow.

Q. What else happened on that evening? You remember distinctly that part of it? A. I took the little girl for a walk, and I gave her the money to get a few rides and money to take chances on something.

Q. While she was getting the rides you were talking to Napolitano? A. No, sir.

Q. How long did Napolitano stay and talk with you? A. Just a few minutes.

Q. What was done with the ice cream? A. The little girl ate hers and mine, because I did not want mine.

Q. Who ate Napolitano's? A. I don't know. I was not looking.

Q. He was there? A. He was there. I do not know whether he ate his or not.

Q. Did he after a few minutes walk away with you? A. No; I told him I was going to take a walk and left him and walked away. I left him there. He was standing there when I walked away. I said, "I am going to take a walk," and I left him standing there and walked away.

Q. Is it not a fact that when you went to your mother's home on the 25th of August, that your brother put you out of the house, and that it was then that you asked Miss Castle and Mr. Everingham to take you back to Long Branch? A. No, sir; my brother did not put me out of the house.

Q. When you were staying down at Mrs. Vandenschoten's house, were you staying there against your will? A. Yes, sir.

Q. You took a taxi and went to Long Branch, did you not? A. Yes, after I had a conversation with Mr. Everingham.

Q. Who took you to Long Branch? A. The taxi driver.

Q. Alone? A. With my sister.

Q. I thought you were staying there against your will? A. I was until I had the conversation with Mr. Everingham. Then he told me I was not under arrest, that I should go and see a lawyer.

Q. Then you went to Long Branch? A. No, I did not.

Q. Where did you go? A. Miss Castle took me back to the boarding house.

Q. If you were not under arrest why, after you went out in this taxicab, did you go back to this boarding house? A. I had my clothes there.

Q. How long did you stay after you came back? A. Overnight, because my sister came there when they put my sister out of the house.

Q. When you were out in the taxicab was your sister with you? A. The next morning she was; yes.

Q. Why, when you went out in the taxicab, didn't you take your clothes with you? A. Because I was going to get my sister. She had told me they had put her out and she was at a certain hotel.

Q. Where? A. At the Chelsea Hotel in Long Branch.

Q. Then before you met your sister, when you made the telephone call to Long Branch, Miss Castle was not there? A. No.

Q. Nobody prevented you from making the calls? A. I asked permission.

Q. From whom? A. From the woman.

Q. From Mrs. Vandenschoten? A. Yes.

Q. And no one prevented you from going out of the house? A. I did not make any attempt because I was told that I——

Q. (Interrupting) If you wanted to, you could have gone out? A. She told me not to go out, that I was being watched, and she told me I was under arrest.

Q. What were you afraid of? A. For disobeying her.

Q. Do you mean to say that you thought simply because someone told you that you were under arrest, that you were afraid to go out, even though no one was watching you? A. Yes, sir; I was afraid.

Q. You attended school in Passaic? A. Yes.

Q. What school? A. No. 17.

Q. High school? A. No, sir.

Q. Grammar school? A. Yes.

Q. Graduated from there? A. No, sir.

Q. When you signed this paper in Judge Cox's office, was it lying flat on the table? A. On the desk, yes.

Q. You could very easily see that the entire page was covered with writing when you looked at it? A. I was too nervous and crying. I do not remember just what kind of paper it was.

Q. You remember everything else very distinctly, that you were nervous and crying, and yet you cannot remember what it was? A. No, sir.

Q. You mean to tell the Court that you signed the paper not knowing what was in it? A. If Judge Cox was here now, he could face me.

Q. Judge Cox has testified that he read this over to you; that he wrote it out in his own handwriting, and that before he wrote it he asked you the substance of what is on this paper? A. He did not.

Q. You say that is not true? A. That is not true.

Q. Whose pen did you use when you signed it? A. His pen.

Q. You remember that distinctly? A. Yes, because he handed it to me.

Q. Do you remember him handing it to you? A. Yes.

Q. Was your hand shaking when you signed this paper, do you know, from your nervousness? A. Well, I wrote it.

Q. Did you see Judge Cox sign his name after you wrote yours? A. No.

Q. Did you see him put his seal or stamp on? A. No; I did not.

Q. On your direct examination you said that on the night of the 24th of August that your husband acted like he always acted. What did you mean by that? A. Naturally, as he always acted other nights.

Q. You mean he acted kindly towards you? A. Well, it didn't turn out that way.

Q. Did he act kindly towards you that night? A. How am I going to answer? I just came in. He didn't talk to me.

Mr. Quinn: We have agreed practically on the substance of this letter, the translation of Exhibit P-4: "Remember that with you I have always been faithful, my dear ingrate. Remember of me every minutes. Remember that which your lying mouth promised me. I am sorry to leave you, but I cannot help it. If you wanted it you could have let me stay, but you did not want to. You have forgotten all over and I will leave, too. I will not forget you, though ingrate, the days we spent together. I wish you and them all. When your husband was not watching you remained with me and I remained with you. Now everything is past on account of you, but I will always remember and I will always write you although you do not write to me. It does not matter anything, because if you loved me the last time I saw you, you would have shown the feeling, but it does not matter. I know everything that is going to happen to you. Watch yourself. Don't let your husband justify you, with his good falsehoods that he shows you. Remember what I told you once that they would give you something to make

you sick, and it seems that I started to see the result. I am sorry for you. I always liked you. You made me leave sisters, brothers and father. My thoughts has always been of you. I do not sleep. I do not work. I sit and see you every moment, but you forget (ingrate). Remember what I told you what is happening to me. Do not trust the mother-in-law and Mary. I finish. I cannot write any more. I hope to see you yet, but I don't think so. After all it does not matter. Of me you think little, but it is all right. That is all. I finish. Give a million kisses to Gressi and I do the same. Hug my picture if you still have it, but I will do the same."

The Court: Is it signed?

Mr. Quinn: Signed "Joseph DeSantis." This letter was contained in an envelope addressed Mrs. Josephine Baldanza, 411 Prospect Street, Long Branch, N. J., and postmarked "Union City, December 23, 1926."

Q. May I ask you: Will you tell me what is written at the top of that letter in pencil? A. Well, I cannot read very good.

Q. Does that mean: "Remember, with you I will always be faithful"? A. That is what it says there.

Q. There is also in this letter a picture of a heart with an arrow through it. Do you know what that means? A. No, sir.

Q. Will you tell me why this man was talking about your child Gressi? A. He never asked about my child.

By the Court.

Q. Who is Gressi that is referred to in this letter? A. My oldest girl's name is Gressi.

By Mr. Quinn.

Q. Will you tell me why he sent you kisses? A. He never sent me kisses.

Q. Will you tell me why he said: "I always liked you"? A. He never told me that.

Q. Will you tell me why his picture was enclosed with the letter? A. I never received no picture.

Q. I show you Exhibit P-2, being a picture of the vicinity near Norwood Avenue, Long Branch, and ask you if you recognize that spot? A. No, sir; I was never around there.

Q. I show you Exhibit P-3, a picture of the vicinity of Norwood Avenue, and ask you if you recall that spot? A. No, sir.

Q. Do you recall Napolitano being in the kitchen with you one day when the pharmacist came in and you were eating cake in the kitchen? A. Napolitano never was in my kitchen.

By Mr. Fitzpatrick.

Q. I think I asked you on direct examination as to whether or not you received this letter marked Exhibit P-4, supposedly written by Joseph DeSantis. Did you ever receive this letter? A. No, sir.

Q. Did you have any such letter in your trunk? A. I never had any such letter in my trunk.

Q. Did you ever correspond with DeSantis? A. No, sir.

Q. How long was DeSantis away from your husband's employ? A. I would say about—he was there one year—I believe he worked there 1925.

Q. Have you seen him or had any communication with him since 1925? A. No, sir.

Q. Now, when you were in Judge Cox's house, what did Miss Castle tell you was the reason for the request to have you sign a paper?

The Court: Must we go over that again? She has already testified that she was told that this had to do with getting possession of the children.

Q. Has your husband made any attempt to see his children since the time of the separation?

Mr. Quinn: I object to any testimony at this time as to whether the husband has made any effort to see these children, as not bearing on the issue involved.

The Court: Objection sustained. I sustain the objection because I am now considering the petition for divorce.

PATSY MASCIA, sworn as a witness on the part of the defendant, testifies as follows:

Direct examination by Mr. Fitzpatrick.

Q. Where do you live? A. 274 Morris Avenue, Long Branch.

Q. What is your business? A. I was bus driver then.

Q. What is your business now? A. I ain't doing anything now.

Q. In August, 1929, what was your business? A. Bus driver.

Q. Where? A. City of Long Branch.

Q. Driving what kind of a bus? A. One of those small busses running to the city line.

Q. Was yours the only bus running to the city line? A. No; there are about ten of them.

Q. Your main route was what street? A. I used to run all through the city.

Q. You used to run all through the city? A. Yes.

Q. So that it was no exception for you to take anybody right to their door, was it? A. No.

Q. You were accustomed to drop people all through the city at their door? A. All through the city.

Q. Did you take Mrs. Baldanza to her door on the night of August 24, 1929? A. When she was——

Q. (Interrupting) Did you take her to her door in your bus? A. Yes.

Q. Where did Mrs. Baldanza enter your bus? A. Broadway and Third Avenue, Long Branch.

Q. Do you remember about what time? A. Why, about a quarter of ten.

Q. How do you fix the time? A. Because I was just about ready to go home at that time.

Q. How did it happen that you picked up Mrs. Baldanza at a quarter to ten and took her to her house, if you were about to go home? A. Well, when she was waiting for a bus there, I came along, and she asked me if I would drive her to her home, and I told her that I was going to the end of the line and I was coming back and going home and I would take her to her house.

Q. Her house was in the direction of your home? A. Yes.

Q. Did she stay on the bus to the end of the line? A. Yes.

Q. Did you leave her at her home? A. Yes.

Q. Did you see her husband that night? A. Yes.

Q. Where? A. In the store.

Q. Did you have occasion to go into the store? A. I went in the store with her.

Q. What was your reason for going in? A. I asked Mrs. Baldanza if she had any beer; I wanted a bottle of beer; I went in and bought a bottle of beer.

Q. Was there any conversation? A. A few words.

Q. With whom? A. With Mr. Baldanza, and then he says, "Well, better for you to go because I have to go to sleep. I got to get up early in the morning."

Q. Did he, in your presence, accuse his wife of any wrongdoing that night? A. No, sir.

Q. From the time that Mrs. Baldanza got on your bus and while you were at her home, how much time elapsed? A. About fifteen minutes.

Q. She got on the bus about what time? A. About a quarter to ten.

Q. So that you were home with her about 10 o'clock? A. About 10 o'clock or a couple of minutes after.

Cross-examination by Mr. Quinn.

Q. It was just about 10 o'clock as you came up. Had you met her on other occasions? A. No.

Q. Have you ever taken her on other occasions on the bus home? A. No.

Q. Has she ever ridden in your bus before? A. Well, she was in the bus before.

Q. How frequently has she been in the bus before? A. Through the day I have taken her down to the beach and taken her home with the baby. That is all.

Q. During the month of August, 1929, was she ever in your bus not with her children? A. Yes.

Q. What time in the evening? A. I never made any special——

Q. Where would you pick her up? A. On Broadway.

Q. At what time of the night or evening? A. I cannot think of the time.

Q. Sometimes as late as 9 or 10 o'clock? A. No, sir; never that late.

Q. What would be the latest you picked her up? A. I cannot remember.

Q. How can you remember so distinctly the night of August 24th; how can you remember the time you picked her up on that particular occasion? A. Because I was going home that night at 10 o'clock.

Q. Were you not going home on other occasions when you met her on the bus? A. I used to go home earlier and later than that.

Q. You might have picked her up as late as 10 o'clock at night, or don't you remember? A. I don't remember.

Q. Did you ever pick her up around the vicinity of the Long Branch station? A. No, sir.

Q. Have you ever picked her up around the vicinity of Ocean Avenue, that you remember? A. Yes.

Q. Where? A. On Ocean Avenue.

Q. What time of the evening? A. In the afternoon.

Q. In the evening have you ever picked her up, or any other occasions? A. No, sir.

Q. Do you know this man Napolitano? A. I know him by seeing him.

Q. Have you ever seen her talking with him on the beach? A. No, sir.

Q. How do you recall that it was August 24 that you brought her home? A. On Saturday night I brought her home and on Tuesday I heard of this thing, and I had it in my mind because I might be called as a witness.

Q. That was two days afterwards? A. Two days afterward.

Q. Two days afterward what made you think you were going to be called as a witness? A. Well, I heard the whole story and I said, "Maybe they are going to call me as a witness."

Q. You mean you heard the whole story about her being charged with being out— A. (Interrupting) That is what I heard.

TERESA NOBILE, sworn as a witness on the part of the defendant, testifies as follows:

Direct examination by Mr. Fitzpatrick.

Q. You are a sister of Mrs. Balanza? A. Yes.

Q. Where were you on the night of August 24, 1929? A. I was over at my sister's house.

Q. When did you reach there? A. I got there 11 o'clock in the morning.

Q. What was the purpose of your visit? A. I was going to see the baby parade on the 27th of August.

Q. The following Tuesday? A. Yes, sir.

Q. Were you there all day? A. Yes.

Q. Were you there the night of August 24? A. Yes.

Q. Were you there when Mrs. Baldanza left the store with her husband? A. Yes.

Q. Did you know where she was going? A. Yes.

Q. How did you know? A. She had told me. She wanted to take me with her. I didn't care to go. I says I would rather stay home and mind the kids.

Mr. Quinn: I object to any conversation between the defendant and her sister.

The Court: I will let her testimony stand that she asked her to go with her.

Q. Where did she say she was going? A. To see Mrs. Grandi, a friend of hers.

Q. What time did she leave, about? A. It must have been around 9 o'clock.

Q. Did you remain there? A. Yes.

Q. What were you doing? A. Well, I was playing with the child.

Q. With Gressi? A. With Gressi.

Q. The older child? A. Yes.

Q. How long was Mrs Baldanza away? A. It could not have been any more than an hour.

Q. Were you there when she returned? A. Yes.

Q. In the store? A. Yes.

Q. Was her husband in the store? A. Yes.

Q. How long was he there before she came? A. Well, he was there, I will say, about twenty-five minutes.

Q. About twenty-five minutes? A. Yes.

Q. He went out with her, didn't he? A. Yes.

Q. When he came back did he say anything to you about Mrs. Baldanza? A. He didn't say anything to me, but he mentioned to the brother about making some kind of an account.

Q. What brother? A. Petey.

Q. His brother Petey? A. Yes.

Q. But there was nothing said about Mrs. Baldanza? A. No, sir.

Q. When he returned did he accuse her of any wrongdoing? A. Nothing at all.

Q. Were there any harsh words that night? A. No, sir.

Q. Did you stay there that night? A. Yes.

Q. Where did you sleep? A. I slept in the spare room.

Q. With whom? A. At first I was alone and then Andrew Baldanza stayed with his brother and I slept with my sister.

Q. What do you mean by his brother? A. Mr. Andrew Baldanza stayed with my brother-in-law; he slept there.

Q. With Harry Baldanza? A. Andrew slept with Harry.

Q. Andrew Baldanza slept with Mrs. Baldanza's husband? A. Yes.

Q. You finished your sleep that night with your sister? A. Yes, sir.

Q. You were there the next morning? A. Yes.

Q. Whom did you see on Sunday morning in that store? A. Andrew Baldanza.

Q. Did you have any conversation with him? A. Yes.

Q. What was it?

Mr. Quinn: I object unless the petitioner was present.

The Court: I will admit it.

A. He asked me whether my husband was coming over that day and I told him he was not, and he wanted to take me out for a ride and I did not go.

Q. Who wanted to take you out for a ride? A. Andrew wanted to take me out for a ride and I did not want to go.

Q. Did he say where he wanted to take you? A. He did not say at first, and then he said he was going out to buy a dress for his daughter.

Q. He told you that? A. Yes.

Q. And he asked you to go? A. Yes, sir; just for a ride, and then he said he wanted to go for the dress.

Q. Did you volunteer to go? A. No; I did not; I hesistated. I was cooking dinner.

Q. Did you hear him ask Mrs. Baldanza? A. Yes.

Q. What did you hear him ask her? A. To go out with him, that he wanted to get a dress for his daughter.

Q. Where was she at the time he asked her that? A. In the store waiting on customers.

Q. Was she dressed to go out? A. No; she had a house dress and apron on.

Q. Did she get dressed? A. Yes.

Q. Did she go out with him? A. Well, he forced her to go.

Q. Did she go out with him? A. Yes; she did.

Q. Did she have her hat on when she went out? A. She had her hat in her hand.

Q. Did you know where they went? A. No; I did not.

Q. You stayed there all that day, didn't you? A. No.

Q. Were you told that she was going to Passaic? A. Yes.

Q. By whom? A. By her mother-in-law.

Q. Before she left? A. No; after she had gone.

Q. How long after? A. It was a little after 12 o'clock.

Q. What did the mother say to you?

Mr. Quinn: Objected to.
The Court: Objection sustained.

Q. Now, how long did you stay there that day? A. I stayed there until 1 o'clock.

Q. Where did you go then? A. I took a train to Passaic.

Q. Did you go alone? A. I took the children with me.

By the Court.

Q. What children? A. Mrs. Baldanza's children.

By Mr. Fitzpatrick.

Q. Where did you take them? A. I took them over to my place of business.

Q. Your husband has what kind of a business? A. Photography.

Q. He has a photographic studio? A. Yes.

Q. Where? A. In Passaic.

Q. Who was there when you got there? A. Andrew Baldanza and Harry Baldanza.

Q. The husband? A. Yes, sir.

Q. Anybody else? A. My husband.

Q. Did he ask for the children? A. He took the children as soon as he saw me coming up with them.

Q. He took them? A. Yes.

Q. You don't know where he took them? A. He must have taken them back to Long Branch; I don't know.

Q. Did you go to Long Branch after that? A. I did, on the 26th.

Q. What was that—Monday? A. Monday.

Q. Did you find your sister at her home on Monday, the 26th? A. No, sir.

Q. Did you see your sister on Monday? A. Yes.

Q. Where? A. 410 Centerfield Avenue, Asbury Park.

Q. How did you know where she was? A. Well, her sister-in-law gave me the address—Mrs. Palozzotti.

Q. She was in Long Branch? A. Yes.

Q. At Mr. Baldanza's home? A. Yes, sir.

Q. That is, at your sister's home you met Mrs. Palozzotti? A. Yes.

Q. On Monday? A. On Monday.

Q. She told you where your sister was. Did you ask her? A. Yes, and she gave me the address.

Q. You went over there right away? A. No; I went in the afternoon.

Q. Did you have any conversation with her husband on Monday before you went to Mrs. Baldanza? A. Not much of a conversation.

Q. Did he tell you where his wife was? A. No; he was outside most of the time.

Q. Did you ask him? A. Yes.

Q. Did he at any time tell you why Mrs. Baldanza had been taken to Passaic? A. No.

Q. Your husband never told you? A. No.

Q. Did you, while in your husband's place of business on Sunday, hear why she was taken to Passaic? A. No; they had the conversation before I got there.

Q. You went to the Centerfield Avenue house run by this lady, Miss Vandenschoten, and what time did you get there? A. Well, I really could not say.

Q. Did you use the telephone while you were there? A. I did, to call up my husband.

Q. Where, where did your call your husband? A. 3632-R Passaic.

Q. That is the same number that Mrs. Baldanza was asked about here this morning? A. I was not here then; I had the baby outside.

Q. 3632-R Passaic on the 26th of August? A. On Monday.

Q. You called that number? A. Yes.

Q. Whose house is that? A. Where I used to live.

Q. Where you used to live? A. Yes.

Q. And you called that number for the purpose of getting— A. (Interrupting) For the purpose of getting in touch with my husband.

Q. You did not find him? A. No.

Q. So it was you and not Mrs. Baldanza? A. I did call that number.

Q. Did you call any number from Long Branch? A. Yes; I did.

Q. Whom did you call from Long Branch? A. My husband.

Q. When you were in the Centerfield Avenue house, the same day that you called Passaic, did you call any number in Long Branch? A. No.

Cross-examination by Mr. Quinn.

Q. What time did you make this call to Passaic? A. I told you I could not tell you the exact time.

Q. About when? A. I have no idea.

Q. In the morning or afternoon? A. I might be lying if I said something.

Q. About what time? A. It was after I got there.

Q. Did you make it in the morning or afternoon? A. I did not get there in the morning.

By the Court.

Q. You know what time you got to the house? A. It was in the afternoon some time.

Q. What time did you get there? A. I could not say exactly.

Q. You came down from Passaic? A. I left Passaic 8.30.

Q. Don't you know what time you reached Long Branch? A. I got to Long Branch about 10.30.

Q. You went to Mr. Baldanza's house? A. Yes.

Q. How long did you stay there before you went to Mrs. Vandenschoten's? A. I didn't stay there long.

Q. Can you tell us what time it was that you got to this house? A. About one or half-past one, I imagine.

Q. How long did you stay there? A. I stayed there until about 4 o'clock.

Q. Then it was between half-past one and 4 o'clock you made the telephone call? A. It must have been.

By Mr. Quinn.

Q. About how long after you got there did you make the telephone call? A. That I cannot recall.

Q. Was it a short time, was it near the time that you arrived, or the time that you left around half-past four? A. It must have been right after I got there.

Q. It was shortly after half-past 1 o'clock that you made that telephone call? A. It must have been.

Q. Whom did you get on the phone at Passaic? A. A lady friend of mine.

Q. Whom? A. The lady where I used to live.

Q. Who was it? A. Mrs. Elkind.

Q. She was there then and she is the person you got on the phone? A. Her daughter answered. Mrs. Elkind was out.

Q. The daughter is the one that you got on the phone—you are sure of that? A. Positive.

Q. There is no doubt of it in your mind? A. I don't think so.

Q. What is the name of the daughter? A. I don't know the name of the daughter.

Q. How do you know it was the daughter who was on the phone? A. You could tell it was——

Q. Why did you call up? A. I wanted to see my husband.

Q. How far away—how far away is your husband's place of business? A. It is about five blocks away.

Q. Do you know Mrs. Elkind very well? A. I never had much to do with her.

Q. Why did you call this lady to get your husband at his place of business four or five blocks away? A. Because my husband was not at his place of business.

Q. Did you call his place of business? A. Sure, otherwise I would not have called her.

Q. When did you call him? A. I called him when I got to Long Branch, which was about 11 o'clock. I went in the station and called up my husband. There was no answer on 7526. By the time I went to Asbury Park I thought maybe—sometimes it happens that he has an outside job that takes quite a while before he gets back.

Q. Where does Mrs. Elkind live? A. Monroe Street.

Q. How far away is that from your husband's place of business? A. It is about five or six blocks.

Q. Why did you call Mrs. Elkind to go five or six blocks to get your husband? A. Probably he might have been home. That is why I took a chance and called there.

Q. You did not make this call, 1288 Long Branch, on August 26th, the place of Mr. Santarelli? A.

No, sir; I do not remember making any Long Branch calls.

Q. You got a telephone call from your sister while you were at Asbury? A. She called up, but they would not let me talk to her.

Q. You were there? A. I was there.

Q. Who answered the phone? A. Her sister-in-law.

Q. (Indicating) This woman—is she the sister-in-law? A. Yes.

Q. Didn't you actually answer the telephone call yourself? A. I was going to talk and she says to me——

Q. Didn't you answer the telephone call and talk to your sister that day? A. I don't remember.

Q. Will you say you did not? A. I did not. I did not talk to my sister.

Q. Do you mean to say that you don't remember whether you talked to your sister? A. She wanted to, but they would not let me call over the telephone.

Q. You said a moment ago you did not remember whether you talked to your sister or not? A. You did not specify whether she called me at her husband's house.

Q. You talked to her when she called up her husband's home when you were there; is it not a fact that you talked to her on the phone at that time? A. No, sir; I did not talk to her.

Q. On your direct examination you were asked at what time in the evening Mrs. Baldanza went out and you said it must have been around 9 o'clock. What did you mean by saying it must have been around 9 o'clock? A. I don't quite get that.

Q. You were asked at what time of the evening Mrs. Baldanza went out on the evening of August

24th, and your answer was, "It must have been around 9 o'clock." What did you mean by that? A. Because her husband got home a quarter to nine.

Q. You mean to say now that Mr. Baldanza was home at a quarter to nine? A. When he came in the first time. Then he took my sister out at 9 o'clock.

Q. How do you know he came in at a quarter of nine? A. Because the clock was standing right there.

Q. Is it not a fact that Mr. Baldanza came home a quarter of eight and they left the store a few minutes after eight, and not after 9 o'clock? A. No; he came home a quarter of nine.

Q. When did you take the children of Mr. Baldanza up to Passaic? A. With the 1.19 train from Long Branch, Standard Time.

Q. What time? A. Sunday, August 25.

Q. At 1.19? A. 1.19 Standard Time.

Q. Will you tell me why you took Mr. Baldanza's children to Passaic? A. Because his mother told me.

Q. Why? A. Because she said she could not take care of them.

Q. Is it not a fact that you took the children up to Passaic because you knew at that time that Mr. Baldanza had told your sister that he was putting her out and she would have to go back to her mother because she had committed adultery? A. Nothing of the kind.

Q. Is not that the reason that you took the children to Passaic? A. No; that is not the reason.

By the Court.

Q. I do not get that. You did not know that your sister was going to Passaic? A. No, sir; I did not.

Q. But you did say that that was where she had gone, that her mother-in-law told you? A. No; the mother-in-law said she didn't know nothing about it.

Q. Then, you did not know she had gone to Passaic at all? A. No; the only thing——

Q. How did it happen that suddenly after she left the house you took the children away? A. You know, first he told me when he came, her husband Harry and the other brother called up his mother and said they were taking Josie to Passaic. That is how I know.

Q. Did he say how long she was going to stay there? A. No; they didn't say.

Q. You didn't know but what Mrs. Baldanza, your sister, was coming back that afternoon? A. The way I took it up different, because the way I took it——

Q. I don't understand you. You did not know that your sister was going to stay in Passaic? A. I did not know.

Q. Why did you take the children up there? A. Because Mrs. Baldanza, Harry Baldanza's mother, told me to take them there and Josie could bring them back. That is what she told me. I didn't take the children of my own accord.

Q. I don't understand why you took the children. Why was it up to you to take the children? A. She fixed it up that I should take the children. What was I to do? I could not leave them destitute. She told me. I asked her the reason why. She said she didn't know nothing about it.

Q. Did she tell you whereabouts in Passaic your sister was? A. She didn't say anything. She just said to take them to Passaic.

Q. You know where your mother lived? A. I lived with my mother at that time.

Q. She was your mother, too? A. Yes.

Q. Why didn't you take the children there? A. That was on my way down to the studio first. The house is further, and it was such a hot day, it was not a pleasure to walk down there and travel with two children; so I thought I would stop there first.

By Mr. Quinn.

Q. Don't you recall in your direct examination stating that it was your mother-in-law who told you where your sister was in Passaic? A. Not my mother-in-law.

Q. Your sister's mother-in-law. A. She only told me she was taken to Passaic.

Q. Answer yes or no. Don't you recall on direct examination stating that your sister's mother-in-law told you where your sister had gone in Passaic? A. She didn't say. She just said the name of Passaic.

By the Court.

Q. The natural thought in your mind would be your mother's home? A. Naturally, I said that, but she did not specify where they were taking her—just to Passaic.

By Mr. Quinn.

Q. When you went to Passaic you found your sister in— A. I did not.

Q. How long after you reached Passaic did you see your sister? A. They had taken her away already.

Q. Were you not there at any time when she was in your husband's place of business? A. No, sir.

Q. Did you speak to your mother? A. I was speaking to my mother after that.

Q. Were the children with you? A. No, sir; Mr. Baldanza took them.

Q. Where? A. To Long Branch.

Q. How long after did you see your mother? A. 9 o'clock that evening.

Q. You had a talk with your mother? A. I didn't have much of a conversation.

Q. Is it not a fact that on that occasion you knew that your mother had put your sister out of the house because she had confessed that she had committed adultery with this man Napolitano? A. I did not; never.

Q. Did you talk with your mother at all? A. No.

Q. Even though you knew that your sister had been taken from Long Branch to Passaic, you did not discuss with your mother why she was taken there? A. I am telling you I came there at 9 o'clock.

Q. You did not discuss it? A. I didn't discuss nothing. I heard already at the studio. I didn't have to discuss it with my mother.

Q. Did you ask your mother why your sister was not at her home? A. Nothing with my mother.

Q. Where did you hear it? A. At my husband's place, the studio.

Q. You heard it there from your sister? A. I did not hear it from my sister. I heard it from Mr. Andrew Baldanza and Harry Baldanza.

Q. And when you got to your mother's house, you did not discuss it with her? A. Nothing at all.

Q. The next morning did you discuss with your mother why your sister was not at home? A. Nothing. I left for Long Branch.

Q. Why didn't you discuss it the next morning? A. I didn't have any time.

Q. Is it not a fact that you did not discuss it because you knew your mother had put your sister

out of the house because your sister admitted that she had committed adultery? A. My sister did not commit adultery.

Q. I want an answer to my question. You did not discuss it with your mother because your sister had been put out? A. I didn't know nothing.

By the Court.

Q. You found Baldanza and his brother at your husband's studio when you got there, and they took the children? A. Yes.

Q. They told you that they were taking the children back? A. He just took the children. I said, "Where is Josie?" Mr. Andrew Baldanza says, "Make believe you have no sister because we have put her out in the woods where nobody will know anything about her," and her husband did not open his mouth; he says nothing at all. "We don't want to have her mentioned any more," and they took the kids and off they went.

Q. Then you went over to your mother's? A. I did not go until 9 o'clock that evening.

Q. You went over there that evening? A. Yes.

Q. Did you stay all night with your mother? A. I lived with my mother. When I got home she was not home and I went right to bed.

Q. You mean you did not ask your mother anything about it? A. I swear I did not.

Q. You knew that they had taken your sister to your mother's that afternoon? A. I did not know it. My husband had told me at night——

Q. Somebody told you? A. Yes, but I did not have any conversation with my mother.

By Mr. Quinn.

Q. You said that Mr. Baldanza forced his wife to go out Sunday morning or Sunday afternoon?

A. Saturday night, you mean. Sure he was anxious to have her go out.

Q. When was this? A. Saturday night.

Q. I thought she was going to see a sick friend? A. He says, "Come on and see Mrs. Grandi. Are you not ready yet? Hurry up and dress up. Now I will take you."

Q. On your direct examination when you said that he forced her to go out, did you refer to Saturday night? A. When was it?

Q. On your direct examination you said that Mr. Baldanza forced her to go out. Did you mean on Saturday night or Sunday morning? A. Sunday. Andrew Baldanza did.

Q. What was said to her when they forced her to go out? A. I just took the baby and put it in the chair and I did not hear the rest.

Q. Was Harry Baldanza there when Andrew Baldanza forced her out? A. No; I did not see Harry.

Q. Was he in the house? A. He just came in for a minute in the store and then he went out.

Q. When your sister was being forced out of the house Sunday morning was Mr. Baldanza there? A. Harry?

Q. Yes. A. No; he was not.

Q. Only the brother was there? A. Andrew forced her out.

Q. You saw Andrew force her out? A. Yes; my sister didn't want to——

Q. Did you ask him why he was forcing her out? A. No; I did not.

Q. You mean to tell the Court that you stood by and saw them force your sister out of the house and said nothing to them? A. I did not, because the way he says he was going out for a dress. Why should I interfere?

By the Court.

Q. Why did you say they were forcing her out? A. They were anxious——

Q. You do not mean to say that they used actual force on her? A. No; he did not use force on her. He says, "Hurry up."

Q. He had asked her to go out with him to help him buy a dress? A. Yes.

Q. And she said she would? A. She said she didn't want to go.

Q. She finally said she would? A. He insisted.

Q. Didn't she finally say she would? A. Yes.

Q. Then she got her hat? A. I seen her with her hat in her hands.

Q. She went and got it, didn't she? Nobody brought it to her? A. I didn't see that.

Q. She had the hat with her? A. Yes.

Q. Andrew or somebody held the door open for her and she— A. She wanted to wait on another customer and Andrew says, "Hurry up."

Q. That is what you mean by "forcing"? A. Yes; and he opened the door.

Q. He didn't take hold of her and shove her? A. Not exactly, not a rough shove.

Q. Did he? A. No.

By Mr. Quinn.

Q. When you went to Asbury Park and met your sister did she tell you that she was under arrest? A. My sister was like an insane person.

By the Court.

Q. Did she tell you that she was under arrest? A. She told me that she was under arrest.

By Mr. Quinn.

Q. Why did you stay all night? A. Why, they put me out of the house; I had to go some place and stay.

Q. Why did you stay all night with your sister? A. Because I knew.

Q. Is it not a fact that on Sunday afternoon when your sister was put out of Mr. Baldanza's house, that you knew she had committed adultery by her own confession, and that following the usual Italian custom her husband took her back to her mother because she had committed adultery? A. She did not commit any adultery.

By the Court.

Q. Did she tell you that she had been to Judge Cox? A. No. She said they took her to some man, to some man's bedroom, and they gave her a blank piece of paper and she had to put her name on it to get the children.

Q. A blank piece of paper? A. That she had to sign it and they would fill it out so that she would get the kids the next day.

By Mr. Fitzpatrick.

Q. The Court is a little bit in doubt about the telephone calls. You called Passaic from this rooming house on Sunday afternoon? A. I did not call on Sunday afternoon.

Q. Monday? A. Monday.

Q. Who lived in the house you called? A. We did. We lived downstairs.

Q. Why didn't you tell that to the Court before? You were trying to get your husband? A. That is what I was.

Q. That was the house you lived in? A. Sure, that is the house.

Q. You had no telephone in your own house? A. No; I did not.

By Mr. Quinn.

Q. Your husband works? A. He is in business at 610 Main Avenue.

Q. Why were you calling up at 2 o'clock in the afternoon, when you knew your husband was away at work? A. Because when I called his place of business there was no answer.

Q. How long did you talk on the phone? A. I could not tell you.

Q. I show you this slip showing six minutes conversation. A. Lots of times it happened to my telephone they charge for calls I never make.

Q. Did you talk for six minutes in your conversation? A. I did not. They just said there was nobody downstairs and hung up.

Q. When your sister talked to you about this piece of paper, the blank piece of paper, signed in Mr. Cox's office, did she say it was afterwards filled up? A. I don't remember.

DOMENICA BALDANZA, sworn as a witness on the part of the defendant, being examined through the interpreter heretofore sworn, testifies as follows:

Direct examination by Mr. Fitzpatrick.

Q. Where do you live? A. 373 Monroe Street, Passaic.

Q. You are the mother of Mrs. Baldanza, the respondent? A. Yes, sir.

Q. Do you remember the day her husband and his brother brought her home to you? A. Yes, sir.

Q. Who do you remember was with her? A. The husband, the brother of the husband, a man and a woman and Tom Maccio.

Q. (Calling on Miss Castle to stand up) Is that the woman? A. Yes.

Q. (Calling on Mr. Everingham to stand up) Is that the man? A. Yes.

Q. (Calling on Mr. Maccio to stand up) Is that Tom Maccio? A. Yes.

Q. And Andrew Baldanza (indicating). Is that the man? A. Yes, sir.

Q. What was said when your daughter was brought in by whom? A. Andrew Baldanza said to me, "Here is the whore of your daughter. We found her in a hotel."

Q. What did you say? A. I didn't say anything.

Q. Did you see any pistol? A. I saw the woman with a pocketbook under her arm and something in her hand which looked like a revolver.

Q. Did anybody else accuse your daughter of wrongdoing on that occasion? A. No, sir.

Q. Was the husband present when Andrew Baldanza charged your daughter with this crime? A. Yes; he was present; he was coming in the door.

Q. Did Harry Baldanza say anything to you when Andrew Baldanza charged your daughter with this crime? A. No, sir.

Q. Did your daughter deny the charge? A. My daughter did not speak at all.

Cross-examination by Mr. Quinn.

Q. Your daughter did not deny that she had been in a hotel? A. My daughter did not speak at all.

Q. When your daughter was accused of being in a hotel, and said nothing, what did you say to her? A. She was about to speak and they grabbed her and they took her out.

Q. What did you say? A. I didn't say anything.

Q. Was your son there? A. Yes.

Q. When they grabbed your daughter what did your son do? A. My son didn't say anything, and when they grabbed her he remained cold.

Q. Did your son try to prevent them from taking your daughter out? A. No, sir.

Q. Is it not true that you and your son said to your daughter, "Get out of our house. You have dishonored our name"? A. No, sir.

Q. And is it not true that you made this statement to her, after she had admitted to you that she had done wrong with Napolitano? A. No, sir.

Q. And is not that the reason that neither you nor your son made any attempt to prevent them from taking her out of the house? A. No, sir.

By the Court.

Q. Was Napolitano's name mentioned that afternoon? A. No, sir.

By Mr. Quinn.

Q. Were you not surprised to see them bringing your daughter to your home? A. Yes, sir.

Q. And when you saw that, you said something to her, didn't you? A. I did not say nothing but this—I said, "What is this here?"

By the Court.

Q. You understood, did you not, that your daughter was being accused of having committed adultery? A. I didn't know anything.

Q. You did not know that when they told you your daughter had been found in a hotel, that they were charging her with having committed adultery with some man? A. When they came I did not know anything. Then they told me that they found her in a hotel.

Q. Didn't you understand that they meant she had been found there with a man? A. They just told me in a hotel.

Q. Did you understand that they meant that she had been found there with a man? A. I understood it, but they did not explain it to me, because I remained stupid.

Q. Then you knew that your daughter was charged with wrongdoing? A. Afterwards I did know it.

Q. While they were there in the house? A. They didn't tell me anything. They told me only——

Q. I don't care what they told you. I am asking you what you understood they meant. A. Yes; I understood the nature of the accusation.

Q. You said nothing to your daughter about it? A. I didn't say anything to my daughter.

Q. Did you speak to her husband about it? A. I said to the husband, "Why didn't you tell me about it?" And Maccio answered, "If we had told you all about it, everything would have gone away."

Q. When did this conversation with Maccio occur? A. After my daughter had gone.

Q. And do you mean to say that after your daughter had gone her husband was still there? A. Yes; they remained one or two minutes.

Q. How long was your daughter in the house? A. A few minutes.

Q. Do you mean ten minutes or two minutes? A. I did not see the clock what time it was.

Q. Was it two minutes or ten minutes? A. The most she could have stayed was five minutes.

Q. And during all of that time she said nothing to you and you said nothing to her? A. No, sir.

Q. Did your son say anything to her? A. No, sir.

Q. Did she say anything to him? A. No, sir.

By Mr. Quinn.

Q. What do I hold in my hand now, Mrs. Baldanza? A. A book.

Q. Is that a book? Look again and tell me what I hold in my hand? A. At that distance I do not see very well.

Q. Then, you did not see any revolver this day, did you? A. I was not at that distance from that woman.

Q. Two persons stood up in the back of the court room and you said you saw them there that day. Did you see those persons in the back of the court room? A. I saw the two persons that day.

Q. Did you see them in the back of the court room? A. I did not see them standing up, but I know who they are by name. At a distance I cannot see.

By the Court.

Q. When those persons stood up in the back of the court room to-day and you identified them, you could not see them at all to-day, could you? A. I could not see them as they stood up, but I know who they are, because at that distance I cannot see.

Mr. Fitzpatrick: I now ask Miss Castle to come up here.

The Court: What is the occasion of this? There is no dispute that Miss Castle was there and Mr. Everingham. Everybody admits they were there.

By Mr. Fitzpatrick.

Q. Your son and Mrs. Baldanza were not on friendly terms on this day that she was brought home, were they? A. Now they are.

Q. Then were they? A. That day they did not speak to one another.

Q. And they had not been on friendly terms——

Mr. Quinn: I object to the question as leading, suggesting to the witness what to say.

The Court: Do not lead.

Q. Who grabbed your daughter and took her out after the five minutes she was in your house? A. Andrew Baldanza, the lady and the man.

By Mr. Quinn.

Q. Did you see them take her out? A. Yes.

Q. Why didn't you tell your son to stop them? A. We remained dumbfounded. I did not know what to do.

Q. When Andrew Baldanza remained a few minutes after she went out of the house and told you that she had done wrong, didn't you say to him, "If you had told me this before, I would have stopped her." A. Yes; I said that to him, why didn't he tell me.

LOUIS BALDANZA, sworn as a witness on the part of the defendant, testifies as follows:

Direct examination by Mr. Fitzpatrick.

Q. Where do you live? A. 40 Bergen Avenue, Clifton.

Q. Did you ever live in Passaic? A. Yes.

Q. You are a brother of Harry Baldanza, the petitioner, are you not? A. Yes.

Q. Did you ever write to his wife a letter, a threatening letter? A. No, sir.

Q. I show you a letter postmarked Passaic, N. J., May 9, 1924, addressed to Mrs. Guissepini Baldanza, 411 Prospect Street, Long Branch, New Jersey, and ask you if you wrote that address on that envelope? A. I do not recognize it.

Q. I show you the letter contained in that envelope dated the 9th of April, 1924, signed "L. Baldanza," and ask you if that is your signature? A. I don't think so.

Q. I now ask you to write your name—"L. Baldanza." A. (Witness does as requested.)

Q. Now write "L. Baldanza." A. (Witness does as requested.)

Q. Now write "Mrs. Guissepini Baldanza." A. (Witness does as requested.)

Q. Now write 'Mrs. Guissepina Baldanza." A. (Witness does as requested.)

Q. "411 Prospect Street." A. (Witness does as requested.)

Q. "Long Branch." A. (Witness does as requested.)

Q. "N. J." A. (Witness does as requested.)

Q. Now, translate that letter? A. I am not a good enough translator and I am not a lawyer.

Q. You write in Italian, don't you? A. I write in Italian.

Mr. Quinn: This letter is not in evidence. I object to it as having no bearing on the case.

Mr. Fitzpatrick: I want to get it in the record. I offer the letter and envelope for identification.

(Envelope is marked D-1, May 15, 1930, for Identification. Letter is marked D-2 for Identification, May 15, 1930.)

FIORE NOBILE, sworn as a witness on the part of the defendant, testifies as follows:

Direct examination by Mr. Fitzpatrick.

Q. Where do you live? A. At present I live 181 Washington Place.

Q. You are the husband of Mrs. Nobile who just testified? A. Yes, sir.

Q. Do you recall August 25, 1929? A. Yes, sir.

Q. Where were you that afternoon? A. I was in our studio.

Q. Your photographic studio? A. Yes.

Q. Were you there the 24th of August, the day before? A. Yes.

Q. On Sunday afternoon, the 25th of August, did you see the petitioner, Harry Baldanza? A. Yes.

Q. Where? A. He came up to my studio.

Q. With whom? A. First he came alone.

Q. What time? A. Between half-past one and 4 o'clock.

Q. You do not know exactly what time? A. Well, I say between maybe 2 o'clock and half-past 2 o'clock.

Q. He was alone? A. He came alone.

Q. When he came alone was there any conversation between you and him? A. Yes.

Q. When he was alone? A. Yes.

Q. What was the conversation? A. He came in all agitated and he told me that my sister-in-law she disgraced the family and they would bring her to her mother. So he——

Q. Did you say anything to him? A. Well, I did not know the situation then. I did not know what to say. I did not know whether it was true or not.

Q. Did he leave after that statement? A. No; he stayed awhile.

Q. He stayed awhile? A. Yes.

Q. Did you discuss it with him at all; did you ask him how his wife had disgraced the family? A. He said she was in a hotel with a man.

Q. You asked him how she disgraced the family? A. Yes; I did ask him.

Q. What did he say? A. He says that they found her with a man in a hotel.

Q. Did you ask him where? A. No.

Q. Did he tell you where? A. No.

Q. Did any others come there later. A. Yes; he came later.

Q. Who came later? A. Her husband, Harry Baldanza, and he came after——

Q. After the first conversation did he leave your place of business? A. No; he stayed there.

Q. He stayed there? A. Yes.

Q. Who else came in later? A. His brother.

Q. What brother? A. Harry. Andrew was first and then Harry came.

Q. Then, the statement that Mrs. Baldanza was in a hotel with a man—is that what you said? A. Yes.

Q. That statement was made by whom? A. By Andrew and Louis Baldanza.

Q. You say that Harry came alone? A. Yes.

Q. Between half-past 1 and 4 o'clock? A. Yes.

Q. And he remained there? A. Yes.

Q. And who came afterwards? A. His brother.

Q. Who was that? A. Harry Baldanza.

Q. Anybody else? A. Well, first before him was Mascia and then he went out.

Q. Mascia was there and went out? A. He came first and then he had some conversation with him.

Q. Mascia was there before Andrew? A. Before anybody else.

Q. Did Mascia say anything about Mrs. Baldanza to you? A. Yes.

Q. What did Mascia say? A. He came to me and——

Q. On the same day? A. On the same day. He was the first one, and he did not like my sister-in-law. I says, "What is the matter?" I knew something was——

Q. Never mind that. You knew Mascia very well? A. Very well, and he told me that they found my sister-in-law in a hotel.

Mr. Quinn: I object to what Mascia said.

The Court: Strike out what he said.

Q. Who came there afterwards? A. Andrew Baldanza.

Q. Was her husband there? A. No; he came the last one.

Q. Was the husband there while Andrew was there at any time? A. Yes.

Q. Now, did Andrew say anything while the husband was there regarding Mrs. Baldanza? A. Yes.

Q. Who said it? A. Andrew.

Q. In the presence of the husband? A. Yes.

Q. What did he say? A. He was in my studio—in the alleyway—the building is small—they were against the wall.

Q. Who were against the wall? A. Harry was against the wall and Andrew was standing up, and I was by my telephone.

Q. Tell us what he said. What did Andrew say? A. Andrew says, "Now, I am taking charge of this here," and he says, "She will not get in the house any more. If he takes her back, I will stab him in the stomach.

Q. Meaning he would stab Harry Baldanza? A. Yes, and he told me that paper was signed and she admitted before the Judge she was guilty, and he said he paid $300 already, and the next day, "I will pay $100 more, and in forty days more they will get a divorce."

Q. Who said that? A. Andrew. Her husband said it was all right like this (indicating).

Q. He shook his head? A. Yes.

Q. Did the husband say anything himself? A. No; he was crying already before this.

Q. He was crying? A. Yes.

Q. That was before Andrew came in? A. They were there.

Q. While he was there? A. Yes.

By the Court.

Q. Harry said that they had taken her before the Judge? A. Yes.

Q. And she had confessed? A. She had signed everything, and they were going to get a divorce in forty days. He says, "She is not going in the house any more."

Cross-examination by Mr. Quinn.

Q. You say he made this statement that they had been before the Judge? A. Yes.

Q. Don't you know as a matter of fact that they did not go to the Judge until Sunday night or early Monday morning, August 26th? A. I don't know that.

Q. You say they told you that they had already been before the Judge? A. That is what they told me.

Q. When the husband was crying in your studio, you asked him what he was crying for? A. Well, the thing was all known. They told me then.

Q. Who told you? A. Mascia and Andrew.

Q. You knew he was crying because of the crime that his wife had committed? A. Naturally crying.

Q. Did you see his wife the next day? A. No.

Q. Did you see her at all? A. No.

Q. You did not see her at all while she was in Passaic? A. No, because I was in my business place.

Q. Are you there every afternoon at your place of business? A. Yes.

Q. What hours? A. From 9 o'clock to 8 o'clock except Sunday, and Sunday from 9 o'clock to 5 o'clock.

Q. Did you receive a telephone call from your wife on Monday afternoon, the 26th of August? A. Yes.

Q. What time? A. In the afternoon I received a telephone. I do not remember the time of the afternoon.

Q. Late in the afternoon? A. Not so late, more or less mid afternoon.

Q. Will you tell us what the locality is around your home, is it built up? A. What do you mean?

Q. Where you live, is the territory built up?

Mr. Fitzpatrick: Are you asking him where he lives or where his place of business is?

Q. Where Mrs. Baldanza's mother lived, do you know where she lived? A. When?

Q. In August, 1929. A. 383 Monroe Street.

Q. Is that a built-up territory—lots of houses there? A. More or less, sure.

Q. Each one close together? A. Spaces between.

Q. Small spaces? A. Quite some space, almost a driveway between.

Q. Stores around? A. Not in her section.

Q. On the other side of the street? A. Up above; yes.

Q. Is the entire district built up with houses and apartment houses? A. No apartment houses; two-family houses.

Q. Is the entire block built up with two-family houses? A. Yes.

Q. Is the next block built up with two-family houses? A. Yes.

Q. On both sides of the street? A. Yes.

Q. And are there stores there on both sides of the street? A. Some places; but not where we were.

Q. In your block? A. In the block where we were there is one store across the street.

Q. And on Monroe Street in Passaic traffic is going back and forth all the time? A. Well, that is not a first-class street. There is very little traffic on a Sunday.

Mr. Fitzpatrick: I would like to offer in evidence letter addressed to Mrs. Guissepini Baldanza, 410 Prospect Street, Long Branch, N. J., the postmark being Passaic, May 9, 1929, signeod by L. Baldanza, written in Italian.

Mr. Quinn: I object to the offer.

The Court: Objection sustained.

Mr. Fitzpatrick: This letter is offered under the same circumstances as the DeSantis letter. There is nothing in the evidence which makes the DeSantis letter in any shape or form binding on the defendant.

The Court: Louis Baldanza says he did not write it.

Mr. Fitzpatrick: We are going to prove it.

The Court: When you prove it, it is a different proposition. The reason the DeSantis letter was admitted in evidence was because there was testimony that it was a letter found in the defendant's trunk, with the photograph of a man, the letter being addressed to her.

JOHN J. GREGORY, JR., sworn as a witness on the part of the defendant, testifies as follows:

Direct examination by Mr. Fitzpatrick.

Q. Where do you live? A. Newark, New Jersey.

Q. What is your business? A. State detective.

Q. Did you have any occasion to investigate for the defendant Mrs. Baldanza? A. Yes, sir.

Q. In that investigation did you interview anybody? A. Yes, sir.

Q. Whom did you interview? A. Miss Castle and Mr. Everingham.

Q. Where did you see Mr. Everingham first? A. In Deal, working on a job as a carpenter.

Q. When? A. About a week before December 6th.

By the Court.

Q. About December 1? A. Somewheres around that, yes.

Q. Last year, I suppose you mean? A. Yes; 1929.

By Mr. Fitzpatrick.

Q. Did you tell Mr. Everingham at the time that you saw him what the purpose of your visit was? A. Yes.

Q. And what did Mr. Everingham tell you? A. Mr. Everingham came from the job over to the car and we sat in the car——

By the Court.

Q. What did he say? A. Well, he told me he was hired by Miss Castle to follow Mrs. Baldanza.

By Mr. Fitzpatrick.

Q. Did he say he had followed her? A. Yes.

Q. Did he say whether or not he had discovered anything condemnatory of her character? A. No, sir. He said he found nothing wrong with her.

Q. Did he say anything about a trip to Passaic? A. Yes; he said that he, Miss Castle and the husband and the husband's brother went to Passaic with Mrs. Baldanza.

Q. Did he say how many times he had watched Mrs. Baldanza? A. About three times.

Q. What did he particularly tell you about the night of August 24? A. He said that they had arranged—as far as he knew they had arranged with the husband for him to take his wife to 171—I think that is the number—on Second Avenue, and they were there watching for her to come.

Q. Who? A. Mr. Everingham said they were hiding back of the hedges.

Q. Who did he say was watching? A. Miss Castle, and they seen Mrs. Baldanza go in the house and Mr. Baldanza pulled away.

Q. What do you mean "pulled away"? A. In the car after he left her there, and then he went over and hid back of the hedge, and while he was hiding there somebody was crawling around the bush and he said, "Who is that?" So Mr. Baldanza was dressed in an old woman's dress, as an old woman, and he said, "Get up and out of there and take that dress off. The first thing you will be arrested with that costume on."

Q. What Mr. Baldanza did he mean? A. The husband, Harry.

Q. How long did he watch the house?

The Court: What difference does it make? The question is whether this woman

committed adultery on August 24, not whether somebody else was crawling around in the bushes. Mr. Everingham has already testified that he followed this woman and the corespondent in an automobile to the place where they were said to have been. That is the crux of Mr. Everingham's testimony.

Q. Did he tell you how long he watched this house on Second Avenue?

Mr. Quinn: Objected to.
The Court: Objection overruled.

A. Yes; about twenty minutes after the lady went in.

Q. And what happened after that? A. She came out, Mrs. Baldanza, and he followed her up the street. He said he saw her getting in a car and going away. He got in their car and went after her.

Q. Did he say who was with him? A. He said there was some man with her.

Q. Did he say who was with him? A. Yes; Miss Castle. I think Miss Castle and him. That is all.

Q. Did he say where they followed him? A. Yes. Up on the back road somewhere.

Q. Did he say as to what he had observed on the back road? A. All that he seen, he told me that he saw this man put his arm around her. I asked him if he seen anything wrong, anyone commit adultery that night, and he said no; he never seen anything in that way from the time he followed her, while he was on the case.

Q. Did he say whether or not he had on any occasion in following her observed anything improper on her part? A. He said he did not.

Cross-examination by Mr. Quinn.

Q. Did he say that they parked in this dark spot? A. No; he said they parked in the gutter, along the gutter. He didn't tell me anything about any hedge or anything like that.

Q. Did he say that it was at that point he saw him put his arm around her? A. No; it was after she got in the car, somewheres down in Long Branch.

Q. Did he say how long they parked in this spot? A. A very short time. I asked him how long and he said a short time.

Q. Did he tell you where it was? A. He did not mention the street, no.

Q. Did you ask him? A. Yes.

Q. What did he say to you? A. He said it was on the back road in Long Branch.

Q. Did you ask him what street it was? A. I don't know whether I did or not.

Q. You are a detective sent there by whom? A. By Mrs. Baldanza.

Q. By whom? A. Mrs. Baldanza.

Q. You do not recall now hether he told you just what street it was? A. He told me it was on the back street in Long Branch. That is all he told me.

Q. Did he describe the road to you? A. No.

Q. You are a detective, and you did not get a description of the road? A. No, sir.

Q. You went there for that purpose, didn't you? A. No, sir; I went there to find out about committing adultery.

By Mr. Fitzpatrick.

Q. Miss Castle asked you to save her, didn't she? A. Yes, sir; Miss Castle said that she was a sick woman and I told her it was not my fault that I was sent down to ask these questions. She didn't have to talk with me unless she wanted to.

Q. Did you have any conversation with Miss Castle? A. Yes.

Q. What did she say? A. Miss Castle said she didn't know anything about taking her to Passaic, that she would not have stood for that; that she didn't know anything about it until they were on the way. I asked Miss Castle did she have a gun with her that day. She said no, but Mr. Everingham had one. When I interviewed Everingham I asked him did he have a gun and he said no, but Miss Castle had one. I asked did he have handcuffs and he said yes.

Q. Did he say whether or not these handcuffs had been shown to Mrs. Baldanza? A. Yes; he said that Mrs. Baldanza had seen the handcuffs; that she tried to get out of the car and they were lying there.

Q. Where? A. When she tried to get out of the car at Red Bank. He said also that he had to pull his gun to save Baldanza from being bodily harmed in the house at Passaic.

Q. Saved whom from bodily harm? A. The brothers and the husband.

By the Court.

Q. You mean Mrs. Baldanza's brother? A. Mrs. Baldanza's husband's brother and her husband, and he said, "The first man lays a hand on him, I will blow his brains out." Those are the words he used to me.

Q. In your conversation with Miss Castle, did she intimate whether there was any condemnatory evidence against Mrs. Baldanza?

Mr. Quinn: Objected to.
The Court: Objection sustained.

Q. What did Miss Castle say of Mrs. Baldanza's actions when she was trailing her? A. She never saw anything wrong. She only saw his arm around her and that they were kissing.

Q. Did she say where that happened? A. In Long Branch before they got out on the dark road, the main road, and the lights were out then.

JOSEPH BALDANZA, sworn as a witness on the part of the defendant, testifies as follows:

Direct examination by Mr. Fitzpatrick.

Q. You are a brother of Mrs. Baldanza? A. Yes.

Q. Were you in your mother's house on the 25th of August when your sister was brought there? A. Yes.

Q. Did you hear anything said that day? A. Why, I heard——

Q. Whom did you hear speak? A. I heard the three persons, Andrew, John Mascia and Harry Baldanza.

Q. What did you hear Andrew Baldanza say? A. He said that my sister was caught in a room that evening and no more would go in that house, like that.

Q. Did he say anything else? A. He said that they were following her up and they had her telephone wire tapped and they got the goods on her.

Q. Did he say that in your presence to your mother? A. My mother could not understand what it was. She was all excited.

Q. Harry was there? A. Yes.

By the Court.

Q. Mascia and Harry and Andrew were all present with your sister at your mother's house when this conversation took place, when Andrew said that they had found her— A. Only three, the three of them were speaking together; I would not say which one.

Q. What else was said? A. Harry said that he was dressed up as a woman, like a woman, and that he hid himself behind the bushes.

Q. Harry said that, did he? A. Yes.

By Mr. Fitzpatrick.

Q. He told you that? A. Yes.

By the Court.

Q. What next? A. They told us what occurred?

By Mr. Fitzpatrick.

Q. Was that woman (indicating Miss Castle) in the room? A. Yes.

Q. And Mr. Everingham? A. Yes.

Q. Did you see anybody there with a pistol that day? A. When they came there I was coming out of the kitchen, coming through the parlor, and I saw this gentleman had his hand in his pocket like that (indicating).

By the Court.

Q. Did you see a pistol? A. Certainly I seen the handle of the pistol.

Q. Sticking out of his pocket? A. Yes.

Q. And he had his hand in his pocket? A. Yes; and the lady she had a pistol with a cream color like this paper, to cover it.

Q. Was that in her hand? A. Yes.

Q. Was the pistol covered? A. Yes.

Cross-examination by Mr. Quinn.

Q. They were forcing your sister out that day? A. I did not force her out of the house. I said, "You got your own home. You should go back where you came from." That is all I said.

Q. Didn't you threaten to kill her after she had confessed to you that she had committed adultery? A. I did not. I says to her, "That is not your own home. Go back where you came from."

Q. What were they talking about before you said that? A. They were talking that they caught her in a room and everything else.

Q. They accused her of adultery? A. Yes.

Q. What did she say? A. It was not true. "That is not true." She put it that way.

Q. What did your mother say? A. My mother could not say anything. She was all excited. She could not say a word.

Q. She did not stay in her mother's house, did she? A. Five or six minutes.

Q. Was not that because your mother put her out? A. My mother never said nothing to her.

Q. Why didn't your mother tell her to stay? A. Because I did not want her, because she had a home where she lived. I did not want to support her.

Q. You did not want to let her stay? A. Me?

Q. Yes. A. She got her own home.

Q. You put her out? A. I didn't put her out. I says, "You go where you came from."

Q. Didn't you put her out because she had committed adultery? A. No, sir.

Q. Did the detectives force her out of the house? A. No, sir.

Q. She testified that she was forced out of the house, that they dragged her out? A. They took her by the arms. They did not pull the pistol again, but they took her by the arms.

Q. Did they drag her? A. Yes.

Q. Why didn't you stop them? A. When a woman is married a brother hasn't anything to do with her any more.

Q. Not even to protect her when they see detectives dragging her out of the house? A. No, sir.

Q. You are a real estate broker? A. Yes, sir.

By Mr. Fitzpatrick.

Q. Whom do you do business with? A. Myself.

Q. At the time your sister came up there, your relations with your sister were not friendly, were they? A. Well, I was there a couple of weeks before that thing happened.

Q. I say your relations with Mrs. Baldanza, your sister, on August 25, were not very friendly, were they? A. No.

Q. You were not talking to her, in fact? A. No.

Mr. Quinn: I object to the leading questions.

(Defendant rests.)

REBUTTAL.

SAMUEL GRANDI, sworn as a witness on the part of the petitioner in rebuttal, testifies as follows:

Direct examination by Mr. Quinn.

Q. Are you subpoenaed here to-day? A. Not to-day, but the last time.

Q. By whom? A. I believe Mr. Harry Baldanza.

Q. Did you get a subpoena this time? A. No, sir.

Q. You are the person referred to to whose house Mrs. Baldanza went on the night of August 24? A. Yes.

Q. What time did she arrive at your house? A. About 8 o'clock.

By the Court.

Q. What time? A. About 8 o'clock.

By Mr. Quinn.

Q. About what time did she leave there? A. A quarter after eight or twenty minutes after. A very short time she stayed in my house.

Q. Now, you say you were subpoenaed by Harry Baldanza. Were you subpoenaed by him?

Mr. Fitzpatrick: I submit the witness has answered the question.

By the Court.

Q. Have you the subpoena? A. Not me, but my wife has.

The Court: Let me see it.

(Subpoena produced.)

By Mr. Quinn.

Q. Is that subpoena signed by Mr. Fitzpatrick? A. I guess that is it.

Mr. Fitzpatrick: It is not a subpoena for this man at all.

Q. Did you get a subpoena the last time?

The Cuort: Is it very materia lwho subpoenaed the witness?

By the Court.

Q. Mrs. Baldanza got to your house about 8 o'clock? A. 8 o'clock—about 8 o'clock.

Q. And left about what time? A. A quarter or twenty minutes after eight.

Cross-examination by Mr. Fitzpatrick.

Q. You are pretty friendly with Harry Baldanza? A. I am friendly with everybody.

Q. When did you check up on this time? A. Nobody checked up on this time, but I checked up because my wife came out of the hospital on the 23rd of August——

Q. I asked you when you checked up on the time? A. I checked up on the time, half-past eight, when I took my wife upstairs because she was a sick woman; just the day before she was out of the hospital; my wife came from the hospital the day before, on the 23rd.

Q. And Mrs. Baldanza was there about what time? A. It was about 8 o'clock.

Q. How long was she there? A. Fifteen or twenty minutes.

Q. Were you there all the time she was there? A. Yes.

Q. What did she talk about? A. She just said a few words to my wife. I offered to take her home in my car. She said, "No; I have to go down and do a little shopping and my husband will meet me downtown."

Q. Her husband was to meet her downtown? A. Yes.

Q. Did you see her husband that night? A. No, sir.

Q. He did not come up in your house? A. He came in front of my house and left his wife there.

Q. How do you know he came in front of your house? A. Because I looked through my front door —I have a French door—and I could see him, but Harry did not come in the house.

Q. What kind of a car did he have? A. A truck, I think it was.

Q. Do you ever take your wife out in a truck? A. Certainly, I am not ashamed to do it.

By Mr. Quinn.

Q. Did you tell the same story to Mr. Fitzpatrick before you went on the stand to-day?

Mr. Fitzpatrick: There is nothing in this record to show that he has ever met me before. I am surprised that counsel should make such a statement.

The Court: It is a proper question.

A. I never—this is the first time I came in court——

Q. You never spoke to Mr. Fitzpatrick? A. This is the first time I met him.

By Mr. Fitzpatrick.

Q. Did you tell Mr. Quinn that you told me that story before? A. No; I did not.

JOSEPHINE GRANDI, sworn as a witness on the part of the petitioner in rebuttal, testifies as follows:

Direct examination by Mr. Quinn.

Q. On the night of August 24, 1929, did Mrs. Baldanza come to your house? A. Yes.

Q. About what time? A. About 8 o'clock.

Q. How did she get there, do you know? A. She got there, her husband brought her down.

Q. How long did she remain there? A. About fifteen or twenty minutes.

Q. Then what did she do? A. Well, she went home and I said, "Why not let my husband take you home?" She said, "I have to go downtown and do a little shopping." I says, "Why don't you let my husband take you home, if you are in a hurry?" She says, "I have to go down to do a little shopping and my husband will meet me downtown. He went to a hotel to deliver some bread."

Q. Why did she tell you she was in a hurry? A. She had to go downtown to do a little shopping.

Cross-examination by Mr. Fitzpatrick.

Q. Whom does your husband work for? A. For everybody.

Q. Who does your brother work for? A. He used to work for Baldanza.

Q. At the time Mrs. Baldanza called, you were sick? A. Sure I was sick.

Q. You just came out of the hospital the day before, didn't you? A. Yes.

Q. How do you fix the time as 8 o'clock? A. Because we did not have supper until half-past seven and by the time my daughter washes the dishes it takes half an hour.

Q. Did you tell this story to anybody before today? A. No, sir.

Q. You did not? A. No, sir.

Q. You did not see Mr. Baldanza, did you? A. No, but he——

Q. Did you see him? A. My husband saw him.

Q. You didn't see him hanging around outside your house, did you? A. No, I did not.

Q. He did not come into your house, did he? A. No.

Q. He did not come in? A. No.

Q. What did Mrs. Baldanza come to your house for? A. To pay me a visit. I was sick.

Q. You were glad to see her, were you? A. Sure.

Q. Her husband did not think enough to come in and see how you were although you had come out of the hospital the day before? A. If my husband was sick he would come in, but I was sick.

Q. Did you hear her testify that she came there because her husband told her? A. No.

Q. You did not hear her testify to that here today? A. No.

The Court: I understand that the case is not closed so far as the defendant's cross-petition is concerned. Further testimony in support of the defendant's cross-petition depends upon the outcome of the decision on the petitioner's petition for divorce.

(At this point adjournment is taken to Wednesday, May 28, 1930, at 10 o'clock in the forenoon.)

(Further adjourned to Wednesday, June 18, 1930, at 10 o'clock in the forenoon.)

(Court met pursuant to adjournment this 18th day of June, 1930, at 10 o'clock in the forenoon.)

(Appearances as heretofore.)

(Argument of counsel.)

The Court (orally at close of argument): The evidence in support of the petitioner's petition is directed to show that the defendant committed adultery with the co-respondent, Napolitano, on the night of August 24, 1929. The testimony of the petitioner and two other witnesses is that they saw the defendant and Napolitano in an automobile that night, showing acts of affection, and that they followed them to a lonely place on the outskirts of Long Branch, where the Napolitano car stopped, had its lights turned out and remained for upwards of twenty minutes and then returned to Long Branch. This testimony is denied by the defendant and Napolitano. They say they were not together that night and did not go to the place mentioned. The witnesses who corroborate the petitioner's story of following the defendant and Napolitano that night are paid detectives, and while their testimony is competent, it must be scrutinized carefully and must not be relied on, in the face of the defendant's denial, unless other evidence gives it support.

The defendant was out and alone the night in question. She was taken by the petitioner to visit

a friend, Mrs. Grandi, who was ill. She says she arrived at the Grandi home about 9.15 P. M., and remained twenty minutes, walked to a nearby shopping district, made a purchase, looked in store windows, took a bus and was home by 10 P. M. The petitioner and his two detective witnesses testify that she reached the Grandi home at 8 P. M. and left at 8.15 P. M. In this they are corroborated by Mr. and Mrs. Grandi, who also say that Mr. Grandi offered to take her home but that she refused his offer, saying she had to meet her husband, which was untrue, and the petitioner and his witnesses say she met Napolitano, evidently by appointment, shortly after leaving the Grandi house.

The next morning the defendant was taken in an automobile by the petitioner and his brother to her mother's home in Passaic. Up to that time her husband had not charged her with misconduct the night before and she says they used a subterfuge to induce her to enter the automobile. At Red Bank, while on the way to Passaic, she was told she had committed adultery the night before and that they were taking her to her mother's. She said she tried to get out of the car but her brother-in-law restrained her and then another automobile containing the detectives came up and she was told she was under arrest and a show of force intimidated her. This was on a Sunday morning in August on a busy highway, on which it is well known that automobiles are constantly passing and repassing and yet, if she was an innocent woman, she did not cry out for help and protest the outrage against her but allowed herself to be taken to her mother's home many miles away.

The whole party proceeded to the defendant's mother's home at Passaic—and I digress here to suggest that if the petitioner and detectives were,

what is known in detectives' parlance as "framing" the defendant and Napolitano, they would not have accompanied the defendant to her mother's home to hear her denounce them as liars, but would have reserved their lies for court proceedings. Upon arriving at Passaic and in the presence of defendant's mother and brother, the defendant was charged with being an adulteress. The petitioner and the detectives say that her mother asked her if the charge was true and that the defendant admitted it and that the mother and brother thereupon turned her out of the house. She admits that in the presence of her mother and her brother she was charged with adultery but denies that she admitted guilt. She is vague as to what she did say to her mother and brother with respect to the charge. Her mother testified that after the charge was made the defendant said nothing to her and that she said nothing to the defendant, a situation almost unbelievable as between mother and daughter, especially if the daughter protested innocence. Her brother says that the defendant said the charge was not true, but he ordered her out of the house because it was not her home and he was not on friendly terms with her. The defendant says she wanted to remain at her mother's home, but evidently neither mother nor brother wanted her, from which it seems a fair inference that something occurred there that day, or something was said by the defendant, which turned the mother and brother against her. At any rate, she made no serious attempt to convince these near relatives of her innocence and they made no effort to harbor her against her accusers. The defendant says she went unwillingly. The party stopped at a restaurant—I think

it was in Passaic—and she remained outside in the automobile with her brother-in-law for twenty minutes or more without attempting to escape to her sister's home in Passaic, for she had a sister living there. The party returned from Passaic over the same well travelled route, without any call for help passing her lips, and at Asbury Park she was taken to a rooming house where accommodations were arranged for her and where she remained from that Sunday night to the following Tuesday morning. Either that Sunday, on the way back from Passaic, or the following day, the detectives took the defendant to the recorder (I believe he was) of the Borough of Deal. The defendant says it was Sunday, August 25. The detectives and the recorder say it was Monday, the 26th; and there the recorder says she made a voluntary statement after he had told her she was not required to do so, which statement the recorder reduced to writing and she signed and swore to it. In this statement, while she did not admit committing adultery she said she had met Napolitano several times during the past three months and had been with him in his automobile parked at the spot where the petitioner and the detectives say they saw them, and she further said in this statement that she and Napolitano had kissed each other. The defendant says she was told to sign the paper so that she could get the custody of her children; that she made no statement to the recorder of her relations with Napolitano and that she signed the paper without reading it. When the defendant signed this statement she knew she was charged with adultery and that she had been brought before a judge or recorder by persons who were witnesses against her, and yet she would have

me believe that she signed a writing without knowledge of its contents and that the recorder committed perjury when he testified she actually made the statement to him.

She remained at the Asbury Park boarding house from Sunday night to Tuesday morning. She knew she was not under restraint, for there was no one there to restrain her. She was allowed to use the telephone and she left the house alone at least twice before she finally left of her own volition. I cannot think that a woman under charges which she now says were false would have remained voluntarily away from relatives and friends, rather than make instant appeal to them for advice and aid.

The woman who kept the boarding house testified that the defendant told her she had been out with a fellow and got caught and she further testified that the defendant made a telephone call and thereafter told the housekeeper that the call was to her boy friend and that she had told his sister to tell John (which is Napolitano's first name) not to go to the petitioner's store, as there was trouble. The defendant denied that she had said she had been caught and she denied the telephone call, but in support of the boarding house keeper's testimony concerning the telephone call, there was produced what purported to be a record from the telephone office showing a call from that house that day to the place where Napolitano worked, or had his headquarters. Counsel for the defendant seeks to explain the telephone call by suggesting that the boarding house keeper made the call to Napolitano's place of business or place of employment as part of the frameup of the defendant and for the purpose of furnishing evi-

dence, either by getting Napolitano to come to the house to see the defendant or by having a record of a telephone call from the house to Napolitano at the time the defendant was in the house, but the boarding house keeper, on the stand, testified apparently as a wholly disinterested person. She seemed to be a woman of credibility and respectability and there was no attack made upon her reliability as a witness, and to accept the theory advanced by the defendant I must find (for which there is no basis in the testimony) that this boarding house keeper was a conspirator with the others in devising a plot which would convict the defendant.

The defendant testifies that Napolitano's calls at the petitioner's store were only on business and that when the petitioner was away such calls lasted only long enough for the transaction of business, but there is testimony by four or five witnesses that Napolitano came frequently while the petitioner was absent and remained much longer than was necessary for business purposes and that the defendant and Napolitano were on friendly terms. The incidents testified to by these witnesses were harmless in themselves; it is the defendant's denials, contradicted by so many witnesses, which count against her.

Upon consideration of all the evidence and the corroboration, by facts and by circumstances and by inferences to be drawn therefrom, of the testimony of the petitioner supported by the detectives, I am led to the conclusion that what the petitioner and the detectives say occurred on the night of August 24, 1929, is true and that the defendant committed adultery with Napolitano that night.

Mr. Quinn: What has your Honor to say as to the cross-petition?

The Court: Nothing is to be said as to the cross-petition filed for maintenance and support, except to say that the cross-petition under the evidence should be dismissed.

Mr. Quinn: And as to the custody of the children?

The Court: I feel that because of their age they should not be taken away from their mother, notwithstanding that I have found her guilty of adultery. She evidently is a good mother and very fond of the children. The petitioner should, of course, have the right of visitation to the children and there should be a provision made for the support of the children by the father while they are in the mother's custody. If you can agree upon the amount and terms of visitation, I will incorporate that agreement in the decree. If you cannot agree, I will have to fix the terms myself.

Mr. Fitzpatrick: I would like to ask for a counsel fee.

The Court: It is my custom not to allow a counsel fee to the wife who defends a petition for divorce on the ground of adultery, where the facts convince me that the defending wife is guilty of the charge. In other words, I do not feel that I ought to penalize the husband by taxing him with a counsel fee for the presentation of what I have found to be not a meritorious defense. I understand there was a temporary counsel fee.

Mr. Fitzpatrick: There was $150 allowed, which did not pay but a small portion of the expense.

The Court: I cannot allow a counsel fee in this case.

Exhibit P-1.

STATE OF NEW JERSEY }
COUNTY OF MONMOUTH } ss.:

I, JOSEPHINE BALDANZA, being of full age on my oath saith that I have known John Napoli for a period of three months that during that time I have met him several times and gone with him to ride in his motor car at night without the permission and unknown to my husband. We have parked the car within the vicinity of Norwood Avenue, in the City of Long Branch, for periods lasting between ten and twenty minutes. I have made appointments to meet him by telephone on several occasions. I have kissed him, and he has kissed me. I am willings to agree to a legal separation between my husband and myself provided I can have the custody of my two children, and further agree that at the request of my husband that I will not enter his home without a request by him so to do.

(Signed) JOSEPHINE BALDANZA.

Sworn and subscribed to before me
this 26th day of August, A. D. 1929.

(Signed) JOSEPH M. COX,
Justice of the Peace.

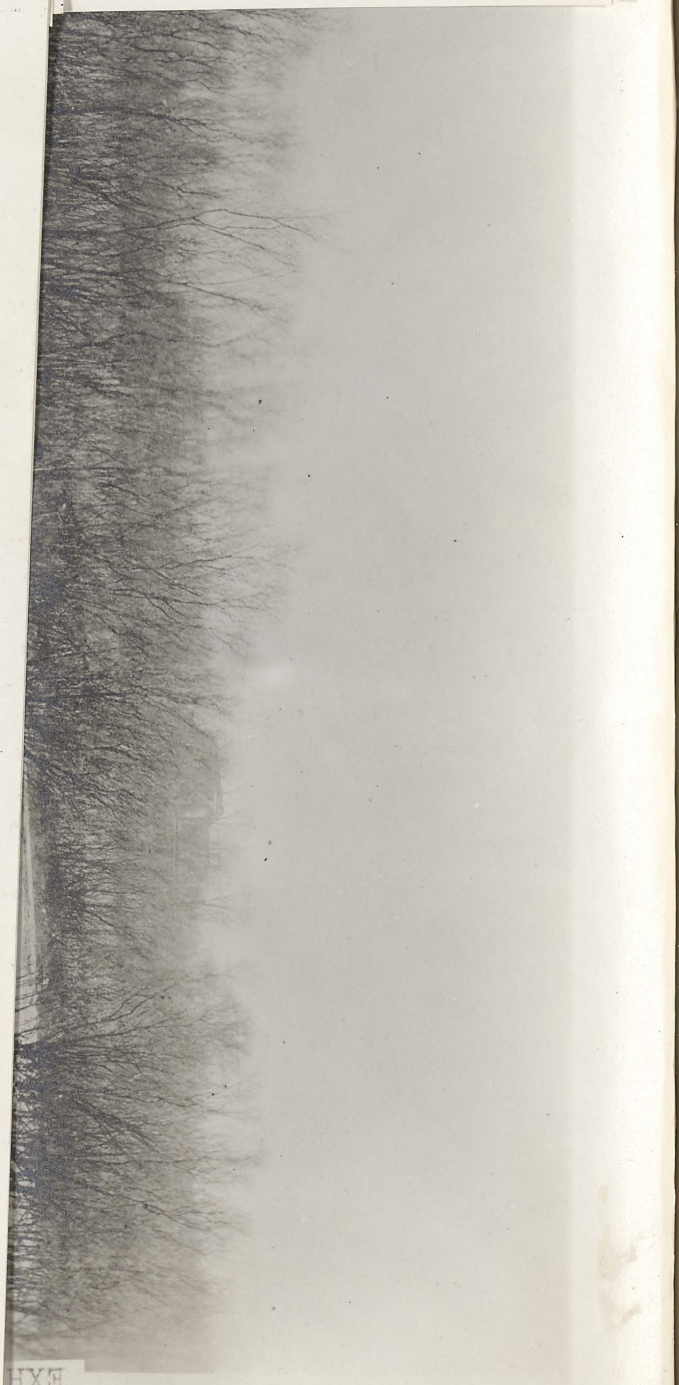

EXHIBIT "P" 2.



EXHIBIT "P" 3.



Decree Nisi.

(Filed October 3, 1930.)

This cause coming on to be heard in the presence of Quinn, Parsons & Doremus, of counsel with the petitioner, and Viviano & Kehoe and Joseph Fitzpatrick, of counsel with the defendant, upon petition, answer, cross-petition and answer thereto, and upon proofs taken in open court; and the court having read, heard and considered the pleadings and proofs in the cause and the arguments of counsel; and it appearing that the petitioner and defendant were joined in the bonds of matrimony on or about April 20, 1924, and that the defendant has been guilty of the adultery charged against her in said petition; and that at the time the cause of action for divorce therefor arose the petitioner and defendant were bona fide residents of this State and that they have continued so to be down to the time of the commencement of this action; and it further appearing that jurisdiction herein on said petition has been acquired by personal service of process upon the defendant within this State, as well as by the appearance and answer of the defendant and her cross-petition filed against the petitioner; and it further appearing that the defendant has failed by her proofs to sustain the allegation of her cross-petition, and that the same should be dismissed:

It is thereupon, on this 3rd day of October, 1930, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, Ordered, Adjudged and Decreed, and 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, does hereby order, adjudge and decree that the said cross-petition of the defendant, Josephine Baldanza, be dismissed and that the said petitioner, Harry Baldanza, and the said defendant, Josephine Baldanza, be divorced from the

Amended Notice of Appeal.

(Filed January 9, 1931.)

The defendant hereby appeals from so much of the decree nisi made in this court, in the above entitled cause, on the 3rd day of October, 1930, as orders, adjudges and decrees that the petitioner, Harry Baldanza, and the defendant, Josephine Baldanza, be divorced from the bonds of matrimony for the cause of adultery, and that the said parties, and each of them, be freed and discharged from the obligations thereof, unless within three months from the date thereof sufficient cause be shown why said decree should not be made absolute, to the Court of Errors and Appeals in the last resort in all causes.

The decree nisi herein appealed from was made by the Honorable Edwin R. Walker, Chancellor of the State of New Jersey, and advised by the Honorable James F. Fielder, one of the Vice Chancellors of the Court of Chancery of the State of New Jersey.

CHANDLESS, WELLER & SELSER,
Solicitors for Defendant.

JOHN E. SELSER,
Of Counsel with Defendant.

I conceive there is good cause for appeal in the above stated cause.

JOHN E. SELSER,
Of Counsel with Defendant.

Petition of Appeal.

(Filed January 23, 1930.)

To the Honorable, The Court of Errors and Appeals, in the last resort in all causes:

The petition of Josephine Baldanza, the appellant, in the above stated cause, respectfully shows that your petitioner finds herself aggrieved by a decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 3rd day of October, 1930, in a cause above entitled, to wit, an action brought by the said Harry Baldanza against your petitioner for divorce upon the ground of adultery in this respect, to wit, that the said decree orders, adjudges and decrees that the said Harry Baldanza and your petitioner be divorced from the bonds of matrimony for the cause of adultery adjudicated to have been committed by your petitioner, and that the parties to said suit, and each of them, be freed and discharged from the obligations thereof, unless within three months from the date of said decree sufficient cause be shown why the said decree should not be made absolute.

Your petitioner appeals from that portion of the decree which decrees, as aforesaid, upon the ground that the same is erroneous in that, the evidence did not warrant the court in finding that your petitioner was guilty of the charge of adultery.

That the said Court should have dismissed the petition filed by the said Harry Baldanza against your petitioner.

Your petitioner therefore prays that the said decree of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that the record may be remitted to the said Court of Chancery with direc-

tion to dismiss the petition filed by the said Harry Baldanza against your petitioner, and that your petitioner may have such other and further relief in the premises as to this Honorable Court shall seem meet.

CHANDLESS, WELLER & SELSER,
Solicitors of Appellant.

JOHN E. SELSER,
of Counsel with Appellant.

New Jersey Court of Errors and Appeals

Between: HARRY BALDANZA, Petitioner-Appellee, and JOSEPHINE BALDANZA, Defendant-Appellant.	On Appeal from the Court of Chancery.

BRIEF OF THE PETITIONER-APPELLEE.

STATEMENT.

The defendant, Josephine Baldanza, prosecutes this appeal from a decree of the Court of Chancery entered on October 3, 1930, granting a divorce to the petitioner on the ground of adultery with one John Napolitano. A petition was filed by Harry Baldanza charging that his wife, the defendant, committed adultery on August 6, 1929, and on August 24, 1929, with John D'Appoli.

The petitioner and defendant were married in 1924 and thereafter took up their residence at Long Branch, where the petitioner was a grocer and baker. Two children were born of the marriage.

In March, 1928, the co-respondent, Napolitano, came to the petitioner's store and there met the defendant. She was impressed with him on first sight and remarked what a fine looking fellow he was. After that Napolitano continuously visited

the defendant, who kept her husband's store while the husband conducted a bakery route, delivering provisions. He would visit with her for long periods of time, and called her by her first name, "Josephine." When the boys who took care of the store or worked part time in the store were present, Napolitano and the defendant would send them on errands or else would go to the kitchen, leaving the boys in the store, and on at least two occasions Napolitano and the defendant were seen in the kitchen adjoining the store, where the defendant was furnishing food or refreshments to the co-respondent. The girls who took care of the children or helped in the store saw Napolitano and the defendant together many times. He rarely called when the petitioner was home but customarily came in his absence. Both the defendant and Napolitano sent these girls, who took care of the children or helped in the store, out of their presence when they were together.

Mrs. Baldanza, the mother of the petitioner, remonstrated with the defendant because of her evident interest in Napolitano.

On one occasion, the defendant met Napolitano on the beach at Long Branch. The defendant was accompanied by one of the girls who assisted in taking care of the children. This girl was sent away on an errand while the two remained together. These girls were in the store on many occasions in the evening when Mrs. Baldanza would leave the children in charge of one or the other of the girls with the advice that she was going downtown and if her husband came in to say that she had just left.

On various occasions she came in late at night. Finally, in August, 1929, the petitioner employed a detective, who trailed Mrs. Baldanza and saw her get into the car of Napolitano. The detective trailed the defendant and Napolitano but finally lost them. She reported this to the petitioner, who was astounded, but requested that he be allowed to accompany the detective the next time his wife was shadowed.

On August 24, 1929, the petitioner took his wife down to see Mrs. Grandi, who had just returned from the hospital. She told him at that time that she was going downtown shopping and then would come home. Petitioner waited outside, in company with Miss Castle and a constable. Mrs. Baldanza remained in the Grandi home for twenty minutes. She then came out and walked down the street to Broadway, Long Branch, where she was followed. There, the defendant entered the car of the co-respondent, Napolitano, and by devious and roundabout streets finally reached a secluded street leading to the old ball park. This street was guarded by hedges ten feet high. The car was driven in between these hedges, the lights turned out and the defendant and the co-respondent remained there alone with the lights out in the car between the hedges for twenty minutes. Then they backed out and went back to Broadway, where the defendant alighted from the car and eventually came home.

The next morning, in accordance with an Italian custom, the erring wife was taken by her husband, in company with his brother, another friend and the two detectives, to her mother's home in Passaic. There, in front of the mother and brother of the defendant, the petitioner accused

her of having intercourse with the co-respondent, Napolitano. According to petitioner's witnesses, the defendant broke down and cried and admitted her guilt. Her own mother then drove her from her home. She approached the detective and asked the detective to take her to Asbury Park. There she obtained a room with a boarding housekeeper. While at the boarding house, the defendant told the boarding housekeeper that she had been caught doing wrong with her boy friend. In the landlady's presence she called her boy friend on the 'phone and told him to stay away from her husband's store. She also called her sister and asked her sister to see if she could not fix it up.

That night, in an endeavor to do something whereby she could get her children, in company with the detective, she went to a Justice of the Peace of Monmouth County, who is also the Recorder of the Borough of Deal. There, before the Recorder, she signed an affidavit which the Recorder said she did willingly after he had read it to her. In this affidavit she stated that she had known John Napolitano for a period of three months, had met him several times and had gone riding with him in his motor car at night without the permission of her husband. She said she had made it a point to meet him by telephone, had kissed him and he had kissed her. This story, offered by the petitioner, was supported in various particulars by ten witnesses. The detective and the constable who assisted the detective were called as witnesses and testified as to the occurrences of August 24th. The landlady, where the defendant stayed and to whom the defendant stated that she had been caught in the act with

her boy friend, appeared, as did three young men who had worked in the store and observed the relationship between the defendant and her inamarato. Two girls who attended the children of the defendant appeared. Mr. and Mrs. Grandi corroborated the time. The defendant and the co-respondent, Napolitano, both appeared. Napolitano denied that he had ever had Mrs. Baldanza in an automobile; that he had ever kissed her; that he had ever talked to her in an affectionate way; that Mrs. Baldanza, the mother of the petitioner, had ever complained to him. He denied that he was ever out with the defendant; that the boys and girls who worked in the store were ever sent out of the store by Mrs. Baldanza when he came there; that he was ever out in the kitchen alone with Mrs. Baldanza; that he had ever talked to Mrs. Baldanza since August 24, 1929, or that he had ever sent any message to her.

The defendant also entered a general denial. She said that she was dragged into her mother's home, but would give no reason why she was unwilling to go in. She admitted her mother said nothing when her husband accused her of adultery. Though she said that she was practically kidnapped, she remained for three hours on a public street and made no outcry. She denied making any telephone calls at the boarding house. She denied that she had told the landlady that there had been any trouble about her boy friend. She denied that she knew, although she was a graduate of grammar school, what was in the affidavit signed before Judge Cox and denied the truth of every statement in that affidavit. She denied that she ever met Napolitano; was ever in his car or ever went to Norwood Avenue. She

denied that she left the Grandi home at 8:30. She had never, according to her story, left her children in the care of others or told those in charge of the store when she was out that she had just gone out. She said she knew nothing about the letter from Joseph DeSantis which was found in her trunk and which was handed to her. Her sister, her brother, her mother and her sister's husband completed her defense. Her mother, when her daughter was accused at Passaic of being a whore, admitted that she said nothing. The mother said that the defendant did not deny the charge, and defendant's own brother said nothing. The mother said she understood the accusation that had been made against her daughter. This, in brief, is the story of the testimony offered at a hearing lasting two days.

At the conclusion of the hearing the learned Vice Chancellor awarded a decree to the petitioner. This decree is attacked on this appeal on four grounds by the defendant. In the argument the defendant entirely ignores the effect of the confession but directs the argument entirely to the ground that there was no evidence of adultery; that there was no corroboration of the detectives, and that the petitioner connived or consented to the relations between the defendant and the co-respondent. The appeal presents essentially a factual question and a construction of the evidence. The Vice Chancellor, who saw and heard the witnesses and observed their demeanor on the stand, disbelieved the defendant and her witnesses, and, on oral opinion, clearly stated the grounds for his disbelief of their testimony and his belief of the testimony of the petitioner and his witnesses.

ARGUMENT.

I.

AMPLE PROOF WAS OFFERED OF ADMISSIONS BY THE DEFENDANT OF ADULTERY WITH THE CO-RESPONDENT.

It is an Italian custom that where a wife errs, sins and is unfaithful to her husband, the husband returns her to her own home from which he took her. This was done in the present case after the husband had seen the defendant go off with the co-respondent to a secluded section and remain there with lights out for some period of time. The defendant, the next day, was taken back to her mother's home in Passaic.

Harry Baldanza said:

> "Q. Tell us what you said. A. I told my mother-in-law that she was going around with John Napolitano and she was having intercourse with John Napolitano, and her mother asked her was it true, and she says it is. When her mother and her brother was there and she admitted it, her mother and brother chased her out of the house.
>
> "Q. Her mother was present when she said, yes, it was true? A. Yes, her brother and her mother.
>
> "Q. They chased your wife out of the house? A. They chased her out of the house and I was left there. My mother-in-law told me she that was was going to come up to my house and take care of my children and take care of me, and 'Do not bother with her any more' " (p. 24, ll. 27-41).

Emmett Everingham, a constable of Monmouth County, went to Passaic when the defendant was returned to her mother. He said:

> "Q. What did you hear in English? A. Her brother asked Miss Castle to tell him what we had seen, and she told him the times we had followed her and what we had seen, and he turned to her sister, Mrs. Baldanza, and asked her if that was the truth, and she said yes. He said, 'Is it all true?' She said, 'Yes.' He immediately told her to go out of the house, she was no longer a sister of his" (p. 62, l. 33 to p. 63, l. 2).

Marie Castle, the detective, said:

> "A. At the time her brother asked her, 'Is this really true?' She turned around and said, 'Yes, but it only happened twice.' He said, 'Do you mean to tell me that you were out with this man unbeknown to your husband and that you went and did wrong?' She said, 'Yes, but it only happened twice' " (p. 88, ll. 1-11).

Defendant's own mother said:

> "Q. What was said when your daughter was brought in by whom? A. Andrew Baldanza said to me, 'Here is the whore of your daughter. We found her in a hotel' " (p. 222, ll. 17-23).
>
> "* * * Q. Did your daughter deny the charge, A. My daughter did not speak at all" (p. 222 l. 36).
>
> "* * * Q. I don't care what they told you. I am asking you what you understood they meant. A. Yes; I understood the nature of the accusation.
>
> "Q. You said nothing to your daughter about it? A. I didn't say anything to my daughter" (p. 224, ll. 22-27).
>
> "* * * Q. When Andrew Baldanza remained a few minutes after she went out

> of the house and told you that she had done wrong, didn't you say to him, 'If you had told me this before I would have stopped her?' A. Yes; I said that to him, why didn't he tell me'' (p. 226, ll. 32-40).

This defendant was taken to her own home. Even her mother admits that there in her own home, in the presence of her mother and her brother, she was accused of infidelity. Petitioner's witnesses stated that at the time the name of the co-respondent was mentioned, defendant, in the presence of her mother, admitted the truth of the accusation. The mother states that her daughter was accused of infidelity and adultery and that when the accusation was made her daughter said nothing. The defendant, herself, admits that the accusation was made but said that she denied it. She is thus contradicted by her own mother. She is contradicted by her husband and she is contradicted by the two witnesses.

As was said by Vice Chancellor Fielder in his oral opinion:

> ''The petitioner and the detectives say that her mother asked her if the charge was true and that the defendant admitted it and that the mother and brother thereupon turned her out of the house. She admits that in the presence of her mother and her brother she was charged with adultery but denies that she admitted guilt. She is vague as to what she did say to her mother and brother with respect to the charge. Her mother testified that after the charge was made the defendant said nothing to her and that she said nothing to the defendant, a situation almost unbelievable as between mother and daughter, especially if the daughter protested innocence. Her brother says that the defend-

> ant said the charge was not true, but he ordered her out of the house because it was not her home and he was not on friendly terms with her. The defendant says she wanted to remain at her mother's home, but evidently neither mother nor brother wanted her, from which it seems a fair inference that something occurred there that day, or something was said by the defendant, which turned the mother and brother against her. At any rate, she made no serious attempt to convince these near relatives of her innocence and they made no effort to harbor her against her accusers" (p. 251, ll. 12-39).

This synopsis of the confession by the Trial Court is clearer and briefer than any synopsis counsel can make. There would seem to be no question that a confession took place and that the defendant admitted her guilt.

However, this is not the only instance of a confession. A disinterested and independent witness, whom the Court described as "a woman of credibility and respectability" (p. 254, l. 12), Mrs. Vandenschotten, said:

> "A. She just said that she had trouble, that she was out with a fellow and got caught" (p. 79, ll. 33-35).

She also told Mrs. Vandenschotten that "she had been to her mother's house and her mother had thrown her out" (p. 80, ll. 8-9).

Here was a confession to Mrs. Vandenschotten. In addition to this, the defendant went before Joseph M. Cox, Recorder of Deal, and there voluntarily made an affidavit which is set forth in full at page 256 of the State of Case. In this affidavit, which Judge Cox states she made volun-

tarily, she swears that she had been out with John Napoli several times without the permission of her husband; that she had parked in the vicinity of Norwood Avenue; that she had kissed him and he had kissed her.

In conjunction with the conduct of the defendant with the acts which were observed by many witnesses, these admissions and confessions are proof beyond doubt.

Confessions supported by facts which corroborate the guilt of the defendant are admissible and accepted as evidence of that guilt.

In *Summerbell* v. *Summerbell,* 37 N. J. Equity, p. 603, the Court of Errors and Appeals affirmed the opinion, in which there is an extensive discussion of the effect of a confession. The following elements were laid down in this case:

(1) Confession must be free from collusion.

(2) Confession must be made freely and without compulsion or undue influence on the part of the husband.

(3) Confession must not have been presented by the husband as a means of formal proof.

In *Garrett* v. *Garrett,* 86 N. J. Equity, p. 293, Chancellor Walker held that a confession when corroborated by other evidence was proof.

In *Foster* v. *Foster,* 93 N. J. Equity, p. 182, the Court of Errors and Appeals held that a confession or admission corroborated by other evidence is sufficient to sustain the decree.

Mrs. Baldanza, the defendant, first confessed and admitted her guilt in the home of her mother

and in the presence of her brother. In this home, where she had been reared and nurtured from childhood which she had left in marriage, she had the right to feel, if innocent, that she would receive every protection and care that an innocent woman would expect. Here, in her mother's home, with her brother present, she, if any place, could rightfully defy and deny an accusation of infidelity.

The Italian race, from the evidence in this case, looks upon such an offense in all its true seriousness and gravity. The guilty woman was taken back to the mother who had reared her. There, in the presence of the mother, she was accused of consorting with the co-respondent, Napolitano. In her mother's presence, in her mother's own words, she did not deny the accusation. The mother says she said nothing. Three witnesses for the petitioner state that she admitted her guilt. The mother of the defendant, called as a witness for her, appearing for her own child, would not go to the length of testifying that the defendant insisted upon her innocence. When the mother of the defendant would not do this, it is unquestionable that the testimony offered by the petitioner is true, that the defendant did admit her guilt. When the circumstances pointed out by the Trial Court that the mother and brother refused to take her into the home, but let her go away, when they knew that petitioner would not take her back, this corroboration confirms the confession.

She again admitted, under no compulsion whatsoever, to the landlady, Mrs. Vandenschotten, that she had been caught with her boy friend and there was trouble at home.

Defendant again admitted in the sworn affidavit before Judge Cox, that she had been out in the company of the co-respondent, Napolitano, without the knowledge and without the consent of her husband; that she had been several times on Norwood Avenue, and that they had treated each other affectionately. To these confessions must be added the evidence that for some period of months she and Napolitano were on intimate terms with each other; that he daily came to the store and talked with her; that frequently she sent away on errands the boys and girls who worked in the store or cared for the children.

In addition to this is the testimony of three witnesses concerning the night of August 24, 1929. The petitioner, the constable and the detective all trailed her. She was seen in the car with the co-respondent. He placed his arm around her. She laid her head affectionately on his shoulder. They drove by devious and indirect routes to an isolated, secluded and hidden section on the outskirts of the city. There they turned the lights of the car out and remained for approximately one-half hour. Upon her return she told her husband that she had been in Long Branch. The testimony of these three witnesses, together with her own confession before her mother and her brother, with her confession before the landlady, with her confession in the sworn affidavit, conclusively prove the commission by this defendant of the act of adultery with the co-respondent, Napolitano.

Albert Mazzatto, a druggist with a store next door to the Baldanza bakery shop, saw Napolitano there three or four times a week with Mrs. Baldanza. On one occasion he saw Napolitano and Mrs. Baldanza in the kitchen eating together (p. 113).

The mother of petitioner, Mary Baldanza, spoke to her daughter-in-law and told her she did not like her intimacy with Napolitano. The defendant said "What can I do?" Then Mrs. Baldanza, the mother, told her of certain examples, and the defendant answered, "What do you take me for—a bad woman" (p. 116)?

Marie Castle, a private detective hired by the petitioner on August 6, 1929, followed Mrs. Baldanza into several stores and then down to Union Avenue. She got into a car with the co-respondent, Napolitano. The car went out to West Long Branch, stayed there for five minutes and then left (p. 81).

On August 24th, by arrangement with Mr. Baldanza, Miss Castle trailed the defendant. The defendant left 171 Second Avenue, Long Branch, around 8:30 and went to Broadway. There she entered the automobile of Napolitano and was driven by a devious route to Archwood Avenue, where it was lonesome and dark and secluded by high hedges. There the car lights were turned out (p. 83). Mrs. Baldanza and Napolitano remained there twenty minutes, and then left and by a different route returned to Broadway.

On cross-examination, Miss Castle told of the statement made by the defendant before Judge Cox. The defendant wanted to secure her children and offered to make this statement in the

belief that if she did so her husband would give her the children (p. 95, l. 10).

On examination by the Vice Chancellor, Miss Castle stated that Napolitano had his arm around the defendant and she was down in the seat with her head on his shoulder (p. 103, l. 12).

Emmett Everingham (pp. 52 to 74) corroborated in every detail the story of Miss Castle, as did the petitioner, Harry Baldanza.

To contradict this story, John Napolitano, the co-respondent, first took the stand for the defendant (p. 127). He testified that he never took Mrs. Baldanza out (p. 128, l. 28); never had her in an automobile (p. 129, l. 18); was not with her on Archwood Avenue on August 24, 1929 (p. 128, l. 28); that he had never embraced Mrs. Baldanza (p. 130, l. 18); that he didn't know when Mrs. Baldanza went to Passaic (p. 130, l. 40); that the boys and girls who worked in the Baldanza store were never sent out when he came there (p. 132, l. 37). He knew that he had been charged with going out with Mrs. Baldanza (p. 133, l. 28), but was unable to give the name of anyone who had told him about it (p. 133, l. 30).

The defendant, Josephine Baldanza, testified that she left Mr. Grandi's house and went to Broadway, visited a few stores and then went home (p. 150). She denied that she had ever been in the vicinity of Norwood Avenue or that she had ever had a telephone conversation with Napolitano (p. 184, l. 40). She said she left the home on Second Avenue where she was visiting on the evening of August 24, 1931, at 9:10 (p. 187, l. 32). She denied that she met Napolitano but admitted that she did not reach home until

around ten o'clock (p. 188). She denied that the girls who had testified ever took care of the children (p. 189, l. 38). She said she never told any of those who worked in the store that if her husband asked what time she came in to tell him that she came in around eight o'clock (p. 190, l. 18). She then immediately contradicted herself and spoke of Margaret Calabretti, who used to take care of the children (p. 191, l. 28). She finally admitted meeting Napolitano on the beach (p. 192, l. 12); that the little girl went away (p. 192, l. 28) and that she was sent away by Mr. Napolitano (p. 192, l. 29). She denied that she had ever received the letter offered in evidence at page 196 but recognized the picture (p. 197). She denied that Napolitano was ever in the kitchen of her home (p. 198).

The picture presented by this testimony is that of an intimacy testified to by four different people who had worked in the store and had observed the conduct of the defendant and Napolitano; by a druggist in the adjoining store who had observed the same condition. In addition to this, the defendant is flatly contradicted by Mr. and Mrs. Grandi (pp. 244 and 247) who both stated that she left their home on August 24th at 8:30. Neither of these witnesses, nor the boys and girls, nor the druggist, had any interest one way or the other in the case. Mrs. Baldanza, however, flatly contradicted them. It was important for her to account for the time between 8:30 and 10 o'clock when she arrived home. For this reason, she stated that she did not leave the Grandis until 9:10. The detective, the constable and the petitioner all stated that she left there at 8:30 and that they followed her and Napolitano to the

trysting place in Archwood Avenue. Mr. and Mrs. Grandi corroborate the evidence of these three witnesses in the time that she left their home. She therefore could not account for the time between 8:30 and 10 o'clock.

Napolitano was flatly contradicted by the boys and girls who worked in the store, by an employee of the bakery shop and by the druggist.

The position of the two guilty parties is that of a general denial, with no explanation whatsoever of their conduct. Inclination is apparent in the intimacy between the two, in the confidential relations exhibited by the two, in the desire to be alone, in dismissing the various employees from their presence when together. The inclination is apparent in the attitude each showed to the other when observed by petitioner's mother and in her answer when both the mother and petitioner objected to her actions and conduct when in the company of the co-respondent.

Opportunity was certainly present when the two, by devious and roundabout route, pursued their way to a spot prepared by nature as an ideal lovers' meeting place. This spot, as evidenced by the pictures, away from the beaten highway, on a by-street, surrounded by high hedges, with a narrow entrance, offered an ideal location for the consummation of their guilty desires. When these desires were satisfied conscience struck the defendant. Overcome by a sense of guilt, in her mother's presence and her brother's presence, she confessed. She again confessed to her landlady and before the Recorder. The entire picture, with each separate act and with each separate bit of testimony completing the whole, is that of an un-

faithful wife who knows that she has been found out. When action is taken against her, her sole recourse is to deny every incident and all statements of all witnesses both those that might be interested and those that might be disinterested. The denial of the evidence of the disinterested witnesses impeaches and discredits the denial of the evidence of the interested witnesses. The surrounding facts strengthen and corroborate the testimony of the petitioner, the constable and the detective.

Appellant, in her brief, states:

> "The law is established that although the testimony of detectives, paid spies, and those who bore ill-feeling toward defendant, is competent, it should be scrutinized carefully and should not be relied upon unless corroborated."

The review of the testimony corroborates in many particulars the testimony of the petitioner, the constable and the detective. The denial of the defendant and her paramour is entirely discredited by the independent evidence of disinterested witnesses. The defendant and her lover went too far in their denials of various and important particulars. They were contradicted by entirely disinterested witnesses. This destroyed the credibility of their testimony. In not a single particular is the testimony of the detective and the constable effective. They underwent a long and vigorous cross-examination. They both corroborated each other and in turn were corroborated by the petitioner. On many items their testimony was corroborated by the independent witnesses. It is submitted that all of the evidence in the case supports the testimony of the petitioner and those

working for him. This evidence leads to the unquestioned inference that the defendant committed adultery with Joseph Napolitano on August 24, 1929.

III.

THE PETITIONER EXERCISED EVERY CAUTION POSSIBLE ON THE PART OF A REASONABLE MAN TO RETAIN THE FIDELITY OF THE DEFENDANT.

Defendant, in her own brief, states that the petitioner warned the defendant about her actions with Napolitano. Petitioner's mother spoke to the defendant. An employee in the store spoke to the defendant. In every instance she laughed at them and charged them with believing her to be a bad woman.

On the contrary, the testimony shows definite intent on the part of the defendant to enjoy the company of Napolitano as often as she could. She desired to be alone with him. She dismissed from their presence employees who worked in the store or the home. She cautioned some of these employees when she left for unknown places to tell her husband when he returned that she had just left. She concealed from her husband her passion for her paramour on every occasion. When he reproved her, she denied it. She secretly met Napolitano some two weeks prior to the night of August 24th. Finally, on the night of August 24th, according to her own story, she told her husband that she wanted to go downtown shopping after she had visited Mrs. Grandi. With the clandestine arrangements already made with a secretive course of conduct, the petitioner was

justified in learning how far the illicit love affair had progressed. The defendant herself, in her testimony throughout, indicates her firm belief that the petitioner loves her. He indicates on various occasions that he succumbed to her artifices and wiles. His suspicions, however, having become definitely aroused with his desire to protect his home and rid it of a cuckold, he determined to discover to what lengths Napolitano and his wife had become entangled one with the other.

Instead of open connivance, on the contrary all the relations between the defendant and her lover were conducted in deepest secrecy. Instead of abetting and aiding, her husband first reproves, and then suspects and finally discovers. Such conduct assuredly is not that of connivance, but, on the contrary, that of any man who feels that he is being wronged and desires to know.

IV.

THE CHARGE OF ADULTERY CONTAINED IN THE PETITION HAS BEEN ESTABLISHED.

Defendant argues under her first point that because the petitioner charges adultery with John D'Appoli while the proof shows the offense to have been committed with John Napolitano that the petitioner has failed to prove his case. It is submitted that this argument is of little weight. No question existed in Napolitano's mind, in the defendant's mind or in any of the parties as to whom the co-respondent was.

Section 10 of the Divorce Act, 2 S. C. p. 2033, provides that the petition shall plainly and fully

state the cause of the application for divorce. Rule 259 provides in suits for divorce on account of adultery the petition shall state the name of the person with whom the adultery was committed, if known. The petition set forth the name of the co-respondent, John D'Appoli. It is to be noted that there was no confusion as to the identity of the person named, D'Appoli, Napolitano, and Napoli. All are similar, both in spelling and in pronunciation. In the affidavit made by the defendant on page 256, the co-respondent is described as John Napoli. In the petition he is described as John D'Appoli. At the trial his full name appears as John Napolitano. The co-respondent himself stated that he knew that he was accused of the offense with the defendant. He appeared on the last day of the trial (p. 128, l. 30). He was also present the second day of the trial. He admitted that he was the man who went to the store every day (p. 131). He also admitted that he was the person charged with being out with Mrs. Baldanza (p. 133, l. 28).

From the inception of the trial of the case, the identity of the co-respondent was clear. Counsel for the defendant, in the trial of the case, accepted the identity as unquestioned. The first witness, the Recorder, who took the stand, produced the affidavit showing the name of John Napoli. Thereafter, throughout the case, the co-respondent was referred to as Napolitano. Nowhere was there any question raised as to any conflict of identity between the name D'Appoli in the petition, the name Napolitano in the case, or the name Napoli in the affidavit. Their identity was accepted by counsel and parties to the cause as one and the same.

The intent of Rule 259 is to apprise the defendant of the name of the co-respondent with whom the defendant is charged with the commission of the offense of adultery. Defendant was fully apprised of the co-respondent's name. He appeared the first day of the trial. No attempt was made to charge an offense with any other persons than this man who appeared the first day of the trial.

The case of *Miller* v. *Miller,* 20 N. J. Equity page 216, cited by the defendant, does not support the contention of the defendant. In *Miller* v. *Miller,* the petitioner named three different co-respondents. At the hearing, proof was offered of adultery with one Byron French, an entirely different, separate and distinct person from the three co-respondents mentioned in the pleadings. The Court very properly said that

> "Proof of adultery with A will not sustain a charge of adultery with B."

Such is not the instant case. Here is a definite person named. That person appears in court and denies the charge. The defendant is apprised of the co-respondent's name, as is the co-respondent himself.

Defendant also cites *Gray* v. *Gray,* 95 N. J. Equity page 561. This case also is distinguishable from the instant case. The petitioner in *Gray* v. *Gray* named a co-respondent, but then alleged that if he was not the person with whom adultery was committed, some other person unknown was guilty, thus qualifying the allegation against the named co-respondent. The named co-respondent then moved to dismiss the petition as to himself.

Vice Chancellor Bentley held that there must be a definite charge unqualifiedly made and not in the alternative.

In the suit *sub judice,* the petitioner makes a definite charge against a definite co-respondent. The defendant is apprised of the charge and identifies the co-respondent. The co-respondent himself comes to court. He is identified in court as the co-respondent by five different witnesses. He takes the stand himself and admits that he is the same man whom the petitioner charged with calling frequently upon his wife, whom witnesses testified had been on the beach with the defendant, and whom other witnesses testified worked in a certain store and was met by the defendant. He was identified as the man who drove a certain car and the car was identified as the car owned by the cousin, for whom he worked. No question throughout the entire hearing arises as to the identity of the co-respondent named. The proofs all were directed as against this man. The court found that these proofs were satisfactory and proved conclusively that this co-respondent committed adultery with the defendant.

V.

CONCLUSION.

The case under review is primarily a factual case. No difficult questions of law arise in the case. Definite proof is offered by three witnesses as to the presence of the defendant and her paramour in a secluded spot, suitable and fit in every way for an illicit affair. Proof is offered of intimacy between the defendant and her lover. Proof is offered of an Italian custom whereby the erring wife is returned to her home. The defendant was so returned and there, in the presence of her mother and brother, charged with having intercourse with the co-respondent. This she admits. She again admits her guilt in an affidavit and before a disinterested third party.

It is respectfully submitted that the decree should be affirmed and the appeal dismissed.

Respectfully submitted,

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Solicitors of the Petitioner-Appellee.

FEB.1.1932

NEW JERSEY

Court of Errors and Appeals

Between HARRY BALDANZA, Petitioner-Appellee, and JOSEPHINE BALDANZA, Defendant-Appellant.	On appeal from Court of Chancery.

BRIEF ON BEHALF OF DEFENDANT-APPELLANT.

This appeal brings before the Court the decree nisi dated October 3, 1930, and filed the same day, based upon the oral opinion of the Honorable James F. Fielder, one of the Vice-Chancellors of the Court of Chancery of New Jersey, delivered June 18, 1930, recommending that the bonds of matrimony between the parties to this suit be dissolved for the reason that on August 24, 1929, *the defendant committed adultery with one John Napolitano.*

The petition filed by the husband charges that *on August 6, 1929, and on August 24, 1929, the defendant committed adultery with John D'Appoli,* and the defendant answering the said petition specifically denied the allegation thereof and stated further that she never committed adultery with any person at any time or place. She filed a counterclaim asking that she be granted a divorce on the ground of extreme cruelty, but by stipulation of counsel at the time of the trial, it was agreed that

the defendant should not prosecute her counterclaim unless and until she should have prevailed upon the petitioner's petition. The prayer of the petitioner's petition having been granted, the testimony in support of the defendant's counterclaim was never taken.

The history of the matrimonial existence of this couple is as follows:

They were married at Passaic, New Jersey, April 20, 1924, and thereafter made their residence at Long Branch (p. 17, lines 10-15; p. 135, line 5). The first child was born April 18, 1925; the second child having been born February 19, 1928 (p. 135, lines 9-11). From the time of marriage to the date of the separation, the defendant helped her husband in his bakery and grocery store (p. 135, line 38; p. 136, line 14). Several employees boarded at petitioner's home (p. 136, line 40), and defendant in addition to her other duties, provided the meals for such employees (p. 137, line 2). Immediately after the marriage, petitioner and defendant lived with petitioner's family (p. 137, lines 20-30), and at various times the family indicated its objection to the defendant and evidenced its ability to dominate the petitioner and an inclination toward breaking up the apparent happy matrimonial relations existing between the couple. Two weeks after the marriage petitioner's mother complained of the clothes defendant wore (p. 137, lines 30-40). Three months after the marriage, petitioner's mother accused defendant of taking measures to avoid having children, this accusation being made in the presence of the husband, the husband's brother Joseph, the husband's unmarried sister, one Dominick Peluso, the husband of petitioner's married sister, and the petitioner's brother Louis. Louis, in the presence of the husband, struck de-

fendant with an ash tray and the husband having done nothing to protect his wife, she went to her room (p. 138, lines 20-40; p. 139, lines 1-4). The husband did not come to defendant until that night when he prepared to retire (p. 140, lines 1-5). A letter mailed May 9, 1924, was received by defendant from petitioner's brother Louis, threatening defendant if she did not do what her superiors told her to do. Defendant wrote a responsive letter to Louis, advising him that she was doing the best she could to please her husband's people (p. 140, lines 10-40). In 1925, while defendant was carrying her first child, Louis struck her (p. 141, lines 3-12). After the first child was born, Joseph, another brother of petitioner, who was then in partnership with petitioner, entered into an argument with defendant with respect to the partnership. Defendant retired to her room and refused to come downstairs to eat while her brother-in-law Joseph was at the table. The husband locked defendant in her room and kept her there for three days (p. 141, lines 18-40). Immediately after that the petitioner made a home for defendant away from petitioner's family (p. 142, line 10). In 1926, the partnership between petitioner and his brother Joseph was dissolved, the brother Joseph having taken the grocery business; the petitioner, the bakery business (p. 143, lines 20-30). In December of 1928, Joseph proposed a sale of the grocery business to the petitioner and the defendant objected. The defendant, notwithstanding the insistence of her husband, refused to sign papers necessary to consummate the sale and the husband then struck the defendant (p. 144, lines 20-40; p. 145, lines 1-35). On the Friday following this occasion, defendant requested that her husband and she talk over the matter of the proposed

purchase and finally it was agreed and the petitioner and the defendant became very affectionate. The petitioner's mother and petitioner's brother Andrew, having seen this, commented upon the fact that defendant with her affection got whatever she wanted and they threatened that she would not have the best of them (p. 146, lines 10-35). These preliminaries bring the matrimonial relations up to the month of August, 1929.

On August 24, 1929, defendant's sister, Teresa Nobile, was staying at defendant's home, having come down for the purpose of being present at the Baby Parade on August 27th. According to defendant, about 9 o'clock the evening of August 24th, the petitioner took the defendant to see a woman who had been sick (p. 147, lines 10-35). However, petitioner says the time of leaving the house was, at one time, twenty minutes to eight (p. 20, lines 20-35), and under cross-examination, twenty minutes after eight (p. 29, lines 22-34), the petitioner not having arrived home until ten minutes after eight (p. 29, line 33). Everyone agrees that defendant was visiting this sick friend for twenty minutes (p. 148, lines 34-40; p. 21, lines 18-22). The defendant said that upon leaving the home of this sick friend, she walked down Second Avenue to Broadway, along Broadway, looking in the store windows, waiting for her husband to come by with his truck. She then went into a stationery store where she purchased a book and then stood at the corner of Broadway and Third Avenue waiting for a bus (p. 150, lines 1-25). The driver of the bus, one Mr. Mascia (p. 150, lines 30-38), upon taking the defendant to her home, stopped his bus in front of defendant's house (p. 130, line 40) about 10 o'clock (p. 150, line 1), and the driver came into petitioner's store and drank a bottle of beer in the

presence of defendant, the petitioner, and defendant's sister, Mrs. Nobile (p. 151, lines 5-20). The petitioner, however, says that defendant met one John Napolitano on Broadway and got into Napolitano's car (p. 21, lines 18-22), and that Napolitano and the defendant drove to a lonely street known as Cherry Street or Archwood Street in West Long Branch (p. 21, lines 32-40), arriving there ten minutes after nine (p. 22, line 35). The automobile was driven into a driveway between two high hedges and remained there for twenty minutes, when it finally returned to Broadway and Third Avenue where the defendant left Napolitano's car (p. 23, lines 1-12). The petitioner then said that he hurried home and arrived there before the defendant and upon her arriving home he asked her where she had been and upon her answering that she had walked up and down Broadway (p. 23, lines 18-22), he asked her if she was sure and whether there were any lights on Broadway where she went. She looked puzzled but said nothing (p. 23, lines 25-28). The defendant denies that there was any conversation when she came home (p. 151, lines 27-35). The defendant claims that after Mr. Mascia left and while she and her husband were preparing to retire to their bed, the telephone rang and in response to that telephone call, the petitioner left his home, stating that he was going for his mother who was at Asbury Park (p. 152, lines 20-40). Upon the petitioner leaving the house, defendant retired to bed in her regular bedroom, defendant's sister retiring to the spare bedroom (p. 153, lines 1 and 2). After a long time defendant was awakened by knocking at the door (p. 153, line 5), and defendant then found that her husband was at the door with his brother Andrew (p. 153, line 24). Defendant, at the request of her husband,

directed her sister to come into the regular bedroom to sleep with her (p. 153, line 40), while the petitioner and Andrew retired to the spare bedroom (p. 154, line 6). There was no argument and no accusations were made (p. 154, line 10). The petitioner says nothing whatever about the occurrences of Saturday night after the return of the defendant to the store. The petitioner then claims that on Sunday morning he started an argument with defendant, asking her why she was coming home late nights (p. 23, lines 30-35), and he then took the defendant to her mother's (p. 23, line 40), where he said he informed the defendant's mother than the defendant was going about with Napolitano and having intercourse with him and when the mother asked the defendant if that was true, defendant admitted it was, and the defendant's mother and her brother then chased her out of the house (p. 24, lines 18-35). The defendant, with respect to this, however, said, that she got up as usual and attended to the duties of the store (p. 154, lines 15-25). The petitioner and his brother Andrew had left the store and house before defendant came downstairs (p. 154, lines 15-33). At 11 o'clock that Sunday morning Andrew came to the store in the absence of the husband and asked defendant to accompany him to the stores for the purpose of buying a dress for Andrew's daughter. Defendant said she could not do it because they were so busy in the store and her husband, having then come in and expressing his desire that defendant accompany Andrew, the defendant prepared to leave the house, and upon going outside to get into the automobile, she found her husband in the car with Andrew. When they started on the road to Red Bank, defendant asked why they were going in that direction and Andrew answered that for going out

the night before with somebody they were taking defendant to her mother's; that they wanted to get rid of her and now was their chance. The husband said nothing and when defendant denied the truth of the allegation she started to cry (p. 155, lines 10-40; p. 156, lines 1-40; p. 157, lines 1-10). Defendant then tried to get out of the car and Andrew caught her and pushed her back as another car came up alongside in which Mr. Mascia, Miss Castle and Mr. Everingham (the last two being private detectives) were riding (p. 157, lines 15-40). Miss Castle then left the automobile in which she was riding, and addressing the defendant, said, "You are under arrest," and upon exhibiting a badge, requested Mr. Everingham to give her the handcuffs (p. 158, lines 1-20). Miss Castle had a revolver in her hand (p. 158, lines 20-28). The petitioner and Mr. Everingham then got into the back seat with defendant and Andrew drove the car (p. 158, lines 28-30). Defendant was taken to her mother's home in Passaic, New Jersey (p. 158, line 40). Upon arriving there, Andrew and Miss Castle took defendant into her mother's home (p. 159, lines 12-15), and Andrew, throwing the defendant before her mother, said, "There is the bum, your daughter" (p. 159, line 28). Defendant approached her husband to plead with him and Andrew and Miss Castle caught hold of her and took her outside, placing her in Miss Castle's automobile (p. 161, lines 1-15). Andrew stayed in the car with the defendant and threatened that if she made a scene, Andrew would put an end to her. Miss Castle and Mr. Everingham then went into a restaurant, in front of which the car was parked (p. 161, lines 20-35), and upon returning to the automobile, Miss Castle and Mr. Everingham took defendant to some man's bedroom (p. 162, line 35), where Miss

Castle talked to the man, saying that defendant would sign to get her children and defendant thereupon signed some paper which she did not read, the contents of which she did not know (p. 162, line 35; p. 163, line 12; p. 163, lines 25-40; p. 164, lines 8-20). From this bedroom, defendant was taken to a rooming house in Asbury Park where she was informed by Miss Castle that she was not to leave because she was being watched (p. 162, lines 1-30). Petitioner admits that he did not see his wife from the time she was at her mother's home Sunday until August 27th following when he had her arrested upon her coming to his home (p. 26, lines 16-26).

Miss Castle said that she took Mrs. Baldanza to Asbury Park at Mrs. Baldanza's request (p. 88, lines 12-25). She engaged the room for Mrs. Baldanza, using her own money for that purpose, she having been paid back two or three days later (p. 89, lines 36-40). She said that Mrs. Baldanza was taken to the man's bedroom (Judge Cox) at Mrs. Baldanza's request, her testimony in this respect being as follows: "She asked me to take her to some Justice of the Peace where she could make a statement; she wanted to tell her husband the truth; she wanted to tell him everything because she knew she could not reach him; she could not get in the house. I told her it might be used in a divorce proceeding against her. She said she did not care, because she wanted to have her children; that she would bring her children up not to sin as she had sinned" (p. 95, lines 5-20).

The above generally summarizes the case but more particular reference will be had to the evidence herein generally outlined in the argument which hereinafter follows, particularly with respect to the great number of material contradictions made by each of the witnesses on behalf of the

petitioner, together with the various circumstances as they were developed, which we claim demonstrate a failure of proof of sufficient dignity to justify the decree advised.

Our argument will be presented under four headings as follows:

POINT I. The petitioner has not established the charge of adultery contained in the petition.

POINT II. There was not such evidence of adultery as would lead the guarded discretion of a reasonable mind to the conclusion of guilt, the circumstances being susceptible of two interpretations; the stronger being that of innocence.

POINT III. The testimony to corroborate the petitioner was given by paid detectives and relatives of petitioner who bore an ill feeling toward defendant and their testimony has been effectively impeached.

POINT IV. The facts in this case with respect to the relations between the defendant and John Napolitano were such that with the slightest caution on the part of the petitioner, the breach of the marriage vow might have been prevented.

POINT I.

The petitioner has not established the charge of adultery contained in the petition.

The petition charges that on August 6, 1929, and on August 24, 1929, *the defendant committed adul-*

tery with one John D'Appoli in the City of Long Branch, Monmouth County, New Jersey, but nowhere in the testimony is there any evidence of any association between the defendant and the adulterer named in the petition. The testimony does refer to two persons, Joe Di Santis and John Napolitano, the name Di Santis having been brought into the case through the production of a letter claimed to have been found in defendant's trunk after the petitioner and defendant were separated. *The evidence was designed to show an act of adultery between defendant and John Napolitano on August 24, 1929, at West Long Branch,* but even as to that testimony it will be contended under Point II of this memorandum that adultery was not established. It is our purpose under this point to argue that a decree for divorce on the ground of adultery can be granted only in the event that the proofs lead the guarded discretion of a reasonable mind to the conclusion that adultery was committed as is charged in the petition; or, in other words, that the Court is without jurisdiction to grant a divorce on the ground of adultery, except the person with whom the offense was committed be named in the petition, if his name be known to the petitioner, and if it be not known, there be alleged such facts as demonstrate that the name cannot be learned, and in that event the person be sufficiently described or the time and place be so established that the parties may know definitely what they are to meet in the trial of the issues.

As early as the October Term, 1869, of the Court of Chancery, it seems to have been established that proof of adultery with a person not named or identified in the bill (suit for divorce at that time being started by bill) would not sustain a charge of adultery with some other named person. In the

case of *Miller* v. *Miller,* 20 N. J. Eq. 216, the bill charged that adultery was committed with three persons therein named, and with divers other persons in the States of New York and Pennsylvania, whose names were unknown. There was proof of adultery with some person other than the three named in the bill, but there was no proof of adultery with any of the persons so named. The Chancellor, in writing the opinion for the Court, at page 217, said (italics ours):

> "A suit for divorce cannot be sustained unless founded on some specific offense, known to the complainant, and specifically charged in the bill. If the name of the adulterer is known, it must be stated; if it is unknown, that fact must be stated in excuse of the omission, and proved at the hearing. His person may be described, or the time, place, and the circumstances which show that the offense was committed, may be stated. And the complainant must prove the offense, or one offense specified in the bill. The precise time is not necessary, provided the variance is not so great as to mislead the defendant. *Proof of adultery with A will not sustain a charge of adultery with B;* nor will proof of adultery with a person whose name was known to the complainant sustain a charge of adultery with a person whose name was unknown. * * *"

The law of this case seems to have been set forth in Section 10 of the Divorce Act of 1907 (2 Comp. Stat., p. 2033), which reads as follows:

> "All suits in the court of chancery for divorce, or nullity under this act, shall be commenced by filing a petition with the clerk of the court, which petition shall plainly and fully state the cause or causes of the application for such divorce or nullity and the relief prayed."

The 259th rule of the Court of Chancery, which apparently has remained unchanged for over sixty years, requires, as is stated in *Miller* v. *Miller, supra,* that the name of the person with whom the adultery was committed be set forth if that name be known, and if it be not known, there shall be set forth a description of the person.

In *Gray* v. *Gray,* 95 N. J. Eq. 561, Vice-Chancellor Bentley said as follows:

> "It is said in 2 Bish., Section 1325: 'The allegation should state positively, not from information and belief, or otherwise in uncertain terms, that at a time and place specified, the defendant committed the carnal act with a person named, unless something of this particularity is unknown, when the want of knowledge may be averred as a substitute therefor.' It cannot be said that the statement is positive, that the person is named, or that there is any want of knowledge that could not be readily discovered if the petitioner would take the requisite steps so to do. There is no reason why the petitioner should not determine definitely whether or not the person named in the petition is the one against whom he intends to produce his evidence. This will result in his knowing himself whether the person he now names is the one he intends to convict or not."

This statute, the rule of court, and the clear statement of law in the case of *Miller* v. *Miller, supra,* we contend require that, as a jurisdictional requisite, the name of the adulterer be set forth in the petition, if the name be known, and that the proofs conform to the allegation of the petition, and it matters not, as was set forth in the case of *Miller* v. *Miller, supra,* that the evidence

taken in the trial establishes adultery with some person other than the one named or described in the petition.

In *Reynolds* v. *Stockton,* 43 N. J. Eq. 211, our Court of Errors and Appeals held as follows (p. 214):

> "The question presented by the appeal to this court is whether to the decree of the New York court the conclusive force and effect of a judgment must be accorded.
>
> That question is distinctly presented in Munday v. Vail, 5 Vr. 418, where it is held by the supreme court of this state that a decree which is entirely aside of the issue raised in the record is invalid, and will be treated as a nullity, even in a collateral proceeding.
>
> A decree or judgment which is not appropriate to any part of the matter in controversy before the court can have no force. The matter in controversy is that exclusively which is presented by the pleadings and the issue framed thereby.
>
> The object of the New York suit was fully accomplished, so far as the pleadings disclosed its purpose, when the New York fund was disposed of. There was an entire absence of such specific allegations in the complaint as were necessary to put the receiver of the New Jersey company on his defence in respect to the state of the account between that company and the Hope company.
>
> "The decree in New York, having adjudicated a matter not presented by the pleadings nor within the issue, can have no higher effect than a judgment rendered in our own courts under like conditions. Under the authority of Munday v. Vail, it must be treated as a nullity."

This case was taken to the United States Supreme Court and reported in 140 U. S., p. 254, and the decision of the Court of Errors and Appeals was affirmed for the reason that the judgment rendered by the Court of New York was ineffective because, although that Court had jurisdiction of the person, the judgment was not responsive to the issues tendered by the pleadings.

The 259th rule of the Court of Chancery is set forth herein in full:

> "In suits for divorce on account of adultery the petition shall state the name of the person with whom the adultery was committed, if known, and, if not known, shall set forth the description of the person or such designation of the time, place and circumstances under which the act or series of acts were committed as will enable the defendant and the court to distinguish and individuate the particular offense or offenses intended to be charged; and no reference shall be ordered in a suit in which the offense is not so designated; and if the name of the person is stated to be unknown, it must be shown on the reference that it was not known at the commencement of the suit."

Section 10 of the Divorce Act has hereinbefore under this point been set forth.

The issue in this case before the Court of Chancery, upon which it was asked to make a decree, was whether or not the defendant had on the 6th or the 24th day of August, 1929, committed adultery with John D'Appoli in the City of Long Branch, Monmouth County, New Jersey. No attempt whatsoever was made by petitioner to meet that issue with his proofs, but on the contrary, he showed merely an indiscreet act on the evening of August 24th with one John Napolitano in West

Long Branch, Monmouth County, New Jersey. This, of course, was evidential within the issue of adultery with D'Appoli as tending to show an inclination on the part of the defendant to violate her marriage vow and it could very well have been used to support the evidence which might have been submitted with regard to inclination in the charge of adultery with D'Appoli alleged to have been committed in Long Branch.

The Vice-Chancellor, in his oral opinion, concluded that the decree for divorce should be allowed, not because of proof of adultery with D'Appoli, as charged in the petition, but, so that there may be no misunderstanding, we quote from his decision:

> "Upon consideration of all the evidence and the corroboration, by facts and by circumstances and by inferences to be drawn therefrom, of the testimony of the petitioner supported by the detectives, I am led to the conclusion that what the petitioner and the detectives say occurred on the night of August 24th, 1929, is true and that the defendant committed adultery with Napolitano that night."

POINT II.

There was not such evidence of adultery as would lead the guarded discretion of a reasonable mind to the conclusion of guilt, the circumstances being susceptible of two interpretations; the stronger being that of innocence.

The law seems to be settled in this State that the burden of proof is upon him who asserts the adultery, and that burden must be clearly sustained. To establish adultery the circumstances

must be such as to lead the guarded discretion of a reasonable and just mind to the conclusion of guilt. The judgment must not be rash and intemperate, moving upon appearances that are equally capable of two interpretations. 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.
Luderitz v. *Luderitz,* 88 N. J. Eq. 103.
Sargent v. *Sargent,* 114 Atl. 428.

It is our purpose to argue here that not only did the evidence fall short of this quality, but even assuming that one could reasonably be convinced that opportunity existed, the petitioner, by his own proofs, explained away any inference that the marriage vows were broken by an adulterous act. An examination of the testimony as to acts of affection, to infer desire, are of the lowest quality. The events leading up to the night of August 24th, are as follows:

The petitioner testified that he first learned his wife knew John Napolitano on March 28, 1929 (p. 17, line 22), when he came to their store trying to sell vegetables (p. 17, lines 22-28). The petitioner knew Napolitano before that (p. 17, lines 30-33). On the date above mentioned, while petitioner made purchases, the defendant stood behind the counter, and after Napolitano left the store she said, "What a nice looking fellow that is" (p. 17, lines 35-40). The petitioner then asked her what foolish idea she had and defendant went to the kitchen (p. 18, lines 17-20). Toward the end of March, 1929, the petitioner told defendant he did not approve "he

comes in the store and talks to her all the time" and defendant answered, "You got a bad mind all the time" (p. 18, lines 25-32). That followed the second time Napolitano was in the store (p. 18, line 38), although on further examination petitioner said Napolitano had been in three or four times (p. 19, line 15). After that Napolitano was in the store nearly every day (p. 19, lines 1-10). Napolitano called defendant "Josie" (p. 19, lines 16-20). Between March and August, 1929, the defendant was out one or two nights a week (p. 19, lines 30-40), leaving the store at ten minutes to eight and returning at nine or nine-thirty (p. 20, lines 10-20).

Emmett Everingham, a detective employed by Miss Castle (p. 52, lines 35-40), followed the defendant July 19th, August 17th, August 23rd and August 24th, and he said she met Napolitano the nights of August 17th and August 24th (p. 71, lines 30-35). No testimony was given by this witness as to the relations between the defendant and Napolitano any night other than the 24th.

Marie Castle, a private detective (p. 80, line 20), with Mr. Everingham, followed defendant July 19th (p. 80, line 25). This witness said defendant got into a car with a man on Union Avenue (p. 80, lines 30-40), and that man was Napolitano (p. 81, lines 1-5). [We call attention now to the fact that Mr. Everingham said that defendant met Napolitano only on August 17th and August 24th (p. 71, lines 30-35).] On August 3rd, petitioner took defendant to the ocean front and this witness followed but defendant merely walked along the beach (p. 81, lines 12-24). On August 6th, petitioner took defendant to Third Avenue and Miss Castle again followed, accompanied by Mr. Mascia (p. 81, lines 22-24). "That night we followed Mrs. Baldanza and she went into several stores, and finally

she went down to Union Avenue. *That is the night we lost her.* She had gotten into a car and she went to—she got in this car of Mr. Napolitano. At that time Napolitano was runing the car" (p. 81, lines 24-32). Her examination as to this night then continued as follows:

> "*By the Court.*
>
> Q. She got into this car on Union Avenue. Was Napolitano in the car? A. Yes.
>
> *By Mr. Quinn.*
>
> Q. Continue. A. The car continued south on Second Avenue; it went to the same place in West Long Branch as the night of the 24th, and they stayed there only for about five minutes. No lights out that night. Why they stayed only a short time I do not know" (p. 81, lines 33-40; p. 82, lines 1-8).

On August 23rd, she again followed defendant to Libery Street, thence to Union Avenue, where the detective lost defendant (p. 82, lines 10-16).

Fred Scialla, who worked in petitioner's bakery shop during the summer of 1929 (p. 103, lines 38-40), saw Napolitano in the store two or three times a week (p. 104, lines 1-6). Napolitano and defendant talked but when this employee entered the store they stopped talking (p. 104, lines 14-20).

Frank Graziano, sixteen years old, an employee of petitioner (p. 105, lines 30-40; p. 106, lines 1-10), saw Napolitano in the store every other day (p. 106, lines 25-32). When there he sold vegetables and talked to defendant (p. 106, lines 32-40). Napolitano was in the kitchen two times and on one occasion ate strawberry short cake while this boy was present (p. 107, lines 15-30).

Josephine Todaro, who worked occasionally for defendant (p. 109, lines 18-40), saw Napolitano in the store two or three times a week (p. 108, lines 10-22). He came in to sell vegetables (p. 110, lines 20-32). They did nothing but talk (p. 110, lines 20-32).

Marjorie Calabretto, fourteen years old (p. 112, line 12), who took care of defendant's children in the summer (p. 111, lines 10-15), saw Napolitano in the store (p. 111, lines 20-28). [This witness gave no testimony of what happened in the store although apparently she was present.] One night this child accompanied defendant to the beach and while they were walking on the sidewalk they met Napolitano. He sent the child for ice cream and defendant and Napolitano talked for fifteen or twenty minutes (p. 111, lines 28-40). That was at seven o'clock or half-past seven (p. 112, line 10).

Albert Mazzatto, a druggist next door to petitioner's store (p. 112, lines 29-32), saw Napolitano around the store three or four times a week (p. 112, lines 35-40). Petitioner was there on some occasions (p. 113, line 8) and sometimes a clerk was present (p. 113, line 15). One evening at six o'clock this witness saw Napolitano in the kitchen eating strawberry short cake and defendant called Mazzatto in (p. 113, lines 19-32). He also had some strawberry short cake (p. 114, lines 28-30). He had a privilege to go through the kitchen as and when he pleased (p. 114, lines 5-25).

Mary Baldanza, mother of petitioner (p. 115, line 14), saw Napolitano in store and heard him calling "Josephine" (p. 115, lines 16-30). We quote from the testimony as follows: "I came up to her and I said to her, 'Josephine, you must excuse me, I do not like your confidence with this man because he is too drunk with passion.' She said, 'What can

I do?' I said, 'What do you mean, what can you do? You will do something. Something will happen. You read the newspapers every day and magazines and you see how many things happen. Three years ago happened about that man that was selling corsets and they killed the husband' " (p. 115, lines 34-40; p. 116, lines 1-10). Defendant replied, "I do not know. What do you take me for —a bad woman?" (p. 116, line 18). This happened in June (p. 116, line 35).

Such is the testimony up to the night of August 24, 1929. We assert that up to that time there was nothing to indicate the slightest affection between these persons. There was no secrecy about the relations, all contacts having been had in the presence of others (except for the two meetings testified to by Miss Castle, about which we will speak later), even to the extent of the defendant calling in the druggist when Napolitano was eating cake in the Baldanza kitchen, a place where at least the druggist might come and go as he pleased. But more than that, Frank Graziano, the sixteen-year-old boy, was present in the kitchen and in the store just off the kitchen. Furthermore, when petitioner's mother spoke to defendant of the objection to Napolitano calling defendant "Josephine" (an act perfectly harmless and meaningless, as we see it), the defendant answered fairly and reasonably, "What can I do? I do not know. What do you take *me* for—a bad woman."

Now, as to the testimony of Miss Castle, that defendant met Napolitano on July 19th while this witness was accompanied by Mr. Everingham and on August 6th while the witness was accompanied by Mr. Mascia, we call attention to the total failure of corroboration. Everingham himself contradicted Miss Castle as to July 19th, and he was

called by the plaintiff. As to the night of August 6th, Miss Castle herself first said she lost the defendant and later described in detail the movements of defendant and Napolitano. A Mr. Mascia, who accompanied Miss Castle, was never called, although that person was apparently a good friend of petitioner's, aiding, as Miss Castle intimated, the petitioner in proving the unfaithful acts of defendant. We think that her testimony in respect to those alleged meetings is wholly discredited, indeed, as we will argue later, this paid detective, as to all her testimony, is entitled to no credit whatsoever.

The night of August 24th seems to be the important one. Before we review the testimony given on this occasion, we wish the court would bear in mind that Daylight Saving Time was then in effect (see Record, p. 213, lines 19-34) and that Mrs. Baldanza, under all the testimony, returned to her home at about 10 o'clock. The date, may we again repeat, was August 24th. The meeting with Napolitano, even under petitioner's testimony, was before 9.30, and they claim it was dark.

We now take up the testimony:

The petitioner testified that at twenty minutes to eight he took his wife to Sam Grandi's home on Second Avenue, Long Branch, where the defendant visited Mrs. Grandi, a sick friend (p. 20, lines 20-40; p. 21, lines 1-15). Petitioner took his car around the corner about 300 feet away (p. 21, line 15; p. 30, lines 30-40). He then walked back to a point 20 feet from the Grandi house (p. 21, line 10). Miss Castle and Mr. Everingham were hiding around the hedge (p. 31, line 40). Petitioner saw defendant come out of the Grandi house (p. 31, line 4) and walk three or four blocks to Broadway (p. 31, lines 28-30). Defendant had told him

she was going to do some shopping after she visited Mrs. Grandi (p. 32, lines 35-40; p. 33, line 15). Petitioner got into Miss Castle's car (p. 31, line 32), which was parked on Second Avenue 50 feet from the Grandi home (p. 32, lines 18-30). *On direct examination he testified that Miss Castle and Mr. Everingham accompanied him to Broadway and then they left the car.* The defendant walked down and they (meaning Miss Castle and Mr. Everingham) followed her on foot and petitioner stayed in the car. Defendant went back toward the beach (p. 21, lines 26-32). There is no testimony by this witness as to how and when Miss Castle and Mr. Everingham returned to the car; however, they must have in some way and at some time returned because it appears that these three followed Napolitano's car to a lonely road in West Long Branch (p. 21, lines 32-40). In the direct examination petitioner said he was accompanied to the lonely road by Miss Castle, Mr. Everingham and Mr. Mike Kola (p. 22, lines 36-38), but in cross-examination he said that he and the two detectives were accompanied by a man named Maccio (p. 35, line 38). At any rate, the defendant and Napolitano, the petitioner says, arrived at the lonely road at ten minutes after nine (p. 22, line 35) and drove the car in between two high hedges upon a driveway leading to the ball field and they stayed there twenty minutes and then drove off to Broadway and Third Avenue and then to Long Branch, where the defendant left Napolitano's car (p. 23, lines 1-12). On the drive from Long Branch to West Long Branch, Napolitano did not drive fast and the pursuing car followed a distance of 15 to 20 feet (p. 35, lines 30-40). The car in which the petitioner was riding had its headlights burning (p. 36, line 10). The petitioner did not see any act of inter-

course when defendant and Napolitano were parked, as he alleges (p. 37, lines 35-40). The petitioner arrived at his home before defendant (p. 23, line 14), the defendant having arrived home at 10 o'clock (p. 39, lines 15-20). The petitioner saw his wife leave the bus in front of the store and the driver of the bus came in and bought a bottle of beer (p. 47, lines 25-40).

Mr. Everingham testified as follows: "She was in there (the Grandi home) exactly twenty minutes and came out, and when she went down Second Avenue towards Broadway, *I followed on foot and followed her to Broadway.* She made several detours up and down Broadway, and finally came back and walked over Second Avenue towards the beach, in front of 74 Broadway, got into this car, M-18245, which was a very light green car, and I was on foot at that time and Miss Castle's car was on Second Avenue. She brought it around the corner and I jumped in the car and I followed them on down to Ocean Avenue, south on Ocean, up Chelsea and so on up to West Long Branch, and then they turned into Archwood Avenue and went in the street where the hedge is" (p. 53, lines 14-31). "They turned the lights off as they drove in" (p. 54, lines 17, 18). This witness, with his companions, then drove their car over several streets and finally brought it to a stop 75 feet from the place where defendant is alleged to have been parked, the rear of the parked car being in full view (p. 54, lines 20-36). The car remained parked between the hedges for twenty minutes, then it was backed out and driven along Wall Street and Norwood Avenue to Broadway, and at the corner of Third Avenue the defendant got out of the car and went into Warner's stationery store (p. 54, lines 30-38). *Under cross-examination this witness*

again repeated that in following Mrs. Baldanza from the Grandi home to Broadway, he was not in Miss Castle's car, but that he followed on foot the entire distance (p. 55, lines 30-38; p. 56, lines 1-17). At the place in West Long Branch where the car was parked, it was developed under cross-examination of this witness that the rear of the parked car was at the sidewalk extending out beyond the hedge, and although the side of the car was in view, the witness said he was unable to see up to the driver's seat (p. 58, lines 35-40; p. 59, lines 1-18).

Miss Castle testified as follows: "On August 24th, Mr. Harry Baldanza wanted to come along with us, so he told us that his wife wanted to see a woman at 171 Second Avenue, Long Branch, so we went down to 171 Second Avenue, Long Branch, and saw Mr. Harry Baldanza taking his wife to that address. She was only in there about twenty minutes. She went there around 8.10. She came out of there 8.30." (At this point we call attention to the testimony of Mr. Everingham as follows: "She came out of the house at 8.40" [p. 61, line 15].) When she came out of the house she walked down Second Avenue, going north to Broadway. At Broadway, I was in my car and I followed behind her and I parked my car on Second Avenue, facing Broadway. I then got out of the car and started to trail Mrs. Baldanza. She went up Broadway and in around Liberty Street, down Union, back to Second Avenue, out to Broadway and out Broadway in front of the tire store, 94 Broadway, she got in a car. The car number was 18425, Monmouth license. This car she got into continued immediately up to the ocean front. At the ocean front they went to Chelsea Avenue, down Chelsea Avenue to Second Avenue, over Second

Avenue; they went to Cedar Avenue; from Cedar Avenue they went to Archwood Avenue, and when they came down Archwood Avenue, it was very lonesome and very dark; there were high hedges there" (p. 82, lines 30-40; p. 83, lines 1-21). "They went down there and they came to a driveway; they parked their car in there. We continued on —Mr. Harry Baldanza, Mr. Mascia, Mr. Everingham and I—we passed the car and we went down Wall Street; we went north on Wall Street; we went down Monroe west and we came back on Hollywood south, and parked our car at Archwood Avenue about, I should say, between 50 and 75 feet away from the car" (p. 83, lines 21-33). The lights of their car were out when they parked (p. 83, line 37). The lights of the pursuing car were put out on Cedar Avenue (p. 83, lines 38-40). "They stayed there twenty minutes. They backed out. As he backed out he must have stepped on the foot brake because the light reflected in the back but no lights in the front. As he pulled out, he drove toward Wall Street, going east" (p. 84, lines 12-16). "Then on Wall Street they went south and then continued over to Broadway to Third Avenue. At Third Avenue she got out of the car. When she got out of the car, Mr. Harry Baldanza and Mr. Mascia and I remained in the car. Mr. Everingham got out of the car. I then took Mr. Harry Baldanza down to where he had his car so that he could go home. I went back to Norwood Avenue and remained there with my car parked" (p. 84, lines 21-30). Under cross-examination of this witness, she testified with respect to the activities of the party in following Mrs. Baldanza from the Grandi home as follows:

> *"Mr. Everingham was on Second Avenue and then when she came out he started on foot and he remained on foot until she got into the car of Napolitano.*

Q. *Where was her husband?* A. *Mr. Harry Baldanza?*

Q. *Yes.* A. *Mr. Harry Baldanza was somewhere near Mr. Everingham, and then after a while he was walking along east"* (p. 91, lines 4-18).

The above are all of the witnesses called by the petitioner as to the alleged occurrences of the night of August 24th, even though the evidence discloses that Mike Kola and a Mr. Mascia were both, or at least one of them, supposed to have been in the party.

Both the defendant and Mr. Napolitano flatly deny that they were in each other's company at the time, or at any other time, except in the store of the petitioner, and on one occasion, when they accidentally met at the beach, a time when Mrs. Baldanza was accompanied by the young girl, whose testimony was given in the petitioner's case.

It is probably argued that the alleged statement made by the defendant before Joseph M. Cox, Recorder of the Borough of Deal, in Monmouth County, corroborates the testimony given by petitioner's witnesses as to the occurrence. This statement was offered in evidence as Exhibit P-1 (p. 14, line 40), and it is printed in full in the record at page 256, and reference is made to it in the testimony of Miss Castle at page 95 of the record, and by the defendant at pages 164 and 165. It is to be particularly noted that *the name appearing in this alleged confession is that of John Napoli, not Napolitano mentioned in the testimony, nor D'Appoli, named in the petition,* and although it is supposed to have been a voluntary statement made after warning that it would be used in a divorce proceeding, it contains the statement that the defendant is willing to agree to a legal separation pro-

vided she can have the custody of her children; and further, that at the request of her husband she will not enter the petitioner's home. The defendant, in her testimony, at pages 164 and 165, said that she was led to believe that although she was under arrest she would be given the custody of the children if she would sign a paper for that purpose, and that without reading the contents of the document, or giving any information which was therein contained, she signed the paper for the purpose of having her children brought to her. It strikes us as peculiar that such a statement would be given for reasons described by Miss Castle, the paid detective, set forth in the record as follows: "She asked me to take her to some Justice of the Peace where she could make a statement; she wanted to tell her husband the truth; she wanted to tell him everything because she knew she could not reach him; she could not get in the house. I told her it might be used in a divorce proceeding against her. She said she did not care, because she wanted to have her children; that she would bring her children up not to sin as she had sinned" (p. 95, lines 8-18). *But even assuming that Miss Castle is correct in this recital, the statement as given does not corroborate in any respect the testimony given by the two paid detectives and the petitioner.* The person named is not the person spoken of by these witnesses. The place at which the car was supposed to be parked is not the place described by these witnesses for Norwood Avenue was not the street and the City of Long Branch was not the municipality. The defendant makes no admission whatsoever that adultery was committed at any time, but on the contrary, in this voluntary statement, given for the purpose of disclosing to the husband the whole truth, the only confession made

is the defendant kissed and was kissed. If Miss Castle's recital is to be accepted—that Mrs. Baldanza insisted upon being taken to a Magistrate so that she could tell her husband in her then repentant state of mind, the truth—that she desired to bring her children up not to sin as she had sinned—then the very proof submitted by the petitioner in the form of this statement demonstrates that there was no act of adultery, but at the best a mere indiscretion in having kissed and been kissed by someone whose identity has never been disclosed.

We respectfully submit that if the uncorroborated stories told by the petitioner and his paid detectives as to the occurrences of the night of August 24th are believed in their entirety, the worst that can be said of the defendant is that she was indiscreet. However, we contend that their stories cannot be believed. There are so many contradictions of material facts and the activities of the husband and his paid detectives, under the circumstances, so improbable, the testimony does not bear that dignity which can characterize it as convincing proof. *Adding to the improbabilities of the party remaining in the car, 50 or 75 feet away from the parked automobile while an act of intercourse, evidence of which they were seeking, was being perpetrated practically before their eyes, between the hour of 9.10 and 9.30 Daylight Saving Time on August 24th,* the fact that other witnesses who were in the pursuing party at the time were not called by the petitioner and no explanation for their absence being given, we say, with the greatest respect, the testimony when scrutinized with that care and caution which the law prescribes as the standard for such testimony, these witnesses have been totally discredited and the petitioner failed to carry that burden of proof which is imposed upon him.

The obvious purpose of the petitioner to rid himself of the defendant, we say is more effectively demonstrated by the events which followed the alleged occurrence of August 24th, particularly the activities of Sunday, August 25th, and the Monday and Tuesday following. We shall very briefly now recite those events.

When defendant returned to her home at 10 o'clock, the night of August 24th, petitioner claims he asked her, "Where have you been?" She said, "You mean to make a visit to somebody else, go in and go out? I stayed there an hour and a half and I took a walk up and down Broadway a couple of times." He said, "Are you sure about that? Were there any lights on that Broadway where you went?" (p. 23, lines 17-27). He has no corroboration for this, but on the contrary, he is flatly contradicted.

Petitioner admits that the bus driver came into the store with his wife (p. 47, lines 25-40). Patsy Mascia, this witness, was called by the defendant. He was in the store fifteen minutes (p. 201, line 25). The petitioner did not accuse the defendant and said to Mr. Mascia, "Well, better for you to go, because I have to go to sleep. I got to get up early in the morning" (p. 201, lines 15-25).

Teresa Nobile, sister of defendant, was also present and she said there were no harsh words or accusations (p. 205, lines 3-15).

The defendant denies any such conversation as the petitioner claims (p. 151, lines 27-35). As she and her husband were retiring for bed together the telephone rang and the petitioner told defendant he had to go to Asbury Park for his mother (p. 152, lines 20-40). Defendant retired to the regular bedroom and her sister went to the spare bedroom (p. 153, lines 1-2). About midnight the petitioner returned with his brother Andrew (p. 153, lines 5-24)

and petitioner and Andrew retired to the spare bedroom (p. 154, line 6), Mrs. Nobile having come into the regular bedroom to share it with defendant (p. 153, line 40). This is corroborated by Mrs. Nobile (p. 205, lines 18-28). The petitioner had nothing to say about what he did from the time defendant returned home at 10 o'clock until the following morning, either in his direct case or in rebuttal and, therefore, defendant's story in that regard is not challenged.

The next morning, petitioner said, he argued with defendant. "I started to question her why she was coming home so late at night times" (p. 23, line 35). He then took her to her mother in Passaic (p. 23, line 40).

This is flatly denied and petitioner is not corroborated. The defendant claims that as she was attending to the duties of the store, petitioner's brother, Andrew, came in and asked defendant to accompany him to purchase a dress for Andrew's daughter (p. 155, lines 16-24). This was 11 o'clock (p. 155, line 15). Petitioner and Andrew had left before defendant got up (p. 154, lines 30-35). Petitioner then came in and at his request she prepared to go with Andrew (p. 155, lines 30-38). Upon going outside defendant found her husband in an automobile and Andrew and she got into it (p. 155, lines 35-40; p. 156, lines 1-3). In all of this defendant is corroborated by her sister (p. 205, line 30; p. 206, lines 16-22).

The petitioner gives no testimony as to the ride to Passaic but Miss Castle does. She said that on Sunday morning she received a telephone call asking her to go to Passaic (p. 85, lines 36-40). She took her car and had with her Mr. Mascia and Mr. Everingham. In the other car there was the petitioner, the defendant and Andrew (p. 86, lines 4-

10). On the way to Passaic, in Red Bank, the defendant made a move as though she was going to get out of the car, and petitioner beckoned Miss Castle up. The Castle car drew up alongside the Baldanza car and stopped. Mr. Everingham then got into the Baldanza car. On going from the one car to the other Mr. Everingham placed his handcuffs in his pocket, exposing them before doing so (p. 97, lines 5-35).

The defendant, in telling this story, explains that when the car started in the direction of Red Bank she inquired the reason. Andrew then accused her and she denied the statement to her husband, but the petitioner remained silent (p. 155, lines 10-40; p. 156, lines 1-40; p. 157, lines 1-10). She then tried to get out of the car and Andrew held her. Miss Castle's car then drew up alongside (p. 157, lines 15-40). Miss Castle informed defendant she was under arrest and exhibited a badge, at the same time asking Mr. Everingham for his handcuffs (p. 158, lines 1-20). They tried to put them upon defendant and a revolver was exposed (p. 158, lines 20-28). Mr. Everingham then got into the car beside defendant, as did petitioner, and Andrew drove (p. 158, lines 28-30).

At the house in Passaic, Miss Castle, Mr. Everingham and petitioner say they accused defendant of improper relations with Napolitano, but this is denied by defendant, her mother and her brother. Mr. Mascia and Andrew Baldanza, although it is claimed they were present, did not testify. The defendant and her witnesses say some accusation of being in a hotel room with a man was made (p. 222, lines 18-36; p. 240, lines 36-40; p. 241, lines 1-10). The defendant's witnesses say defendant was forcibly taken out of the mother's presence, whereas petitioner's witnesses say defend-

ant's people chased her out. At any rate, she was finally taken by Miss Castle to the rooming house in Asbury Park, not abandoned as a bad woman and an outcast, but taken to a friendly acquaintance of Miss Castle's where it is claimed more evidence was obtained.

It is uncontradicted, however, that Andrew said, in the presence of Fiore Nobile, the afternoon of August 25th, "She will not get in the house any more. If he takes her back, I will stab him in the stomach" (p. 231, lines 10-22), and the petitioner was crying (p. 231, lines 30-38).

These activities all demonstrate, not the conduct of a husband, heartbroken over his wife's deceit, but rather a vicious attack, by Andrew at least, to rid the family of one, who by her affections, dominated her husband. Surely, the handcuffs, on Miss Castle's own story, suggest something. Why did Mr. Everingham find it necessary to get into the car to guard Mrs. Baldanza? Why was she taken, not to her acquaintances, but to a strange rooming house in Asbury Park? Why was she taken to the Police Magistrate, if as Miss Castle implies, this detective felt sorry for the defendant? Why was she arrested on a charge of adultery the Tuesday following when she went to her home to see her husband, remembering that she had already insisted upon being taken to a Justice of the Peace to confess and to agree never to enter her husband's home unless he requested her to do so? Why, too, was not Mr. Napolitano arrested on the charge of adultery?

We respectfully submit that all of this suggests a plot, carefully prepared, and we say more of this in the next point of this memorandum.

POINT III.

The testimony to corroborate the petitioner was given by paid detectives and relatives of petitioner who bore an ill feeling toward defendant and their testimony has been effectively impeached.

The law is established, that although the testimony of detectives, paid spies, and those who bore ill-feeling toward defendant, is competent, it should be scrutinized carefully and should not be relied upon unless corroborated.

At the head of this brief we have summarized the testimony as to the family relations prior to August 24th, 1929. Under Point II we have particularly set forth all the testimony relating to desire and opportunity.

We now assert that there is no testimony given by anyone other than the two detectives and the petitioner to demonstrate any act on the part of defendant to arouse the least suspicion. Her application to the duties of the store, her conduct toward her husband and her submission to the persecutions of the petitioner's family were as evident on the day of August 24th as at any other time.

The contradictions of each of petitioner's witnesses—the failure of petitioner to produce Andrew Baldanza and Mr. Mascia to give testimony—the story of the bus driver to contradict petitioner as to any questions asked of defendant upon her return—the conduct of petitioner, an Italian, during the night of August 24th—the presence of Andrew at the home that night with no act on his part to then prevent defendant from sharing the roof with him—the fact that adultery is supposed to have been committed in a car less than 75 feet

from an apparently loving husband before dark, so that he could have seen each and every act (the offense was supposed to have been committed August 24th, before 9.30 P. M., Daylight Saving Time), and the husband remain entirely cool and collected—the part played by Miss Castle and Mr. Everingham, the detectives on the ride to Passaic—the part played by Miss Castle in taking defendant before a police recorder to make a sworn confession when no criminal proceedings were pending, including the use of a name therein not even proved to have been known to the defendant (surely not Napolitano whom defendant is supposed to have known so well)—these circumstances make us pause to wonder how the guarded discretion of a reasonable mind can find that the circumstances bear heavily toward the inference of guilt.

It is certain the petitioner's family objected to defendant and she, we think, held little, if any, love for any but her husband. It is quite natural that each side resented the influence of the other over an apparently prosperous man. This reaction is the normal result of average inter-family association. In this case, particularly, there was cause for feeling and the activities of Andrew on the night of the 24th and the days following demonstrated that the feeling had reached unbearable limits. Under such circumstances a plot is not an impossible result.

POINT IV.

The facts in this case with respect to the relations between the defendant and John Napolitano were such that with the slightest caution on the part of the petitioner the breach of the marriage vow might have been prevented.

In *Delaney* v. *Delaney,* 71 N. J. Eq. 246, at page 256, Mr. Justice Fort, writing the opinion for the Court of Errors and Appeals, said:

> "In Cane v. Cane, 39 N. J. Eq. (12 Stew.) 158, Vice-Chancellor Van Fleet says: 'If a husband sees his wife in danger, if he sees her in a position where she is likely to become subject to the power of the blandishments of a man whose character he knows to be bad and intentions evil, and he does nothing to warn her or to withhold her from his hands, but allows her to be led to ruin and his dishonor, his conduct in law amounts to consent, and the statute declares that no divorce for adultery shall be decreed when it appears that the party applying consented thereto.' And he quotes the language of Chancellor Zabriskie in Hedden v. Hedden, 21 N. J. Eq. (6 C. E. Gr.) 61, in which case it was held that if a husband sees what a reasonable man could not see without alarm, or if he knows that his wife has been guilty of any weakness whereby he is put upon his guard respecting her weakness, he is called upon to exercise 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.
>
> This court, in Warn v. Warn, 59 N. J. Eq. (14 Dick.) (at p. 642), approved of the doc-

trine stated in the Hedden and Crane cases, but held that there was nothing in that case 'that the complainant did or that he failed to do which could reasonably impute to him a desire or anticipation that his conduct would prompt her to drift into lewdness.' And said further: 'Unless this intention could under the circumstances be imputed to him, it is irrelevant to consider whether it was his duty to have acted toward her differently than he did,' thus clearly implying that if the facts and circumstances were such as to impute to the petitioner or complainant 'a desire or anticipation that his conduct would prompt her to drift into lewdness,' that this, if established, would amount to connivance or consent.

On the principle of the cases just cited are the cases of Morrison v. Morrison, 136 Mass. 310; Dennis v. Dennis, 68 Conn. 186; 57 Am. St. Rep. 95 (note at p. 101); Wilson v. Wilson, 154 Mass. 194; 26 Am. St. Rep. 237 (note at p. 239); Cairns v. Cairns, 109 Mass. 408. See, also, note to Hawkins v. Hawkins, 25 Am. L. Reg. (N. S.) 98.

In Bourgeois v. Chauvin, 39 La. Ann. 216, the court says: 'Where the conduct of the husband indicates an intent to have his wife transgress, or to let her do so, undisturbed, this constitutes a connivance, and will act as a bar to his suit for divorce.'

In 9 Am. & Eng. Encycl. L. 829, tit. 'Connivance,' a general discussion of the subject will be found and a citation of other authorities."

The evidence shows that petitioner as early as March, 1929, saw that Napolitano apparently held some peculiar power over defendant. He observed Napolitano's conduct and spoke of it to defendant. He hired Miss Castle, a detective, in July, and upon being told that defendant was out with Napolitano

August 6th, parking for five minutes (p. 81, lines 22-40; p. 82, lines 1-25), petitioner expressed a wish to go along to see for himself. He, however, had *relations* with his wife on August 12th, six days later (p. 51, line 18). He took her out on several occasions and left her—to be followed by detectives. On the night of August 24th, he saw her leave the Grandi home and knew "she was going to do wrong" (p. 34, line 5). He followed, saw her get into the car with Napolitano and although the car drove slowly, he followed a distance of 15 to 20 feet. When defendant was parked in the driveway, so that the rear of the car was exposed to view, he without emotion of any kind remained in the detective's car 50 to 75 feet behind. He then went to his home and when defendant returned he did not accuse her, have her arrested, or put her out of his home, but on the contrary prepared to retire to bed with her when the telephone call changed his plans. (This is not contradicted by petitioner and defendant is corroborated.) Andrew, his brother, who had earlier threatened defendant, returned with petitioner and stayed with him until early morning and no accusations were then made. She was later taken to Passaic and then abandoned in Asbury Park and finally, when she arrived back at her home, arrested.

Now, we submit that the uncontradicted proofs of the defendant show a desire on the part of petitioner's family to be rid of the defendant. She had crossed her husband, at least twice, in his relations with his family and he struck her. Then, after he had been told that defendant had gone to a lonely road with Napolitano and there parked for five minutes the night of August 6th, he continued the intimate relations of husband and wife

until August 12th, for at page 51 of the record, lines 1 to 20, the following appears:

> "Q. You did not want to get rid of your wife, did you? A. No.
>
> Q. You did not want to get rid of her? A. No.
>
> Q. Your brothers did, didn't they? A. No.
>
> Mr. Quinn: I object.
>
> The Court: I will allow that to stand.
>
> Q. Your brother did? A. No, sir.
>
> Q. Why do you get excited? A. Because you are asking such foolish questions. I was sleeping with my wife, not my brother.
>
> Q. What was the last time you had marriage relations with your wife? A. 12th of August.
>
> Q. It was not the 23rd or 24th of August? A. No, sir."

Considering this amazing fact, with the further and even more amazing fact that petitioner did nothing at the time of and following the alleged occurrence of the night of the 24th of August, we think the plot, or connivance, becomes perfectly apparent. Couple to this the events of Sunday, Monday and Tuesday and we find, not accidental discoveries, as would be expected if defendant were thrown out by her own people and cared for by the good samaritan, Miss Castle, but rather a further carefully worked out scheme of attack designed to accomplish the long looked for result, the elimination of defendant.

CONCLUSION.

We respectfully submit that the decree appealed from should be set aside and the case remanded to be proceeded upon, according to the practice under, defendant's cross petition.

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New Jersey Court of Errors and Appeals

Between:
HARRY BALDANZA,
Petitioner-Appellee,
and
JOSEPHINE BALDANZA,
Defendant-Appellant.

On Appeal from the Court of Chancery.

BRIEF OF THE PETITIONER-APPELLEE.

STATEMENT.

The defendant, Josephine Baldanza, prosecutes this appeal from a decree of the Court of Chancery entered on October 3, 1930, granting a divorce to the petitioner on the ground of adultery with one John Napolitano. A petition was filed by Harry Baldanza charging that his wife, the defendant, committed adultery on August 6, 1929, and on August 24, 1929, with John D'Appoli.

The petitioner and defendant were married in 1924 and thereafter took up their residence at Long Branch, where the petitioner was a grocer and baker. Two children were born of the marriage.

In March, 1928, the co-respondent, Napolitano, came to the petitioner's store and there met the defendant. She was impressed with him on first sight and remarked what a fine looking fellow he was. After that Napolitano continuously visited

the defendant, who kept her husband's store while the husband conducted a bakery route, delivering provisions. He would visit with her for long periods of time, and called her by her first name, "Josephine." When the boys who took care of the store or worked part time in the store were present, Napolitano and the defendant would send them on errands or else would go to the kitchen, leaving the boys in the store, and on at least two occasions Napolitano and the defendant were seen in the kitchen adjoining the store, where the defendant was furnishing food or refreshments to the co-respondent. The girls who took care of the children or helped in the store saw Napolitano and the defendant together many times. He rarely called when the petitioner was home but customarily came in his absence. Both the defendant and Napolitano sent these girls, who took care of the children or helped in the store, out of their presence when they were together.

Mrs. Baldanza, the mother of the petitioner, remonstrated with the defendant because of her evident interest in Napolitano.

On one occasion, the defendant met Napolitano on the beach at Long Branch. The defendant was accompanied by one of the girls who assisted in taking care of the children. This girl was sent away on an errand while the two remained together. These girls were in the store on many occasions in the evening when Mrs. Baldanza would leave the children in charge of one or the other of the girls with the advice that she was going downtown and if her husband came in to say that she had just left.

On various occasions she came in late at night. Finally, in August, 1929, the petitioner employed a detective, who trailed Mrs. Baldanza and saw her get into the car of Napolitano. The detective trailed the defendant and Napolitano but finally lost them. She reported this to the petitioner, who was astounded, but requested that he be allowed to accompany the detective the next time his wife was shadowed.

On August 24, 1929, the petitioner took his wife down to see Mrs. Grandi, who had just returned from the hospital. She told him at that time that she was going downtown shopping and then would come home. Petitioner waited outside, in company with Miss Castle and a constable. Mrs. Baldanza remained in the Grandi home for twenty minutes. She then came out and walked down the street to Broadway, Long Branch, where she was followed. There, the defendant entered the car of the co-respondent, Napolitano, and by devious and roundabout streets finally reached a secluded street leading to the old ball park. This street was guarded by hedges ten feet high. The car was driven in between these hedges, the lights turned out and the defendant and the co-respondent remained there alone with the lights out in the car between the hedges for twenty minutes. Then they backed out and went back to Broadway, where the defendant alighted from the car and eventually came home.

The next morning, in accordance with an Italian custom, the erring wife was taken by her husband, in company with his brother, another friend and the two detectives, to her mother's home in Passaic. There, in front of the mother and brother of the defendant, the petitioner accused

her of having intercourse with the co-respondent, Napolitano. According to petitioner's witnesses, the defendant broke down and cried and admitted her guilt. Her own mother then drove her from her home. She approached the detective and asked the detective to take her to Asbury Park. There she obtained a room with a boarding housekeeper. While at the boarding house, the defendant told the boarding housekeeper that she had been caught doing wrong with her boy friend. In the landlady's presence she called her boy friend on the 'phone and told him to stay away from her husband's store. She also called her sister and asked her sister to see if she could not fix it up.

That night, in an endeavor to do something whereby she could get her children, in company with the detective, she went to a Justice of the Peace of Monmouth County, who is also the Recorder of the Borough of Deal. There, before the Recorder, she signed an affidavit which the Recorder said she did willingly after he had read it to her. In this affidavit she stated that she had known John Napolitano for a period of three months, had met him several times and had gone riding with him in his motor car at night without the permission of her husband. She said she had made it a point to meet him by telephone, had kissed him and he had kissed her. This story, offered by the petitioner, was supported in various particulars by ten witnesses. The detective and the constable who assisted the detective were called as witnesses and testified as to the occurrences of August 24th. The landlady, where the defendant stayed and to whom the defendant stated that she had been caught in the act with

her boy friend, appeared, as did three young men who had worked in the store and observed the relationship between the defendant and her inamarato. Two girls who attended the children of the defendant appeared. Mr. and Mrs. Grandi corroborated the time. The defendant and the co-respondent, Napolitano, both appeared. Napolitano denied that he had ever had Mrs. Baldanza in an automobile; that he had ever kissed her; that he had ever talked to her in an affectionate way; that Mrs. Baldanza, the mother of the petitioner, had ever complained to him. He denied that he was ever out with the defendant; that the boys and girls who worked in the store were ever sent out of the store by Mrs. Baldanza when he came there; that he was ever out in the kitchen alone with Mrs. Baldanza; that he had ever talked to Mrs. Baldanza since August 24, 1929, or that he had ever sent any message to her.

The defendant also entered a general denial. She said that she was dragged into her mother's home, but would give no reason why she was unwilling to go in. She admitted her mother said nothing when her husband accused her of adultery. Though she said that she was practically kidnapped, she remained for three hours on a public street and made no outcry. She denied making any telephone calls at the boarding house. She denied that she had told the landlady that there had been any trouble about her boy friend. She denied that she knew, although she was a graduate of grammar school, what was in the affidavit signed before Judge Cox and denied the truth of every statement in that affidavit. She denied that she ever met Napolitano; was ever in his car or ever went to Norwood Avenue. She

denied that she left the Grandi home at 8:30. She had never, according to her story, left her children in the care of others or told those in charge of the store when she was out that she had just gone out. She said she knew nothing about the letter from Joseph DeSantis which was found in her trunk and which was handed to her. Her sister, her brother, her mother and her sister's husband completed her defense. Her mother, when her daughter was accused at Passaic of being a whore, admitted that she said nothing. The mother said that the defendant did not deny the charge, and defendant's own brother said nothing. The mother said she understood the accusation that had been made against her daughter. This, in brief, is the story of the testimony offered at a hearing lasting two days.

At the conclusion of the hearing the learned Vice Chancellor awarded a decree to the petitioner. This decree is attacked on this appeal on four grounds by the defendant. In the argument the defendant entirely ignores the effect of the confession but directs the argument entirely to the ground that there was no evidence of adultery; that there was no corroboration of the detectives, and that the petitioner connived or consented to the relations between the defendant and the co-respondent. The appeal presents essentially a factual question and a construction of the evidence. The Vice Chancellor, who saw and heard the witnesses and observed their demeanor on the stand, disbelieved the defendant and her witnesses, and, on oral opinion, clearly stated the grounds for his disbelief of their testimony and his belief of the testimony of the petitioner and his witnesses.

ARGUMENT.

I.

AMPLE PROOF WAS OFFERED OF ADMISSIONS BY THE DEFENDANT OF ADULTERY WITH THE CO-RESPONDENT.

It is an Italian custom that where a wife errs, sins and is unfaithful to her husband, the husband returns her to her own home from which he took her. This was done in the present case after the husband had seen the defendant go off with the co-respondent to a secluded section and remain there with lights out for some period of time. The defendant, the next day, was taken back to her mother's home in Passaic.

Harry Baldanza said:

> "Q. Tell us what you said. A. I told my mother-in-law that she was going around with John Napolitano and she was having intercourse with John Napolitano, and her mother asked her was it true, and she says it is. When her mother and her brother was there and she admitted it, her mother and brother chased her out of the house.
>
> "Q. Her mother was present when she said, yes, it was true? A. Yes, her brother and her mother.
>
> "Q. They chased your wife out of the house? A. They chased her out of the house and I was left there. My mother-in-law told me she that was was going to come up to my house and take care of my children and take care of me, and 'Do not bother with her any more' " (p. 24, ll. 27-41).

Emmett Everingham, a constable of Monmouth County, went to Passaic when the defendant was returned to her mother. He said:

> "Q. What did you hear in English? A. Her brother asked Miss Castle to tell him what we had seen, and she told him the times we had followed her and what we had seen, and he turned to her sister, Mrs. Baldanza, and asked her if that was the truth, and she said yes. He said, 'Is it all true?' She said, 'Yes.' He immediately told her to go out of the house, she was no longer a sister of his" (p. 62, l. 33 to p. 63, l. 2).

Marie Castle, the detective, said:

> "A. At the time her brother asked her, 'Is this really true?' She turned around and said, 'Yes, but it only happened twice.' He said, 'Do you mean to tell me that you were out with this man unbeknown to your husband and that you went and did wrong?' She said, 'Yes, but it only happened twice' " (p. 88, ll. 1-11).

Defendant's own mother said:

> "Q. What was said when your daughter was brought in by whom? A. Andrew Baldanza said to me, 'Here is the whore of your daughter. We found her in a hotel' " (p. 222, ll. 17-23).
>
> "* * * Q. Did your daughter deny the charge, A. My daughter did not speak at all" (p. 222 l. 36).
>
> "* * * Q. I don't care what they told you. I am asking you what you understood they meant. A. Yes; I understood the nature of the accusation.
>
> "Q. You said nothing to your daughter about it? A. I didn't say anything to my daughter" (p. 224, ll. 22-27).
>
> "* * * Q. When Andrew Baldanza remained a few minutes after she went out

> of the house and told you that she had done wrong, didn't you say to him, 'If you had told me this before I would have stopped her?' A. Yes; I said that to him, why didn't he tell me" (p. 226, ll. 32-40).

This defendant was taken to her own home. Even her mother admits that there in her own home, in the presence of her mother and her brother, she was accused of infidelity. Petitioner's witnesses stated that at the time the name of the co-respondent was mentioned, defendant, in the presence of her mother, admitted the truth of the accusation. The mother states that her daughter was accused of infidelity and adultery and that when the accusation was made her daughter said nothing. The defendant, herself, admits that the accusation was made but said that she denied it. She is thus contradicted by her own mother. She is contradicted by her husband and she is contradicted by the two witnesses.

As was said by Vice Chancellor Fielder in his oral opinion:

> "The petitioner and the detectives say that her mother asked her if the charge was true and that the defendant admitted it and that the mother and brother thereupon turned her out of the house. She admits that in the presence of her mother and her brother she was charged with adultery but denies that she admitted guilt. She is vague as to what she did say to her mother and brother with respect to the charge. Her mother testified that after the charge was made the defendant said nothing to her and that she said nothing to the defendant, a situation almost unbelievable as between mother and daughter, especially if the daughter protested innocence. Her brother says that the defend-

and in the presence of her brother. In this home, where she had been reared and nurtured from childhood which she had left in marriage, she had the right to feel, if innocent, that she would receive every protection and care that an innocent woman would expect. Here, in her mother's home, with her brother present, she, if any place, could rightfully defy and deny an accusation of infidelity.

The Italian race, from the evidence in this case, looks upon such an offense in all its true seriousness and gravity. The guilty woman was taken back to the mother who had reared her. There, in the presence of the mother, she was accused of consorting with the co-respondent, Napolitano. In her mother's presence, in her mother's own words, she did not deny the accusation. The mother says she said nothing. Three witnesses for the petitioner state that she admitted her guilt. The mother of the defendant, called as a witness for her, appearing for her own child, would not go to the length of testifying that the defendant insisted upon her innocence. When the mother of the defendant would not do this, it is unquestionable that the testimony offered by the petitioner is true, that the defendant did admit her guilt. When the circumstances pointed out by the Trial Court that the mother and brother refused to take her into the home, but let her go away, when they knew that petitioner would not take her back, this corroboration confirms the confession.

She again admitted, under no compulsion whatsoever, to the landlady, Mrs. Vandenschotten, that she had been caught with her boy friend and there was trouble at home.

Defendant again admitted in the sworn affidavit before Judge Cox, that she had been out in the company of the co-respondent, Napolitano, without the knowledge and without the consent of her husband; that she had been several times on Norwood Avenue, and that they had treated each other affectionately. To these confessions must be added the evidence that for some period of months she and Napolitano were on intimate terms with each other; that he daily came to the store and talked with her; that frequently she sent away on errands the boys and girls who worked in the store or cared for the children.

In addition to this is the testimony of three witnesses concerning the night of August 24, 1929. The petitioner, the constable and the detective all trailed her. She was seen in the car with the co-respondent. He placed his arm around her. She laid her head affectionately on his shoulder. They drove by devious and indirect routes to an isolated, secluded and hidden section on the outskirts of the city. There they turned the lights of the car out and remained for approximately one-half hour. Upon her return she told her husband that she had been in Long Branch. The testimony of these three witnesses, together with her own confession before her mother and her brother, with her confession before the landlady, with her confession in the sworn affidavit, conclusively prove the commission by this defendant of the act of adultery with the co-respondent, Napolitano.

II.

THERE WAS CLEAR PROOF OF INCLINATION, DESIRE AND OPPORTUNITY BY THE EVIDENCE OF IMPARTIAL WITNESSES WHO CORROBORATED THE EVIDENCE OF THE PETITIONER AND THE DEFENDANT.

The defendant argues that there was no evidence that would indicate adultery. Defendant overlooks entirely and scarcely mentions the confessions and conduct of the defendant. Irrespective of these confessions, the overwhelming weight of evidence showed an intimate relation between the defendant and the co-respondent which culminated in the tryst in the by-road behind the hedges.

The defendant first met Napolitano in March, 1929, at the store operated by the petitioner and the defendant. When Napolitano went out, the defendant said, "What a nice looking fellow that is" (p. 17, l. 40). After repeated visits, the petitioner reproved the defendant because of her intimacy with Napolitano. She answered, "You got a bad mind all the time" (p. 18, l. 30). Napolitano came to the store nearly every day and talked to the defendant in confidence, calling her "Josie" repeatedly (p. 19, l. 18).

Between March and August, the defendant went out once or twice a week at night. When the petitioner told her he did not like her to go out late at night, she said she went out to buy clothes (p. 19, l. 40).

During this period of time, between March and August, Fred Scialla, who worked for Baldanza

in the bakery shop, frequently saw Napolitano in the store two or three times a week when Baldanza was away. When Scialla went in the store, the defendant and Napolitano would stop talking. After the petitioner's mother had spoken to Scialla, he, in turn, spoke to the defendant and told her, "Why don't you cut it out with Joe?" Mrs. Baldanza answered, "Who told you that—the old lady? She had better mind her own God damned business" (p. 105, ll. 1-18).

Frank Graziano worked in the store for two and one-half years and worked during June and the first week in July, 1929. He saw Napolitano in the store nearly every other day, talking to Mrs. Baldanza. Whenever he came in, Mrs. Baldanza, the defendant, sent Graziano away to do something else (p. 106, l. 40). Graziano also saw Napolitano and the defendant in the kitchen on two occasions.

Josephine Todaro worked at the Baldanza store in the summer of 1929. Miss Todaro saw Napolitano in the store two or three times a week in the daytime. Frequently Mrs. Baldanza went out in the evening and returned after nine o'clock. The defendant told Miss Todaro to tell her husband, if he came home, that she had just left (p. 108).

Marjorie Calabretto took care of the Baldanza children during the summer of 1929 in the afternoon and evening. She saw Napolitano around. On one occasion she went down to the beach with Mrs. Baldanza and there she met Napolitano, the co-respondent. When they met, Napolitano sent Marjorie away for ice cream.

Albert Mazzatto, a druggist with a store next door to the Baldanza bakery shop, saw Napolitano there three or four times a week with Mrs. Baldanza. On one occasion he saw Napolitano and Mrs. Baldanza in the kitchen eating together (p. 113).

The mother of petitioner, Mary Baldanza, spoke to her daughter-in-law and told her she did not like her intimacy with Napolitano. The defendant said "What can I do?" Then Mrs. Baldanza, the mother, told her of certain examples, and the defendant answered, "What do you take me for—a bad woman" (p. 116)?

Marie Castle, a private detective hired by the petitioner on August 6, 1929, followed Mrs. Baldanza into several stores and then down to Union Avenue. She got into a car with the co-respondent, Napolitano. The car went out to West Long Branch, stayed there for five minutes and then left (p. 81).

On August 24th, by arrangement with Mr. Baldanza, Miss Castle trailed the defendant. The defendant left 171 Second Avenue, Long Branch, around 8:30 and went to Broadway. There she entered the automobile of Napolitano and was driven by a devious route to Archwood Avenue, where it was lonesome and dark and secluded by high hedges. There the car lights were turned out (p. 83). Mrs. Baldanza and Napolitano remained there twenty minutes, and then left and by a different route returned to Broadway.

On cross-examination, Miss Castle told of the statement made by the defendant before Judge Cox. The defendant wanted to secure her children and offered to make this statement in the

belief that if she did so her husband would give her the children (p. 95, l. 10).

On examination by the Vice Chancellor, Miss Castle stated that Napolitano had his arm around the defendant and she was down in the seat with her head on his shoulder (p. 103, l. 12).

Emmett Everingham (pp. 52 to 74) corroborated in every detail the story of Miss Castle, as did the petitioner, Harry Baldanza.

To contradict this story, John Napolitano, the co-respondent, first took the stand for the defendant (p. 127). He testified that he never took Mrs. Baldanza out (p. 128, l. 28); never had her in an automobile (p. 129, l. 18); was not with her on Archwood Avenue on August 24, 1929 (p. 128, l. 28); that he had never embraced Mrs. Baldanza (p. 130, l. 18); that he didn't know when Mrs. Baldanza went to Passaic (p. 130, l. 40); that the boys and girls who worked in the Baldanza store were never sent out when he came there (p. 132, l. 37). He knew that he had been charged with going out with Mrs. Baldanza (p. 133, l. 28), but was unable to give the name of anyone who had told him about it (p. 133, l. 30).

The defendant, Josephine Baldanza, testified that she left Mr. Grandi's house and went to Broadway, visited a few stores and then went home (p. 150). She denied that she had ever been in the vicinity of Norwood Avenue or that she had ever had a telephone conversation with Napolitano (p. 184, l. 40). She said she left the home on Second Avenue where she was visiting on the evening of August 24, 1931, at 9:10 (p. 187, l. 32). She denied that she met Napolitano but admitted that she did not reach home until

around ten o'clock (p. 188). She denied that the girls who had testified ever took care of the children (p. 189, l. 38). She said she never told any of those who worked in the store that if her husband asked what time she came in to tell him that she came in around eight o'clock (p. 190, l. 18). She then immediately contradicted herself and spoke of Margaret Calabretti, who used to take care of the children (p. 191, l. 28). She finally admitted meeting Napolitano on the beach (p. 192, l. 12); that the little girl went away (p. 192, l. 28) and that she was sent away by Mr. Napolitano (p. 192, l. 29). She denied that she had ever received the letter offered in evidence at page 196 but recognized the picture (p. 197). She denied that Napolitano was ever in the kitchen of her home (p. 198).

The picture presented by this testimony is that of an intimacy testified to by four different people who had worked in the store and had observed the conduct of the defendant and Napolitano; by a druggist in the adjoining store who had observed the same condition. In addition to this, the defendant is flatly contradicted by Mr. and Mrs. Grandi (pp. 244 and 247) who both stated that she left their home on August 24th at 8:30. Neither of these witnesses, nor the boys and girls, nor the druggist, had any interest one way or the other in the case. Mrs. Baldanza, however, flatly contradicted them. It was important for her to account for the time between 8:30 and 10 o'clock when she arrived home. For this reason, she stated that she did not leave the Grandis until 9:10. The detective, the constable and the petitioner all stated that she left there at 8:30 and that they followed her and Napolitano to the

trysting place in Archwood Avenue. Mr. and Mrs. Grandi corroborate the evidence of these three witnesses in the time that she left their home. She therefore could not account for the time between 8:30 and 10 o'clock.

Napolitano was flatly contradicted by the boys and girls who worked in the store, by an employee of the bakery shop and by the druggist.

The position of the two guilty parties is that of a general denial, with no explanation whatsoever of their conduct. Inclination is apparent in the intimacy between the two, in the confidential relations exhibited by the two, in the desire to be alone, in dismissing the various employees from their presence when together. The inclination is apparent in the attitude each showed to the other when observed by petitioner's mother and in her answer when both the mother and petitioner objected to her actions and conduct when in the company of the co-respondent.

Opportunity was certainly present when the two, by devious and roundabout route, pursued their way to a spot prepared by nature as an ideal lovers' meeting place. This spot, as evidenced by the pictures, away from the beaten highway, on a by-street, surrounded by high hedges, with a narrow entrance, offered an ideal location for the consummation of their guilty desires. When these desires were satisfied conscience struck the defendant. Overcome by a sense of guilt, in her mother's presence and her brother's presence, she confessed. She again confessed to her landlady and before the Recorder. The entire picture, with each separate act and with each separate bit of testimony completing the whole, is that of an un-

faithful wife who knows that she has been found out. When action is taken against her, her sole recourse is to deny every incident and all statements of all witnesses both those that might be interested and those that might be disinterested. The denial of the evidence of the disinterested witnesses impeaches and discredits the denial of the evidence of the interested witnesses. The surrounding facts strengthen and corroborate the testimony of the petitioner, the constable and the detective.

Appellant, in her brief, states:

> "The law is established that although the testimony of detectives, paid spies, and those who bore ill-feeling toward defendant, is competent, it should be scrutinized carefully and should not be relied upon unless corroborated."

The review of the testimony corroborates in many particulars the testimony of the petitioner, the constable and the detective. The denial of the defendant and her paramour is entirely discredited by the independent evidence of disinterested witnesses. The defendant and her lover went too far in their denials of various and important particulars. They were contradicted by entirely disinterested witnesses. This destroyed the credibility of their testimony. In not a single particular is the testimony of the detective and the constable effective. They underwent a long and vigorous cross-examination. They both corroborated each other and in turn were corroborated by the petitioner. On many items their testimony was corroborated by the independent witnesses. It is submitted that all of the evidence in the case supports the testimony of the petitioner and those

working for him. This evidence leads to the unquestioned inference that the defendant committed adultery with Joseph Napolitano on August 24, 1929.

III.

THE PETITIONER EXERCISED EVERY CAUTION POSSIBLE ON THE PART OF A REASONABLE MAN TO RETAIN THE FIDELITY OF THE DEFENDANT.

Defendant, in her own brief, states that the petitioner warned the defendant about her actions with Napolitano. Petitioner's mother spoke to the defendant. An employee in the store spoke to the defendant. In every instance she laughed at them and charged them with believing her to be a bad woman.

On the contrary, the testimony shows definite intent on the part of the defendant to enjoy the company of Napolitano as often as she could. She desired to be alone with him. She dismissed from their presence employees who worked in the store or the home. She cautioned some of these employees when she left for unknown places to tell her husband when he returned that she had just left. She concealed from her husband her passion for her paramour on every occasion. When he reproved her, she denied it. She secretly met Napolitano some two weeks prior to the night of August 24th. Finally, on the night of August 24th, according to her own story, she told her husband that she wanted to go downtown shopping after she had visited Mrs. Grandi. With the clandestine arrangements already made with a secretive course of conduct, the petitioner was

justified in learning how far the illicit love affair had progressed. The defendant herself, in her testimony throughout, indicates her firm belief that the petitioner loves her. He indicates on various occasions that he succumbed to her artifices and wiles. His suspicions, however, having become definitely aroused with his desire to protect his home and rid it of a cuckold, he determined to discover to what lengths Napolitano and his wife had become entangled one with the other.

Instead of open connivance, on the contrary all the relations between the defendant and her lover were conducted in deepest secrecy. Instead of abetting and aiding, her husband first reproves, and then suspects and finally discovers. Such conduct assuredly is not that of connivance, but, on the contrary, that of any man who feels that he is being wronged and desires to know.

IV.

THE CHARGE OF ADULTERY CONTAINED IN THE PETITION HAS BEEN ESTABLISHED.

Defendant argues under her first point that because the petitioner charges adultery with John D'Appoli while the proof shows the offense to have been committed with John Napolitano that the petitioner has failed to prove his case. It is submitted that this argument is of little weight. No question existed in Napolitano's mind, in the defendant's mind or in any of the parties as to whom the co-respondent was.

Section 10 of the Divorce Act, 2 S. C. p. 2033, provides that the petition shall plainly and fully

state the cause of the application for divorce. Rule 259 provides in suits for divorce on account of adultery the petition shall state the name of the person with whom the adultery was committed, if known. The petition set forth the name of the co-respondent, John D'Appoli. It is to be noted that there was no confusion as to the identity of the person named, D'Appoli, Napolitano, and Napoli. All are similar, both in spelling and in pronunciation. In the affidavit made by the defendant on page 256, the co-respondent is described as John Napoli. In the petition he is described as John D'Appoli. At the trial his full name appears as John Napolitano. The co-respondent himself stated that he knew that he was accused of the offense with the defendant. He appeared on the last day of the trial (p. 128, l. 30). He was also present the second day of the trial. He admitted that he was the man who went to the store every day (p. 131). He also admitted that he was the person charged with being out with Mrs. Baldanza (p. 133, l. 28).

From the inception of the trial of the case, the identity of the co-respondent was clear. Counsel for the defendant, in the trial of the case, accepted the identity as unquestioned. The first witness, the Recorder, who took the stand, produced the affidavit showing the name of John Napoli. Thereafter, throughout the case, the co-respondent was referred to as Napolitano. Nowhere was there any question raised as to any conflict of identity between the name D'Appoli in the petition, the name Napolitano in the case, or the name Napoli in the affidavit. Their identity was accepted by counsel and parties to the cause as one and the same.

The intent of Rule 259 is to apprise the defendant of the name of the co-respondent with whom the defendant is charged with the commission of the offense of adultery. Defendant was fully apprised of the co-respondent's name. He appeared the first day of the trial. No attempt was made to charge an offense with any other persons than this man who appeared the first day of the trial.

The case of *Miller* v. *Miller,* 20 N. J. Equity page 216, cited by the defendant, does not support the contention of the defendant. In *Miller* v. *Miller,* the petitioner named three different co-respondents. At the hearing, proof was offered of adultery with one Byron French, an entirely different, separate and distinct person from the three co-respondents mentioned in the pleadings. The Court very properly said that

> "Proof of adultery with A will not sustain a charge of adultery with B."

Such is not the instant case. Here is a definite person named. That person appears in court and denies the charge. The defendant is apprised of the co-respondent's name, as is the co-respondent himself.

Defendant also cites *Gray* v. *Gray,* 95 N. J. Equity page 561. This case also is distinguishable from the instant case. The petitioner in *Gray* v. *Gray* named a co-respondent, but then alleged that if he was not the person with whom adultery was committed, some other person unknown was guilty, thus qualifying the allegation against the named co-respondent. The named co-respondent then moved to dismiss the petition as to himself.

Vice Chancellor Bentley held that there must be a definite charge unqualifiedly made and not in the alternative.

In the suit *sub judice,* the petitioner makes a definite charge against a definite co-respondent. The defendant is apprised of the charge and identifies the co-respondent. The co-respondent himself comes to court. He is identified in court as the co-respondent by five different witnesses. He takes the stand himself and admits that he is the same man whom the petitioner charged with calling frequently upon his wife, whom witnesses testified had been on the beach with the defendant, and whom other witnesses testified worked in a certain store and was met by the defendant. He was identified as the man who drove a certain car and the car was identified as the car owned by the cousin, for whom he worked. No question throughout the entire hearing arises as to the identity of the co-respondent named. The proofs all were directed as against this man. The court found that these proofs were satisfactory and proved conclusively that this co-respondent committed adultery with the defendant.