INDEX

PLEADINGS, ETC.

Petition 1
Answer 4
Replications 8
Answer of Intervenor 9
Demand for Bill of Particulars 11
Order relative to Bill of Particulars 11
Decree nisi 13
Notice of Appeal 14
Petition of Appeal 15

TESTIMONY

Amendola, John, direct 596
cross 597
Barlow, Alfred, direct 208
cross 211
Barlow, Florence, direct 199
cross 201
Barlow, Marie, direct 206
cross 208
Blue, Edna, direct 213
cross 220
re-direct 272
re-cross 275
re-direct 278
Burns, Harry, direct 57
cross 59
Donnelley, James J., direct 305
cross 333
recalled, direct 539
Dunstan, Walter L., direct 72
cross 73
recalled, direct 594
cross 594

Evans, William W., direct 622
Fairhurst, Edward, direct 17
cross 30
re-direct 53
re-cross 56
re-direct 57
re-cross 57
recalled, direct 614
cross 617
re-direct 618
Griffin, Thomas D., direct 626
cross 644
Guet, Albert, direct 576
cross 577
re-direct 584
re-cross 584
Hengeveld, Loftus, direct 537
cross 538
Kilpatrick, John, direct 69
cross 71
Kunz, Julius, direct 573
cross 574
re-direct 574
Macleod, Alexander, direct 154
Marsden, Mollie, direct 281
cross 286
re-direct 305
recalled, cross 589
re-direct 591
Pearsall, Emily, direct 184
cross 191
re-direct 198
Pearsall, Henry E., direct 157
cross 170
Schofield, George, direct 113
cross 117

New Jersey State Library

re-direct 118
re-cross 118
recalled, direct 540
cross 543
Shorter, Louis R., direct 118
cross 121
recalled, direct 619
Smith, Alice, direct 79
cross 87
re-direct 95
recalled, direct 584
cross 588
Smith, Frances B., direct 442
cross 485
re-direct 531
re-cross 533
recalled, direct 572
recalled, direct 603
cross 604
re-direct 613
recalled, direct 620
Smith, Roy Underwood, direct 125
cross 139
re-direct 149
re-cross 153
re-direct 153
re-cross 154
recalled, direct 544
cross 547
re-direct 562
re-cross 562
re-direct 563
recalled, direct 595
Smith, William H., direct 98
cross 104
Spagnola, Thomas, direct 60

cross 68
Thetge, Katherine, direct 124
cross 125
Thetge, Lawrence L., direct 122
cross 123
Van Ness, Wallace, direct 155
cross 157
Wainwright, Jane S., direct 109
cross 112
Wiseman, George, direct 95
Wiseman, Rudolph A., direct 75
cross 77
re-direct 78
recalled, direct 278
cross 280
re-direct 280
recalled, direct 567
cross 588
Wright, James N., direct 74
cross 75
recalled, direct 107

Opinion 649

EXHIBITS

W-1 for identification; affidavit of John Kilpatrick 35
P-1 for identification; affidavit of Thomas Spagnola 62
C-1 1-2—Pencil sketch of rooms at Oxford, in evidence 81
Z-1 for identification—Signature written by Frances B. Smith; in evidence 575
Z-2 for identification—Tracing of signature by Frances B. Smith; in evidence 575
Z-3 for identification—Letter written tc "Anita" and signed "Mother," in evidence 575

Z-A 5 1-2 for identification—Entry on register of United States Hotel; 573, in evidence 575
Z-A 1—Mrs. Marsden's card as nurse, in evidence 593
Z-Y 2 1-2—Record of birth and marriage of Alfred Scowcroft, in evidence 614
Y-A 5 1-2—Post card addressed to Edward Fairhurst and signed "Frances." In evidence, page 622. Printed in full on same page.

(Filed Feb. 23, 1922)

In Chancery of New Jersey

Roy U. Smith,
Petitioner,

vs.

Frances B. Smith,
Defendant.

PETITION

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

The petition of Roy U. Smith, of the City of Paterson, in the County of Passaic and State of New Jersey, respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to his present wife, Frances B. Smith, the defendant in this suit on the nineteenth day of September, Nineteen hundred and eleven, by the Rev. David Stuart Hamilton, a Minister of the Gospel, at Paterson, in the State of New Jersey.

2. Defendant, since her marriage to your petitioner and on August 27th and 29th, 1918, and on other days in said month, committed adultery with one Harry E. Pearsall at Oxford, in the County of Chenango, in the State of New York.

3. Defendant, since her marriage to your petitioner, and on the fourth day of December, 1920, committed adultery with one James Donnelly, at Warren Point, in the County of Bergen and State of New Jersey.

4. Defendant, since her marriage to your petitioner, and on the nineteenth day of November.

Nineteen hundred and twenty one, and on other days in said month, committed adultery with one James Donnelly, at the home of one Andrew Blue, at Paterson, County of Passaic and State of New Jersey, and other places unknown to petitioner.

5. Defendant, since her marriage to your petitioner, and on various days the exact dates being unknown to your petitioner, during the months of January, February, March, April, May, June, July, August, September, October, November, and December, 1919, and during the months of January, February, March, April, May, June, July, August, September, October, November and December, 1920, and during the months of January, February, March, April, May, June, July, August, September, October and November, 1921, committed adultery with the said James Donnelly at Paterson, at the home of the petitioner and defendant in Paterson, and at the home of Andrew Blue, in the City of Paterson, and State of New Jersey, on occasions when the petitioner would be away from home and the defendant would remain home, and on occasions when the petitioner would be away from home and the defendant would go to the home of the said Andrew Blue, and there remain until late at night, and on other occasions and at other places unknown to your petitioner.

6. Petitioner and defendant were bona fide residents of the State of New Jersey when this cause of action arose, and they have ever since continued to be bona fide residents of this State, down to the time of the commencement of this action, residing at Paterson, in the County of Passaic.

7. Two children were born of the marriage aforesaid, to wit, Anita Smith, aged seven years and Frances Smith, aged six years, who are in the custody of the defendant, who is unfit to have the custody of said children; and that the welfare of said children requires that they should be removed from her custody and restored to that of your petitioner.

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

And your petitioner will ever pray, etc.

Roy U. Smith,
Petitioner

Merritt Lane,
Solicitor for Petitioner.

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

Roy U. Smith, 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.

Roy U. Smith,

Sworn and subscribed before me
at Paterson, New Jersey, this 18th
day of February, 1922.
John F. Evans,
A Master in Chancery of New Jersey.

A True Copy,
Jesse R. Salmon,
Clerk.

Answer

(Filed April 5, 1912)

IN CHANCERY OF NEW JERSEY

(Title Omitted)

ANSWER

The following is the answer of the defendant, Frances E. Smith, to the petition filed in the above cause:

This defendant further answering says:

1. She admits the matters contained in the first paragraph.

2. She denies the matters contained in the second, third, fourth, and fifth paragraphs of the petition.

3. She admits the matters contained in paragraph six.

4. She admits so much of paragraph seven as avers that two children, Anita Smith and Frances Smith were born of the marriage, and the ages thereof. She denies the remainder of said paragraph.

This defendant further answering by way of recrimination avers:

5. That commencing with the early Spring of 1919 and thence almost continually until the petitioner separated himself from the defendant in November, 1921, the petitioner was guilty of acts of extreme cruelty and violence toward this defendant. That in public he used to exercise extreme control over himself but in private constantly displayed to defendant a violent and ill-governed temper. That during these attacks of temper he would use vile epithets, curse and swear at

her, reprimand and abuse her without any cause whatsoever and on a number of occasions within the same period, committed upon her acts of assault and battery. It was a common practice of his to sit at the table at meals and refuse to carry on any discourse with this defendant or their children. That any attempt on the part of the children to talk or laugh would produce a reprimand to the children and abuse to this defendant. It was a common practice of his to ridicule this defendant's religion and her efforts to bring up her children in the Episcopalian religion of which church this defendant is a member. That he did not care to go to church stating that it reminded him of a musical comedy or a circus.

6. That previous to the Spring of 1919 petitioner's parents had lived with petitioner and this defendant at their home and at the request of this defendant, petitioner's parents removed to another home. That this greatly annoyed the petitioner and it is this defendant's belief that this was the beginning of the cause of their trouble. That in various manifestations of temper and ugly feeling on the part of petitioner, a common expression of his was "God damn you, it is because of you that my father and mother are not still here; it was pleasanter with them with us," or words to that effect.

7. That in the Fall of 1919, the exact date of which this defendant cannot recall, but on the late evening of this certain day, the petitioner complained of something the children had done and disparaging remarks about this defendant's father and his regret for having married into their family. Defendant attempted to defend her father,

and petitioner thereupon brutally assaulted her, and thereafter refused to have any intercourse with her for several days.

8. In the Winter of 1919-1920, he again assaulted this defendant and used profane, abusive or threatening language towards her.

9. He frequently made disparaging remarks of defendant's family, and on a number of occasions objected to her entertaining her sister, her brother-in-law and child, stating that he would not sit down to the table with them.

10. In the Spring of 1920, he committed an assault and battery upon her, and used profane, abusive or threatening language towards her.

11. On an occasion in the Fall of 1920, after returning from an evening spent with friends, he committed a series of assaults and batteries upon her, lasting several hours, and used profane, abusive or threatening language towards her.

12. On Christmas Day, 1920, he was in an extremely ugly mood, and without cause made ugly remarks, and otherwise did not speak to defendant. He failed to purchase any gift for her, except on Christmas Day to write out a check and throw it at her, and refused then to accept a Christmas gift from her. He then left the house with his children, and spent almost the entire day away.

12. In the early part of the year 1921 his conduct continued to be so unpleasant, cruel and inhuman that defendant asked him if he cared for some other woman, and he made some insulting remarks, and stated that it would not be difficult to find any one better than she was.

13. In Spring, 1921, he assaulted defendant for taking her mother automobiling.

14. He refused in the Summer of 1921 to give defendant a vacation.

15. In the Fall of 1921, defendant visited her sister-in-law in Asbury Park for a short time, and on her return he abused her and assaulted her, and used profane, abusive or threatening language towards her.

16. In the month of October, 1921, he committed an assault and battery upon her without cause, and used profane, abusive or threatening language towards her.

17. On November 20, 1921, without cause he quarreled with her and committed an assault and battery upon her, and used profane, abusive or threatening language towards her.

18. On Monday evening, the November 21st, 1921, he again quarreled with her and committed an assault and battery upon her, without cause, and used profane, abusive or threatening language towards her.

19. In the month of November, 1921, shortly before the events last above referred to, he committed an assault and battery upon her, without any cause, and used profane, abusive or threatening language towards her.

20. There are other occasions, the exact time she cannot at this time give, when petitioner committed assaults and batteries upon her and ill-treated and abused her and threatened her, and that all the foregoing had a serious and ill-effect upon her mental and physical health.

All of the foregoing this defendant is ready and willing to prove, and prays to be hence dismissed,

with her reasonable costs and charges in this behalf most wrongfully sustained.

Ward & McGinnis,
Solicitors of Defendant.

A True Copy.
Jesse R. Salmon,
Clerk.

(Filed May 3, 1922)

IN CHANCERY OF NEW JERSEY

(Title Omitted)

SPECIAL REPLICATION

In reply to the defenses stated in the answer of the defendant and not anticipated in the petition the petitioner, by leave of court, says that—

Answering that portion of the answer by way of recrimination petitioner says—

1. He denies the contents of paragraph 5.
2. He denies the contents of paragraph 6 except that petitioner's parents lived with petitioner and this defendant.
3. He denies the contents of paragraph 7.
4. He denies the contents of paragraph 8.
5. He denies the contents of paragraph 9.
6. He denies the contents of paragraph 10.
7. He denies the contents of paragraph 11.
8. He denies the contents of paragraph 12 and also the contents of the succeeding paragraph also numbered 12.
9. He denies the contents of paragraph 13.
10. He denies the contents of paragraph 14.
11. He denies the contents of paragraph 15 ex-

cept that in the fall of 1921 defendant visited her sister in law in Asbury Park.

12. He denies the contents of paragraph 16.

13. He denies the contents of paragraph 17.

14. He denies the contents of paragraph 18.

15. He denies the contents of paragraph 19.

16. He denies the contents of paragraph 20.

Further replying to said recriminatory matter petitioner says that the statements contained in said recriminatory matter do not constitute a defense to the cause of action of petitioner, and petitioner will object to the legal sufficiency of said recriminatory matter and the proof thereunder.

Petitioner joins issue upon the remainder of the answer.

Merritt Lane,
Solicitor for petitioner.

A True Copy,
Jesse R. Salmon,
Clerk.

(Filed Dec. 6, 1922)

IN CHANCERY OF NEW JERSEY

(Title Omitted)

ANSWER OF INTERVENOR

The answer of James J. Donnelly, Jr., admitted as defendant to the petition of Roy U. Smith, petitioner:

This defendant answering so much of the petition as he is advised is material for him to answer, says:

1. He denies that on December 4th, 1920, he committed adultery with said defendant Frances

Smith at Warren Point, in the County of Bergen, State of New Jersey.

2. He denies that on the 19th day of November, 1921, or on any other days in said month he committed adultery with said defendant Frances Smith at the home of Andrew Blue in said city of Paterson, Passaic County, N. J., or at any other place or places unknown or at any other place or places.

3. He denies that during the months of January, February, March, April, May, June, July, August, September, October, November and December, 1919 he committed adultery with said defendant, Frances Smith.

4. He denies that during the months of January, February, March, April, May, June, July, August, September, October, November and December, 1920, he committed adultery with said defendant Frances Smith; and denies that during the months of January, February, March, April, May, June, July, August, September, October, and November, 1921, he committed adultery with said defendant Frances Smith at the home of Roy U. Smith, or at the home of Andrew Blue, as in said petition alleged or at any other time or place.

This defendant prays that said petition as to himself may be dismissed with costs.

James J. Donnelly, Jr.
Intervenor.

Wood McKee,
Solr. of Intervenor.

A True Copy.
Jesse R. Salmon,
Clerk.

IN CHANCERY OF NEW JERSEY

(Title Omitted)

NOTICE OF DEMAND FOR BILL OF PARTICULARS

To Merritt Lane, Esq.,
Solicitor of the petitioner.

Sir: Take Notice that on Tuesday the 28th day of March, 1922, at ten o'clock in the forenoon, or as soon thereafter as the Court can hear the same, we shall apply to the Chancellor, at the Chancery Chambers, at the City of Newark, County of Essex and State of New Jersey (Prudential Bldg.) for an order requiring the petitioner to file a Bill of particulars in the above entitled cause setting forth with particularity, the date, hour, place and circumstances of each act of adultery, upon which the petitioner intends to rely in support of the alleged charge of adultery in his petition.

Respectfully,
Ward & McGinnis,
Sols. of defendant.

March 20, 1922.

IN CHANCERY OF NEW JERSEY

(Title Omitted)

ORDER RELATIVE TO BILL OF PARTICULARS

This matter being opened to the court by Peter J. McGinnis, of counsel with the defendant, in the presence of Merritt Lane, of counsel with the petitioner, upon a motion with respect to the particulars of charges contained in the fifth paragraph of

the petition, and counsel for the petitioner representing to the court that under the charges contained in the fifth paragraph of the petition it is intended to prove inclination and opportunity to commit the offense during the space of time covered by the allegations in said paragraph at the home of the petitioner and defendant in Paterson, and at the home of Andrew Blue, in the city of Paterson, and state of New Jersey, on such occasions as the petitioner would be away from home and on which occasions the defendant would remain home, and the said James Donnelly come to the home of petitioner and defendant, and on such occasions as when the petitioner would be away from home and the defendant would go to the home of the said Andrew Blue and there remain until late at night, and the said James Donnelly would also be at the home of the said Andrew Blue, the petitioner intending to prove the commission of the offense by inclination and opportunity, and by a chain of circumstances, and that the petitioner has no knowledge of the exact dates, and that the petitioner does not intend to prove specific acts at any specific time under this paragraph.

It is, on this 4th day of April, 1922, ordered, that no further particulars be required, provided that if the said petitioner shall, in the future, intend to rely upon the commission of any specific act, at any specific time, and shall have knowledge of any particular date he shall give notice thereof to the said defendant.

E. R. Walker,
C.

Respectfully advised,
John E. Foster,
V. C.

Decree Nisi

IN CHANCERY OF NEW JERSEY

(Title Omitted)

DECREE NISI

This cause coming on to be heard in the presence of Merritt Lane, of counsel with the petitoner, and Peter McGinnis, of Ward & McGinnis, of counsel with defendant, and Wood McKee, of counsel with the c-orespondent, James Donnelly, on petition, answers of the defendant and of James Donnelly, and oral proofs taken in open court, whereupon, and upon duly considering the said pleading and proofs and hearing and considering the arguments of counsel, from all of which it now appears satisfactorily to the Chancellor that the petitioner and defendant were lawfully joined in the bonds of matrimony on or about September 19, 1911, and that the defendant has been guilty of the adultery charged against her in the said petition, and that at the time the cause of action for divorce arose both the petitioner and the defendant were bona fide residents of this state, and have continued so to be down to the time of the commencement of this action, and it further appearing that jurisdiction herein has been acquired by personal service of process upon the defendant within this state as well as by her answer herein, it is thereupon on this sixteenth day of May, 1923, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey.

Ordered, Adjuged and Decred and the said Chancellor by virtue of the power and authority of this court and the acts of the Legislature in

such case made and provided, doth hereby order, adjudge and decree that the sai petitioner, Roy U. Smith and the defendant, Frances B. Smith, be divorced from the bonds of matrimony for the cause aforesaid and that the said parties and each of them be freed and discharged from the obligations thereof, unless sufficient cause be shown to the court why this decree should not be made absolute within six months from the date hereof; and it is further

Ordered that the question of counsel fees and costs and the support and maintenance and custody of the infant children of the marriage be reserved for future consideration and order, and these matters may be brought on by either party upon five days notice to the solicitor of the other.

Respectfully advised,
Vivian M. Lewis,
V. C.

(Filed May 18, 1923)

IN CHANCERY OF NEW JERSEY

(Title Om itted)

NOTICE OF APPEAL OF DECREE OF DIVORCE

Frances B. Smith, the above named defendant, hereby appeals from the decree in favor of the petitioner filed in this cause and dated the 16th day of May, 1923, and from every part thereof to

the Court of Errors and Appeals of the last resort in all causes.

Ward & McGinnis,
So ls. for and of counsel
with defendant.

Dated May 17, 1923.

I conceive that there is a good cause for appeal in the above stated cause.

Peter J. McGinnis,
Of counsel.

(Filed May 24, 1923)

NEW JERSEY COURT OF ERRORS AND APPEALS

(Title Omitted)

PETITION OF APPEAL

To the Honorable Court of Errors and Appeals of the last resort of all causes.

The petition of Frances B. Smith, appellant, respectfully shows:

That your petitioner finds herself aggrieved by a decree nisi made in the Court of Chancery of New Jersey by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey on the sixteenth day of May, 1923, in that the said decree recites and adjudges that the defendant being the wife of the respondent, committed adultery with one Harry Pearsall and with one James Donnelly at the time and places in the petition for divorce set forth, and that it doth decree that the marriage between your petitioner and the respondent, Roy U. Smith be dissolved for the cause aforesaid.

And your petitioner appeals from the said decree and from every part thereof on the ground that the same is erroneous for that the said Chancellor should have adjudged that your petitioner was not guilty of the said acts of adultery complained of and should have dismissed the petition of the respondent.

Your petitioner therefore prays that the said decree may be reversed, rescinded and for nothing holden and that your petitioner may have such further and other relief as shall be meet.

Ward & McGinnis,
Sols. and counsel with petitioner, Frances B. Smith.

I hereby acknowledge service of a copy of the petition of appeal in the above entitled cause.

Merritt Lane,
Sol'r. of respondent.

Dated May 23, 1923.

(Title Omitted)

TESTIMONY

FIRST DAY

EDWARD FAIRHURST, sworn in behalf of the petitioner, testified as follows:

Direct Examination by Mr. Lane:

Q. Where do you live? A. 546 East 29th Street, Paterson, N. J.

Q. Do you know Mr. Roy U. Smith? A. Yes, sir.

Q. How long have you known him? A. All my life.

Q. How old are you? A. 36.

Q. Do you know Mrs. Smith? A. Yes, sir.

Q. How long have you known her? A. Fifteen years.

Q. Do you know when Mr. and Mrs. Smith were married? A. Yes, sir.

Q. When was it? A. About eleven years ago.

Q. How well acquainted were you with Mr. Smith? A. Our fathers were friends from the time we were little boys, and we were thrown into each other's company as little boys.

Q. Did you keep up that intimacy up to the present time? A. No, sir.

Q. Up to what time? A. We became acquainted through business; Mr. Smith is a raw silk salesman.

Q. What is your business? A. I am manager for my father, a silk manufacturing concern.

Q. Did you become intimately acquainted with him after he became of age? A. Yes, sir.

Q. How well acquainted did you become with him? A. Very intimate—we became very close friends.

Q. How intimately did you become acquainted with Mrs. Smith? A. I had known her from the time she was a young lady and had attended the same social functions and had become very well acquainted with her.

Q. Did you visit at their house? A. I did.

Q. Was there a set in which the Smith's circulated? A. Yes, sir.

Q. And that set consisted of whom? A. Mr. and Mrs. Evans, Mr. and Mrs. Shorter, and Mr. and Mrs. Schofield; Mr. and Mrs. Seddon, myself and Wisemann Brothers, and others not so close.

Q. And what did they do generally of a social nature? A. Played cards and attended theatres together, and went out to dinner.

Q. During what year? A. For the past six or seven years, I dare say.

Q. And continued up to what time? A. They still continue.

Q. With the exception of whom? A. Mrs. Smith.

Q. And when did she cease to be a party? A. About a year ago.

Q. When trouble arose between her husband and herself? A. Yes, sir.

Q. Do you know James Donnelley? A. Yes, sir.

Q. Is he in court? A. Yes, sir.

Q. Which one is he? A. In the rear row, next to the door.

Q. How long have you known him? A. Since he was a little boy.

Q. Where does he live? A. East 23rd Street, near Park Avenue.

Q. How well have you known him? A. I have known Mr. Donnelley's sisters very much better than I have known him; he is so much younger than I am. I dare say he is ten years younger than I am; he has two sisters, Helen and Irene.

Q. Are they in court now? A. No, sir, they are not in court now.

Q. Was Mr. Donnelley a member of this set, so called? A. No, sir.

Q. Hod he ever been? A. No, sir.

Q. Had his sisters? A. More or less.

Q. Did you ever see Mrs. Smith with Mr. Donnelley? A. I did.

Q. When, for the first time? A. In Asbury Park, in the summer of 1920.

Q. Where? A. Walking together on one occasion, on the boardwalk, and walking on the street on another occasion; and sitting on the porch of the Lakeland Hotel.

Q. Was that the first time that you had seen them together? A. Yes, sir.

Q. Did you speak to her about it at that time? A. No, sir.

Q. Did you attribute any particular significance to it?

Mr. Ward—Objected to.

A. I did not.

The Court—Strike the answer out.

Q. When did you next see them together? A. During the fall of 1920.

Q. Where? A. Riding around in Mr. Smith's automobile.

Q. How often? A. Very often.

Q. What kind of a car was it? A. A Cole-eight, a sedan.

Q. How long had Mr. Smith had that car? A. About a year and a half at that time.

Q. And did Mrs. Smith drive it? A. Yes, sir.

Q. You say you saw her and Mr. Donnelley very often; what do you mean by that? A. Very often, when I went down during the day I saw Mr. Donnelley in Mr. Smith's car during the daytime.

By the Court:

Q. Did you ever see them at night? A. No, sir.

Q. Just in the day? A. Yes, sir.

Further Direct:

Q. At what places did you see them? A. Driving around the city; I never had occasion to go outside of the city during the daytime.

Q. And that continued during what month? A. During the months of September, October and November of 1920.

Q. Did anything happen on December 4th, 1920? A. Yes, sir.

Q. What? A. I was riding horseback that day.

Q. What happened? A. I went over to Mor-

lot Bridge, 33d Street bridge, out to Peterson's house, and then through the woods.

Q. Proceed. A. I went through the woods to the Donkerhook Road, and rode along the edge of the hemacite for a few hundred yards, and then took the first turn to the right into the woods.

Q. What did you see? A. About a quarter of a mile in from the road I saw Mr. Smith's car parked 25 feet off the road.

Q. Did you see anybody in that car? A. Yes, sir.

Q. Whom? A. James Donnelley and Mrs. Smith.

Q. And where was James Donnelley in the car? A. In the back seat of the car; and she was also on the back seat of the car.

Q. And what were they doing? A. They were embracing.

By the Court:

Q. What do you mean by that; were they kissing each other? A. Yes, sir.

Q. You could see them? A. Yes, sir.

Further Direct:

Q. Was Mrs. Smith in his lap or in his arms, or what?

Mr. Ward—Objected to.
The Court—Objection sustained.

By the Court:

Q. What was Mrs. Smith's position and Mr. Donnelley's position? A. They were in each other's arms.

Further Direct:

Q. Did anything happen to your horse just about that time? A. Yes, sir, I was very much startled, and it must have frightened the horse, and the horse bolted.

Q. How far did it bolt? A. Several hundred yards, I imagine.

Q. Then what happened? A. We brought the horse under control and turned around.

Q. What did you observe, then, if anything? A. I observed the Smith car being backed into the road, and being rapidly driven away from me towards the hemacite.

Q. What day of the week was this, December 4th? A. Saturday afternoon.

Q. On December 6th did you do anything? A. I telephoned to Mrs. Smith about nine o'clock in the morning.

Q. Did you recognize her voice? A. Yes, sir.

Q. What did you say to her? A. I told her I would like to see her.

Q. What did she say? A. She said she had no time to see me, she had Christmas shopping to do.

Q. Give us the whole conversation. A. She told me to tell her over the telephone what I had to say. I told her I could not say that I had to say, over the telephone.

Q. What else was said? A. She very reluctantly said she would see me if she could.

Mr. Ward—Objected to.

The Court—Strike out about "reluctantly."

A. It was understood she was to see me that morning.

Q. Did you go to see her? A. No, sir.

Q. Did she come to see you? A. Yes, sir.

Q. Where? A. She came to my office.

Q. Where? A. 539 East 18th Street, at about 11 o'clock on December 6th.

Q. Tell us the conversation which took place between you two at that time. A. After meeting her, I asked her where she was on Saturday afternoon; she asked me why I wanted to know that; I told her that I knew where she was—that she was out with James Donnelley in the car; she said that somebody had been gossipping about her to me; I told her they had not, that no one had gossipped to me about her at all; but that I knew she was out with James Donnelley in the car, and she told me she had loaned the car to James Donnelley that afternoon.

Q. Tell us the whole conversation. A. I then told her that I had seen her out on many occasions with Mr. Donnelley during the past few months, and that I strongly advised her not to be seen with Mr. Donnelley any more, because naturally, people would gossip about her; and I told her that she would injure her standing in the community; that she had every reason to be loyal to her husband, because he was a good, splendid, loyal fellow; that I knew him very intimately, and that she might lose a good home, and even her little children, by doing a thing of that kind.

Q. What did she say? A. She became very angry.

Q. What did she say? A. She said, "This thing is none of your business; why are you inter-

fering?'' I said, ''I merely consider it my duty to advise you;'' I told her again that she might suffer a very great loss through this thing; and she said, ''This is none of your business, and if you know what is good for you, you will keep out of it.''

Q. What else? A. She told me that James Donnelley was just a darling boy; and that there had never been anything between them; and surely, that I did not think for a minute that there had been anything between them. I said, that I did not know anything about that.

Q. Proceed. A. I said to her, ''Don't you realize the seriousness of this thing—that you might lose everything that is valuable to a woman in life?'' and she said, ''If I am interfered with, I will lie, I will stop at nothing, and if this thing goes into court and any attempt is made to take these children away from me, I will swear they are not Roy Smith's.''

Q. What else? A. I told her that that was the worst thing I had ever heard a woman say, and that surely, she did not realize what a terribly unjust thing it was to say a thing like that.'' I told her that the little children had all their future before them; that they were entitled to everything in life.

I then asked her again, if she was going to cease associating with James Donnelley, and she told me that she intended to mind her own business, and advised me to do the same; I told her that is just exactly what I intended to do; I said ''I am through;'' and she said, ''That is simply up to you;'' I said, ''It is up to me, and under the circumstances, I cannot have anything further to

do with you, nor come to your house; but'' I said ''Mr. Smith will find out the reason why.'' I started to walk off, and Mrs. Smith called me back, and promised not to see Mr. Donnelley again; she shook hands on it, and Mrs. Smith drove off.

Q. Did you say anything to Mr. Smith about it? A. I did not, no, sir.

Q. Did you have a subsequent conversation with Mrs. Smith? A. I did, yes, sir.

Q. When? A. During the Christmas week, about three weeks later.

Q. Before New Year's? A. Yes, sir.

Q. Where? A. In Mrs. Smith's house.

Q. Who was present? A. No one but Mrs. Smith and myself.

By the Court:

Q. Did you call there and see her? A. Yes, sir.

Q. At her request? A. No, sir.

Q. Of your own volition? A. Yes, sir.

Q. What conversation did you have then? A. Do you want to know why I went there?

Q. (Question read.) A. The night before, in walking up from the train, Mr. Smith had said to me—

Mr. Ward—Objected to.

A. I told Mrs. Smith that in a conversation the night before,—I had met Mr. George Wisemann and he had told me that he had observed Mrs. Smith going around in, as he called it, in dangerous company, and he said that he thought one of us ought to tell Mr. Smith about it—

The Court—Strike that out.

A. I told Mrs. Smith that I had heard from one of her intimate friends of her association with Mr. Donnelley, and I again advised her.

Further Direct:

Q. What did she say then? A. As nearly as I can remember, she wept, and she told me something about she did not love Roy Smith.

By the Court:

Q. She told you that? A. Yes, sir.

Q. Was there anything further in the conversation? A. No, sir, I then left the house.

Further Direct:

Q. Did you have a talk with her after that? A. Every time anyone mentioned it to me, I mentioned it to Mrs. Smith; I told Mrs. Smith everything I ever heard.

Q. Do you remember a particular talk you had with her in October, 1921? A. I don't remember that.

Q. Do you remember a talk with her in which something was said about your right to exact the promise that you had? A. I told her on that occasion, that she had not kept her promise in regard to associating with Mr. Donnelley; that Mr. Wisemann had told me the day before—

The Court—Strike that out.

Q. When was this talk? A. I don't know the date, it was sometime in the fall of 1921; I told Mrs. Smith that she had not kept her promise in regard to Donnelley, and she said she had not; and she said that I had no right to exact such a promise from her.

Q. Do you remember being at the Shorter's bungalow at Culver's Lake on Labor Day, 1921? A. Yes, sir.

Q. Did you have any talk with Mrs. Smith during that visit? A. On that day I talked with her, on Labor Day.

Q. What did you say to her, and what did she say to you? A. I again told her that more of her friends knew of her association with Mr. Donnelley, and that it had come to them from Mr. Donnelley's family, from the Misses Donnelley, the two young ladies.

Q. Did you tell her what the Misses Donnelley had said? A. I did not, only to say that the Misses Donnelley had said that they were surprised to learn that Mrs. Smith was associating with their brother.

Q. What did she say? A. She wept again, and told me that she did not love Roy Smith.

Q. Do you remember anything more of her conversation? A. Yes, sir; she told me if she had money enough she would leave Paterson to-morrow and take her children with her. She said she was disgusted with Paterson and with the people in it.

Q. Do you remember anything else she said? A. I don't recall at this time.

Q. Do you remember her saying anything about leaving Mr. Smith? A. She said in that

conversation, that if she had money enough she would leave Mr. Smith; she said she would take her children and leave Mr. Smith and leave Paterson; that she was disguested with Paterson and all the people in it.

Q. Now, do you remember Saturday, July 9th, 1921? A. Yes, sir.

Q. What occurred on that day? A. I was eating my lunch about one o'clock, and Mrs. Smith telephoned to me.

Q. Did you recognize her voice? A. Yes, sir.

Mr. Ward—I object. We specifically asked for a bill of particulars; I would like your Honor to read it and see if this line of examination is proper. The original is there, if your Honor please (indicating on the Court's desk). I particularly call your Honor's attention to this: "It is on this fourth day of April, 1922, ordered that no further particulars be required." (Reading bill of particulars.)

The Court—I presume this is not relying on any specific act.

Mr. Ward—My point is this: that we cannot meet, of course, these different dates, unless we have them.

The Court—The defendant is in court, and I will give you an opportunity to meet anything that surprises you. The Vice Chancellor has finally advised that there be no further bill of particulars required. I will allow the question.

By the Court:

Q. Do you recall this date of July, 1921? A. Yes, sir.

Further Direct:

Q. What occurred that day? A. Mrs. Smith telephoned to me from Palisade; she said she was at Palisade, New Jersey, along the Hudson River.

Q. Did you recognize her voice? A. Yes, sir, I recognized her voice on the telephone, and she said, "I am in trouble;" she said "I had an accident with my car, and I cannot reach Roy at his office; he has left; I have also called the house and he is not there; will you please get in touch with him at the railroad station and bring him down?" I said I would. I said, "What shall I do if I don't get in touch with him?" she said, "Please get the service man;" and I said, "Why don't you leave your car at the public garage and come home;" and she said, "I don't want to do that;" and I went to the railroad station, and that was all that occurred in that conversation; I told her I would do that, and I went to the railroad station and Mr. Smith was not there; and I went to the Cole service station and took the service man down towards New York.

Q. And where did you find Mrs. Smith? A. We met Mrs. Smith coming over the Leonia hill, driving the Smith car under its own power; the service man left me and went over to the other car; I turned around and followed the other car, and they drove on a short way and Mrs. Smith left the Cole car and came back with me, and I took

her home—the service man taking the crippled car into Paterson.

Cross Examination by Mr. Ward:

Q. How long have you known Mrs. Smith? A. About fifteen years.

Q. You were quite attentive to her before her marriage? A. No, sir.

Q. You visited her? A. I did not.

Q. You never visited her at the Barlow home? A. I was in the Barlow home once; I took Mrs. Smith to a party at St. Paul's Parish House.

Q. Aside from that, you never visisted her at her home? A. No, sir.

Q. Did you ever visit the home, the Barlow home, except on that one occasion? A. No, sir.

Q. So that, as you recollect now, there was only one occasion on which you were in the Barlow home before she was married? A. Yes, sir.

Q. Were you not better acquainted with Mrs. Smith than you were with Mr. Smith prior to their marriage? A. Yes, sir.

Q. So that you were more friendly with her than with him prior to their marriage? A. Yes, sir.

Q. You professed love and affection for Mrs. Smith before her marriage? A. No, sir.

Q. Didn't you express regret that she was going to marry Mr. Smith? A. No, sir.

Q. After Mrs. Smith's marriage you became intimate with Mr. Smith, didn't you? A. I was intimate with Mr. Smith.

Q. And it was after this marriage to Mrs. Smith that that intimacy sprung up with Mr. Smith? A. Yes, sir.

Q. And it was not because of your friendship for Mrs. Smith that you became interested in Mr. Smith then? A. No, sir.

Q. It just happened that way? A. Yes, sir.

Q. Do you remember an occasion at Milford about two years after Mr. and Mrs. Smith were married, and Mrs. Smith was spending the vacation period there, and you visited them? A. Yes, sir, Captain Schleffer and I—

Q. Do you recall that distinctly? A. Yes, sir.

Q. Do you recall, on the occasion of your visit there, that there was a dance at the hotel? A. I don't recall that.

Q. Is your memory indistinct about that visit? A. I don't remember anything except the fact that Captain Schleffer and I went up there; we stayed there one night.

Q. Do you remember on that occasion professing love for Mrs. Smith and professing regret that she had married her husband? A. No, sir.

Q. But your recollections are very indistinct about that occasion? A. I remember driving up there, and then going away.

Q. Answer my question—do you remember a dance there? A. I don't remember the dance, and I don't remember the occasion.

Q. Have you ever made love to Mrs. Smith? A. No, sir.

Q. Why did you hesitate? A. Because Mrs. Smith was always more or less of a jollier, and a fun maker.

Q. Did you jolly back? A. I usually do.

Q. Did you in this case? A. I suppose I did.

Q. In your jollying, did you profess love for her? A. No, sir.

Q. Did you ever try to kiss her? A. No, sir.

Q. You never have tried to kiss her? A. No, sir.

Q. To what extend did your jollying go? A. Passing fun.

Q. What kind of passing fun? A. Silly talk, I suppose.

Q. Love making? A. As is usual among friends.

Q. Love making? A. No, sir.

Q. Isn't it true, that whenever the opportunity presented, you were alone with Mrs. Smith? A. No, sir.

Q. Have you not taken her riding with the consent of her husband? A. I have never taken her riding, except at her request.

Q. But you have taken her riding? A. When she got her car, or when Mr. Smith got the car, Mrs. Smith telephoned to me two or three times—

Q. Answer the question. A. Yes, sir, I have taken her riding.

Q. You took her down town frequently, didn't you, in the evening, in your car? A. No, sir.

Q. Did you ever take her down? A. Yes, sir.

Q. On a number of occasions? A. Occasionally, when she has requested me to take her somewhere, I have taken her.

Q. Alone? A. Yes, sir.

Q. And then you would take her, instead of taking her directly home, you would take her for a ride? A. No, sir.

Q. That never occurred? A. No, sir.

By the Court:

Q. Did you take her in your car? A. Not that I recall.

Q. Whose car would you take her in? A. I might take her down town in my own car, but I don't recall specific instances.

Further Cross:

Q. Do you recall a specific instance when Mr. Smith went to Plattsburgh? A. I do.

Q. Do you recall taking Mr. and Mrs. Smith to the station, the Grand Central Station in New York? A. Yes, sir.

Q. What time was it, when you took him there? A. I had a dinner engagement with Mr. Smith, and as we left, Mrs. Smith asked if she could go along.

Q. Was Mrs. Smith there on the station? A. Yes, sir.

Q. What time did you leave the Grand Central? A. A quarter of nine, about; Mr. Smith's train left at nine o'clock.

Q. What time did you get home? A. 10:30.

Q. Wasn't it after midnight when you got home? A. No, sir.

Q. Do you recall losing your way coming home? A. Yes, sir.

Q. Well, you knew the road pretty well, didn't you? A. I did.

Q. You lost your way coming home? A. Yes, sir.

Q. That was not at Mrs. Smith's suggestion you lost your way, was it? A. No, sir.

Q. You were alone on that occasion coming back? A . We were.

Q. Do you ever recall going up to Mrs. Smith's room when she was alone there? A. No, sir.

Q. To Mrs. Smith's bedroom? A. No, sir.

Q. You were a pretty close friend of the family? A. Yes, sir.

Q. And you professed a pretty close friendship for Mrs. Smith? A. Yes, sir.

Q. Was it sincere? A. Yes, sir.

Q. You professed to think a great deal of her, didn't you? A. Yes, sir, I had every reason to respect her.

Q. You have been pretty active in this case, haven't you? A. Well, I am a very close friend of Mr. Smith.

Q. (Question read.) A. No, sir, I don't consider that I have been active.

Q. You went to Jersey City and saw a man named Griffin? A. Mr. Smith did.

Q. But you went? A. Yes, sir.

Q. You did most of the talking to Mr. Griffin in Jersey City? A. No, sir.

Q. Didn't you try to persuade Mr. Griffin to say that Mrs. Smith and Mr. Donnelley were together? A. No, sir.

Q. Did you mention any names to him? A. No, sir.

Q. Did you mention Donnelley's name to him? A. No, sir.

Q. Did you mention Mrs. Smith's name to him? A. I don't recall.

Q. Do you remember now whether you mentioned Donnelley's name to him or not? A. I don't recall.

Q. And you have seen a man by the name of Spagnolia with reference to this matter? A. No, sir.

Q. Have you ever seen a tower man and talked to him about this case? A. I have not.

Q. Have you ever seen a railroad man and talked to him about this case? A. Kilpatrick, yes. sir.

Q. Did you have an affidavit drawn up? A. No, sir.

Q. Was there a paper that was presented to him at that time? A. Yes, sir.

Q. And in that paper did it state that on a number of occasions he had seen Mrs. Smith and Mr. Donnelley together?

Mr. Lane—I object to that.

A. I did not read the paper.

Mr. Lane—I object to what his papers state; if he wants the paper, let him call for it.

The Court—It affects the credibility of the witness; have you the paper?

Mr. Lane—Yes.

The Court—All right, produce it.

Q. You have seen this paper, before? A. Yes, sir, but I have never read it.

Marked "Exhibit W-1 for identification."

Q. Did you have any talk with this man Kilpatrick? A. Yes, sir.

Q. And you had most of the talk with him, didn't you? A. Yes, sir, I did.

Q. How many times had you seen him? A. I saw him twice.

Q. You wanted him to say he had seen Mrs. Smith and Mr. Donnelley together frequently, didn't you? A. No, sir.

By the Court:

Q. Who was with you when you saw him? A. No one, the first time.

Q. Did you go alone? A. Yes, sir.

Further Cross:

Q. At your own behest? A. No, sir, Mr. Smith sent me to him.

Q. You also have seen Mrs. Camwell? A. Yes, sir.

Q. Alone? A. Yes, sir.

Q. On several occasions? A. No, sir, only twice.

Q. And you wanted her to testify, didn't you, too? A. No, sir.

Q. She refused to testify? A. I merely asked her.

Q. Did you or not, want her to testify to things to which she refused to testify? A. I did not try to influence her at all; I did not ask her to testify to any particular thing.

Q. Didn't you tell her you wanted her to testify that Mrs. Smith and Mr. Donnelley had met at her home? A. Yes, sir.

Q. And didn't you want her to testify that Mr. Donnelley came there for the purpose of meeting

Mrs. Smith? A. I did not try to get Mrs. Camwell to say any such thing.

Q. Didn't you ask her that? A. No, sir.

Q. And did not Mrs. Camwell reply, that Mr. Donnelley had come there to see her daughters? A. She did not say that—she said she had always supposed that Mr. Donnelley had come to see her daughters.

Q. And you wanted her to put it the other way —that Mr. Donnelley came there to see Mrs. Smith? A. I did not concern myself.

Q. Didn't you suggest that to her? A. No, sir.

Q. Was that mentioned? A. Not that I recall.

Q. You went there to get some evidence against Mrs. Smith, didn't you? A. I did not.

Q. Wasn't that the purpose of your visit, to get some evidence against Mrs. Smith? A. To get the truth.

Q. To get evidence against Mrs. Smith? A. I will say "Yes", if you wish me to.

Q. I wish you to tell the truth. A. (No answer.)

By the Court:

Q. Who is Mrs. Camwell; is she any relation to the Smiths? A. No, sir.

Further Cross:

Q. You have never visited Mrs. Camwell except on the two occasions? A. Not that I recall.

By the Court:

Q. Did you know her before you visited her? A. Yes, sir.

Q. When did you meet her? A. When I was a little boy; her children attended the St. Paul's Sunday School.

Further Cross:

Q. As a matter of fact, aside from the set that counsel designates as your particular set, there was another set, wasn't there, with which you were acquainted, social set? A. That is not clear to me; I don't understand your question.

Q. You don't get my questions as well as you do Mr. Lane's?

Mr. Lane—I object to that.

Q. To be more specific, there was a set, wasn't there, in which there was a Miss Camwell and a Miss Davis and Mr. Donnelley? A. I have seen them together.

Q. You are not a member of that set? A. I know them all, but I have not associated with them.

Q. And you did know that Mrs. Smith associated with Miss Camwell and Miss Davis to a very great extent? A. Yes, sir.

Q. And you did not like that, did you? A. I had no objection.

Q. Didn't you remonstrate with her about that? A. No, sir.

Q. You never spoke to her about that at all? A. No, sir.

Q. But you did know that Mr. Donnelley associated with Miss Camwell and Miss Davis? A. I never saw them together.

Q. You say you saw Donnelley and Mrs. Smith together at Asbury Park? A. Yes, sir.

Q. On the boardwalk? A. Yes, sir.

Q. Sure of that? A. Yes, sir.

Q. With anyone else? A. With others and by themselves.

Q. You saw them on three occasions? A. I may have seen them together on one occasion; and on another occasion seen them with somebody else.

Q. Did you see them on more than one occasion on the boardwalk? A. I saw them on the boardwalk once; and I saw them walk along the street down towards Mrs. Smith's hotel.

Q. On this occasion when you saw them on the boardwalk, was there anyone with them? A. No, sir.

Q. Who else did you see on the boardwalk that day that you knew? A. I don't recall.

Q. Well, there was nothing in Mr. Donnelley and Mrs. Smith being on the boardwalk that was peculiar? A. Nothing whatever.

Q. And there was nothing to impress that incident on your mind at that time? A. No, sir.

Q. Well, you can't recall anyone else that you saw on that day? A. It was because I know Mrs. Smith so well.

By the Court:

Q. Do you recall anyone else you saw on that day? A. No, sir.

Q. Were you alone? A. I don't recall.

Q. Did you see Mr. Smith that day at all? A. No, sir, I don't think I did.

Further Cross:

Q. If anyone was with you, wouldn't you remember that? A. Not necessarily, no, sir; there might be somebody I had met.

Q. Don't you know you were alone on that occasion? A. No, sir, I did not.

Q. Were you following Mrs. Smith? A. No, sir.

Q. Then you say you saw them one time on the street in Asbury Park? A. Yes, sir.

Q. Were they alone? A. No, sir, Mrs. Smith's children were walking along.

Q. Was there anyone else with them? A. Yes, sir, I think Charlie Simon was with them.

Q. So there was nothing unusual about that? A. No, sir, Mr. Simon and Donnelley were great friends.

Q. Did you make a note of it? A. No, sir.

Q. Then you saw them at the hotel? A. I saw them sitting on the front porch.

Q. Was Mr. Smith there? A. Mrs. Smith was there.

Q. Why didn't you mention that in your direct examination? A. Mr. Smith was with me; Mr. Smith arrived at the hotel with me.

Q. Was Mr. Smith with Mrs. Smith and Donnelley, or with you? A. With me.

Q. And not with Mr. Donnelley and Mrs. Smith? A. No, sir.

Q. Who else was there? A. Florrie Davis and Gladys Campbell; they were sitting in a circle on

the hotel porch, and we were coming in to the hotel; that was in the afternoon.

Q. So you did not join the party at all? A. Yes, sir, we sat down and talked.

Q. Mr. Smith, too? A. Yes, sir.

Q. Then Mr. Smith was right there with Mr. Donnelley and Mrs. Smith? A. After we arrived, he was.

Q. Is your recollection distinct about the occurrences of that day? A. Not particularly.

Q. Don't you remember that Mr. Donnelley came up with Mr. Thomas Kelly and introduced Mr. Kelly to you and Mr. Smith? Did not Mr. Kelly come up with Mr. Donnelley? A. They were there when we arrived.

Q. Was Mr. Kelly introduced to you? A. Yes, sir.

Q. And to Mr. Smith? A. As near as I can remember.

Q. You say, on the 4th of December, 1920, you were riding horseback? A. Yes, sir.

Q. You passed this car? A. Yes, sir.

Q. It was in the open field? A. No, sir, it was behind two trees.

Q. Were there any other people there? A. No, sir.

Q. No one else was there? A. No, sir.

Q. Didn't you stop and talk to some hunter right in view of that car? A. No, sir.

Q. There were no hunters there? A. There was a hunter in the brush on the other side.

Q. Didn't you go over the brow of the hill at an ordinary speed and then turn around and come back? A. No, sir, I rode pretty near up to the top of the hill and back again.

Q. When you came back didn't you talk to a hunter? A. A hunter may have called out to me from the brush.

Q. Right out in the road, almost? A. Yes, sir.

Q. Didn't you tell Mrs. Smith you had come back there because your horse had thrown a shoe? A. No, sir.

Q. Had your horse thrown a shoe? A. Yes, sir.

Q. Then it is a fact that your horse threw a shoe? A. Yes, sir.

Q. You don't know how Mrs. Smith learned of that? A. I told Mr. Blue.

Q. Now then, you knew it was the Smith car? A. Yes, sir.

Q. But you were not sure of who was in it? A. Yes, sir, I was.

Q. Didn't you afterwards tell Mrs. Smith to learn from Mr. Donnelley whom he had had out in that car? A. I did not.

Q. Didn't you repeatedly ask her to do that? A. She said it was up to me to find out.

Q. And you also told her, didn't you, that it was up to her to find out who was in that car? A. I don't recall.

Q. You did not say that a moment ago, that it was up to Mrs. Smith to find out who was in that car, to find out from Donnelley? A. I knew who was in the car.

Q. Did you ask her to find out who was in that car with Donnelley; that is the question; it is a simple question; did you ask Mrs. Smith? A. No,

sir, I told her it was up to her to find out; I did not mean it in that sense.

Q. Didn't you tell her that Donnelley had played a dirty trick in taking her car and taking another girl out? A. No, sir, I don't remember ever having said such a thing.

Q. Will you say you did not say that to her? A. Yes, sir, I think I am safe in saying that I did not say that. I mean, that I think it is the truth.

Q. When you told Mrs. Smith about that, she told you she had not been out with Mr. Donnelley, didn't she? A. She told me that—she did not say she had not been out with Donnelley; she said she had loaned the car to Mr. Donnelley.

By the Court:

Q. You are talking about the time when you say them on the roadside December 4th? A. Yes, sir.

Further Cross:

Q. Didn't she deny to you that she had been out with Mr. Donnelley? A. She said, "I loaned the car to Mr. Donnelley."

Q. (Question read.) A. That is a part denial.

Q. I am not asking you that. (Question read.) A. I don't know.

Q. And you passed within how many feet of the car? A. 25 feet.

Q. The car was in plain view of the road? A. Yes, sir.

Q. Anyone passing by could have seen the car? A. In palin view of the back woods road.

Q. And you saw, you say, actually kissing and embracing? A. Yes, sir.

Q. Why didn't you go back to them, if you were such a close friend of Mr. and Mrs. Smith; why didn't you go back? A. Because I did not know what to do.

Q. But you came back? A. Yes, sir.

Q. Why didn't you go up to them? A. They drove away; they were backing out and after I turned they drove away ahead of me.

Q. Didn't you go over the brow of the hill before coming back? A. No, sir.

Q. Didn't you go over the brow of the hill? A. No, sir, I did not.

Q. Were you not out of sight when you turned around? A. It is an up grade, Mr. Ward.

Q. You telephoned to her then after that? A. The following Monday, I did; the Monday after this occurrence.

Q. Was this on a Saturday when you were riding? A. Yes, sir, Saturday afternoon.

Q. What time of day was that? A. About the middle of the afternoon.

Q. Can you fix the time any more specifically than that? A. It would be hard to do that.

Q. Did you make any memorandum of that? A. Not until after I had talked to Mrs. Smith.

Q. Then you made a memorandum? A. Yes, sir.

Q. A memorandum of the time? A. I don't recall.

Q. Have you read the memorandum lately? A. No, sir.

Q. When you called up Mrs. Smith, she asked

you what you wanted to see her about, didn't she? A. Yes, sir.

Q. And so far as you could observe at the time, she did not seem to know what you wanted to see her about, did she; from what she said over the telephone? A. She pretended to be confused, of course.

Q. Whether it was pretence or not— A. She said "Why don't you tell me over the telephone?"

Q. And then when you were insistent, she came down to your office? A. Yes, sir.

Q. Then you wanted to know where she had been Saturday afternoon, didn't you? A. I asked her "Where were you Saturday afternoon?"

Q. You didn't say to her, "I saw you on Saturday afternoon, and I want to remonstrate with you about it?" A. No, sir.

Q. But you asked her where she had been; wasn't it because you did not know and you were not sure, that you asked her where she was that Saturday afternoon? A. No, sir.

Q. What was your reason for asking her if you knew where she had been? A. I wanted to open up the conversation.

Q. You had known this woman for years, hadn't you? A. Yes, sir, but I did not know how to approach that subject.

Q. When you asked her where she was that Saturday afternoon, then she asked you why you wanted to know, didn't she? A. Yes, sir.

Q. Then you told her, "Why, I saw you;" is that correct? A. Yes, sir.

Q. "Saw you over in Bergen County?" Did you describe where you had seen her? A. No, sir.

Q. And then she denied it? A. I merely said, "I know where you were."

Q. Did you tell her where she had been? A. No, sir.

Q. Did you tell her what you had seen? A. No, sir.

Q. You did not ask her about the car? A. She told me that she had loaned the car to Mr. Donnelley.

Q. Wasn't that because you asked her where the car was Saturday afternoon? A. No, sir, it was because I said, "You were out with James Donnelley."

Q. You did tell her that; did you tell her she had been out in the car with James Donnelley? A. I implied that she had.

Q. Didn't she then deny that that was so? A. She said that she had loaned the car to James Donnelley.

Q. I ask you again, did she at that time deny that she had been with Donnelley on that Saturday afternoon? A. She implied that she had; she said that she had loaned the car to James Donnelley.

Q. She implied that she had been with Mr. Donnelley? A. It was an implication.

Q. Didn't you say on direct examination that she said that that was untrue; that somebody had been gossipping to you about her? A. She said somebody had been gossipping about her; I did not say anything about her saying it was untrue.

By the Court:

Q. Didn't you say that you remonstrated with her for her conduct with Donnelley? Now, she

must have said something—you must have told her something about seeing her out in the car? A. I did not tell her I had seen her on the road.

Q. At that time you told her you had seen her quite often with Mr. Donnelley, didn't you? A. Yes, sir.

Q. And she became angry at your insinuation? A. Yes, sir.

Q. And she denied that there was any reason for you to adopt that attitude? A. Yes, sir.

Q. She told you to mind your own business? A. She said it was none of my affair.

Q. And she said that James Donnelley was only a darling boy? A. Yes, sir.

Q. As a matter of fact, you knew there was a great disparity between their ages? A. There is, yes, sir.

Q. You referred in great detail to every word of the conversation that you had with Mrs. Smith on that occasion. Is your recollection so keen and distinct as all that? A. It made considerable impression upon me.

Q. And the conversation that you gave here as the conversation that took place between you and her, was that word for word exact? A. No, sir; I never could guarantee to repeat it exact.

Q. Have you gone over this in your own mind, this conversation? A. I considered it, of course.

Q. Do you recall in detail what was said? A. Not in close detail.

Q. Then you said, after repeating much of this conversation, that she told you that if this were ever taken to court, "I shall lie; I shall stop at nothing, if this goes into court; I shall lie and say that my children are not Roy Smith's;" were those

her exact words? A. As nearly as I can recall—that was the sense that I got.

Q. You know, after this trouble there was some talk about Roy Smith taking his children, wasn't there; I mean, after they separated? A. I don't know anything about it.

Q. You did not know that? A. No, sir.

Q. You say you talked to her on a number of occasions? A. Yes, sir.

Q. And on several occasions she told you she did not love Roy Smith? A. Yes, sir.

Q. Did she tell you why? A. No, sir.

Q. Did she tell you about his constant ill-treatment and beating her? A. No, sir.

Q. So, that when she told you that she no longer cared for her husband, she gave no reason? A. None whatever.

Q. When she said she was disgusted with things in general, she gave no reason? A. No, sir.

Q. Didn't she tell you about Roy Smith beating and striking her on a number of occasions? A. No, sir, never.

Q. You and she were close friends during all of this time? A. Yes, sir.

Q. And you were more or less of a confident of hers and she of yours; is not that so? A. I told Mrs. Smith all that came to my ears regarding this affair.

Q. What affair? A. Anything that you might call gossip that I heard.

Q. You made a confidant of her, didn't you? A. I told her for her own good, yes, sir.

Q. Did you talk to her about other matters? A. Not that I recall.

Q. How often did you see her? A. Quite often.

Q. It was you who made all the arrangements about the 19th of November, wasn't it? A. No, sir.

Q. Didn't you arrange with Mr. Blue— A. Mr. Blue made the arrangements.

Q. Didn't you go to M. Blue? A. Yes, sir.

Q. Didn't you make the arrangement for the car to go and get him at Pompton? A. At his request, I did.

Q. And you made all these arrangements? A. At his request.

Q. But you were not there yourself? A. No, sir.

Q. You kept in the background? A. At Mr. Blue's request.

Q. Didn't you make a confidant of Mrs. Smith to the extent of telling her about some girl who was making advances to you, and that because of your affection for her, you did not tolerate the advances? A. No, sir.

Q. And isn't it true that you were jealous of Donnelley? A. No, sir.

Cross Examination by Mr. McKee:

Q. On the 4th of December, when you were taking your ride in Bergen County, you had no idea that the Smith car was there? A. Absolutely none whatever.

Q. And you proceeded up the Donkerhook Road? A. On to hemacite.

Q. Were you going at a moderate speed? A. Yes, sir.

Q. How long had you been riding? A. I just came from home.

Q. Had the horse been out much during that week? A. That I don't know.

Q. Did your horse feel pretty well that day? A. It seemed to be able to go.

Q. As you approached this car, how far away were you from the car at the time when you identified it? A. The car had been run off the road.

Q. Was the car facing the same way that you were going? A. No, sir, it had been run away from the road, head in from the road.

Q. You really did not recognize the car until you were about past it? A. I glanced over there and saw the car.

Q. Then you identified it as Mr. Smith's car? A. Yes, sir.

Q. And at that time you had passed the car with your horse? A. Just passed it.

Q. Did you stop? A. No, sir, I don't know what happened; I suppose the horse hesitated and then jumped.

Q. Just for a second, I suppose? A. I don't know what happened.

Q. And your horse ran on further up the road? A. Yes, sir; naturally, I was very much perturbed and upset.

Q. You say Mr. Donnelley and Mrs. Smith were in the rear of the car? A. They were facing each other; they gave me a side view.

Q. And your quick identification was based upon what? A. My acquaintance with Mr. Donnelley and Mrs. Smith, having known them many years.

Q. You had a direct view of the face of Mrs. Smith? A. Yes, sir, I recognized Mrs. Smith.

Q. How did you recognize Mr. Donnelley? A. From the fact that I know him so well.

Q. At that time they were embracing and kissing? A. Yes, sir.

Q. Their faces were very close together? A. Yes, sir.

Q. Their arms were around each other? A. Yes, sir.

Q. And yet, you went by this car on a gallop and never identified the car until after you had virtually passed it?

Mr. Lane—I object to the statement that it was galloping.

Q. Was it gallopping? A. I am not sure what pace the horse was taking, but it was not travelling fast.

Q. If it had been walking, you would have identified the car long before you got to it? A. No, sir, there was a clump of trees that hid the car from the main road; it was 25 feet in.

Q. You will say your horse was not on a walk? A. I don't think it was.

Q. This clump of trees hid the car from your view until you got virtually past the car? A. Yes, sir, until I got opposite the car.

Q. Did you notice what kind of trees they were? A. The brush is pretty thick through there.

Q. It is from four to five feet high, isn't it? A. I don't think it would cover the car, but the trees are growing very thick.

Q. Were they in leaf at that time? A. No, sir.

Q. Entirely bare? A. No, sir, dead leaves clinging to them.

Q. You say that was the cause of the obstructing of your view, as far as seeing this car was concerned? A. Yes, sir.

Q. And yet, with all that, in the second you had before your horse bolted, you identified these two figures who were wrapped in each other's arms and kissing? A. I had a very clear view.

Q. Did you look over your shoulder backward? A. No, sir, I looked sideways; I was riding at right angles to the car.

Q. You did not continue to look at right angles at the time your horse bolted? A. No, sir, I gave my attention to the horse immediately.

Q. Did you tell Mrs. Smith all that you had seen? A. No, sir.

Q. Did you tell her you had seen her and Mr. Donnelley kissing in the car and hugging each other in the car? A. No, sir.

Q. Isn't it a fact that when you told her, you told her you saw her out in the car with Donnelley? A. Yes, sir.

Q. And didn't she deny that she was in the car with Donnelley? A. She said she loaned the car to Donnelley.

Q. Didn't she deny that she was in the car with Donnelley, positively? A. Not positively; she said she had loaned the car to Mr. Donnelley.

Q. And that she was not with him? A. She did not say that.

Q. How many trees did you say there were between the road and this car? A. There is a

clump of trees growing there very close together, and it is two or three times the size of this room.

Q. And how many? A. I don't know how many there are.

Q. Did you say on direct examination that there were two trees there? A. No, sir.

Q. That the car was behind two trees? A. No, sir, I said behind the trees.

Re-direct Examination by Mr. Lane:

Q. Did Mrs. Smith tell you where she had been Saturday afternoon? A. Yes, sir.

Q. What did she say? A. She said she was out with her sister.

Q. Did she tell you where? A. No, sir.

Q. Which sister? A. She only has one sister, that is Mrs. Blue.

Q. The wife of the man whose name has been mentioned in the testimony? A. Yes, sir.

Q. When was it you saw Mrs. Camwell? A. Early in the fall of 1921.

Q. How did you come to see her? A. I happened to come out of church with her one night.

Q. And did you have a conversation with her with respect to Mrs. Smith? A. Yes, sir.

Q. What did you say and what did she say?

Mr. Ward—I object to that on the ground that the witness' attention on cross examination was directed to a conversation that he had since this case has been started.

The Court—I will take the testimony, and rule it out afterwards if it is improper.

A. Mrs. Camwell told me in the course of conversation, that she had discovered that Mrs. Smith

was meeting Mr. Donnelley at her home, at Mrs. Camwell's home. She did not put it that way—she said she believed they were using her home as a meeting place.

Q. Did she say how she found that out?

Mr. Ward—Objected to .

The Court—Objection overruled.

A. She said she walked into the room and found them together, in her house.

Q. Did she tell you what room it was? A. She said it was the parlor, I think.

Q. Did she say it was dark? A. I think so.

Q. Did she say what she did?

Mr. Ward—I think the witness should be permitted to tell what Mrs. Camwell said without being prompted.

By the Court:

Q. What did she say? A. She said she remonstrated with them and told them that she did not permit such things in her house.

Q. I believe you said on cross examination, that Mrs. Camwell had said that she thought that Donnelley had come there to see her daughters; when was it she told you that; was it at that conversation? A. She said that prior to that time she had always supposed that Mr. Donnelley came there to call on her daughters.

Q. Did you have anything to do with the affidavit that was signed by Kilpatrick? A. I went

with Mr. Wiseman when he took Mr. Kilpatrick's affidavit.

Q. Mr. Wiseman is a lawyer? A. Yes, sir.

Q. Did you have anything to do with the preparation of the affidavit? A. Nothing whatever.

Q. When was it that you had your conversation, your first conversation, with Mr. Kilpatrick? A. Last spring.

Q. Were you alone at that time or did you have somebody with you? A. I was alone.

Q. How did you come to go there?

Mr. Ward—I object to that question; I do not think it is proper.

The Court—I think the question is objectionable in that form, Mr. Lane.

Q. Why did you go there?

Mr. Ward—Same objection.

The Court—It is the same question practically.

Mr. Lane—I think I am entitled to show how he happened to go.

The Court—I will rule the question out.

Q. When you said during this interview on Monday following Saturday, December 4th, that you knew where Mrs. Smith was, what did she say in direct response to that? A. As nearly as I can recall, she told me that she had loaned the car to Mr. Donnelley.

Q. Had you suggested before that anything about a car? A. Yes, sir, I had said that I had

seen Mr. Donnelley and Mrs. Smith out in the Smith car.

Re-cross Examination by Mr. Ward:

Q. You said on re-direct examination, that she told you she had been out with her sister that Saturday afternoon? A. Yes, sir.

Q. Then she did deny that she had been out with Mr. Donnelley? A. Not necessarily.

Q. So that when she said she had been out with her sister, you did not mean to say that she said she had not been out with Mr. Donnelley? A. I did not think she was with her sister.

Q. You also have said that you had a conversation with Mrs. Camwell; when was that? A. In the fall of 1921.

Q. Now, you also had another conversation with Mrs. Camwell recently? A. Yes, sir.

Q. And you were asked about that on your cross examination, were you not? A. I don't recall.

Q. And counsel for the defendant, myself, asked you about that on cross examination? A. I don't recall it.

Q. And didn't you say on cross examination that at that time Mrs. Camwell told you that she had always thought that Mr. Donnelley came to see her daughters; didn't you volunteer that on your cross examination? A. Up to that time she had thought so.

Q. Didn't you say on the occasion of your last talk with Mrs. Camwell that she told you that she had always assumed that Mr. Donnelley came to see her daughter? A. In the recent conversation with Mrs. Camwell?

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

Q. You don't recall saying that on cross examination? A. No, sir.

Q. You claim you remember that statement as being made at the time you met her at church? A. She might have repeated the assertion.

Q. Do you recall whether she did or not? A. I do not.

Re-direct Examination by Mr. Lane:

Q. Do you recollect whether there was anything in counsel's questions to distinguish between which of the conversations he was talking about? A. I do not.

Re-cross Examination by Mr. Ward:

Q. You do not? Why, were you not asked if you did not go there to get her affidavit; were you not asked that on cross examination? A. That is why I went to see her.

Q. Then you did know what conversation I referred to, didn't you? A. No, sir, I did not.

Q. You did not know that I referred to the conversation that you had recently, when you went there and asked her to testify?

The Court—He says he did not, Mr. Ward.

HARRY BURNS, being duly sworn in behalf of the petitioner, testified as follows:

Direct Examination by Mr. Lane:

Q. Where do you reside? A. 356 East 18th St., Paterson, N. J.

Q. What is your business? A. Crossing tender.

Q. For whom? A. New York, Susquehanna and Western Railroad, stationed at 22nd Street and Park Avenue.

Q. How long have you been stationed there? A. I have been stationed there five or six years.

Q. Do you recognize Mrs. Smith, this woman here? A. Yes, sir.

Q. Do you recognize Mr. Donnelley? A. Yes, sir.

Q. During the year 1921, did you see those two people at any place? A. Right back of the tower on the railroad, between the depot and Park Avenue.

Q. And during what time during the year 1921 did you see them? A. The late summer, through the summer.

Q. What time? A. Night time.

Q. What time? A. Twenty minutes to eleven.

Q. What are your hours? A. 11 o'clock at night until 7 in the morning.

Q. How often did you see them there? A. I saw them there repeatedly during the summer months.

Q. How many times? A. Say, a half a dozen times.

Q. Did you ever see them meet? A. No, sir, they were there when I passed.

Q. What did you see them do? A. They seemed to be very loving, that is all.

By the Court:

Q. Were they kissing each other? A. No, sir.

Q. What did you see them doing that was lov-

ing? A. He had his arms around her and was embracing her; and I was up in the tower and I could see right down.

Further Direct:

Q. Did you see them walk along the railroad track? A. No, sir, they would separate; sometimes the station lights would be flashed on and they would usually separate then, and she would go to the confectionery store and take a bus, and he would generally walk out to Park Avenue.

Q. Separately? A. Yes, sir.

Q. How long a time have you seen them stay there? A. Not over five or ten minutes; how long they had been there before, that, I don't know.

Q. Was it the subject of conversation between yourself and those associated with you in that business?

Mr. Ward—Objected to.
The Court—Objection sustained.

Cross Examination by Mr. Ward:

Q. You were in the tower? A. I was passing on my way to work.

Q. Did you know Mr. Donnelley pretty well? A. I have seen him quite often, and I was told who he was.

Q. You got your view from the tower on most of the occasions? A. The majority of the times I passed them on my way to work.

Q. How many times do you think you passed them? A. Say, half a dozen times.

Q. And they were in a secluded place? A. It was sort of dark there.

Q. In a position, apparently, to avoid observation? A. Yes, sir.

JOHN KILPATRICK, sworn in behalf of the petitioner, testified as follows:

(Witness withdrawn for the present.)

THOMAS SPAGNOLA, sworn in behalf of the petitioner, testified as follows:

Direct Examination by Mr. Lane:

Q. Where do you live? A. 307 Park Avenue.

Q. Paterson, N. J.? A. Yes, sir.

Q. What is your business? A. Fruit merchant.

Q. Where? A. At 302 East 33rd Street.

Q. Where is that with reference to the Park Avenue station? A. It used to be 297 Park Avenue.

Q. It is immediately adjoining the railroad? A. Yes, sir.

Q. Were you there during the year 1921? A. Yes, sir.

Q. It was immediately adjacent to the railroad? A. Yes, sir.

Q. Do you know Mrs. Smith? A. Yes, sir.

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

Q. You know Mr. Donnelley? A. Yes, sir.

Q. During the summer of 1921, did you see Mr. Donnelley and Mrs. Smith in the proximity of the

New York, Susquehanna and Western Railroad crossing? A. I did not.

Q. Did you see them anywhere? A. No, sir.

Q. In that neighborhood? A. No, sir.

Q. Where did you see them, if at all? A. I never saw them together.

Q. Are you sure of that? A. Yes, sir.

Q. I show you an affidavit and ask you whether this is your signature? A. (Witness reads it over) Oh, this affidavit, your Honor, it tells on here—

Q. Did you sign that? A. Yes, sir.

Q. When? A. One night there during the hours of business, when Mr. Smith came in.

Q. Who was there? A. That gentleman sitting over there.

Q. Mr. Wiseman? A. Yes, sir.

Q. Who else? A. That is all.

Q. Was Mr. Smith there? A. Yes, sir.

Q. And Mr. Wiseman? A. Yes, sir.

Q. Did you swear to it? A. I believe I did.

Q. Was it the truth? A. Well, to tell you the truth, I did not read this over carefully.

By the Court:

Q. Was it the truth; you are under oath, and that is an affidavit signed by you. A. It was the truth.

Further Direct:

Q. Did you see Mrs. Smith and Mr. Donnelley in the neighborhood of the New York, Susquehanna and Western Railroad tracks in the summer of 1921? A. I did not see them.

Q. Did you see her come from out of there? A. I saw her come from out of there, I think I did.

Q. Did you see her come from out of there,

or did you think you did? A. I saw her come out of there.

Q. When? A. I cannot remember that far back.

Q. How many times? A. Just this one night.

Q. Where did you see her come from? A. I don't know.

Q. Why did you say you saw here come from out of there for? A. I was asked after Mr. Kilpatrick called my attention to it.

Q. Did she drop a purse, did Mrs. Smith drop a purse?

Mr. Ward—Objected to as leading.
The Court—Objection overruled.

A. You see, I did not know Mrs. Smith came from there at all; I just came out of my place of business and somebody spoke to me at that time.

Q. Who? A. Mrs. Smith, but where she came from, I don't know; I cannot swear she came from out of there; she said "Good evening."

Q. What time was it? A. I don't know, to be exact; it was night time.

Q. Do you know how late it was? A. No, sir.

Q. Do you remember when this affidavit, which I will ask to have marked for identification, was shown to you?

(Marked "Exhibit P-1 for identification".)

Who crossed out the 1-2-3-4-5 lines which are crossed out there? A. I believe Mr. Wiseman did.

Q. You saw him do it, didn't you? A. Yes, sir.

Q. You saw Mr. Wiseman cross out the others? A. Yes, sir.

Q. You read that affidavit, or it was read to you carefully enough to have you object to these four lines, wasn't it?

The Court—He read it all over.

Q. Whom have you been talking to about this case recently? A. I answered that question, to no one at all.

Q. Whom have you been talking to? A. To no one.

Q. Why did you object to answering the question? A. What question?

Q. As to whom you had been talking to? A. I don't think that is necessary.

Q. That is not the only reason? A. Yes, sir.

Q. Do you know Senator McGinnis? A. No, sir.

Q. Do you know Mr. Ward? A. I do, just by seeing him.

Q. You haven't talked to anyone from their office? A. Not to my knowledge.

Q. Did you talk to Mrs. Smith? A. No, sir.

Q. How long is it since you have seen Mrs. Smith? A. It is every bit of a year.

Q. Now, read that affidavit again carefully. A. My attention was called to it that one night only.

Q. Did you pick up a purse of Mrs. Smith's? A. I don't know whether it was a purse, but I picked up something that she dropped.

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Q. And did you return it to her? A. I did, yes, sir.

Q. And where was she when you returned it to her? A. She was about to cross the street, she was on Park Avenue.

Q. Was she on the way to get a bus? A. I believe she was.

Q. How close to her were you when this, whatever it was, was dropped? A. About three feet.

Q. Behind her? A. Well, I was walking towards there—I did not even know it was Mrs. Smith until after she had left there.

Q. How soon after she had left did you know it was Mrs. Smith? A. After she said "Good evening."

Q. You knew it then? A. Yes, sir.

Q. When was it that your eyes first lit on this woman? A. After I had picked the purse up.

Q. You did not see her before that? A. No, sir.

Q. But you were walking where? A. Towards the gateman that was standing there at the railroad crossing at the time, and I stooped down and picked it up and said ,"Good evening."

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

Q. What did you mean in that affidavit—the last four lines? A. I never took notice of that, or I would not have consented to that.

By the Court:

Q. You know the parties very well; how did you come to say you had seen her frequently, if it is not true, and sign your name to it; how did you come to sign that affidavit and put it in this case? A. I was busy at the time, and Mr. Wise-

man and Mr. Smith came in, and, of course, I looked it over, but I did not look it over thoroughly; there were few things on there that I noticed.

Q. Had you seen them at this place? A. No, sir, I did not; not together,—that I could swear to.

Further Direct:

Q. Had you seen Mrs. Smith alone at the railroad crossing? A. Only on this one occasion.

Q. At night? A. No, sir.

Q. Had you ever seen Donnelley there at the railroad crossing before? A. No, sir, only this one night.

Q. Then you did see him that night? A. My attention was called to him crossing the railroad after.

Q. When was that? A. A little later.

Q. Who called your attention to him? A. Mr. Kilpatrick.

Q. Did you see him then? A. Yes, sir.

Q. Where was he? A. I don't know where he was before then.

Q. Where was he when you saw him? A. He was crossing the railroad crossing.

Q. Going from what place; where did you first see him? A. He was coming from out of the railroad pathway along the tracks.

Q. How long after you had seen Mrs. Smith was it that you saw Donnelley? A. I would judge it to be about five minutes or so.

Q. Did you talk to Mrs. Smith? A. Nothing more than just "Good evening."

Q. Did you talk to her about being there at that place? A. About being there?

Q. Yes. A. I did, yes, sir.

Q. What did you say? A. I just called her attention that my attention was called to her being there, and that I did not believe it.

Q. What did you say and what did she say? A . She did not say anything; she said it was ridiculous.

Q. What did you say? A. That my attention was called to her being there, coming down from the track with Mr. Donnelley, that was all.

Q. What did you say? A. I told her that Mr. Kilpatrick said that he wanted to know if that was really Mrs. Smith at the time.

Q. Tell us the whole conversation. A. And I told her that he had said just what he had seen.

Q. What did you tell her he had said? A. Just what I said.

Q. Tell it again. A. That she was standing there with Mr. Donnelley and came out from the track; and she said it was ridiculous for anyone to talk anything like that.

Q. Was that all she said? A. Yes, sir.

Q. Did she say why she was there at that hour of the night? A. No, sir.

By Mr. Ward:

Q. Did you ask her? A. No, sir.

Further Direct:

Q. How soon after you picked up the purse was it, that you had this conversation about her being there? A. About two days later.

Q. It was not the same night then? A. No, sir.

Q. How did you come to talk to her two days later? A. I talk to a good many other married women; she happened to come in my place of business and bought something, and that is how the conversation commenced; I just called her attention to it.

Q. You mean to say, that when this woman—is she a customer of yours? A. She was at that time a good customer of mine.

Q. And when she came into your shop you said to her, "What is it about your meeting Mr. Donnelley down here, as I have been told by Mr. Kilpatrick;" is that what you said to her?

Mr. Ward—I object to that.

The Court—I shall allow the utmost license, because the witness is evidently a reluctant witness, and he made an affidavit in the case which is a part of the Court's record, and it is beneficial to him to be particularly examined for his protection.

Q. And you said to her—is it a fact that this woman coming into your place, two days after this occurrence, that you said to her yourself, substantially to this effect: "What is there about your meeting Mr. Donnelley, or being with Mr. Donnelley down here at night;" is that what you said to her? A. No, sir, I said to her, "Mrs. Smith, Mr. Kilpatrick called my attention to your coming out through there and being with Mr. Donnelley;" that is what I said.

Q. And all she said was, that it was ridiculous? A. Yes, sir.

Q. Did you say, "I saw Mr. Donnelley come

out five minutes after you left two nights before?'' A. No, sir.

Q. Why not? A. I did not.

Q. Why not? A. Why should I?

Q. Your explanation of these four lines, that you had observed similar conduct before is, that you did see it—in this affidavit? A. What is that? These four lines?

Q. Yes. A. To tell you the truth, I did not look it over thoroughly; I was doing business at the time that Mr. Smith and Mr. Wiseman came in, and I looked it over as thoroughly as I possibly could, and I explained to them just what I knew about the matter, and I took it for granted that everything was all right.

Q. Be careful what you say, because you did not take it for granted, because you have already testified that you insisted on these five or six lines being crossed out; that is not taking anything for granted. A. I did not notice these others down below.

Q. So the explanation of this language that you had seen Mrs. Smith and Donnelley there on other occasions,—the explanation of that is, that you did not see it? A. I did not see it, and I can swear to that.

Cross Examination by Mr. Ward:

Q. Mr. Spagnola, you say that the first you saw of this woman was when she was about to cross the street? A. Yes, sir.

Q. Then she dropped something, a purse, and you picked it up and returned it to her? A. Yes sir.

Q. Up to that time you had not observed her? A. No, sir.

Q. Then something was said to you by Kilpatrick after that? A. Yes, sir.

Q. And Kilpatrick indicated some man, did he, who was crossing the track? A. Later on, yes, sir.

Q. And named the man? A. I named the man.

Q. Then Mr. Kilpatrick asked you, or wanted to know if that was Mrs. Smith who had met Donnelley? A. Yes, sir.

Q. Was it dark? A. Well, there was plenty of light right where we were.

Q. Well, where this woman was when you returned the purse to her, was it dark where she was then? A. No, sir.

JOHN KILPATRICK resumes the witness stand.

Direct Examination by Mr. Lane:

Q. Where do you reside? A. 555 Madison Avenue.

Q. What is your occupation? A. I am a car washer just at present.

Q. What was your occupation in the summer of 1921? A. At North Paterson.

Q. Do you remember Saturday night when you were talking with the gateman at the railroad crossing— A. It was a Saturday night in the summer time.

Q. You know it was the year 1921? A. Yes, sir.

Q. Who was the crossing man that you were talking to? A. Mr. Burns, and a man who has recently been killed, a man named Barr.

Q. Do you remember seeing Mrs. Smith at that place at that time? A. I remember seeing a woman and a man standing talking on that pathway, but I did not know it was Mrs. Smith until she dropped something, and she came back and picked it up, then she came to Mr. Spagnola, and she said "Good evening, Tom," and he said "Good evening."

Q. Did you see her standing anywhere with anyone around there? A. Yes, sir, she was there with a man.

Q. Do you recognize the man in the court room now? A. No, sir.

Q. What were they doing? A. At the time when I saw them the lights were out; when I saw them the lights were out, and they were standing midway between the station and the tower house.

Q. Were the lights afterwards put on? A. About that time the lights were flashed on, and they broke away, and she came up towards me, through Park Avenue; they broke away; when the lights flashed on she whizzed around and started away.

Q. Did you talk to the gateman about it?

Mr. Ward—Objected to.

The Court—Objection overruled.

A. I could not tell you about that, but I was talking to the group, including Spagnola.

Q. How long after Mrs. Smith left did you next see the man who, you were told afterwards, was

Donnelley? A. Mr. Donnelley came walking up at his leisure a few minutes after Mrs. Smith came up.

Q. And did he pass the group? A. Yes, sir.

Cross Examination by Mr. Ward:

Q. You say you were standing there when these lights went on? A. Yes, sir.

Q. This woman came up the path and turned into Park Avenue? A. No, sir, she went on over to the sidewalk; when she got at or near about to us, she dropped something, and she noticed she dropped it, and she came back to pick it up, but I think Mr. Spagnola picked it up and returned it to her; she went on over to the sidewalk, and then she noticed she had dropped something.

Q. Up to that time you did not know who she was? A. No, sir.

Cross Examination by Mr. McKee:

Q. You were near the Park Avenue crossing? A. Yes, sir, standing by the tower house.

Q. Where was this man and woman standing? A. They were between the tower house and the station.

Q. Do you know where the branch breaks off from the main line? A. Yes, sir, it is a little beyond that.

Q. Then they were nearer the station than they were to your crossing? A. It is nearer to the tower house than it is to the station.

Q. You saw no improper position of this man and woman? A. No, sir.

Q. It was light enough for you to see from

Park Avenue half-way to the station that there was a man and woman there? A. Yes, sir, there were two lights at the station.

Q. You could see two persons standing there? A. Yes, sir.

Q. It is a gravel walk, about fifteen feet wide? A. Yes, sir.

Q. It is used by the public? A. Yes, sir.

Q. At the time the lights came on, there was nothing wrong in the position of these people, that you saw? A. No, sir.

Q. The only thing is, when the lights came on she turned and walked away? A. Yes, sir.

WALTER L. DUNSTAN, sworn in behalf of the petitioner, testified as follows:

Direct Examination by Mr. Lane:

Q. Where do you live? A. 394 East 30th Street, Paterson, N. J.

Q. What is your business? A. Salesman.

Q. In what? A. National Biscuit Company.

Q. Do you know Mrs. Smith? A. Yes, sir.

Q. Do you know Mr. Donnelley? A. Yes, sir.

Q. Have you ever seen Mr. Donnelley enter the Smith house? A. Yes, sir.

Q. When? A. I don't know the exact date.

Q. About when? A. Over a year ago, I guess.

Q. More than once? A. Once is all I ever saw.

Q. Can you tell me what time it was? A. Around eight or eight-thirty in the evening.

Q. Can you tell me how he entered? A. The kitchen door.

Q. How did you happen to see him? A. I was going down to the garage to get my car.

Q. How close did you live to them? A. About a block from where they did live.

Q. Did you ever see him go to the house at any other time? A. No, sir.

Q. Did you ever see Mrs. Smith and Donnelley together? A. Yes, sir.

Q. Where? A. One time on Park Avenue I saw them talking; and another time I saw them riding in Passaic.

Q. When was that you saw them riding in Passaic? A. I happened to be coming up Main Avenue, and they passed in Mr. Smith's Cole-eight sedan; I was with Mr. Brock at the time.

Q. Did you see them together at the Homestead Hotel? A. No, sir.

Q. Or leaving it? A. No, sir.

Cross Examination by Mr. Ward:

Q. What time was it when you saw them in Passaic? A. Shortly after lunch, about one o'clock.

Q. Can you remember the date? A. No, sir.

Q. About how long ago? A. In the late fall; it was on Main Avenue; I was riding up towards Paterson.

Q. Closed car? A. Yes.

Q. Was yours a closed car, too? A. No, sir, open.

Q. Were you on the same side of Main Avenue with them? A. Yes, sir, but going in a different direction.

Q. How soon before you passed them did you see them? A. 100 feet.

Q. Did you bow? A. Yes, sir.

Q. Who was in your car? A. A man named Brock.

Q. Who was in the Smith car? A. There was Mr. Donnelley, Mrs. Smith and some other young lady.

JAMES N. WRIGHT, sworn in behalf of the petitioner, testified as follows:

Direct Examination by Mr. Lane:

Q. Where do you live? A. 650 East 26th Street, Paterson, N. J.

Q. Do you know Mrs. Smith? A. Yes, sir.

Q. Do you know Mr. Donnelley? A. Yes, sir.

Q. Did you ever see Mr. Donnelley and Mrs. Smith at the Smith house? A. Adjacent to the Smith house.

Q. Can you tell me when it was? A. It was either October or the early part of November of last year.

Q. 1921? A. Yes, sir.

Q. How do you fix that time? A. I had joined an organization the night that I saw them.

Q. Where did you see them? A. In a Ford coupe on the Easterly side of the Smith house, that is, the 30th Street side.

Q. What time was it? A. About 11 o'clock in the evening.

Q. What did they do? A. They were sitting in the coupe talking to each other when I saw them.

Q. Did you watch what happened? A. No, sir.

Q. Where was the car standing? A. Under trees, just so that the electric light on the corner of East 20th Street and 17th Avenue shone into the coupe, so that I could see who was in it.

Q. Was that this house on the corner? A. Yes, sir, on the Northwest corner.

Q. Has it a side entrance? A. The main entrance is on 30th Street, with a kitchen and back door—the main entrance is on 17th Avenue, with a kitchen and cellar door entrance on 30th Street; that is in from 30th Street in the back yard.

Q. You did not see them leave? A. No, sir, and I did not see them come there.

By Mr. McKee:

Q. You did not wait? A. No, sir.

Cross Examination by Mr. Ward:

Q. Was it a rainy night? A. No, sir, it was a clear night.

RUDOLPH A. WISEMAN, being duly sworn in behalf of the petitioner, testified as follows:

Direct Examination by Mr. Lane:

Q. Where do you reside? A. 224 Seventeenth Avenue.

Q. You are a member of the bar? A. Yes, sir.

Q. Do you know Mrs. Smith? A. Yes, sir.

Q. How long have you known her? A. I should judge ten or twelve years.

Q. Do you know Mr. Smith? A. Yes, sir.

Q. How long have you known him? A. For about an equal time.

Q. Have you gone out with him socially? A. Yes, sir.

Q. Do you remember an evening in the fall of 1921 in connection with having seen Mrs. Smith? A. Yes, sir, one evening I was out motoring with Mr. Smith; in fact, I had called at his house, Mrs. Smith was absent,—at about 10.30 in the evening. He suggested we take the machine and go and get Mrs. Smith at Mrs. Blue's residence where she was supposed to be visiting. We stopped at the house, and Mrs. Blue came to the door, and Mrs. Smith was not there. We then proceeded. We had travelled in the first instance through Pennington Street. We then proceeded to go up Park Avenue back to Mr. Smith's home, and we stopped there, and Mrs. Smith had not got home yet, and we had not seen her en route; so we again traversed 17th Avenue in the hope of meeting her en route somewhere, but did not meet her. We then went on down town. We came on back up Park Avenue towards Mr. Smith's residence, and at the intersection of the Susquehanna Railroad and Park Avenue I saw Mr. Donnelley and Mrs. Smith going up the railroad tracks towards 17th Avenue.

Q. And this was what time of the night? A. That must have been 11 o'clock.

Q. Did you say anything to Mr. Smith about it? A. No, sir, I said nothing.

By the Court:

Q. Were they walking? A. Yes, sir, they were walking.

Cross Examination by Mr. Ward:

Q. How far were you from them? A. I imagine they were 100 feet up the track at the time we crossed the intersection.

Q. You were in an automobile? A. Yes, sir.

Q. How fast were you going? A. We were going reasonably slow, because we were looking for Mrs. Smith.

Q. You did not see them until they were in the particular spot you have just mentioned? A. That is right.

Q. At night time? A. Yes, sir.

Q. About 11 o'clock? A. Yes, sir.

Q. No lights up there except the street light? A. There is a regular street light on that intersection, but there are no lights along the track.

Q. And you went on your way? A. Yes, sir, they seemed to be in a hurry.

Q. You have been quite active in this case? A. To a certain extent.

Q. You have taken affidavits? A. I have acted as Mr. Smith's solicitor.

Q. You have taken affidavits? A. Yes, sir.

Q. You took the Spagnola affidavit? A. Yes, sir.

Q. Where did you get your information to put in that? A. I went there at Mr. Smith's request.

Q. You discovered you had some mis-information; you had put things in the affidavit that were not properly there? A. Yes, sir.

Q. And it was only when Mr. Spagnola called your attention to them, that you eliminated them? A. I said to him, "I don't know whether this is a correct statement or not; I want you to read this over carefully;" and he said, "It is not correct;" and he said, "Those parts that I struck out were not correct."

Q. Had you talked to him before that? A. No, sir.

Q. Where was the affidavit drawn? A. It was drawn by me in my office, upon information.

Q. What information? A. Information submitted to me by Mr. Smith.

Q. You got your information originally from Mr. Smith? A. Yes, sir.

Q. And put that in the affidavit? A. Yes, sir.

Cross Examination by Mr. McKee:

Q. You went directly home from Mr. Smith's house? A. Mr. Smith left me at my residence.

Q. Did you tell him you had seen his wife there? A. No, sir.

Q. You had been spending half an hour looking for Mrs. Smith? A. Yes, sir.

Q. And when you saw them you did not mention it to Mr. Smith? A. No, sir.

Re-direct Examination by Mr. Lane:

Q. Why not? A. The reason I did not was because at that time I had heard no particular rumors concerning Mrs. Donnelley and Mr. Smith, and I did not think it was the best thing for me to do, to give him the information at that time.

Recess Until 2 P. M.

After recess

MRS. ALICE SMITH, sworn in behalf of the petitioner, testified as follows:

Direct Examination by Mr. Lane:

Q. What is your relationship to Roy U. Smith? A. Stepmother.

Q. Do you know his wife, Mrs. Frances Smith? A. Yes, sir.

Q. In the summer of 1918, July and August of that year, were you staying with the Smiths, or the Smiths staying with you? A. We were in Oxford in my sister's house.

Q. What was her name? A. Emily Pearsall.

Q. When was this? A. 1918.

Q. Did you know a Harry Pearsall? A. Who is he? He is Mrs. Pearsall's stepson.

Q. Where is his home? A. In the outskirts of Boston, I believe.

Q. Was he at the house in Oxford at the same time that you were there? A. Yes, sir.

Q. Is he in court at the present time? A. There he is, standing up.

Q. Did he come to the same place where you were stopping in Oxford? A. Yes, sir.

Q. How long did he stay there? A. From Tuesday morning until Friday morning.

Q. Do you remember what month it was? A. Yes, sir, August.

Q. Was Mr. Roy U. Smith there during that time? A. No, sir.

Q. Was Mrs. Smith there? A. Yes, sir.

Q. Did you observe any friendship between Mrs. Smith and Mr. Pearsall? A. Yes, sir.

Q. When did you first begin to observe that? A. Well, Tuesday noon.

Q. Tell us what you observed? A. Well, they appeared like very great friends; he arrived at Oxford about nine o'clock in the morning; I don't know just the exact time.

Q. What did they do that evening, if you remember? A. Mr. Pearsall had a business engagement; he wanted to see a man on business, and Mrs. Smith volunteered to go with him, and they left right after dinner at 6:30, daylight saving time, and they got back after nine o'clock.

Q. Were you still up? A. Yes, sir.

Q. Did the party then talk for sometime? A. We all sat around on the porch and in the living room, talking up to 11 or after 11.

Q. Then what did you do? A. We retired, my sister, Mr. Smith and I, leaving Mr. Pearsall and Mrs. Smith down in the library.

Q. After that, did you hear them come upstairs? A. Yes, sir, in an hour or an hour and a half, probably an hour.

Q. Who was with you? A. Mr. Smith, my husband.

Q. What is his first name? A. William.

Q. Did you all have rooms on the second floor? A. Yes, sir.

Q. Can you tell me how that house was arranged? A. I think so.

Q. In the first place, let me ask you whether the stairs run up and down going up to the second floor in the front of the house? A. One pair, the pair that they used—

Mr. Lane—It is conceded by counsel, that this sketch which I have in my hand, and

which I want to be marked, represents the respective locations of the rooms.

Marked "Exhibit C-1½."

Mr. Ward—The arrow should point the other way on the stairway. "F. E. Smith" stands for Mrs. Frances Smith, the defendant here; and the next room is her children's, and the next room is Mrs. Pearsall's room, and on the opposite side in the rear corner, " H. P." stands for Harry Pearsall.

Further Direct:

Q. Could you distinctly hear them come upstairs? A. Yes, sir.

Q. Did you hear them after they got on the second floor, so that you could tell whether they separated or not? A. Yes, sir.

Q. Did they? A. Yes, sir.

Q. Could you tell where Mrs. Smith went, and where Mr. Pearsall went? A. Mr. Pearsall went in his room, which was adjoining ours.

Q. Now, after that, did you hear anyone leave Mr. Pearsall's room? A. Yes, sir, I did.

Q. How long after? A. Just a short time.

Q. What did you hear? A. I heard him go through the hall towards the front of the house, toward Mrs. Smith's room.

Q. Could you tell by the way in which he was walking, whether he had his shoes on or was in his stocking feet? A. I thought he was in his stocking feet; it was a very soft tread.

Q. Could you tell where he stopped? A. Yes, sir, about at Mrs. Smith's room; there was no other place to go.

The Court—Strike that out, the last part.

Q. Did you immediately go to sleep? A. I lay awake.

Q. For how long? A. I don't know.

Q. Was it for some time? A. Yes, sir, but I could not tell you how long.

Q. Did you hear him return? A. I did not.

Q. Did you hear him return at any time in the night? A. No, sir, I did not hear anything after that.

Q. The next morning did you see Mrs. Smith? A. Yes, sir.

Q. Where? A. Coming up the back stairs.

Q. About what time? A. A little after six, I guess.

Q. What was her custom with respect to rising? A. About eight o'clock.

Q. Did you talk with her? A. She just made one remark to me.

Q. What did she say? A. That she had made the coffee.

Q. For whom? A. Mr. Pearsall; he said the night before he wanted an early breakfast, and I volunteered to get the breakfast.

Q. Did he leave? A. Yes, sir; I went down to make the breakfast as usual, only two hours earlier, and I found Mrs. Smith coming upstairs, and she said she had already made the coffee.

Q. Did he go to his business engagement that morning? A. Yes, sir.

Q. What time did he return? A. Not until noon, lunch time.

Q. Did you go with him then for a ride? A. The first afternoon I did; we have been talking about the next morning.

Q. That afternoon, after Mr. Pearsall returned, did Mr. Pearsall and Mrs. Smith go out again? A.

In the evening, as soon as they got their supper—

Q. I am talking about the 28th, Wednesday. A. He wanted to speak with Mrs. Smith on the telephone, and I answered the telephone, and he said he was going to take her to the fair, to Oxford, and I called Mrs. Smith to the telephone, and he said he would bring a horse and buggy and take her to the fair, and he did; and they left shortly after lunch, as quick as they could go, and returned at nine o'clock at night, as near as I can remember. She made the remark that they only stayed a short time at the fair grounds.

Q. That evening did you have a talk with Mr. Pearsall and with Mrs. Smith? A. Yes, sir; they had their supper when they returned, and we were all sitting around the table, and I said to Mr. Pearsall, "I heard you go through the hall last night"; and he said, "Yes, I went in to ask Frances how to set the alarm."

Q. Was Mrs. Smith present at that time? A. Yes, sir; we were all present.

Q. Do you know what time you went to bed that night? A. About the same time, eleven or after.

Q. Who was left downstairs, if anyone? A. Mr. Pearsall and Mrs. Smith.

Q. Did anything happen that night? A. Not to my knowledge.

Q. Did anything happen on Thursday night? A. We left them downstairs, as usual.

Q. That is, you left Mr. Pearsall and Mrs. Smith downstairs? A. Yes, sir, all of us had been out that afternoon to a picnic.

Q. Who is Mr. Pearsall? A. He is my sister's stepson.

Q. What were they doing on Thursday night when you left them and went to bed? A. We left

them in the kitchen drinking rhubarb wine when we retired.

Q. Did you hear them that night come upstairs? A. Yes, sir.

Q. How long after you had retired? A. I don't know; quite a while.

Q. Did you hear anyone leave Pearsall's room after that? A. Yes, sir.

Q. About how long after they had come up? A. Just a short while.

Q. Tell us what you heard? A. Just the same —somebody walking through the hall to the front of the house.

Q. And where did the footsteps cease? A. Mrs. Smith's room was right at the front of the house; there was nothing else in the front of the house.

Q. Did you lie awake after that? How long? A. I could not tell you.

Q. Was it for some time? A. Yes, sir.

Q. Was your husband there with you? A. Yes, sir.

Q. Was there a discussion between you and him at that time? A. Yes, sir.

Q. Can you say whether it was as long as an hour?

Mr. Ward—All of these questions are very leading.

The Court—Well, at the same time, you have not objected to the original question. He asked whether there was a discussion between the husband and herself, and it is important to know how long the discussion was.

A. I had no time clock in my room.

Q. Can you estimate the length of the discussion between your husband and yourself? A. The discussion was not very long—he wanted to go—

The Court—Strike that out.

Q. Did either of you get up? A. Mr. Smith got up.

Q. And left your room? A. No, sir, he sat up in the room; I would not let him leave the room.

The Court—Strike that out.

Q. Did he open the door of your room? A. No, sir.

Q. Can you estimate about how long it was that you were awake? A. I think from half an hour to an hour.

By the Court:

Q. You did not hear the clock strike? A. Not to my knowledge.

Further Direct:

Q. During the time that you were awake, did you hear anyone return along the hall? A. No, sir.

Q. The next morning, do you know what time Mr. Pearsall left? A. Why, it was in the morning, about 9 or 9:30, somewhere around there.

Q. Did Mr. Roy U. Smith come home that day? A. He came up that night.

Q. Was he expected? A. Not until Saturday.

Q. Did you and Mrs. Frances Smith have any talk about the fact? A. She said, "Wasn't I lucky to get rid of Harry before Roy arrived?"

Q. Now, the afternoon that Mr. Pearsall came, did Mr. Smith and Pearsall go out with Frances? A. No, sir, I went.

Mr. Ward—I object to these questions; they are all leading.

The Court—Reframe that.

Q. Did you all go out? A. My sister and myself and Mr. Pearsall.

Q. What did Mrs. Smith do? A. She took care of the kiddies.

Q. Her children? A. Yes, sir.

Q. Do you remember an occasion in which you all went to some place beyond McDonough? A. Yes, sir.

Q. When was that? A. That was Wednesday morning.

Q. What happened Wednesday morning then? A. Mr. Pearsall wanted to see some lumber yard, and he got an auto and took my sister and Mrs. Smith and Mr. Smith and the kiddies, and coming back he wanted to go in the old homestead, one of his father's farms, and he and Mrs. Smith went.

Q. Proceed. A. Mrs. Smith told us when she got back that she had such fun; Mr. Pearsall went in the house and opened the window and pulled her in after him, and they were gone about half an hour. Mr. Will Smith picked huckleberries while they were gone, and we sat in the car, my sister and I.

Q. Do you know, as a matter of fact, whether Mrs. Smith had known Mr. Pearsall before this? A. She never had met him.

Q. How do you know that? A. I don't understand the question.

Q. How do you know that? A. I had never heard of her meeting him, and she went to the station to meet him with my sister.

Q. Do you know anything about Mrs. Smith meeting Mr. Pearsall after that? A. I never saw him meet her after that.

Q. Did Mrs. Smith ever say anything to you about having met Mr. Pearsall after that? A. No, sir.

Cross Examination by Mr. Ward:

Q. You have some feeling against Mrs. Smith? A. I naturally would have now.

Q. And have had for some time? A. No, sir.

Q. Long before this suit came up? A. No, sir.

Q. Not since the incident at Oxford? A. I never showed any feeling.

Q. Did you have any? A. Not that I would want her to know.

Q. So you had the greatest affection for her after that? A. Yes, sir.

Q. As a matter of fact, you and Mr. Smith lived with Mr. and Mrs. Roy Smith? A. Yes, sir.

Q. And finally, you felt that she desired her home for herself and her children, and you left? A. We left.

Q. And you went to live at the Kelsey House? A. Yes, sir.

Q. You left because they wanted you to go? A. They never said so.

Q. You knew they wanted you to go? A. Yes, sir.

Q. And you blamed her for that? A. No, sir.

Q. And after that you had a key to the house? A. Yes, sir.

Q. And then Mr. or Mrs. Smith asked you for the key? A. Yes, sir.

Q. Did you blame her for that? A. Yes, sir.

Q. You know Mrs. Barlow? A. Yes, sir.

Q. Have you ever talked to her about Mrs. Smith? A. Yes, sir.

Q. Did you ever tell her that if it took you your lifetime, you would get back at Mrs. Smith? A. No, sir.

Q. You never said, if you had your way she never would end her days with Roy Smith? A. I never said that.

Q. But you did have this feeling against her after the key incident? A. No feeling that amounted to anything; I have always had a feeling of friendship and kindness towards her.

Q. Do you remember an occassion when you said to her mother that you were tired of being a drudge in the house, and that Frances was nothing but a street walker? A. No, sir.

Q. Do you remember her mother asking you what you meant and whether you knew anything that justified you in saying anything like that? A. No, sir.

Q. And do you remember her mother being insistent and your stating that you did not know anything, except that she was out all the time? A. I never even made that remark.

Q. This incident was a little over a year ago to which I refer? A. I have not seen Mrs. Barlow to speak to her for two or three years.

Q. Well, it was after the Oxford trip. A. I have seen her since then.

Q. And talked to her? A. Never any discussion of that kind.

Q. You were friendly with Roy Smith? A. Yes, sir.

Q. And have been all the time? A. Yes, sir.

Q. And still are? A. Yes, sir.

Q. And you are living with him now? A. Yes, sir.

Q. In fact, since Mrs. Smith and her husband have separated, the relationship that originally existed has been resumed? A. Yes, sir.

Q. You are living in his home? A. Yes, sir.

Q. In the summer of 1918, while at Oxford, you say, as I understand, that Mrs. Smith had never known Mr. Pearsall before? A. Not to my knowledge.

Q. And you noticed that they seemed very friendly that afternoon? A. Yes, sir.

Q. You were all very friendly? A. Always.

Q. What time in the morning did Mr. Pearsall come? A. I think about 9 or 9:30.

Q. Don't you know that the train did not get in until one o'clock or after? A. No, sir.

Q. Is your recollection good? A. Pretty good; I don't know when the trains get in.

Q. You may be mistaken as to the time you thought Mr. Pearsall got there? A. Yes, sir.

Q. After Mr. Pearsall got there, do I understand that that afternoon you took a ride? A. Yes, sir.

Q. All of you? A. No, sir; Mrs. Pearsall, my sister; Mr. Pearsall and myself.

Q. Mrs. Smith did not go? A. No, sir.

Q. You were more friendly with Mr. Pearsall at that time than she was? A. I have known him ever since he was a little boy, and my father and his father were intimate friends.

Q. You returned what time? A. About six o'clock.

Q. Were you all very friendly that evening? A. Yes, sir.

Q. You were all together that evening? A. Yes, sir.

Q. In the living room? A. After dinner, and Mrs. Smith and Mr. Pearsall left and were gone two hours.

Q. When they returned were you perfectly friendly? A. Yes, sir.

Q. Then you went upstairs? A. Yes, sir.

Q. You testified that an hour and a half after you went upstairs, you heard them come up? A. I cannot exactly tell you the time; it was about an hour before I heard them come up.

Q. That correctly indicates the situation there, doesn't it? A. I think it does.

Q. And the "F. S." means the room occupied by Mrs. Smith? A. Yes, sir.

Q. And the next is the children's room, and the next Mrs. Pearsall's? A. Yes, sir.

Q. That is Emily Pearsall? A. Yes, sir.

Q. And Harry Pearsall was across the hallway? A. No, sir, that is an open stairs leading down to the kitchen.

Q. So that your room and Mr. William Smith's room was directly across from the children's? A. Yes, sir, across the hall.

Q. Between the room occupied by Mrs. Frances Smith and the room occupied by the children there were folding doors? A. Yes, sir.

Q. And there was no lock on the door of her room? A. I don't know.

Q. Was there a lock on your door? A. I don't know; I never used it.

Q. That hallway is about three feet wide? A. No, sir, I should think it was not more than two and a half feet.

Q. The house is an old house? A. Yes, sir.

Q. And you say that the conditions were such that you could plainly hear Mr. Pearsall when he was in his room? A. Between Mr. Pearsall's room and mine there was a board partition.

Q. And there was only a board door between you and the hallway? A. Yes, sir.

Q. How do you estimate the time? A. I had no watch with me; Mr. Smith's watch was broken at the time, and I had no clock.

Q. Then you heard a noise in the hall? A. Yes, sir.

Q. And it sounded as if somebody was going around in their stocking feet? A. Yes, sir.

Q. Have you ever heard a person walk in the hall in their stocking feet? A. Yes, sir.

Q. Where? A. In Oxford.

Q. You immediately assumed the noise you heard was of some person walking in his stocking feet? A. Yes, sir.

Q. Do you consider your hearing perfectly acute? A. Yes, sir, perfect.

Q. Was the movement steathy or not? A. Apparently.

Q. And then you say that the noise ceased at the end of the hallway? A. Yes, sir.

Q. Did you hear the noise end at the end of the hallway? A. Yes, sir.

Q. The stairway is at the end of the hallway? A. Nearly; there is just a little bay window or something in front of the hall.

By the Court:

Q. How far was it from your door to Mrs. Smith's door? A. Eight feet, about.

Further Cross:

Q. And you lay awake? A. Yes, sir.

Q. Then finally you went to sleep? A. Yes, sir.

Q. It did not keep you awake? A. No, sir.

Q. It did not arouse your apprehensions to the extent of keeping you awake? A. No, sir.

Q. The next morning you spoke about it? A. No, sir.

Q. Was it the next night you spoke about it? A. Yes, sir.

Q. You spoke to Mr. Pearsall? A. Yes, sir; we were all at the dining room table, eating.

Q. Are you sure about that? A. Yes, sir.

Q. And Mrs. Emily Pearsall was there? A. No, sir.

Q. Are not you saying that she was not there, because you know it did not occur? A. No, sir.

Q. Didn't you say a moment ago, that you were all sitting there? A. No, sir.

Q. Are not you fearful that Mrs. Pearsall will be brought here? A. No, sir.

Q. Is it true that all of you were sitting around the table at that time? A. Mrs. Pearsall was not present when I told Harry that I had heard him go through the hall, and I said, "Why ask Frances about the alarm clock, why not ask Emily?" and he said, "I did not want to awaken her."

Q. And yet you made no comment to Mrs. Smith about this? A. No, sir.

Q. No remark that you thought it was improper? A. No, sir.

Q. And yet, three years afterwards, you permit a charge of adultery to be brought against her for that, four years after? A. I never said a word against Mrs. Smith in my life.

Q. The next day you say that you went out riding again, on Wednesday? A. Yes, sir.

Q. All of you? A. Yes, sir.

Q. And you felt perfectly satisfied in accepting his invitation that day? A. Yes, sir.

Q. You felt it was perfectly all right to go out with him? A. Yes, sir.

Q. And you felt that everything was all right? A. I never let on anything.

Q. You did not think then, that at that time this situation mentioned should keep you from accepting the invitation of Mr. Pearsall? A. I knew about it.

Q. You never remonstrated with Mrs. Smith about it? A. No, sir.

Q. You were a member of the household at the time? A. Yes, sir.

Q. Was that the day you went to the old homestead? A. Yes, sir.

Q. And when Mrs. Smith got out with Mr. Pearsall to go to the old homestead why didn't you get out with her? A. We were not invited.

Q. You were all there together? A. Yes, sir.

Q. You were invited on the ride? A. Yes, sir.

Q. Well, why didn't you say, "I will come too;" why didn't you attempt to protect your stepson's wife? A. I never would say anything to hurt her feelings, and I never did.

Q. Then, on the following night, Thursday night, you again left them alone? A. Yes, sir.

Q. Then, after you were suspicious, you left them alone together downstairs? A. Yes, sir, I did.

Q. Did you stay awake that night? A. Yes, sir.

Q. They were down how long? A. I think the same as the first night; they stayed down there

about an hour; we left them in the kitchen, as I said before.

Q. To go back for a moment, you said that on Wednesday morning you met Mrs. Smith on the stairway early? A. Yes, sir.

Q. And that Mrs. Smith said she had been making coffee for Mr. Pearsall? A. Yes, sir.

Q. Are you sure of that? A. Yes, sir.

Q. Don't you know he never drank coffee in his life? A. I don't care if he never did; what I say is true.

Q. On Thursday night you made no protest with reference to their staying downstairs? A. No, sir.

Q. And you did not relate this to Mr. Roy Smith until after the occurrence of November 19th? A. No, sir.

By the Court:

Q. You talked to your husband about it, though? A. Yes, sir.

Q. In bed that night? A. Yes, sir.

Q. When you heard this footfall on the passageway? A. Yes, sir, he and I discussed it, but we never told anyone.

Further Cross:

Q. When Mr. Pearsall left you were very friendly to him? A. Yes, sir.

Q. Did you have these suspicions when you were friendly with him? A. Yes, sir.

Q. It did not cause you to have any change of feeling towards him? A. No, sir.

Q. And you are still just as friendly towards Mrs. Smith? A. Yes, sir.

Q. You even invited Mr. Pearsall to come to

Paterson to visit your folks there, didn't you? A I don't remember, but I would have done so.

Q. And your husband also invited him to come to Paterson— A. I don't remember what Mr. Smith did.

Re-direct Examination by Mr. Lane:

Q. Why didn't you say anything about it? A. I never liked to; I always kept those things to myself; some things I did not even mention to Mr. Smith, my husband would have resented it.

GEORGE WISEMAN, sworn in behalf of the petitioner, testified as follows:

Direct Examination by Mr. Lane:

Q. Where do you live? A. Paterson, New Jersey.

Q. What is your business? A. Manufacturing.

Q. Do you know Mr. Roy U. Smith? A. Yes, sir.

Q. How long have you known him, about? A. Eight or ten years.

Q. Do you know Mrs. Frances Smith? A. Yes, sir.

Q. How long have you known her? A. The same length of time.

Q. Do you know Mr. Donnelley? A. Yes, sir.

Q. Did you ever have any conversation with Mrs. Smith with respect to Mr. Donnelley? A. No, sir.

Q. Did you ever have any conversation with Mrs. Smith at any time with respect to her conduct? A. I did, yes, sir.

Q. When? A. It was in the fall of 1921.

Q. Where?

Mr. Ward—I object to the line of questioning.

The Court—Objection overruled.

Q. Did you have any conversation with Mrs. Smith relative to her conduct? A. I did.

Q. Where? A. At her house.

Q. When? A. I don't remember the exact date, probably in September 1921.

Q. Who was present? A. Me and Mrs. Smith.

Q. What was said? A. I told her that I wished that she would watch the company that she kept.

Q. What did she say? A. She said she would.

Q. Is that all that took place? A. Yes, sir.

Q. Did you have any other conversation with her at any other time? A. I did not.

Q. How did you come to talk to her at that time?

Mr. Ward—I object to that.

The Court—Objection sustained.

Q. Did you ever see Mrs. Smith in the company of Donnelley? A. Yes, sir.

Q. When? A. I don't know the date.

Q. Where? A. In Paterson, on Fair Street, in the morning.

Q. Did she have her car? A. Yes, sir.

Q. Where were they? Were they both in the car? A. Yes, sir.

Q. Did you ever see her on any other occasion with him? A. No, sir.

Q. What were they doing? A. They were driving along the street.

Q. Did the conversation which you had with Mrs. Smith—was that all that was said, what you have testified to? A. She was about to go to New York, and I drove her to the Broadway station in my car, and we talked about things of that nature.

Q. What was said? A. I said I heard that she had been keeping company with people who would not do her any good, but I did not tell her who.

Q. What did she say? A. She said she would not do it any more.

Q. Is that all she said? A. Yes, sir, she said she could not break right off with certain people, but that she would do it.

Q. Did you refer to girls or men that she was keeping company with? A. Some of them were girls.

Q. Were others men? A. We did not mention any names.

Q. Did you ever see her with any men? A. Only one I saw her with, Donnelley.

Q. Give us the whole of the conversation that you had with her at that time? A. As I got to the house and asked for Frances, she came all ready, apparently, ready to go out, and I told her I wanted to talk to her, and she said she was going to New York on the 10 o'clock train; and I said, "Get in the car, and I will talk to you on the way down;" and I told her that she should keep the best of company for her own sake, and she said she knew it and would try to stop it.

Q. Is that all you said from the time you left the house to the time you got to the railroad station? A. Practically all—on that same subject.

By the Court:

Q. How long have you known her? A. Probably eight or ten years.

Q. Have you known her husband for many years? A. About the same time.

Q. Had you had any conversation with her husband? A. No, sir.

Further Direct:

Q. What was your interest in the matter?

Mr. Ward—Objected to.
The Court—Objection sustained.

Q. Were you a friend of hers? A. Yes, sir.

Q. Did you visit her frequently? A. Yes, sir, we called in the evenings with other friends.

By the Court:

Q. Had anybody spoken to you relative to the character of the people she was keeping company with? A. Yes, sir.

No cross-examination.

WILLIAM H. SMITH, sworn on behalf of the petitioner, testified as follows:

Direct Examination by Mr. Lane:

Q. Mr. Smith, where do you live? A. 334 Park Avenue, Paterson, New Jersey.

Q. What is your business? A. Silk salesman.

Q. You are the husband of the witness, Alice C. Smith? A. Yes, sir.

Q. Were you in Oxford in August, 1918? A. Yes, sir.

Q. Do you know Mrs. Frances Smith? A. Yes, sir.

Q. And how long have you known her? A. Eleven or twelve years.

Q. Do you know Mr. Harry Pearsall? A. Yes, sir.

Q. How long have you known him? A. Not long.

Q. You never met him until August 27th? A. I had never seen him before that.

Q. Do you remember the night that he came—do you remember the night of the day that he came? A. Yes, sir, he came in the morning.

Q. Do you know what time you retired, about, that night? A. About 11 o'clock was our time, 10:45 to 11:15.

Q. Who was left downstairs? A. Pearsall and Frances.

Q. Before that, do you remember whether they had gone out for a walk, or what not? A. Yes, sir; Pearsall had an engagement, a business engagement, that evening, and Frances volunteered to go with him, and she did so, and they got back home about nine o'clock.

Q. When did they leave? A. Shortly after dinner, at six or seven o'clock.

Q. Did you hear them come upstairs after you had gone to bed? A. Yes, sir.

Q. How long after? A. I would say an hour; I could not tell you just how long.

Q. Mr. Pearsall's room was right next to yours? A. Yes, sir.

Q. What kind of a partition was there between the two rooms? A. A board partition.

Q. Did you hear him go in his room? A. Yes, sir.

Q. Afterwards, did you hear anything else that night? A. I heard Pearsall leave his room, yes, sir, and go through the hallway, very carefully.

Mr. Ward—I object to the "very carefully".
The Court—Strike out "very carefully."

Q. How did it sound to you? A. Very quiet.

Q. Could you tell where he stopped? A. He went past our door.

Q. Can you state where he stopped? A. No, sir.

Q. You did not look out of the door? A. No, sir.

Q. Was Mrs. Smith awake at that time, your wife? A. Yes, sir.

Q. Did you and she have any talk then? A. Yes, sir.

Q. Did either of you get up?

Mr. Ward—Objected to as leading.
The Court—Objection sustained.

Q. What did you do, did you go to sleep—that was the first night? A. After I lay awake a long time, then I went to sleep; dropped off to sleep; I could not help it.

Q. Did you hear Mr. Pearsall return to his room before you went to sleep? A. No, sir.

Q. The next morning, did you see Mr. Pearsall? A. Yes, sir.

Q. Where? A. in the bathroom.

Q. Did you see Mrs. Smith? A. Yes, sir.

Q. Where? A. In the bathroom—at the door of the bathroom.

Q. Were they both there at the same time? A. Yes, sir.

Q. What was Pearsall doing? A. He was shaving.

Q. What was Mrs. Smith doing? A. Standing in the hallway facing Pearsall.

By the Court:

Q. Were they dressed? A. Yes, sir, Pearsall was dressed, and Mrs. Smith had a kimona on.

Q. Did you say anything? A. Yes, sir, I was so surprised I said to Frances, "Are you going crazy?" that is the remark I made to her; and she gave me to understand it was none of my affairs what she did; she said, "It is none of your business what I do."

Q. Did you have any further words with her? A. That was all that I said to her.

Q. Did Mr. Pearsall hear what you said? A. Yes, sir.

Q. Did he make any remark? A. No, sir. May I explain here—Mrs. Smith had agreed to get breakfast—

Q. Don't go into thaat A. I went down to take a bath that morning, as was my custom, and we were to get up at six o'clock in the morning; Mrs. Smith was to get Pearsall's breakfast, and on account of our being awake so late, we got overslept, and then I went down the back stairs, and I found them in the bath room; that is how I saw them in

the bathroom; that was shortly after 6:30; I got up about 6:30.

Q. Mrs. Smith agreed to get breakfast? A. My wife agreed to get breakfast.

Further Direct:

Q. Do you remember the next day; do you remember the time you went to a place near McDonough; when was that? A. We left about nine o'clock in the morning; Pearsall had got back from his early business engagement; and when he came back, he came back with a seven-passenger car and took us all over to McDonough.

Q. When you got there, what happened? A. We went about two miles beyond McDonough.

The Court—If this is cumulative evidence, I would not extend it.

Mr. Lane—Then I will skip to Thursday night.

Q. When you retired on Thursday night, what time was it? A. About the usual time.

Q. What time was that? A. 10:45 to 11:15.

Q. Whom did you leave downstairs that night? A. Mr. Pearsall and Frances.

Q. Did you hear them come upstairs that night? A. Yes, sir.

Q. Did you ask your daughter-in-law why she did not retire? A. I said nothing about it; I never said a word about it from that time until about a year ago.

Q. How long after you had gone upstairs did you hear them come up on Thursday night? A. About an hour.

Q. Did you hear Pearsall go to his room? A. Yes, sir.

Q. After that, did you hear him leave his room? A. Yes, sir.

Q. How long after he had come upstairs? A. Fifteen or twenty minutes, a short time.

Q. What did you hear? A. The same as before.

Q. Was there any discussion between you and your wife that night? A. Yes, sir, I wanted to get up and open the door, and Mrs. Smith—

By the Court:

Q. Don't tell us the conversation between your wife and yourself. A. There was a discussion.

Further Direct:

Q. Did you lie awake that night for some time? A. Yes, sir.

Q. Did you hear the footfalls in the passageway again? A. Yes, sir.

Q. Did you hear them going back? A. No, sir.

Mr. Ward—Objected to as leading.

By the Court:

Q. What did you hear afterwards; did you hear him come back? A. No, sir.

Further Direct:

Q. This house, what kind of a house is it; is it an old house? A. Yes, sir, it is an old house, a very good one.

Q. How were the floors for sounding purposes? A. I could hear the boards creak in the hallway.

Q. This partition that was up between your room, which you called the wooden partition—what kind of a wooden partition do you mean? A. I think originally, that was all one room, and it has been divided.

Q. But it was a wooden partition covered with wall paper? A. Yes, sir, there was no wall plaster on; it was one thickness of board.

Q. Were you present at any time when Mrs. Smith, your wife, said anything to Mr. Pearsall about this? A. Yes, sir, that was at the table after they had gotten back from the fair; they said that they had had nothing to eat, and my wife prepared a meal for them, and it was during, or shortly after that, that Mrs. Smith said to Harry, "I heard you in the hall last night", and he said that he had gone to ask Frances to show him how to set the alarm clock. I said, "Why didn't you ask Emily?" and he said that he did not want to awaken her.

Cross-Examination by Mr. Ward:

Q. You have had some feeling against Mrs. Roy Smith? A. Naturally, since this.

Q. Have you had this ill feeling against her since November 19, 1921? A. Why, naturally, I felt that Roy was wronged.

Q. You had a bad feeling against her since November, a year ago? A. Yes, sir.

Q. Because you felt that he had been wronged? A. Yes, sir.

Q. Did you have any feeling against her before that? A. I could not say that I had, no.

Q. Then you did not feel that he had been wronged by Pearsall then? A. Yes, sir.

Q. What was the difference? A. I did feel that way, that she had done wrong and that she was wronging him.

Q. Aside from that, had you any feeling against her? A. No, sir.

Q. You lived with your son and his wife for some time? A. Yes, sir.

Q. And he practically supported you, didn't he? A. Yes, sir.

Q. And your wife? A. Yes, sir.

Q. Then there came a time when you learned that Mrs. Smith—that you felt you were not welcome there because of Mrs. Smith? A. I can answer that, yes.

Q. And you knew that you were going to leave, and in fact, after you left, you knew that you had left because of her, didn't you? A. No, sir.

Q. You went to the Kelsey House? A. Yes, sir.

Q. And left your son's home? A. Yes, sir.

Q. There was no trouble between you and your son? A. No, sir.

Q. No controversy? A. No, sir.

Q. You knew, didn't you— A. Or with Frances either.

Q. Excepting that she wanted you to get out; you kenw that, didn't you? A. In a way, yes.

Q. Then, after that, you knew there was some difficulty about a key between her and your wife? A. I remember that.

Q. Did you resent the fact that she demanded the key to her home from your wife? A. I thought she had done wrong.

Q. Get back to 1918; on Tuesday you were very friendly with Mr. Pearsall? A. At Oxford—we were together, yes, sir.

Q. Had you known him before that? A. No, sir.

Q. But you were calling him "Harry"? A. I always heard him called "Harry", and that was the reason.

Q. You were all very friendly talking with him? A. Yes, sir.

Q. And that was equally true on Wednesday and Thursday up to the time he left? A. Yes, sir.

Q. There was no change in your demeanor or your feeling towards him? A. I could not say about the feeling; I did feel differently.

Q. You did not resent it? A. No, sir.

Q. Were you just as friendly to him? A. I used him the same; I did not say a word to him about my suspicions.

Q. But the only thing that you said was, to Mrs. Smith on Wednesday morning, "Are you crazy?" and she said "Mind your own business?" A. That is the only thing I said.

Q. That is the only protest you made to anybody? A. Except my wife.

Q. The first night you did not get up? A. No, sir.

Q. You did not get up the second night? A. I did not open the door, but I got up.

Q. You kept this a secret from that time until after November, 1921? A. My wife and I did.

Q. You are now living with your son? A. Yes, sir.

Q. Is he supporting you and your wife now? A. Yes, sir.

Q. What did you mean when you said just now that you had taken Mr. Pearsall's word for it? A. For what?

Q. For where he was that night? A. In his

conversation—what he told us at the supper table the night after—he told us that he went in about the alarm clock.

Q. Did you take his word for it? A. I naturally would; why wouldn't I?

Q. You know that Mrs. Frances Smith has been unfriendly with Mrs. Smith, your wife, since the incident about the key? A. Yes, sir.

Q. There has always been a feeling since that time? A. Yes, sir.

Q. (By Mr. Lane) Why didn't you get up the second night? A. Mrs. Smith influenced me not to.

JAMES N. WRIGHT, being recalled, testified as follows:

Direct Examination by Mr. Lane:

Q. On this occasion when you say you saw Mr. Donnelley and Mrs. Smith in a Ford coupe outside the Smith house, do you know where Mr. Roy Smith was? A. Yes, sir.

Mr. Ward—I object. Was Mr. Smith with him?

By the Court:

Q. Do you know where Mr. Smith was? A. Yes, sir, I had left him about 10:30; he was in lodge with me.

Q. Did he occupy an office in that lodge? A. Yes, sir, senior warden.

By the Court:

Q. You don't know where he was when you saw Donnelley and Mrs. Smith in this Ford; you did not see him at the time you saw them in the car? A. No, sir.

Further Direct:

Q. How long before had you left Mr. Smith when you saw them? A. Within a half an hour.

Q. Do you know how long the Masonic meetings last?

Mr. Ward—Objected to as immaterial.

A. Usually I leave about half an hour before they are over.

The Court—It depends on the number of candidates; it might last all night sometimes.

Q. Are there regular nights for the meetings? A. Thursday nights.

Q. Do you know how long Mr. Smith had been a warden?

Mr. Ward—Objected to as hearsay.

The Court—He may have actual knowledge by being an official, but it is immaterial; if you object on the ground that it is immaterial, I don't see why we should go into all that.

Mr. Ward—Yes, I do object.

MRS. JANE S. WAINWRIGHT, sworn in behalf of the petitioner, testified as follows:

Direct Examination by Mr. Lane:

Q. Where do you live? A. I live in Brooklyn, New York.

Q. Do you know the parties to this suit, Mr. and Mrs. Smith? A. Yes, sir.

Q. Are you the sister of Mr. Roy U. Smith? A. Yes, sir.

Q. In the spring of 1921 did you have a telephone talk with Mrs. Frances Smith? A. Yes, sir.

Q. Did you call her or did she call you? A. She called me.

Q. What time? A. About 4 or 4:30.

Q. Can you tell me what day it was? A. No, sir.

Q. Can you tell me that month it was? A. No, sir.

Q. You know it was in the spring? A. I could not tell you when it was; it did not make any impression on me at all.

Q. Did you afterwards write your brother a letter in which you referred to that telephone conversation? A. I did not; I wrote my mother a letter and referred to the conversation.

Q. Did you write a letter to your mother? A. Yes, sir.

Q. You have not seen that letter since? A. No, sir.

The Court—Have you the letter, Mr. Lane?
Mr. Lane—We have not got it now.

Q. Can you tell me how long after you had the telephone conversation you wrote to your mother? A. I should imagine a day or two.

Q. What was said over the telephone? A. Mrs. Smith merely said she was in New York and would take dinner with me, and I said I would be very glad to have her.

Q. Was there anything said at that time with respect to whether she was actually coming or not? A. She said she would be there, but telephoned later and said that she would not be there.

Q. When did she telephone later? A. In about an hour or an hour and a half.

Q. What did she say the second time she telephoned? A. She said, "Jane, I shall not be there; I am sorry." That is all.

Q. Can you tell me the time of the day it was when the first telephone came in? A. About four o'clock.

Q. And the second came in when? A. About six o'clock; I had the dinner ready then.

Q. Did she say where she was when she telephoned the first time? A. No, sir, she said she was in New York, but did not say just where.

Q. Did she say where she was the second time she telephoned? A. No, sir.

Q. Did she ask you anything about whether anyone had telephoned to you about her?

Mr. Ward—Objected to as leading.

Q. Was there any further conversation between you and Mrs. Smith over the telephone at that time? A. That was all at that time, I think.

Q. Have you exhausted your memory with re-

spect to the conversation? A. Mrs. Smith's first conversation was, that she would be out to dinner—that she was in New York and would take dinner with me at six o'clock, and I waited for her until about six, when she telephoned and said she found she could not make it and would not be with us that evening.

Q. Now, is that all the conversation that you can recollect? A. That is all the conversation I had with Mrs. Smith.

Q. Now, do you remember whether anything was said with respect to whether anyone had telephoned for her?

Mr. Ward—Objected to.
The Court—Objection overruled.

A. Not then she did not, no, sir.

Q. Did she at any time? A. I don't remember. My brother telephoned to me that night—

Q. What time did your brother telephone to you that night? A. About seven o'clock.

By Mr. Ward:

Q. What did he want?

Mr. Lane—Objected to.

By the Court:

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

The Court—Objection sustained.

Further Direct:

Q. How long a conversation did you have with him? A. Just a few minutes.

Q. Did you talk to your sister-in-law after that, that night? A. I might have a few days afterwards; I visited them after that.

Q. Did you communicate to her the conversation you had with your brother over the telephone the day she was in New York? A. I might have.

Q. Do you remember whether you did or not? A. I don't remember for sure, but I think I mentioned the fact to her that he had telephoned to me that evening.

Q. Do you remember about when it was, if you did that? A. I don't remember exactly; I don't know when I saw Mrs. Smith again.

Q. Do you remember what her reply was? A. No, sir, I do not.

Q. Did Mrs. Smith ever make any request of you with respect to statements as to where she was? A. No, sir, she did not tell me where she was; I had no idea where she was; she just told me she was in New York.

Q. Did she ever make any requests to you with respect to your stating where she was, if any inquiry should be made? A. She merely said to tell that she would be home later if anyone called for her.

Q. When did she say that? A. I don't remember just when—when she telephoned me and said she would not be there for dinner, and said she would be going home later.

Cross-Examination by Mr. Ward:

Q. You don't remember when that was? A. No, sir, it made no impression on me at all.

GEORGE SCHOFIELD, sworn in behalf of the petitioner, testified as follows:

Direct Examination by Mr. Lane:

Q. Where do you reside? A. At the present time, 658 East 26th Street, with my mother.

Q. What is your business? A. I am a silk throwster.

Q. Do you know Mr. Roy U. Smith? A. Yes, sir, very well.

Q. How long have you known him? A. At least twelve years.

Q. Do you know Mrs. Frances Smith? A. Yes, sir.

Q. How long have you known her? A. Ten years.

Q. Have you visited their home? A. Yes, sir.

Q. Are you a member of this social set that has been referred to? A. Yes, sir.

Q. Do you remember the 19th of November, I think it was? A. I do.

Q. Where were you in the evening of that day; where were you on the 19th of November, in the evening? A. At nine o'clock in the evening, I met Mr. Shorter down town, at the Colt building.

Q. And from there, where did you go? A. To Pompton.

Q. With whom? A. Mr. Shorter.

Q. In an automobile? A. Yes, sir.

Q. To what place in Pompton did you go? A. To a dance hall.

Q. Whom did you meet there? A. Mr. Blue.

Q. Anyone else? A. No, sir.

Q. Then where did you go? A. We returned to Paterson.

Q. And where did you go then? A. To the corner of East 18th Street and 17th Avenue.

Q. Then what happened? A. I went to Pennington Street, opposite Mr. Blue's home—

Q. How long did you stay there? A. Probably 40 or 50 minutes.

Q. Where did Mr. Blue go, if he went anywhere? A. He went through an empty lot on the rear of 17th Avenue to his home.

Q. Where did Mr. Shorter go? A. He stayed in his automobile on the corner.

Q. How far away from you? A. About a quarter of a block.

Q. Did you hear anything? A. I heard screaming coming from across the street.

Q. From what house was it coming? A. It appeared to be from directly across the street from where I stood; that was Mr. Blue's home.

Q. Was a woman screaming? A. Yes, sir.

Q. How long did it keep up? A. Two or three minutes.

Q. Then what happened? A. Then all was still.

Q. Then what happened? A. I noticed a tall gentleman coming from the alleyway.

Q. Of what house? A. Mr. Blue's.

Q. What did he do? A. He hurried to the corner of 17th Avenue and Pennington Street and there turned the corner.

Q. Was anyone following him? A. He was followed by an elderly lady.

Q. And what was the elderly lady doing? A. She was calling for him to come back.

Q. Did he come back? A. He did not.

Q. What did the elderly lady do then?

Mr. Ward—Objected to as incompetent, irrelevant and immaterial.

A. She went around the corner.

Q. Did you see her go in the house? A. She returned after two or three minutes and retraced her steps to the alleyway, and then she came to the front porch and entered through the front door of the Blue's house.

Q. Did you recognize the man who came out? A. No, sir.

Q. Do you recognize him now? A. Yes, sir.

Q. Who is he? A. Mr. Donnelley.

Q. What did you do next? A. I retraced my steps to the automobile.

Q. And then what next happened? A. Mr. Blue came immediately after.

Q. Then what happened? A. We decided to go back to Pompton.

Q. Did you have a conversation with Mr. Blue and Mr. Shorter? A. Yes, sir, on the way back.

Q. Did you report what you had seen, and also what was told you by Mr. Blue and Mr. Shorter, to Mr. Smith, Roy Smith? A. No, sir.

Q. Were you present when any report was made to him or any statement was made to him?

Mr. Ward—Objected to; that would be purely hearsay.

The Court—Objection sustained.

Q. Do you know whether it was told to Mr. Smith or not? A. Not immediately.

Q. Do you know whether it was at any time? A. It was, yes, sir.

Q. Were you present when it was? A. No, sir.

Mr. Ward—I ask that it be stricken out then.

Q. You have no knowledge of its being told to Mr. Smith, of your own knowledge? A. I have now.

By the Court:

Q. You did not tell it to him? A. No, sir.

Q. Did you ever have any conversation with Mrs. Smith about it? A. No, sir.

Further Direct:

Q. Do you remember whether the lights in the Blue house were lit or not? A. The drop light in the kitchen was partly turned on.

Q. Was there a light in any other part of the house? A. No, sir.

Q. What do you mean by partly turned down? A. Turned low, halfway down.

Q. After you got to the place in Pompton from whence you had started, how long did you stay there? A. Only a few minutes.

Q. Whom did you get there? A. Mr. Blue.

Q. You had Mr. Blue going with you, going there; when you got to Pompton, whom did you get? What did you go back there for, anyhow? A. For Mrs. Blue.

Q. Did you pick up Mrs. Blue then?

Mr. Ward—Objected to as irrelevant and immaterial.

The Court—Objection overruled.

A. We did, and we returned to Paterson.

Q. Where did you drop Mr. and Mrs. Blue? A. They let me off at the corner of Church and Market.

Q. Then you left? A. Yes, sir.

Q. Did you see Mrs. Frances Smith at any time during that night? A. I did not.

Q. Did you ever see Mrs. Smith and Mr. Donnelley together? A. No, sir.

Q. Did you ever have any conversation with Mrs. Smith with respect to this particular matter? A. No, sir.

Cross-Examination by Mr. Ward:

Q. It was Fairhurst who arranged to go with you to Pompton? A. Mr. Fairhurst and Mr. Shorter.

Q. You were across the street? A. Yes, sir.

Q. And you did not cross to the side of the Blue home, did you? A. I was on the opposite side of the street.

Q. An ordinary width street Pennington Street is? A. Yes, sir.

Q. You were not more than 50 feet from the Blue home? A. That is it.

Q. Do you say there was not a light in the front room? A. There was not; the shades were not down.

Q. There were no shades that were drawn in that front room that night? A. Down to the bottom, no, sir.

Q. Well, down three-quarters of the way? A. No, sir.

Q. How high up were they? A. Half way.

Q. How do you know? A. Because I took particular notice.

Q. And there was not any light in the dining room? A. No, sir.

Q. And only a light in the kitchen? A. That is all.

Re-direct Examination by Mr. Lane:

Q. Do you remember whether Mr. Donnelley had an overcoat on? A. He did not.

Q. Do you remember whether he had a hat on? A. He had.

Q. But not an overcoat? A. No, sir.

Re-cross Examination by Mr. McKee:

Q. You mean, the man you saw come out, did not have a coat on? A. That is it.

LOUIS R. SHORTER, sworn in behalf of the petitioner, testified as follows:

Direct Examination by Mr. Lane:

Q. Where do you live? A. 444 East 39th Street.

Q. Do you know Mr. Roy U. Smith? A. Yes, sir.

Q. What is your business? A. Undertaker.

Q. Do you know Mrs. Frances Smith? A. Yes, sir.

Q. How long have you known her? A. About twelve years.

Q. How long have you known Roy Smith? A. About five or six years.

Q. Do you know them intimately? A. Yes, sir, I have been at their home.

Q. Do you remember the evening of November 16th, I think it is? A. November 19th was Saturday night.

Q. Was it the 19th? A. Yes, sir.

Q. What happened? A. I met Mr. Schofield and went to Pompton.

Q. Where did you meet him and when? A. I met him at the Colt Building about nine o'clock.

Q. What did you go to Pompton for? A. To meet Mr. Blue.

Q. Did you meet him? A. Yes, sir.

Q. Then where did you go? A. Brought him to Paterson, and I sat in my car on the corner of 18th Street and 17th Avenue.

Q. How close is that to the Blue house? A. About a block and a quarter.

Q. How long did you stay there? A. About fifty minutes to an hour.

Q. What did Mr. Blue do? A. He left the car and walked towards Pennington Street and went through a lot.

Q. And where did Mr. Schofield go? A. He walked with Mr. Blue as far as the lot, and went to Pennington Street and walked towards Park Avenue; of course, I did not see where he went.

Q. Who returned first? A. Mr. Schofield returned first and then went back again, and then after that Mr. Schofield came back, and then after that Mr. Blue came back, and that was fifty minutes to an hour when Mr. Blue came back.

Q. Did you see Donnelley that night? A. Yes, sir.

Q. How was he dressed? A. He had a white suit on and a brown hat.

Q. Did he have any overcoat on? A. No, sir.

Q. Do you know whether there was anyone with him? A. There was an elderly lady chased

him for about 100 feet on Seventeenth Avenue going towards 18th Street.

Q. How long did you have him in sight? A. Until he got to Market Street and turned East.

Q. What did you do after you and Blue and Schofield got together again? A. We went to Pompton.

Q. Did you pick anybody up at Pompton? A. Mrs. Blue, and drove her back to Paterson.

Q. And then what whappened? A . Left Mr. Schofield at the corner of Market and Church Street, and Mrs. Blue got out of the car between Pennington and Graham Avenue, on Market Street, facing the armory, on the opposite side of the street from the armory.

Q. Did you see Mrs. Frances Smith that night? A. No, sir.

Q. Did you have a talk with Mr. Blue and Mr. Schofield going back in the car? A. Yes, sir.

Q. Did you tell Roy U. Smith what had occurred? A. No, sir.

Q. Were you present when Roy U. Smith was told? A. No, sir.

Q. To whom did you communicate such information as you had?

Mr. Ward—Objected to as immaterial.

Q. Did you communicate it to Mrs. Smith in any way? A. No, sir.

By the Court:

Q. Did you have any talk with her in any way? A. I told it to Mr. Evans and Mr. Fairhurst.

Q. How soon after the occasion? A. On the same night.

Q. Where? A. At. Mr. Evans' home.

Q. Where was that? A. On East 30th Street, near Park Avenue.

Q. Had you ever seen Mrs. Smith and Mr. Donnelley together? A. Yes, sir, on one or two occasions.

Q. Where? A. Between the Erie Railroad track and Straight Street, on Ellison Street, talking.

Q. How often have you seen them together? A. On two different occasions, and both were practically at the same place; Mr. Donnelley was standing on one side of the car and Mrs. Smith was in the car; it was around noon time.

Q. Did you ever talk to Mrs. Smith with respect to Donnelley? A. No, sir.

By Mr. Ward:

Q. It was Mr. Fairhurst who arranged about your going up to Pompton? A. Yes, sir.

Cross Examination by Mr. McKee:

Q. You were about a block and a quarter from the house, I believe? A. Yes, sir.

Q. You did not get out of your car? A. No, sir.

Q. Rather dark up 17th Avenue? A. There is a light on the corner of Pennington Street and 17th Avenue.

Q. And 18th Street is the next block south? A. Yes, sir.

Q. You say Mr. Donnelley was running by your car? A. He came down 17th Street and cut across the street in the center between Penning-

ton and 18th Street, and then cut right in front of my car; my car was facing south.

Q. Was the elderly lady behind him? A. She stopped.

Q. She was a decrepit old lady, I suppose? A. She was an elderly lady.

Q. How do you know she was an elderly lady? A. I could tell by her movements.

Q. That is the reason you say she was elderly? A. Yes, sir; she was a medium sized woman, short; I would not know her now.

LAWRENCE L. THETGE, sworn in behalf of the petitioner, testified as follows:

Direct Examination by Mr. Lane:

Q. What is your business? A. Garage repairman.

Q. Where do you live? A. 95 Twentieth Avenue.

Q. Do you know Mrs. Frances E. Smith? A. Yes, sir.

Q. How long have you known her? A. Just though coming to the garage for the car.

Q. During the year 1921, did she come to the garage? A. Yes, sir.

Q. How often? A. I could not say that; sometimes it would be once a week; sometimes she would not be there for a month.

Q. Now, you know Mr. Donnelley? A. I did not know him then.

Q. Do you recognize him now? A. Yes, sir.

Q. You did not know his name then? A. No, sir.

Q. Did you see Mr. Donnelley at your garage with Mrs. Smith? A. No, sir, not at the garage, but I saw him a block away; he would be a block away waiting for her; I could tell that; waiting for the car to be fixed, and then he would get in the car.

Q. Have you seen him get in the car? A. Yes, sir, on one occasion.

Q. How long did you see him wait a block away, waiting? A. Sometimes he would stand there half an hour, and if he had to wait longer than that, he would walk past the garage.

Q. Get back to the time when you say you saw him get into the car; you only saw him get into the car once? A. Yes, sir.

Q. How long had he been waiting outside that time? A. I don't know.

Q. Had he been there some time? A. Yes, sir.

Q. Now on other occasions, how long have you seen him wait? A. That I could not tell, because I would be working on the car.

Q. How often would it be? A. I can only say once or twice.

Q. Was there ever any occasion when he actually came to the garage for the car? A. No, sir.

Cross Examination by Mr. McKee:

Q. Who pointed him out to you as Mr. Donnelley? A. I only know through the description that was given of him.

Q. Who gave you the description? A. Mr. Smith.

Q. Do you know Mr. Fairhurst? A. Yes, sir.

Q. Has he been to you to talk to you about it? A. No, sir, not that I would say.

Q. Has he? A. He has been to the garage, but not to talk about that.

Q. Didn't he describe Mr. Donnelley to you? A. I cannot remember.

Q. Didn't he ask you if you ever saw that man around there? A. No, sir, I don't think he did.

Q. How long has this Smith car been kept there? A. I only do repair work on it; it is not kept there.

Q. You have been doing the repair work on that car how long? A. Right along.

Q. You do it yet? A. Yes, sir.

Q. Mr. Smith brings it around yet when it needs to be fixed? A. Yes, sir.

Q. Mr. Fairhurst has been with Mr. Smith over at the place when he talked to you and gave you a description of Mr. Donnelley? A. Yes, sir.

MRS. KATHERINE THETGE, sworn in behalf of the petitioner, testified as follows:

Direct Examination by Mr. Lane:

Q. You are the wife of the last witness? A. Yes, sir.

Q. Do you know Mrs. Smith? A. Yes, sir.

Q. Do you know Mr. Donnelley? A. Only by sight.

Q. Do you know him by sight? A. Yes, sir.

Q. Did you ever see him at your garage? A. He stood outside waiting at the garage for Mrs. Smith to come out.

Q. How many times have you seen him before that? A. Once in all, but I have seen him other

times in the car going down different side streets; I took special notice of him; I happened to be cleaning windows, and he happened to be waiting on the opposite corner for her, and when she came out—he had got tired of waiting on one side of the street, and so he waited in front of the mill for her.

Q. Did he ever come into the garage? A. No, sir.

Q. Did you see her join him after she left? A. Yes, sir.

Q. When she left did you see her leave? A. Yes, sir, and they went down 20th Avenue.

By the Court:

Q. Did you see any signs of affection between them, kissing? A. No, sir.

Q. You did not see him with his arms around her? A. No.

Cross Examination by Mr. Ward:

Q. Broad daylight? A. Yes, sir.

Q. What time of day? A. Between 2.30 and 3.

Adjourned to 10 o'clock A. M., December 7th, 1922.

SECOND DAY

(Title omitted)

ROY UNDERWOOD SMITH, being duly sworn in his own behalf, testified as follows:

Direct Examination by Mr. Lane:

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

Q. And how old are you? A. Thirty-five years of age.

Q. How old is your wife? A. Thirty-one years of age.

Q. When were you married? A. We were married in 1911.

Q. Where were you married and by whom? A. We were married at St. Paul's Church, Paterson, by the Rev. D. S. Hamilton.

Q. Were there any children born of the marriage? A. Yes, sir, there were two.

Q. And what are their names, Mr. Smith? A. Anita, 8 years of age, and Frances is six years of age.

Q. After your marriage, where did you go to live? A. On East 23rd Street; we boarded first with my mother and father for about four months.

Q. Just where did you go? A. Then we went to a house on East 23rd Street.

Q. Is that a house of your own? A. A floor that I rented.

Q. How long did you stay there? A. I think about one and a half years.

Q. Where did you go then? A. Then we moved to East 27th Street.

Q. How long did you stay there? A. I should say about an equal time.

Q. Then what? A. Then we moved to a house on Park Avenue.

Q. How long did you stay there? A. We were there a little bit less than a year, about a year.

Q. Then where did you go? A. Then we moved to a house at 237 17th Avenue, and we stayed there about six years, and then I moved to a house, a floor, at 334 Park Avenue.

Q. How long did you stay there? A. I am still there.

Q. Is that the place that you were living at when the separation between yourself and your wife took place? A. No, sir.

Q. Where were you living then? A. 237 17th Avenue.

Q. When did you move from there? A. The first of March of this year.

Q. Was that a house owned by yourself? A. No, sir.

Q. It was a whole house? A. Yes, sir.

Q. How many were in your family? A. My own family were four; my mother and father were there part of the time.

Q. Until what time? A. Until about two and a half years or so before we broke up.

Q. And from that time on until you broke up, were you and your wife and two children living alone in that house? A. We were, except for the maids.

Q. How many maids did you have? A. We had two during that time.

Q. What is your business? A. Raw silk salesman.

Q. Always been in that business? A. Yes, sir.

Q. On the night of November 19, 1921, where were you? A. During the evening?

Q. Yes. A. I was at the house of Mr. Evans, at a stag party.

Q. When had that been arranged? A. I had been invited there sometime during the previous week; I don't recall just when.

Q. When did you last see your wife before you went to the party? A. At dinner.

Q. Of that night? A. Yes, sir.

Q. Did she state where she was going? A. She said she had arranged to go to her sister's house, Edna, the only sister she had—that is, Mrs. Andrew Blue, of 25 Pennington Street.

Q. Who composed the family of your sister? A. Mr. Blue and Mrs. Blue and one child at that time.

Q. What kind of a house is it that they live in? A. A three-family apartment house.

Q. Which floor does Mrs. Edna Blue live on? A. The ground floor.

Q. Who lives above them? A. I don't know who lives there now.

Q. Who did? A. Mrs. Blue, the mother of Andrew Blue.

Q. A separate apartment? A. Yes, sir.

Q. What kind of apartments are they? A. Regular housekeeping apartments.

Q. You have been in the Blue residence? A. Yes, sir.

Q. How many rooms are there in it? A. Five.

Q. Tell me the location of the kitchen. A. It is in the back of the house on the North side.

Q. How are the rooms located—in a row? A. You might say two rows, starting at the front on the North side of the house; there is a living room, a dining room, and behind that the kitchen; and on the south side of the house first comes the entrance hall, and behind that the bathroom, and then a bedroom, and behind that a small bedroom.

Q. What time did you get home on the night of November 19th? A. Around one o'clock.

Q. Was your wife home? A. No, sir.

Q. When did she return? A. Sometime the next morning.

Q. Have you any idea what time? A. I should say between ten and twelve, sometime. I am not positive of that.

Q. Were yo uhome on the evening of the 19th when she went, or did you leave before she did? A. I am not sure.

Q. Do you know whether she packed anything to take with her? A. Yes, sir.

Q. What? A. She packed things to have things overnight, in the little black bag; she packed a nightgown made of pink Georgette for one thing.

Q. Did you have any conversation with your wife on Sunday when she came back, as to where she had been, or anything of that kind? A. It was understood that she had been at her sister's house.

Q. Did she say anything to indicate that she had not carried out her intentions? A. No, sir, and the conversation of the members of her family who visisted all day, that day, were in the same strain.

Q. Who visited you that day? A. Mr. and Mrs. Blue and Mr. and Mrs. Barlow, Sr.

Q. Mr. and Mrs. Barlow, Sr., are who? A. The parents of the defendant.

Q. Of Mrs. Smith? A. Yes, sir.

Q. How long did they stay that day? A. They were there for dinner and they stayed until after supper; I drove them all home in my car, leaving each family at their own house.

Q. Was anything said to you, or in your presence, about any of the events of the night before,

at that time? A. You mean during the day?

Q. Yes. A. I don't recall anything particularly.

Q. Was anything said about Donnelley, or anything of that kind? A. Absolutely nothing.

Q. Was anything told you or talked over between your wife and her family, who were there visiting, as to any excitement that there had been at the Blue house the night before? A. Nothing that I heard of.

Q. Was your wife home on Sunday night? A. Yes, sir.

Q. Was your wife home on Monday night? A. She was home for dinner.

Q. Where did she go then? A. After dinner she went to her sister's.

Q. Did she say anything about going to her sister's, at dinner, on Monday night? A. Yes, sir.

Q. What did she say? A. I wanted her to go to moving pictures with me, and she refused; she said she was going to her sister's, and I asked her, I said, "Why don't you ask me first if I want you to do something for me, and if I don't want you, then you can give your evening to them."

Q. What did she say to that? A. That she was going to her sister's anyhow.

Q. Did she give any particular reason for going to her sister's that Monday night? A. I think not.

Q. Were you home that night? A. I think about the time she went out I went to the Kelsey House to call on my mother and father.

Q. Did you return home that night? A. Not directly, but I was home that night.

Q. When did you finally get home? A. After the moving pictures to which I had gone with my wife.

Q. What time? A. It must have been to the late show, 9 o'clock show, because she called me on the telephone at the Kelsey House, and, while she had refused to go to the moving pictures with me earlier in the evening, she then said she would go.

Q. What time did she call you at the Kelsey House? A. It must have been in the neighborhood of 8.30 or 8.45.

Q. What time had she left to go to her sister's? A. It was after dinner.

Q. Had your wife taken anything that night to stay over night, or did she expect to stay over night that night? A. I did not expect her to.

Q. You and your wife went home that night? A. Yes, sir.

Q. During that evening or that night, did your wife say anything to you about any excitement that had occurred at the Blue house the Saturday before? A. Absolutely nothing.

Q. Where were you on Tuesday night? A. Tuesday night—I was at my house.

Q. Was your wife there also? A. No, sir.

Q. Where was she? A. I don't know.

Q. When was it that the separation took place: when was the last time your wife was in your house? A. About noon time on Tuesday, November 22nd, was the last time I saw her in my house.

Q. Was that before you had been informed of any alleged events? A. That was afterwards; about an hour and a half afterwards.

Q. When and where were you first informed of the alleged events that took place on Saturday? A. At the office of Mr. W. W. Evans.

Q. What time in the day? A. Between 9.30 and 11.30 in the morning.

Q. Who were present? A. Mr. Evans, Mr. Wiseman and my father and myself.

Q. Where did you go after the talk that you had at Mr. Evans' office? A. I went to my house, probably around 11.30 or 11.45.

Q. Did you find your wife there? A. Yes, sir.

Q. Did you talk to her? A. Yes, sir. The only thing I remember was, that she was cleaning the house, and she asked me to go to one of the local stores and buy something for her, which I did, and took it back and gave it to either Mrs. Smith or the maid, I don't recall which.

Q. Did you have any talk with respect to the subject matter of which you had heard at Evans' office? A. None whatever.

Q. When did you? A. Later in the evening when she came to the house between a quarter-past and half-past eight; she came to the door, and I refused her admission.

Q. And was there a conversation between you and her then? Just tell us what happened. A. I had reached home with my father earlier in the evening, perhaps between five and six, and I put the burglar chain on both the front and back door, and awaited developments; when she came, I spoke to her through the small opening permitted by the chain; I said, "Frances, I know the whole story, and I cannot let you in," and I closed the door.

Q. What did she say? A. I did not hear what she said, the door was closed; I was trying to avoid a scene.

The Court—Strike that last out.

Q. What next happened? A. I had no further conversation with her; she returned again, I should say, about 10.30 or 10.45, with her father. This time she rang the doorbell, and I went down to answer the bell, and I looked and saw it was Mrs. Smith and her father, and I shook my head "No;" put the light out and went back upstairs.

Q. What next happened? A. I saw no more of Mrs. Smith.

Q. The next morning did you have a telephone conversation with a member of her family? A. I did not.

Q. Did you hear such a conversation? A. No, sir, I was not at home; I was over to New York.

Q. Did you have a conversation over the telephone with her sister? A. Yes, sir, I did that Tuesday night, before I had refused Mrs. Smith admission to my house; she called me up, Mrs. Blue did; I think that was about eight o'clock, perhaps 20 minutes to half an hour before Mrs. Smith came to the door.

Q. Did Mrs. Blue say anything with respect to where your wife was at the time she was telephoning? A. No, sir.

By the Court:

Q. Did you ever discuss at any time with your wife these alleged events that had taken place

on the Saturday evening in November? A. No, sir, at no time.

Q. Had you, prior to this information, reason to suspect her of any misconduct with anyone, by observation, by seeing or hearing? A. No, sir.

Q. Why didn't you discuss it with her? A. I had no knowledge of it.

Q. After you got the information from your friends, why didn't you discuss the matter with her? A. You mean at the door that night?

Q. Yes, before you shut the door. A. I was trying to avoid a scene.

Further Direct:

Q. Did she ever, or did any member of her family, ever attempt to communicate with you by telephone, or otherwise, to ascertain why it was that you took the position that you did?

Mr. Ward—Objected to as too general.

The Court—Leave out the words "attempt to."

By the Court:

Q. Did they communicate with you to ascertain why you took the position you did in the matter? A. I received a message from her through Mr. Wiseman; he said that she wanted to see me.

Mr. Ward—I object to that.

The Court—Do you want it struck out? I will strike it out if you want it struck out.

Mr. Ward—I withdraw the objection.

A. And I sent an answer back through Mr. Wiseman.

Further Direct:

Q. When was it? A. That was a very few days after the Tuesday.

Q. Do you know of a telephone conversation with her on the night of November 19, with Mrs. Smith? A. Yes, sir.

Q. Where were you? A. At Mr. Evans' house.

Q. What time was it? A. The first one was about nine o'clock.

Q. What did she say? A. She called up and said she was ready for bed and was at her sister's house, and she just wanted to say "Good night."

Q. When was the second conversation? A. That was about 11.30.

Q. And what did she say then? A. She called up again and she said something about being unable to sleep, and about wondering whether I was having a good time; then we talked a little more, and she wanted to know who was there, and she insisted that I name everybody that was present; that was at the stag party at Mr. Evans' house, and from the location of the telephone I could look through the door into the dining room where the gentlemen were sitting around the dining room table, and I named to her everyone that was there; she asked particularly if Edward Fairhurst was there, and I assured her that he was there.

Q. Did you say whether Mr. Schofield was there or not? A. He was not there all the evening.

Q. Was Shorter there? A. Yes, sir.

Q. What time did Shorter leave? A. Around 9.30, possibly a little earlier than that.

Q. Did he return? A. He returned just before we broke up, which was almost one o'clock.

Q. Up to the time that you were told, whatever you were told,—(Question withdrawn)—up to the Tuesday following November 19, 1921, had you any knowledge whatever that your wife was meeting a man named Donnelley? A. No, sir, I had not.

Q. Had you any knowledge whatever that she was taking Donnelley out in your car? A. I had none.

Q. Did she ever mention Donnelley's name to you? A. She did not.

Q. Was it your custom, or what was your custom with respect to being home nights, or going out? A. You mean, as to my going out in the evenings?

Q. Yes. A. There was only one evening in the week on which I went out regularly.

Q. What evening was that? A. On Thursday evening.

Mr. Ward—Objected to as irrelevant and immaterial.

The Court—I don't see why you go into it now, Mr. Lane; you might put him on in rebuttal for such evidence, if you desire so to do. Any conduct of the parties to the matrimonial contract is evidence in the case, as we know.

Mr. Lane—I think I will ask a few questions.

The Court—I will permit them to be asked.

By the Court:

Q. What was it? A. I went out regularly on Thursday nights.

Further Direct:

Q. And where?

Mr. Ward—Objected to as irrelevant and immaterial.

The Court—I think probably I will allow it.

Q. Where did you go? A. I attended the meetings of an organization of which I am a member.

Q. How long have you been doing that? A. Ever since 1915.

Q. Was there any certain time that you got home nights when you went out that way? A. The meetings usually were over between 10.30 and 11.30.

Q. Were you there during the entire meeting? A. I was.

Q. Every Thursday night? A. Yes, sir; I may have left a few times earlier, but that was the general rule.

Q. What was your wife's custom with respect to going to the Blue house? A. What do you mean?

Q. What did she do when you went out on these Thursday nights; did she stay at home or did she go out?

Mr. Ward—I object, that would be hearsay.

A. Sometimes she would tell me where she was going, and sometimes she would not.

Q. Did she go to the Blues' house very often? A. Yes, sir.

Q. For the six months preceding November 19, what was her habit as to going there and staying all night? A . She went there quite frequently to care for Mr. and Mrs. Blue's child, while they went out somewhere; and sometimes she would stay over night.

Q. Did she say why she wanted to go there when Mr. and Mrs. Blue went out? A. Simply that she wanted to do Edna a favor.

Q. What was the favor? A. Making it possible for Mr. and Mrs. Blue to go out.

Q. Did she say she was needed to take care of the youngster? A. Yes, sir.

Q. How many children did you have? A. Two.

By the Court:

Q. How old were they in November, 1921? A. One was five and the other was seven.

Q. How old was Mrs. Blue's child at that time? A. At that time it was, perhaps, a year old.

Q. Had they any other children but one? A. That was all.

Further Direct:

Q. Do you know anything about this alleged Pearsall incident at all? A. Only what I have heard.

Q. And when did you first hear anything with respect to that? A. Not until after the night of November 22nd; it might have been the next night or two nights later.

Cross Examination by Mr. Ward:

Q. You did know Mr. Donnelley, didn't you? A. Very slightly.

Q. You had met him at Asbury Park? A. Yes, sir.

Q. You remember the incident when you and your friend Fairhurst were on the porch at the hotel when he came there? A. Yes, sir.

Q. Do you remember his being there with Mr. Kelly? A. Yes, sir.

Q. You also recall that Miss Camwell and Miss Davis were there? A. Yes, sir.

Q. And you were in that party? A. I was not in the party.

Q. But you were in the group on the porch that day? A. Yes, sir.

Q. Didn't you go down there with your wife? A. She was staying there; I went down for the week end.

Q. You had gone down Saturday? A. Yes, sir.

Q. You were there when Mr. Kelly and Mr. Fairhurst came up? A. Yes, sir.

Q. It is not true that you and Mr. Fairhurst came up and joined them; that is not true? A. I don't understand the question.

Q. I asked you if you were not there in that party, in that group, when Mr. Kelly and Mr. Donnelley came up, and you said "Yes." A. Yes, sir, on Sunday afternoon.

Q. (Question read.) A. They came to call at the hotel.

Q. You had been married how many years? A. Since 1911.

Q. You never had any cause for complaint against your wife during that eleven years? A. What do you mean by "complaint"?

Q. You never had any suspicion about her morals? A. I think not.

Q. She was a good wife? A. I don't know just how to answer that; if you mean in caring for the house, she was not.

Q. Was she a good mother? A. She took pretty good care of the children until the last year.

Q. And she was not a good wife, good housewife? A. She did not pay the attention to the house that I considered she should have paid it.

Q. Didn't she bring your breakfast up to you every Sunday morning while you were in bed? A. Yes, sir.

Q. Now, Mr. Smith, up to the time of November 19th, or shortly thereafter, I believe you said except on this trip, you had no complaint to make with reference to your wife's association with other men? A. I had heard nothing about it.

Q. You had no complaint to make? A. No, sir.

Q. You knew that she frequently took men out, or at least down town, in her car? A. I cannot say that I did.

Q. Didn't you know she had taken Mr. Evans down town when she passed him on the street? A. I knew that she would pick him up if she met him on the street.

Q. And Mr. Wiseman? A. Yes, sir.

Q. And Mr. Fairhurst? A. Yes, sir.

Q. And the elder Mr. Fairhurst, Mr. Fairhurst, Senior? A. Yes, sir.

Q. In fact, you knew that it was her custom to frequently take her acquaintances out in the car, didn't you? A. Yes, sir.

Q. And you had no objection to that? A. None.

Q. You knew Mr. Fairhurst frequently took her out? A. Yes, sir.

Q. Alone? A. Yes, sir.

Q. You had no objection to that? A. None whatever.

Q. So there was never a time that you objected to her, or made objection to her, that she was going out in the car with other men, or that other men were in her car? A. No, sir.

Q. Do you remember an occasion when you came home from the lodge, and Mrs. Smith was just leaving the car, or a car in which Mr. Donnelley was, a Ford sedan, at your home? A. I don't recall the incident.

Q. Did you not, at that time, come up and talk to Mrs. Smith and Mr. Donnelley? A. I don't recall the incident.

By the Court:

Q. Well, did you do that; do you remember whether you did or not? A. No, sir, I did not.

Further Cross:

Q. Mr. Donnelley has visited your home with her brother, Mr. Barlow, when you were there? A. I have a vague recollection of his coming there once.

Q. And you know that Mrs. Smith was friendly with Miss Camwell and Miss Davis? A. Yes, sir.

Q. You knew Mr. Donnelley was a friend of theirs? A. Yes, sir.

Q. I believe I asked you if Miss Davis and Miss Camwell were stopping at the hotel at which your wife was stopping in Asbury Park? A. Yes, sir.

Q. Do you remember an occurrence when you went to Plattsburg? There were a great many occurrences.

Q. Do you remember the occasion when you went to Plattsburgh, when Mr. Fairhurst took you and your wife down to New York and left you at the Grand Central Station? A. Yes, sir.

Q. You knew that Mrs. Smith was going to return by Mr. Fairhurst's car, alone with him? A. Yes, sir.

Q. You had no objection to that? A. None whatever.

Q. You had not known Mr. Fairhurst very well before your marriage, had you? A. I had known him a long time, but not intimately.

Q. But after your marriage to Mrs. Smith, you became intimate with him, didn't you? A. Yes, sir.

Q. And that was a very close intimacy, wasn't it? A. It was.

Q. In fact, you and Mr. Fairhurst, or Mr. Fairhurst was closer to you than any other man? A. He was.

Q. He came to your home very frequently? A. Yes, sir.

Q. You remember your wife complained to you about his attentions? A. I do not.

Q. You don't remember that your wife also complained to you about your attentions to Mrs. Blue? A. I do not.

Q. Do you remember you were attentive to Mrs. Blue? A. I do not.

Q. Do you remember how frequently you visited Mrs. Blue's house in the absence of Mr. Blue, until you were stopped? A. I remember no such thing, because it did not occur.

Q. Didn't you cease going to Mr. Blue's home in the morning? A. I don't remember any such thing.

Q. Hadn't you been in the habit and custom of going to Mrs. Blue's home in the morning when her husband was absent? A. No, sir.

Q. Did not Mrs. Smith come and tell you that her sister had spoken to her and asked you to ask her not to come there in the absence of Mr. Blue? A. She did not.

Q. Did you ever go to the Blues' home in the morning? A. I presume I have; I was a member of the family.

Q. Don't you know? A. I don't recall any specific incident.

Q. Haven't you gone into the Blue home unannounced, when Mrs. Blue was still in bed, in the absence of her husband? A. I don't recall any such incident.

Q. Didn't you walk right into the bedroom? A. I did not.

Q. And when she told you to go out you refused to go out? A . I don't recall any such incident.

Q. Were you affectionate towards Mrs. Blue? A. I always liked her.

Q. Did you kiss her and caress her? A. I probably have, at times.

Q. Do you know? A. Yes, sir.

Q. Have you kissed her and caressed her? A. A. I have kissed her.

Q. Didn't she object to the manner in which you did that? A. No, sir.

Q. Isn't it true that you went into her bedroom at one time when she was in bed alone, and you refused to go out of her room until she had kissed you? A. I recall no such incident.

Q. Do you say that is untrue? A. Yes, sir.

Q. Now, Mr. Smith, you say that you knew nothing about any rumors with reference to Mr. Donnelley until after the 19th of November, when you heard something—that is correct? A. Not until after the 22nd.

Q. As a matter of fact, very much information, or very much at least, was told you and said to you by Mr. Fairhurst after that, wasn't it? A. A. I think not.

Q. Mr. Fairhurst has been very active with you in this case, hasn't he? A. That is a matter of degree; he was not as active as some others.

Q. Hasn't he accompanied you when you have visited witnesses? A. Yes, sir, he has.

Q. After these occurrences in November, he kept a sort of a brief, a memorandum, that he wrote out? A. I think he did, after he realized the seriousness of it.

Q. And you have seen that memorandum and read it? A. Yes, sir.

Q. Isn't it true that in the memorandum he stated he did not know the woman who was down with Donnelley at Fairlawn? A. It is not true.

Q. That he did not recognize the woman?

Mr. Lane—You are putting a wrong interpretation on his testimony.

Q. You have seen that memorandum, however, and have read it? A. Yes, sir.

Q. Now, do you wish to say that memorandum does not state that Mr. Fairhurst did not recognize the woman who was with Donnelley, or did not know who the woman was? A. I don't recall the wording of the memorandum.

Q. Mr. Smith, your father and mother lived with you? A. Yes, sir, they did.

Q. And you supported them? A. I did.

Q. And then there came a time when Mrs. Smith was anxious to have her home to herself? A. Yes, sir.

Q. And through that, you made it known to your father and mother that you would prefer to have them leave, didn't you? A. I did.

Q. And as a result of that, they did leave, didn't they? A. There was another contributing circumstance.

Q. But didn't they leave because of the attitude of Mrs. Smith that you made known to them? A. They did.

Q. And there was considerable feeling on their part against Mrs. Smith, wasn't there? A. I don't think so.

Q. Didn't you know that your stepmother was going around talking about Mrs. Smith? A. I did not.

Q. Did she ever talk to you about Mrs. Smith? A. She did not.

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Q. You remember the incident when you requested that your stepmother give back the key to your home? A. I remember about the key.

Q. Did you state at that time to your stepmother, that it was at the request of Mrs. Smith that you wanted the key? A. I think so.

Q. And there was feeling then, wasn't there, on the part of your stepmother? A. I remember that they were chagrined about the matter, yes.

Q. Do you remember the Christmas before the separation? A. I do.

Q. Do you recall at that time that you abused your wife and stated that she was the cause of the separation between you and your father and stepmother? A. No, sir.

Q. You did have trouble? A. We had a disagreement.

Q. With Mrs. Smith? A. Yes, sir.

Q. And you did not say anything of that kind to her at that time? A. No, sir.

Q. Now, coming down to the 19th of November, I believe you said it was frequently the custom of Mrs. Smith, your wife, to go down to Mrs. Blue's and take care of the child? A. Yes, sir.

Q. And sometimes she stayed there over night? A. Yes, sir.

Q. You had a maid at that time? A. Yes, sir.

Q. A competent maid to take care of the children? A. We thought so.

Q. And you were satisfied to have the children left in the custody of the maid upon the occasions when Mrs. Smith went down to the Blues'? A. I did not object to it.

Q. And Mrs. Blue had no maid? A. No, sir.

Q. And sometimes Mrs. Smith would stay overnight? A. Yes, sir.

Q. That was with your consent and sanction? A. With my consent.

Q. Mrs. Smith was a competent and dutiful wife? A. I would not say.

Q. On the 22nd of November, you say that you went to Mr. Evans' office? A. Yes, sir.

Q. And up to that time you had never made a complaint or an intimation to your wife about her conduct or misconduct; or alleged misconduct? A. You mean with Mr. Donnelley?

Q. With any man? A. No, sir.

Q. I believe you visited your wife at Oxford? A. Yes, sir.

Q. You knew she had met Mr. Pearsall up there? A. Yes, sir.

Q. After something had been told to you on November 22nd, you returned to your home, didn't you, about 11 o'clock? A. No, sir, I think it was about 11.45.

Q. Mrs. Smith was there? A. Yes, sir.

Q. You made no remarks to her about anything that might have been told to you? A. Under advice of counsel, I did not.

Q. You acted perfectly naturally? A. I tried to.

Q. And you even did her bidding, so far as going on an errand was concerned? A. Yes, sir.

Q. And she went out in the afternoon? A. She was out when I arrived home.

Q. When she came back, when you locked her out, her two children were with her? A. They were not.

Q. Who else was with her at the time? A. Mr. Barlow was with her.

Q. And her two children were not with her? A. I did not see them.

Q. Did you look to see? A. I looked out of the window as they left the house and Mr. Barlow and Mrs. Smith were alone.

Q. And didn't you say, on direct examination, that no one from her family had communicated with you in any way with reference to why you were adopting this course of action? A. After that night?

Q. Yes. A. Yes, sir.

Q. That night Mrs. Smith and her father returned to your home? A. Yes, sir.

Q. And Mrs. Blue came to your home? A. Yes, sir, she did, after Mrs. Smith had been there.

Q. You would not admit her? A. I spoke to her through the door.

Q. And you would not discuss matters with her at all? A. She said to me—she was crying—she did not know where Mrs. Smith or Mr. Barlow were—she said to me, "Oh, Roy, please be lenient with her;" and I said, "Edna, I will not discuss the matter with you, and I think I had better not let you in."

Q. So, as far as you are concerned, there has nothing come from your lips here that you charge or intimated that you believed that she was guilty of misconduct? A. I have had no communication with her personally.

Q. And then, after this incident, twelve weeks elapsed before you instituted any action against Mrs. Smith? A. I don't know how long it was.

Q. And it was not until the suit was brought

against you for the support and maintenance of Mrs. Smith and her two children that you instituted suit? A. That is right.

Q. You knew that your wife had lawyers? A. After I received notice of the suit, yes, sir.

Q. Didn't you know it before? A. Yes, sir, I did; I recall now.

Q. You had had a conference? A. Yes, sir.

Q. And at that conference you had not said anything about your charges? A. No, sir.

Q. The conference was about your children? A. Yes, sir.

Q. Mrs. Smith retained your children, subject to your having them over Sundays? A. Yes, sir.

Q. And on occasions when you might share them? A. Yes, sir.

Q. And during the time that your children and Mrs. Smith—during the twelve weeks they were away from you, you did not give them any money with the exception of fifty dollars, did you? A. I gave them about $150.00, perhaps $175.00; I fell into a habit of sending them $25.00 every two weeks.

Q. And isn't it true, Mr. Smith, that you knew that her counsel were consulting with your counsel with reference to support, and didn't you know that it was stated that unless you started a suit that she would, before you ever instituted action? A. I knew that there was something going on, yes.

Re-direct Examination by Mr. Lane:

Q. After the 22nd of November were you acting under the advice of counsel?

Mr. Ward—Objected to as leading.

Q. Under whose advice did you act after the 22nd of November? A. Under Mr. Evans' and Mr. Wiseman's advice.

Q. Was he your counsel at that time? A. Yes, sir.

Q. And were you present at any of these conferences between counsel? A. Only one.

Q. And that conference was held where? A. At Mr. Wiseman's office.

Q. When? A. One evening.

Q. Who were present? A. Mr. Evans, Mr. Wiseman, Mrs. Smith, Mr. Ward and myself.

Q. At the time of that conference was anything said by Mrs. Smith or Mr. Ward indicating they had not any knowledge as to what these charges were about? A. At that conference Mr. Ward admitted that Mrs. Smith had been indiscreet, he admitted that in opening the conversation.

Q. (Question read.) A. No, sir, there was nothing.

Q. Was any demand made upon you at that time, or upon your counsel, to put your cards on the table, or anything of that kind? A. No, sir.

Q. I omitted in your direct examination to ask: do you remember an occasion when you were out with Mr. Wiseman and went to the Blue house to get Mrs. Smith? A. I do.

Q. You don't know when that was? A. I don't remember just when that was; it was sometime before this incident.

Q. Before November 19th? A. Yes, sir.

Q. Tell us what happened that night? A. Mr. Wiseman and I had been somewhere, I think

probably it was to the moving pictures; I had understood that Mrs. Smith was going to her sister's house; I reached home after the moving pictures; it was, perhaps, about ten o'clock, and Mrs. Smith was not at home, and Mr. Wiseman and I chatted until 10.30, and then I said, "I will go down and get Mrs. Smith and drive her home," and we stopped at the house and Edna came to the door and said Mrs. Smith had left a few minutes before, and that we would probably overtake her on the way home. We drove through the streets, but did not see her, and when I reached my home she was not there, and we went back down town, and we had some ice cream, and we returned by Park Avenue to Mr. Wiseman's house where I let him out, and then I put my car away and went home.

Q. Was she home by that time? A. No, sir.

Q. How long after that did she get home? A. I don't recall how long it was.

Q. Did you say anything to her about where she had been? A. I think not.

By the Court:

Q. Why not—your wife out—not at the place you thought she was—she did not come home until very late at night—why didn't you ask her where she had been? A. Your Honor, I recall vaguely that she said something about having been to an ice cream store down on Park Avenue.

Further Re-direct:

Q. Now, at that time, had you the least suspicion of your wife at that time? A. I did not.

Q. Do you remember another occasion on

which Mr. Blue called you up to ascertain whether your wife had gotten home or not? A. Yes, sir.

Q. When was that? A. I don't know the date.

Q. Do you know what year it was? A. I know it was during 1921.

Q. Where was your wife at that time; where had she gone? A. She had been to the Blues' house during the evening; he told me she had left there and he had gone out to overtake her to drive her home, as the hour was late.

Q. How long after Mr. Blue telephoned did she get home? A. It was quite some time after.

Q. On that occasion, did you ask her what had detained her in getting home?

Mr. Ward—Objected to as leading.

By the Court:

Q. When your wife returned home, did you have any conversation with her that night? A. I told her about Mr. Blue having called up, and I believed that night I asked her where she had been; I believe she told me she had been talking to certain girls on the corner below my house; she gave that as an excuse one night, I know.

The Court—Strike the word "excuse" out.

Q. She told you that? A. Yes, sir; whether that was the particular night she told me that, I don't know.

Re-cross Examination by Mr. Ward:

Q. Your house on 17th Avenue and 30th Street was on the corner? A. Yes, sir.

Q. And there is a side entrance on 31st? A. Most of my friends came to the front door.

Q. Wasn't that commonly used by Mrs. Smith? A. I don't understand the question.

Q. Was it frequently used? A. Yes, sir.

Q. Do you say that on the occasion of this conference that counsel for Mrs. Smith admitted that she had been indiscreet? Do you recall that counsel for Mrs. Smith told you, man to man, after the closest and most careful investigation, that he was convinced she was not guilty, and he told you that as a father and a husband; do you remember that? A. I do not.

Q. You don't recall that he positively assured you that after this investigation he knew that she was innocent? A. I remember your saying no such thing.

Q. Do you recall that he said it would not be necessary to state that to you if he were not confident that it was the truth? A. I don't remember any such thing, Mr. Ward.

Q. Do you recall that he said, in his position as a lawyer, representing Mrs. Smith, it would not be necessary for him to make any assurance to you unless he knew in his own mind, after the most careful investigation, that she was innocent? A. I don't recall that.

Re-direct Examination by Mr. Lane:

Q. Did counsel inform you or state what he had investigated, do you remember that? A. I don't recall it, Mr. Lane.

Re-cross Examination by Mr. McKee:

Q. You have met Mr. Donnelley on different occasions? A. Very seldom.

Q. You met him at your house several times? A. I remember vaguely one incident.

Q. Don't you remember the time he called at your house with Mr. Barlow, the brother of Mrs. Smith? A. It may have been Mr. Barlow.

Q. Don't you recollect Sunday afternoon he called with Miss Camwell on a visit, and you invited them to remain for supper? A. I don't recall that incident.

Q. Do you recall another incident when he called at your house in the evening with Miss Camwell, at the time the Wiseman boys came in, and you spent the evening together? A. I do not recall the incident.

Petitioner rests.

Mr. Ward—We would like about ten or fifteen minutes to arrange with reference to the order in which we will call our witnesses, as the case of the petitioner has ended rather abruptly.

(Short recess for 15 minutes.)

Mr. Lane—We wish to put in further testimony that we had omitted.

The Court—All right.

ALEXANDER MacLEOD, sworn in behalf of the petitioner, testified as follows:

Direct Examination by Mr. Lane:

Q. You are a member of the firm— A. Yes, sir.

Q. Subsequent to July 9, 1921, did you have anything to do with respect to an automobile accident that occurred in Hudson County or Bergen County, involving Mr. Smith's Cole-eight sedan? A. I believed it involved that car; I did not see the car or the accident, but I had something to do with an accident in which Mr. Donnelley was interested.

Q. When was it that accident took place? A. I don't recall the date.

Q. Where was it? A. I don't recall where it happened.

Q. Who was the other party involved? A. I don't know that there was any other party involved.

Q. There were two cars? A. I don't know the names of the party, I think it was Griffith or Griffin.

Q. You represented Mr. Donnelley? A. Yes sir.

No Cross Examination.

WALLACE K. VANNESS, sworn in behalf of the petitioner, testified as follows:

Direct Examination by Mr. Lane:

Q. Where do you live? A. 677 14th Avenue, Paterson.

Q. Do you know Mr. Donnelley? A. Yes, sir.

Q. Do you know Mrs. Smith? A. Yes, sir.

Q. Did you see Mr. Donnelley and Mrs. Smith together at Asbury Park at any time? A. Yes, sir.

Q. About when? A. In the summer of 1920.

Q. Where? A. It was on the boardwalk.

Q. What time of the day? A. Eight o'clock about eight o'clock at night.

Q. What were they doing? A. Walking along the boardwalk.

Q. In what direction? A. Towards Allenhurst.

Q. Just describe that boardwalk at that point? A. That is where the boardwalk came to a stop at Asbury.

Q. What is there after the boardwalk comes to the stop at Asbury, going over into Allenhurst? A. There is a pavilion and then a sort of a path over to Allenhurst.

Q. How big a path is it? A. It is probably marked out by boards laid in on ends—the width of one board—a board path.

Q. Is that laid right on the sand? A. Yes, sir.

Q. How long does that path continue? A. I should say 100 yards.

Q. With respect to that path, where was it that you saw Donnelley and Mrs. Smith? A. They were on the boardwalk.

Q. How close to the path were they? A. They were within about fifty yards of the end of the boardwalk.

Q. Did you see where they went to? A. No, sir.

Q. Were other people with you? A. Yes, sir.

Q. Did you see them again that night? A. Yes, sir, when they were coming back.

Q. What time was that? A. About 11.30.

Q. Where did you see them then? A. They were coming back.

Q. Where did you see them? A. I believe we passed them on the path.

Cross Examination by Mr. Ward:

Q. That was a boardwalk that was much frequented by everybody, wasn't it—the boardwalk in Asbury Park? A. Yes, sir.

Q. Lots of people on it? A. Yes, sir.

Q. And the spot that you mention is practically opposite the largest hotel in Asbury Park? A. About three or four blocks towards Allenhurst.

Q. But is not the new Monterey practically opposite the point where you saw them? A. No, sir, they were further towards Allenhurst.

Mr. Lane—Now I offer the deposition taken upon notice of Mr. Griffiths.

The Court—That was referred to yesterday—not the deposition itself, but Mr. Griffiths.

Mr. Lane—Does your Honor want it read?

The Court—You can reserve it; I shall have to read it, anyhow.

Petitioner rests.

DEFENCE

HARRY E. PEARSALL, sworn in behalf of the defendant, testified as follows:

Direct Examination by Mr. Ward:

Q. In 1918 you were a resident of New York State? A. No, sir.

Q. Where were you a resident? A. Of Massachusetts.

Q. Your home formerly had been at Oxford? A. Yes, sir.

Q. Were you married in 1918? A. Yes, sir.

Q. How long had you been married? A. In 1918 I had been married about eight or nine years.

Q. How old are you? A. 41 next March.

Q. Prior to 1918 and up to the present time, during all of these years, have you been happily married or not? A. Extraordinarily so; I have two children.

Q. In the year 1918, did you have any affection for your wife? A. The greatest in the world.

Q. Do you recall going to Oxford in August, 1918? A. I do, yes, sir.

Q. Do you remember the date? A. I could not be positive of the date, only that it was the latter part of August.

Q. Your stepmother, Mrs. Pearsall, was living in Oxford at the time? A. Yes, sir.

Q. Were your relations with her friendly? A. Yes, sir.

Q. Had you ever met Mrs. Frances Smith prior to that time? A. I never knew she existed.

Q. Had you met Mr. William Smith or Mrs. Alice Smith? A. Mrs. Alice Smith has known me ever since I was a boy, but I had never met him.

Q. What time did you arrive at Oxford? A. Approximately one o'clock; I think the official time is 12.49, of the train.

Q. Where did you go upon your arrival? A. To the house, from the station—a short distance.

Q. Were you introduced to Mrs. Frances Smith? A. I believe Mrs. Frances Smith and my stepmother met me at the station; we were, of course, introduced, as soon as I got off.

Q. Were you introduced to Mr. William Smith after that? A. When we arrived at the house.

Q. How did you spend that afternoon? A. Well, immediately after lunch—may I explain a little bit further? My father died the year previous.

Q. You were there to look after the estate? A. Yes, sir; I was the executor of the estate.

Q. Immediately after luncheon, where did you go? A. Up town, trying to get an automobile to go to the old homestead to see about the farm.

Q. How long were you gone from the house on that afternoon? A. When I went to get the automobile?

Q. Yes. A. Anywhere from half an hour to an hour, possibly.

Q. Was Mrs. Smith with you during that time? A. She was not.

Q. You returned then with the automobile? A. Yes, sir.

Q. What did you do then? A. Took all the family for an automobile ride, to see two farms and two tenants.

Q. What time did you return? A. In the neighborhood of six o'clock, I should say.

Q. Did Mrs. Smith accompany you? A. No, sir.

Q. Did you have your evening meal then? A. Yes, sir.

Q. After that, what did you do that evening? A. We all sat around and played cards.

Q. Were you away from that house at all that evening? A. No, sir.

Q. Did you take Mrs. Smith out with you that evening from seven until nine, daylight saving time? A. No, sir.

Q. Were you alone with Mrs. Smith at all that day? A. No, sir, I was not at any time.

Q. What time did you retire? A. I don't know definitely, but probably in the neighborhood of 10.30 to 11 o'clock.

Q. Who went upstairs at that time? A. Everyone.

Q. Is it true that you and Mrs. Smith remained downstairs for an hour or an hour and a half after the others had gone to bed? A. Most decidedly it is not true.

Q. When you went upstairs with the others, where did you go? A. To my room.

Q. And after going to your room did you leave your room at all that night? A. I did not.

Q. It has been testified here, that after you went to your room you moved around for fifteen minutes or so and then you came out into the hallway and along the hallway to the end of the hallway, or about there, in the direction of Mrs. Smith's room; is that true? A. It is not true, it is ridiculous; it is contemptible.

Q. On the next day where did you go, Mr. Pearsall? A. To the Bliven farms.

Q. Who went with you? A. I think I got a seven-passenger car and took everyone, including Mrs. Frances Smith and her children.

Q. Did she get out of the car on that occasion? A. Yes, sir.

Q. Was he or not in plain sight of the ocupants of that car during the entire time she was out?

Mr. Lane—Objected to as leading.
The Court—Objection sustained.

Q. When she got out where did she go? A. If I can explain in this way, I can make it perfectly clear: the house sets back from the road 75 to 100 yards, the main State highway, which is a macadam road; we went up there and left the automobile and walked into the house; the reason we did not drive in is because there is a soft muddy place there that we did not want to go through, and Mrs. Smith walked into the farm buildings with me.

Q. During that time was she at any time out of the sight of the occupants of the car? A. Not to my knowledge.

Q. It has been testified here that you drew her up through the window into the house. A. That is not true.

Q. When did you return to Oxford? A. From this trip?

Q. Yes. A. Oh, I imagine sometime around 12 or 1 o'clock—possibly half-past one.

Q. During that morning were you alone with her at all, away from the others, out of sight of the others? A. Not out of the sight of the others. I went over there to look at the buildings; I went in the barns; I think I went in the house, but I did not go in through a window.

Q. Did she go to the barns? A. Not to my knowledge.

Q. Did she go in the house with you? A. No, sir.

Q. After you returned, Mr. Pearsall, do you remember what you did that afternoon—that would be Wednesday afternoon, the second day? A. Wednesday afternoon,—I think I did nothing in particular, only, possibly, some matters around town—saw the attorney for the estate, a man who lives right there, I have a lot to do with him.

Q. On Wednesday, were you alone at all with Mrs. Smith? A. I was not.

Q. Now, Thursday, what did you do Thursday? A. As I remember, I went up town in the morning to consult with the attorney for the estate.

Q. Did Mrs. Smith go with you? A. She did not. The County Fair was on at Norwich, New York, and I believe it had been talked about, in fact, I am positive it was talked about on Wednesday night, and I told the whole crowd I would get an automobile and take them in the afternoon up to Norwich to the fair, and we could have an old-fashioned fair day; and I did try to get an automobile, but I could not get one; and I tried to get a team and could not, but I finally, as was suggested to me by the attorney,—his brother's wife had a horse that she sometimes rented,—and I got that with a single wagon, with a top, a runabout.

Q. Whom did you take to the fair? A. Mrs. Frances Smith I took to the fair that afternoon.

By the Court:

Q. How big an estate was this that you were settling up? A. My father's estate, it was very small, in money, but there were three or four farms.

Q. What did you have to do with the attorney? A. With regard to most of the rentals—some of the tenants he got himself from them; and some of the rentals from the farm were sent to him.

Q. How much time did you spend with the attorney up there, all told, about? A. In his actual presence?

Q. Yes. A. One and a half hours or two hours, I suppose.

Further Direct:

Q. It has been testified to here that you did not return that night to the home of your stepmother until nine o'clock, daylight saving time; is that so? A. It is not.

Q. What time did you return? A. I could not say definitely, but I remember distinctly that we all ate dinner together that night.

Q. The next day, what did you do—that would be Friday (question withdrawn). Upon returning to the home of your stepmother on Thursday night, what went on, after your dinner? A. I don't remember definitely, only that we were just sitting around; oh, yes—a cousin of mine and his wife came in to see us, and I remember distinctly they came in sometime after dinner.

Q. What time did they leave? A. I should say any time between ten and eleven o'clock

Q. What time did you retire? A. That night?

Q. Yes. A. The hour?

Q. Yes, about. A. Very soon after they left, probably around eleven o'clock.

Q. Did you go upstairs alone? A. We all went up together.

Q. It has been testified that on Thursday evening the rest retired about 11 o'clock, and that you and Mrs. Smith were left downstairs alone; is that true or not? A. It is not true.

Q. When you went upstairs to retire, where did you go? A. To my room.

Q. After going to your room what did you do? A. Went to bed.

Q. Did you leave your room that night? A. No, sir.

Q. It has been testified here, that after going to your room you waited a short time, ten or fifteen minutes; then opened your door and went quietly and softly along the hallway, in the direction of Mrs. Smith's room; is that true or not? A. It is not true.

Q. Do you recall an incident with reference to your shaving? A. I do.

Q. Just tell us about that, please. A. I was up, and downstairs in the bathroom shaving; I was dressed, with the exception of my shirt and collar, and I was shaving; the bathroom door is on the ground floor of the house, at the rear end of the house, and can be entered by two doors, the one from the kitchen and one from what is now used as a sewing room, and has an entrance from the living room and dining room; but the door leading to the living room and dining room does not lock, and it never has locked; the bathroom which leads into this sewing room, and then into the living room, does not lock—that is, it locks very hard, and I don't know that it will lock at all; and while I was shaving, I heard someone coming to the door, and I naturally stepped to close it or hold it, and it was Mrs. Frances Smith. I very likely said,

"Good morning" or something like that, because the door was open; she must have opened the door, because the door was open.

Q. While there, did you see Mr. Smith, Senior? A. Yes, sir.

Q. Where was he? A. My only, and first remembrance of seeing him is standing still almost on the edge of the dining room or between the dining room and living room.

Q. Did he say to Mrs. Smith, "Frances are you crazy?" A. He did not, not in my presence.

Q. And did she say to him in your presence, "Mind your own business?" A. She did not; at the time I saw him, and so far as I know, he was a matter of 25 or 30 feet away from the bathroom door.

Q. On Friday, what time did you arise? A. Probably any time around seven o'clock or seven-thirty.

Q. What did you do on Friday? It has been testified here you left that place on Friday morning? A. I left Friday night, late, at 12.32.

Q. What did you do on Friday? A. Friday forenoon, after breakfast, up until 12 o'clock, I really don't remember, but Friday afternoon I know we all went, including some friends who lived on the street, and a son of theirs, a Major, to a place called Chemango Lake.

Q. Was this Major married? A. Yes, sir.

Q. Was he at your house? A. No, sir, he was at a neighbor's house.

Q. Who was at the house on the afternoon of the day of the fair? A. A cousin of mine and his wife.

By the Court:

Q. Why did you take Mrs. Smith to the fair that afternoon in preference to anyone else? A. Because we were congenial; we really had a good time.

Q. Did she take her children with her? A. There was no room for them.

Q. It was an open wagon? A. Yes, sir, with a single seat.

Q. She could have put one of the children on her lap? A. Yes, sir, but it would not have been very comfortable for her.

Q. How long were you at the fair at Norwich? A. I cannot say.

Q. What did you witness at the fair? A. Horse races.

Further Direct:

Q. After you returned from this picnic, what time did you return from Chemango Lake? A. Around eight o'clock.

Q. Then where did you go? A. Stayed at home, to the best of my recollection.

Q. Did you have your supper? A. We had our picnic supper at the lake.

Q. Do you recall what you did that evening before leaving? A. I believe we sat around and played cards; it was that night at 12 o'clock, or 12.32 that I was to leave for home.

Q. Did you know that Mr. Roy Smith was expected? A. Yes, sir.

Q. Was there anything said to you or in your presence, about getting rid of you before Roy Smith came? A. No, sir.

Q. What was said, if anything, by Mr. and Mrs. Smith, and Mrs. Frances Smith? A. They all of them urged me very strongly to stay over and meet Roy.

Q. Were you alone with Mrs. Smith at all, with the exception of the time you took her to the fair? A. No, sir.

Q. Were you any more attentive to her than you were to the others? A. Why, I don't konw—any more attentive to her?

Q. Was there any familiarity between you and her? A. Absolutely none.

Q. Mr. Pearsall, did you commit adultery with Mrs. Smith on the 27th of August, 1918? A. I did not.

Q. Did you commit adultery with Mrs. Smith at that place on the 29th of August, 1918? A. Certainly not.

Q. Or at any other time? A. No, sir, at no time.

Q. Was there any affection between you and her? A. No affection, no, sir.

Q. This is an old rambling house, isn't it? A. Well, I would not say that, it is a house probably 25 or 30 years old.

Q. What kind of a partition is there between the room that is occupied by you and the room occupied by William Smith and his wife? A. The same as all the other partitions—plaster, mortar, lath, with the exception of the end. When my father bought the house, as I remember it, the room which Mr. and Mrs. Smith, Senior, occupied had no closet in it, and they built a very unusually small closet, with the door from that bedroom,

but the closet part itself extends into the maid's room, and which was the room I occupied.

Q. What do you say as to the character of the hallway, the flooring? A. Well, the flooring always squeaked.

Q. Where was Mrs. Pearsall's room—your stepmother's room? A. Directly opposite my room.

Q, A narrow hallway? A. Yes, sir, two and a half to three feet.

Q. Were there any keys or locks there, so that the doors could be locked? A. There were keyholes in the doors, but at that time I would not have known it, but I have since been told—

Q. What do you yourself know? A. I would not have known whether there were, on the doors, or not, at that time.

Q. You remember the room that was occupied by Mrs. Smith at the end of the hallway? A. Yes, sir.

Q. Where was that with reference to the room occupied by Mr. William Smith? A. Mrs. Frances Smith's room—

Q. Yes. A. Down the hall, possibly eight or ten feet.

Q. To reach that room did you have to pass the door of the room occupied by Mr. Smith and his wife? A. I would have to do so.

By the Court:

Q. Mr. Pearsall, was there any time when Mrs. Smith made coffee for you in the morning? A. No, sir, I never drink it in the morning.

Q. Who made your breakfast on Friday morn-

ing, the day you left? A. I don't know; we all ate breakfast together.

Q. Who prepared it? A. In all probability, Mrs. Mary Pearsall and Mrs. Alice Smith.

Q. Was there any occasion when Mrs. Frances Smith prepared breakfast for you alone? A. No, sir.

Q. Did you have your breakfast alone on any occasion when you were there? A. No, sir.

Further Direct:

Q. In testifying here, Mrs. Smith on Wednesday testified that while you were all at the dinner table or supper table, that she said to you, "Harry, I heard you go down the hall and pass my room last night;" and she testified that you said, "Yes, I went down to ask Frances, or have Frances, fix my alarm clock;" is that true or not? A. It is not true.

Q. Did you go down the hall to have Frances Smith fix your alarm clock? A. At no time.

Q. It has also been testified, that on that same occasion, Mrs. Alice Smith then said, "Why didn't you ask Emily to fix it?" and that you replied, "I did not want to awaken Emily;" is that true or not? A. It is not true.

Q. Do you recall what the attitude of Mr. William Smith and Mrs. William Smith was towards you at the time you left? A. Cordial and friendly.

Q. What did they say to you? A. They asked me to come to Paterson and see them, and look them up in New York.

Cross Examination by Mr. Lane:

Q. Why didn't you wait until Mr. Roy Smith did come up there? A. I never liked to be away from home over Sunday, and I would much prefer to be home than up there; I had already wasted one day to go to Chemango Lake.

Q. Why did you do that? A. Simply because they all wanted to go.

Q. And they all wanted you to meet Mr. Roy Smith? A. Yes, sir.

Q. But you went away coincident with Mr. Roy Smith's arrival. A. At the time I left I could not get home without leaving at that time.

Q. But it was coincident with Mr. Smith's arriving? A. Yes, sir.

Q. So that you waited as long as you could wait, so that you might get home and not meet Mr. Roy Smith? A. That is putting an entirely wrong phase on it.

Q. It is a fact, nevertheless? A. Yes, sir.

Q. You remember this picnic at Chemango Lake was on Thursday? A. I distinctly remember it was not.

Q. Why is your memory so distinct with respect to that? A. No reason, only that I have turned the thing over in my mind until I think I have a pretty clear recollection of the facts that occurred at that time.

Q. How do you place this picnic as on Friday particularly? A. I cannot tell you, only that I know I agree with my stepmother on it, and she was positive, and I am positive that it was that day.

Q. It was Friday afternoon? A. Yes, sir.

Q. You are sure of that? A. I am positive we

went to Chemango Lake on Friday; I know it; I cannot tell you how I know it.

Q. You are positive you did not leave until the 12.42 train that night? A. Yes, sir.

Q. If Mr. Roy Smith had returned on Friday night and gotten there at 8.45, you would have met him, in Oxford? A. Yes, sir.

Q. You were where you would have met him if he had, in fact, gotten there at that time? A. Certainly.

Q. When was it he was expected? A. I could not tell you; I think they said that he was coming the next morning, which would bring it Saturday morning.

Q. Who urged you to stay? A. All of them.

Q. Who? A. Mrs. Frances Smith, Mrs. Pearsall, Mrs. Alice Smith and Mr. William Smith.

Q. Have you seen Mrs. Smith since the Oxford trip? A. Mrs. Frances Smith?

Q. Yes. A. I have.

Q. When? A. In New York.

Q. How soon after the Oxford trip? A. Well, I could not say as to that; probably any time from one to two months.

Q. Where—in New York? A. I ate lunch with her at the Manhattan Hotel.

Q. And also at the Claridge? A. No, sir.

Q. How did you come to eat lunch with her at the Manhattan Hotel? A. While I was in Oxford, Mrs. Smith told me about a friend of hers in New York.

Q. Her name was McGee? A. Yes, sir.

Q. What else did she tell you about this friend, Mrs. McGee? A. Only that they were very good friends, and she would like to have me meet her,

and I called up Mrs. McGee and told her I met Frances in Oxford, and we talked a lot about her, and it is my impression that she said Frances would be over the next day, from this telephone conversation; and I asked them both, when she came, to come in and take lunch with me.

By the Court

Q. With you alone? A. Yes, sir.

Further Cross:

Q. Did you suggest that Mr. Smith come along? A. No, sir.

Q. Why not? A. She was a married woman—

Q. You were married—why not suggest that her husband accompany you to luncheon? A. No reason in particular.

Q. You thought that was the proper thing? A. I see nothing improper in it.

Q. Did you ask Mrs. Smith whether her husband knew that she was taking lunch with you at the Manhattan Hotel? A. No, sir.

Q. It did not concern you in the least? A. I did not think of it.

Q. Had you thought of it you would have inquired? A. I don't understand.

Q. Had you thought of it, would you have inquired of this married lady whether he knew that she was taking lunch with you in New York? A. If I had thought her husband would object, I would not have done it.

Q. When did you meet her next? A. I saw Mrs. Frances Smith in New York two or three times.

Q. Three, wasn't it, at least? A. Not to exceed three.

Q. And where, upon each occasion; first, at the Manhattan Hotel; when was the next? A. On 42nd Street, Bozart Restaurant.

Q. What time of the day was that? A. Dinner, at night.

Q. How did the appointment come to be made for the Bozart's? A. I called up Mrs. McGee and asked her to get Frances and see if it was convenient to come in and have dinner with me, if they would, which they did.

Q. Both of them? A. Yes, sir.

Q. What time did you sit down to dinner at the Bozart's? A. Probably around seven o'clock or seven-thirty.

Q. How long did it take you? A. We dined during the evening.

Q. Did you bring your wife along on any of these occasions? A. No, sir.

By the Court:

Q. Did your wife know Mrs. Smith? A. She has never seen her.

Q. What was the object of your taking her out to lunch? A. I enjoyed her company; she was congenial; I had nothing to do—

Q. Did you suggest or ask where her husband was? A. No, sir.

Q. Did you dance with her on any of these occasions when you took her out to luncheon? A. Yes, sir.

Q. You danced? A. Yes, sir.

Q. How long did you dance? A. Just during dinner.

Q. Did you take her home? A. No, sir.

Q. Where did you leave her? A. I sent them both home in a taxicab.

Q. Whose home? A. Mrs. McGee.

Q. At what time? A. I could not say, to be exact; it was in the neighborhood of 10 o'clock, 10.30 maybe.

Q. When was the next time you saw her? A. At the same place, at the same time, and under the same conditions.

Q. Appointment made how? A. The same way.

By the Court:

Q. Through Mrs. McGee? A. If you could call it an appointment.

Further Cross:

Q. Did it ever strike you that you might call up Mrs. Frances Smith, directly? Why didn't you communicate with her directly; did you ever telephone to her at her house? A. No, sir.

Q. Then, every communication you had with Mrs. Smith was through Mrs. McGee? A. Yes, sir.

Q. How soon after the Oxford episode was the last time you saw Mrs. Smith at the Bozart's? A. Well, I could not say positively, but I imagine any time from six to nine months.

Q. Six to nine months? A. I should say so.

Q. That would bring it up to 1919, wouldn't it—the spring of 1919? A. I think so.

Q. Did Mrs. Frances Smith ever telephone you? A. Never.

Q. Did she ever telegraph you? A. No, sir.

Q. Did she ever write to you? A. No, sir.

Q. Did you see Mrs. Smith during the summer

of 1919? A. Not if you are correct in the other dates.

Q. In the summer of 1919, did you see her? A. May I ask you if my understanding is correct—

Q. I am referring to something entirely different. A. I have never seen her any other time except the three times in New York.

Q. Did you ever make arrangements to see her any other time? A. No, sir, not that I know of.

Q. Don't you know? A. I did not.

Q. Do you remember in the summer of 1919, that Mrs. Smith, with the two children, was at Martha's Vineyard? A. I know nothing about it.

Q. Mrs. Smith did not either telegraph or write you or telephone you in the summer of 1919, and make an appointment with you to have lunch in Boston? A. She did not; if she did, I never got it.

Q. Nothing of that kind ever occurred? A. No, sir.

Q. You said that you gave up telephoning Mrs. McGee and taking dinner or luncheon with Mrs. McGee and Mrs. Smith at the Manhattan in New York; what caused you to drop it? A. Just naturally stopped.

Q. It continued for nine months? A. Three times in nine months.

Q. But those three times in nine months were every time they came to New York? A. Decidedly not.

Q. Then there was a sufficient length of time between the three occasions for you to forget— A. There was nothing to forget.

Q. Why did you renew it after a period of

three months; what put it in your mind when you got to New York to telephone Mrs. McGee to telephone to Mrs. Smith to make the appointment? A. Just a happy thought.

Q. Each time you left them, you sent them home in a taxicab? A. Yes, sir.

Q. You never accompanied them home? A. No, sir.

Q. Why not? A. It is a good ways over to Brooklyn and back again.

Q. That is the only reason? A. Yes, sir.

Q. Did Mrs. Smith, when she met you at lunch and dinner, inform you as to where she was staying? A. Mrs. McGee was with Frances every time that I ever saw her in New York.

Q. Did she inform you as to where she was staying? A. The three times that I saw her she did stay, I think, with Mrs. McGee.

Q. You would not have allowed her to go unaccompanied at night to Paterson? A. At that time of night I should not deem it necessary to go to Paterson with her.

Q. Did you have a drink? A. I presume I did, but I never saw her take a drink of anything.

Q. And you never expressed to Mrs. Smith a desire to meet her husband? A. I very likely have said, after a pleasant time at Bozart's, that I would be glad to see him if I could.

Q. I say, at these times when you met her in New York, did you express any desire to meet her husband? A. I don't remember.

Q. Did she ever express any desire to have you meet her husband? A. I don't remember.

Q. Did she ever express any desire to present her husband to you? A. Not that I remember.

Q. Did you tell your wife all about these trips? A. She knows all about it now; she knew all about the Oxford business.

Q. I am talking about the luncheons and the dinners in New York? A. I don't remember whether I told her or not; I don't know for sure; I have taken people to lunch very often and told my wife about it.

Q. Married ladies, and made by appointment with a third person? A. Married ladies, not an appointment made through a third person, I presume.

Q. Why is that presumption in your mind? A. I don't know why; I certainly had nothing to conceal.

Q. You had a good time at dinner with two ladies, and you had a dance with them, and you were married, and when you went back to your wife in Boston, why didn't you tell her about it? A. It probably did not make sufficient impression on me, but I had no conpunction about telling her of it.

Q. Did you do it? A. I don't know.

Q. You had never met Mrs. McGee before you first telephoned to her? A. No, sir.

Q. You had never met her? A. No, sir.

Q. All you knew of Mrs. McGee—all you knew about Mrs. McGee when you first telephoned her in New York, was what Mrs. Smith had told you? A. Yes, sir.

Q. She was a strange woman, except that Mrs. Smith said that she was a very close friend of hers? A. Yes, sir.

Q. And you called up this strange woman? A. Yes, sir.

Q. And it did not seem strange to you to do that? A. Not at all.

Q. And it does not now? A. Not a bit.

Q. Did Mrs. Smith in Oxford ever suggest that when you were in New York you might call on Mrs. McGee? A. Not to my knowledge; I don't remember that she did.

Q. What is her telephone number? A. I have not the faintest idea.

Q. How did you find it? A. I cannot tell you; probably in the telephone book.

Q. What is her first name? A. Elsie.

Q. Is she married? A. I believe McGee is her married name.

Q. Was she married at that time? A. She was.

Q. Do you know what her husband's name is, or was? A. No, sir.

Q. Did you ever know her husband's name? A. If I did, I have forgotten it.

Q. Don't you know that Mrs. Smith gave you her telephone number before you left Oxford? A. She may have; I don't know it; I would not attempt to deny it; I see nothing incriminating about that.

Q. What makes you think she may have given you that telephone number of this third person before you left Oxford? A. I don't know that I do think so; she talked about Mrs. McGee; she said she would like to have me meet her, or words to that effect.

Q. Why did he say that? A. I don't know.

Q. What did she say? A. I don't remember.

Q. What were the attractions which she pointed out which would make it attractive to you to meet Mrs. McGee? A. She was an attractive girl, I suppose.

Q. But you were happily married? A. Is it incriminating to go to lunch with another woman other than your wife?

Q. She did not give her own telephone number, —Mrs. Frances Smith, did she? A. I would not be sure about that.

Q. Tell me, if she did give you her telephone number, why you did not telephone her? A. One lived in New York and the other lived in Paterson.

Q. And that influenced your mind? A. I think so.

Q. You have never had any difficulty with Mrs. William H. Smith? A. None whatsoever; she has known me ever since I was a little boy.

Q. And she expressed fondness for you? A. So far as I know.

Q. Nor have you had any difficulty with Mr. William H. Smith? A. I never knew him until the time at Oxford.

Q. That is the first time you met him? A. Yes, sir.

Q. What is your explanation as to why they should each of them deliberately falsify with respect to your conduct at Oxford?

Mr. Ward—I object to that; it is not cross examination and not pertinent.

The Court—It is cross examination; these witnesses have testified that they heard the footsteps proceeding from his room to Mrs. Smith's room; he has gone on the witness stand, and under your examination he has denied it. I shall allow it.

Q. (Question read.) A. The only explanation that I can possibly conceive of—it is the most

contemptible thing that I have ever heard of in my life—is, to aid Mr. Roy Smith in succeedin in getting his divorce.

Q. That is the only motive that you can attribute the falseness of their statements to? A. Yes, sir.

Q. There is no feeling that would have prompted them to injure you? A. Not that I know of.

Q. Did you ever send a telegram to Mrs. Smith while she was at Martha's Vineyard? A. I did not, never.

Q. Or did you ever telephone her when she was at Martha's Vineyard? A. I did not.

Q. By the way, when you had this luncheon at the Manhattan—by the way, your first meeting was at the Manhattan? A. As I remember.

Q. And the second was at the Bozart? A. Yes, sir.

Q. Who suggested that the second meeting should be at the Bozart? A. I don't remember.

Q. You recognized those hotels are of a different type? A. Yes, sir.

Q. And you cannot remember who it was suggested that the second meeting that you had should be at the Bozart instead of at the Manhattan? A. No, sir.

Q. Why was it you went to the Bozart the second time? A. I suppose because it was a place to dance; I never saw dancing in the Manhattan Hotel.

Q. It is a little freer in the Bozart, isn't it? A. What do you mean?

Q. I mean, it is freer and easier? A. It is no more free in the Bozart than it is in the Biltmore Hotel.

Q. I am talking about the Manhattan. A. I

never was in Bozart's except these two times.

Q. It was not you, then, that suggested the Biltmore? A. Probably not.

Q. Do you remember which one of the ladies suggested Bozart's A. No, sir.

Q. Well, how did you come to go to the Bozzart's the third time? A. I have no idea.

Q. Do you know? A. I don't know.

Q. Where did you meet the first time? A. At the Manhattan Hotel.

Q. Where did you meet the second time? A. I don't know, but probably at Bozart's.

Q. Did Mrs. McGee come with Mrs. Smith? A. I think they came together.

Q. Do you know? A. I am quite positive they came together on each occasion.

Q. Did they tell you where they had come from? A. No, sir.

Q. Did it occur to you to meet them at Mrs. McGee's house and take them to the hotel? A. No, sir, it did not, and if it had, I probably should not have done it; it is too far off.

Q. Do you remember on one of these occasions when you were at the Bozart, Mrs. Smith, leaving the table and going to the telephone, stating that she had to telephone Mrs. Wainwright that she would not be there that night? A. I do not.

Q. Do you remember Mrs. Smith, upon either one of the occasions, leaving the table and stating that she had to telephone? A. I do not.

Q. Do you remember her telephoning on any one of these occasions? A. I do not.

Q. Had you heard Mrs. Wainwright's name before? A. I don't think I have heard her name before right now.

Q. Was Mr. Smith's name mentioned during

the time you were eating and dancing at the Bozart? A. I don't remember.

Q. Or at the Manhattan? A. I don't remember that either.

Q. Nothing was said about him or his existence at all? A. Not that I remember of.

Q. What time was it that you were in the bathroom at the Oxford house when you saw Mr. Smith? A. In the morning.

Q. But what time in the morning? A. Probably in the neighborhood of seven o'clock; I cannot tell; I don't remember exactly.

Q. You remember it was before seven, don't you? A. I know it was when I first got up.

Q. About seven o'clock? A. I should say so.

Q. You had to get up early that morning, didn't you? A. Well, seven o'clock is not late for me to get up.

Q. Wasn't it understood the night before that you intended to get up earlier than the rest of the household? A. Not as far as I know.

Q. Do you say that household got up and was astir at seven o'clock in the morning? A. I don't know whether they were or not.

Q. Don't you know that that particular morning you had to get up early to keep an appointment, or to go somewhere? A. I do not.

Q. Will you say it was not so? A. I don't remember; but I would be positive that there was no night before at which it was talked about my getting up earlier than the rest of them the next morning for some particular purpose.

Q. Well, did you have to get up that morning earlier for some particular purpose? A. I don't

know, but I remember I was usually among the first ones up.

Q. Did you see Mrs. Frances Smith that morning at the bathroom door? A. Yes, sir.

Q. How was she dressed? A. I could not tell you.

Q. Did you see Mr. William H. Smith any closer than down the hall? A. I saw Mr. William H. Smith exactly as I testified.

Q. Where? A. Approximately in the hallway, or between the dining room and the living room.

Q. And nothing was said between you and him? A. Nothing at all.

Q. Nothing was said between Mr. Smith and Mrs. Frances Smith that you heard? A. Nothing.

Q. How old is Mrs. McGee? A. I don't know.

Q. Do you know where she is now? A. I have no idea.

Q. Do you know where she lives now? A. No, sir.

Q. Do you know whether, as a matter of fact, at the time you met them in New York, Mrs. McGee was being sued for divorce? A. I do not.

Q. Did you know at the time whether Mr. and Mrs. McGee were living together? A. I don't know.

Q. You did not know either? A. No, sir.

Q. It did not concern you? A. No, sir, I don't know that it was ever mentioned.

Q. At each one of the times that you were at lunch or dinner at the Manhattan or the Bozart, who were in the party? A. Mrs. McGee and Mrs. Frances Smith and myself.

Q. No one else? A. No one else.

Q. On no occasion? A. On no occasion.

Q. You are sure that on another one of these occasions there was no other man, who was an officer of the army, present? A. There was not.

Q. No one suggested getting another man? A. No, sir.

Q. You did the dancing first with Mrs. Smith and then with Mrs. McGee? A. Probably.

Q. Well, did you? A. I undoubtedly danced with both of them.

Recess to 2 P. M.

After Recess

MRS. EMILY PEARSALL, sworn in behalf of the defendant, testified as follows:

Direct Examination by Mr. Ward:

Q. Mrs. Pearsall, where do you live? A. Oxford, New York.

Q. Are you a stepmother of Mr. Harry Pearsall, the last witness on the witness stand? A. Yes, sir.

Q. You were living in Oxford in August or September, 1918? A. Yes, sir.

Q. Do you recall the Smith family being there with you? A. Yes, sir.

Q. You are a sister of Mrs. William Smith? A. Yes, sir.

Q. Do you remember the occasion when Mr. Harry Pearsall came to Oxford while the Smith family were there? A. I do.

Q. When was that? A. That was on Tuesday, but I don't remember the date.

Q. And he went away when? A. Friday, at midnight.

Q. How many rooms are there on the upper floor? A. Five.

Q. There are five rooms there? A. Yes, sir.

Q. The one occupied by you is on the Northerly side of the house? A. The one occupied by me is on the Northeastern side.

Q. Next to that, going West, was the room occupied by Mrs. Smith's children? A. Yes, sir.

Q. And then beyond that, further west, was the room occupied by Mrs. Smith? A. Yes, sir.

Q. There is a narrow hallway there? A. Yes, sir, long and narrow.

Q. On the other side of the house the Southeast room was occupied by Mr. Pearsall? A. Yes, sir.

Q. And next to that was the room occupied by Mr. and Mrs. Smith, Senior, Mr. and Mrs. William Smith? A. Yes, sir.

Q. What was the condition of the hallway with reference to the flooring? A. It squeaks.

Q. What time did Harry Pearsall arrive at Oxford? A. He arrived on the 12.49 train from Utica. and Mrs. Roy Smith and I walked over to the train and met him.

Q. Do you know whether or not they had been acquainted before that? A. I know they had not.

Q. Where did you go from the station? A. Home.

Q. And then what? A. We ate dinner and then my son telephoned, or went to see a cousin of his who was in the automobile business, and he

got an old Ford car, and we went to the old homestead.

Q. Did Mrs. Frances Smith accompany you? A. No, sir.

Q. Do you recall returning that evening and having suppor or dinner? A. Yes, sir.

Q. After that, what occurred? A. We played cards until about 11 o'clock.

Q. It has been testified here, that on that evening, Mr. Pearsall left about seven o'cloch, accompanied by Mrs. Frances Smith, and did not return until nine; is that true or not? A. It is not true.

Q. That evening do you recall retiring? A. Yes, sir.

Q. Who went upstairs at that time? A. We all went up.

Q. And were Mrs. Frances Smith and Mr. Pearsall left downstairs together? A. No, sir, they had only known each other about five hours; we would not likely leave them down.

Q. Do you know whether Mr. Pearsall went directly to his room? A. As far as I know, he did.

Q. What is your custom with reference to the length of time it takes you to prepare to retire after having reached your room? A. Oh, I am a regular old poke on going to bed; as a rule, I am the last one in bed in my family.

Q. How long does it take you? A. I seldom get in bed for a half an hour after I get in my room.

Q. Did Mr. Pearsall get up and go along that hallway? A. No, sir.

Q. It has been testified here, that after you and

Mr. and Mrs. William Smith had gotten upstairs preparatory to retiring, that Mr. Pearsall and Mrs. Smith remained downstairs alone together for an hour or an hour and a half; is that true or not? A. It is not true.

Q. It has been testified here, that about fifteen minutes after Mr. Pearsall went to his room, or within a short time thereafter, Mr. Pearsall left his room and went along the hallway in the direction of Mrs. Smith's room—is that true? A. As far as I know, it is not true; I believe I should have heard him.

Q. On the next day, do you remember who got up and got the breakfast? A. Yes, sir, Mrs. William Smith.

Q. Did you all breakfast together? A. Yes, sir.

Q. Did Mr. Pearsall breakfast with you? A. Yes, sir, as far as I know.

Q. What happened that day? A. Mr. Pearsall hired an automobile, and we all drove over to a farm about 10½ miles from our house, in the morning. In the afternoon we were just around the house visiting, and Mr. Pearsall went over down visiting some friends.

Q. Now, on this trip to the farm, did Mr. Pearsall and Mrs. Smith go into the house? A. Not that I know of; I don't think they could have; the house was unoccupied, dirty and filthy.

Q. That would have been Wednesday? A. Yes, sir.

Q. Did anything unusual occur the rest of that day? A. No, sir.

Q. Do you remember what happened on Thursday? A. Yes, sir; Thursday was the day of the

fair; we were home in the morning, except Mr. Pearsall; he went over town to try to get us a car to take us to the County Fair at Norwich, and Mrs. Roy Smith particularly said she wished she could go, and he said he would get a car and take us all; he tried and failed to get a car; then he tried to get a double team to take us, and also failed; and our attorney told us of his sister-in-law, who has a horse and a runabout, and he got that; and he called up Mrs. Roy Smith and asked her if she would go up with that, because he could not get any car.

Q. Then they went? A. Yes, sir, they went as a sort of a joke to go to a country fair.

Q. It has been testified here, that they did not return that night until nine o'clock, daylight saving time; is that true? A. They returned at six o'clock; Mr. Pearsall brought Mrs. Smith down to the house then, before he took the horse and carriage up to the lady who owned it, and returned, and we had supper together.

Q. That evening, where were you? A. A cousin of Mr. Pearsall and his wife came over and spent the evening; they stayed from 10 until 10.30, and after they left we stayed up a while, and then we went upstairs.

Q. Accompanied by anyone? A. Just the whole party of us.

Q. The whole party retired at the same time? A. One or two might have gone up ahead.

Q. Did you on that evening, you and Mrs. Smith, Senior, leave Mrs. Frances Smith and Mr. Pearsall downstairs? A. No, sir.

Q. It has been testified that you and Mr. and Mrs. Smith retired, and that Frances Smith and

Mr. Pearsall remained downstairs for an hour or an hour and a half. A. That is not true.

Q. On that night do you know whether Mr. Pearsall went directly to his room? A. I am sure he did so.

Q. After that, did he come out? A. Not to my knowledge.

Q. It has been testified, that about fifteen minutes after he went to his room he came out and walked along the hallway towards Mrs. Smith's room; is that so or not? A. I don't think it is; he might have gone in the hallway to go downstairs, but I did not hear him.

Q. The next day what occurred? A. The next day we all went to Chemango Lake, in the afternoon, to a picnic, and in the morning we were all busy getting ready for the picnic—the doctor and his wife and his son, the Major in the army, and our family went; and we took our lunch and ate it out of doors, and then later we stayed there, and some of them went in bathing; and we had our supper and then we came home.

Q. Do you know of any case when Mrs. Smith went downstairs and made coffee for Mr. Pearsall? A. Not that she went downstairs; I know on occasion she made coffee.

Q. I mean in the morning? A. No, sir.

Q. Does Mr. Pearsall drink coffee? A. No, sir, he does not.

Q. After returning from the lake on Friday how long did Mr. Pearsall stay? A. Until the 12.32 train.

Q. Whereabouts? A. We all played cards until about 11 o'clock, and then Mrs. Smith and Mr. Will Smith went to bed, and Mrs. Frances

Smith got a lunch for Mr. Pearsall, and we three sat there and ate our lunch until very nearly time for the train, anyway; and then we went in the living room and sat there until it was time for him to go to the station.

Q. Were you there all the time? A. Yes, sir.

Q. With the exception of the time when Mr. Pearsall took Mrs. Smith to the County Fair, were they alone at all? A. Not to my knowledge.

Q. What was the attitude of Mr. Pearsall towards Mrs. Frances Smith? A. The same as to the rest of us.

Q. Did he show any intimate attention to her, or interest in her? A. Not that I saw.

Q. When Mr. Pearsall said "Good-bye" to Mr. and Mrs. William Smith, what was their attitude towards him? A. Very cordial.

Q. Do you recall what they said to him? A. They had urged him to stay—

The Court—That has been testified to by Pearsall and the Smiths; do you want her to repeat it?

Q. What about the locks at that time, Mrs. Pearsall, the locks on the doors? A. There are locks on every door, but there are only keys in one, and that is the room occupied by Mr. and Mrs—

Q. What kind of partition is there between the room occupied by Mr. Pearsall and the room occupied by Mr. and Mrs. William Smith? A. Just the same partition as there is here—all the way across the room, plaster, and over the door that leads into a closet there is a little corner parti-

tioned off; the partition is in this little back room that Mr. Pearsall occupied, but the partition in their room goes all the way across, and this partition was put on extra and forms a closet.

Q. What kind of doors are there between the room occupied by Mrs. Frances Smith and her children? A. They are large folding doors.

Q. Were they usually open? A. I think they were always open.

Q. Was there any change in the attitude of Mr. and Mrs. Smith towards Mr. Pearsall during that time? A. No, sir.

Q. You are on perfectly friendly terms with your sister? A. Yes, sir.,

Q. And on perfectly friendly terms with Mr. Roy Smith? A. Perfectly.

Cross Examination by Mr. Lane:

Q. Did I understand you to say there was no change in the attitude of Mr. Pearsall from the time he met Mrs. Smith until the time he left? A. I don't understand you.

Q. Did I understand you to say, that there was no change in the attitude of Mr. Pearsall towards Mrs. Smith from the time he met her till the time he left? A. No change.

Q. He did not know her when he met her? A. No, sir, he was congenial with her when he met her, and he was congenial with her when he left; he is a very friendly man with everyone.

Q. Did he talk in your presence about Mrs. McGee, or did Mrs. Frances Smith talk in your presence about her friend, Mrs McGee, in Brooklyn, New York? A. No, sir.

Q. You did not hear that? A. Never a word.

Q. No conversation with respect to this friend, Mrs. McGee took place between Mr. Pearsall and Mrs. Smith while present in the company of the others? A. Not to my knowledge.

Q. So that you had not heard Mrs. McGee's name when Mrs. Smith or Mr. Pearsall left? A. I had heard her name, but not on their lips.

Q. And nothing was said in your presence with respect to Mr. Pearsall upon some occasion meeting Mrs. Smith in New York? A. No, sir.

Q. It had not progressed to such a friendliness as that, in your opinion? A. No, sir.

Q. There was nothing to indicate that anything like that was possible? A. It is always possible.

Q. But it was improbable? A. Yes, sir; they were four days—my son was four days in my house; it is not very long.

Q. And did you discuss nothing which would indicate to you that they had become sufficiently friendly as to have Mr. Pearsall invite Mrs. Smith to have dinner or lunch with him in New York, without her husband? A. I don't think he invited her then.

Q. Who is the Major in the army? A. His name was Paul Johnson; he died one and a half years ago; he was killed in an auto accident.

Q. Where did he live? A. His home was two doors from me in Oxford, his parents' home, but he was a regular army Major; he was in the Regular Army.

Q. What relation are you to Mr. Pearsall? A. I am his stepmother.

Q. Are you dependent upon him for support? A. No, sir, I am depending upon the income from the estate.

Q. Of which Mr. Pearsall is the executor? A. Yes, sir.

Q. And Mr. Pearsall has the control of the payment of the money? A. Yes, sir, he is the executor of the estate.

Q. And you get your money from him, don't you? A. Yes, sir.

Q. And that is the sole source of your support? A. No, sir, I have teachers; I rent two or three rooms to school teachers, because I was left there alone, and I did not like being alone, and so I tried one or two other ways of living, and did not like them and finally rented some rooms to teachers.

Q. You discovered afterwards that Mr. Pearsall had met Mrs. Smith in New York? A. He told me so himself.

Q. When? A. I cannot tell you.

Q. After this suit was started, wasn't it? A. It might have been.

Q. Wasn't it after this suit was started, and didn't he at that time ask you to go to Mr. Roy Smith and tell him to drop his name out? A. No, sir.

Q. Did you go to Mr. Roy Smith? A. I did.

Q. When was that? A. I should say last spring, but I don't know what time.

Q. After the suit was started? A. Yes sir.

Q. How long before that had you had a conversation with Mr. Pearsall? A. I don't know.

Mr. Ward—This is all objected to.

Q. Do you know about how long? A. I don't know whether it was three weeks or three months. I think it was some little time after I saw him before I saw Roy Smith.

Q. And Mr. Pearsall did not suggest that you should see Mr. Roy Smith? A. No, sir, I think I suggested myself to Mr. Pearsall that I should see him.

Q. And thereafter you saw Mr. Smith, Mr. Roy Smith? A. Yes, sir.

Q. Did you write a letter to your sister in the spring of this year with respect to this case? A. I don't remember to have done so; I called my sister up from another sister's house and told her I was coming up there and wanted to see Roy; I don't remember to have written about this case at all.

Q. Do you remember writing her a letter in which you said you were sorry she had mentioned Mr. Pearsall in connection with this case? A. No, sir, I don't think I did.

Q. Did you ever discuss this case with your sister? A. Not until this day that I went up to their house and discussed it with Roy and Mr. and Mrs. Smith.

Q. Was Mr. Roy Smith and Mrs. Smith and yourself together at that time? A. We were.

Q. Did you know at that time what Mrs. Alice Smith had said about Mr. Pearsall as to what happened in this house in Oxford? A. No, sir, as far as I know; I cannot remember that I did; I don't think I did.

Q. You have no knowledge of it? A. No, sir.

Q. Did you ask her upon that occasion how it was that she mentioned Mr. Pearsall? A. I don't know whether she told me about that then or not—that she had any thought; she told me about their meeting in New York; and Mr. Pearsall frankly confessed that he had done so.

Q. I am asking you about what happened in Oxford? A. I don't think so.

Q. Did you ask her the details?

Mr. Ward—I object to this line of questioning, on the ground that it is not binding upon the defendant in any respect, conversations had between the witness and some other person, and purely collateral.

The Court—Objection overruled; it affects the credibility of the witness.

Q. Did you ask her what she had said with respect to Mr. Pearsall and Mrs. Frances Smith?

Mr. Ward—Same objection.

A. I did not; I talked to Roy Smith about his drawing this article that had Mr. Pearsall's name in.

Q. Did you ask Mrs. Smith, or did Mrs. William H. Smith tell you what she knew about what had occurred in Oxford at that time? A. Not that I know of.

Q. Did she ever tell you? A. I don't think she did.

Q. Don't you know? A. I don't know.

Q. You don't know whether your sister ever told you what she says she saw or heard in Oxford? A. No, if she had told me that she heard him going from his room to Mrs. Smith's, I would certainly remember it, and I would have known that it could not have been true.

Q. I am asking you now whether you remember whether she said that or not—ever said it to you? A. I don't think she ever said it.

Q. Do you mean you don't think she did, or you don't know? A. I don't remember.

Q. So you have no recollection? A. I don't remember.

Q. Were you in court yesterday? A. No, sir.

Q. Were you in court when Mrs. William H. Smith testified? A. No, sir.

Q. Then you don't know what she testified to? A. I don't know from hearing; I saw something of her testimony; I saw it printed.

Q. When? A. Yesterday.

Q. Where? A. Do I have to tell?

Q. Yes. A. I saw it typewritten, her testimony.

Q. Of the record of yesterday? A. Yes, sir.

Q. Is that the first time you knew? A. Yes, sir.

Q. Is that the first time you knew with respect to what Mrs. William H. Smith had testified to? A. As to his going in her room, I think it is.

Q. Do you know? A. Yes, sir.

Q. Nobody had ever told you before that Mrs. William H. Smith had said that she had heard Mr. Pearsall go into Frances Smith's room; is that right? A. Yes, sir.

Q. How soon after Mr. Pearsall was at Oxford was it, that you saw your sister again? A. So far as I know—I don't know at all—come to think of it, I don't know, but I usually come down to Newark about once a year, and I always see her when I come; she was up in Oxford and left the last of October, and naturally, I would not have come to Newark again after that until next October.

Q. Do you remember that the first time you did see her after this Oxford visit, whenever it was,

you spoke about Mr. Pearsall and Mrs. Frances Smith? A. I do not.

Q. Do you remember you asked your sister whether Frances had ever tried to see Harry in New York? A. I remember she told me that; I don't remember asking it; I never thought of asking it.

Q. She told you that Harry had met Mrs. Frances Smith in New York? A. Yes, sir.

Q. How did she come to tell you that? A. I don't know—just as anyone would tell anything.

Q. But she had not told you anything else except that? A. Only that they had met in New York.

By the Court:

Q. Did you comment upon it? A. I could not tell you what I said, if I did, I don't know.

Further Cross:

Q. It seemed funny to you, didn't it?

Mr. Ward—Objected to.
The Court—Objection sustained.

By the Court:

Q. Did you say anything to your sister about it? A. I think she said, "I did not intend to tell you this"; I think my sister said that.

Q. Did you express your views? A. I think she said to me, "I did not intend to tell you this"; and I said, "Well, I am glad you did, because if there was anything of that sort going on, I would like to know it."

Further Cross:

Q. Did she tell you anything else except the meeting of Frances in New York with Mr. Pearsall? A. No, sir.

Q. Nothing else? A. No, sir.

Q. Did you communicate that information which you had received from her to anyone? A. After this suit was begun.

Q. Before the suit was begun, I mean? A. Not that I know of, ever.

Q. You were glad you had been told it, because you wanted to know? A. Yes, sir.

Q. And you kept the information to yourself? A. The only person I ever communicated it to was to Mr. Pearsall himself.

Q. Where did you all go Wednesday? A. We were home Wednesday evening; we went off to a farm in the morning, but in the afternoon and evening we were home.

Q. Where did you go Thursday? A. Thursday Frances and Mr. Pearsall went to the fair and on Friday we went to Chemango Lake.

Q. When did Mr. Roy Smith arrive? A. On Saturday morning.

Q. What time? A. 9:34.

Q. Are you sure of that? A. Yes, sir.

Q. Was he expected? A. Yes, sir.

Q. Who urged Mr. Pearsall to stay over? A. We all did.

Q. And what did he say? A. He said he could not do it.

Re-direct Examination by Mr. Ward:

Q. Mrs. Pearsall, you started to say why, when you read Mr. Pearsall's name in the paper, why you

went to Roy Smith and talked to Roy Smith about that matter; why did you do it? A. Because I did not want my son brought into this trial.

Mr. Ward—If counsel will permit, I would like to put Mrs. Smith on the witness stand, simply with reference to the Oxford incident, and clean that up first.

The Court—What Mrs. Smith?

Mr. Ward—Mrs. Frances Smith, the defendant, but I would not want to go into the whole case now.

Mr. Lane—I object to that; I think the case is of such a nature, that no matter what she is put on for, the cross-examination should be open.

MRS. FLORENCE BARLOW, sworn in behalf of the defendant, testified as follows:

Direct Examination by Mr. Ward:

Q. You are a sister-in-law of Mrs. Frances Smith? A. Yes, sir.

Q. Do you know Mrs. William Smith? A. Yes, sir.

Q. Do you remember any occasion that Mrs. William Smith and her husband ceased to live with Mrs. Roy Smith when Mrs. William Smith discussed Frances with you? A. Several times.

Q. Do you remember any occasion on the street? A. Yes, sir, at least two, or maybe three times.

Q. Do you remember whether or not on that occasion Mrs. William Smith said to you in words or effect—

Mr. Lane—I object to this leading question.

Mr. Ward—This is rebuttal.

The Court—I thought this was your defence.

Mr. Ward—I don't want to go into the defence yet.

The Court—I don't think you should reverse the order of the case, unless it is by consent; do you consent to this, Mr. Lane?

Mr. Lane—No, I shall not consent to it.

The Court—I suggest you follow the orderly course, and if this is for the defence, all right, but don't call it rebuttal.

Mr. Ward—I should have said—to rebut the evidence given by Mrs. William Smith, Senior.

Q. Tell us what conversation you had on the first occasion? A. She always seemed to be very bitter to Mrs. Smith; she said she would see they never ended their days together, if she had anything whatever to do it—Frances and Roy. She was very bitter because she said Frances was very ungrateful and did not appreciate what she had done for her, and had caused her to lose her home, and that she had them move to the Kelsey House.

Q. Do you recall any occasion when you met at Quackenbush's? A. This conversation was carried on in Quackenbush's store.

Q. Was there any other occasion? A. Yes, sir, she came to my home, and she remarked that they would never end their days together if it took her all of her days to make it come to that effect; that was all.

Cross-Examination by Mr. Lane:

Q. Do you remember an incident that was related to you about the key, related to you by Mrs. William Smith? A. The key seemed to be the whole key to the situation; I don't think she went into details about the key.

Q. Tell us what she said. A. She said she could not go back to Mrs. Smith's house, that the key had been taken from her, and she resented it very much.

Q. When was this conversation? A. It was since Mrs. Smith has been at the Kelsey House.

Q. Was it in the year 1920? A. Yes, sir.

Q. Was it in the winter time? A. There was one occasion she came to my house in the early spring; and when I saw her at Quackenbush's, I should say it must have been in the winter.

Q. And then there was a third conversation? A. The conversation in Quackenbush's all were about the same.

Q. How many conversations were there in all? A. Two, and one in my home would make three.

Q. Two conversations in Quackenbush's and one at your home? A. Yes, sir.

Q. Did you meet in Quackenbush's by accident? A. Yes, sir.

Q. Who opened the conversation bringing in the Smiths? A. Mrs. Smith.

Q. What was it that led her to open the conversation? A. She was very anxious to talk to me.

Q. What did she say first? A. I could not tell you what she said first, but it was not long before she had told me what I have stated.

Q. I want to know something else about the conversation than those few words. A. That is all

I got, and that she was very bitter towards Mrs. Smith.

Q. But what did she say first when the conversation opened? A. Well, something about "Have you seen Frances lately?" or something about that, and how things were going, and "Did you know I was not living up there?" I could not tell you exactly the conversation.

Q. What did she say about Frances other than what you have said? A. Nothing.

Q. What did you say? A. I listened to it.

Q. Did you say anything? A. No, sir.

Q. You did not say a word? A. No, sir, I listened.

Q. You had this conversation practically repeated at your house in the spring? A. Yes, sir.

Q. And you still listened to it and did not say anything? A. I listened.

Q. Did she tell you how it was that she was going to accomplish the separation of the Smiths? A. No, sir, she did not.

Q. Did you ask her? A. No, sir.

Q. Did you ask her why it was that she felt so bitter? A. No, sir.

Q. Did you interject yourself in the conversation upon either occasion at all? A. No, sir.

Q. You did not say a word? A. No, sir, I listened.

Q. You did not say a word? A. No, sir.

Q. Now, do you remember, after you opened the conversation so far as Mrs. Frances Smith was concerned, do you remember that you asked Mrs. William H. Smith if she had heard the latest scandal? A. No, sir, I did not.

Q. Was anything like that said? A. I never said it.

Q. Did she? A. I don't know.

Q. Was the word "scandal" used? A. I think that I recall that she did say something about there was a scandal.

Q. Then what did you say when she referred to the scandal? A. I said nothing.

Q. Don't you remember you also said to her, "Guess who Frances' latest affinity is?" A. I never said that.

Q. Did you say that? A. Not that I remember.

Q. Was the word "affinity" used in this conversation? A. No, sir, positively not.

Q. Do you remember that Thomas Kelley's name was mentioned during that conversation? A. No, sir.

Q. You know Thomas Kelley? A. I have heard of him but I don't know him.

Q. Do you remember you said in reply to something that Mrs. William H. Smith said, "Guess again, it is someone from the cradle?" A. No, sir, I never heard of that expression.

Q. That expression is new to you? A. Yes, sir.

Q. Was James Donnelley's name mentioned in this conversation? A. No, sir.

Q. Was his name mentioned in any conversation you had with Mrs. William H. Smith? A. No, sir.

Q. You never heard of his name, so far as Mrs. William H. Smith was concerned? A. No, sir.

Q. Did you tell Mrs. William H. Smith—by the way, were you at Asbury Park when Mrs. Frances Smith was staying at the Lakeland Hotel? A. Yes, sir.

Q. When was that? A. She stayed there two different years; she did not stay at that hotel two years—in 1921 she was at the Lakeland.

Q. Do you remember this conversation that you

had with Mrs. Smith talking about visiting Mrs. Frances Smith at the Lakeland Hotel? A. I remember there was something said about Asbury; I think Mrs. Smith asked me something about Asbury; and I said, as far as I saw, she carried herself as a lady, as far as I could see.

Q. As far as you could see? A. That is one reply I made to her question.

Q. Let us have that conversation, so far as Asbury is concerned; what provoked that remark on your part? A. Because she inferred that she did not; she said she had a pretty gay time when she was at the beach.

Q. Was Donnelley's name mentioned? A. No, sir.

Q. Did you talk with him? A. No, sir.

Q. All you said was what? A. That it was not so.

Q. What? A. That she had a pretty gay time.

Q. That is as far as you went into particulars? A. Yes, sir.

Q. Don't you remember that you told her upon that occasion, that you had caught Mrs. Frances Smith and James Donnelley together at the hotel in a pretty mess? A. I never did.

Q. Was the word "pretty mess" ever used? A. Never.

Q. All that was said about the Asbury Park episode is what you have told us? A. Yes, sir, exactly.

Q. How long did this conversation take place? A. I should judge, I could not just say, maybe it was in ten minutes, may be it was five minutes; I could not say.

Q. How did the second conversation, the con-

versation at your home come to take place? A. Just the same as all the rest did.

Q. At whose suggestion? A. At her suggestion.

Q. She came to see you? A. Yes, sir.

Q. To talk over Mr. and Mrs. Roy Smith? A. So it seemed; that was the burden of her talk.

Q. Did you tell Mrs. Frances Smith about it? A. Well, I did, some things, yes, sir.

Q. When? A. I told her she was talking maliciously about her.

Q. What did you tell her? A. I said she was talking maliciously; I did not tell her anything else.

Q. Didn't she ask you what Mrs. Smith had said? A. She said she knew exactly how Mrs. Smith felt.

Q. She did not ask what Mrs. Smith had said? A. No, sir.

Q. And you did not tell her? A. I did not.

Q. Now, the second conversation that took place at your house, do you remember that you again told Mrs. Smith about having caught Donnelley and Mrs. Frances Smith at the hotel in Asbury Park? A. She never mentioned that to me.

Q. Was Asbury Park mentioned at this second conversation? A. No, sir.

Q. What was mentioned? A. That she was bitter towards Frances about the key and how she would separate them if it was the last thing she did.

Q. Was Mr. Fairhurst's name mentioned on that occasion? A. No, sir.

Q. Was Mrs. Edna Blue's name mentioned? A. No, sir.

Q. Did you tell her that Edna Blue had told you of an occurrence which took place at the Blues'

house in which Mr. Donnelley and Mrs. Frances Smith were involved? A. Certainly not.

Q. You never referred to Mr. Donnelley's name or Mr. Blue's at that time? A. I did not.

Q. Do you remember saying to Mrs. Smith at that time, that Mrs. Blue had told you that she was afraid that Roy Smith was suspicious? A. No, sir.

Q. And that she had told her sister that, and that her sister had said that she did not think he was? A. That was never mentioned.

Q. Did Mrs. Frances Smith ever ask you whether you had heard any scandal about her? A. No, sir.

Q. Did you upon this occasion tell Mrs. William H. Smith that Mrs. Frances Smith had often asked you whether you had heard any scandal about her? A. No, sir, I never mentioned that.

Q. What do you say? A. No.

Q. Did you also say to Mrs. William H. Smith in that second conversation, that Frances had caused Roy's car to be called "The scandal car"? A. No, sir, I never heard that phrase used.

Q. You never had heard of that phrase? A. No, sir.

Q. And the conversation that you had both upon the first and the second occasions, consisting simply of Mrs. William H. Smith telling you how bitter she felt towards Frances Smith and your keeping quiet? A. That is it.

MRS. MARIE BARLOW, sworn in behalf of the defendant, testified as follows:

Direct Examination by Mr. Ward:

Q. You are the mother of Frances Smith? A. Yes, sir.

Q. And you reside with your husband where? A. 87 Jaspar Street, this city.

Q. Do you recall an occasion at the Smith home when you had a conversation with Mrs. Smith about Mrs. Frances Smith? A. Yes, sir, I do.

Q. Where was it? A. In the kitchen.

Q. Just tell his Honor what occurred. A. Yes, sir, I will—

Q. Proceed. A. I was in the kitchen; it was in the evening about eight o'clock; Mrs. Smith wanted to go to the store to get something for the baby, little Frances, and she said, "Mamma, do you mind helping Mrs. Smith with the dishes?" and so I went to do so, and we got almost through, until Mrs. Smith was washing the pans, and she turned to me and said, "Mrs. Barlow, I am sick and tired of being a scullery maid for Frances; I am not used to it"; she said, "I think it is a shame that I should drudge here, and your daughter, I should pronounce her a street walker." I said, "You have never become a mother, and you have not got that real motherly feeling"; I said, "If you think it is very nice for me to stand here and hear you call my daughter a 'street walker';" I said, "If you think that, it would be better to speak to Mr. Smith about it"; she said, "No, Mrs. Barlow, pardon me; I did not mean it that way"; then I said, "What do you mean?" she said, "I mean that your daughter does too much gadding on the street, when she ought to be home doing her housework."

Q. Can you fix the time when that was? Do you remember when your daughter was in Oxford in 1918? A. Yes, sir.

Q. Was it since that that you had this conversation? A. Yes, sir.

Cross-Examination by Mr. Lane:

Q. How long did Mrs. Smith stay there that day? A. Mrs. William Smith was living at Mrs. Roy Smith's.

Q. What were you doing there? A. I was visiting there that afternoon.

Q. Were you and Mrs. William H. Smith alone? A. In the kitchen—during that conversation.

Q. Did that end the conversation? A. Yes, sir; what I have just said now ended the conversation; then my daughter came in and we stopped talking about it.

Q. Have you spoken to Mrs. Smith since? A. No, sir, I have not.

Q. Did you speak to Mrs. Frances Smith about what Mrs. William H. Smith had told you? A. No, sir.

Q. Did you ask Mrs. Wm. H. Smith upon what she based this statement about your daughter? A. Yes, sir, I asked her what she meant by saying that about my daughter.

Q. And that is all? A. Yes, sir, there was not very much said.

Q. It was a horrible charge for her to make? A. I should say it was.

Q. To a mother? A. Yes, sir.

Q. But you did nothing except what you have recited here on the witness stand? A. Yes, sir, I just called her attention to it.

ALFRED BARLOW, sworn in behalf of the defendant, testified as follows:

Direct Examination by Mr. Ward:

Q. You are a brother of Mrs. Frances Smith? A. Yes, sir.

Q. And the husband of the witness who was on the witness stand? A. Yes, sir.

Q. How long have you been married? A. About nine years.

Q. Do you know Mr. James Donnelley? A. Yes, sir.

Q. How long have you known him? A. Oh, ever since we were boys.

Q. Have you ever associated with him? A. Oh, yes.

Q. Has he ever been at your home? A. Yes, sir.

Q. Has he ever been at your mother's and father's home? A. Yes, sir.

Q. Have you ever been with him at the Smith home? A. Yes, sir.

Q. How often? A. Oh, several times.

Q. Do you recall any time when you were at the Smith home (question withdrawn). The Smith home was on the corner of 30th Street and 17th Avenue? A. Yes, sir.

Q. Was there an entrance on 30th Street? A. Yes, sir.

Q. Do you know whether or not that entrance was only used by members of the family? A. It was.

Q. Coming in from Park Avenue, that entrance is the nearest one? A. Yes, sir.

Q. In order to enter the house if you did use that entrance, where would you go? A. Around to the front part.

Q. Do you recall any occasion when you were in your sister's home when Mr. Donnelley was waiting outside? A. Yes, sir.

Q. About a year ago? A. Yes, sir, I think I do.

Q. Where were you? A. I was in the house.

Q. What happened at that time? A. It was in October.

Q. What happened? A. Jimmy and I had been down to Frances', that is all.

Q. Where did you come from? A. From our house; Jimmy and I were going to the movies, and Mrs. Barlow wanted to borrow Frances' electric curling iron; my wife wanted Mrs. Smith's curling iron, Frances' curling iron, and she asked me to run over and get it; and we went down 30th street, and there was a light in the house, and I saw the door was slightly open in the back, and I ran up the back porch and left Jimmy outside waiting, and I asked her if she would let me have the curling iron, and she said "Certainly"; and I told her we were going to the movies, and she said, "Call him in"; and I called Donnelley in; so she went upstairs and got the curling iron and brought it down and handed it to me.

Q. That was about 8:30 at night? A. It was before the first show, yes, sir.

Q. Was there ever any occasion when you went with your sister to the garage? A. Yes, sir.

Q. The garage on 20th Avenue—the Thetge's garage? A. Yes, sir.

Q. Do you remember any occasion when you waited on the corner? A. I think I went down to the garage with her; yes, I do recall that, and she went ahead to get the car, and I stopped on 23rd and Market Street and bought some grapes; and coming out I met a friend of mine and talked to him, and I had to meet her down there, and we got talking, and when I started down 24th street I met her half-way, coming up, and I went over to Mrs. Blue's.

Q. I note that you have a small moustache? A. Yes, sir.

Q. And that you also wear your hair pretty closely cut? A. Generally.

Cross-Examination by Mr. Lane:

Q. You never were down at the New York and Susquehanna Railroad tracks with your sister? A. No, sir, I was never there.

Q. How many times did you stand out waiting for Mrs. Frances Smith, outside of the garage? A. I never waited outside of the garage; I never waited only the one time, when I was taking a walk down 24th Street, and I went in a store and met a man and talked to him, and then walked down towards the garage.

Q. How often have you been with Mr. Donnelley at Smith's house? A. I could not exactly say—two or three other times, maybe.

Q. Whom did you go to see there? A. Just went over to see Frank, or call on her, or I had to get something for Mrs. Barlow; I often went to Mrs. Smith's house.

Q. You said you went to Mrs. Smith's house with Mr. Donnelley, and you conveyed the impression to me that he went there with you? A. Yes, sir.

Q. A social call? A. No, sir, we never had social calls there; I might have been there two or three times, maybe four times—

Q. Did you ever see Mr. Smith? A. He was there once, as I recall; I remember seeing Mr. Smith there.

Q. Do you recall seeing Mr. Smith there when Mr. Donnelley was there, more than once? A. No, sir.

Q. Then the other occasions you called there, what were they? A. I went to get something for my wife.

Q. You never took James Donnelley to call on Mr. Smith or on Mrs. Smith? A. No, sir.

Q. If you went there at all it was merely to stop? A. We might stay and talk.

Q. Do you remember going there with Mr. Donnelley and talking there for an hour at a time? A. Yes, sir, we have sat around and talked.

Q. How many times did you do that? A. Two or three times; I don't know if we stayed an hour every time; we generally went in the front.

Q. When was the last time you went to Mrs. Smith's house with Mr. Donnelley and called at the front door? A. I cannot recall; I think that must have been in the spring of last year, somewhere about there, or the winter before that—

Q. Last year? A. The spring of 1921 or the fall or winter of 1920.

Q. When was it you went for this curling iron? A. That was in September or October of last year, after we came home from the beach, last year.

Q. How do you place that date? A. Being home from the beach; I remember we came home in September, and it was just before Roy and Frances had had their trouble, in September.

Q. And how long were you in the house with Mr. Donnelley? A. Maybe ten minutes.

Q. Was there any conversation between Mrs. Frances Smith and Donnelley with respect to their being out in an automobile, or with respect to their ever having been out in an automobile together? A. No, sir.

Q. Do you know anything about that? A. Only going up and down town she would pick us up.

Q. Did your sister or Mr. Donnelley, in the conversation, say anything about being at the New York and Susquehanna Railroad tracks together? A. No, sir.

Q. How is it that you and Donnelley did not both of you go right up to the door in the first instance? A. The day I went up to get the irons?

Q. You had gone to the house before that? A. I said to him, "Wait outside."

Q. That time you went there, you left Donnelley on the outside? A. Yes, sir.

Q. And your sister suggested that Donnelley be brought in? A. Yes, sir, she said she had to go upstairs and get the iron, and that he should be brought in.

Q. Your sister suggested that you bring him in to wait the requisite length of time for her to go upstairs and come down with a curling iron? A. She said, "Why don't you call him in?" and I did so.

Q. When he got in, how long did you stay? A. About ten or fifteen minutes.

Q. Talking about what? A. Different things.

Q. Do you remember any part of the conversation? A. No, sir.

Q. Or what is was about? A. No, sir, just saying what kind of time we had down at the beach and about going to the movies.

MRS. EDNA BLUE, being duly sworn in behalf of the defendant, testified as follows:

Direct Examination by Mr. Ward:

Q. You are a sister of Frances Smith? A. Yes, sir.

Q. Are you married? A. Yes, sir.

Q. You live where? A. 25 Pennington Street, Paterson, N. J.

Q. How long have you been married? A. Five years.

Q. Do you remember when your sister was married? A. Yes, sir.

Q. Prior to that time, did you know Ted Fairhurst? A. Yes, sir.

Q. Do you know whether or not, prior to her marriage, Ted Fairhurst had ever visited your mother's home? A. Oh, yes, on several occasions.

Q. More than once? A. Yes, sir, several times.

Q. Did you know James Donnelley? A. No, sir, not to know him intimately, just friendly.

Q. Did you know whether or not he ever visited your father's home? A. I think he came there several times to see my brother, and after he was married he brought him there several times.

Q. And has he ever visited your home with your brother? A. Yes, sir, several times.

Q. Were you ever present when he visited the Smith home? A. No, sir, I don't believe I was.

Q. You, of course, knew Mrs. Roy Smith? A. Yes, sir.

Q. How old were you when your sister was married? A. 19 or 21, I really don't know; I am 26 now; I know I was just a youngster.

Q. Was Roy Smith ever obnoxiously attentive to you?

Mr. Lane—Objected to, on the ground that it calls for a conclusion, the use of the word "obnoxiously".

The Court—The objection will be sustained.

Q. Mrs. Blue, what were the actions of Mr. Roy Smith towards you after your marriage? A. Very intimate; too much so.

Q. What would he do or say? A. He would continually make love to me; I could not be alone with him five minutes; I had to avoid meeting him at my house when Mr. Blue was not at home when he came there; he insisted upon making love to me.

Q. In what way did he make love to you? A. He insisted on holding me and kissing me.

Q. Holding you where? A. He never held me on his lap in my home—

Q. Did he do anything else to you? A. Besides kissing and embracing, no, sir.

Q. Was he ever in your bedroom? A. Yes, sir.

Q. Just relate the circumstances, if you will. A. It was on an occasion when Borden's milkmen were on strike; I had to have my milk for my babay, and I could not get over there and leave my kiddie alone, and I called up Mrs. Smith and asked her if she would take the car and run over and get my milk; and she said Roy was out in the car and would be back in a minute, and if he came back she would have him go over and get the milk; and so he went over and got it, and Mr. Blue had left by the back door and it was unlocked; and I had gone back to bed and must have dozed off again when I heard somebody in my house, and I was just about to get up when Mr. Smith entered my bedroom. He sat on the edge of the bed beside me, and he insisted on making love to me, just kissing me and embracing me, and holding me; and I said, "Roy, you cannot do this; Andy would be very provoked about it, and I am ashamed of you in acting this way"; and he said, "If you will put your arms around me and kiss me, I will let you go"; and so I did so.

Q. Did you ever on any other occasions object to his actions towards you? A. Yes, sir; he used to take me out to the movies quite often, and sometimes we would go for a ride after, but there were occasions when he would not bring me home unless I would allow him to kiss me and embrace me. One time especially—I don't know just where it was, but it was way out some place by a railroad track, and he insisted on sitting there until I sat on his lap and let him embrace me, and finally we got home at 12:15.

By the Court:

Q. How many times did you go riding with him? A. Quite often.

Q. Did he always kiss you? A. Not always.

Q. When did he start to do it? A. He has always been very affectionate with me.

Q. Ever since you have known him? A. I was only a child then. It was only after I was married that he was affectionate with me.

Further Direct:

Q. Finally, what did you do to stop it? A. I told my sister on two occasions, and she told me the next day that she had remonstrated with him; and it was after she had told him that he came down and came to my room, and I remonstrated with him then, and said I had spoken to my sister about it; and he just simply laughed the matter off.

By the Court:

Q. Did you go to the movies with him after he had embraced you and kissed you? A. That was

the last time that he did that; I refused to go to the movies with him then.

Q. You never went to the movies after he embraced and kissed you? A. After the railroad track affair, I never went with him again to the movies. He called me several times, and I refused to go.

Further Direct:

Q. That is, you mean, alone with him? A. Yes, sir.

Q. Mrs. Blue, do you remember any occasion when you have been in the car when Mrs. Frances Smith was coming down town; have you ever been in the car when she has been driving it down town? A. Very often.

Q. Do you know whether or not she ever stopped and took acquaintances down town? A. Yes, sir, very often.

Q. Were you ever in the car when she took Mr. Donnelley down town? A. Yes, sir.

Q. Do you remember any occasion in December, 1920, when you were coming down town with your sister and encountered Mr. Donnelley, in December 1920? A. Yes, sir, I think I do.

Q. Just relate, if you will, what was said at that time by Mr. Donnelley and by your sister. I will ask you this: do you recall any occasion when there was a discussion between your sister and Mr. Donnelley about the car? A. Yes, sir; it was on the occasion that my sister called for me at the house, and we went through Pennington Street and down Park Avenue. About at Graham Avenue, we picked Mr. Donnelley up.

Q. Just relate what occurred? A. As far as

I can remember, we drove Mr. Donnelley down town, and he said he had a date for that afternoon, and he would like to have a car to go over on this date with; and Mrs. Smith said, "You can take my car, if you wish to, if you will not be very long"; and he said he had to go to some place, I don't know just where it was.

Q. What else was said? A. But he would not take the car unless she would let him pay for the gas and oil that he used, about five dollars; and she said, "No, I won't do that"; and I said, "That would be fair"; and then she agreed to do that. So, Mr. Donnelley took the car, and he was to bring it back and leave it at the Y. W. C. A.

Q. Was there any particular time that he was to leave it? A. About three o'clock; we said we would like to have it then.

Q. Did you leave him them? A. Yes, sir, we dropped him off down town.

Q. Did you see the car again that day? A. Yes, sir, surely; we went back and got it at three; we had to leave the car—we told Mr. Donnelley we would leave the car at the Y. W. C. A. for him to get, and that is how he got the car, and he was to bring it back there when he was through.

Q. Did your sister ever come to your home and stay over night? A. Yes, sir.

Q. On what occasions? A. Usually when she came to take care of the baby for me.

Q. What was the occasion for her to come; what were the occasions for her to come to your home and stay over night? A. To keep the baby for me when I went out.

Q. Now, reverting to the incident in December; when you and your sister left Mr. Donnelley at the

Y. W. C. A., do you know what time it was? A. I think it was about 12:45.

Q. Do you know whether or not Mr. Donnelley at that time rode away in the car? A. I think he did.

Q. From that time until the time that you returned to the car at 3 o'clock, or thereabouts, were you or not, constantly and continuously with your sister? A. Oh, yes.

Q. And were either you or she at Fair Lawn that afternoon? A. Certainly not.

Q. Do you remember the day of the week? A. Yes, sir, I think it was Saturday—I am quite sure of it—Saturday afternoon.

Q. Mrs. Blue, do you recall any other occasion when Mr. Donnelley had that car? A. I know he had it several times.

Q. Do you recall any occasion when your sister was at your home and received a telephone message from Mr. Donnelley? A. Yes, sir.

Q. Do you recall an incident in the month of July, 1921, when your sister was at your home—that was the July before the separation; do you recall any incident when the car had been in a collision or in an accident? A. Yes, sir.

Q. Do you recall when that was? A. Yes, sir.

Q. When was it? A. In July.

Q. What year? A. 1921, I think.

Q. Where was your sister at that time? A. She was at my house.

Q. And did anything occur? A. She received this telephone call from Mr. Donnelley.

Q. Where did she go then? A. She left to go after the car.

Q. How long had your sister been there at your

home that afternoon? A. Why, she came before lunch I know, I think she did.

Q. And when was it that she left for the car? How do you know she went for the car? A. Mr. Donnelley called her and said, that he had had an accident with the car, and I don't know what his question was, but I heard her say, "No, I will come and get the car." So she left immediately after that; that was between 1 and 1:15 I think.

Mr. Ward—I think that is all.

The Court—If there is anything you have overlooked, you can recall her.

Cross-Examination by Mr. Lane:

Q. What date was that? A. July, 1921; I don't know exactly the date.

Q. What time had your sister gotten there to you, about? A. It was before luncheon; I could not tell you just when.

Q. Did she say anything about where her car was when she came? A. Yes, sir, she said she had loaned it to Mr. Donnelley.

Q. Did she tell you where Mr. Donnelley was bound for? A. I think she said Westwood, but I won't be sure.

Q. Did she say how it came that she had loaned Mr. Donnelley the car on that day? A. I think the arrangement had been made between my brother and Mr. Donnelley; I am not sure.

Q. Did your sister say, or do you know anything about how she came to loan the car to Mr. Donnelley on that day? A. Yes, sir, I think that is the arrangement.

Q. What did she say? A. That she had loaned the car to Mr. Donnelley.

Q. Did she say how she had come to loan the car on that day to Mr. Donnelley? A. Through my brother; she said my brother had called her up, and asked her if Mr. Donnelley could have the car, and she had loaned it to him.

Q. When did she say that? A. When she was at my house: I said, "Where is the car?" I said, "Is it laid up?" and she said, "No, I loaned it to Mr. Donnelley."

Q. And that is the way it came to you, that she told you she had loaned it to Mr. Donnelley? A. Yes, sir.

Q. Then she went on and told you how it came about that she had loaned it to Mr. Donnelley? A. Yes, sir.

Q. How long after that did this telephone message come in? A. I don't know; she had been there some time.

Q. About how long? A. Oh, maybe an hour.

Q. And did you overhear the telephone conversation? A. I overheard her; I heard her say, "No, I will come and get the car."

Q. Is that all you heard? A. Yes, sir, I think so.

Q. And then what did she say to you? A. She said, "I am going to get the car; Jimmie has had an accident with it"; and I said "All right."

Q. Did she say what Donnelley had said with respect to what the accident was? A. I don't believe they discussed that, because that is all I heard.

Q. How long were they at the telephone? A. Just a few minutes.

Q. You were there listening to the conversation? A. I listened to her conversation; I don't know what he said.

Q. How was your sister going to get the car? A. On the trolley.

Q. Did she say where the car was? A. No, sir, I don't believe I heard her say that; I was busy.

Q. Didn't you ask her where it was that this car was disabled? A. No, sir, because she went out immediately.

Q. Did you ask her whether Donnelley had said how seriously the car was injured? A. No, sir.

Q. Did she suggest there was a wheel off, or that the car could operate under its own power? A. No, sir.

Q. Did she tell you where the car was? A. No, sir.

Q. So, that when she left your house to go to this car, on a trolley car, you did not know how badly the car was injured or where the car was? A. No, sir.

Q. Or how long a trolley ride it was? A. No, sir.

Q. Or how many trolley cars she had to take to get to the place to which she was going? A. No, sir.

Q. Did you suggest that Mr. Donnelley should bring the car home, that he, having taken the car and been in an accident, might bring the car home? A. No, sir.

Q. Did Mrs. Smith give any reason why she should go to get a smashed up car that she had loaned to Donnelley? A. No, sir.

Q. And you expressed no surprise over her starting out to bring back this disabled car? A. No, sir, I did not.

Q. Why not? A. I did not discuss it with her; all she said was, that she was going over to get the trolley. I was busy. She was leaving immediately, and I was busy, and we did not discuss it.

Q. How long after the telephone conversation was it that she left? A. Immediately; just as soon as she could put her hat on she went.

Q. She did not attempt to communicate with Mr. Smith? A. No, sir.

Q. Or to tell the house that she had gone off on this trip to get the disabled car? A. No, sir.

Q. And she left without giving you any idea of how long it might take her to get to the place to which she was going? A. No, sir.

Q. When did you next see your sister? A. I don't remember.

Q. How long after this accident? A. I don't remember.

Q. Did you talk to her when you did next see her, about the accident? A. I don't know that I did, and I don't know that I did not.

Q. It was but a few days afterwards that you saw her, was it? A. It was probably the next day.

Q. You don't remember whether you talked to her about this accident? A. No, sir.

Q. You did not ask her how she had found the car when she had got to the place to which she had to go to get the car? A. I don't remember discussing it at all with my sister.

Q. You did not ask her what condition she found the car in? A. No, sir, I don't believe I did.

Q. You did not ask her how she came home? A. No, sir, I don't think I did.

Q. You did not talk to her about the events of the day before, or several days before, at all? A. I did not; I don't believe I did.

Q. Didn't you have any curiosity to know how your sister had found this car which she loaned to Donnelley, and which had been in an accident, and

which she had gone to get and bring home? A. I probably had the curiosity and forgot all about it.

Q. It was an unusual thing? A. Accidents are not unusual, no.

Q. Well, it was an unusual happening, wasn't it, to have your sister loan a car that way and go out in a hurry to get the disabled car? A. It was not unusual.

Q. Did it happen before? A. She had agreed to loan Mr. Donnelley the car.

Q. I am discussing the going of your sister to the rescue of the disabled car, or the car which had been in an accident; that was unusual, wasn't it? A. No, sir.

Q. Had it ever happened before? A. Not an accident, no, sir.

Q. How soon was it that you next saw the car? A. I don't remember.

Q. When you did next see it, Mrs. Frances Smith was driving it, wasn't she? A. She may have been, and it may have been Mr. Smith.

Q. But at any rate, when you did see the car you did not speak to whoever was driving the car, about the accident? A. No, sir, I don't believe I did.

Q. Nor did you speak to Mrs. Smith about it? A. I don't believe I did.

Q. And you never spoke to Mr. Smith about it, did you? A. I don't think I did.

Q. Don't you know you did not? A. I don't know that I did not.

Q. You think it may be possible that you spoke to Mr. Roy U. Smith about this accident to his car? A. I don't remember.

Q. Now, did Mrs. Smith, before she left the house, telephone anybody? A. I could not say.

Q. Well, but you were right there, and you heard the telephone from Mr. Donnelley come; how do you know it was from Mr. Donnelley? A. Because she said it was.

Q. You were right there and you heard the telephone message come in from Donnelley, and you were there until your sister left to go and get the car. Now, can you tell me, from the time the telephone message came in to the time she left to get the car, if she telephoned to anyone else? A. I don't know.

Q. She may have, as far as you know? A. Yes, sir.

Q. Do you know whether she telephoned to Mr. Fairhurst from your house? A. I don't know.

Q. Did she ever tell you she had met Fairhurst on this day? A. I don't remember.

Q. You don't know whether she did? A. She may have.

Q. Now, can you tell me whether you can remember now whether she ever told you how she got home? A. I don't believe I discussed it at all with her.

Q. What time of the day was it, to refresh my recollection, that this telephone message came in? A. It was about one o'clock, I think.

Q. On a Saturday afternoon? A. Yes, sir; I would not be sure about the time.

Q. How long after the accident did you see Mr. Donnelley? A. I don't remember.

Q. Did he call at your house quite often? A. Not very often, but he has called there.

Q. How often has he called at your house? A. Well, maybe three or four times.

Q. During the entire course of your married life? A. Yes, sir.

Q. So that by no means would you say you were intimate with him? A. No, sir, he was a friend of the family's.

Q. Do you remember how soon after July you saw Donnelley? A. No, sir.

Q. You saw him in December, didn't you? A. December of what year—that same year?

Q. Yes. A. I don't remember.

Q. Oh, but did you see him in December of that year? A. Where?

Q. Never mind where; didn't you see him in December of that year? A. I don't remember.

Q. Wasn't it in December of that year that he borrowed the car again, or was it December of the year before? A. I don't remember

Q. When was it that he borrowed the car again? A. I don't think I remember.

Q. Was it before that he borrowed the car—another time—or was it after that that he borrowed the car another time? A. I don't know; he had borrowed it in July.

Q. That is the time of the accident? A. Yes, sir.

Q. Did he ever borrow it, to your knowledge, at any other time? A. Yes, sir, but I don't remember the date.

Q. Have you any idea as to whether it was before this time or after this time? A. I think it was after.

Q. How long after? A. Some months after.

Q. When he borrowed it the second time, did anyone say, "Don't get it in an accident like you did before?" A. Not to my knowledge.

Q. It would be a natural thing to say? A. Yes, it probably was.

Q. But nothing like that was said? A. No, sir.

Q. And no reference was made to the fact that he had borrowed it before? A. I don't believe so.

Q. Now, when he borrowed it the other time, where did you meet him? A. We picked him up.

Q. Where did you pick him up? A. On Park Avenue.

Q. Where? A. About at Graham Street.

Q. What was it—just an accident? A. Yes, sir.

Q. And then what was said? A. Well, the usual conversation.

Q. What was that usual conversation that you had with Donnelley when you picked him up? A. Well, I don't remember the occasion that we are talking about now; if I did, I could probably tell you the conversation.

Q. I am talking about an occasion at which Donnelley borrowed the car; the other occasion, I mean; tell us about it. A. We simply picked Mr. Donnelley up, and he was going out and wanted the car.

Q. Tell us all the conversation? A. I don't know whether Mrs. Smith or myself said, "Let him take this car."

Q. Why didn't you remember this conversation before when I asked you? A. I did not know what occasion you were talking about.

Mr. Ward—The Y. W. C. A. occasion.

Q. Now, tell us just what occurred on that occasion? A. Mrs. Smith and I picked Mr. Donnelley up and left the car at the Y. W. C. A., and asked Mr. Donnelley to return it by three o'clock.

Q. I want the whole conversation from the time Mr. Donnelley got in the car until the time you go out? A. I don't know whether she suggested it, or I suggested it, letting Mr. Donnelley having the car. He wanted a car to go over to keep this date with this person; I don't know who it was.

Q. What did he say? A. He said that he had a date for that afternoon and would like to have a car, and either my sister or myself suggested his taking this car, and he said he would under one consideration, that she would accept about five dollars to pay for the gas and oil; and I said I thought that was very fair, and it was perfectly all right for her to do.

Q. Did he tell you where he had the date? A. No, sir, I don't think he did.

Q. Did he tell you with whom the date was? A. No, sir, I don't think he did; I am quite sure he did not; it was a girl, that was all.

Q. Did he tell you what he meant by the term "a date"? A. I would not be likely to ask.

Q. Why not? A. Naturally, a date is a date.

Q. What is a date? A. An appointment or an engagement.

Q. Is that all? A. That is all it means to me.

Q. Mrs. Frances Smith evinced no curiosity as to with whom the date was or where it was? A. No, sir, not that I remember.

Q. What time was that? A. That was after luncheon.

Q. How long after luncheon? A. Between 12:30 and 1 o'clock.

Q. And where had you been before? A. At home.

Q. Just came out? A. Just came from our house, yes, sir.

Q. Where were you going to? A. Down town to shop.

Q. Did Mrs. Smith call for you? A. Mrs. Smith called for me.

Q. When did you get back to the Y. W. C. A.? A. I think it was about 3 or 3:15, something like that.

Q. Was the car there? A. Yes, sir.

Q. Was Mr. Donnelley there? A. No, sir.

Q. The car was there alone? A. Yes, sir.

Q. Did you see Mr. Donnelley after that? A. No, sir.

Q. Did you ever talk to him about the car or about whether he had a good time or not? A. No, sir; I did not know he was going out for a good time.

Q. You knew he was going to keep a date? A. Yes, sir.

Q. Did you ever ask him, or did you ever talk about that occurrence with him? A. No, sir, I don't think I did.

Q. Or with your sister? A. No, sir.

Q. Did you see him after that? A. I probably did, but not that day.

Q. How soon after did you see him? A. I don't know.

Q. Then, when you did see him, did you refer to the difference in the condition of the car, as to the way he brought it back then, and the way it was brought back before?

Mr. Ward—Objected to on the ground that there is no evidence that on that occasion there was a change in the car; it is assuming a fact that is not in evidence.

Mr. Lane—The question is, whether she said anything to Mr. Donnelley with respect to the difference between the condition in which he returned the car on this occasion and the condition in which he returned it on the other occasion.

The Court—There is no evidence that it was returned in bad condition prior to this time. However, you may note an objection. I will permit the witness to answer.

By the Court:

Q. Did you say anything to him about the difference? A. I did not.

Further Cross:

Q. Now, Mrs. Blue, was this the first time or was this the second time that the car had been borrowed, that he left it at the Y. W. C. A.? A. That was the first time.

Q. This was the only time that he left it at the Y. W. C. A.? A. Yes, sir.

Q. And was that the first time he had borrowed the car, or was it the second time he had borrowed the car; in other words was that before the time that the accident happened? A. That was before.

Q. Why did you say on your cross-examination a few minutes ago, that it was after? A. That must have been an error, if I said that.

Q. The time that he borrowed the car and left

it at the Y. W. C. A., was the first time? A. Yes, sir.

Q. Do you know of any other occasion upon which he borrowed the car? A. I don't remember.

Q. Did Mr. Donnelley ever speak to you about having seen Mr. Fairhurst on that day? A. No, sir.

Q. Did Mrs. Smith ever speak to you about having a conversation with Mr. Fairhurst as to what happened on that day? A. No, sir.

Q. Did she ever tell you that on the succeeding Monday Fairhurst had sent for her and she had gone down and had a conversation with him with respect to where the car was on the Saturday preceding? A. I don't believe she did.

Q. Do you know? A. I don't know.

Q. Wouldn't you remember if your sister had come to you and said that Fairhurst had talked to her on the Monday succeeding this Saturday with respect to that car? A. I probably would.

Q. Can you say now whether she did talk to you or whether she did not? A. No, sir, I don't remember her discussing it with me.

Q. Did you know that Fairhurst had talked to her on the succeeding Monday, or any other time, about this car? A. No, sir.

Q. Then your sister never talked to you about it? A. No, sir.

Q. Up to what time? A. She never discussed it with me.

Q. She has discussed it with you since this case opened? A. Naturally, yes, sir.

Q. When was it the first time that she discussed it? A. I don't remember.

Q. Did you ever see your sister and Donnelley

together after the time that the car suffered the accident? A. I don't remember.

Q. Have you any recollection on the subject at all? A. I may have, but I don't remember.

Q. Did you see Donnelley and your sister together at any time after the car was loaned in December of 1920? A. Yes, sir.

Q. And how often? A. I don't know.

Q. More than once? A. Probably; I know we picked him up several times and took him down town.

Q. But nothing was said in your presence when they were together, about anything that happened to this car with respect to Fairhurst at the time the car was borrowed in December? A. No, sir.

Q. This incident in December, 1920, made no impression on your mind, did it, about the borrowing of the car, and the Y. W. C. A.? A. Except that that was the first time she had loaned it to him.

Q. How do you know that? A. To my knowledge, I mean.

Q. Did she say it was the first time she had loaned it to him? A. No, sir, she did not.

Q. But you assumed it was? A. Yes, sir.

Q. What did you assume it from? A. Well, the conversation, when we picked him up, did not seem as if he had been borrowing it.

Q. When was it that you were asked to refresh your recollection as to what occurred in December, 1920? A. I was not asked.

Q. You have refreshed your recollection, haven't you? A. Yes, sir.

Q. And when did you first begin to think about events back there in December, 1920? A. Not until the case came up.

Q. When the case was started? A. When the case came up.

Q. For this trial? A. Yes, sir.

Q. How long ago? A. I don't remember.

Q. A week ago? A. I don't know.

Q. Two weeks ago? A. I don't know.

Q. Three weeks ago? A. I still don't know.

Q. Could it have been a month ago? A. It may have been a month ago, and it may have been only a week or so ago.

Q. It could not be six months ago? A. Hardly.

Q. And you talked this matter over with your sister? A. I did, yes, sir.

Q. Do you know of any other occasions than these two when your sister has loaned the car either to Donnelley or to anyone else? A. I think she has.

Q. Do you know of any other occasion? A. No, sir, I don't believe I do.

Q. Were you ever present when she loaned the car to Donnelley on any other occasion except thes two? A. I cannot remember.

Q. Cannot you remember that? A. No, sir.

Q. You remember distinctly the loan of the car in December, 1920; cannot you remember if there was any other occasion on which the car was loaned under the same or similar circumstances? A. I think I only remember the two occasions.

Q. Think a moment; if there are any others I would like to have them? A. I don't remember any other.

Q. And do you remember any other occasions when your sister has said that she had loaned the car to Donnelley? A. No, sir, I don't remember.

Q. Now, then, again—take your time, tell me if you can remember, any other occasion, or rather,

when your sister told you of any other occasion that she had loaned the car to Donnelley? A. I don't remember any occasion.

The Court—It is quite apparent that your cross-examination of this witness will take considerable time, and I think we will take a recess now, and we will continue on the 20th of December.

Third Day

(Title Omitted.)

MRS. EDNA BLUE resumes the witness stand for further cross-examination.

Cross-examination (continued) by Mr. Lane:

Q. Mrs. Blue, you testified at the last hearing, that your sister quite often, or your sister upon some occasions, came to your house to take care of the baby, your sister Frances? A. Yes, sir.

Q. Did she do that often? A. Yes, sir, quite often.

Q. About how often? A. Well, maybe once a month, perhaps not that often.

Q. Do you remember that she did it on the night of November 19? A. Yes, sir.

Q. And you were at a dance at Pompton, were you not? A. Yes, sir.

Q. And you left that dance about midnight? A. I think it was about then.

Q. With Mr. Shorter and Mr. Schofield and your husband? A. Yes, sir.

Q. Your husband had left the dance about 8:30 or 9 o'clock? A. No, sir, he did not.

Q. When had he left? A. I don't know just what time he had left.

Q. You knew that he had left? A. Yes, sir, during the course of the evening I missed him.

Q. What time was it when you missed him? A. It may have been about 10:45.

Q. And he did not tell you that he was going? A. No, sir.

Q. Had you looked all around for him and did not find him? A. Yes, sir.

Q. And he came in about midnight with Mr. Shorter and Mr. Schofield, or did they wait outside? A. He came in alone.

Q. And then took you out to the car? A. Yes, sir.

Q. What time did you reach Paterson? A. I could not say.

Q. About when? A. I really could not say; it was after the dance was over; I don't know what time it was when we got home.

Q. Don't you recollect that occasion with more certainty than that? A. I don't know how long it takes to run down from Pompton; the dance usually ended about 12 o'clock.

Q. You remember that occurrence very distinctly? A. Yes, sir.

Q. Then, cannot you remember what time it was when you reached Paterson? A. No, sir.

Q. Do you remember where you dropped Mr. Schofield and Mr. Shorter? A. I don't know exactly where we dropped Mr. Schofield, but we dropped Mr. Shorter at Market Street and Pennington.

Q. And then you and your husband went home? A. Yes, sir.

Q. And was Mrs. Smith still there? A. Yes, sir.

Q. You saw Mr. Smith the next morning, didn't you? A. No, sir, I did not; I don't believe I did.

Q. How soon after was it that you did see Mr. Smith? A. I think it was Sunday afternoon, about three or four o'clock.

Q. What? Repeat that. A. I think it was Sunday afternoon about three or four o'clock.

Q. Where? A. At his home.

Q. Who was there? A. I think my mother and father and Mr. Blue, and my kiddie and myself.

Q. Who else? A. And Mr. Smith and Mrs. Smith and her children, I think.

Q. Where? A. At her home.

Q. What time? A. I think it was about three or four o'clock; I am not sure of the time.

Q. And at that time nothing was said as to what had occurred on the night of November 19th? A. No, sir.

Q. Why didn't you say something about it then? A. I just did not.

Q. It was on your mind, wasn't it? A. I don't think so, right then.

Q. Well, there had been a considerable discussion coming down from the dance at Pompton to Paterson, hadn't there? A. No, sir, not to my recollection.

Q. Don't you remember the talk that there was in that car coming out from Pompton to Paterson? A. I did not say that—I said I remembered the evening distinctly, but I did not say that I remembered the conversation.

Q. You say you cannot recollect whether there was any talk coming down on the car or not? A. I have not said that.

Q. Do you recollect whether there was any talk coming down on the car or not?

Mr. Ward—I object to this line of questioning; it was not in the presence of Mrs. Smith, and is not binding upon her to any extent; if it is offered under the guise of attacking the witness' credibility, it is simply a guise—

The Court—It seems to me to be perfectly proper cross-examination to ask the witness whether she remembers whether there was any conversation in the car that night coming down from Pompton; I will allow it; it attacks the credibility of the witness.

A. I do recollect.

Q. Was there? A. Between my husband and myself, yes, sir.

Q. Was there any conversation in which Mr. Shorter and Mr. Schofield participated? A. Not that I can remember.

Q. Whas was the subject matter of the conversation between your husband and yourself?

Mr. Ward—Objected to.

The Court—The objection will be overruled.

A. It was in reference to his having left the dance that evening.

Q. And the purposes?

Mr. Ward—I object.

The Court—Objection overruled.

A. I don't understand the question.

Q. Was the purpose that he left for the subject matter of the conversation? A. Yes, sir.

Q. And what had occurred while he was absent, was that the subject matter of the conversation? A. It was, yes, sir.

Mr. Ward—We make the same objection.
The Court—Objection overruled.

Q. After the Sunday afternoon, when was the next time you saw Mr. Smith? A. I think on Monday night, the following Monday night.

Q. Where? A. At my house.

Q. And what occurred on that occasion? A. We went to the movies, the four of us did, Mr. and Mrs. Smith, Mr. Blue and myself.

Q. And nothing was said with respect to the subject matter of November 19th on that occasion? A. There was something said.

Q. To whom? A. The four of us discussed it a little.

By the Court:

Q. Discussed what? A. We discussed Mr. Fairhurst in general.

Further Cross:

Q. What was said between you? A. We spoke about Mr. Fairhurst telling vile stories about Mrs. Smith, and said that we thought Mr. Smith ought to do something about it.

Q. Who said that? A. I think I said it.

Q. Just what did you say? A. Simply to that effect, that Mr. Fairhurst had been saying things that were not quite the proper thing for him to say,

stories that were absolute lies, and I thought Mr. Smith ought to get after him about it.

Q. Did you tell your sister what Mr. Fairhurst had said about her at that time? A. No, sir, I don't think we discussed what had been said.

Q. She did not ask what the vile things were he was saying about her? A. I think Mrs. Smith understood some of the things that were said.

Q. What was said; you opened the conversation by saying something to Mr. Smith, something about the vile stories that Fairhurst was circulating about Mrs. Smith; is that the way it happened? A. I don't know exactly how it happened.

Q. Is that the statement that you made, and what was the reply to that? A. He said he had not been aware that Mr. Fairhurst was saying anything—that he did not know that Mr. Fairhurst meant anything by these stories.

Q. What did you say to that? A. I said I thought he ought to look into it.

Q. Did he ask what the stories were? A. I think Mr. Smith knew about the stories.

Q. What makes you think he did? A. I think he and my sister had discussed it.

Q. How do you know? A. From the conversation.

Q. What was said? A. I don't remember exactly what was said.

Q. Have you any recollection as to anything more that took place at that conversation than that? A. No, sir, we did not discuss it more than a minute or two.

Q. You have said the stories were vile? A. Yes, sir, I said the stories were wild.

Q. Nobody asked during that conversation what the wild stories were? A. No, sir.

Q. You talked to your sister about what the wild stories were? A. No, sir.

Q. Had you talked with your sister about the occurrences of November 19? A. Yes, sir.

Q. That was one of the wild stories, wasn't it? A. Yes, sir, that was discussed.

Q. When? A. That evening.

Q. Of November 19? A. Well, yes.

Q. Where? A. At my house.

Q. Between whom? A. Between Mrs. Smith and Mr. Blue and myself.

Q. After you had returned from this dance at Pompton? A. I don't believe we discussed it that evening, on the 19th.

Q. When did you discuss it? A. On the Monday night following.

Q. When you were all at this party? A. Before Mr. Smith joined the party.

Q. And you had not discussed it until that time with your sister? A. No, sir.

Q. What did you say to your sister on the Monday night, before Mr. Smith came? A. I don't remember what was said; she simply said she told Mr. Smith about the night of November 19.

Q. What was said? She did not just break out and say, "I told Mr. Smith what happened on the night of November 19th?" A. No, sir, but I don't remember just exactly what she said or how it came about.

Q. How did the conversation open; what caused the discussion on Monday night? A. I don't remember what caused the discussion.

Q. How did it come about? A. We simply were talking and it just simply happened in.

Q. You had not said a single thing about it when

you got back from the dance? A. We may have passed some little remark before we went to bed.

Q. What was the little remark that you passed? A. I don't remember exactly what the remark was, but it was to the effect "Has Andy told you the terrible thing that he has done?"

Q. Who said that? A. Mrs. Smith.

Q. What was said to that? A. I said, "Yes, I was very provoked at hearing it."

Q. And what was said then? A. That it was very foolish for him to have done what he did do.

By Mr. Ward:

Q. When you learned that what Mr. Blue had done, was Mrs. Smith present or not? A. No, sir.

The Court—All right. Go ahead.

Further Cross:

Q. What did he do? A. (No answer.)

By the Court:

Q. In this conversation you said that you told your sister it was very foolish of Mr. Blue to do what he did do; from whom did you get the information? A. From Mr. Blue.

Q. Did not your sister talk to you about it then? A. That is all she said to me; she said did Mr. Blue tell me everything that he did.

Q. Did she tell you what terrible thing Mr. Blue did? A. I don't believe we went into a discussion.

Q. Don't you know you did talk it over? A. Mr. Blue told me coming down in the car what he had done.

Q. Do you mean to tell the court that you and your sister, talking there quietly and confidentially, did not talk this thing over together; do you mean to tell the Court that you and your sister did not discuss these terrible things that you are talking about? A. I don't think we did.

Q. You let it pass? A. Yes, sir.

Further Cross:

Q. You were hysterical and crying coming down from Pompton, were you not? A. I don't believe so.

Q. Don't you know whether you were or not? A. I was not hysterical, no, but I was crying.

Q. And the tears were brought to you by what your husband told you?

Mr. Ward—Objected to as leading.
The Court—Objection sustained.

A. I was nervous at having missed Mr. Blue all the evening.

Q. That is what brought it about? A. And then coupled with what he had said to me.

Q. And Mr. Schofield was in the car? A. Yes, sir.

Q. In the back seat? A. No, sir, the front seat.

Q. Where was Mr. Shorter? A. In the front seat.

Q. These terrible things were told to you? A. Just a few things were told to me—just the thing that he had done.

Q. You did not say anything to Schofield or Shorter about it? A. I don't believe I did.

Q. You did not protest? A. Protest what?

Q. You did not say anything to them? A. No, sir; there may have been a remark, but I don't remember it just now.

Q. Is it a fact that, in this conversation when you went to the movies on Monday, nothing was said except your statement to Mr. Smith that he should do something about the wild tales that Mr. Fairhurst was circulating? A. That was discussed; I think that was all that I said; maybe Mr. Smith and Mrs. Smith and Mr. Blue may have said something about it. I don't remember the whole thing.

Q. Was any one of the wild tales referred to? A. I think something was said about the night of the 19th, but I am not sure.

Q. Tell me what was said, your best recollection as to what was said about the night of November 19? A. I don't remember just what was said.

Q. Well, it was an important matter, wasn't it? A. Yes, sir.

Q. Why?

Mr. Ward—I object—what might have made it important to this witness is not relevant to this cross-examination.

The Court—Objection sustained.

Q. At any rate, it was important; that is true, isn't it? A. Yes, sir.

Q. And serious? A. No, sir.

Q. Not serious? A. No, sir.

Q. A thing may be important but not serious? A. Yes, sir.

Q. It lead to the separation of your sister and her husband?

Mr. Ward—Objected to as a conclusion.
The Court—Objection sustained.

Q. Do you know what led to the separation between your sister and her husband? A. I think it was the stories that Mr. Fairhurst had repeated.

Q. Then it was serious? A. Yes, sir, those stories were very serious.

Q. And when you were talking about these stories on Monday, it was a serious proposition, wasn't it? A. We did not talk about the stories, we simply talked about Mr. Fairhurst telling stories.

Q. And nothing was said during that conversation about this matter, as to what the stories were? A. I don't remember that there was.

Q. And your sister, did she say she explained it to her husband? A. She said that at our house.

Q. In Mr. Smith's presence? A. No, sir, before he came in.

Q. Did she repeat it at all after Mr. Smith came in? A. I think something was said about the 19th, but I don't think we went into a discussion; we did not have time.

Q. Did she say, before Mr. Smith came in, that Mr. Smith was satisfied with the explanation? A. Yes, sir, he was provoked, but he accepted her explanation.

Q. Did she say what he was provoked at? A. At what she had told him.

Q. Did she say what he was provoked at; did she say what it was that had provoked him? A. She said she had told Mr. Smith what had occurred on the 19th.

Q. Provoked at whom? A. At Mrs. Smith.

By the Court:

Q. Why at Mrs. Smith? A. On account of what had occurred on the 19th.

Further Cross:

Q. What did she say had occurred on the 19th, so far as she was concerned, that provoked Mr. Smith? A. I don't know what she told Mr. Smith; she said she had told him about the 19th; I don't know what she had told him.

Q. Did she talk to you as to what had occurred on the night of the 19th, that she was going to tell her husband, or which she had told her husband, which provoked him? A. Did she ask me?

Q. Did she tell you what she had told him? A. No, sir, she did not say; she had told him about the 19th.

Q. Do you know what it was that occurred on the 19th which would provoke her husband?

Mr. Ward—Objected to.
The Court—Objection overruled.

Q. Did you know what had occurred on the night of the 19th that she had told her husband and which had provoked him? A. Yes, sir.

Q. From whom did you get the information? A. From Mr. Blue.

Q. During the trip down? A. He told me just a little coming down.

Q. When did he tell you the rest? A. Probably Sunday morning; I don't remember.

Q. And when your sister saw you on Monday, before Mr. Smith came, all she said was, that she had told her husband, and that he was satisfied with

her explanation? A. Of course, he was angry, but he accepted her explanation.

Q. Of course, he was angry?

Mr. Ward—I object to that conclusion.
The Court—Strike it out.

Q. Do you know what he was angry about? A. At what she had told him.

Q. Did she tell you what he was angry about? A. No, sir.

Q. Did he appear to be angry when he came in to go to the movies, or provoked? A. I would not say that he was angry, no, sir.

Q. Well, provoked then? A. Not provoked; he was sort of distant to all; I guess he was just a little provoked.

Q. To his wife—was he distant? A. Just in general; he was sort of peevish.

Q. To everyone? A. Yes, sir.

Q. Did his wife seem to resent that peevishness? A. I don't know that she did; I don't think we had time to resent anything.

Q. Did she say to you, when she talked to you before Mr. Smith came in, "He is provoked; he is angry, but I cannot understand why he should be"; or anything like that? A. No, sir.

Q. When was the next time you saw Mr. Smith? A. I don't remember, after Monday night, I don't remember.

Q. Do you remember the night of the 22nd? A. Yes, sir, I do.

Q. Did you see him then? A. Yes, sir.

Q. Where? A. At his home.

Q. And how did you come to be there? A. I went up there to see Mr. Smith.

Q. What for? A. To talk with him.

Q. To talk with him? A. Yes, sir.

Q. About what? A. About his attitude towards my sister.

Q. And what was this attitude which caused you to do that? A. I don't know what his attitude was just then; I did not get a chance to talk to him except a few words.

Q. What was the attitude which had induced you to go? A. It was in reference to what Mr. Blue said to me on his return from New York that I went up there.

Q. Where was your sister? A. She was at my mother's.

Q. How long had she been at your mother's? A. I don't know; I know she was there for dinner.

Q. What did you say to Mr. Smith?

Mr. Ward—I object.

Mr. Lane—I think it goes to the witness' credibility.

The Court—Almost any question which affects the credibility of a witness may be propounded; the objection will be overruled.

Q. (Question read.) A. I did not get a chance to say very much to him.

Q. Did you go in the house? A. No, sir, I did not get in.

Q. You went to the door? A. Yes, sir; rang the bell and he opened the door, and the door was on a chain, and he did not take the chain off.

Q. So you talked through the opening in the door?

A. Yes, sir, and I said, "Where is Frances?" and he said she had left, and he slammed the door.

Q. You were crying? A. No, sir, I don't believe I was; I am quite sure I was not.

Q. Is that all the conversation that took place? A. Yes, sir.

Q. Didn't he tell you that Andy Blue and Mrs. Smith had been there? A. He said they had left; I said, "Where is Frances?" I suppose I said, "Mr. Blue", too; and he said they had left; I understood she was there; I understood she had gone there with Mr. Blue, and I went up there.

Q. Why did you go up there? A. To talk to Mr. Smith.

Q. About his attitude? A. Yes, sir.

Q. How had his attitude been evinced to you? A. Through what Mr. Blue had told me.

Q. Only that? A. Yes, sir.

Q. Don't you remember on the telephone on November 22, you called Mr. Smith up on the telephone and talked to him over the telephone? A. Yes, sir, I think I did.

Q. What time was that? A. I really could not say what time it was; it was after dinner.

Q. And why was it?

Mr. Ward—Objected to.
The Court—Objection sustained.

Q. What did you say to him?

Mr. Ward—Objected to.
The Court—Objection overruled.

A. I really don't remember, but I know it was in reference to my sister; I don't know just what I did say.

By the Court:

Q. Don't you remember what you said to Mr. Smith about the situation over the telephone that night? A. I don't know just exactly, but it was something to the effect that I wished he would listen to her explanation when she arrived, and he said, "I cannot discuss it over the telephone."

Further Cross:

Q. But on Monday night he had listened to the explanation? A. Yes, sir.

Q. And had accepted it, although provoked? A. Yes, sir.

Q. And his attitude changed within 24 hours? A. Yes, sir.

Q. After an interview between Mr. Smith and your husband?

Mr. Ward—Objected to; she cannot tell when his attitude changed.

The Court—Objection sustained.

Q. Your husband was the first one that told you about this change in attitude, at what hour? A. Upon his return from New York.

Q. About what time? A. I don't know just when he got home; it was usually between six and seven.

By the Court:

Q. What day was it he told you about Mr. Smith's attitude changing? A. The 22nd.

Q. So then you called up Mr. Smith? A. Yes, sir.

Further Cross:

Q. That was the next night, the very next day to the time that you say you went to the movies on Monday night? A. Yes, sir.

Q. Did Mr. Blue tell you what time it was that he had seen Mr. Smith?

Mr. Ward—Objected to.
The Court—Objection overruled.

A. I really could not answer that truthfully, because I don't know.

Q. Did Mr. Blue tell you what time it was that he had seen Mr. Smith, when he came home, about this change in attitude? A. I don't remember.

Q. Getting back to what you tell Mr. Smith over the telephone, what else did you tell him? A. That is all that I said.

Q. Did you tell him over the telephone what Mrs. Smith's explanation was? A. No, sir.

Q. And Mrs. Smith never told you what her explanations were? A. Mrs. Smith, I don't believe, ever explained to Mr. Smith—

By the Court:

Q. What makes you believe that? A. She did not have a chance, your honor.

Further Cross:

Q. Do you mean that? A. I do.

Q. You told us at least three or four times, that when your sister saw you on Monday at your house before Mr. Smith came in, she told you that she made some explanations to Mr. Smith, and that they had been accepted, although he was angry? A. I

understood you to mean after his attitude had changed.

Q. Was there another explanation which she had not given to him?

Mr. Ward—Objected to.
The Court—Objection overruled.

By the Court:

Q. Were there two explanations; did she make two explanations to Mr. Smith? A. No, sir, not that I know of.

Further Cross:

Q. You stated a few moments ago, that she had explained matters to Mr. Smith? A. I said when she came down on Monday night she said she had told him about it.

Q. What did you mean a few moments ago, when you said you did not tell Mrs. Smith—or explain to Mr. Smith? A. I don't understand.

Q. Was anything said with respect to any re-explanation? A. I don't understand the question.

Q. What did you mean when you said that you did not believe Mrs. Smith had explained to her husband; what did you mean when you used that expression? A. When I said Mrs. Smith had not explained to her husband, I meant that his attitude —on the 22nd, Mr. Smith's attitude had changed and I think he needed to be reasoned with.

Q. Did you say to him over the telephone, "Won't you permit us to explain", or words to that effect? A. As I said, I asked him to listen to my sister's explanation.

Q. What did he say to that? A. He said, "I

am sorry, Ted, but I cannot discuss this over the telephone."

Q. Well, did you ask him to be lenient? A. I did not.

Q. You did not use that word? A. No, sir.

Q. You are sure? A. I am positive I did not.

Q. You were crying over the telephone, were you not? A. No, sir.

Q. Just as calm as you are now? A. No, sir, but I was not crying.

Q. Was your sister with you when you telephoned? A. No, sir.

Q. Where was she then? A. I think she was on her way up home.

Q. And then you followed that up by going up to Mr. Smith's house? A. Yes, sir.

Q. About how long after your telephone conversation? A. I don't think it was very long.

Q. Was your husband home? A. No, sir.

Q. Where was he? A. He had left to go with Mrs. Smith up home.

Q. When did Mrs. Smith come to your home? A. What do you mean?

Q. You say she was not there when the telephone conversation took place? A. She was not.

Q. She was there when your husband left to take her home? A. No, sir, she was not.

Q. Where was she? A. She was at my mother's.

Q. Then she never was at your home during that afternoon? A. No, sir.

Q. Or that day? A. Yes, sir; she ran over in the evening.

Q. From where? A. From my mother's.

Q. Do you remember the morning of the 23rd, the next morning; that was Wednesday? A. Yes, sir, I remember the morning.

Q. Do you remember telephoning to Mr. William H. Smith? A. Yes, sir.

Q. The father of Mr. Smith? A. Yes, sir.

Q. What time did you telephone him?

Mr. Ward—Objected to.
The Court—Objection overruled.

A. I could not tell you; I really have no recollection.

Q. What led you to telephone him?

Mr. Ward—Objected to.
The Court—Objection overruled.

A. I did not telephone to get Mr. Smith, to get Mr. William Smith, but he answered the telephone. I tried to get Mr. Roy Smith.

Q. Again? A. Yes, sir, and Mr. William Smith answered.

Q. Did you have a conversation with Mr. William Smith about the subject matter of this affair? A. Yes, sir.

Q. You asked Mr. William Smith to intervene with his son?

Mr. Ward—Objected to.
The Court—Objection sustained.

Q. What did you say to Mr. Smith?

Mr. Ward—Objected to.
The Court—It attacks her credibility.

A. I don't remember the exact conversation, but afterwards I asked Mr. William Smith, I said that

he had quite an influence over his son, and I asked him if he would not talk with Roy and make him see Frances and let her thresh this out with him; and I thought he ought to see Frances and talk to her—that he misunderstood everything.

Q. How about that? A. Mr. Blue told me.

Q. Did Mrs. Smith ever tell you? A. No, sir.

By the Court:

Q. Hadn't she told you before the 22nd of everything, your sister? A. Mr. Smith's attitude had not changed until the 22nd.

Q. Hadn't she told you anything about that; hadn't she said anything to you? A. This all happened on the 22nd.

Q. No, this happened on the 19th? A. The telephone conversation and everything, I mean.

Q. But you were intervening for your sister to bring about a better understanding on the part of her husband with her; now, do you mean to tell us that you had not had a talk with your sister about the subject matter? A. You mean in reference to what she had told Mr. Smith; it happened on the night of the 22nd, and she had left when I called Mr. Smith.

Q. Who informed you of the changed attitude of Mr. Smith? A. Mr. Blue.

Q. Had he been in company with your sister and Mr. Smith? A. No, sir.

Q. How did he know that there was any changed attitude? A. He had seen Mr. Smith.

Q. He had talked to Mr. Smith himself? A. Yes, sir.

Further Cross:

Q. Do you mean to say that you never discussed

with your sister the happenings of the night of November 19 up until the 23rd? A. We had discussed it on Monday night just a little.

Q. Did you discuss what it was that required an explanation? A. The whole thing required an explanation.

Q. What was said by you to Mr. Smith? A. I don't remember just what was said.

Q. Give me the substance of it, that required an explanation? A. She simply said that she had spoken with Mr. Smith about the 19th.

Q. I am trying to find out whether you and Mrs. Smith ever discussed the events of the 19th? A. Yes, sir, I said we discussed them just a little.

Q. What was said in that discussion? A. I don't remember just what was said.

Q. Give me the substance of what was said? A. Just about Mr. Blue having made a fool of himself in coming down to my house on the night of the 19th, and finding this Mr. Donnelley there with Mrs. Smith—thinking that she was alone with him.

Q. That is what required the explanation, was it? A. Yes, sir.

Q. And Mr. Blue thought that she was alone? A. Mr. Blue thought that Mr. Donnelley and my sister were alone? No, sir.

Q. What was the explanation required?

Mr. Ward—Objected to as a conclusion.
The Court—Objection overruled.

By the Court:

Q. Give us the explanation if you can; what explanation was required? A. There was no explanation required.

Further Cross:

Q. There was no explanation required? A. No, sir.

Q. Do you realize you have told us that your sister said that she had made her explanations to Mr. Smith, and that he was angry and provoked, and that she showed no resentment against that attitude?

Mr. Ward—I object to the form of the question.

The Court—Objection overruled.

By the Court:

Q. What was her attitude? A. I did not say that Mr. Smith was really provoked; I said he was just peevish about it.

Q. But your sister said he was provoked—so you told us? A. Yes, sir.

Further Cross:

Q. Is that the only answer you can make to the question? A. I think so.

Q. Now, you say there was no explanation required? A. Perhaps I should not have used the word "explanation", but there was not really an explanation required; it was natural to be talked over between her and her husband.

Q. The word "explanation" was yours? A. That is, perhaps, the wrong word for me to have used.

Q. There was something to be talked about as between Mr. and Mrs. Smith, and as between you and Mr. Blue, and it was talked about? A. Yes, sir.

Q. Let us go back to the time it was talked about

between you and Mr. Blue and Mrs. Smith, and what was said.

Mr. Ward—There is no evidence that the three of them discussed it.

By the Court:

Q. Was there a talking over of this matter between you and Mr. Blue and Mrs. Smith—you talked to your sister about it—such a serious thing as this, didn't you? A. We discussed it a little on Monday night before we went to the movies.

Q. And Mr. Smith was peevish at the movies, and you and your sister talked that over, didn't you? A. He was peevish that we should refer to it again; he wanted the matter dropped; and then we dropped the matter.

Q. And you referred to this November 19 happening? A. Yes, sir.

Further Cross:

Q. What was said when you and your sister talked over the events of the 19th, on the evening of the 19th; I want that conversation.

Mr. Ward—Objected to as improper.

Q. After you returned? A. I said we did not discuss it—

Q. What was said? A. I said, that she simply said, "Has Andy told you what he has done?" and I said, "Yes, it was a terrible thing for him to have done, and very foolish, and he is very ashamed of himself for having done it"; and I don't think we barely went into it in detail.

Q. Didn't your sister make the explanation then? A. What explanation?

Q. Whatever there was to be made? A. No, sir, she did not.

Q. Didn't she tell you what time Donnelley had gotten there? A. No, sir.

Q. Didn't you ask her? A. No, sir, I said that I did not discuss it with her, that evening.

Q. Didn't you ask her what time Donnelley had left? A. No, sir.

Q. Didn't you ask her how it was that he was running out of the house without his coat on? A. I did not discuss it with my sister; it was early morning and I did not discuss it with her; we were both tired.

Q. Was it because you were tired that you did not discuss this important matter with your sister; is that the only explanation? A. She was in bed, and I was provoked with Mr. Blue, and we just did not discuss it; we thought it was better to drop it.

Q. Did you tell her why you were provoked with Mr. Blue? A. Yes, sir, she knew that; because he had come down there.

Q. Why were you provoked with him for going to his own home? A. Because he came there to see if Mr. Donnelley and my sister were alone.

Q. Did you tell her that? A. We did not discuss it.

Q. Did you know that Donnelley was to be there? A. No, sir.

Q. Had he ever been there before, to your knowledge? A. Yes, sir.

Q. When Mrs. Smith was there—after you had left to go to a dance, or anywhere else? A. Certainly not.

Q. So you were as much surprised to know that

Donnelley was there as Mr. Blue was? A. Yes, sir.

Q. Didn't you say that to your sister? A. No, sir, we did not discuss it.

Q. If you were so surprised under the circumstances, why didn't you say to your sister, "How is it that Donnelley was here when I knew nothing about it?" A. I said we did not discuss it that evening.

Q. I want to get your attitude of mind as to why you did not? A. Mr. Blue wanted us to go immediately to bed because we were both tired, and not talk about it at all.

Q. So that you went to bed the night of November 19th? A. Yes, sir.

Q. Without knowing any of the details of what occurred on November 19?

Mr. Ward—Objected to; that is not a statement of the facts; I object to the line of questioning.

Q. So you went to bed that night without having any explanation from your sister as to the occurrences of the night of November 19; is that right?

Mr. Ward—I object to that; you will recall that this witness has said specifically that she had a conversation, but not in detail, coming down from Pompton, with her husband; she has gone over repeatedly what she said to her sister that night; she said that she and her husband, after they retired, either that night or on the Sunday morning, discussed it in detail; that is where she got her knowledge—

The Court— The objection will be overruled.

Q. You say you went to bed that night without any explanation from your sister as to the occurrences of November 19? A. I think I did.

By the Court:

Q. Will you swear that you did, Mrs. Blue? Tell us what you did discuss. A. We did not discuss it at all, except what I have said.

Further Cross:

Q. When did your sister tell you how it was that Mr. Donnelley came up there? A. I don't know whether it was that Sunday morning, or whether Mr. Blue told me—whether Mrs. Smith told me or whether Mr. Blue told me.

Q. Can you swear your sister ever told you sometime between the 19th and 23rd? A. Yes, sir, she told me.

Q. When, that you distinctly recollect; when, for the first time? A. I think it was Sunday morning.

Q. Who was present? A. Mrs. Smith and Mr. Blue.

Q. What did she say? A. They just discussed the whole thing.

Q. What did she say? A. In reference to what —about Mr. Donnelley's being there?

Q. Yes, the explanation. A. I believe she said that Mr. Donnelley came there in reference to a letter he had received.

Q. Go on. A. Asking him to call on her at my home.

Q. Go on. A. Of which she knew nothing about.

Q. Go on. A. That is why he was there.

Q. Go on. A. That is the explanation why Mr. Donnelley was there.

Q. In this explanation, did she tell you what time it was that he got there? A. I don't think she did; if she did, I don't just remember.

Q. Did you ask her how it was that Donnelley came calling in response to a letter which he had received asking him to call? A. The letter covered that.

Q. Did she tell you what the letter covered? A. As far as I can remember, she said the letter was asking Mr. Donnelley to call to see her about an important matter at my home, on that night.

Q. Did she say, of course, that that was not true? A. Yes, sir, she said she told Mr. Donnelley she had not written that letter.

Q. Did she tell you what happened? A. He could not understand who would send the letter.

Q. Did she tell you then what happened? A. That he stayed for a while.

Q. Did she tell you why he stayed for a while, having come in response to a letter which was apparently a "frame-up"? A. Yes, sir, I believe she was making coffee, and she invited him to join her; they decided it must have been a joke.

Q. So she said, that assuming it to be a joke, that he stayed there? A. Yes, sir.

Q. Did he stay long? A. He took coffee and chatted a few minutes.

Q. Until what happened—did she say? A. Until Mr. Blue came.

Q. Did she say then what happened? A. Yes,

sir, Mr. Blue came in and found her with Mr. Donnelley.

Q. Did she say then what happened? A. Yes, sir, Mr. Blue came in and found her with Donnelley, and he made a little rumpus about it, thinking she was alone.

Q. Couldn't he see? A. He could not at the time; there was somebody else in the living room.

Q. Who was in the living room? A. Mrs. Marsden, she had come early in the evening, shortly after we had left.

Q. Did she say how long she stayed there? A. She stayed the evening with my sister.

Q. Was she there when you got home? A. No, sir.

Q. Did she say how long she had gone before you got home? A. No, sir, I don't think so.

Q. Did she say what rumpus it was that Mr. Blue raised? A. As I understand it, Mrs. Smith and Mrs. Marsden and Mr. Donnelley were in the living room just as Mr. Donnelley was leaving, and they heard a slight noise and went in the kitchen to find out what the noise was, and Mr. Blue entered just at that time, and seeing Mr. Donnelley and my sister there alone, coupled with the stories that Mr. Fairhurst had told him, he was very much provoked.

Q. What did he do? A. He just bawled them out, properly, and asked Mr. Donnelley what he meant by being there alone with my sister at his home and taking advantage of his absence; that is as near as I can remember.

Q. Did she say what else he said? A. No, sir, he did most of the talking; they did not get a chance to do any of the talking; he was so provoked at finding them there.

Edna Blue—cross

Q. Who was it went in the kitchen when they heard this noise you spoke about? A. My sister and Mr. Donnelley.

Q. And then what happened? A. The doorbell rang, and Mr. Blue went to answer the door, and then he saw Mrs. Marsden in the living room at that time.

Q. And what happened while they were still in the house? A. When he got back to Mrs. Smith, Mr. Donnelley had left.

Q. Did he say how Mr. Donnelley had left? A. I don't think so, except that he had left when he got back.

Q. How far is the living room from the kitchen? A. The dining room comes after the kitchen, and then the living room.

Q. One room between? A. Yes, sir.

Q. Did anyone suggest how it was that Mrs. Marsden did not come into the kitchen when she heard this noise? A. Mrs. Marsden said since then, that she did not care to interfere in family affairs.

Q. And that is the reason why she did not intervene and make her presence known; is that what your sister said? A. That is what Mrs. Marsden said.

Q. Did your sister tell you whether she or Mr. Donnelley said, "Why, here is a letter that I got that brought me here?" A. Did she say that to whom?

Q. To Mr. Blue, when he was raising a rumpus? A. Mr. Blue did not give them a chance to say anything.

Q. When was it that your sister, for the first time, told Mr. Blue about this letter, if you know, so far as you know? A. As far as I know, it was after Mr. Donnelley had left.

Q. But that same evening? A. Yes, sir.

Q. So that Mr. Blue knew that when he came to get you at Pompton? A. Yes, sir, sure, he knew.

Q. Are you sure of that now? A. Yes, sir, I am sure of it.

Q. Didn't he tell you about it? A. He did not tell me about it coming down from Pompton; he did not tell me about the letter.

Q. He told you about all the rest of it? A. No, sir, he did not.

Q. He told you he had gone into this house and Mr. Donnelley and Mrs. Smith were there, and that there was a rumpus? A. Yes, sir.

Q. But he did not tell you a thing about the fact that Donnelley had been brought there by a false letter? A. No, sir, he did not tell me that.

Q. When was the first time that he told you Mr. Donnelley had been brought there by a false letter? A. On Sunday morning.

Q. Not until then? A. No, sir.

Q. Whatever talk you had on Saturday night, the letter was not mentioned? A. No, sir, it was not.

Q. That was the most important thing in the whole business, wasn't it, in your view?

Mr. Ward—Objected to.
(Question withdrawn.)

Q. Did your sister, upon the Monday night, the night you went to the movies, before Mr. Smith joined you, did she tell you that she had told Mr. Smith about this letter? A. I took it for granted that he had told me everything; she said she had told him everything.

Q. Did she refer to the letter? A. She did not,

no, sir, she did not make any mention of it on Monday night.

Q. Did you to her? A. No, sir.

Q. Did you discuss the letter with her on the night of Tuesday or Wednesday? A. I don't think I did.

Q. Did she say to you what Mr. Donnelley's reply was when Mr. Blue said, "What do you mean by being here and taking advantage of my absence?" A. She said that Mr. Blue did not give Mr. Donnelley a chance to say anything, that they were both trying to say something, but he just stood there and bawled them out, and did not give them a chance to say anything.

Q. When did he tell you that? A. When we discussed it on Sunday morning.

Q. But not coming down from Pompton? A. No, sir.

Q. He was angry coming from Pompton? A. No, sir, I was angry at him.

Q. And he was not angry? A. No, sir.

Q. You were angry? A. Yes, sir.

Q. And you told him if he testified to what had occurred, you would leave him? A. No, sir.

Q. Your anger did not go to that extent? A. No, sir.

Q. But it was real anger? A. My anger was on account of his having left me at the dance.

Q. Your anger was in no wise connected with what he had done, so far as your sister was concerned? A. Yes, sir, it was, also, but when he met me my anger was on account of his having left me at the dance.

Q. But it was also against him on account of what he had done against your sister? A. Yes, sir.

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Q. And it was real anger, wasn't it? A. Yes, sir, I was angry with him.

Q. On how many occasions was it that Mr. Smith insisted on embracing you before taking you home? A. He just embraced me on this one occasion that I spoke about in my testimony; he would be very attentive to me; he was always very attentive to me, and very affectionate.

Q. I am talking about embracing you? A. He may have done it several times.

Q. Embraced you? A. Yes, sir.

Q. Before he would take you home after you were out with him in the automobile? A. There was only that one occasion.

By the Court:

Q. When was that? A. I really could not say; it was when we went to the movies one night.

Further Cross:

Q. Can you tell me about when it was? A. No, sir, I have no idea.

Q. When was the first occasion after your marriage was it that he took you out and insisted on embracing you? A. He never insisted on it except on that one occasion, after he had taken me out.

Q. But you said there were occasions when he embraced you? A. He was very affectionate with me, yes.

Q. I am trying to get at the first occasion when he embraced you. A. (No answer.)

By the Court:

Q. Kissed you; when was the first time he kissed

you? A. I don't know just when it did happen.

Further Cross:

Q. The time you were on the witness stand before you said (page 252): "He used to take me out to the movies quite often, and sometimes we would go for a ride after, but there were occasions when he would not bring me home until I would allow him to kiss me or embrace me"? A. When there was an occasion, it should have been.

Q. That is what you meant? A. Yes, sir.

Q. There was only that one occasion? A. He kissed me many a time. There were two occasions when he embraced me.

Q. There was, I think, one occasion when he would not bring you home unless you did? A. Yes, sir.

Q. When you gave that occasion, you referred to the time as one time specially; I don't know just when it was; and then you went on and testified about the occasion when he insisted that you sit on his lap, I think; I want to know what other occasion you had in your mind when you gave that testimony, in which kissing and embracing were indulged in by Mr. Smith? A. The other occasions were when he came to my home.

Q. So that you will now say that there was but one occasion on which he had you out in this car, and on which occasion he embraced you? A. I think that was all.

Q. Do you know? A. No, sir, I am not sure of it, but I think so, that is the only one that impressed me.

Q. If there had been any other of us in which he had indulged in embracing you, it would have im-

pressed you? A. Yes, sir, that impressed me very much, that one occasion.

Q. You told your sister about that one? A. Yes, sir.

Q. When? A. Several days after it happened.

Q. What did she say? A. I don't remember just the conversation, but she said she was very surprised to hear it, and wanted to know if I was sure that Mr. Smith meant it in that way.

10

By the Court:

Q. Did you regard it as an improper advance on his part? A. Up to that time I had thought it was brotherly affection with me, but he carried it too far that evening, and I simply had to remonstrate with my sister about it.

Further Cross:

20 Q. What did your sister say? A. She was very much surprised to hear about it, and said she would take it up with Mr. Smith. I said it could not go on, or I should have to speak to Mr. Blue about it.

Q. Did you ever speak to Mr. Blue about any of these occurrences between yourself and Mr. Smith? A. No, sir.

Q. Did your sister tell you afterwards whether she had spoken to Mr. Smith about it? A. Yes, sir, and she said he just took it as a joke and laughed the matter off.

30 Q. Did your sister say she was satisfied with his laughing it off that way? A. She, perhaps, thought I had misunderstood him.

Q. Did you tell her that Mr. Smith had insisted that you should sit on his lap and embrace? A. Yes, sir, and she said Mr. Smith did not seem to

think it was anything, and she wanted to know if I would not overlook it and not speak to Mr. Blue about it.

By the Court:

Q. Did you overlook it? A. I overlooked it to the extent that I did not speak to Mr. Blue about it, but I never went out with Mr. Smith after that —alone with him.

Further Cross:

Q. Did you tell your sister about the episode in your bedroom? A. Yes, sir.

Q. Was that after the episode that you have just told us about? A. Yes, sir.

Q. How long after? A. It was not very long after.

Q. What did your sister tell you when you told her about that? A. She was very angry about it and took it up again with Mr. Smith, and he acted exactly the same way about it; and she said that she told him that I was going to speak to Mr. Blue about it, and that I would not allow such a thing.

Q. You did not tell your husband about that? A. No, sir.

Q. Why not? A. Because I knew it would cause trouble, and I did not want any trouble.

Q. Did Mrs. Smith ask you not to? A. Yes, sir.

Q. Again? A. Yes, sir.

Q. On the second occasion? A. Yes, sir.

Q. Was Mrs. Marsden a friend of yours? A. She is a friend of my mother's.

Q. Was she a friend of yours? A. Yes, sir, through my mother.

Q. Had she ever visited you before? A. I think she has been there with my mother several times.

Q. Never without your mother? A. I don't think so.

Q. Your mother was not there on this occasion?

Mr. Ward—All this he is going into under the guise of testing the witness' credibility.

The Court—The Court does not feel it should restrict proper cross-examination; if the truth is being told there is no difficulty about the situation, is there? We want to get at the facts in a case of this character and they require a great deal of cross-examination, possibly.

Mr. Ward—But it is so tiresome, it seems to me.

The Court—I do not feel that under the circumstances I can restrict the cross-examination. Objection overruled.

Q. Did your sister say what time Mrs. Marsden got there? A. She may have, but I really don't remember.

Q. Did she say why Mrs. Marsden came there on that particular night of the 19th? A. She said Mrs. Marsden came there looking for my mother.

Q. Where does your mother live? A. Just around the corner from me.

Q. She did not say what time Mrs. Marsden got there? A. She may have, but I don't recollect it; she said it was shortly after we had left that Mrs. Marsden arrived.

Q. Did she say how it was that she continued to stay there after she found your mother was not to be located there? A. My sister asked her to

come in, naturally; she was alone, and Mrs. Marsden spent the evening with her—

Q. Did she tell you what time Mr. Donnelley was there? A. No, sir, I don't think so, I don't think she did; she may have, but I don't remember; I did not put it down.

Q. Did she say there were any lights in the living room in which Mrs. Marsden was sitting? A. I believe there was a low light in the living room.

Q. Did she talk about this low light in the living room? A. No, sir.

Q. Did she, or anyone in her presence, say why it was that the light in the living room was low? A. I know it was low when we left, because the regular burner was not working properly, and we have three, and we just lit one of the little lights, and that can only throw out a little light.

Q. Were there any other gas jets in that room? A. There is only one chandelier; there is one that can be lit, and one that has a little gas burner on, and the other cannot be used at all.

Q. Is there any other room in the house where you can sit? A. Just the dining room.

Q. The lights in there are all right? A. Yes, sir.

Q. Any other room in the house where you can sit? A. We have the living, dining room and kitchen and bedrooms and bath.

Q. So the only rooms you would sit in would be the living room and dining room? A. Yes, sir.

Q. Which room do you generally use? A. The living room.

Q. But the light is dull? A. Yes, sir.

Q. And you prefer to sit there? A. The dining room light is very good.

Q. Is the light so low in the living room when it is turned on, that from across the street you might think there was no light there? A. You would think there was a light there.

Re-direct Examination by Mr. Ward:

Q. Some questions I omitted, the first time. I ask you this: what is the situation of your living apartment in the house in which you live with reference to the street? A. It is very low, Mr. Ward; the house is built very low.

Q. And if the curtain were undrawn, would it be possible for anyone to see in the living room walking on the street? A. Yes, sir.

Q. On the night of the 19th, were the curtains drawn or not? A. They were always drawn when we lit the light.

Q. On the night of the 19th were they drawn or not? A. Yes, sir.

Q. Did they completely cover the window? A. Yes, sir.

Q. The light in the dining room, is there a dome that covers that? A. Yes, sir.

Q. So that the light was reflected down on the floor to some extent? A. Yes, sir.

Q. And the light—this light in the living room, ordinarily you say you had a light there with three small mantels on one jet? A. Yes, sir.

Q. What was the condition of that on the night of the 19th? A. The mantels were broken, two of them, and, of course, you don't light them when they are broken.

Q. The other gas jet, what kind of a gas jet was that? A. It is just a regular gas burner, it is a tip.

Q. What kind of a light does that give? A. Very low light.

Q. Have you, since the 19th of November drawn the curtain and lighted the lights as they were lighted that night, and taken observations from outside?

Mr. Lane—I object to the term "as they were lighted that night."

The Court—Objection sustained.

A. No, sir, the light is fixed now.

Q. You were asked with reference to these conversations that you had with different people; so far as you knew, from what you gathered from these conversations, who was the first person to speak to Mr. Blue with reference to your sister? A. Mr. Fairhurst.

Q. The man who was on the witness stand? A. Yes, sir.

Q. The first witness in the case? A. Yes, sir.

Q. Do you know whether he saw Mr. Blue on more than one occasion in spreading these stories? A. I really could not say.

Q. Do you know whether or not he ever went to New York and saw Mr. Blue before the 19th? A. Yes, sir, he did.

Q. And from all these conversations, do you know who made all the arrangements with reference to Mr. Blue coming down from Paterson to Pompton that night? A. I know that Mr. Blue told me that Mr. Fairhurst had made all the arrangements.

Q. And do you know who was accused by Mrs. Smith of writing this letter to her and arranging this frame-up? A. She accused Mr. Fairhurst.

Q. Do you know whether or not, or did Mr. Blue ever tell you in any of these conversations, that Mr. Fairhurst had said that he would prove Mr. Donnelley would be there that night? A. Yes, sir, he did.

Q. What did he tell you about that?

Mr. Lane—Objected to on the ground that it is a pure matter of hearsay.

The Court—Objection overruled.

A. I don't think I understand the question.

Q. What did Mr. Blue tell you with reference to what Mr. Fairhurst had said to him about proving that Mr. Donnelley would be there? A. He said that he would arrange with some man—if Mr. Blue would arrange to go out to some place, he would arrange to have some man watch the house, and Mr. Blue could come and see for himself that Mr. Donnelley would be there with my sister.

Q. What did you observe personally with reference to Fairhurst's attitude towards your sister before this? A. He was very attentive to my sister.

Q. You knew nothing about this arrangement, Mrs. Blue, before your husband returned from Pompton? A. No, sir.

Q. Nothing about this frame-up? A. I did not, Mr. Ward.

Q. Then you say you had some conversation with your husband that night coming down in the automobile? A. Yes, sir.

Q. And your husband wanted you to retire early, as soon as you got back? A. Yes, sir.

Q. What was your husband's attitude and demeanor when he came back to Pompton; was he

natural, normal, or what? A. Well, he was excited, and seemed very much ashamed of himself.

Q. What kind of a disposition has your husband?

Mr. Lane—Objected to.

The Court—I don't think you should go into that; the objection will be sustained.

Q. Mrs. Blue, then the next morning you had a further conversation with your husband? A. Yes, sir.

Q. And were the details thoroughly discussed as to what had occurred the night before? A. Yes, sir.

Q. And did you have a general knowledge of everything that had taken place of what you have heard here in court? A. Yes, sir.

Q. The stories that Fairhurst had circulated? A. Yes, sir.

Q. Then you say on Monday Mrs. Smith told you that she had told her husband? A. Yes, sir.

Q. And did you or not, assume at that time that she had told him what had transpired? A. Yes, sir.

Q. And before that—on Sunday, I believe, you have said that you and she and Mr. Blue had talked the matter over as to what had happened? A. Yes, sir.

Re-cross Examination by Mr. Lane:

Q. When did Mrs. Smith accuse Mr. Fairhurst of writing this letter to Mr. Donnelley? A. On Sunday morning when we discussed it.

Q. To whom? A. To Mr. Blue and myself.

Q. Was that the first time you had seen the letter? A. I did not see the letter.

Q. You did not? A. I did not, no, sir.

Q. Have you ever seen it? A. No, sir.

Q. Do you know what was done with it? A. No, sir, I do not.

Q. Did Mrs. Smith ever suggest what was done with it? A. No, sir, she did not.

Q. Did you ask what had been done with it? A. No, sir.

Q. This letter was discussed on that Sunday morning? A. Yes, sir.

Q. And Mr. Fairhurst was accused of writing it? A. Yes, sir; well, she said if it was done in any frame-up that the only person that she would know of that would do it would be Mr. Fairhurst.

Q. But nothing was said as to the whereabouts of that letter? A. No, sir; I don't think so, not to my recollection.

Q. Were you not curious to see this letter and see the basis of the frame-up? A. I don't think so; I may have been curious, but I don't think I gave much thought to the letter.

Q. Was not the letter the most important thing in this matter? A. It probably was.

Q. Did Mr. Blue ask to see the letter? A. No, sir, I don't think he did.

Q. Did he say he had seen it? A. Not to my knowledge.

Q. Did you ask him if he had seen it? A. No, sir.

Q. Did you ever ask him whether he had seen it? A. No, sir.

Q. So you don't know now whether he has ever seen it? A. No, sir.

Q. Although this letter was an important thing? A. Yes, sir.

Q. Did you ever speak to Mr. Donnelley about the letter? A. No, sir.

Q. Did your husband ever tell you that he had spoken to Mr. Donnelley about the letter? A. He never told me anything of the kind.

Q. Did you ask him? A. No, sir.

Q. Did Mrs. Smith ever tell you anything about the whereabouts of the letter? A. No, sir.

Q. Did you ever ask your sister where this important letter was? A. I think that they lost track of the letter; that is all I know.

Q. When did you first think that they had lost track of this letter? A. At one of the conferences with her counsel.

Q. When? A. I don't know.

Q. When did you first know that they had lost track of this important piece of evidence? A. At one of the conferences with her counsel.

Q. Was it a month ago? A. No, sir, it was probably longer ago than that—

Q. Six months ago? A. It may have been.

Q. How soon after the commencement of the suit; can you tell me that? A. No, sir.

Q. Can you tell me when the suit was commenced —I don't mean the date; you remember the fact that the suit was started? A. Yes, sir.

Q. How soon after that was it that you found out that the letter had been lost track of? A. It was some time after that.

Q. Can you tell me about how long? A. I really could not tell you.

Q. Have you ever heard that they have got track of the letter which they lost track of? A. No, sir, I have not.

Q. You have not heard of any change in that situation? A. No, sir.

Q. You remember distinctly that the shades were down when you left the house? A. We generally do that; I know that we pulled them.

Q. Was the position of the shades discussed after the night of November 19th? A. At one of the conferences I said the shades were down.

Q. I am talking before that—during the time that this case was boiling, was anything said between any of you as to the position of the shades? A. I do not believe so; I do not remember discussing the shades at all.

Q. So that, so far as the shades were concerned, the first time that your attention was drawn to their position was at some conference with counsel? A. Yes, sir.

Q. And then you recollected that the shades were down? A. Yes, sir.

Q. Was Mrs. Marsden's name mentioned the night you went to the movies, that Monday night following? A. I said we did not go into the details of the thing.

Q. Was her name mentioned? A. I don't remember.

Q. Have you any recollection? A. I don't remember that her name was mentioned.

Q. Have you any recollection of her name ever being mentioned when Mr. Smith was present? A. No, sir, I have no recollection of it.

Re-direct Examination by Mr. Ward:

Q. Mrs. Marsden's name was mentioned on the Sunday morning? A. Yes, sir.

RUDOLPH A. WISEMAN, being duly sworn, testified as follows:

Direct Examination by Mr. Ward:

Q. You are the solicitor of Mr. Roy Smith, the petitioner in one of these cases? A. Yes, sir.

Q. You are also the solicitor of Mr. Roy Smith in the case in which he is the defendant? A. Yes, sir.

Q. You filed an answer for him? A. I don't believe I am the solicitor of record in that case.

Q. You know that an answer has been filed in that case? A. I don't know it positively.

Q. The case brought by Mrs. Smith was brought a considerable period of time after the 19th of November, wasn't it? A. Yes, sir, it was some months.

Q. And it was not until after she started her suit against Mr. Smith to compel him to support her and her children, that he instituted this suit against her?

The Court—Is not that entirely a matter of record?

Mr. Ward—Yes, I will withdraw the question.

Q. As a matter of fact, Mr. Wiseman, acting as the representative of Mr. Smith, you saw Mr. McGinnis, of the firm of Ward and McGinnis on several occasions, didn't you? A. On at least two occasions.

Q. And on each of these occasions you were urged by Mr. McGinnis, acting as the representative of Mrs. Smith, to institute suit immediately, were you not? A. I recollect the first conference was not for the purpose of discussing the institu-

tion of the suit, but rather, of effecting a reconciliation.

Q. Is t so or not? (Question read.) A. It is so, yes, sir.

Q. And isn't it a fact that Mr. McGinnis told you at the last conference, that unless you began suit immediately, Mrs. Smith would begin? A. That is very true.

Cross Examination by Mr. Lane:

Q. Mr. Wiseman, who were counsel in that case for Mr. Smith? A. In connection with that I really cannot say; I suppose you were, Mr. Lane.

Q. Who else? A. Mr. W. W. Evans.

Q. The course of conduct which was indulged in, was indulged in after consultation with the counsel involved? A. Yes, sir.

Q. Was it suggested in these conferences that one of the objects to be attained was the avoidance of publicity? A. Yes, sir.

Q. So far as the time of commencing suit was concerned, did Mr. Smith have anything to do with it, or was it the affair of counsel? A. It was entirely a matter in the discretion of counsel.

Re-direct Examination by Mr. Ward:

Q. If it were the publicity that was to be avoided, did Mr. Smith assume that attitude when there was discussion about his children in your office? A. He has always assumed that attitude.

Q. Isn't it true, that at the conference held at your office, when Mr. Ward, of the firm of Ward & McGinnis was present, that Mr. Ward pointed out to Mr. Smith that if he pursued his mad course that there would be publicity that would reflect on

hic children; was not that pointed out to him? A. Yes, sir.

Q. And didn't he say that he did not care? A. No, sir.

Q. Didn't he say that he would pursue the course? A. He said he would pursue that.

MRS. MOLLIE MARSDEN, being duly sworn, testified as follows:

Direct Examination by Mr. Ward:

Q. Where do you live? A. 3 Graham Avenue, Paterson, N. J.

Q. How long have you lived in Paterson? A. Well, this last time about 18 months.

Q. Are you acquainted with Mrs. Barlow, the mother of Mrs. Smith? A. Yes, sir.

Q. Are you acquainted with Mrs. Smith and Mrs. Blue? A. Yes, sir.

Q. How long have you known them? A. Practically nine or ten years.

Q. How long have you known Mrs. Barlow? A. A number of years; I could not say.

Q. Have you ever met Mr. James Donnelley? A. Yes, sir.

Q. Where did you meet him first? A. At the Browns' house.

Q. Did you ever see him at the Barlow home? A. Yes, sir.

Q. Do you remember a certain evening, on the 19th of November, 1921? A. Yes, sir.

Q. Where were you on that evening? A. I was making a call on Mrs. Barlow, Park Avenue,

and not finding her home I went across to her daughter's, Mrs. Blue's.

Q. Had you been there before? A. Yes, sir.

Q. Just what happened? A. When I got there it was just before nine o'clock, and, of course, I went to see if Mrs. Barlow was there, and not finding her there, of course, Mrs. Smith, who came to the door, invited me in and asked me to stay for the evening and keep her company. O fcourse, I did that, and we had coffee.

Q. Was there anyone there when you went in? A. No, sir.

Q. Was Mrs. Smith alone? A. Yes, sir, and Mrs. Blue's baby.

Q. When you went in, into what room did you go? A. Into the living room.

Q. Describe the lights; did you notice anything about the lights there that night? A. The mantel was broken, and then there was an ordinary gas jet; but in the dining room there was a good light; the two rooms go into one.

Q. Did you observe anything about the shades? A. The shades were down, because I could have seen through going up the steps if Mrs. Barlow had been there.

Q. The house is practically on the sidewalk? A. Yes, sir.

Q. The window is very low? A. Yes, sir.

Q. You say that Mrs. Smith and the baby were there alone? A. Yes, sir, the baby was in bed.

Q. But you say that there was some suggestion made about making coffee? A. Mrs. Smith asked me if I would have coffee or tea, and she was making coffee for herself, and I said I would have coffee.

Q. Did anyone else come there while you were there? A. The doorbell rang and she went to the door, and she said, "Hello, Jimmie, come in," and it was Mr. Donnelley, and they spoke about a letter.

Q. Tell us about that. A. When he spoke about the letter he said, "Frances, I want to know what is this important business you want me for;" and she said, "Important business, why, nothing that I know of; I don't want you at all for any important business," she said; and he said, "I have got a letter." And the letter was kind of long.

Q. Did you see the letter? A. Yes, sir, and I heard it read, and it simply asked him to call on this important business; and she laughed and thought it was a joke. She said, "Somebody has played a joke on you;" and then she asked him if he would have some coffee, and he said "Yes;" and he sat down and we talked; and there was not very much said about the letter afterwards, only that it was just a joke.

Q. Do you know what became of that letter? A. No, sir, I saw Mr. Donnelley had the letter; he had the letter, because I noticed she handed it back to him.

Q. You said she denied writing the letter? A. Yes, sir, she laughed and said it was a joke, that she did not write it.

Q. After the coffee you say you stayed there and chatted together? A. Yes, sir.

Q. What was the next incident that happened? A. Mr. Donnelley made a break to go.

Q. What time was that? A. It would be something before 11 o'clock, half past ten or a quarter to eleven.

Q. What happened then? A. He got his hat from the side of the house where he was sitting, and he went towards the door, and Frances was just saying "Good night" when we heard a noise —we all heard the noise.

Q. Where was the noise from? A. From the back of the house; and I sat right behind the living room door by the bay window, and I stood up then, and we looked at each other, me, Frances and Mr. Donnelley, when we heard this noise—

Q. It startled you? A. Yes, sir.

Q. Proceed. A. Then we were talking, and Frances was kind of scared, and I don't say that I was not, and Mr. Donnelley said, "Do you want me to investigate?"

By the Court:

Q. Were wou scared? A. Not very much; that was between 10.30 and 11 o'clock; I could not swear to the time.

Further Direct:

Q. You say that Mr. Donnelley said, "Do you want me to investigate?" A. Yes, sir.

Q. Proceed. A. Frances and him went towards the kitchen, and then the next I heard was loud talking, very loud; and all that I could hear was, "Andy, listen to reason;" and, of course, Andy was very angry, and I naturally thought it was a family squabble, and I did not bother.

Q. How long a time elapsed from the time they left you and walked out until the time you heard the angry voices? A. Right away, in a second, as you might say.

Q. Proceed. A. And I heard the noises and the confusion, and they were quite angry with each other, and I could hear Frances say, "Andy, listen to reason," but he was so wild—he was furious.

Q. Did you hear what he said? A. I heard two or three remarks.

Q. What remarks did he make? A. He said to Mr. Donnelley, "You dirty dog;" and after that, of course, they slammed the door; then a little while after they were arguing and arguing, and a bell rang, which I took to be the front door bell, and Andy came rushing through the room, he flew through the room and went to the door himself, and who was there I don't know. Then he closed the door. He spoke to somebody, but who it was I could not swear to; and when he came back again he came out of the hallway, and he was closing the door, and I sat behind just near the telephone, and he said, "Why, how do you do; how long have you been here?" and I said, "Practically all the evening;" and he walked out kind of sheepish.

Q. Where did he go when he walked out? A. Into the kitchen.

Q. And then how long did Mrs. Smith remain there before she came out? A. Quite a while; and then she came back and asked me to excuse her, that there had been some lies told about her; and I stayed in the living room; and she went back again; but where the men went I don't know; they did not come through the living room.

Q. Did you see Mr. Donnelley after that? A. No, sir.

Q. Did you see Andy Blue again? A. No, sir.

Q. How long was it from the time Mr. Donnelley and Mrs. Smith went into the kitchen up

to the time that Mrs. Smith came back to you? A. Do you mean the first time?

Q. Yes. A. Before Mr. Blue came in—do you mean after the noise?

Q. I don't think you understand the question. You testified that Mrs. Smith and Mr. Donnelley went into the kitchen; that you heard these things; then you testified that Mr. Blue came out and went to the front door, and then came back and spoke to you, and then returned to the kitchen; how long was it after that, that Mrs. Smith came in to you? A. A little while after; and she left again, and she was gone quite a while then.

Q. How long did you stay there? A. I was there all the evening; it was turned 12 o'clock when I got home.

Q. Where do you live? A. Graham Avenue.

Q. How was Mrs. Smith clothed that evening? A. Just ordinary, a shirtwaist.

Q. Was she fully dressed or not? A. Yes, sir, she had a little coat effect on.

Q. How was Mr. Donnelley dressed? A. Fully dressed—

Q. From the time Mr. Donnelley got there up to the time they went into the kitchen to investigate about this noise, were they alone together at all? A. No, sir.

Q. Do you know whether or not Mr. Blue had gone when you went home? A. I could not tell where the men went or when they went; I was in the living room at the other end of the house.

Cross Examination by Mr. Lane:

Q. Did you get there about nine o'clock? A. About 8.45 to 9 o'clock.

Q. Had Donnelley got there then? A. I had been in the house a short time; then, not very long afterwards, ten minutes or a quarter of an hour, he came.

Q. What was the first thing Mr. Donnelley said when he came into the living room? A. He said "How do you do" to me, and then he said to Frances, "Frances, I have come to see what this important business is that you have with me;" and she said "Important business? I don't know anything about me; not me." And he said, "I have received a letter," and he produced the letter, and they read it; it was a kind of a long envelope and in ink; I could see it quite plainly. Frances read it out; it was signed "Frances Smith."

Q. Did you see what kind of handwriting it was? A. It was in ink, but I could not swear to the writing.

Q. What was said in the letter? A. It was just asking him to call.

Q. You don't mean to say that this letter was dropped like that? A. The letter was just simply a kind of a note effect.

Q. What was said about it—it was forgery, wasn't it? A. I did not know that.

Q. Mrs. Smith said she had not sent the letter? A. Yes, sir.

Q. And there was her signature? A. It was supposed to be her signature, but she said it was not hers; she said she thought somebody had played a joke on them.

Q. Was it suggested what kind of a joke that was? A. No, sir.

Q. If you had not been there, she would have been there alone with the baby? A. Yes, sir.

Q. There was not anything more said about this joke? A. No, sir.

Q. And no further discussion with respect to the letter? A. Not in my presence.

Q. Did Mr. Donnelley say that he thought it was a letter that was all right? A. No, sir, there was not anything at all said about it, not to my knowledge; I cannot recall the exact words.

Q. He did not say, "Did you ever write this? This looks phoney to me." A. No, sir, she denied that she wrote the letter; he asked her what was the important business; why she had written it.

Q. Did he indicate that he had any suspicions about the letter? A. No, sir, he said he had got the letter, and that he had come to ask her what it was for.

Q. Did Mrs. Smith say anything else? A. She said she never wrote the letter and did not know anything about it.

Q. Did she say, "If I wanted you on important business, I would have had you come to my own house?" A. No, sir, it just blew over.

Q. Did she say, "How is it you thought I would send for you to come to my sister's house?" or anything like that? A. No, sir, she said she had not sent the letter; she knew nothing about it.

Q. They did not go into a discussion as to the probabilities of that letter having been sent by her? A. She said she had not sent it.

Q. But did she say why it was impossible that she should have sent it? A. No, sir.

Q. Nothing was said that that was an impossible thing, was it? A. No, sir, nothing of that kind.

Q. Either by her or by him? A. They said they could not understand it; Mr. Donnelley said, "I cannot understand why I should get the letter;" and she said, "I did not send any letter to you;" and he said, "I don't understand it;" that was all that he said.

Q. Did he say when he got the letter? A. No, sir, I don't recall now whether he said that morning or that afternoon; I could not recall that.

Q. Had it gone through the United States mails? A. Yes, sir.

Q. Did they look at the stamp to see whether it had been postmarked? A. I could not recall that.

Q. Was there anything said, Mrs. Marsden, as to who had sent it; did anyone say, "I wonder who sent this letter?" A. I don't recall about that.

Q. Did they look at the postmark to see whether it had been mailed there? A. She said, "Why, this is not my handwriting;" and I said, "That is an end to it," to myself.

Q. The three of you tried to find out where the letter had been mailed from, by looking at the post mark? A. No, sir.

Q. You don't know whether it was mailed from Paterson or from New York? A. I don't know.

Q. And no one showed any curiosity about it? A. She was kind of confused at the time when he said she had important business with him; he said he could not understand it when she said she did not send it.

Q. Nothing further was said during the evening about this letter? A. No, sir, they could not understand why he should receive a letter like that.

Q. Mr. Blue was out talking to Mrs. Smith for

quite some time after he had seen you? A. They were talking together; I don't know how many were talking.

Q. Mr. Blue came in to go to the door to answer the bell, and he saw you? A. He saw me when he came back on his way to the dining room, and he had a conversation with me.

Q. Then he went all through? A. Yes, sir.

Q. How many were talking to you there that night? A. There was Andy Blue, and Donnelley, and Frances.

Q. You are sure of those three? A. Yes, sir, but I am not sure that there were any others.

Q. The next thing that happened, so far as you are concerned, was, that Mrs. Smith came back into the living room alone to you? A. Yes, sir.

Q. How long were Donnelley and Mrs. Smith and Blue talking in the dining room before Mrs. Smith came back to you?

Mr. McKee—I object; that is assuming a fact not proven.

A. Not in the dining room—in the kitchen.

Q. How long? A. Quite some time.

Q. Ten or fifteen minutes? A. It was quite a little while, fifteen or twenty minutes, I should imagine.

Q. You would say at least ten minutes? A. Yes, sir.

Q. So that for at least ten minutes you heard Mrs. Smith, Donnelley and Blue talking in the rear of the house? A. Yes, sir.

Q. What did you hear? A. I heard Mr. Blue say, "You dirty dog; get out." Then I heard

Frances say, "Why, Andy, listen to reason;" he was terrible; he was wild; and they kept on talking, and then the front doorbell rang, and he went there; and what was said at the front door I don't know, and I could not tell whether it was a lady or a man; and then he came back and closed the door, and he saw me sitting there, and he said, "How do you do, Mrs. Marsden; how long have you been here?" and I said, "Practically all the evening;" in a little while after Frances came back and said somebody had been lying about her, and I said, "I think I will be going."

Q. Now, I have asked you how long it was after Mr. Blue had gone to answer the bell, and gone through the living room and seen you, and went back into the kitchen into the back of the house when you heard Mrs. Smith, Mr. Donnelley and Mr. Blue talking together, and you said "At least ten minutes or twenty minutes." A. No, that was the first time.

Q. Can you understand the English langage? A. I think I can.

Q. I have asked you how long it was after Mr. Blue saw you that he talked with Mrs. Smith and Mr. Donnelley in the kitchen? A. Oh, from ten to fifteen minutes, I should imagine.

Q. Now, I ask you what was said that you overheard during that conversation? A. I could not hear when they closed the door; when he went to the back of the house from the front door, I did not get much of the conversation.

Q. It was from ten to fifteen minutes that you heard voices? A. Yes, sir.

Q. And you heard Mr. Donnelley and Mr. Blue and Mrs. Smith? A. Yes, sir.

Q. And were they loud voices? A. They were all talking together.

Q. And this was after Mr. Blue had seen you? A. Yes, sir.

Q. Now, you are sure of that? A. He was talking before and afterwards.

Q. Confine your attention to what happened after; you are sure that the ten or fifteen minutes he was talking out in the rear of the house with Mrs. Smith and Mr. Donnelley—that they were all talking? A. They were all talking together.

Recess to 2 P. M.

After Recess.

MRS. MOLLIE MARSDEN resumes the witness stand.

Cross Examination (continued) by Mr. Lane:

Q. Mrs. Marsden, when Mrs. Smith returned to you in the living room, what did she say? A. She just asked me to excuse her for a little while, as she was having a little trouble, having an argument over some lies that had been told about her.

Q. I say, when she came back? A. She just asked me to excuse her.

Q. When was that? A. When she came out of the kitchen and came to the living room, she asked me to excuse her as she was having some trouble over somebody having told some lies about her.

Q. What was said then? A. Nothing more until after they had gone home and I was ready to go home—

Q. How long did she stay in the living room with you after she returned, before you went home? A. Two or three seconds.

Q. What was all the conversation about? A. She just asked me to excuse her until she had reasoned with Andy Blue.

Q. Where was he then? A. He had gone into the kitchen; he had gone back from the front door into the kitchen.

Q. Then after he went into the kitchen, she came in to see you? A. No, sir; first of all, Andy Blue came rushing through—

Q. Just a moment. After Mr. Blue went through back into the kitchen, did Mrs. Smith come into the living room? A. Not until I was going home, not until after eleven o'clock.

Q. What did you mean when you said a few moments ago, that she came in and said, "Excuse me for a few moments; I have to talk to Andy Blue; and then she went back into the kitchen"? A. That is right.

Q. When Andy went to the front door, did he recognize you? A. I don't know, but when he came back from the front door after answering the doorbell, he said, "How do you do, Mrs. Marsden."

Q. After that, did Mrs. Smith come in? A. No, sir.

Q. A few moments ago you said she did? A. She came in as Mr. Blue went to the front door.

Q. Mr. Blue went through the room; you had to go through the room where you were sitting, to get to the front door? A. Yes, sir.

Q. So he went to the front door? A. Yes, sir.

Q. Mrs. Smith followed him? A. Yes, sir, she came right after him.

Q. And then she said to you, "Excuse me for a few moments?" A. Yes, sir.

Q. Then she turned around and went back into the kitchen? A. Yes, sir.

Q. And she got there before Mr. Blue returned from the front door? A. Well, they both went together like.

Q. Where did they meet, before Andy Blue saw you or afterwards? A. In the dining room; she was making her way to go into the kitchen when he came back from the front door.

Q. Did Mr. Blue and Mrs. Smith meet before Andy Blue—(question withdrawn). Had Mrs. Smith left you before Mr. Blue came back after having answered the bell? A. She was going towards the kitchen as he came through, and he was closing the door, and he said, "How do you do, Mrs. Marsden;" then they went into the kitchen, and I heard Mrs. Smith saying, "Andy, listen to reason."

Q. You heard the talk going on how long? A. I don't know how long.

Q. You did not see Mr. Blue after that? A. No, sir.

Q. Neither did you Mr. Donnelley after that? A. No, sir.

Q. You did see Mrs. Smith after that? A. Oh, yes.

Q. What did she say to you after she met you? A. She said somebody had been telling lies about her, and she was quite excited over Mr. Blue making a scene, and not knowing what he was making the trouble over; she sai dthat somebody had been telling lies about her; she did not say what the lies

were, and I did not ask her about that.

Q. She simply said that somebody had been telling lies about her? A. Yes, sir.

Q. Then what? A. My hat and coat were in Mrs. Blue's bedroom, and I asked her to get it; I said, "It is getting late, and I must be going;" that must have been about twenty minutes to twelve when I left that house.

Q. Did Mrs. Smith then go to get the hat and coat? A. Yes, sir, I went into the dining room, and she went into the bedroom and got it.

Q. Did Mr. Donnelley wear an overcoat that night? A. I don't think—I don't think he had a coat on.

Q. Did he have a hat? A. Yes, sir; he had that in his hand ready to go when we heard the noise; he was ready to leave the house then.

Q. Why did he go into the kitchen? A. Because when we heard the noise he said, "Do you want me to investigate before I leave the house?"

Q. He took his hat into the kitchen? A. When he was ready to go, then he had his hat in his hand ready to go out.

Q. You were afraid? A. I was a little nervous.

Q. Where did the noise come from? A. From the back of the house.

Q. How long were Mr. Donnelley and Mrs. Smith out in that kitchen before you heard them talking? A. Do you mean the first time?

Q. Yes. A. Quite some time, ten minutes or fifteen minutes; that was after we had heard the noise.

Q. After Mrs. Smith and Mr. Donnelley went into the kitchen to locate the noise, how long were they down there before you heard them begin to

talk? A. Right away—I heard harsh talking, and then I heard Mr. Andy Blue say, "You dirty dog, get out;" and then the door closed, the kitchen door, and I could hear voices, but I could not tell what they were saying.

Q. You did not go out? A. No, sir.

Q. You did not hear anything more said by Mr. Blue, except "You dirty dog, get out"? A. That is all.

Q. When Mrs. Smith came back the last time before you went home, did you and she discuss at all that had occurred there that night? A. Nothing no more than there had been lies told about her.

Q. Did you ask Mrs. Smith what Andy Blue meant by calling Donnelley "A dirty dog"? A. She said somebody had been telling lies about her

Q. Did she tell you what she said to him? A. No, sir.

Q. Did she tell you what reason there was for him to listen to? A. No, sir.

Q. Did you say to her, "It is absurd; I have been here all the evening?" A. No, sir.

Q. Why not? A. Because it was not my business to interfere with family affairs.

Q. Did she say to you, "This is absurd; you have been here all the time Mr. Donnelley has been here?" A. No, sir.

Q. So that your presence in the house during the time when anything could have happened, was not referred to in any way between Mrs. Smith and yourself; is that right? A. No more than there had been lies told about her, and Andy was quite annoyed.

Q. I say, your presence in that house, during the time that anything could have happened, was

not referred to between you and Mrs. Smith before you left that house that night? A. No, sir.

Q. You did not talk about the fact that you were there, so that nothing could have happened, did you? A. No, sir, we never mentioned it.

Q. She did not say, "Mrs. Marsden, this is absurd, because you have been here all the evening?" A. No, sir, she did not.

Q. And Andy Blue did not say, when he saw you, "Why, Mrs. Marsden, I am surprised; have you been here all the evening?" A. He said, "How do you do, Mrs. Marsden; how long have you been here?" That is when he came back from the front door.

Q. After he went out, Mr. Blue did not come back to talk about the matter with you? A. Andy Blue did not.

Q. Did Mrs. Smith? A. She came back and said there was trouble over lies; that is all she told me.

Q. And they did not come back and talk with you about what had occurred at the house that evening? A. No, sir.

Q. And Andy Blue did not ask you that evening what you had seen there during the evening, did he? A. I did not see Andy Blue afterwards.

Q. Mrs. Smith did not say to you, "Why, I tried to get Andy to come in here and talk to you about it, and he would not come"? A. No, sir, she just simply said that there was trouble over the lies, that somebody had been telling lies about her.

Q. You were not curious enough to ask what they were, although you had seen this letter which Mrs. Smith denied having sent? A. Of course, I came to the conclusion that there was something

radically wrong, but it was none of my business.

Q. You came to that conclusion that evening, didn't you? A. No, sir, I don't say that I came to any conclusion at all; I simply heard their story, and it had nothing at all to do with me, and I did not wish to butt into anybody's private affairs.

Q. How long have you know Mrs. Barlow? A. About ten years.

Q. When did you get to her house? A. About 8.40.

Q. Whom did you see at her house? A. No one was at home at Mrs. Barlow's, not a soul.

Q. Then did you go right across the road and turn into Pennington Street and call on Mrs. Blue? A. Yes, sir, and I found Mrs. Smith there.

Q. Your friend was Mrs. Barlow? A. Yes, sir, but I was acquainted with all of them.

Q. How long had you known Mrs. Smith? A. Quite some time, eight or nine years.

Q. Did you ever visit her? A. Not in her married home; I visited her at her mother's; also Mr. Smith, too.

Q. Have you ever been in her own home? A. No, sir.

Q. Has she ever visited you? A. No, sir.

Q. Why did you go to Mrs. Blue's house to find her mother? A. Because I have always been told that if I did not find her at home to call at Mrs. Blue's.

Q. Have you ever done that before? A. Yes, sir; the lady downstairs had always told me I would find her at Mrs. Blue's.

Q. Did the lady downstairs tell you this that night? A. No, sir.

Q. That is the only way you knew that she might

be there? A. I knew she was in the habit of going to her daughter's.

Q. When you got to Mrs. Blue's house what occurred? A. I rang the doorbell and Frances came to the door, and I said, "Is your mother here?" and she said, "No"; and I said "I have just been across to Park Avenue, and I thought I would come here and see if she were here"; and she said, "Won't you come in?" and I went in, and we sat for a few minutes, and then the front doorbell rang, and she went to the door, and she said, "Hello, Jimmie", and I think she said, "Won't you come in?" and he came in. Of course, I had seen him at their homes, and I knew him; I had seen him at Mrs. Alfred Barlow's, also at Mrs. Barlow's.

Q. Anywhere else? A. No, sir.

Q. Proceed. A. When he came in he said, "How do you do?" and I said, "How do you do?" and he commenced talking to Frances, and he said, "I called to see you about this letter—it says you want to see me on important business"; and he said, "I would like to know what this important business is"; something to that effect; and then he produced a letter, and they read the letter, and she said it was not her handwriting, and that she had not sent any letter.

Q. Proceed. A. That is all I can tell you.

Q. What next happened? A. There was nothing until we had the coffee and cheese and crackers, all three of us.

Q. What did you talk about—the three of you? A. I could not tell you.

Q. You sat there for an hour? A. I sat there all the evening, but we did not talk about anything in particular; I think I did talk over seas with Mr. Donnelley; I was talking about France; I had a

brother missing, and that is what makes me remember that.

Q. Anything else? A. No, sir.

Q. What time was it when you heard this noise? A. Just past eleven.

Q. So you and Mrs. Smith and Mr. Donnelley sat there from nine to eleven? A. Mr. Donnelley did not come until I had been there for quite a little while.

Q. When did Mr. Donnelley come there? A. About nine o'clock or a little after; it might be a little before nine o'clock, I could not say.

Q. Would you say it was after 9:30? A. No, sir, it was not after 9:30; I think it would be ten minutes or a quarter after nine o'clock, as near as I could tell you.

Q. Did Mr. Donnelley tell you where he had come from? A. No, sir.

Q. Did he say anything about the hour that he was arriving at on this important business? A. No, sir.

Q. No one said anything about that? A. No, sir.

Q. When did you first tell what you knew about this case to anyone? A. I could not give you the exact date.

Q. About? A. I had talked it over at Mrs. Barlow's.

Q. When? A. When she was living with her mother—just after she had gone home to her mother's.

Q. How long after? A. Quite a time—three or four or four weeks—maybe more.

Q. Would you say it was three or four weeks after what had occurred before you talked to anyone about it? A. I cannot recall the date, but I know I made a call on her mother.

Q. Nobody approached you — nobody came to you about it? A. No, sir.

Q. You talked to her mother about it in the ordinary course of conversation? A. Yes, sir, I went over to Mrs. Barlow's, and Frances was there and her two children, and the conversation came up in the natural course of conversation.

Q. That was some time after the happenings in November, 1919? A. I could not give you the date to be certain.

Q. It was not that week? A. No, sir.

Q. And it was not the next week, was it? A. I could not give you the date or the time.

Q. Mrs. Smith never came to ask you to see Mr. Smith and tell him you were there during all that time? A. No, sir.

Q. No one suggested that? A. No, sir.

Q. Mrs. Blue never talked to you about it? A. No, sir.

Q. Andy Blue never came to you and talked about it? A. No, sir.

Q. Andy Blue never asked you what you knew about it? A. No, sir.

Q. All he ever said to you, so far as this case is concerned, is what you have stated as having occurred as he passed casually through the room on his way to the front door to answer the bell? A. When he came back he said, "How do you do; how long have you been here?"

Q. And after that, after he went back to the kitchen, did you hear Mrs. Smith and Andy Blue and Donnelley in high conversation? A. I say I heard Frances saying to Andy Blue, "Listen to reason, Andy, do listen to reason"; but I could not tell you anything else at all.

Q. Did you hear Mr. Donnelley?

Q. You said this morning three or four times before recess that you heard Donnelley and Andy Blue and Mrs. Smith in conversation for at least from ten to fifteen minutes? A. That was the first time, before I had seen Andy Blue.

Q. You said the second time? A. No, sir, I said the first time—when he went out to the kitchen the first time, they were talking ten or fifteen minutes.

Q. You said this morning upon at least two occasions, that after Mr. Blue returned to the kitchen you heard Mr. Donnelley, Mr. Blue and Mrs. Smith in conversation; is that the fact? A. I did not understand you then, if I did say that.

Q. Then your explanation is that you did not understand it this morning? A. It was the first occasion when I heard them all talking together.

Q. So your explanation is, that you did not understand me? A. That is it.

Q. Have you talked about this case since recess? A. Yes, sir.

Q. With whom? A. With Mr. Ward and Mrs. Smith and Mrs. Blue.

Q. How long have you talked to them about it? A. They called my attention to what happened, and I said, "Yes", I must have misunderstood you.

Q. So that your attention during recess was called by counsel to the fact—your attention during recess was called by counsel to the way in which you testified? A. Yes, sir, because I did not understand you.

Q. Who suggested that you did not understand me? A. I said I did not quite get what you meant.

Q. What did Mrs. Smith say? A. She said you did not seem to understand; I said "I cannot see where I misunderstand, because I said Mr. Blue

came through to the door and went back again; Mr. Blue went right through the dining room into the kitchen, and I did not see him afterwards."

Q. Mrs. Smith did not tell you how Mr. Donnelley had left? A. No, sir.

Q. And you did not ask? A. No, sir.

Q. Did Mrs. Smith suggest during the noon recess that she had come in after Mr. Blue had gone through to speak to somebody at the front door? A. No, sir.

Q. Why didn't you tell that this morning when you were retailing your story? A. I don't quite follow you now—tell whom?

Q. You said this afternoon that when Mr. Blue went through the room to answer the front doorbell, that Mrs. Smith followed him up? A. She came to me while he was at the front door.

Q. She followed him, and she walked over to where you were sitting? A. Yes, sir.

Q. And she said "Excuse me for a few moments, I am having some family troubles?" A. Yes, sir.

Q. Why didn't you tell that this morning? A. I did tell that this morning.

Q. That was not discussed during the noon recess? A. No, sir.

Q. Do you know whether or not it was discussed during the noon recess? A. No, sir, we talked about whether you meant the first or the second time.

Q. How old are you? A. Fifty-three.

Q. Are you married? A. Yes, sir, I have been married twice.

Q. What kind of a noise did you hear? A. I could not exactly tell you, only that there was somebody at the back of the house, as though there was somebody moving at the back of the house, as if

somebody was moving in the kitchen; it sounded as if it came from the kitchen.

Q. What positions were you in when you heard that noise? A. I sat in a chair by the window behind the door, near the telephone table, and Mr. Donnelley and Frances stood up, and he was going.

Q. With his hat in his hand? A. Yes, sir, ready to go.

Q. Could you hear what Mr. Blue said, whomsoever it was at the front door? A. No, sir, I could not really tell you whether it was a man's voice or a woman's voice; I could not get anything at all; I did not listen.

Q. And all of the conversation that you heard in the rear was, "You dirty dog; get out"? A. Yes, sir, you could hear voices, but I could not hear what was said, except that.

Q. Who said that? A. Andy Blue.

Q. How do you know that? A. I knew his voice.

Q. So you knew it was Andy Blue out there from his voice? A. Yes, sir, I knew it was Andy because he came through afterwards.

Q. Did you know it was he when you heard the voice, "You dirty dog"? A. Yes, sir, I knew his voice; he said, "You dirty dog; what are you doing here? Get out." And they were all talking together.

Q. He said, "You dirty dog; what are you doing here? Get out?" A. Yes, sir.

Q. Did you hear, "You dirty dog; what are you doing here? Get out"? A. Yes, sir.

Q. Did you hear Donneley say in reply, "I am here on my business"? A. No, sir.

Q. Did you hear anything that sounded like that? A. No, sir.

Q. You knew what he was doing there, didn't you? A. Yes, sir.

Q. He had come to see what Mrs. Smith wanted? A. He read the letter out loud.

Q. You knew by stepping to the kitchen you could have explained the whole thing? A. I did not know what the trouble was about.

Q. For fifteen minutes you sat there while those high words went on? A. Yes, sir.

Q. All you heard was, "You dirty dog; what are you doing here? Get out"? A. Yes, sir.

Q. And during those fifteen minutes it never occurred to you, that by stepping into the next two rooms you could explain the whole situation? A. Yes, sir, but I did not.

Re-direct Examination by Mr. Ward:

Q. You were also informed at noon time by Mr. Ward, that when you got back on the witness stand, to state that you had conversed with him on the subject?

The Court—I don't think there is any reflection on counsel.

Mr. Lane—It reflects on the occuracy of the witness' testimony; we have the right to judge her testimony.

Mr. Ward—After all, it is not what counsel thinks, it is what your Honor thinks.

JAMES J. DONNELLEY, JR., being duly sworn, testified as follows:

Direct Examination by Mr. McKee:

Q. How old are you? A. 24.

Q. Where do you live? A. 148 East 23rd St., Paterson, N. J.

Q. What is your business? A. Mortgages and bonds salesman.

Q. You have been in that business how long? A. A couple of years.

Q. What was your business prior to that? A. I was in the army before that.

Q. For how long? A. Two and a half years.

Q. Over seas? A. Yes, sir.

Q. When did you return from the army? A. In the fall of 1919.

Q. About what time in the fall of 1919? A. O'. probably in November.

Q. Do you know Mrs. Smith, the defendant in this case? A. I do.

Q. And do you know Mr. Smith, her husband? A. I do.

Q. Do you know Mrs. Barlow, her mother? A. I do.

Q. Do you know Mrs. Blue, her sister? A. Yes, sir.

Q. Do you know Mr. Andy Blue, her brother-in-law? A. Yes, sir.

Q. How long have you known all these people? A. Oh, probably six or seven years.

Q. Did you know Mrs. Smith before her marriage? A. No, sir, I did not.

Q. Where did you get acquainted with Mrs. Smith? A. At the home of her family.

Q. Mrs. Barlow's? A. Yes, sir.

Q. Did you ever visit the Barlow family at the time Mrs. Smith was there? A. Yes, sir, I have.

Q. And was it on that occasion that you first met her? A. It was, yes, sir.

Q. Do you know Miss Camwell? A. Yes, sir.

Q. How long have you known her? A. For years.

Q. What is her full name? A. Miss Gladys Camwell.

Q. Where did she live? A. Ellison Street.

Q. Was she acquainted with Mrs. Smith? A. Yes, sir.

Q. Was she a friend of Mrs. Smith? A. Yes, sir.

Q. Did you know Miss Camwell before you knew Mrs. Smith? A. Probably about the same time.

Q. Where did Miss Camwell live as compared with the residence of Mrs. Barlow? A. Miss Camwell lived just above Carroll Street, and Mrs. Barlow lived on Park Avenue.

Q. Did Miss Camwell live on Ellison Street? A. Yes, sir.

Q. How often do you recollect of meeting Mrs. Smith before the 19th of November, 1921, Mr. Donnelley—how often have you met Mrs. Smith? A. I have met her at different times.

Q. Did you ever meet her at her house? A. I have.

Q. Have you visited her house? A. Yes, sir.

Q. On how many occasions? A. Probably half a dozen or so.

Q. Did you ever visit the home of Mrs. Smith at any time alone? A. I have not.

Q. At the time of your visits to Mrs. Smith's house were you accompanied by anyone? A. Yes, sir.

Q. By whom? A. On some occasions with her brother, Alfred, and on other occasions with Miss Camwell and Miss Davis.

Q. How often with Miss Camwell and Miss Davis? A. Twice that I recall.

Q. Did you ever see Mrs. Smith while there? A. Yes, sir.

Q. What was the nature of your visit at that time; how did you come to make that visit there? A. I went with the young ladies there.

Q. The visit was not made then at your suggestion? A. No, sir, they were going up to see Mrs. Smith.

Q. What was the length of your visits on those occasions? A. Probably an hour or a couple of hours.

Q. Do you know the brother of Mrs. Smith? A. Yes, sir.

Q. What is his name? A. Alfred.

Q. How long have you known him? A. Ever since I was a boy.

Q. How often have you visited the home of Mrs. Smith in company with her brother Alfred? A. Probably four times or so.

Q. Was Mr. Smith ever home on those occasions? A. I think on one occasion.

Q. The other three you don't know? A. No, sir.

Mr. Lane—Objected to as leading.
The Court—Objection sustained.

Q. Do you know on those three occasions whether Mr. Smith was home or not? A. Once I remember, but he was not home on the other occasion.

Q. On one occasion do you recollect of going with the brother of Mrs. Smith to her home, when the brother went in and you waited outside for him? A. I do.

Q. Tell the Court just what that occasion was

and what took place at that time? A. Al and I were going out that evening to the movies, and his wife asked him to go over to Mrs. Smith's and get her curling iron.

Q. Were you there at the time his wife requested that? A. Yes, sir.

Q. Proceed. A. We went over and went down 30th Street, and there was a light in the kitchen, and he said "Wait, and I will be out in just a minute", and I waited outside, and in the course of half a minute, or a minute or so, he came to the door and said, "Come on in", and I went on in, and we probably stayed ten or fifteen minutes, and then we brought the curling iron back, went on back.

Q. Was the brother in the house all the time you were in the house? A. Yes, sir.

Q. While you were waiting outside did you see any people you knew? A. No, sir—people passed.

Q. As you were about going in, did you see anyone that you knew? A. I am not positive, but I think I did.

Q. And do you recollect who that was? A. Mr. Dunstan.

Q. You were home at the time Mr. Dunstan testified he saw you go in at the side door? A. Yes, sir.

Q. Did you ever go out riding with Mrs. Smith in an automobile? A. No, sir.

Q. Did you ever ride in Mrs. Smith's automobile? A. Yes, sir.

Q. Did you ever ride in it with her alone? A. Yes, sir.

Q. When and on what occasions? A. Going up and down town.

Q. How did you happen to have a ride in her automobile? A. I usually used to walk up and

down most of the time, and on different occasions she would be driving along, and she would stop and pick me up and take me up town.

Q. Have you ever been picked up that way on the street when anyone was in the automobile with her? A. Yes, sir.

Q. Who, for instance? A. Miss Camwell or Miss Davis or Mrs. Blue or Mrs. Barlow.

Q. You visited Miss Camwell quite often, didn't you? A. Yes, sir.

Q. Did you ever take her out to functions, to parties, Miss Camwell? A. Yes, sir.

Q. How often did you visit her? A. There was not any regular time; I used to see her sometimes once a week, and sometimes once every ten days or two weeks.

Q. Do you remember on one occasion being picked up by Mrs. Smith on Park Avenue and taken down town, at the time Mrs. Blue was with her? A. Yes, sir.

Q. Just state to the Court that occasion, and how that took place. A. December 4, 1920, I was walking down Park Avenue, right near Graham Avenue, and Mrs. Smith and Mrs. Blue were going in the same direction, and they stopped and asked me if I was going down, and I rode down with them, and we were talking, and I mentioned that I was going to hire a car for that afternoon.

Q. Did you tell them for what reason? A. I told them that I had an appointment that I had to keep, and that I was going down town to hire a car.

Q. What was said then? A. I believe that it was Mrs. Blue's suggestion to Mrs. Smith, "Why don't you let Mr. Donnelley have the car?" and they talked back and forth, and they said "Yes", that

I could have their car if I wished; and I said, "No, I won't take it only under the condition that you allow me to pay for the gas and oil that I use"; and they said, "That is absurd"; so I said, "Well, that is the only condition I will take it under"; so we finally decided that I would pay $5.00 towards the gas and oil, and we made arrangements that I would get the car on Ellison Street alongside of the Y. W. C. A.; and they dropped me off at the City Hall; and I was to go back there about five minutes later or so, and get the car.

Q. Was anything said as to where they were going that afternoon? A. I don't know whether they were going to the movies or going to do some shopping.

Q. Was anything said as to the time the car was to be returned? A. I believe three o'clock or 3:30.

Q. Where were you going that afternoon? A. To Westwood, New Jersey.

Q. Did you go there that afternoon? A. Yes, sir.

Q. With Mrs. Smith's car? A. Yes, sir.

Q. Was Mrs. Smith with you? A. No, sir.

Q. Was there a lady with you? A. Yes, sir, a Miss Clara Meyers.

Q. Where does she live now? A. In Pennsylvania, Bethlehem, Pennsylvania.

Q. Where did you meet her? A. On the corner of Church and Ellison Streets on that day.

Q. What was the object of your trip that day? A. It was Miss Meyers who had the appointment in Westwood, and I had told her previously that I would take her over.

Q. Now, you started from the Y. W. C. A. on Chestnut and Church Street at about what time? A. I don't know exactly, probably around noon time.

Q. Did you go to Westwood? A. Yes, sir.

Q. On your return did you come directly back to Paterson? A. Not directly, no, sir.

Q. What did you do; did you stop anywhere that day after leaving Westwood on your way back? A. Yes, sir.

Q. Where? A. In Fairlawn.

Q. Whereabouts in Fairlawn? A. I don't know what road you would call it.

Q. Was it on the main road through Fairlawn? A. It is the continuation of the Morelots Road.

Q. Is that the road you came over? A. Yes, sir.

Q. What did you do there? A. I stopped probably ten minutes or so, ten or fifteen minutes.

Q. What was the occasion of your stopping? A. There were probably five or six hunters there, and we stopped to watch the hunters.

Q. What time of day was that? A. Oh, it was in the early afternoon.

Q. Broad daylight, sunshine? A. Yes, sir.

Q. How far off the main road were you? A. Probably twenty feet.

Q. And was your car in plain view? A. Yes, sir.

Q. How long did you remain there? A. Probably ten or fifteen minutes.

Q. Did these hunters have any dogs? A. Yes, sir.

Q. Hunting dogs? A. Yes, sir.

Q. How far away from you were the hunters? A. They were moving about all the time.

Q. While resting there, did you see anyone you knew? A. Yes, sir.

Q. Who? A. Mr. Fairhurst.

Q. How did you come to see him? A. He passed on horseback.

Q. How close to your car was he? A. He was along the road probably the distance that I was off the road.

Q. You were ten feet off the road? A. More than that.

Q. From ten to fifteen feet? A. Yes, sir.

Q. Were there any trees between your car and the road, that you know of? A. There were not.

Q. Was the view in any way obstructed from the main road to your car? A. No, sir.

Q. And there was no growth of thick brush between your car and the road? A. No, sir.

Q. Was it open enough so that you could drive in readily to the main road from where you were standing? A. Yes, sir.

Q. Did you recognize Mr. Fairhurst that day? A. Yes, sir.

Q. Did he recognize you? A. I could not say.

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

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

Q. What did Mr. Fairhurst do as he came along? A. He came along the road and got about opposite the car, and his horse bolted and galloped on down the road.

Q. Do you know why the horse bolted? A. I don't know.

Q. How far did he go? A. He went a good distance down the road; he went out of sight.

Q. Did you see him again? A. He came back.

Q. While you were still there? A. Yes, sir.

Q. What took place after he came back? A. He stopped about 100 or 150 yards down the road, and got off his horse.

Q. Did he talk to anyone? A. He talked to one of the hunters.

Q. Did he come back to your car again before he left? A. No, sir.

Q. How soon after that was it that you left? A. He got on his horse again and went on in the direction that he was going towards Paterson, and I pulled out and went in the opposite direction.

Q. You were going in what direction? A. Well, I was on my way to Paterson, that was back from Westwood.

Q. During the time you waited in that car, was there any loving or kissing going on in that car? A. No, sir.

Q. Any hugging? A. No, sir.

Q. Was there anything improper in any way between you and the lady that was with you at that time? A. Absolutely none.

Q. You brought the car back about what time, Mr. Donnelley? A At the time I was supposed to bring it back—around three or three-thirty.

Q. And you left the car where? A. On Ellison, right where I had picked it up by the Y. W. C. A.

Q. Is that the first time you had had Mrs. Smith's car? A. Yes, sir.

Q. And did you ever have it after that? A. Yes, sir.

Q. When was that? A. I had it on two other occasions.

Q. Do you recollect the dates? A. I don't recall the dates, no, sir, but I remember one day in the summer; I believe it was July of 1921—

Q. Yes, how did you come to get it that time? A. I got it through her brother Alfred.

Q. Where did you go with it? A. I started for New York.

Q. How far did you get? A. To the ferry.

Q. What happened? A. I had an accident.

Q. What was the nature of the accident? A. I hit another car.

Q. Who was with you at that time? A. This same young lady.

Q. Was Mrs. Smith with you at that time? A. She was not.

Q. Where was Mrs. Smith? A. She was with her sister.

Q. Her sister being Mrs. Blue? A. Yes, sir.

Q. What did you do after the accident? A. I called up Mrs. Smith at her sister's home.

Q. How did you know she was there? A. Because she said I was to leave the car there—that that is where she would be.

Q. All right, go ahead; you telephoned; did you get her on the telephone? A. Yes, sir.

Q. What did you tell her? A. I told her to go over to the ferry, the 125th Street ferry, as I had a little trouble; I did not go into details at all.

Q. Was anything said about the car, about leaving the car? A. No, sir; I said I would be at the ferry to meet the trolley car.

Q. Did she come? A. Yes, sir.

Q. Were you there at the time she arrived? A. Yes, sir, I was.

Q. What became of the car then? A. Why, I had an appointment over in New York, a very important appointment, and I asked her if she wanted me to take care of it and bring the car back, and she said "No", that she would take care of it, and for me to go on over to New York and keep my appointment.

Q. You then left? A. Yes, sir.

Q. Do you remember the 19th of November, 1921? A. Yes, sir, I do.

Q. Do you remember that distinctly? A. Yes, sir.

Q. That summer you were down to Asbury Park, were you not, 1921? A. Yes, sir.

Q. Where were you stopping? A. In Allenhurst, at Mr. Charles Simon's.

Q. That is right on the ocean front, isn't it? A. Yes, sir.

Q. You had been staying with him how long? A. I used to go down very nearly every week end.

Q. Mr. Simons, Junior? A. Yes, sir.

Q. Do you remember seeing Mrs. Smith there one summer? A. Yes, sir.

Q. Where did you see her? A. I saw her over at the Lakeland Hotel, and I also saw her on the boardwalk.

Mr. Lane—Has the date been fixed?
Mr. McKee—Summer of 1921.

By the Court:

Q. What month? A. I really don't know whether it was July or August.

Further Direct:

Q. At any time while you were there during that summer, did you ever go out with Mrs. Smith absolutely alone? A. Yes, sir.

Q. When was that? A. On one occasion; I went over one evening, over to the hotel to see Miss Camwell and Miss Davis.

Q. They were stopping there? A. Miss Davis

was stopping at the same hotel that Mrs. Smith was, and Miss Camwell was stopping at another hotel.

Q. At the time you called at the hotel that Mrs. Smith was stopping at, did you call for the purpose of seeing Mrs. Smith? A. No, sir.

Q. Upon whom were you calling? A. Upon Miss Camwell.

Q. Those are the occasions you saw Mrs. Smith there? A. On this occasion I went over to see Miss Camwell, and Miss Camwell was not there, but Mrs. Smith was there, so I told her I wanted to take Miss Camwell out for the evening.

Q. Did you tell her where? A. That I wanted to take her to Allenhurst.

Q. To where? A. To the Club.

Q. What was going on there? A. There was a dance.

Q. Did you tell her that? A. Yes, sir.

Q. Then what was said after you told her that at the hotel? A. She said that Miss Camwell had gone down to the boardwalk probably half an hour before that, and I said, "I will go down and look for her"; and she said, "I am going down, I want to see her, too."

Q. Did you go down to look for her? A. Yes, sir, and Mrs. Smith went with me, and we went down to the boardwalk, and we could not find Miss Camwell or Miss Davis, so she said that she did not have anything to do that evening as long as she could not find the girls, and I said, "Would you care to go over?" and she decided to go along, and we went along the boardwalk and over to Allenhurst.

Q. From Allenhurst across to North Asbury Park what was the condition of the property along there? (Question withdrawn.) Does the board-

walk extend entirely across to Allenhurst? A. Not the main boardwalk; there is a boardwalk that continues all the way over.

Q. How large was that boardwalk? A. At the continuation of the main boardwalk there is a boardwalk probably four feet wide.

Q. How long is that smaller boardwalk? A. Fifty or seventy-five feet.

Q. After leaving that boardwalk what do you get on to then? A. There is a pavilion then in Allenhurst, a bathing pavilion, I believe.

Q. And there is a large hotel in connection with that pavilion? A. Yes, sir.

Q. And what is the name of that hotel? A. The Loch Arbor.

Q. That is brilliantly lighted in the evening? A. Yes, sir.

Q. On this path where that goes across from Asbury Park to Allenhurst, is that a dark passage there? A. No, sir, it is not.

Q. What gives it the light there in the evening? A. There is a very large electric sign right at the end of the boardwalk, or probably 25 to 50 feet after the end of the boardwalk.

Q. Is that sign illuminated all the time? A. Yes, sir.

Q. Was it that evening? A. Yes, sir.

Q. What time did you return from Allenhurst that night? A. Probably between 10:30 and 11 o'clock.

Q. Did you come back the same way that you went? A. The same way.

Q. Were you alone with Mrs. Smith on that passageway across from Allenhurst to Asbury Park that night? A. Yes, sir.

Q. Was anyone else present? A. There were people on the boardwalk.

Q. Was that walk used much by the people living in the respective places? A. Very much.

Q. Is there any other means of getting from Asbury Park to Allenhurst except this walk that you speak of, unless you go halfway up the lake to the main bridge? A. No, sir, that is the only means.

Q. I ask you if that is the means usually used by people walking from Allenhurst to Asbury Park? A. Yes, sir, it is.

Q. Now, on that evening you say you returned about half-past ten or eleven o'clock; where did you go after you got into Asbury Park? A. I took Mrs. Smith back to the hotel.

Q. From the time you started out from the hotel that night, Mr. Donnelley, I ask you if there were any improper actions or talk upon your part or Mrs. Smith's part during all that time? A. Positively not.

Q. Were there any indications of affectionate regard or actions between you at all? A. I should say not.

Q. Have you at any time ever shown any affection for Mrs. Smith? A. Positively not.

Q. Have you ever had any affection for her? A. No, sir.

Q. Has she ever shown any affection towards you? A. She has not.

Q. You testified here, Mr. Donnelley, that you were on the porch of the hotel where Mrs. Smith lived in Asbury Park; is that so—with Mrs. Smith? A. Very true.

Q. Was anyone else present at that time? A. Yes, sir.

Q. How many? A. Probably half a dozen.

Q. Did you see Mr. Smith, also, that day? A. Yes, sir.

Q. Were you there first, or did you come after Mr. Smith arrived? A. He was there on the porch when I arrived.

Q. And who were in the group on the porch, do you recollect? A. Mr. and Mrs. Smith, Mr. Davis and Miss Davis and Miss Camwell; I believe that was all.

Q. Who came with you? A. Mr. Kelly.

Q. Now, when you arrived, what did you do? A. Went up on the porch.

Q. Did you go to the group in which Mr. and Mrs. Smith were? A. Yes, sir, and sat down.

Q. How long did you remain there? A. Probably twenty minutes or so.

Q. Then what happened? A. Then we left.

Q. Who left? A. Mr. Kelly and myself.

Q. Leaving the same number of people in the group there? A. Yes, sir.

Q. Whom did you go to see there that afternoon? A. Miss Camwell.

Q. Did you have any intention of calling on Mrs. Smith at that time at all? A. No, sir.

Q. There was no expression of affection between you that day was there? A. No, sir.

Q. No suggestion of anything of that kind? A. No, indeed.

Q. Now, on another occasion they say, Mr. Donnelley, that you walked—(Question withdrawn). By the way, what time of day was that you visited Miss Camwell and saw the rest of them on the porch? A. I believe it was in the afternoon.

Q. Broad daylight? A. I believe it was.

Q. Did you walk on the boardwalk with Mrs. Smith in Asbury Park at any time on any occasion

other than the evening you went over to Allenhurst? A. I have seen her on the boardwalk.

Q. Have you ever talked with her on the boardwalk? A. I have.

Q. In daylight? A. Yes, sir.

Q. Do you recollect who was with her? A. She had her children with her.

Q. Have you ever walked with her on the boardwalk? A. I might have walked with her a short distance.

Q. There were no signs of affection between you on those occasions? A. No, sir.

Q. No attempt on your part to hide the fact that you were talking to Mrs. Smith on the boardwalk? A. No, sir.

Q. Did anything suggest itself to your mind that it was improper for you to speak to her at any time? A. No, sir.

Q. Or in any place? A. No, sir.

Q. Did you ever ride in Mrs. Smith's car at any time other than what you have told us? A. I went to New York once.

Q. Did you ever ride to Newark in Mrs. Smith's car? A. Yes, sir.

Q. With whom? A. Mrs. Smith and Mrs. Barlow.

Q. When was that? A. I don't recollect the date.

Q. Referring to Mrs. Barlow—to whom do you refer there? A. Mrs. Alfred Barlow.

Q. To whom do you refer there? A. Mrs. Alfred Barlow.

Q. That is the sister-in-law of Mrs. Smith? A. Yes, sir.

Q. Now, how did that come about, Mr. Donnelley? A. I happened to be walking down Park Ave-

nue in front of Mrs. Smith's mother's home; the car was parked there, and Mrs. Barlow was sitting in the car, and as I passed I spoke to her and started to talk, and walked over to the car and stayed there talking to her for a few moments; and Mrs. Smith came out and they said that they were going to Newark, New Jersey, so I told them that I was going down to take a train, that I was going to New York, and they suggested that if I wanted to ride to Newark with them they would take me as far as Newark, and I could take the tube from there, which I did.

Q. That was not done by appointment? A. No, sir.

Q. At no time during that ride were you alone with Mrs. Smith? A. No, sir.

Q. Do you remember the night you visited at Mr. Blue's house on the 19th of November, 1921, Saturday night? A. Yes, sir.

Q. Prior to that time you had taken Mrs. Smith home in a Ford car, hadn't you? A. Yes, sir.

Q. When was that, do you recollect? A. I don't know.

Q. On how many occasions have you taken Mrs. Smith home? A. I might have on a couple of occasions.

Q. And where from? A. From Miss Camwell's.

Q. Do you remember one night when Mr. Wright saw you, that he testified to? A. Yes, sir.

Q. Where had you brought Mrs. Smith from that night? A. From Mrs. Camwell's; I was there calling on Miss Camwell, and Mrs. Smith was there.

Q. Did you know anything about Mrs. Smith coming there? A. No, sir.

Q. What happened? A. On towards 10:30 or 11 o'clock it was time to leave, and I said I was

going home, and Mrs. Smith said she was going, and I asked her if I could not take her up home; I said, "As long as I have a car and you would have to ride on the trolley", so I asked her if I could take her up, which I did.

Q. What time did you arrive at the house? A. I don't know exactly; probably in the neighborhood of 10:45.

Q. What happened then? A. After we were there only for a minute or so, Mr. Smith drove up in his car and pushed in right ahead of me at the curb and got out and came and spoke to me.

Q. Did you carry on any conversation? A. Just for a minute or two, and then Mrs. Smith got out, and I said "Good night" to both of them, and went home.

Q. Did he ask where she had been? A. I think he did.

Q. Did she tell him? A. She did.

Q. That happened how often? A. That incident only occurred once, but I had taken her home one other time outside of that, that I remember.

Q. That was from Mrs. Camwell's? A. Yes, sir.

Q. And Miss Camwell lived where? A. On Ellison Street, above Carroll.

Q. Did you ever walk home with her? A. No, sir.

Q. Did you ever walk with her along the Susquehanna Railroad? A. No, sir.

Q. Were you ever with Mrs. Smith behind the tower, the switch tower of the Susquehanna Railroad? A. I should say not.

Q. Will you say not? A. I will.

Q. Did you at any time walk with her along the passageway from Park Avenue to the station of

the Susquehanna Railroad, and stand there and talk with her? A. I never did.

Q. Until the lights came up, and then left her? A. I have never been there with her.

Q. Did you ever walk with her through 22nd Street? A. No, sir.

Q. Do you remember the occasion of the night that Mrs. Smith lost her pocketbook? A. I do not.

Q. When did you first hear of that? A. In the court room here.

Q. Did you ever remember speaking to any of the witnesses that appeared on the part of the petitioner in this cause about your presence on the Susquehanna property? A. No, sir.

Q. What is your usual way of coming through to Park Avenue, Mr. Donnelley?

The Court—I don't think that you ought to go as far as that.

Mr. McKee—I will withdraw that. (Question withdrawn.)

Q. Have you ever walked through there with any lady? A. I have.

Q. Quite often? A. Well, yes, sir.

Q. In the summer of 1921? A. Yes, sir.

Q. A year ago this last summer? A. Yes, sir.

Q. Was it Mrs. Smith? A. It was not.

Q. Did you ever walk with Mrs. Smith out at night any time at any place other than at Asbury Park? A. No, sir.

Q. And that was on one occasion only? A. Yes, sir.

Q. Prior to the 19th of November, 1921, do you recollect how long it was before that that you had

seen Mrs. Smith to talk to? A. I could not say; it may have been a week or ten days—maybe two weeks.

Q. Had you ever visited the home of Mr. Blue on Pennington Street prior to that time? A. Yes, sir.

Q. How often? A. Only a few times.

Q. With whom? A. With her brother.

Q. Did you ever visit the home of Mr. Blue on Pennington Street with Mrs. Smith? A. I did not.

Q. Did you ever call at the home of Mr. Blue on Pennington Street at any time when Mrs. Smith was there alone? A. I did not.

Q. Did you ever know of any night when Mrs. Smith would be at Mr. Blue's house alone? A. I did not.

Q. You did visit there on the 19th day of November? A. Yes, sir.

Q. How did you come to make that visit? A. Through a letter which I had received.

Q. When did you receive that letter? A. The same day.

Q. On the morning of the 19th of November? A. No, sir, that afternoon when I went home.

Q. On the afternoon of the 19th of November? A. Yes, sir.

Q. Saturday? A. Yes, sir.

Q. Was the letter at your house? A. Yes, sir.

Q. In answer to that letter, what did you do? A. I went down to Mrs. Blue's that evening.

Q. What time? A. In the neighborhood of nine o'clock.

Q. What did you go so late for? A. I don't call nine o'clock late.

Q. Was there any time set in the letter for you to call? A. There was not, no, sir.

Q. What happened when you got to Mr. Blue's house? A. Mrs. Smith answered the door and I went in, I went inside, and Mrs. Marsden was there.

Q. Who was she? A. A friend of Mrs. Barlow's.

Q. Had you ever met her before? A. Yes, sir, at Mrs. Barlow's.

Q. How long prior to that time? A. Probably a year or so.

Q. Met her more than once? A. Yes, sir.

Q. You knew her? A. Yes, sir.

Q. What was said when you arrived there and what was done? A. I went in and Mrs. Smith asked me to sit down, and started talking, and I asked her what she wanted to see me about, and she said that she did not want to see me; and I said, "It is very funny—did you not send me a letter to that effect?" and she asked "What letter?" and I said, "The letter you sent me asking me to come down here this evening, that you had something very important to see me about."

Q. Well, what did you do? A. She said that she had not sent it, and I said, "I have it right here", and I took it out of my pocket and showed it to her, and she said "I did not write that letter."

Q. Prior to that time, had you ever seen the writing of Mrs. Smith? A. No, sir.

Q. Have you ever seen her handwriting since? A. No, sir.

Q. Was there anything about the letter that would lead you to suspect that it was not from Mrs. Smith? A. There was not, not until I found out that night.

Q. I mean up to that time? A. No, sir.

Q. How was it signed? A. It was signed "Frances Smith."

Q. Was the handwriting apparently in a feminine hand? A. Yes, sir, it was.

Q. You showed her the letter; did you read it? A. Yes, sir.

Q. Was Mrs. Marsden in there at the time? A. Yes, sir.

Q. Was the letter read aloud? A. Yes, sir.

Q. What was said? A. She said, "It must be a joke somebody has been playing on you."

Q. How were you dressed that night? A. I had a gray suit on and I had a brown soft hat.

Q. You did not wear any overcoat at the time you went there? A. No, sir.

Q. What was done after that comment had been made about the letter? A. At that time Mrs. Marsden and Mrs. Smith were just about ready to have some coffee and they asked me if I would have some with them, so I said that I would stay and have some coffee with them.

Q. Did you stay? A. Yes, sir.

Q. And you stayed for how long? A. Until probably in the neighborhood of eleven o'clock.

Q. As you go into the Blue house you go up the side steps? A. Yes, sir.

Q. That passes right in front of one of the front windows? A. Yes, sir.

Q. Could you recollect as to the position of the shades that night? A. They were down.

Q. Did you notice that? A. I noticed it as I went up the stairs, I had to pass right up them, and I certainly would have looked in if they were up.

Q. As you go from the front door you go directly into what room? A. The living room.

Q. The front door leads into a hallway? A. Yes, sir.

Q. And then the first door to the right is into

the living room? A. The first door to the left, you mean.

Q. As you went into the room you saw Mrs. Marsden and saw Mrs. Smith. Did anything strike you as peculiar about the illumination of the room that night? A. There was not very much illumination.

Q. Was there any illumination anywhere else? A. The dining room was fully illuminated.

Q. To what extent was the living room illuminated? A. Just the regular gas jet was turned on; it gives a very small and dim light.

Q. Was your conversation conducted in the sitting room or the dining room? A. It was in the sitting room.

Q. There was light enough there for you to recognize Mrs. Marsden? A. Yes, sir.

Q. Light enough to see everything going on in the room? A. Yes, sir.

Q. Light enough to read at night? A. Yes, sir, it is possible to read by it, if you are over close to the dining room door.

Q. How long prior to the 19th of November was it that you had visited the Blue house? A. Maybe a month, or maybe more than that.

Q. Did you have your coffee with Mrs. Smith and Mrs. Marsden? A. Yes, sir.

Q. Where was that coffee served? A. In the dining room.

Q. How long did you remain in the dining room disposing of your coffee? A. We sat around the table and talked.

Q. For how long, about? A. It must have been a good hour or more.

Q. What happened then? A. It was getting late, so I decided to leave; so I got up; we were back

in the living room at that time, and I got my hat on the davenport and started for the door, and just at that time we heard a noise.

Q. What kind of a noise? A. Just as though someone was in the house.

Q. Proceed. A. And Mrs. Smith made the remark—she said, "Did you hear that?" and I said, "Yes", and Mrs. Marsden also said that she heard it; so we stood still for a moment, and the noise continued; so Mrs. Smith said it sounded as if somebody was in the rear of the house; so I said, "Do you want me to go back there and see?" and so she said, "Yes"; so I went back towards the kitchen, and she was right behind me.

Q. Were the lights still burning in the dining room? A. Yes, sir, it was.

Q. And also in the sitting room? A. Yes, sir. And we went back into the kitchen and opened the door, and just got inside the door and found Mr. Blue in there.

Q. Was the light lighted in the kitchen? A. I don't think so.

Q. Proceed; what happened? A. Mr. Blue was like a wild man—

Q. What had he done—cut his foot to make him wild? A. I don't know what he had done.

Q. What happened in the kitchen; go on and tell us? A. He came at me and started to bawl me out, and asked me what right I had to be in his home; and he would not give me a chance to explain; he called me a "dirty dog."

Q. Did he say anything about Mrs. Smith? A. Yes, sir, about her and I being there together.

Q. Proceed. A. And I tried to explain to him and told him the circumstances.

By the Court:

Q. Who had the letter at that time? A. It was in the living room, that is, the last that I remember; and Mr. Blue was like a wild man.

Q. Now, what did he say and what did you answer him? A. I tried to explain to him and argue with him, and explain my being there; and he would not stand for any explanation at all; he was just raving like a wild man, and was telling me to get out of the house, and I was trying to explain to him that I would get out after I had talked to him.

Q. Did he have his fist or his hand upraised? A. I don't think so.

Q. How did he act like a wild man? A. He probably was shaking his hands.

Further Direct:

Q. Did he have anything in his hands? A. Yes, sir.

Q. What? A. He had a gun.

Q. Why don't you tell it; was he shaking that at you? A. Yes, sir.

Q. What did you say to him? A. I did not have a chance to say anything; I was trying to explain the story.

By the Court:

Q. Did you get out? When did you get out? A. Mr. Blue went in the front.

Q. Why? A. The doorbell rang and he went to the front of the house, and Mrs. Smith and I were there in the kitchen, and she said, "You had better get out, because it will only come to blows"; and she said, "You had better get out while he is gone";

and I had my hat in my hand, and I went out the back door.

Q. Where did you go from the back door? A. I went out of the alley to Pennington Street and down 17th Street.

Q. At any time after you left that house, did you run? A. Not that I remember.

By the Court:

Q. Did you run? A. I don't think I did.

Further Direct:

Q. You did not have any overcoat on? A. No, sir.

Q. You had your top coat on? A. Yes, sir.

Q. Were you in your shirt sleeves at any time? A. No, sir.

Q. At any time during your visit there, were you in your shirt sleeves? A. No, sir, I was not.

Q. How was Mrs. Smith dressed that night; do you recollect? Was she fully dressed? A. Yes, sir.

Q. And at no time was she any different? A. No, sir.

Q. Now, I ask you, Mr. Donnelley, from the time you arrived at that house that evening, up to the time you went into the kitchen with Mrs. Smith, were you at any time alone with Mrs. Smith? A. I was not.

Q. How long after you went into the kitchen with Mrs. Smith alone was it, before you saw Mr. Blue? A. Only a second or two.

Q. Now, I ask you, did you on that night commit adultery with Mrs. Smith? A. Positively not.

Q. Did you on that night or any other night or

day commit adultery with Mrs. Smith? A. I did not.

Q. Or at any other time or place? A. I should say not.

Q. Has there ever been any demonstration of affection between you and Mrs. Smith at any time? A. Positively none.

Q. Have you at any time had any affection for Mrs. Smith? A. No, sir.

Q. Has she at any time shown any affection for you? A. None at all.

Q. What became of that letter; do you know? A. The last I remember seeing it was in the living room of Mrs. Blue.

Q. Was it there at the time you left there that night? A. I could not say that; it was there when I was in the living room.

Q. How long was that before Mr. Blue came? A. Just a few minutes; when I heard the noise it was there on the table.

Q. Have you ever seen that letter since? A. I have not.

Q. Do you know what became of it? A. No, sir; the last I remember seeing it was on the living room table.

Q. Now, how soon after that occasion on the 19th of November was it that you saw Mrs. Smith again? A. I did not see her until, I believe, it was down at her counsel's office.

Q. And have you at any time since the 19th of November, on the occasion at Mr. Blue's house, seen or been alone with Mrs. Smith? A. Not at all.

Q. You were named as a co-respondent in this case? A. Yes, sir.

Q. And you petitioned the court to come in and defend? A. Yes, sir.

Q. Mr. Donnelley, you live on 23rd Street? A. Yes, sir.

Q. You are acquainted with the Susquehanna Railroad running from Park Avenue to 17th Avenue? A. Yes, sir.

Q. Did you ever meet Mrs. Smith at any time of night at any place other than the Camwell house and walk with her along the car track from Park Avenue to 17th Avenue? A. I did not.

Q. Did you ever talk with Mrs. Smith while she was in an automobile on Ellison Street? A. I probably have.

Q. That was in daylight? A. Yes, sir.

Q. Did you ever talk with her when she was in an automobile at night anywhere? A. Yes, sir, I have talked to her when I took her in my car to her home, but not any other time.

Q. I ask you, Mr. Donnelley—it has been testified to by Mr. Shorter that he saw you and Mrs. Smith together on two different occasions, once between the Erie track on Straight Street and Ellison Street; is that true? A. It is possible.

Q. That was at the time you were talking to her when she was standing still in her automobile? A. Yes, sir.

Q. And that was in daylight? A. Yes, sir.

Cross-Examination by Mr. Lane:

Q. If you had been guilty with Mrs. Smith on the night in question, would you have told us? A. I would.

Q. So you now swear that if you had been guilty of adultery with her, you would have testified to it? A. Yes, sir.

Q. What was your important appointment over

in New York that required that you should abandon the car that you had borrowed and smashed, and let the lady from whom you borrowed it take it home as best she could? A. I had an appointment at my office.

Q. What was the appointment? A. A business appointment.

Q. What was it? A. It was with my boss in New York.

Q. What was it—it must have been a mighty important appointment to have you abandon the car that you had smashed, which was borrowed, and let the lady from whom you borrowed it take it home; wasn't it?

The Court—Counsel has no right to comment in that way.

Q. Was it an important appointment? A. Yes, sir.

Q. What was it? A. It was regarding business deals.

Q. Can you tell me what it was? A. It was regarding some of the accounts of my clients.

Q. What was your business? A. Stocks and bonds.

Q. What time was it in the day? A. Around noon.

Q. When had the appointment been made? A. That morning.

Q. What were you using the car for? A. To transport myself over to New York and back again.

Q. Why use the car to go to New York and back again? A. Because I had a young lady with me.

Q. Why take the young lady for this important

business appointment? A. I was taking her for a ride over there.

Q. So you were combining business with pleasure? A. Yes, sir.

Q. What happened to the young lady after you had the smash-up? A. She went with me to New York.

Q. To your business appointment? A. Yes, sir.

Q. What time of day was it? A. Around noon.

Q. What time did you leave Paterson? A. In the neighborhood of 11:30 or 12 o'clock.

Q. How had you gone to New York; what road did you take? A. Went over through Hackensack.

Q. Where was the accident, tell us what happened. A. The accident occurred on the River Road, on the Boulevard, very near the ferries.

Q. Describe the accident; what were you doing? A. I was driving towards the ferry, and there was a car coming in the opposite direction and he was not looking where he was going, and his hub hit my hub and stopped, and I got out; and I started to look the car over to see what damage he had done; and this young lady that I had with me talked to this man who was in the other car, and we exchanged numbers and drove on.

Q. What had occurred to your car? A. It broke the hub cap and bent the axle.

Q. Did you go on with it? A. Yes, sir.

Q. Where to? A. To the ferry; then I called Mrs. Smith from there and I told her I had some trouble and asked her if she could come over.

Q. Is that all you told her? A. I did not go into details.

Q. Why not? A. I did not think it was necessary to explain over the telephone.

Q. Did you tell her whether the car could operate under its own power or not? A. No, sir.

Q. Did you tell her whether the differential was smashed or not? A. I did not go into details.

Q. So she had not the least idea as to the extent of the accident? A. She did not know.

Q. Whether the car would operate or whether it would not? A. I told her I had some trouble and that is all.

Q. She did not know whether the car would operate or whether it would not operate? A. No, sir, she did not.

Q. You did not give her any inkling of that? A. I did not.

Q. And you asked her to come over? A. Yes, sir.

Q. Why? A. The car belonged to her; I had borrowed the car from her.

Q. Ordinary courtesy would require you to return it? A. Yes, sir.

Q. Then why send for her to come down and get the car when it was damaged, and she did not know the extent of the damage? A. She loaned me the car.

Q. Wouldn't you have thought it strange, even had a man loaned you the car, to telephone to the man from whom you borrowed the car to come and get his disabled car? A. It was borrowed under peculiar circumstances.

Q. What were those peculiar circumstances? A. She practically hired the car out to me.

Q. You were treating it just as a hired car? A. Yes, sir.

Q. How much did you pay for it? A. Five dollars.

Q. Each time you borrowed the car you hired it by paying five dollars? A. Yes, sir.

Q. Every time? A. Yes, sir.

Q. So you thought that you would rather put her upon the plane of the garage keeper, who has hired out his car, and the car being disabled, you telephoned to him to come and get his car? A. I would have taken the car back, but she insisted on my going on to New York and keeping my appointment.

Q. Over the telephone? A. No, sir, when she arrived.

Q. Why did you want her to come there; what was the pressing necessity to have her go to 125th Street? A. Because I did not want anyone to see me with the car.

Q. Why didn't you want anyone to see you with the car? A. Because the car did not belong to me.

Q. Was there anything wrong about it? A. Nothing radically wrong, no.

Q. Was there anything irradically wrong, or that was wrong, but not radically wrong? A. There are lots of people crossing that ferry, and if they saw me with the car, not knowing the circumstances, they would probably think a lot.

Q. Why should that be? A. Seeing me there with this other young lady alone in the car.

Q. Why would there be any criticism directed at you because of the presence of the other young lady; I should think that might be so if Mrs. Smith was there, but not with the other young lady.

Mr. McKee—Objected to.

The Court—Strike out the last part of the question.

A. Not seeing Mrs. Smith there in her own car, people would probably think it was funny.

Q. Why didn't you think of that before you left? A. It was a lot cheaper for me to hire that car for five dollars than to get a taxi.

Q. You say the reason why you sent for Mrs. Smith was because you did not want people from Paterson to see you and the young lady in the car, because they would think it funny? A. That is right.

Q. I ask you whether or not they would not think it funny even if the car was not disabled, and they might see you driving through the streets of Paterson, might they not, as well as in the ferry house at 125th Street? A. Yes, sir, they might.

Q. Now I ask you whether you took a chance of the people in Paterson seeing you and thinking it funny because you could get the Smith car cheaper than you could hire a taxi? A. I did not know an accident was going to occur.

Q. Then it was the accident that might make it funny? A. It is a delay along the road.

Q. The delay along the road was where it would be very unusual for Paterson people to see you? A. Not unusual, no, sir.

Adjourned to December 21, 1922, at the Paterson Court House.

Fourth Day
(Title Omitted.)

JAMES J. DONNELLEY resumes the witness stand.

Cross-Examination (continued) by Mr. Lane:

Q. Did I understand you to say that this lady with whom you were upon these two occasions upon

which you had Mrs. Smith's car, lives in Bethlehem, Pennsylvania? A. Yes, sir.

Q. Does she? A. She does.

Q. Are you sure it was Bethlehem? A. Yes, sir.

Q. Have you been there? A. No, sir.

Q. Who told you she lived in Bethlehem? A. I have written to her there.

Q. Doesn't she live at Tamaqua? A. Not to my knowledge.

Q. Did you ever hear of that place? A. Yes, sir.

Q. When did you hear of it? A. I am acquainted with towns in Pennsylvania.

Q. When did you first hear of that particular town? How near Bethelehem is it? A. I don't know.

Q. Do you know where it is? A. In Pennsylvania.

Q. Do you know what part of Pennsylvania it is in? A. Near Bethlehem.

Q. How do you know that? You said a few moments ago you did not know where it was? A. I have known people there for years.

Q. A few moments ago you expressed ignorance of where this place was; why did you do that, if you now say it is near Bethlehem and you know where it is? A. I said I knew it was in Pennsylvania.

Q. I said where in Pennsylvania, and you said you did not know: why did you answer that way?

Mr. McKee—I object; he did not say that.

The Court—I do not recall.

Q. At any rate, you know where it is? A. Yes, sir.

Q. How near Bethlehem is it? A. I don't know.

Q. How do you know it is near Bethlehem—does it take you as long as a minute to answer me that—cannot you answer that you have been there, or somebody has told you? A. I have not been there.

Q. How do you know it is near Bethlehem? A. The map shows that.

Q. So that you saw it on a map? A. I have, yes, sir.

Q. When did you have occasion to see this place on a map? A. I do business through Pennsylvania.

Q. But you have never been in this place? A. I have not.

Q. You are sure this young lady does not live there? A. Not to my knowledge.

Q. And did not live there? A. Not to my knowledge.

Q. What address did you address her to at Bethlehem? A. I cannot say off-handed, but I have the address.

Q. Cannot you remember what street it was? A. Eighth Street, I believe; I am not positive; I don't remember the number.

Q. You have never been there? A. No, sir.

Q. How often have you communicated with her there? A. I could not say definitely.

Q. Is she married? A. Not to my knowledge.

Q. Did you ever hear she was? A. I did not.

Q. Are you sure of that? A. Positive.

Q. Did she live in Bethlehem in 1921? A. No, sir.

Q. Where did she live then? A. In Paterson.

Q. Where, in Paterson? A. With Mrs. Pike.

Q. What is her first name? A. I could not say.

Q. Where? A. Market Street.

Q. Where? A. Corner of Clarke.

Q. Does she have any relatives here in Paterson? A. I don't know.

Q. Think a minute; don't you know that a Mr. Gibeia was her relative? A. I have heard her mention the name.

Q. Don't you know he was her uncle? A. I did not know what relationship he was.

Q. Did you know he was a relative? A. I have heard her mention him several times.

Q. What was there that interested you about the hunters on the day you went to Westwood, that caused you to stop and watch them for ten or fifteen minutes? A. Because I am very fond of hunting—and dogs, too, also; I am very fond of dogs.

Q. Is that all? A. Yes, sir.

Q. What were they doing; what was being done that caused you to stop and watch? A. They were hunting game.

Q. I know that, but what they were doing physically; in hunting game you do a great many things, don't you? A. They were walking around looking for game, and I was watching their movements.

Q. How far were they from you when you first noticed them? A. They were in the near vicinity.

Q. What does that mean? A. They were moving around all the time.

Q. Where were you when you first noticed them? A. Before I had gone off the road I saw them.

Q. How far, before you had gone off the road? A. Just a short distance.

Q. Can you tell me about how far? A. Probably 20 to 25 feet.

Q. From where? A. From where I turned off the road.

Q. What did you turn off the road for? A. It is not wide enough for any other car to pass.

Q. Why were you on that road at all? A. I was on my way back from Westwood.

Q. That is not the direct road from Westwood to Paterson, is it? A. It is quite direct, yes.

Q. It is a country road? A. Yes, sir.

Q. There is a smooth, hard road which you left to go on the country road? A. It is a short cut over to 33rd Street, and that is the reason I took it.

Q. Why were you taking a short cut when you had a smooth, hard road right into Paterson? A. That is the shortest way to get over to 33rd Street.

Q. How did you go out from Paterson? A. I went out Broadway.

Q. To where? A. To Hackensack.

Q. Why didn't you come back the same way? A. There was no reason for not coming back the same way—just to take a different road in.

Q. After you had watched the hunters for fifteen minutes, why did you go away from Paterson? A. Because I had seen Mr. Fairhurst.

Q. Why should that make a change in your plans? A. I did not think it was necessary to go in the same direction that he did and pass him.

Q. Why? A. Because I had Mrs. Smith's car.

Q. You were perfectly innocent; there was not anything wrong; why should you object to passing Fairhurst? A. I knew he was a friend of the Smiths, and that Mr. Smith was not aware that I had his car.

Q. Well—is that the only reason? A. If I went back the same way I would probably have passed Mr. Fairhurst.

Q. Why were you, in broad daylight, desirous at least, not to pass Mr. Fairhurst the second time? A. I did not know whether he had seen me or not.

Q. Why, not knowing whether he had seen you or not, were you desirous of not passing him the second time? A. Because I had borrowed this car from Mrs. Smith, and if I went past Mr. Fairhurst I knew, probably, it would get back to the family.

Q. So you knew you had no right to borrow the car? A. There was nothing wrong in it.

Q. Then why be so afraid? A. I knew that Mr. Smith was not aware that I had borrowed the car.

Q. But you passed through the streets of Paterson in open daylight with this car? A. Yes, sir.

Q. And any number of people upon the public thoroughfares in Paterson might have seen you who knew the Smiths? A. Yes, sir.

Q. Mr. Smith is known by a great many people? A. Yes, sir.

Q. Mr. Evans knows him? A. Yes, sir.

Q. So that any number of people may have seen you with his car? A. That is right.

Q. Then why were you particularly anxious not to be seen at this particular time by Mr. Fairhurst? A. There was no occasion of running into people unnecessarily.

Q. That is your only answer? A. Yes, sir.

Q. And when you turned and went the other way, you did not know that Mr. Fairhurst had seen you the first time? A. No, sir.

Q. When did you know that for the first time? A. I did not know it until this trouble arose.

Q. When, I ask you? A. I don't know the date.

Q. About when was it? A. Probably a year ago.

Q. Under what cirumstances? A. I learned it through Mrs. Smith's counsel, Ward & McGinnis.

Q. Not until after this suit was started? A. That is right.

Q. You don't mean that? A. Yes, sir.

Q. You never knew until you talked to Mr. McGinnis after this suit was started, that Mr. Fairhurst had seen you upon this occasion upon this road? A. I did not.

Q. Hadn't you talked to Mr. Evans before that about your relations with Mrs. Smith? A. Yes, sir.

Q. When? A. I don't know the date.

Q. Tell me about when? A. Just a short time before this happened.

Q. Before this suit was started? A. Yes, sir.

Q. Before you borrowed the car the second time and it was smashed up, wasn't it? A. I don't know.

Q. Think—think—tell me about when it was that you talked to Mr. Evans? A. I don't know.

Q. Did it make such a slight impression on your mind that you have forgotten absolutely whether it was before or after you had borrowed the car for the second time? A. I could not say; I did not keep track of it.

Q. Where did you talk to Mr. Evans? A. In his office.

Q. Where? A. In his office.

Q. How did you come to go there? A. Mr. Evans got in touch with me.

Q. What was said? A. Mr. W. W. Evans told me that he had been hearing a lot of talk around

about Mrs. Smith and myself, and he said, "If it is true", he said, "why, it certainly is a shame"; he said that he had heard through Mr. Fairhurst; and he said, "If the things are true, it is a shame"; and I told Mr. Evans there was absolutely no truth in anything that he had heard.

Q. Now, don't you remember that was just before Columbus Day, 1921? A. I don't remember, it may have been.

Q. Now, that talk made some impression on your mind, didn't it? A. Not much, because I was innocent.

Q. It did not make any impression on your mind, because you were innocent? A. He told me in strict confidence.

Q. What has that got to do with the impression it made on your mind; it did not make any great impression on your mind, do I understand, because you were innocent? A. Not any great impression, no, sir.

Q. Not so much of an impression on your mind that you can say now whether it was before or after you borrowed the car and had the smash-up? A. I don't know whether it was before or after.

Q. Well, it was after the Fairhurst incident wasn't it, or don't you even remember that? A. It probably was.

Q. Do you remember whether the Fairhurst incident was referred to upon that occasions? A. There were not any affairs mentioned.

Q. What was said? A. Mr. Evans just told me he had heard several things about Mrs. Smith and myself.

Q. Did you say, "What are they?" A. He did not go into details.

Q. Did you say, "What are they?" A. Yes, sir.

Q. What did he say? A. He said that he had heard through Mr. Fairhrust a lot of things about Mrs. Smith and myself.

Q. Did you say "What are they?" A. I did, yes, sir.

Q. Proceed; what did he say? A. He did not go into details; he did not explain.

Q. You were being charged with undue intimacy with a woman, and you were perfectly innocent; is not that so?

Mr. McKee—Objected to.

The Court—Objection sustained.

Q. What were you being charged with?

The Court—There is no evidence of a charge, Mr. Lane; the evidence is that he had a conversation with Mr. Evans; what Mr. Evans said, as I understand the witness to say, was, that there were remarks being made about his conduct with Mrs. Smith; he did not say "intimacy."

Mr. McKee—Which he denied.

Q. Did you consider at the time, that Mr. Evans was making any charges against you? A. He was just mentioning what he was told.

Q. Weren't you enough interested to find out exactly what he had been told? A. He told me in strict confidence, and he said he was told in the same way.

Q. What? A. That he had been hearing different things about me.

Q. Didn't you say, "What have you heard?" A. Yes, sir.

Q. Why didn't you get it answered? A. Because he didn't go into details.

Q. Why didn't you insist upon getting an answer; why didn't you press him for an answer? A. I did—I asked him.

Q. What did he say then? A. He said he was told in strict confidence, and he would not go into details to explain any incident.

Q. Did you ever explain to anyone about this interview you had with Mr. Evans? A. No, sir.

Q. Did you ever speak to Mrs. Smith about it? A. I may have mentioned it to her at some time.

Q. Do you remember whether you did or not? A. I probably did.

Q. What did you say when you did? A. I may have just told her that Mr. Evans had spoken to me; I don't know whether I mentioned it to her, though; I have no recollection of it.

Q. You don't know whether she mentioned it to you? A. No, sir.

Q. Did you tell her about having seen Mr. Fairhurst on this road when you had borrowed this car? A. No, sir.

Q. You did not say a word about that? A. No, sir.

Q. Did she ever say a word to you about it? A. No, sir.

Q. Did she say anything about having seen Mr. Fairhurst the next Monday? A. No, sir.

Q. She never told you anything about that? A. No, sir.

Q. And did you and she never discuss that incident? A. No, sir.

Q. In any manner, shape or form, until after this case was started? A. That is true.

Q. Don't you remember Mr. Evans said to you during the course of this conversation, that if any harm came to Mrs. Smith because of your attentions to her, you would be expected to do the honorable thing, or words to that effect? A. He did not.

Q. That was not said? A. No, sir.

Q. You are sure of that? A. Yes, sir.

Q. Nothing like that was said? A. No, sir.

Q. Do you remember he said he had the fear that if this got to Mr. Smith, that it would mean a separation and the end of their married life? A. He did not.

Q. Nothing like that? A. No, sir.

Q. Nothing that sounded like that? A. No, sir.

Q. Are you sure of that? A. Yes, sir.

Q. You thanked him for his advice, didn't you? A. I did not.

Q. Are you sure of that, too? A. I don't see why I should.

Q. I am asking you whether you did, in fact, thank him for his advice? A. I did not.

Q. Are you sure of that? A. I am.

Q. And you are sure that you denied that there was anything between you and Mrs. Smith, or that there was anything to the talk that he said he had heard? A. Yes, sir.

Q. And you are sure he never said to you during this conversation anything with respect to the things which he had heard, specifically; you are sure of that? A. He did not.

Q. And all that he said was what? A. That he had been hearing different things about Mrs. Smith and myself.

Q. That is all? A. That was the whole conversation.

Q. Did he reiterate that over and over again; I

want all the conversation; did you give it to us? A. There were other things talked about.

Q. What? A. Not regarding that.

Q. How long were you there? A. Just a short time.

Q. How long? A. A very few minutes.

Q. You were sent for? A. By telephone.

Q. Who telephoned you? A. Mr. Evans, I believe, left word there for me to call when I came in.

Q. You are sure you don't remember the date? A. I do not.

Q. Or whether it was before you borrowed the car the second time? A. I do not.

Q. Well, now, cannot you say it was not before—it must have been after you borrowed the car the second time, because you would not have borrowed the car the second time if it was before?

Mr. McKee—Objected to as a double question; it should be separated.

The Court—Objection overruled.

A. I don't know whether it was before or after.

Q. Do you mean now to say that if you had heard from Mr. Evans before you borrowed the car the second time, which resulted in the smash-up, that you would have gone ahead and borrowed the car the second time; that that would have made no difference to you at all? A. I don't see why that incident should interfere with my borrowing the car.

By the Court:

Q. Answer the question; are you sure that if you had heard from Mr. Evans, that you would not

have borrowed the car the second time? A. I may have.

Q. Notwithstanding what Mr. Evans said? A. Yes, because there was nothing in what Mr. Evans said.

Further Cross:

Q. But you were so afraid of being seen with that car by Mr. Fairhurst before you talked with Mr. Evans, that you turned and went the other way; that is true, isn't it? A. It is, yes, sir.

Q. Now, Mr. Evans had said to you after that, that there were tales being circulated with respect to you and Mrs. Smith, and do you mean now to say that after this Evans incident you would have gone on and borrowed the car again? A. I may have, if I had occasion to use the car.

Q. So that the talk made no difference to you? A. Because I was perfectly innocent.

Q. You were innocent on the country road where you were watching the hunters; you were innocent then? A. Yes, sir.

Q. Yet you turned and went the other way? A. Yes, sir.

Q. Mr. Evans talked to you and told you about these tales, and you were innocent; Mr. Evans told you he had been hearing remarks; that is true? A. Yes, sir.

Q. Yet you borrowed the car, notwithstanding that, the second time?

Mr. Ward—That is not the evidence.

Q. Well, you would have borrowed the car the second time; is that true? A. I may have.

Q. How long did you wait at the 125th street ferry for Mrs. Smith to come? A. I don't know exactly, probably better than an hour.

Q. Where? A. In the ferry house.

Q. What part of the ferry house? A. The inside.

Q. With this young lady? A. Yes, sir.

Q. When Mrs. Smith came, what did she say? A. She wanted to know what the trouble was.

Q. What did you say? A. I told her that I had had an accident.

Q. What happened then? A. She wanted to know where the car was, and I told her it was outside, and that it was not damaged enough that it could not be run; so we went out and looked at the car.

Q. All three of you? A. Yes, sir, and I suggested that I would go on back with the car, and Mrs. Smith insisted that I keep my appointment in New York and go on over, and that she would take the car back.

Q. What did you say when you made the suggestion that you would go back with the car? A. That is what I said.

Q. What did you say? A. That we would drive back.

Q. Who? A. The three of us.

Q. What did she say? A. She said, "No, go on over to New York, and I will drive the car; I will get in touch with the garage man and have him come over."

Q. Over where? A. Come over to the ferry in case it was necessary, in case she could not make any headway.

Q. Then what happened? A. I left.

Q. Right then? A. Yes, sir, in the course of a few minutes.

Q. What happened? A. Just looking over the car to see what damage was done.

Q. Then she said that she would telephone over to the garage man if necessary? A. Yes, sir.

Q. You left then? A. Yes, sir.

Q. While the car was standing there? A. Yes, sir.

Q. And was she alone? A. Yes, sir.

Q. She had not telephoned the garage man? A. Not before I left.

Q. She had not tested out the car? A. I tested it out before she got there.

Q. She had not tested out the car then to see if it was necessary to send for the garage man? A. I did it previously.

Q. Then why the talk about the garage man? A. Because the car was crippled with a bent axle, and she did not know whether she would be able to get all the way back to Paterson or not with it.

Q. So that there was some trouble about that when you left? A. Yes, sir.

Q. And you left her there standing with this crippled car, without knowing whether she could get back to Paterson or not, and without having made any arrangements to have the garage man come over? A. She made the arrangements.

Q. Then you left her there with the crippled car; is that right? A. Yes, sir.

Q. Without any knowledge as to whether she would be called upon to call for a garage man or not? A. She went into the ferry-house at the same time that we did, and called the garage.

Q. Did you wait? A. No, sir, there happened to be a boat in at the time.

Q. She went off to call the garage man? A. Yes, sir.

Q. And you went on? A. Yes, sir.

Q. Without knowing whether she got the garage man or anything about it? A. She said there was no doubt she could get the garage man.

Q. So you took it for granted, that if she called the garage man she would get him and he would come over? A. Yes, sir.

Q. And you did not stop to see whether he would get over or not? A. She said, "Go on, as long as the boat is in."

Q. So, for the sake of the boat, you left her there talking to the garage man? A. Yes, sir.

Q. Do you know how often those boats run? A. Every fifteen minutes, I believe.

Q. Did you take the young lady over to your office? A. No, sir.

Q. Where did you leave her? A. On Broadway.

Q. Where? A. 42nd Street.

Q. Where is your office? A. 43rd Street.

Q. Did you leave her standing on the corner of Broadway and 42nd Street? A. She went on to do some shopping.

Q. When did you see her again? Did you see her again that day? A. Yes, sir.

Q. When? A. Probaby half an hour or three-quarters of an hour.

Q. Where? A. On the same corner.

Q. You left her standing on the corner of 42nd Street and Broadway, and then you went back and found her there later? A. Yes, sir.

Q. Then what did you do? A. Came on back to Paterson.

Q. How? A. On the train.

Q. What train—do you know? A. I don't know.

Q. Have you no recollection? A. No, sir, I have not.

Q. Why didn't you hire a taxi? A. A taxi is pretty expensive from New York to Paterson.

Q. You said you hired Mrs. Smith's car because it was cheaper than hiring a taxi? A. That is right.

Q. Then why didn't you hire a taxi when Mrs. Smith's car gave out? A. Because they have meter taxis in New York.

Q. So you might have hired a taxi in New York if they had a taxi that was not a meter taxi? A. No, sir.

Q. Is that the reason? A. Yes, sir.

Q. Don't you know you can get taxis in New York at any number of places in the neighborhood of 42nd Street and Broadway for a flat rate to go to Paterson? A. I don't know that.

Q. You did not know this? A. No, sir.

Q. So that, if you thought you could have got a taxi for a flat rate at that time, you would have got it? A. I don't know.

Q. At least you thought the meter taxi would be so expensive— A. I did not think of coming back in a taxi.

Q. Where did you leave the young lady that night in Paterson? A. Where did I leave her?

Q. Yes. A. I don't remember.

Q. When did you see Mrs. Smith next? A. I could not say.

Q. About when; how soon after? A. It may have been a week or so.

Q. Where? A. I could not say.

Q. When you got home, did you try to get in

touch with her, in communication with her? A. I got in touch with her brother.

Q. When? A. It might have been the following day; I could not say exactly; it may have been a day.

Q. What did you say to him? A. I told him about the accident.

Q. What did he say? A. He just said it was too bad that I had had the accident.

Q. Is that all? A. That is about all.

Q. Didn't you make any effort when you came back that night or soon thereafter, to ascertain how Mrs. Smith had fared in coming back to Paterson in this crippled car? A. I did not get in touch.

Q. Why not? A. I presumed that everything was all right, because she told me she would have the garage man come, that he would probably come out in his car.

Q. You paid for the damages for the accident to the Smith car? A. Yes, sir.

Q. How did you pay that? A. I paid it to Mr. Griffin.

Q. And he paid it to Mr. Smith? A. I presume so.

Q. You knew that was the purpose? A. Yes, sir.

Q. To conceal it from Mr. Smith? A. Yes, sir.

Q. Your participation—that is right? A. Yes, sir.

Q. You had Mr. McLeod, of Newark, New Jersey, with Mr. Griffin and you paid Mr. Griffin for the damages to his car, and you paid him, Mr. Griffin, fifty dollars to send to Mr. Smith for damages to his car? A. Yes, sir.

Q. Why? A. That is the only natural thing, if an accident occurs, to pay the damages.

Q. Why this circumlocution; why did you pay it through Mr. Griffin? A. He is the man that hit the car.

Q. Why didn't you make Griffin pay his own bill? A. Because Mr. Smith had been in touch with Mr. Griffin and had sent him a bill.

Q. Why did you pay? A. To straighten the whole matter out, that is the reason I did it.

Q. So that your participation in the transaction would not come out, wasn't it? A. Yes, sir.

Q. Why were you so afraid of your participation in that transaction coming out? A. Because I borrowed the car in that instance.

Q. Didn't you realize at the time you paid it, that if the way in which you made the payment to Mr. Smith came out—the inference that might be drawn? A. I did not think there was anything wrong.

Q. If there was nothing wrong, why didn't you do it aboveboard? A. I said I did not think there was anything wrong in the way I made the payment.

Q. You did not think there was anything wrong in your paying Mr. Griffin for the damages to his car, and for your also paying Mr. Griffin, through a lawyer, the money to be paid to Mr. Smith, as if it were coming from Mr. Griffin? A. That is right.

Q. There was nothing peculiar about that? A. I did it to straighten the whole matter up and get it over with.

Q. And you knew, didn't you, when you made that payment, that if the manner in which you made

that payment came out, it might be said that Mrs. Smith was in the car; you knew that, didn't you? A. I don't understand your question.

Q. You knew at the time, that if the manner in which you made the payment came out, it might be said that Mrs. Smith was in the car with you, at the time the accident happened? A. No, sir, I did not think that.

Q. You did not think that? A. That is right.

Q. Notwithstanding the fact that you were so afraid of something, that when you had the car before, you went the other way, so as not to meet Mr. Fairhurst; you never thought of that, did you? A. No, sir, I did not think of it.

Q. Do you mean to say now, that you did not think that if that accident came out somebody might say that Mrs. Smith was in that car with you?

Mr. Ward—Objected to—I object to the form of the question.

The Court—The objection will be overruled.

A. No, sir, I did not.

Q. And that had nothing to do with the manner in which you made this payment? A. It did not.

Q. It was only because you had hired the car? A. Yes, sir.

Q. When you thought what? That you had not any right to hire it? A. No, sir.

Q. Then you had a right to hire it then? A. Mrs. Smith hired it to me, but her husband, probably, did not know it.

Q. Did you know her husband did not know it? A. I did not know, no, sir, but I presumed that.

Q. Presumed what? A. That her husband did not know.

Q. Why? A. I did not know whether she told him or not.

Q. Why did you presume that her husband did not know that she was hiring out his car to you? A. I supposed that if he knew she was hiring the car, he would probably be provoked at her.

Q. Why? A. For hiring his car.

Q. Why? A. It is a natural presumption.

Q. If you knew he would be provoked, and if you presumed that he did not know that you were hiring the car, why did you hire it from this married lady? A. It was a cheap way for me to get a car.

Q. So that you would hire the car when you knew her husband did not know it—when you presumed her husband did not know it, and when you knew, or when you presumed her husband did not know it, and when you knew he might be provoked about it, because it was cheaper—because it was cheaper? A. That is right.

Q. Did you need a car upon the occasions that you hired the car from Mrs. Smith, so badly as that? A. I needed a car, yes.

Q. It would have been cheaper to go to New York by train, wouldn't it? A. It probably would have, yes, sir.

Q. And it would have been a cheaper way for this young lady going to Westwood without your company, than hiring a car, wouldn't it? A. It would.

Q. Why didn't you let her go and why didn't

you go, by train? A. Because, I told her I would take her.

Q. Upon the 125th Street incident—it would have been cheaper for you to have gone to your office by train than hiring the car, wouldn't it? A. It would have been cheaper, yes, sir.

Q. Why didn't you do it, rather than run the risk of having this husband provoked? A. Because I told this yong lady that I would take her with me.

Q. So, for the sake of taking the young lady in a car, which would be cheaper than a taxi, you ran the risk of provoking the husband of the lady who kindly hired you the car; is that right? A. You put it in a rather peculiar light.

Q. I am using your language, I think, or the inference to be derived therefrom. A. When I had the car I was not thinking of provoking the husband.

Q. But that was the second time that the circumstances were such as that you knew that you had run the risk of having the hubsand know, wasn't it? A. Running the risk, yes, sir.

Q. You had one warning when Mr. Fairhurst saw you, hadn't you? A. I did not know that Mr. Fairhurst had seen me.

Q. You knew you came at least within an ace of being seen? A. Yes, sir.

Q. That was a warning, wasn't it? A. Yes, sir.

Q. But you repeated it, didn't you? A. Yes, sir.

Q. How far off the country road were you when Mr. Fairhurst galloped by? A. Probably 15 feet or so.

Q. Into what? A. 15 or 20 feet.

Q. Into what? A. Into an open field, to get off the road.

Q. Why did you do that? A. On account of the road is only narrow enough for one car—the road was only wide enough for one car; if I had stayed in the road, other cars would not have been able to pass.

Q. Do you mean to say two cars cannot pass on that road? A. Not very well.

Q. So if two cars meet on that road, one or the other has got to back up, or back into the shrubbery? A. They have to pull into the side.

Q. And you have to do that in almost every country road, haven't you? A. Yes, sir.

Q. Why didn't you pull over to the side of the road instead of going into the open field 15 feet? A. There was a sort of driveway right into this field.

Q. Then you went into a driveway? A. Not a driveway, it is a roadway leading into this field.

Q. Were there bars? A. No, sir.

Q. Was there a fence? A. No, sir.

Q. Why did you go into the open field instead of staying off on the road—just to the one side of the road, as people usually park, don't they?

Mr. McKee—Objected to.
The Court—Objection overruled.

A. Because the hunters were in the field.

Q. So you did not go into the field because the road was narrow but because the hunters were in the field? A. Between the two.

Q. What do you mean? A. On account of the

road being narrow, and also on account of the hunters being in the field.

Q. You did not go into the field so that people on the road would not see you? A. No, sir, I was not under cover.

Q. How is it you did not know whether Mr. Fairhurst saw you or not? A. I did not know, because I did not see him look.

Q. But it was so that anyone could see going along the road? A. Yes, sir, it was.

Q. The natural presumption would be then, that he would see you, wouldn't it? A. Not necessarily.

Q. Why not, if you were so in open view? A. It all depends on how observing he is.

Q. So that you were in a position where people might go along that road and not see you, were you? A. If they had looked they would have seen, yes, sir.

Q. You were in a position where people travelling along that road in the ordinary way would not see you, were you not? A. They could have seen me if they had looked.

Q. If they had looked how? A. With their eyes.

Q. Then why would you think that Mr. Fairhurst did not see you; did you think he was going along there blindly? A. I did not know.

Q. You did not? A. He probably was not.

Q. Why did you think he might not have seen you? A. Because I did not seem him looking.

Q. Were you facing the road? A. No, sir.

Q. Was the car facing the road? A. It was not.

Q. The back of the car was to the road? A. Yes, sir.

Q. How did you see Mr. Fairhurst? A. I heard the noise of the horse.

Q. That is how you heard him—how did you see him? A. I saw him with my eyes.

Q. Well, now, do you think that is an answer to my question? A. I think so.

Q. You do? A. Yes, sir.

Q. How did you see him—I repeat it; you were looking at the hunters; how did you happen to see Mr. Fairhurst on the road, back of your car?

Mr. McKee—That is a different question.

The Court—The question is capable of easy understanding.

A. I heard the noise of the horse and that attracted my attention, and I looked.

Q. Where did you look? A. I looked at the road.

Q. Where did you look? A. I turned round to look; I was in the front seat and the lady was at the front, also.

Q. Which side of the car were you on? A. The driver's side.

Q. Left or right? A. The left.

Q. Then you turned your head and looked around? A. Yes, sir.

Q. Did you look at the rear of the car? A. I don't remember how I looked, but I looked so that I could see Mr. Fairhurst.

Q. Don't you know you were in the back seat? A. I was not.

Q. And don't you know you looked through the

glass in the back of the car? A. I don't know whether I did or not.

Q. Where was Mr. Fairhurst when you first saw him? A. On the road.

Q. Yes, I know that—how far away? A. Just a short distance from the car.

Q. How far? A. Probably twenty or twenty-five feet or so.

Q. How long did you sit there? A. Probably ten or fifteen minutes.

Q. After that? A. No, sir, all together.

Q. After Mr. Fairhurst went by? A. Probably a few minutes.

Q. Just long enough to get out, wasn't it? A. Yes, sir.

Q. What did you say to the young lady? A. I told her that I thought it was a man that I knew.

Q. There was nothing wrong about that? A. And that I thought we had better be going.

Q. Give us the whole conversation you had in that car before you backed out? A. I said I had to get the car back at a certain time, and that we had better go on.

Q. How soon after that was it that you borrowed the car again? A. I don't know.

Q. Can you tell me, about? A. It was not until the following year, I believe.

Q. Not until the following year? A. That is right.

Q. What date was it that this Fairhurst episode took place? A. I think it was December, if I remember rightly.

Q. Of what year? A. 1920.

Q. When was it you next borrowed the car? A. 1921.

Q. When? A. Several months after.

Q. Where? A. Probably in the summer.

Q. Under what circumstances; tell me about it? A. I borrowed it to drive over to New York.

Q. Is this the other time you have been telling us about—the 125th Street incident? A. No, sir.

Q. Tell us all about it. A. I borrowed the car under the same circumstances; I borrowed the car through her brother.

Q. What did you do—what happened? A. I got in touch with her brother.

Q. How? A. When I was with him.

Q. What did you say? A. I asked him if it would be possible to get the car, and he said he would find out and let me know, which he did, and I borrowed it and got the car down on Ellison Street and went over to New York.

Q. With whom? A. I went alone.

Q. What did you do when you got to New York? A. Went over to my office.

Q. Then what did you do? A. I went over on business.

Q. Then what did you do? A. Came back again.

Q. How much did you pay for the car that time? A. Five Dollars.

Q. Why did you borrow the car that time? A. To go over to New York.

Q. Why hire Mrs. Smith's car to go to New York alone? A. It is more pleasant to drive over than to go over on the train.

Q. Were you commuting at that time? A. No, sir.

Q. Were you going to business over in New York? A. No, sir.

Q. What were you doing at that time? A. I

was in business in town, but the main office was in New York.

Q. How often did you go over there? A. No special time, just whenever occasion arose.

Q. About how often? A. Sometimes once a week, sometimes twice, sometimes maybe a couple of times a month.

Q. Did you hire Mrs. Smith's car every time you went? A. No, sir.

Q. How many times did you hire Mrs. Smith's car when you went? A. On three or four occasions, I guess.

Q. Did you each time pay five dollars for the use of it? A. Yes, sir.

Q. When was the next time, after the time you have just told us about? A. At the time of the accident.

Q. When was the next time? A. I believe that was the last time I borrowed it.

Q. You have told us about four times? A. That is all I ever borrowed it.

Q. You have told us the only three times you ever borrowed the car? A. I think that I may have borrowed it upon one other occasion.

Q. When was that? A. To go to New York.

Q. When? A. In the same year, 1921, in the summer.

Q. And under what circumstances? A. The same circumstances.

Q. Did you go alone? A. No, sir, I had a young lady with me.

Q. Who? A. Miss Meyers.

Q. Tell us all about that occasion? A. I got in touch with Mrs. Smith's brother and asked him to see if it would be possible for me to get the car,

and he did so the same as he had done before; and I got the car on Ellison Street at the same place, and went to New York.

Q. Where? A. I went to my office.

Q. Where did you leave Miss Meyers on that occasion? A. In the car.

Q. Where? A. In front of the office.

Q. You took the car all the way over to New York on that occasion? A. Yes, sir.

Q. When did you get back? A. I came back the same day.

Q. Now, have you told us all the occasions on which you borrowed the car? A. Yes, sir.

Q. Do you know whether anyone saw you on this last occasion that you have told us bout? A. No, sir.

Q. When you borrowed the car on that occasion you went through the streets of Paterson in broad daylight? A. Yes, sir.

Q. And this was in the summer of 1921? A. Yes, sir.

Q. You were not afraid of being seen then, were you? A. I did not parade the main streets.

Q. How did you go then out of Paterson; where did you get the car? A. On Ellison Street, right by the Y. W. C. A.

Q. And from thence, whence? A. Down Church Street and over Fair or Hamilton Avenue, over that way.

Q. Is that a direct route out of Paterson, or is that a circuitous route? A. It is quite direct.

Q. You did not avoid any of the main streets that would naturally be used to get out of the City of Paterson? A. I did not pick the principal streets.

Q. Did you pick some streets that were not the

principal streets, and if so, why? A. Yes, sir, I did.

Q. Why? A. To avoid people seeing me.

Q. Did you realize when you were doing this and that, what you were doing was quite likely to cause trouble? A. Not to cause trouble, no, sir.

Q. Well, then, if it was not, why avoid the main streets? A. People would probably see me in the car and would start to wonder why I had the car.

Q. Did you realize that that might cause trouble? A. I did not realize it, no, sir.

Q. Now, have you told us every occasion on which you operated this car? A. I have.

Q. How soon after November 19th did you see Mrs. Smith? A. I don't know exactly.

Q. Did you? A. It may have been a week or more.

Q. How did it come about? A. Through her counsel.

Q. Through her counsel? Do you mean to say you did not see Mrs. Smith until you saw her counsel? A. I did not.

Q. Why not? A. Because I did not try to.

Q. Why not? A. I did not see why I should.

Q. When Mr. Blue had come into that house and called you a "dirty dog" and some other remarks, and you had gone because the going was good at that particular time, you did not think that the occasion required that you should find out about it? A. I was in touch with her brother all the time; I had spoken to her brother about it.

Q. When, for the first time? A. Just after it occurred.

Q. How soon after it occurred? A. It may have been a day or so.

Q. What was said? A. I just expained it to him.

Q. What did you say? A. I told him about the night of the 19th.

Q. What did you tell him? A. I told him about Mr. Blue coming there and finding me there—that he was very much provoked, and Mrs. Smith's brother then said he had heard of the occasion.

Q. Tell me everything you said to Mr. Barlow? A. I told him that Andy was ridiculous.

Q. Go on. A. That is all.

Q. Didn't you tell him anything more than that? A. I told him that it certainly looked very funny about my receiving that letter. That I thought it was a joke, receiving the letter.

Q. What else did you say to Mr. Barlow? A. Nothing else regarding that.

Q. When did you see Mrs. Marsden? A. When did I see her?

Q. Yes. A. After that night?

Q. Yes. A. I saw her at Mr. Barlow's.

Q. When? A. Sometime after.

Q. How soon after? A. Maybe a month or more.

Q. Not until then? A. No, sir.

Q. Did you discuss Mrs. Marsden with Mr. Barlow when you talked to him shortly after the events of the 19th? A. Yes, sir, I mentioned her name.

Q. What did you say to him? A. I said that Mrs. Marsden was there.

Q. You are sure of that now? A. I am.

Q. Did Mr. Barlow ask for the letter? A. No, sir, he did not.

Q. He did not? A. No, sir.

Q. Did he say anything about the letter? A. He did.

Q. What? A. I told him about the letter.

Q. Did he say anything when you told him about it? A. He said it must have been a joke.

Q. Is that all? A. That is all.

Q. Did you ask him where the letter was? A. No sir, I did not.

Q. It was the proof of the joke, wasn't it? A. Yes, sir.

Q. Well, why didn't you ask for it? A. I never gave the letter a thought.

Q. The letter was the thing which you knew had brought you there to that place? A. Yes, sir.

Q. Why didn't you make some inquiry to find out where it was? A. I never expected things to turn out the way they did.

Q. You knew Mrs. Smith, within four days after this, had been denied admittance by her husband, didn't you? A. I knew that, yes, sir.

Q. Well, it was serious then, wasn't it? A. I did not know it right away.

Q. You knew it when you talked to Barlow, didn't you? A. Yes, sir.

Q. When you did know it, why didn't you make some inquiries with respect to the letter? A. I did not know what it was all about then.

Q. You did not know what it was all about, although Mr. Blue had come in the house and said what to you—what did he say when he came into that house? A. He called me a dirty dog.

Q. And what else? A. And told me I had no right to be there, and told me to get out.

Q. And what else—you were there for ten minutes with him, were you not? A. No, sir.

Q. For how long? A. Only for a few minutes.

Q. What did he say? A. He said that he had

considered a lot of things, and I had no right to be in his house.

Q. Did he say what he had heard? A. No, sir.

Q. And what else? A. And that it was a fine thing for me to be there with Mrs. Smith.

Q. And what else? A. I was trying to explain to him during this and I could not; I was trying to explain to him that it was perfectly all right—that there was a third party there.

Q. You tried to do that? A. Yes, sir.

Q. What did you do towards trying to do that; tell me what you did? A. I tried to explain to him.

Q. What did you say? A. Just what I told you.

Q. Were you in such a position that you could not say "Mrs. Marsden is in there"; couldn't you even say that? A. He was in such a rage that he would not listen to anything.

Q. Was he in such a rage that you could not say "Mrs. Marsden is in there?" A. I did tell him.

Q. You did say "Mrs. Marsden is in there?" A. Yes, sir.

Q. While you were in the kitchen you got out as much as "Mrs. Marsden is in there?" A. Yes, sir.

Q. What did he say? A. He was in such a rage that he could not hear anything; he probably heard me, but he was in such a rage that he would not stand for any explanation.

Q. Although he was saying at the time that you had been taking advantage by being there alone; that is what he was saying, wasn't he? A. Yes, sir.

Q. And you said to him you were not there alone, and that Mrs. Marsden was there, and he kept right on? A. I told him, but he was in such a rage.

Q. You met Mr. Blue on Monday night, didn't you? A. After this occurrence?

Q. Yes. A. I did, yes, sir.

Q. On the corner? A. Yes, sir.

Q. And you had a fight, didn't you? A. No, sir.

Q. What happened? A. Nothing happened.

Q. You met him? A. Yes, sir.

Q. What else happened? A. He stopped and talked to me, and I would not speak to him.

Q. You would not speak to him? A. No, sir.

Q. Why not? A. For what had occurred a few nights previous to that.

Q. Did he come to you in a pleasant way? A. He did.

Q. And wanted to talk to you; is that right? A. He did.

Q. And you would not talk to him? A. I would not.

Q. You would not take the trouble to explain when he was not in a rage, as to what had occurred on the 19th? A. I kept right on going.

Q. Why did you keep on going? A. Because I did not care to talk to him.

Q. There was no fisticuffs? A. No, sir.

Q. Didn't he ask you to fight? A. He did not.

Q. And didn't you refuse to fight, and didn't he punch your face? A. He did not, no.

Q. What did he say? A. He said he wanted to talk to me.

Q. Then what did you do? A. I said, "You cannot talk to me," and I kept on going.

Q. Did he follow you? A. No, sir.

Q. And there was no reason, so far as he was concerned, why you should not have stopped there

at that time and explained all the circumstances? A. No, not after what he had called me before that —

Q. Well, you knew—you did not resent his calling you that, did you? A. I did, yes, sir.

Q. He told you that you were there alone with Mrs. Smith—you thought he believed that you were alone with Mrs. Smith, didn't you? A. Yes, sir.

Q. And you knew there had been tales about you and Mrs. Smith? A. Yes, sir.

Q. Then you did not resent Mr. Blue's making the remarks that he did in the belief that he had, did you? A. Yes, sir, I did.

Q. Wasn't it the natural thing, in your opinion? A. Nothing natural for a man to come in and point a gun at you, no.

Q. Why not, in view of the fact that he believed that you were there alone with Mrs. Smith? A. I did not think it was very proper for him to come in in that manner.

Q. How did you expect him to come in under the circumstances? A. I did not expect him to come in.

Q. How would you have expected him to come in under the circumstances? A. I would have expected him to come in in a natural way.

Q. What would be the natural way for him to come in under the circumstances, in your opinion? A. Under what circumstances?

Q. Under the circumstances that he had heard tales.

Mr. Ward—I object to the use of the word "tales."

Q. "Remarks," we will put it.

The Court—He heard something from Fairhurst; that is the evidence.

Mr. Lane—Mr. Donnelley has already testified that Mr. Blue when he came in said that he had heard tales about Mrs. Smith and Donnelley, and he wanted to know why Mr. Donnelley was taking advantage of him by theing there alone.

Mr. Ward—He said "things."

Mr. Lane—Then change the question to "things."

Q. Under the circumstances that he had heard things? What would you think would be the natural thing for Mr. Blue to do?

The Court—The witness has stated that he expected him to come in in the natural way, and I think the question is proper. I will allow it. You may note an objection to it.

By the Court:

Q. Having heard these things, how would you consider that he would come in in the natural way—what do you say about that? A. I should think he would come in through the door, and not be in the rage that he was in.

Further Cross:

Q. When did you first make inquiry with respect to this letter, as to where it was? A. At Blue's home.

Q. When? A. That evening.

Q. As to where it was, I asked you. A. (No answer).

By the Court:

Q. Do you mean the night of the 19th you made inquiry about the letter, where it was? A. No, sir.

Further Cross:

Q. When was it that you first made inquiry as to where this important letter was? A. It was sometime after.

By the Court:

Q. How long after? A. Probably a month or so, I don't know exactly.

Further Cross:

Q. Under what circumstances? A. Through Mrs. Smith's counsel.

Q. Well, under what circumstances; how did it come about that you made inquiry at that time? A. They asked me if I had the letter, and I told them I had not.

Q. What else was said? A. I said the last time I remembered seeing it was in the Blues' home that evening.

Q. Wasn't that all that was said? A. We tried to locate the letter.

Q. What did you do? A. (No answer).

By the Court:

Q. Did you see Mrs. Smith about it? A. Yes, sir, and her counsel.

Further Cross:

Q. Is that the first time you saw her? A. I don't remember whether it was or not.

Q. Can you tell me the first time you saw her after the night of the 19th? A. I said before, that I could not.

Q. Where was it when you did see her? A. At her counsel's.

Q. Then you did not see her between the 19th and the time you met her at her counsel's? A. No, sir.

Q. And you made no attempt of any kind, nature or description to locate this letter? A. Yes, sir, I tried to locate it.

By the Court:

Q. How soon after the 19th? A. I just answered that—about a month.

Q. In view of the fact that this letter was the cause of your going to the Blues' house that night, why was it you did not look the letter right up? A. I tried to locate it.

Q. But that was a month afterwards; you saw the anger of Mr. Blue and the condition of mind he was in; why didn't you look for it and take it down to Mr. Blue and show him the letter and say, "That is why I was there;" why didn't you do that? A. I did not know whether I had the letter or not.

Further Cross:

Q. Why didn't you move, instead of waiting for somebody else to ask you? A. I did not know that it was this incident that caused everything.

Q. You did not know it was that incident that caused everything; what did you think had caused it, if it was not that incident? A. I did not learn until later.

Q. You knew your name was involved, didn't you? A. Yes, sir.

Q. Why didn't you make it your business to find out, if you were innocent? A. I did; I spoke to her counsel.

Q. When? A. I spoke to her counsel probably a week or so after.

Q. With Mrs. Smith? A. No, sir, not with her.

Q. Did you speak about the letter then? A. I did.

Q. What did you say? A. I explained about receiving a letter and that was why I was down there that evening.

Q. Did you make any effort then to find it? A. I did, yes, sir.

Q. What did you do? A. I looked for it in my home.

Q. Then what did you do? A. I could not find it.

Q. Then what did you do? A. I tried to recall the last time that I remembered seeing it.

Q. Then what did you do? A. Came to the conclusion that the last time I remembered seeing it was down at the Blue home that evening.

Q. And then what? A. Then I told that to her counsel.

Q. When? A. After I found out that I did not have it.

Q. When? A. I don't know when.

Q. How soon after the first visit to the counsel? A. Probably the second visit.

Q. When was that? A. I don't know.

Q. How long after? A. I don't know how long it was.

Q. A week—two weeks— A. Probably not that long.

Q. Can you tell me about how long? A. It may have been a few days.

Q. You said you saw her counsel or made some inquiry with respect to the letter, about a month after the occurrence? A. I probably did talk about it then.

Q. Can you tell me how long after the first visit, when counsel asked you to locate this letter, you communicated the result of your inquiry to counsel? A. Yes, sir; probably a few days; I don't know exactly.

Q. Well, did not counsel tell you when you told him about this letter, to go to your home at once and locate that letter and bring it in? A. He told me to try to locate it.

Q. And did not they tell you to let them know at once whether you had it or not, or didn't they? A. They told me to try to locate it, to just try to locate it.

Q. You mean to say they instructed you with respect to this piece of evidence, to just try to locate it? A. That is all a person can do, to try.

Q. And they did not tell you when to let them know, is that right? A. They told me to let them know just as soon as I found out.

Q. No other injunction upon you to hurry, or anything of that kind? A. They may have; I don't know the words they used exactly.

Q. And you did not go to Mrs. Smith? A. No, sir, I did not.

Q. You did not communicate with her in any way? A. I did not, no, sir.

Q. You did not ask anyone else to? A. Her counsel.

Q. Did you know what the result of her counsel's—did her counsel tell you what the result of their communication with her was; did they? A. The result of what?

Q. The result of their communication with her with respect to the letter? A. I told them that I could not find the letter.

Q. Was that all? A. And I told them that as far as I could recall, the last time that I saw it was down at the Blue home.

Q. Did you stop there? A. No, sir, and I told them that it probably must have been left there on the table.

Q. You stopped there? A. And they said that they would try to get in touch with the Blues to see if they could find the letter around their house.

Q. Did you stop at that? A. Yes, sir.

Q. And you never found out what the result of their inquiry was? A. Yes, sir, I found out later on that they could not locate it.

Q. Just later on; why didn't you find out at once whether Mrs. Blue or Mrs. Smith had that letter—the proof of your innocence, so far as your visit to the home of the Blues was concerned.

Mr. Ward—I object to that characterization. (Question withdrawn.)

Q. Why didn't you insist on knowing at least whether that letter was in existence or whether it was not? A. Mrs. Smith's counsel said that they would get in touch and see if they could locate the letter.

By the Court:

Q. But it was your letter, Mr. Donnelley, it was a letter addressed to you? A. And I did try to look it up and could not find it.

Q. Now, you say you looked it up immediately; a while ago you said you looked it up a month after? A. No, I did not say that.

The Court—The record will disclose. I don't want to mis-state anything.

Further Cross:

Q. With respect to these tales or "things" that you have referred to; before you were on this country road in Mrs. Smith's car, your family had received a letter purporting to be signed "K. K. K.," which had reference to your relations with Mrs. Smith, hadn't they? A. I don't know.

Q. You don't know? A. No, sir.

Q. Wasn't that letter shown to you by Leo? A. It was, yes, sir.

Q. Then why did you say you don't know? A. You said regarding Mrs. Smith.

Q. What was the letter then; why did you say "No."

Mr. Ward—He was asked if his family had received a letter signed "K. K. K." with reference to his relations with Mrs. Smith, and he said "I don't know." Then he was asked with reference to a certain letter signed "K. K. K." which evidently did not refer to Mrs. Smith.

Mr. Lane—I will withdraw the question.

Q. (Question withdrawn.) What was the letter? A. I don't remember just what it was.

Q. Charge your memory and tell me what you do remember as to what it was. A. I don't remember what it was; I just saw it once.

Q. Cannot you tell me anything that was in it? A. I remember the letter signed "K. K. K." and I took it as a joke.

Q. This thing you took as a joke, what was it? A. (No answer).

By the Court:

Q. Do you remember anything in the letter? A. There was a picture in it.

Further Cross:

Q. Tell us about it. A. It was a picture of the Ku Klux Klan.

Q. What else? A. It was printed; I don't remember the contents of the letter.

By the Court:

Q. Can you tell us what the letter related to? A. I don't remember, because I did not have the letter in my hands.

Further Cross:

Q. Leo showed it to you in the presence of your family? A. Yes, sir.

Q. And wanted to know what it was all about? A. No, sir.

Q. How did he come to show it to you? A. Because it came in the mail.

By the Court:

Q. Was it addressed to Leo? A. I don't know; I did not even have it in my hands.

Further Cross:

Q. You saw what it was, and it was the subject matter of discussion between Leo and your sister? A. No, sir.

Q. Were not your sisters there? A. I don't remember whether they were present or not.

Q. Don't you remember what was in that letter? A. No, sir.

Q. Wasn't it with respect to your going around with married women? A. No, sir.

Q. What was it, then? A. I don't know, but it did not mention anything about a married woman.

Q. If you are so sure of that, why can't you tell me what was in it, if you are so sure of what was not in it? A. As far as I know, it merely stated "Beware of the Ku Klux Klan."

Q. Didn't it say why? A. Not to my knowledge.

Q. Then you don't know whether it had in it anything with respect to your going around with

a married woman or not? A. All it had in, so far as I know was, to beware of the K. K. K.

Q. Didn't you, in your own mind at that time, connect that letter with your going around with Mrs. Smith? A. I should say not.

Q. Or with your hiring her car without the knowledge of her husband? A. No, sir.

Q. What did you attribute it to; was there anything else? A. I took it merely as a joke; there is a lot of K. K. K. letters in circulation.

Q. Do you know when that was? A. No, sir, I do not.

Q. Can you tell me about when it was? A. No, sir.

Q. Was it 1920 or 1921—last year or the year before? A. It was probably last year, I am not positive.

Q. During the summer of 1921 you had a talk with your father about the situation with respect to Mrs. Smith, didn't you? A. No, sir, I did not.

Q. Are you sure of that? A. I am.

Q. In the summer of 1921, did not your father forbid you the house? A. He did not.

Q. For three days? A. No, sir.

Q. Was there any talk about it at that time? A. No, sir.

Q. Had you any talk about Mrs. Smith at that time between you and your father? A. No, sir.

Q. Or between you and your sisters? A. No, sir, there was not.

Q. Are you sure of that? A. Yes, sir.

Q. Where are your sisters now? A. I don't know.

Q. Do you know where they are living now? A. Yes, sir.

Q. Where? A. At home.
Q. Where? A. Paterson, N. J.
Q. Where? A. 23rd Street.
Q. Where? A. 748.
Q. Do you know whether they are at home now? A. I could not say.
Q. Do you live there? A. Yes, sir.
Q. Were they at home this morning? A. Yes, sir.
Q. Sure of that? A. Yes, sir.
Q. And they expected to be home this evening? A. I could not say.
Q. Why not; are they anticipating a trip or anything of that kind, or are they living there; would they ordinarily be there this evening? A. I don't know.
Q. Were they living there last week? A. I don't know.
Q. Were they home last week? A. I could not say; I was not home.
Q. You were not home any time? A. No, sir, I was not.
Q. You saw your sisters at home, however, this morning? A. Yes, sir.
Q. Do you know a Miss Martin? A. Yes, sir.
Q. Who is she? A. She is a young lady.
Q. Does she call you there at the house? A. No, sir, I don't believe so.
Q. Never called you up at the house? A. I don't know.
Q. When you were there? A. She may have.
Q. Do you remember whether she did or not? A. I could not say.
Q. Where does Miss Martin live? A. The Martin I am speaking of is Miss Lillian Martin.

Q. Where does she live? A. I don't know just where she is living now.

Q. Where was she living the last time you knew where she lived? A. She was living on Broadway.

Q. Where? A. Near 23rd Street.

Q. Can you tell me more definitely than that? A. I don't know the number of the house.

Q. Can you tell me how to locate it? A. She used to live on Broadway, the second door from 23rd.

Q. When was that? A. Several years ago.

Q. When did you last see her or hear of her? A. I think I saw her a couple of weeks ago.

Q. Where? A. Down town.

Q. Where? A. I don't remember the place.

Q. If we want to locate her, how can we locate her; or if you wanted to locate her, how would you locate her? A By telephone.

Q. How; what is the telephone? A. I don't know.

Q. Then how would you locate her by telephone? A. If you called her number you would probably get her.

Q. Is she in the book? A. I believe it is under her father's name.

Q. What is his name? A. Joseph Martin.

Q. Who is he? A. A paper box manufacturer, Broadway, Paterson.

Q. Did she telephone you during the summer of 1921? A. I don't think so, no, sir.

Q. You are sure of that? A. I am not positive.

Q. Did you talk with anyone on the telephon-

from your house to someone who gave the name of Miss Martin? A. I could not say.

Q. Have you any recollection of whether you did or not? A. No, sir.

Q. If you talked to somebody during the summer of 1921 who called you by telephone and gave the name of Miss Martin, and she was not Miss Martin, you would remember it, wouldn't you? A. Not necessarily.

Q. Why not? A. It would not be so impressive that I would remember it.

Q. It would be an unusual thing, wouldn't it? A. Yes, sir.

Q. But you cannot now say whether anything of that kind happened during the summer of 1921, or not? A. I don't think so.

Q. But you don't remember? A. I don't remember whether it occurred or not.

Q. Do you remember when you came home one evening your sister, I think it was Helen, or it may have been the other sister, told you that a Miss Martin had called and that she asked you to call "Lambert 1797?"

Mr. Ward—I object on the ground that it has no binding force or effect upon the defendant, Mrs. Smith, the conversation not being had in her presence, and, therefore, it is not evidential.

The Court—I will allow it as affecting his credibility.

Q. (Question read.) A. I do not, no.

Q. Do you say it did not happen? A. Yes, sir.

Q. Why are you certain of that? A. I do not recall such an incident.

Q. You are not certain as to whether Miss Martin called you up? A. If there was a message left to that effect, I probably called.

Q. You do not know whether Miss Martin ever called you during the summer of 1921, and left word for you to call up some telephone number, do you? A. I do not remember her calling.

Q. But you are certain she did not tell you to call up "Lambert 1797"? A. I could not swear to it.

Q. Why, when I asked you that question first, were you so positive; why, when I asked you that question before, did you say she did not?

Mr. Ward—My recollection is, that he was asked whether or not his sisters had delivered that message to him, and he said "No," they had not.

Q. Why, when I asked you before whether she had called you up, or your sister had told you that she had called you up and asked you to call up "1797 Lambert" you answered she did not? A. I don't remember talking to Miss Martin at all.

Q. But do you recollect that in your testimony given here a few moments ago, you said that Miss Martin did not, or that no message ever was given to you that Miss Martin had asked you to call that number, why were you certain with respect to that, and uncertain as to whether she had ever called you or not? A. If there was a message to that effect, I would have probably called Miss

Martin up, and I do not remember talking to her.
Q. Do you know what 1797 Lambert is? A. No, sir.

Q. You did not know whose telephone 1797 was, when you answered the question a moment ago? A. No, sir.

Q. You don't know it is Mr. Smith's telephone? A. No, sir.

Q. You never were present when anyone called her up at her house? A. No, sir.

Q. You never knew her telephone number? A. No, sir, I did not.

Q. Now, do you remember that you did, in fact, call up 1797, and that a lady talked to you on the other end of the wire, and that at the close of the conversation you said, "All right; I will meet you in half an hour;" or words to that effect? A. I do not, no, sir.

Q. Will you say you did not? A. I did not.

Q. You are sure of that? A. I am.

Q. And you are sure your sisters did not overhear any such conversation? A. They could not have.

Q. And are you sure it was not within a day or two after that, that your father forbid you to come in the house?

Mr. Ward—That assumes a fact which has been denied.

The Court—He has denied that his father ever forbid him to come in the house, but there is no assumption of the fact in that; that is directing the witness' attention to a time; I will allow it.

A. My father did not refuse me the house.

Q. And didn't you, about that time, promise your father that you would not see Mrs. Smith again; and didn't he then, upon your promise, say that you might come in the house again?

Mr. Ward—It assumes that that telephone call took place.

The Court—The objection is sustained.

Q. Did you ever say to your father that you would not see Mrs. Smith again? A. I did not, no, sir.

Q. Did you ever talk to him with respect to Mrs. Smith? A. After this trouble, yes.

Q. Before this trouble? A. No, sir.

Q. When did you go down to see Mr. Munson Force, if you ever did? A. I saw Mr. Force after this trouble.

Q. When? A. Some time after this occurred.

Q. Cannot you tell me about when? A. No, sir.

Q. Who sent you there? A. My father asked me to go down.

Q. Now, can you tell me when? A. No, sir.

Q. How did he come to ask you to go? A. He just asked me to go down to sign some papers.

Q. What papers? A. They were personal papers.

Q. About what? A. Not regarding anything of this affair.

Q. About what? A. Papers regarding our home.

Q. With respect to what?

Mr. McKee—Objected to.

A. It is personal.

The Court—There is no reason that he should have any privilege on this matter; if the matter is immaterial, irrelevant and imcompetent, the Court will strike it out; it won't affect me at all. But the rules of the Court of Chancery are so elastic, that I might take every bit of evidence here even though it was objected to, and then strike it out. Of course, if there is something that should not be disclosed to the public, the Court will strike it from the record.

Mr. Ward—I object, because it has no force or effect upon Mrs. Smith.

The Court—It is not binding upon her at all; it has no binding effect upon Mrs. Smith.

By the Court:

Q. What was it about, Mr. Donnelley? A. About signing a paper there regarding our home.

Q. What paper were you called upon to sign—what to do? A. About turning my share of the home over to my sisters.

Further Cross:

Q. When was that first suggested?

Mr. Ward—I object to that.

The Court—Objection overruled.

A. I don't remember.

Q. You don't remember when that was suggested? A. I do not, no, sir.

Q. You haven't any idea? A. No, sir, I have not.

Q. Wasn't it suggested when your father talked to you about your relations with Mrs. Smith?

Mr. Ward—Objected to as assuming that he did talk to him; he has denied that he talked to him.

By the Court:

Q. Was there a time that he talked to you about this—your father? A. This occurred after this trouble arose—

Further Cross:

Q. Didn't your father insist on your taking that action because of your relations with Mrs. Smith? A. No, sir, it was not.

Q. Were the relations of Mrs. Smith and yourself discussed at the time?

Mr. Ward—If your Honor please, those questions are very unfair; we contend there were no relations, Mr. Donnelley contends there were no relations.

The Court—The witness has said that he had a conversation—that the transfer was talked about with his father after the trouble in this case arose; now, it is perfectly

proper to go on. I will allow it. I would not pursue it, though, to any great extent.

A. I don't believe they were, no, sir.

Q. Don't you know? A. I could not say positively.

Q. So that you have no recollection one way or the other? A. Whether she was mentioned?

Q. Whether the relations, or any alleged relations btween you and Mrs. Smith were mentioned? A. At that time, no, sir.

Q. At any time, at any family conference, were your relations with Mrs. Smith discussed in any way? A. It was talked about, yes, sir.

Q. Now, don't you remember, that at a family conference about the time that this trouble broke your alleged relations between yourself and Mrs. Smith were discussed, and your sisters told your father about the Miss Martin telephoning and getting the telephone number to call up 1797-Lambert, and also told about the conversation which you had over the telephone with Lambert-1797, after your sisters told you about it, and that it was then, and after that matter was discussed, that your father insisted or asked that you turn over the interest that you had to your sisters?

Mr. McKee—Objected to, because this is a question based upon the conversation, or a statement made by the sisters to the father—

(Objection withdrawn.)

A. No, sir.

Q. Did your father tell you such a statement

had been made by your sisters to him? A. He did not.

Q. Did your sisters tell you? A. No, sir.

Q. Did anyone tell you? A. No, sir.

Q. Did your father tell you at any time that he had been in communication with Mrs. Smith? A. He did not.

Q. Did he tell you at the time this transfer was discussed, that he had been in communication with Mrs. Smith and had asked her not to see you again? A. No, sir.

Q. Did anyone ever tell you that? A. No, sir.

Q. Did he tell you that he had talked with Mrs. Smith and had said to Mrs. Smith, that unless she did make that promise, he would bring it to the attention of Mr. Smith?

Mr. Ward—I make the same objection.

A. No, sir.

Q. Nothing like that was said? A. No, sir.

Q. Did you talk with Andy Blue about this case at all after the events of the 19th? A. No, sir, I have not.

Q. Did you have a talk with Mrs. Smith about the events of the 19th? A. I did, yes, sir.

Q. Did you ask Mrs. Smith what Andy Blue had told Mr. Smith as to the events of the 19th? A. We talked that over with her counsel.

Q. Did you talk it over with her? A. They were present; we all talked it over.

Q. Did she say that Andy Blue had stated that he had found you and Mrs. Smith there alone? A. No, sir.

Q. You are sure of that? A. I am.

Q. Did she state that Andy Blue had stated that he had found you there, and that Mrs. Marsden was there? A. Did she state that?

Q. Yes. A. Yes, sir, she did.

Q. Did she say that Andy Blue had stated to Mr. Smith that he had found you there, and that you had been brought there by a letter? A. No, sir.

Q. She did not say that either? A. No, sir.

Q. But you are sure that she said that Andy Blue had stated to Mr. Smith that Mrs. Marsden was there? A. I did not say that.

Q. You said that— A. Then I did not understand; I thought you said Mrs. Smith; I misunderstood the question.

Q. So that she made no statement as to what Andy Blue had stated he had told Mr. Smith? A. She did not, no, sir.

Q. And what Andy Blue had stated to Mrs. Smith that he had told Mr. Smith was not the subject matter of the discussion at all, is that right? A. What Mr. Blue had stated to Mr. Smith—

Q. Or Mr. Blue—I withdraw it—did Mrs. Smith tell you that she had tried to get from Mr. Blue what he had told Mr. Smith or Mr. Shorter or Mr. Schofield; were you not anxious to know what Mr. Blue had told Mr. Shorter and Mr. Schofield? A. I did not know about these men.

Q. When did you first know about Mr. Shorter and Mr. Schofield? A. That was some time after.

Q. When? A. I learned it through Mrs. Smith's counsel.

Q. When? A. I don't remember the time.

Q. Well, you knew that, however; can you tell me any nearer than that? A. To the time?

Q. Yes. A. No, sir, I could not say.

Q. You finally knew that Mr. Blue had been accompanied by Mr. Shorter and Mr. Schofield, didn't you? A. Yes, sir, I finally found that out.

Q. And you finally found out that Mr. Blue had told Mr. Schofield and Mr. Shorter something as to what had happened in the house?

Mr. Ward—This is the most palpable effort on the part of counsel to get in improper evidence; this is an effort on the part of counsel to get into the record in some way what Andy Blue said to these men—not in the presence of Mrs. Smith.

The Court—The objection is overruled.

Q. (Question read.) A. I found that out, yes, through her counsel.

Q. When? A. In going over the case.

Q. With whom? A. Mr. Ward and Mr. McGinnis.

Q. Whom else? A. Mrs. Smith.

Q. Whom else? A. That is all, I believe.

Q. Didn't you know anything about it until you had this conference with counsel? A. I did not, no, sir.

Q. You made no effort to find out what Mr. Blue had said? A. I did not know that he had said anything.

Q. Well, hard on to the happenings of the 19th of November there had been a separation between the Smiths? A. Yes, sir.

Q. And still you did not know that Mr. Blue had said anything—do you mean that? A. I presume that he must have said something.

Q. Didn't you try to find out what he had said? A. I found out later on from Mrs. Smith's counsel.

Q. Didn't you try to find out at that time? A. No, sir.

Q. Didn't you ask Mrs. Smith? A. I did not see Mrs. Smith.

Q. Did you ask Mrs. Blue? A. I did not see her.

Q. Why didn't you see her?

The Court—We will take a recess here to 2 P. M.

After Recess.

JAMES J. DONNELLEY resumes the witness stand.

Cross Examination (continued) by Mr. Lane:

Q. Tell me about how tall you are, Mr. Donnelley ? A. About six feet.

Q. How much do you weigh? A. About 150 pounds.

Q. Don't you weigh more than that? A. The last time I weighed that is how much it was.

Q. By the way, how many hunters were there upon this occasion when you were coming back from Westwood? A. Probably five or six.

Q. Did they have guns? A. Yes, sir.

Q. And dogs? A. Yes, sir.

Q. What were they hunting? A. Rabbits, I suppose.

Q. Don't you know? A. I did not ask them.

Q. You were interested in it? A. Yes, sir.

Q. Are you interested in hunting? A. Yes, sir.

Q. Didn't you observe from the way they hunted, what they were hunting? A. Rabbits.

Q. Is there any doubt about the fact that they were after rabbits? A. I don't know.

Q. Do you know whether they were hunting birds, or what? A. They seemed to be hunting on the ground. They were not shooting birds in the air.

Q. What kind of dogs did they have? A. Hunting dogs.

Q. Bird dogs? A. Yes, sir.

Q. Were they bird dogs? A. My recollection is, that they were.

Q. You drew your car in out of the road for the purpose of observing this hunting? A. Yes, sir.

Q. Didn't you observe something about it? A. Yes, sir, they had hunting dogs.

Q. Bird dogs? A. Yes, sir.

Q. They were hunting rabbits with bird dogs, were they? A. I could not say, I don't know.

Q. How long did you watch them? A. About ten minutes.

Q. While they hunted? A. Yes, sir.

Q. Where were they hunting? A. Around in the fields and through the brush.

Q. In front of your car or in the rear of the car, or in the brush, or where? A. They were all around.

Q. On all sides of you? A. Yes, sir.

Q. So that some were in front of you, some were behind you, and all around? A. Yes, sir.

Q. You were in the center? A. Yes, sir.

Q. You were afraid of being shot by a stray shot? A. No, sir.

Q. Why not—five or six men with guns and dogs around you, and you in a car, glass enclosed? A. Yes, sir.

Q. You sat there watching the hunting? A. Yes, sir.

Q. You were not afraid of getting shot? A. No, sir.

Q. Did you hear them shooting? A. Yes, sir.

Q. How much shooting did you hear? A. I heard, probably, a couple of reports.

Q. Did you see anything brought in? A. No, sir.

Q. Are you a hunter? A. I have hunted, yes.

Q. But are you a hunter; do you go out enough to say that you are a hunter? A. I have been out hunting, yes, sir.

Q. Are you enough experienced hunter to know what they were hunting? A. I am not very much experienced, no, sir.

Q. The dogs, were they in a pack, or single dogs? A. I don't remember.

Q. Don't you remember whether these dogs were in a pack, or whether each man had his own dog? A. They all did not have dogs.

Q. Were the dogs which were there, in one group, what I call a pack? A. I don't think so.

Q. Do you know? A. I am not positive.

Q. What were the dogs doing? A. Running, barking.

Q. Running and barking? A. Yes, sir.

Q. Were the dogs running back and forth barking? A. Yes, sir.

Q. While the hunters hunted? A. Yes, sir.

Q. And while these shots were fired? A. Yes, sir.

Q. But you don't know what they were hunting? A. No, sir.

Q. You are sure they were bird dogs? A. There were some to my recollection.

Q. How do you know? A. I think I know a bird dog when I see one.

Q. What is the difference, on a casual inspection that you got from a hunting field—what did the dogs do; how did they act, which indicated to your mind that they were bird dogs and trained to hunt birds? A. They were running through the brush, barking.

Q. What made you say they were bird dogs; did you see any of them come to a stand and point? A. No, sir.

Q. Was there anything which they did which indicated to you that they were bird dogs? A. (No answer.)

Q. Is that question so hard, that you have to take a few moments to answer?

The Court—He said he saw them running through the bushes.

Q. When does the hunting season close? A. I could not say.

Q. Do you know? A. No, sir.

Q. Do you know it closes on December 4th? A. I don't know.

Q. This was December 15? A. I don't know whether it was or not.

Q. Do you know the date? A. I know it was December.

Q. Do you know how long in December? A. No, sir, I don't.

Q. Have you any idea? A. No, sir.

Q. You have not the least idea? A. Not the date, no, sir.

Q. You said you did not say anything to Mrs. Smith about this episode, did you? A. No, sir.

Q. Or she to you? A. No, sir.

Q. At any time? A. No, sir. I have not mentioned it until after this case was started.

Q. You referred in your direct examination to the occasion upon which you took Mrs. Smith home in a Ford car; that was a Ford coupe? A. Yes, sir.

Q. Can you tell us when that was? A. No, sir, I don't know the date.

Q. Was it 1921 or 1920? A. I really could not say.

Q. About when was it? A. It may have been either year.

Q. Well, if I recollect correctly, on direct examination your attention was called to an occasion when Mr. Wright saw you; you said you remembered that occasion, and you told us about going to Miss Camwell's house, and Mrs. Smith being there, and your taking her home. You remember that specific occasion that Mr. Wright referred to? A. Yes, sir.

Q. What is there that draws that particular occasion to your mind? A. Because it is the only occasion that I remember taking her home.

Q. Did you see Mr. Wright? A. No, sir, I did not.

Q. What drew your attention when counsel asked you with respect to the occasion when Mr.

Wright saw you; did that mean anything to you? A. I did not say that I saw Mr. Wright.

Q. You don't know whether that was the occasion that Mr. Wright saw you or not, except, possibly, by a process of exclusion, that that is the only time you did it? A. Yes, sir.

Q. Is that the only time you did it? A. Yes, sir.

Q. When did you get that Ford coupe? A. 1919.

Q. When did you dispose of it? A. Probably about a year later.

Q. When? A. I don't know the date.

Q. Tell me about when? A. In 1920.

Q. Tell me about when in 1920. A. In the fall.

Q. Whom did you dispose of it to? A. I sold it to a man whose name I don't recall.

Q. Through whom? A. Through no one; we transacted the business together.

Q. Who was it, then? A. I don't know.

Q. What was the number of your license? Was the car licensed in your name? A. In my name.

Q. Do you know the number of your license? A. No, sir.

Q. Was it licensed in your name in 1919, is that right? A. 1920, I think it was.

Q. Was the license in your name in 1921? A. I did not have it then, I believe.

Q. Did you buy it in 1919 or 1920? A. I think it was the latter part of the year of 1919 that I bought it, and I kept it until about the fall of 1920.

Q. Can you be any more definite than that? A. I could not say any closer than that.

Q. And it was licensed at that time in your name? A. Yes, sir.

Q. Was the license changed as soon as you sold it? A. Yes, sir, it was.

Q. You surrendered your license to the man who bought it; is that right; and the license was changed? A. I don't remember whether it was transferred; I don't know whether it is transferable or not.

Q. Do you know anything about the details of the transfer of the license—what was done? A. I don't remember.

Q. Did you give a bill of sale? A. Yes, sir.

Q. And do you know where that car is now? A. No, sir.

Q. Did you have anything to do with the change of the license? A. I don't remember whether the license was changed.

Q. You do not? A. I do not.

Q. Are you sure of that? A. Positive.

Q. You don't remember whether the license was changed or whether it was not? A. No, sir.

Q. Do you think he may have been driving the car afterwards on your license? A. I don't remember whether it was transferred or not.

Q. Do you know whether it is in your name now? A. I don't know that.

Q. You don't know whether it is or not? A. No, sir.

Q. When did you last see the car? A. When I sold it.

Q. When you first borrowed Mrs. Smith's car, did you have that car? A. I don't remember whether I did or not.

Q. Try to think; whether you had the Ford

coupe when you borrowed Mrs. Smith's Cole-8 sedan? A. No, sir, I did not.

Q. What makes you think you did not? A. I was just figuring up the time.

Q. All right; how did you arrive at that— Because the first time I borrowed the car was in December, 1920.

Q. And what? A. And I disposed of my car before that.

Q. That is the only reason why you figured you did not have the coupe at the time you borrowed the sedan? A. Yes, sir.

Q. If you had the coupe why would you borrow the sedan? A. I said I did not have the coupe.

Q. If you had the coupe there would have been no object in your borrowing the sedan? A. No, sir.

Q. And if, as a matter of fact, you had that coupe at that time, there would be no reason for your borrowing the sedan? A. That is right.

Q. There is no question about that? A. No, sir.

Q. There is no reason that you can think of why, if you had the coupe, why you should borrow the sedan? A. No, sir.

Q. Where did you keep this coupe when you had it? A. On 24th Street.

Q. Where? A. 17th Avenue.

Q. At a public garage? A. No, sir, private.

Q. At whose house? A. I don't know whom it belongs to.

Q. Is the garage still there? A. I believe it is.

Q. What did you do—make a private arrangement with the owner of the house to keep your car in his garage? A. Yes, sir.

Q. What is the name of the man? A. I don't know.

Q. You don't remember the name of the man with whom you made the arrangement? A. I don't recall now, no, sir.

Q. Locate his house for me. A. He lives on 17th Avenue, I believe.

Q. 17th and what? A. 24th Street.

Q. On the corner or where; how would you locate it; if you wanted to tell me how to go to get it, what would you say? A. The Southwest corner.

Q. Are you sure of that? A. I believe so.

Q. And the car has not been there since you owned it? A. I don't know.

Q. The man who bought it took it away with him? A. Yes, sir.

Q. So far as you know, the car has not been in that garage since? A. Not as far as I know.

Q. Do you know where the man lived that bought it ? A. No, sir.

Q. Do you know where he did live at the time? A. He lived in Haledon, I believe.

Q. Do you know where? A. I don't know the street, no, sir.

Q. Are you sure it was in 1920 that you took Mrs. Smith home? A. No, sir, I am not sure.

Q. Are you sure it was not last year? A. It may have been.

Q. It may have been last year? A. Yes, sir.

Q. 1921? A. Yes, sir.

Q. How could it have been then if you did not have the car? A. It must have been 1920, then.

Q. Then why did you say it might have been

1921? A. I never gave it a thought of not having the car then.

Q. Take your mind back to the time, when you took Mrs. Smith home; are you sure it was not last year that you took Mrs. Smith home? A. It could not have been.

Q. And the only reason why you say that is because you did not have the car then? A. That is right.

Q. You don't locate it in your mind in any other way? A. That is right.

Q. What side of the street did you stop on? A. On the right hand side.

Q. What street? A. 30th.

Q. In the front of the house? A. On the side of the house.

Q. Then what did you do? A. Stopped, and as Mrs. Smith was getting out, Mr. Smith drove up in his car.

Q. How long did you stay there before Mr. Smith came? A. I don't believe it was any more than a minute or so.

Q. You did not stop there any length of time? A. No, sir.

Q. You did not stop there for five minutes? A. No, sir.

Q. No one could have seen you stopping there for five minutes? A. No, sir.

Q. Nor for any length of time, except for time enough for Mrs. Smith to get out? A. We may have said a few words or something; it was not any more than a minute or two.

Q. Were there any trees there? A. I believe there were.

Q. Was the car under the trees? A. I could not say that; I suppose if there are trees there, that the car may have been under the trees.

Q. Did you stop the motor? A. I don't remember that; I don't think so.

Q. Did you get out? A. I don't recall whether I did or not; I don't think so.

Q. Did you speak to Mr. Smith? A. Yes, sir, I said "Hello" to him.

Q. You were in the car? A. Mr. Smith got out of his car and came over to mine.

Q. After Mrs. Smith had gotten out of yours? A. I don't know whether she had gotten out or was getting out, but she got out, I remember, and we talked there for a minute or so, and then I drove on.

Q. That was the only occasion that you ever took Mrs. Smith home? A. Yes, sir.

Q. In any kind of a conveyance? A. Yes, sir.

Q. You never walked home? A. No, sir, I did not.

Q. You never started out to walk home with her? A. No, sir.

Q. You are sure of that? A. Yes, sir.

Q. You never went home with her in her own car? A. I believe there was one occasion, yes.

Q. When was that? A. I could not say when it was.

Q. Well, let us have the details. A. There was Miss Camwell and Miss Davis, Mrs. Smith and myself that went there, and Mr. Smith took Miss Camwell and Miss Davis and myself home.

Q. Mr. Smith was in the party? A. Mrs. Smith was not there.

Q. Mr. Smith was? A. Mrs. Smith was there when we drove up to the house; Mrs. Smith got out and Mr. Smith took us home.

Q. Did you go home in Mr. Smith's car? A. Yes, sir.

Q. Is that the only occasion that you ever went to Mrs. Smith's house in her car? A. Yes, sir.

Q. How many times did you go into Mrs. Smith's house from the rear entrance? A. Once, that I know of, maybe twice.

Q. What was the once that you know of—was it the curling iron incident? A. Yes, sir.

Q. You remember the details of that distinctly? A. Yes, sir.

Q. And what was the other occasion? A. Once when Mr. Barlow and myself went over.

Q. For what? A. He went in to see his sister for a minute, and I went with him.

Q. In the rear entrance? A. Yes, sir.

Q. How long did you stay there? A. A few minutes, probably five minutes.

Q. Was there anyone there except Mrs. Smith, Mr. Barlow and yourself? A. No, sir; Mrs. Smith was in the kitchen, and we went in the rear way.

Q. What time was it? A. In the evening.

Q. What time? A. I don't know exactly, in the early evening.

Q. Was it six, seven, eight or nine o'clock? A. Around eight o'clock, I should say.

Q. What was the reason for your going there that time? A. He went to see his sister.

Q. About any particular thing, any curling iron or anything of that kind that calls your attention to it particularly? A. He had something for his

sister, I think; I don't know what it was; he had a package for her.

Q. Do you know when that was? A. No, sir.

Q. Was that last year or the year before; have you any idea as to when it was? A. No, sir, I have not.

Q. Is that the only time you have been there? A. It is.

Q. Those two occasions are the only times you have been there? A. I have been there on other occasions.

Q. When was the next time you went in the rear entrance? A. Those are the only times.

Q. Those two occasions, then, are the only times? A. Yes, sir.

Q. Those are the only occasions that you went to the rear entrance? A. Yes, sir.

Q. How many times did you go to the front entrance? A. Maybe four times or so, four or five times.

Q. During all the time that you knew Mrs. Smith? A. Yes, sir.

Q. On how many of these occasions was Mr. Smith at home? A. I believe two of the occasions.

Q. Were there any of the occasions when you were alone? A. Absolutely none.

Q. And on all the other occasions, who were with you? A. Sometimes her brother — oftentimes Miss Camwell and Miss Davis.

Q. Do you know how many times the brother was with you? A. On a couple of occasions.

Q. And on the other occasions? A. Miss Camwell and Miss Davis.

Q. How many occasions? A. Two or three occasions, probably.

Q. When did you first know Mrs. Smith? A. About seven years ago.

Q. How did you become acquainted with her? A. I met her at her mother's.

Q. After her marriage? A. Yes, sir.

Q. When was the first time you called at her house with her brother? A. I could not say definitely.

Q. Two years ago? A. Two or three years ago, maybe.

Q. When was the first time you went to the rear entrance of the house with her brother? A. I could not say that.

Q. Two or three years ago? A. Yes, sir.

Q. Not more than that? A. No, sir.

Q. When was the first time you met her at Miss Camwell's house? A. Probably three years ago.

Q. About three years ago? A. Yes, sir.

Q. When was the first time you met her at—(Question withdrawn.) How often did you see her at her mother's house? A. Probably—I don't know exactly—probably six or eight times.

Q. How often did you see her at Mrs. Blue's house; when were the occasions? A. On the night of the 19th.

Q. Any other occasion? A. Once.

Q. When was the other occasion? A. Once when I went there with Mr. Barlow.

Q. When was that? A. Two or three years ago.

Q. Was it just an accidental meeting? A. Positively.

Q. Those are the only two occasions you ever saw her at the Blue's house? A. Yes, sir.

Q. What did this note say? A. It asked me to come down.

Q. What did it say, recite it, if you can? A. I have something very important to talk over with you; will you kindly come down to my sister's home Saturday night, and signed "Frances Smith."

Q. You thought it was genuine? A. I did, yes, sir.

Q. And you were on such acquaintance with her as that you would reply to a genuine letter of that kind? A. Yes, sir, I would reply to a letter from anyone.

Q. You had been to her house on very few occasions? A. Yes, sir.

Q. You did not think of calling her up, did you? A. I did not.

Q. Either at the Blue house or her own house? A. No, sir.

Q. How was the letter addressed? A. It was addressed to me.

Q. How—what was the salutation? A. "James Donnelley, Jr., 748 East 23rd Street, Paterson, N. J."

Q. On the inside of it, I mean? A. (No answer.)

By the Court:

Q. How were you addressed in the letter? A. (No answer.)

Further Cross:

Q. "Dear Sir"? A. No, sir.

Q. How? A. "Dear Jimmie", I believe.

Q. When did you become on such terms of acquaintance with Mrs. Smith as that she called you

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"Jimmie?" A. She called me that for some time.

Q. When was the first time? A. I don't remember that.

Q. Was it for the last three or four years? A. Probably she called me that before I was in the army.

Q. When? A. 1916.

Q. When was it that you were in Asbury Park? A. I was down there in 1920 and 1921.

Q. When was it you were in Asbury Park and walked on the walk to Allenhurst? A. I think it was 1921.

Q. Last year or the year before; was it last year or the year before? A. I was down there both years.

Q. But you walked to Allenhurst on the walk, on the boardwalk; you remember that distinctly? A. Yes, sir.

Q. Can't you remember when it was, whether it was last year or the year before? A. I think it was probably last year.

Q. Any doubt in your mind of its being last year? A. Yes, sir, there is doubt in my mind.

Q. Cannot you remember whether it was last years or two years ago? A. No, sir, I don't remember.

Q. But you remember the incident distinctly? A. I do.

Q. What makes you remember the incident distinctly? A. Because it has been talked about in this case.

Q. Is that right? A. Yes, sir.

Q. So that you remember distinctly what happened a year or two ago, because of something which has happened now; is that right? A. It brought it back to me.

Q. So until this case was mentioned or referred to, you had no distinct recollection of it? A. I never gave it a thought.

Q. It was a passing incident? A. Yes, sir.

Q. But now, since the case came up, you remember the details distinctly? A. Yes, sir.

Q. Do you remember whether you saw anyone on that walk home that you knew? A. No, sir, I did not.

Q. You did not see anyone you knew, or you don't remember? A. I don't remember seeing anyone.

Q. Do you know Mr. Vannest? A. Yes, sir.

Q. Did you see him? A. No, sir, I did not.

Q. You said there was an electric sign on that walk? A. Yes, sir.

Q. Where is that electric sign? A. At the end of the boardwalk.

Q. In Asbury Park? A. Yes, sir.

Q. And that sign throws its electric beams which way? A. Towards Asbury.

Q. And that is the sign that illuminated the boardwalk beyond it? A. Towards Allenhurst; there are lights all along the boardwalk.

Q. You refer to the electric sign; I want to know whether this electric sign that is directly at the end of the boardwalk illuminated the boardwalk leading towards Allenhurst? A. It does, yes, sir.

Q. Sure of that? A. There is a certain amount of light thrown on there.

Q. Don't you know the tendency is to throw it in darkness—the reverse of the sign? A. There is plenty of light around there from the sign.

Q. Is that the only time you walked over that boardwalk with Mrs. Smith? A. Yes, sir.

Q. Sure of that? A. Yes, sir.

Q. Why are you sure of it? A. Because it is the only time I took her over there.

Q. What was there that is of such moment in this casual walk that would make you say that it was the only time that you were ever on that boardwalk when Mrs. Smith was there? A. I was never out with her any other time.

Q. You had met her on the boardwalk before? A. Yes, sir.

Q. You had stood and talked to her before? A. Yes, sir.

Q. When no one else was there? A. There were others there.

Q. Did you ever stand and talk to her on the boardwalk when somebody else was not there? A. Not that I remember of, no, sir.

Q. When I talked about somebody present, I meant somebody whom you knew; there never was any other occasion, that you were alone with Mrs. Smith in Asbury Park but this one occasion when you walked on the boardwalk to Allenhurst; is that right? A. That is right.

Q. And you remember that distinctly; there can be no mistake about that? A. I remember it distinctly.

Q. And you went to Allenhurst to find whom? A. To a dance.

Q. How long did you stay at the dance? A. Two hours.

Q. Who was at the dance that you knew? A. Some people that I had left down there.

Q. Was Mrs. Smith there? A. Yes, sir.

Q. Whom was she with? A. With me.

Q. With you? A. Yes, sir.

Q. When had the arrangement been made for

you to go to the dance with her? A. On the spur of the moment.

Q. When? A. When he had walked down after looking for the girls.

Q. And where, where was it, when did the spur of the moment come that you agreed to go to the dance? A. I went down looking for the girls, and could not find the girls, I went to take the girls out, and when I could not locate them, I suggested to Mrs. Smith if she cared to go to the dance.

Q. Where were you when you made that suggestion? A. On the boardwalk.

Q. Where, what part of the boardwalk? A. In Asbury.

Q. Where did you meet Mrs. Smith that night? A. At the hotel.

Q. What hour? A. I don't know exactly.

Q. Can you tell me, about? A. Probably around 8 or 8:30 or so.

Q. It was no earlier? A. It may have been.

Q. What did you say to her? A. I asked her if the girls were there.

Q. What led you to suppose that the girls might be there? A. Because one of them was staying there.

Q. With her? A. No, sir.

Q. At that hotel? A. Yes, sir.

Q. Which one of the girls? A. Miss Davis.

Q. Where was the other girl staying? A. At another hotel.

Q. Where? A. A few blocks way.

Q. Had you been to that hotel? A. Yes, sir.

Q. What had you been informed there? A. That she was not in.

Q. Then you went to Mrs. Smith's hotel? A. Yes, sir.

Q. You inquired for whom? A. Miss Davis.

Q. What was the answer there? A. Mrs. Smith was there, and she told me that Miss Camwell or Miss Davis was not there; and I asked her if she knew where they were, and she said they left to go down to the boardwalk, and they said they would be back in a little while, and I said I would go down and look for them, and she said that she wanted to see them too—so she said, "If you are going down, I will walk down with you."

Q. Who was there with her at that time? A. No, one.

Q. Were her children there? A. I don't think so.

Q. Was she staying there with her children? A. I don't know.

Q. Was Mr. Smith there? A. No, sir, he was not.

Q. Tell us what happened; you walked up the boardwalk? A. Yes, sir, and walked the boardwalk, and looked for Miss Camwell and Miss Davis and did not see them.

Q. Which way did you go—north or south? A. Went south and then north.

Q. How far south did you go? A. Probably a distance of four or five blocks, maybe.

Q. You looked at the passers-by to see if you could see Miss Davis and the other lady? A. Yes, sir.

Q. And then you turned around and walked back? A. Yes, sir.

Q. How far north did you go? A. Walked some distance there.

Q. Just what did you do—still looking at the passers-by? A. Yes, sir.

Q. Then what did you do? A. Then I said, "They don't seem to be here"; and I said "Would you care to go, as long I cannot find them?" I said, "Maybe you would like to go"; and Mrs. Smith decided to go, so we went on.

Q. The dance to be held where? A. At the Allenhurst club.

Q. Who gave the dance? A. I don't know who gave the dance.

Q. Was it a public performance—pay? A. No, sir.

Q. Was it an hotel dance? A. Yes, sir.

Q. You were staying at the hotel? A. No, sir.

Q. You just walked in? A. Yes, sir.

Q. What time did you get there? A. I don't know what time it was.

Q. How long did you stay? A. Until probably 10:30 or 11 o'clock we stayed.

Q. Dancing with Mrs. Smith? A. Yes, sir.

Q. Did you see anyone there that you knew, dancing? A. Yes, sir.

Q. Who? A. Some people that I had met down at the shore.

Q. Do you know their names; cannot you remember them; cannot you remember the names of the people you met at this dance? A. There was a man named Mr. Reynolds.

Q. What is his first name? A. Jack, I believe.

Q. Where can he be found? A. I don't know where he is; he was down there for the summer.

Q. Do you know anyone that was there that you do know where he is now? A. No, sir, I do not.

Q. Did you introduce Mrs. Smith to this friend of yours? A. I did introduce her to them.

Q. Did they dance with her? A. Yes, sir.

Q. Did you dance with the ladies that these gentlemen were with? A. Yes, sir.

Q. Did you have any appointment to meet anyone at that dance? A. No, sir, I did not.

Q. What was it that you wanted to see the girls about? A. Just to take them out for the evening.

Q. Did you have this dance in mind? A. That is where I was going to take them.

Q. But you did not have any agreement or any appointment with anyone else to meet at that dance? A. No, sir.

Q. Did you leave the dance with anyone? A. I took Mrs. Smith home.

Q. Anyone else? A. No, sir.

Q. How far is the Allenhurst Club from the boardwalk, the beginning of the boardwalk in Allenhurst? A. Probably three or four blocks.

Q. How did you walk after you left the dance; I don't mean the speed; I mean the streets that you walked over? A. I don't know the names of the streets.

Q. Did you walk the shortest route that there is to the point where the boardwalk begins? A. Yes, sir.

Q. How close to the beach is the boardwalk? A. It is right on the beach.

Q. It is on it? A. Yes, sir.

Q. Was anyone with you except Mrs. Smith? A. No, sir.

Q. How long is this boardwalk? A. What boardwalk?

Q. The boardwalk that leads from Allenhurst to Asbury Park, before you strike the electric sign? A. Probably fifty feet.

Q. Now, at the end of the boardwalk in Allenhurst, what is there? A. A pavilion there.

Q. What is the name of the pavilion? A. I don't know.

Q. And in front of the pavilion what is there? A. There is a bench.

Q. That pavilion is built on piles? A. I could not say; I suppose it is built on the beach.

Q. You have been there in daylight? A. I never observed that.

Q. Haven't you got a picture of it in your mind now? You stayed down there two summers? A. Yes, sir.

Q. Haven't you got a picture of this pavilion in your mind? A. I have, yes, sir.

Q. Is it built on piles? A. I don't know.

Q. Do you know whether you can walk under it or not? A. You cannot.

Q. You know that? A. Yes, sir.

Q. Is there any place between its floor and the beach? A. It is right on the beach.

Q. Do you mean that it is flat up against the beach? A. Yes, sir.

Q. Then there is no space underneath it? A. No, sir.

Q. As you go on up the beach, what do you get next after the pavilion? A. You get the beach.

Q. What is built along the beach—anything? A. It is an open beach.

Q. For how far? A. Some distance, all the way up to the pool.

Q. Any lights along there? A. There are street lights.

Q. But there is no street on the beach? A. There is a street right along the beach.

Q. How close to the beach is the street? A. It runs right to the road.

Q. Isn't there a bulkhead; what separates the street from the beach? A. Nothing separates it.

Q. The only lights that there are, are these street lights? A. Yes, sir.

Q. Do you know how far apart those street lights are? A. No, sir.

Q. Were there any people on this beach as you walk over this boardwalk towards Allenhurst? A. I could not say that.

Q. You were looking right at it? A. Yes, sir, but I was not observing.

Q. That beach is deserted at that time of the night, isn't it? A. I suppose it would be.

Q. You have never seen people on that beach in numbers between nine and eleven o'clock at night, have you? A. I have gone in swimming at that time.

Q. I said in numbers; people don't usually bathe at night in the ocean? A. No, sir.

Q. Then, cannot you say that usually between the hours of nine and eleven, that beach is deserted? A. There are occasionally beach parties.

Q. Aside from that—are there very often beach parties? A. Occasionally.

Q. Did you walk on this beach on this night? A. No, sir.

Q. You walked on the boardwalk to the point where it left the beach, and then you did not go on the beach? A. That is right.

Q. And when you came back you did not go on the beach? A. I did not, no, sir.

Q. What time did you get back to the hotel? A. Probably in the neighborhood of eleven o'clock.

Q. Where did you leave Mrs. Smith? A. At the hotel.

Q. Had you met the girls at all that night? A. I did not, no, sir.

Q. Was Mr. Smith there when you got there? A. I did not see him.

Q. Did Mrs. Smith ever tell you that she told her husband about this dance? A. She did not tell me.

Q. She did not tell you whether she did or did not? A. No, sir.

Q. And you never knew? A. No, sir.

Q. You did not tell her not to tell her husband? A. No, sir.

Q. There was no arrangement between you that you should not? A. No, sir.

Q. There was nothing to indicate to your mind, at least, that he would have been provoked in his mind as much as from your hiring the car? A. Nothing at all.

Q. Did you refer to this dance afterwards to Mrs. Smith? A. I don't remember bringing it up at all.

Q. Did you invite her to any other dance? A. No, sir.

Q. Did the girls, referring to Miss Camwell and Miss Davis, and Mrs. Smith and you go to any other dance? A. We did not.

Q. To any dance? A. No, sir.

Q. Had you ever been to any dance with Mrs. Smith before this time? A. No, sir, I had not.

Q. Had you ever been either alone or in company with others? A. What do you mean by 'others?'

Q. With Mrs. Smith? A. I had not.

Q. So this was the first and last occasion on which you were ever with Mrs. Smith at a dance, either alone or with anyone else? A. It was, yes, sir.

Q. Were you ever out to dinner with Mrs. Smith? A. No, sir.

Q. Were you ever with her alone or with anyone else along? A. I was not.

Q. Well, before this dance, what had been your social acquaintance with Mrs. Smith; what had you done together which made it—what had you done together—what had been your social contact? A. No social contact at all, outside of seeing her with the girls; I would be with the girls.

Q. How often did you see her under those circumstances; tell us about that. A. I have met her.

Q. You were sufficiently acquainted with her not to think that it was anything unusual to take her to this dance on the spur of the moment? A. I was, yes, sir.

Q. I want to know what actually occurred in your relationship; what was the social contact that made you think that what had occurred—describe your relations? A. I had been around with Miss Camwell and Miss Davis.

Q. How often? A. Several times.

Q. How often; you just casually met her at Miss Camwell's and Miss Davis' house? A. I would be there to call on the girls, and sometimes she would be there.

Q. When she came there, she did not come by appointment; she just dropped in, and you happened to be there at the same time? A. Yes, sir.

Q. How often did that happen? A. Maybe six or eight times.

Q. Before this dance? A. Are you speaking of Asbury Park now, or at any time?

Q. I thought there was only one dance. I am

talking about whatever you had done with her socially, prior to the dance; what was it? A. Six or eight times.

Q. Before the dance, or when? A. I don't know.

Q. I want to know what you had done before the dance. What was there in your relationship; what had you two done together, alone or with others? A. Done nothing together.

Q. I mean, what had been your social contact; what had you done which made you think that there was nothing out of the way to go on this casual dance on the spur of the moment? A. I met her around with Miss Camwell and Miss Davis.

Q. How often before the dance? A. Maybe six or eight times.

Q. Before the dance? A. I don't know whether it was before or after.

Q. Can you tell me how often it was before the dance? A. I cannot, no, sir.

Q. Did you ever have dinner with her in Mrs. Camwell's house or Miss Davis' house? A. No, sir.

Q. How long a time did you ever stay with her at either of the houses? A. I did not stay with her.

Q. With the others; I mean at either one of the houses? A. Sometimes for a short time, and maybe for a couple of hours.

Q. What was the longest time? A. A couple of hours.

Q. Daytime or night time? A. Both.

Q. Was the episode in which you took her home in the Ford before or after the dance? A. I could not say that.

Q. How long had you been there then? A. I was down there for the evening.

Q. How long? A. Two hours, maybe.

Q. By appointment or by accident? A. Was I there by appointment, do you mean?

Q. Yes. A. I don't remember whether I happened to drop in or whether I had called up beforehand.

Q. Was she there by accident or by appointment? A. I could not say; I imagined she had dropped in: I don't know. She may have had an appointment.

Q. Was there any other gentleman there at that time? A. No, sir.

Q. Had there been any other gentleman there at any time when you met Mrs. Smith at Mrs. Camwell's house? A. Miss Camwell's brother has been there.

Q. Anyone else? A. I don't remember anyone.

Q. Which house were you at when you took her home in the Ford coupe? A. Miss Camwell's.

Q. Did you ever meet her in any other house except Mrs. Camwell's? A. I met her at Miss Davis'.

Q. You cannot tell how many times it was Davis' and how many times it was Camwell's? A. I could not say definitely how many times.

Q. Why did you go by way of 125th Street to New York? A. That is the way I usually go.

Q. Why? A. It is a good road that way.

Q. It is a good road the other way, too, isn't it? A. Not as good as the other.

Q. You had an appointment over in New York at 42nd Street and Broadway? A. Yes, sir.

Q. Important? A. Yes, sir.

Q. You were in a hurry to get there? A. Yes, sir.

Q. But you went over to 125th Street? A. Yes, sir.

Q. Why not go over to 42nd Street? A. Because I always took the 125th Street ferry.

Q. When you landed in New York you were at 125th Street? A. Yes, sir.

Q. Then you drove how to get to 42nd Street; how did you go the time you did take the car over? A. Down Riverside Drive.

Q. All the way down Riverside Drive? A. Yes, sir.

Q. To where? A. To West End Avenue.

Q. To where? A. Down a few blocks and then over to Broadway.

Q. And you took that road when you were in a hurry? A. I did, yes, sir.

Q. Although you could have gone and crossed at 42nd Street? A. Yes, sir.

Q. Have you ever gone that way, to 42nd Street? A. Yes, sir.

Q. You know that road? A. Yes, sir.

Q. You knew that road at the time you went over when you borrowed Mrs. Smith's car? A. I knew it, yes, sir.

Q. And upon each occasion that you borrowed Mrs. Smith's car and took it to New York, you went by way of 125th Street? A. Yes, sir.

Q. Did you ever take your own Ford coupe to New York? A. I have, yes, sir.

Q. Which way did you go then? A. The same way.

Q. 125th Street? A. Yes, sir.

Q. Was Mrs. Smith ever in your Ford coupe except on this occasion when you took her home from Miss Camwell's house? A. No, sir.

Q. That is the only occasion she was in that car? A. Yes, sir.

Q. What time was it you were to get back at the Y. W. C. A., at the time you went to Westwood? A. I don't recall now; I think it was either three or 3:30.

Q. What time did you get back there? A. About that time.

Q. And where did you go in Westwood? A. Went over to see a man by the name of Cooper, I think.

Q. You did not have to go there? A. No, sir.

Q. When did you make the appointment with Miss Meyers to take her there? A. I made it that day.

Q. When? A. I don't know exactly.

Q. Morning? A. It may have been; it must have been.

Q. Recollect, if you can. A. I don't remember the time.

Q. Where? A. Down town.

Q. Where? A. I met her on Market Street.

Q. Accidentally? A. Yes, sir.

Q. What was said? A. She told me that she had to go over to Westwood; that she had an engagement over there.

Q. What did you say? A. And I suggested, I told her that I would take her over.

Q. How did you intend to take her over? A. In an automobile.

Q. What automobile? A. Borrow one, or try to.

Q. You did not think of hiring one? A. I did, yes, sir.

Q. Did you know where you were going to borrow one? A. I thought I would try to borrow one.

Q. Did you know from whom or to whom you were going to apply to borrow one? A. No, no definite person, no, sir.

Q. Did you have anyone in mind? A. Yes, sir.

Q. Who? A. Some man down at Paterson.

Q. Who? A. Mr. Seymour and Mr. Wilkins.

Q. Did you go to see them? A. Yes, sir.

Q. What did they say? A. That I could not have their car.

Q. What time was this? A. In the morning.

Q. Did you have reason to believe you would be able to get their car? A. I thought there was a possibility.

Q. Then what did you do; did you try anyone else? A. No, sir, I tried those two; those are the only two I had in mind.

Q. Did you try anyone else? A. No, sir.

Q. Did you try to hire a car? A. No, sir.

Q. Why not? A. I would not try further if—

Q. What hour was it that she was due in Westwood? A. I don't remember just what time.

Q. Have you any idea? A. At one or two o'-clock, I suppose.

Q. You made an appointment with her, didn't you? A. Yes, sir.

Q. Where was the appointment to be? A. In Westwood.

Q. Were you to go to Westwood and she to go

to Westwood— A. No, sir, I told her I would take her over.

Q. Where were you to meet? A. I told her that I would call her.

Q. How? A. On the telephone.

Q. Where? A. At Mrs. Pike's.

Q. Where? A. At her home.

Q. Where? A. Market Street.

Q. Where? A. And Clark.

Q. Do you know the number? A. No, sir.

Q. How do you get there? A. Get there most any way.

Q. If you were telling me how to locate that house, what would you tell me? A. I would say it was on the corner of Market and Clark.

Q. This Mrs. Pike, what relationship is she to Miss Meyers? A. Only a friend, as far as I know.

Q. Do you know her telephone number? A. No, sir, I do not.

Q. Do you know how long Miss Meyers had been staying there? A. No, sir, I don't know exactly.

Q. Do you know whether Mrs. Pike is in business at that address? A. Not at that address, no, sir.

Q. What is her business? A. A beauty parlor on Main Street.

Q. Main and what? A. Right near Market.

Q. Any other business, do you know? A. No, sir.

Q. Does she keep boarders? A. Not that I know of.

Q. At that time, I mean, did she keep boarders at that time? A. Miss Meyers is the only one that I knew that was there.

Q. Had you ever been there? A. Yes, sir.

Q. When? A. I don't know just when.

Q. Why? A. I went there to see Miss Meyers.

Q. When? A. On different occasions.

Q. What hour? A. Sometimes during the day, and sometimes in the evening.

Q. How long did you stay when you went there in the evening? A. Sometimes just a short visit, and sometimes I would stay there for two hours.

Q. Any longer? A. No, sir.

Q. How long had you been calling to see Miss Meyers at this place; when did you start to call on Miss Meyers at this place? A. I don't remember just when I started.

Q. Can you tell us about when? A. Probably 1920, the first part of the year.

Q. Did you ever call on anyone else there? A. No, sir.

Q. Did you ever see anyone else there? A. I saw Mrs. Pike.

Q. I mean, any other young ladies? A. I did not, no, sir.

Q. Never? A. No, sir.

Q. By the way, when was it that this Westwood episode took place? A. The latter part of that year.

Q. You had been calling on her during all that year? A. Yes, sir.

Q. You inquired of Mr. William Seymour that you tried to borrow this car from? A. Yes, sir.

Q. That took you up to about what hour to ascertain that you could not get a car down town? A. Quite a while in the morning, and I saw I could not get one.

Q. What happened? A. I happened to meet

Mrs. Smith on my way down town from my home.

Q. Had you gone home after making the unsuccessful efforts to get the car? A. Yes, sir.

Q. And had you telephoned Miss Meyers that she would have to find some other way to get to Westwood? A. I told her I would get in touch with her.

Q. Had you gotten in touch with her? A. No, sir.

Q. You had failed to get the car? A. Yes, sir.

Q. Did you telephone her she would have to find some other way to get to Westwood? A. No, sir.

Q. Why not; she wanted to go to Westwood and you could not get a car? A. I had not given up hope of getting one.

Q. You had not given up hope, but you had gone home? A. Yes, sir.

Q. You had not made any effort to hire one? A. No, sir.

Q. Then you left home to go down town; for what purpose? A. To borrow a car or hire one.

Q. Whom did you anticipate going to when you came down town then? A. No one specially.

Q. What time was it? A. Probably around noon.

Q. Then, as you walked down town, you accidentally met Mrs. Smith? A. Yes, sir.

Q. Did she overtake you walking? A. She was not walking.

Q. Did she in her car overtake you as you were walking? A. Yes, sir.

Q. Just tell us what happened then. A. It was right near Graham Avenue; she was going

down with her sister, and they pulled up to the curb and asked me if I was going down, and I said "Yes," and they said they would drive me down, and I got in, and we drove off down Park Avenue, and I mentioned that I had to go and get a car.

Q. Who mentioned it? A. I did; I said I was going to borrow one or get a taxi, or hire one; so either Mrs. Blue or Mrs. Smith, I don't remember which, suggested "Why don't you let him take this car;" so they talked back and forth; and I said "No," I would not take the car unless I paid for the gas and oil, and I said "That is the only condition under which I will take it;" so Mrs. Smith did not want to let me have it under those circumstances, and I told her that it was the only way that I would take it. So it was finally decided that I would take the car, and she let me off at the City Hall and said that I could get the car in a few minutes on Ellison Street, near the Y. W. C. A.

Q. Then what did you do? A. I got in touch with Miss Meyers.

Q. How? A. Telephoned to her.

Q. Then what did you do? A. Told her that I had gotten a car and would leave immediately.

Q. Leave where immediately? A. Paterson.

Q. Then what did you do? A. Drove over to Westwood; I told her to meet me on the corner of Church Street and Ellison.

Q. Why didn't you drive up to Mrs. Pike's and get her? A. I did not think it was necessary.

Q. She came out and walked to where your car was; was Mrs. Smith there then? A. No, sir.

Q. Neither was Mrs. Blue? A. No, sir.

Q. Did you suggest during the time you were talking—this was the first time you had borrowed the car? A. Yes, sir.

Q. Did you say, "Well, I don't want to take this car, Mr. Smith may not like it?" A. I did not say that.

Q. Why not? A. I never gave it a thought.

Q. That very same day, within two hours afterwards, you gave that sufficient thought to make you go in the opposite direction from your destination, so that Mr. Fairhurst should not see you; now, why didn't you give it a thought at that time? A. I did not give it a thought at that time.

Q. What caused you to give it a thought two hours later? A. Because, when I saw Mr. Fairhurst, I thought probably he would probably say something about my having the car, and that Mrs. Smith, on account of hiring the car, that she was liable to get in wrong.

Q. You said that at the time you took the car, which resulted in the smash-up, that you made your arrangements with Mr. Barlow? A. I did.

Q. When did you make your arrangements to take Miss Meyers with you? A. On that occasion?

Q. Yes—I withdraw that question—where did you drop Miss Meyers the day you came back from Westwood? A. I dropped her on the corner where I got the car.

Q. Drove right in the middle of Paterson? A. Yes, sir.

Q. And dropped her there? A. Yes, sir, that is right.

Q. When did you make your arrangements with Miss Meyers which resulted in her going over

to New York at the time you smashed the car? A. I believe I made them right at the time that I took the car.

Q. Where, where, at the time you took the car, where? A. When I found out that I could get the car I got in touch with Miss Meyers.

Q. Tell us what occurred—from the time your mind first conceived the idea of your getting the car to the time you went off with the car. A. I got in touch with Miss Meyers.

Q. What did you do; did you get in touch with her by telephone or letter or what? A. Telephoned to her.

Q. What did you do; tell us what you did. A. I telephoned to her.

Q. From where? A. I don't just remember—probably a booth—I don't know.

Q. Who was there? A. I was alone.

Q. You said, at the time you got the car; where did you get the car that day? A. I got the car in the same place.

Q. What place? A. Ellison Street.

Q. How did it come to you that that car was in the place for you to get? A. I got in touch with Mrs. Smith's brother.

Q. How did you get in touch with him, and what was done? A. I telephoned to Mr. Barlow.

Q. When? A. That morning.

Q. Proceed. A. And asked him if it would be possible for him to get in touch with his sister and make arrangements for my getting the car.

Q. Why didn't you telephone Mrs. Smith; it was her car? A. I knew her brother so much better.

Q. Is that the only reason? A. Yes, sir.

Q. What time was it? A. I don't know.

Q. Have you any idea? A. Sometime in the morning.

Q. What did you intend to do at that time if you got the car? A. Go to New York.

Q. Alone, or what? A. Yes, sir, I was going alone.

Q. Is that right? A. Yes, sir.

Q. So that when you made arrangements to get the car you had no idea of taking anyone except yourself? A. No, I may have thought about taking Miss Meyers.

Q. Well, did you? A. Did I what—take her? Yes.

Q. Did you have any idea at the time you made your arrangements to take the car that you were going to take her or not? A. I might have thought about it; I don't know.

Q. So you don't know whether you did or did not? A. Not definitely, no, sir; I don't know definitely.

Q. And you don't know what time it was? A. It was that morning.

Q. What did you say to her brother? A. I asked him if he would get in touch with his sister to see if he could make arrangements for my getting the car, and he said that he would.

Q. And then what happened? A. I told him I would call him up in about five minutes, which I did.

Q. What happened? A. And in the meantime he had gotten in touch with his sister, and he said, "I have made the arrangements."

Q. What else? A. And he said, "You will get the car down on Ellison Street or the Y. W. C. A.

Q. Did he make that suggestion, Ellison or Y. W. C. A.? A. Yes, sir, he did.

Q. Is there any significance in that particular place? A. Only that I had gotten the car there before.

Q. That was almost a year before, wasn't it? A. It was some time before.

Q. Months, at least—was that place selected because it was the place where you got the car in the preceding December—do you mean that? A. That is the only place that I ever got the car.

Q. Was that place selected on this occasion, which was in July, was that place selected in July, 1921, because it happened to be the place where you got the car in December, 1920? A. I suppose it was; I did not select the place.

Q. Then what did you do next? A. After I found out I could get the car, I got in touch with—

Q. What did you do? A. I telephoned Miss Meyers and asked her if she wanted to take a ride over to New York, and she said "Yes."

Q. Then what happened? A. She wanted to know when we would go.

Q. Then what happened? A. And I told her I was not positive what time it would be, but probably around 11:30 or so, and I asked her if she would be ready, and she said "Yes."

Q. Then what happened? A. So I told her to walk over towards the Y. W. C. A.

Q. Then what happened? A. And I made her walk over that way, and Mrs. Smith happened to be there, just pulled in at the time we got there, and I introduced Mrs. Smith to Miss Meyers.

Q. And— A. And Mrs. Smith left, and we drove off.

Q. What was the conversation between you and Mrs. Smith and Miss Meyers to the time you drove off? A. I don't know what we talked about; probably about the weather.

Q. It was a clear day? A. Yes, sir.

Q. Did you talk about the time you might be home? A. Yes, sir, we probably did.

Q. Well, did you? A. Yes, sir.

Q. What? A. I think around three o'clock, if I am not mistaken, it may have been; I am not positive.

Q. Wasn't there any arrangement made as to when you should deliver the car back? A. Yes, sir, that the car should be brought back to Mrs. Blue's.

Q. At what hour? A. I believe around three o'clock.

Q. Back to Mrs. Blue's? A. Yes, sir.

Q. Why? A. Because Mrs. Smith expected to be there.

Q. Not back to Ellison Street? A. No, sir; I had made arrangements with her brother, and he told me it would be on Ellison Street.

Q. Was Mrs. Blue with her? A. I did not see Mrs. Blue.

Q. The car was there on Ellison Street, and Mrs. Smith was there, Miss Meyers was there, and you introduced Miss Meyers to Mrs. Smith? A. Yes, sir.

Q. Was Mrs. Blue there? A. She had just gotten out of the car, I believe, and gone down the street.

Q. What makes you believe that? A. Because Mrs. Smith said that her sister had just left.

Q. Had you met Mrs. Smith coming in with the car? A. She had just arrived there.

Q. Was the car still? A. Yes, sir.

Q. Then she might have been there for some time? A. She said she had just gotten there.

Q. Did she say where she had gotten Mrs. Blue? A. No, sir.

Q. But she said Mrs. Blue had just left? A. Yes, sir.

Q. To go where? A. I don't know where she went.

Q. Was she in sight at the time? A. I did not look down the street after her.

Q. Did Mrs. Smith say where she was going? A. I don't know whether she said to the movies or to do some shopping.

Q. But she said for one or the other? A. I did not say that.

Q. Did she say one or the other? A. I don't know; I believe she said either to the movies or to do some shopping.

Q. You gathered the idea that Mrs. Smith and Mrs. Blue were going to do some shopping? A. Yes, sir.

Q. And that Mrs. Blue had gone on? A. Yes, sir.

Q. And that Mrs. Smith was going to follow her up? A. I don't know.

Q. That was the impression, that they were going to do shopping together? A. I suppose so.

Q. What time was it when you telephoned to the Blue house? A. I don't know exactly what time it was, probably around twelve o'clock, or a little after.

Q. Whom did you get on the wire? A. I don't

remember; either Mrs. Blue or Mrs. Smith answered the telephone.

Q. Why did you suppose they would be there at that time? A. Because they said they were going back there.

Q. But you left them with the idea in your head that they were going to the movies or to do some shopping? A. I said I did not know whether they were going to the movies or to do some shopping.

Q. That was your impression? A. Yes, sir.

Q. You did not know whether they would be at the Blue house or not? A. No, sir; they said they were going back there, and that is where I was supposed to take the car, and that is why I called there.

Q. Do you know this man Spagnolia? A. I do, yes, sir.

Q. Before I forget it, whom did you pay the five dollars to? A. To Mr. Barlow.

Q. Well, when the first five dollars? A. I always paid it to him.

Q. But when? In December when you borrowed the car and made arrangements to pay the five dollars for the car, and said that you would not take it otherwise, the arrangements were made with Mrs. Smith; did you pay that five dollars to Mr. Barlow? A. Yes, sir.

Q. When? A. The next time I saw him.

Q. Why didn't you give the five dollars to Mrs. Smith when you came in? A. Because I told her I would straighten it out with her brother.

Q. Why straighten a five dollar indebtedness out with her brother; why not give her a five dollar note? A. I did not have five dollars with me.

Q. You went to Westwood with Miss Meyers on this trip with this borrowed car, and did not have five dollars with you? A. I did not, but I did later on.

Q. When? A. I withdrew some from the bank.

Q. That day? A. I believe so, yes, sir.

Q. So you were without a cent in your pocket when you went to Westwood? A. No, sir.

Q. How many cents did you have? A. I don't know.

Q. Less than five dollars? A. No, sir, I did not.

Q. Then, why didn't you pay her the five dollars and call it quits? A. I did not have it with me.

Q. I am talking about the money that you had in your pocket. A. I did not see Mrs. Smith when I got back.

Q. You just left the car standing there? A. Yes, sir.

Q. Then it was because you did not see Mrs. Smith that you did not give it to her? A. Yes, sir.

Q. Then why didn't you tell me that the first time I asked you? The truth is, that you did not see Mrs. Smith, and that is the reason why you did not pay her. Now, why did you answer me that you did not pay her because you did not have the five dollars? A. I thought you meant the time that I met her on Park Avenue when I went down.

Q. I meant when you came back? A. I misunderstood you.

Q. Why didn't you pay her when you met her

on Park Avenue? A. I did not have it; I had some money, but not that amount.

Q. Afterwards you withdrew some money from the bank? A. Yes, sir.

Q. What date was that? A. I don't know.

Q. What bank? A. Paterson National Bank.

Q. A checking account? A. Yes, sir.

Q. You don't remember the date? A. I do not.

Q. How much did you withdraw? A. I don't remember that.

Q. Any idea? A. No, sir, I have not.

Q. Drawn to the order of cash? A. I presume I did—

Q. What? A. I presume I did.

Q. Do you keep your account there now? A. Yes, sir.

Q. Did you draw the money after you met Miss Meyers? A. I don't remember, probably before.

Q. You had the car; Mrs. Smith and Mrs. Blue had gone; the car was standing on Ellison Street; what did you do with respect to drawing the money; did you leave the car and go in the bank and get the money and then come back? A. I did, yes, sir.

Q. Are you sure of that now? A. Mrs. Smith let me out at the City Hall.

Q. Then you went and got the money? A. Yes, sir.

Q. Then you went back and got the car? A. I got in touch with Miss Meyers.

Q. Then you went back to the car? A. Yes, sir.

Q. It was left for you on Ellison Street? A. Yes, sir.

Q. Can you tell me how long after that day it was that you paid Mr. Barlow the five dollars? A. The next time I saw him.

Q. How long after you borrowed the car the next time was it, that you paid Mr. Barlow the five dollars? A. The next time that I saw him.

Q. You saw Mr. Barlow, as I understood you this morning, after you returned to New York by train, when you borrowed the car in July, about a week afterwards, wasn't it? A. I don't know just what time.

Q. The next time you saw him you paid him the five dollars? A. Yes, sir.

Q. Do you mean that? A. Yes, sir.

Q. That you paid him five dollars? A. Yes, sir.

Q. On the occasion that you smashed the car? A. You are talking about the time of the accident?

Q. I am talking about July; it is quite clear what I am talking about—is that right? A. Yes, sir.

Q. You paid him five dollars? A. Yes, sir.

Q. You negotiated for the payment of the damages to the Griffin car, and for the payment of the payment of the damages to the Smith car; but aside from that and apart from that, you paid Barlow the five dollars for the use of the car; do you mean that? A. Yes, sir.

Q. And it was the first time that you saw him; when did you tell Barlow you would pay for the damages to the Smith car? A. The next time I saw him.

Q. But no one had spoken to you as to how the damages to the Smith car was going to be made

up, until then? A. No, sir, I said that I would stand it.

Q. But you had not said it to anyone up to the time you first saw Barlow? A. I told Mrs. Smith when she came over.

Q. Oh, you told Mrs. Smith when she came over and saw you at 125th Street? A. Yes, sir.

Q. That you would pay for the damages to the Smith car? A. Yes, sir.

Q. Did you and she discuss at that time how that was to be done? A. No, sir.

Q. Did you tell her you would pay for the damages to the Griffin car? A. No, sir.

Q. When did you first know that Griffin had made any claim for damages? A. I did not know that Griffin had made any claim.

Q. You paid something to him for damages, didn't you? A. I did, yes, sir.

Q. Sometime or other you knew he made a claim for damages, didn't you? A. I learned that through Mr. McLeod.

Q. When? A. I don't know; some time after the accident.

Q. Did you see Mr. Griffin personally? A. Yes, sir, I did.

Q. When? A. Some time after the accident.

Q. How soon? A. I don't know just how soon it was.

Q. Where? A. At Jersey City.

Q. Did you talk to him about the accident? A. Yes, sir.

Q. Who was with you? A. I was alone.

Q. Why did you go there? A. I went there to straighten it out.

Q. You went there because you had heard,

hadn't you—(Question withdrawn). Did you see Mr. Griffin after this suit was started? A. No, sir.

Q. Did you have any talk with Mr. Griffin except that one time? A. I saw him a couple of times.

Q. Did you tell Mr. Griffin to forget that there was a woman in the car? A. No, sir.

Q. Did you tell Mr. Griffin to forget that you were in the car? A. No, sir.

Q. You did not? A. No, sir.

Q. So that Mr. Griffin knew from the beginning that you were in the car; is that right? A. Mr. Griffin did not know who I was.

Q. He knew who you were when you went down there to straighten it out? A. No, sir.

Q. Didn't you tell him your name? A. No, sir.

Q. Didn't he ask you your name? A. I told him I was down there to straighten this matter out.

Q. Didn't you tell him who you were? A. No, sir.

Q. Didn't he ask you who you were? A. No, sir, he did not.

Q. What did you say to him; what did he say? A. I believe at that time he had been in touch with Mr. Smith, and Mr. Smith had sent him a bill.

Q. What did he say? A. The bill was very much higher than what it should have been; and I told Mr. Griffin I did not think there was as much damage done to the car as was stated on the bill.

Q. Did he ask you how you knew how much damage was done to the car? A. No, sir.

Q. Did you tell him how you knew how much damage there was done to the car? A. No, sir.

Q. Did he recognize you as the man who was driving the car? A. No, sir.

Q. And you did not tell him you were the man who was driving the car? A. No, sir.

Q. Who did the talking at the time of the accident with Griffin, you or the lady? A. The lady was doing most of the talking.

Q. Who did the talking? A. The young lady did most of it.

Q. What did she say? A. I don't know what she said; I was out looking to see what damage was done to the car.

Q. Did you talk to him at all? A. I may have had a word or two.

Adjourned to a day to be fixed.

Fifth Day

(Title Omitted.)

MRS. FRANCES B. SMITH, the above-named defendant, being duly sworn, testifies as follows:

Direct Examination by Mr. Ward:

Q. Mrs. Smith, you are the defendant in this suit? A. Yes, sir.

Q. You were married when? A. September 19, 1911.

Q. By whom? A. By the Rev. Mr. Hamilton.

Q. You are the mother of two children? A. Yes, sir.

Q. What are their names and ages? A. Anita Maria, 8½ years of age, and Frances Allen, 7 years of age—

Q. They are now in your custody? A. Yes, sir.

Q. And have been since the separation of your husband from you? A. Yes, sir.

Q. Where are you residing? A. 87 Jaspar St., Paterson, N. J., with my mother and father, and I have been residing with them since our separation.

Q. How long have you been a resident of Paterson? A. All my life.

Q. Were you born here? A. Yes, sir.

Q. How long did you know your husband before you were married to him? A. About a year and a half.

Q. When did you say you were married? A. September 19, 1911.

Q. You lived with him continuously up to what time? A. Up to November 22, 1921.

Q. Whereabouts were you living at that time? A. At 237 Seventeenth Avenue, Paterson, N. J.

Q. You were living there with your two children and your husband? A. Yes, sir.

Q. Before that time had any one else resided with you? A. Yes, sir, my husband's stepmother and his father.

Q. How long had they resided with you? A. Why, I really don't know, but I would say about three or four years.

Q. And how long before the separation did they cease to reside with you? A. Maybe a year and a half or two years.

Q. Were you or not, the cause of their leaving? A. I don't know how to answer that.

Q. What did they say about their leaving when they left? A. I really wanted them to leave, because I felt that our home was never our own; there was always someone there.

Q. Did you ask them to leave? A. No, sir.

Q. Did you ask your husband to request them to leave? A. No, sir, I did not.

Q. Well, they left? A. Yes, sir.

Q. Was that as a result of what you expressed to your husband or not? A. No, sir, I think not.

Q. Do you know why they left? A. Well, I think that Mr. Smith's father had secured a position, and that they probably felt able to take care of themselves.

Q. Wasn't he employed while he was living with you? A. No, sir.

Q. Was his wife employed in any capacity while they were living with you? A. No, sir.

Q. By whom were they supported? A. By Mr. Roy Smith.

Q. Do you recall an incident when you were on your vacation at the home of Mrs. Smith's sister, the step-mother of your husband? A. Yes, sir, Mrs. Emily Pearsall's.

Q. When was that? A. In 1918.

Q. For how long a period of time were you there? A. For two full months.

Q. Did your husband visit you while you were there? A. Yes, sir, mostly every week end.

Q. You know Mr. Harry Pearsall? A. Yes, sir.

Q. When did you first meet him? A. I met him the first time up at Oxford, New York, that summer.

Q. Do you know what occasioned his visit to Oxford? A. He had business; that he was taking care of for his father's estate.

Q. Where did you first see him? A. At the station the day he arrived.

Q. Was there anyone with you when he arrived? A. Mrs. Emily Pearsall, his step-mother.

Q. How were you introduced? A. I think we were introduced as "Frances" and "Harry"; she said "Harry this is Frances;" and she said, "Frances, this is Harry."

Q. What happened after you met him at the station; where did you go? A. It was just before luncheon, and we all walked home and had lunch.

Q. What happened after luncheon; I might ask you, up to the time you had luncheon were you alone with him at all? A. No, sir, I had just met him.

Q. After you had luncheon, what happened? A. I think he went up to town to try to get a car, and he could only get, I think it was a four-passenger Ford.

Q. For what purpose did he attempt to get a car? A. He had to go to this farm that he had to take care of.

Q. Did you accompany him in his attempt to get this car? A. No, sir.

Q. What time did he return with the car? A. That I don't know; I would say between two and three c'clock.

Q. What happened then? A. Then Mr. and Mrs. Smith Sr., and aunt Emily and Mr. Pearsall went for a ride.

Q. Did you accompany them? A. No, sir.

Q. What time did they return? A. In time for dinner; I prepared the dinner for them.

Q. After dinner, tell us what happened? A. We all sat around talking; I don't remember whether or not we played cards that night.

Q. Were you alone with Mr. Pearsall at all that day? A. Not one minute that day.

Q. It has been said that the others retired early and that you remained downstairs with Mr. Pear-

sall, conversing with him, for sometime— A. That is dreadfully untrue.

Q. Well, you retired that evening at the same time as the others? A. Yes, sir. As far as I know, Mr. Pearsall did, and I know that I did.

Q. Describe to the Court the general situation and layout of that house, Mrs. Smith, with reference to the stairway going up, and then the second floor? A. It is so very long ago, that I don't remember all about it, but you go up the front stairs and there is a hall, and I know my room was at the other end of the hall.

Q. As you go up the stairway, does the hall continue from the top of the stairway; or is the hall to the right? A. I could not answer that.

Q. As you go up the stairway and get into the hall, what was there on the right hand side, and what on the left hand side with reference to rooms? A. On the right hand side was the room occupied by Mr. and Mrs. William Smith, and back of that room was the room—

Q. That is the father and step-mother of Mr. Roy U. Smith? A. Yes, sir; and in back of that was the room that Mr. Pearsall had; and then across from his room was Mrs. Emily Pearsall's room, and then next to hers was the room that my children slept in, and then my room at the far end of the hall.

Q. There were five rooms all together then, on the second floor? A. Yes, sir, as I remember.

Q. Were doors leading from each room into the hall there? A. I think there was not a door from my children's room to the hall; I don't remember that—there were large folding doors from the children's room into my room.

Q. Between your room and your children's room there were large folding doors? A. Yes, sir.

Q. Were there any locks or keys that could be used on the doors? A. I don't recall seeing any on any of the doors.

Q. What time did you retire that first night? A. We always retired early up there; I would say from 10:30 to 11 o'clock.

Q. The next day what time did you arise? A. I really don't know; I have always gotten up early.

Q. You have gone over these events in your own mind? A. Yes, sir.

Q. And you have tried to remember everything that happened? A. Yes, sir.

Q. And you have discussed the matter with Mr. Pearsall? A. Yes, sir, I have.

Q. During the time he was here? A. Yes, sir.

Q. And your recollection has it been refreshed or not, by reason of going over these things in this way? A. Yes, sir, I can recall most of the things that occurred.

Q. Just tell us in your own way what happened the next day. You got up and had breakfast, I presume? A. Yes, sir.

Q. After that, what did you do? What did Mr. Pearsall and the rest of you do? A. Mr. Pearsall went up to town and managed to get a large car, and he took all of us riding.

Q. Did you go up to town with him? A. No, sir.

Q. It has been testified to by witnesses for the petitioner, that you accompanied him on either the first or the second occasion to town to get a car? A. That is not true.

Q. After he had gotten the car, where did you

go? A. We all went out in the country and stopped at this farm house.

Q. Who was in the party? A. Mr. and Mrs. William Smith Sr.—Mrs. Emily Pearsall—Mr. Harry Pearsall, my two children and myself, and the driver.

Q. When you got to the farm what happened? A. The car stopped—the farm was situated back from the road, and, of course, the car stayed out on the road, and Mr. Smith and my two children and Mr. Pearsall and myself got out of the car; and Mrs. Pearsall and Mrs. Smith, Sr. stayed in the car; and we all went back towards the house.

Q. Did you go in that house with Mr. Pearsall? A. No, sir.

Q. It has been testified to that you stayed afterwards that Mr. Pearsall—that you stated to Mrs. Smith and Mr. William Smith, that Mr. Pearsall had drawn you through a window? A. That is not true—

Q. Were you drawn up through a window? A. No, sir.

Q. Were you in the house alone with Pearsall? A. No, sir.

Q. Were you ever out of the view or observation of these people at any time on that occasion? A. Not for a minute.

Q. Where were your children? A. They were playing not 50 feet away from me—

Q. During that entire trip were you alone with Mr. Pearsall at any time, or away from the others? A. No, sir.

Q. You returned then to Mrs. Emily Pearsall's home? A. Yes, sir.

Q. Now, in the evening, do you recall what happened? A. Yes, sir, we had a light luncheon and then Mr. Pearsall had several things that he had

to attend to, and he was out in town the whole afternoon, I think; I do not remember seeing him at all.

Q. He returned for supper? A. Yes, sir.

Q. You had your supper? A. Yes, sir.

Q. After supper, what happened? A. The same thing that happened the night before — we sat around and played cards; I think some neighbors came in that night; I am not sure.

Q. Were you alone with him at all? A. No, sir.

Q. What time did you retire? A. I would say about 11 o'clock or 11:30.

Q. To the room to which you have referred? A. Yes, sir.

Q. Were you downstairs alone with Mr. Pearsall at all after the others retired that night? A. Not for a minute.

Q. Who came upstairs at the time you did? A. We all went upstairs together except my children; they had been in bed for hours, of course.

Q. Mrs. Smith, it has been testified to that that night, after Mr. Pearsall had gone to his room, some one left his room and footsteps were heard along the hallway, in the general direction of your room; do you know anything about that? A. Absolutely nothing.

Q. Did Mr. Pearsall enter your room that night? A. No, sir, he did not.

Q. Did you see Mr. Pearsall at all that night after you and the others had come upstairs together? A. No, sir, I did not, Mr. Ward.

Q. Now, Mrs. Smith, do you recall the next morning going downstairs? A. Yes, sir, I do.

Q. Was Mr. Pearsall there? A. Yes, sir, he was there.

Q. How were you attired? A. I had on a crepe kimona and a boudoir cap, I think. Mr. William Smith was there.

Q. Had you gone down for the purpose of making coffee for Mr. Pearsall? A. No, sir, I had not; I did not know Mr. Pearsall was going to be downstairs.

Q. Tell us about that, about your going down, and what you found down there. A. I went downstairs to go to the bathroom and there were two entrances to that bathroom, one from the kitchen and one from a sort of a sitting room, and I went from the front of the house and went through the sitting room door and went to the door, and as I did so, Mr. Pearsall opened the door and said, "Good morning, I am in here"; and I asked him if was there, and then I looked up and saw Mr. Smith standing in the other door.

Q. Mr. Smith, Senior? A. Yes, sir.

Q. How long were you there? A. Three seconds.

Q. Did Mr. Smith at that time say to you, "Frances, you must be crazy", or words to that effect? A. Not that I heard.

Q. Did he say anything upbraiding you? A. Not a thing, except "Good morning."

Q. Was he any different to you on that morning from any other occasion? A. No, sir.

Q. Mr. William Smith was always friendly with you? A. Yes, sir.

Q. And treated you cordially? A. Yes, sir.

Q. Was there any difference in his attitude on that morning with reference to his cordiality towards you? A. No, sir, there was no difference.

Q. Was there any difference in the attitude of Mrs. Smith, Senior—Mr. Wiiliam Smith's wife, towards you? A. No, sir, not any difference.

Q. Can you relate what occurred that day? A. Yes, sir, I can. Mr. Pearsall went up to town again that morning, and there had been some talk about a County Fair at a place called Norwich, seven miles away, and I was terribly enthusiastic about it; and Mr. Pearsall went up to town and said he would try to get a large car to take all of us, but he found he could not, and he tried to get a two-seated rig and could not get that; so he finally managed to get this funny looking horse and buggy; no, he did not —before he got that, he 'phoned, he called up the house, and he talked to Mrs. William Smith, I think, and as I remember it, she said, "Why don't you come and take Frances?" so he brought this horse and buggy over to the house and took me to the fair; I was very anxious to go to the County Fair, as I had never been to one.

Q. Had you gone to town with him that morning? A. No, sir.

Q. How far was the fair away? A. It was at Norwich, seven miles away from Oxford.

Q. Did you stop on the road at all? A. Just while the horse stopped to drink, that is all.

Q. Were you out of that buggy at all until you reached the fair? A. No, sir.

Q. How long were you at the fair? A. About an hour and a half or two hours.

Q. Were you alone at that fair where people were not around? A. No, sir, we were at the horse races there, and then we drove back.

Q. Did you stop on your way back? A. No, sir.

Q. What time did you return? A. About six o'clock in the evening—in time for dinner.

Q. Up to that time had you ever been alone with Mr. Pearsall? A. No, sir, except that afternoon.

Q. That evening, what occurred? A. That evening some relatives of Mr. Pearsall came in, a cousin and his wife came in, and we played cards, and we retired about 11:30.

Q. Did you go upstairs alone? A. No, sir.

Q. Were you alone with Mr. Pearsall at all that evening? A. No, sir.

Q. After you retired, did anyone come to your room? A. No, sir.

Q. After you went upstairs did you or not immediatey go to your room? A. I did.

Q. Did you leave your room afterwards? A. No, sir.

Q. And the night before—the first night that Mr. Pearsall was there, or on any other occasion when Mr. Pearsall was there, did you ever leave your room after going to it? A. No, sir.

Q. Do you recall the next day what happened? A. Yes, sir; we all wanted to go on a picnic.

Q. During that day were you alone with Mr. Pearsall? A. No, sir; everyone went to the picnic; we went right after luncheon and returned—

Q. That evening, how did you spend the evening? A. We all sat around; I think it was Friday; we all sat around talking; I don't believe we played cards, and finally Mr. and Mrs. William Smith went to bed, and I made some coffee for aunt Emily and myself, and Mr. Pearsall had something to eat with us; and he left that night on the midnight train.

Q. Then I recollect it was testified that there was another occasion, I think one night intervening, but there was another occasion when you remained downstairs with Mr. Pearsall after all the others had gone upstairs; is that true or not? A. It is not true.

Q. And it has been testified to, that on that

second occasion, footsteps were heard—that on a second occasion you retired—came upstairs with Mr. Pearsall, and you went to your room and he went to his room, and that thereafter footsteps were heard coming from his room and going in the direction of your room; do you know anything about that? A. Not anything.

Q. Was there ever an occasion when Mr. Pearsal was in your bedroom? A. He may have been during the day.

Q. I mean, when you were there? A. I meant that, too; it was his home and it was really my home.

Q. Was there any occasion that you recall, I ask you, when that happened? A. No, sir.

Q. You say he left that night after having had something to eat? A. Yes, sir.

Q. Mrs. Emily Pearsall was his step-mother? A. Yes, sir.

Q. And Mrs. Smith, have you related as nearly as you can recall, everything that took place between you and Mr. Pearsall? A. Absolutely everything.

Q. It has been testified to that you stated on the occasion, on an occasion, the morning that you had come downstairs, you stated you had come downstairs to make coffee for Mr. Pearsall; was that true or not? A. That was not true.

Q. It has been testified to, that in your presence Mrs. Smith, Senior, asked Mr. Pearsall why he had gotten up the night before and gone to your room, and that he replied that he had gone to your room to get you to fix the alarm clock? A. That is untrue.

Q. Was Mr. Pearsall ever in your room at night? A. No sir, never.

Q. Had you any affection or feeling of any kind for Mr. Pearsall? A. I had just met him—of course, not.

Q. Did he ever caress you or kiss you? A. Not in any way.

Q. Did he ever address any endearing terms to you? A. No, sir.

Q. Or you to him? A. No, sir.

Q. Mrs. Smith, has Harry Pearsall ever committed adultery with you? A. He has not.

Q. I believe you saw him in New York after that? A. Yes, sir, I did.

Q. On several occasions? A. Two or three occasions, yes, sir.

Q. Did you attach any importance to them? A. I did not attach any importance to them.

By the Court:

Q. How did you come to meet him in New York? A. When I was up there, when we had gone to this fair, we had one of the funniest afternoons I had ever had, and I raved about some friends of mine in Brooklyn, and I said, "When you come to town, why don't you get in touch with them, and maybe we can all have lunch together"; and he said he would do that.

Further Direct:

Q. When you met together in New York, did Mr. Pearsall ever embrace you or show any affection towards you? A. No, sir.

Q. Did he ever address any terms of endearment to you? A. No, sir.

Q. Were you ever alone with him? A. No, sir.

Q. Mrs. Smith, when did you first meet James Donnelley? A. About eight years ago.

Q. Where and under what circumstances? A. He was a friend of my younger brother.

Q. Is your younger brother Alfred Barlow, who was on the witness stand? A. Yes, sir.

Q. Before your marriage did you ever see Mr. Donnelley? A. Oh, no.

Q. Where was it you met him? A. I met him at my mother's home.

Q. That was about eight years ago? A. Yes, sir.

Q. How old were you at that time? A. At that time I was 23.

Q. How old was he? A. He was just a boy.

Q. How often did you see him there? A. That I don't know; maybe three or four times.

Q. Did you ever see him at any other place or places? A. Yes, sir, I have seen him at my brother's home since my brother was married, and I have seen him all over.

Q. Was he or not a friend of your friends? A. Yes, sir, he was a friend of everyone that I knew.

Q. Can you mention anyone in particular, any person? A. Everyone that I knew he was friendly with.

Q. Did he or not, associate with the same set with which you associated? A. Yes, sir, he did.

Q. Have you ever been in an automobile alone with Mr. Donnelley? A. What do you mean—alone?

Q. (Question read.) A. I have not been except riding up and down town where everyone could see me.

Q. Do you remember one occasion when you were driving through Passaic as has been testified to

here; Mr. Dunstan testified that he saw you driving through Passaic; do you remember that occasion? A. Yes, sir.

Q. Relate to us what happened on that occasion —why you were driving there? A. There was another girl with me, and we had stopped at my mother's on Park Avenue; we were going to Newark, New Jersey, and as I went into my mother's my sister-in-law sat outside in the car, and I came back and found Mr. Donnelley was standing there talking to her, and he said he was on his way to New York, and I said that we were on our way to Newark, New Jersey; I think my sister-in-law had said it first, and said if he wanted to ride over to the tubes in Newark with us he could do so, and that was done.

Q. Were you alone at all with him on that occasion? A. No, sir.

Q. You say that on occasions you have ridden down town, but always where people could see you? A. Yes, sir.

Q. How frequently? A. Maybe three or four or five or six times; I really don't know.

Q. It has been testified that on one ocasion you were on Ellison Street with your car at a standstill, and that you were talking to Mr. Donnelley; do you recall any such occasion? A. I really do not, but I may have stopped to ask him if he wanted to ride up.

Q. It has been testified to, as I understand, that you were on one occasion in front of your home, and that Mr. Donnelley was in a car with you at about 11 o'clock at night, under an electric light; tell his Honor about that— that was the evidence of Mr. Wright. A. Yes, sir, we had been to a girl's house; we had both happened to meet there.

Q. Had you met by appointment? A. No, sir, and we all sat around talking, and when it was time to go home, Mr. Donnelley offered to take me home, and as we drove up to our house we always stopped at the side of our house; Mr. Smith, and anyone who came to our house, stopped on the side of the house; the house was on the corner, and there was a side entrance, and as we stopped there Mr. Smith backed up from Seventeenth Avenue in his car.

Q. Mr. Roy U. Smith? A. Yes, sir; and he got out of his car, and I was just stepping out of Mr. Donnelley's car when Mr. Smith came up and spoke for a minute, and then we both went in and said "Good night" to Mr. Donnelley; Jimmie Wright had passed as we drove up.

Q. Did you make any effort at concealment? A. No, sir, I would not have gone there if I had.

Q. Mr. Fairhurst has testified to certain events, amongst which was one incident that he says occurred at Fair Lawn, and he has testified that you and Mr. Donnelley were seated in your car, or your husband's car, behind a clump of bushes or trees, about fifty feet or so from the roadway, in the fall of 1920? A. (No answer.)

By the Court:

Q. Were you ever in a car on this roadside? A. No, sir, I was never there.

Further Direct:

Q. Do you recall the evidence of Mr. Fairhurst with reference to Asbury Park? A. Yes, sir.

Q. Were you ever alone with Mr. Donnelley at Asbury Park? A. Never alone, no, sir.

Q. Mr. Fairhurst has testified, that after the

incident at Fair Lawn, where he stated that he believed he saw you, that he met you and asked you where you were on Saturday, and that he stated to you that he knew where you were (reads) "I knew where she was, that she was out with James Donnelley in the car; she said somebody had been gossipping about her to me; I told her they had not, that no one had gossipped to me about her at all, but that I knew that she was out with James Donnelley in the car; and she told me she had loaned the car to James Donnelley that afternoon"; did you have any such conversation? A. Yes, sir, I had.

Q. Explain to his Honor what was said at that time. A. One Monday morning Mr. Fairhurst asked me to come over to his mill to see him, and I did; I had been there several times before; and he started by asking me if I was out with my car with Jimmie Donnelley on Saturday, and I told him I was not; he said, "I saw Jimmie Donnelley in your car on Saturday"; and I said, "Yes, he was"; "Well", he said "I saw him"; and he said, "I want you to find out where Jimmie Donnelley had your car on Saturday, because he has played you a dirty trick"; and I said I did not feel that it was any of my affair as I had loaned the car to Jimmie Donnelley, and where he took it did not concern me; and for months after that, every time I saw him he asked me where that car was and where Jimmie Donnelley had had it, and he kept asking me if I had found out.

Q. You remember his testifying that he saw Mr. Donnelley embracing you and all that? A. Yes, sir, but I was not in the car.

Q. At that time, during the conversation you had with this Fairhurst, did he accuse you of being in the car with James Donnelley? A. No, sir, he did not.

Q. Did he ever intimate to you that it was his belief that you had been in the car with Mr. Donnelley that day? A. No, sir, he knew I was not there, or he would not have kept asking me who was with him that day, would he?

Mr. Ward—Page 11 at the bottom.

Q. He testified, that during an interview with you, you said "If I am interfered with, I will lie, I will stop at nothing, and if this thing goes into court and any attempt is made to take these children away from me I will swear they are not Roy Smith's;" is that true? A. I never had such a conversation with him in my life.

By the Court:

Q. Did you ever make that remark? A. No, sir.

Further Direct:

Q. What was Fairhurst's attitude towards you? A. He had been in love with me for at least eight years, and he had told me so repeatedly.

Q. Before your marriage, had he ever told you he was in love with you? A. Yes, sir.

Q. After your marriage what was his conduct towards you? A. For two years we did not see very much of him, and then we were away for six weeks up in Milford, and Mr. Fairhurst and a friend of his came up to spend the week-end with us at Milford; we went to a dance on a Saturday night; I don't remember whether it was at the hotel or some other place, and Mr. Fairhurst and I walked out; it was very warm; and he immediately started; that

was the first time since I was married to Mr. Smith that he tried to make love to me.

By the Court:

Q. What date was that, about? A. About 1913, I guess.

Q. What hotel was it? A. "The Bluff House" at Milford.

Further Direct:

Q. What else did he say at the "Bluff House"? A. Of course, I told him to stop.

By the Court:

Q. What did he say to you, or what did he do to you? A. He started by putting his arms around me, and he tried to kiss me, and I resented that.

Q. Where was this? A. This was out on a porch, and he tried to kiss me, and he said, "You know I have been in love with you for years"; and I said, "No", that I knew nothing of the kind, and I did not care to know it; and I think that is about all that was said that time.

Further Direct:

Q. After that, did he ever attempt to force his attentions on you? A. (No answer.)

By the Court:

Q. What did you say to him when he said these things to you, what did you say? A. I told him I was not interested.

Q. Didn't you say you were married? A. He knew that; I did not have to tell him.

Further Direct:

Q. What did you say to him at the time when he said that to you? A. I said, "Ted, this is ridiculous; I don't want you to make love to me."

Q. And after that, did he ever, on other occasions, attempt to force his attentions on you and make love to you? A. Yes, sir, he has always done it.

Q. What did you do? A. I felt that he was perfectly safe as far as I was concerned; I had absolutely no feeling for him except as a good friend of my husband's; I would not say that, really, but he was the only person that Mr. Smith went around with.

Q. Did you ever complain to your husband about his attentions? A. Yes, sir, I did.

Q. When? A. Once, several years ago, and once quite recently, or at least, just before we separated.

Q. Why did you complain to your husband about his attentions? A. Because he became a nuisance, and there were times when I really thought I could not control him.

Q. What had occurred that made you do this; on the first occasion, what had occurred? A. He kept at it, and I could not stop him.

Q. What did he do? A. The minute we would be left alone he would put his arms around me and try to kiss me, and my husband could not go into the cellar that he would not fly to where I was, and if I went to my room he would do the same thing there, he would come upstairs.

Q. Did you resent it or not? A. Always.

Q. What did you say to your husband then about it? A. I told him that Mr. Fairhurst was making love to me, and I wanted it stopped—he thought that I was just complaining about Mr. Fairhurst, and he would not do anything about it.

Q. On the second occasion, what had occurred that made you complain? A. I think it was just about the same thing.

Q. Tell us, do you remember complaining the second time to your husband? A. Yes, sir.

Q. What had occurred that made you do that? A. I think it was just about the time that Mr. Smith was doing exactly the same thing to my sister; my sister came to me and told me about it, and I went to Mr. Smith, and I did not want any family squabbles; my sister told me that Mr. Smith was annoying her with his attentions, and I felt at first that it was just a brotherly affection for her, and then she finally convinced me that that was not true; so the second time that I went to Mr. Smith about Mr. Fairhurst. I mentioned his conduct as being the same as Mr. Fairhurst's; I said, "You and Ted evidently have the idea that girls want to be loved all the time", and I asked him to stop it before Mr. Blue heard about it.

Q. What did you say about Mr. Fairhurst? A. I said, that Mr. Fairhurst was annoying me making love to me every time he could.

Q. At that time Mr. Smith and Mr. Fairhurst were still intimate? A. Yes, sir, very intimate.

Q. During the Christmas week following the incident at Fair Lawn, did you have any other conversation with Mr. Fairhurst? A. I may have had conversations with him; I saw him all the time.

Q. Mr. Fairhurst testified, on page 13, "I told

Mrs. Smith I had heard from one of my intimate friends of her association with Mr. Donnelley, and I again advised her"; and again on page 14, "As nearly as I can remember, she laughed, and she told me something about she did not love Roy Smith." Is there any truth in that? A. No, sir, I had no such conversation with Mr. Fairhurst.

Q. Mr. Fairhurst also testified, on page 14, "I don't know the date, it was sometime in the fall of 1921, I told Mrs. Smith she had not kept her promise in regard to Donnelley, and she said she had not, and she said I had no right to exact such a promise from her." Did you ever have such a conversation with him? A. No, sir.

Q. Had you ever made a promise to him of that character? A. No, sir, I had not.

Q. He testified in answer to the question (page 15): "Ques. Did you tell her what the Misses Donnelley had said? Ans. I did not, only to say that the Misses Donnelley had said that they were surprised to learn that Mrs. Smith was associating with their brother." A. That is not true.

Q. Did you ever tell him, if you had money enough you would leave Paterson, that you were disgusted with it? A. No, sir, but I always wanted to move out of Paterson.

Q. Do you remember any incident at Culver Lake, when you had a talk with Mr. Fairhurst? A. Yes, sir, I do.

Q. That was on Labor Day? A. I don't know, I know it was on a holiday.

Q. Did you at that time have any conversation with Mr. Fairhurst with reference to Mr. Donnelley? A. His name was not mentioned.

Q. Mrs. Smith, you testified you were not in the car at Fair Lawn with Mr. Donnelley; how did

Mr. Donnelley happen to have your car on that occasion? A. I had loaned it to him.

Q. Under what circumstances; tell us about it. A. I had stopped at my sister's and she and I were on our way down town; we turned into Park Avenue; I always stopped and picked up anyone that I knew if I did not have Mr. Smith in the car; I say that, because Mr. Smith did not pick people up very often; I don't mean that I picked up a man because Mr. Smith was not in the car; and my sister and I stopped and asked Mr. Donnelley if he wanted to ride down, and he said he would be glad to do so. While riding down he told us that he had something he wanted to do that afternoon, and that he needed a car, and that he had tried to get a car and had not been able to get one, and I offered him mine, and he said he would not take it; and finally my sister said to him, "Why don't you take it; we are going to shop for the afternoon;" and he said, "All right", he would, if I would permit him to pay for the gas and oil. I was glad of an opportunity to get some money to pay for my own gas and oil, and so he took it; and he brought it back to where we had left it at the Y. W. C. A. I asked him to put the car back there. I never locked the car. Mr. Smith would lock it, but I never did.

Q. Were there any other occasions upon which Mr. Donnelley had the car? A. Yes, sir, he had it.

Q. How often? A. Three or four other times, I think.

Q. And do you remember any occasion when there was an accident to the car, when it collided with some other car? A. Yes, sir.

Q. Tell us about that. A. Mr. Donnelley had asked me if he could have the car that day to go to New York, and I said "Yes", and I took it down

and left it down town, or I gave it to him, I think, that day at the Y. W. C. A.; that was about 10 o'clock or 10:30 in the morning; I had some shopping to do, and then I was going to my sister's for luncheon, and I asked him to bring the car to my sister's between 4 and 4:30. About 12 o'clock the telephone rang, and it was Mr. Donnelley; he called to tell me about the accident.

Q. What did you do? A. He said he thought he could get it back, or would I rather come out, and I said I would come over; and he told me he was at the ferry at 130th tSreet; and then I left immediately.

Q. Where did you get the car? A. At Broadway and 18th Street.

Q. You misunderstood me—you got the trolley car there? A. Yes, sir.

Q. You say you met Mr. Donnelley and gave him the car down town? A. Yes, sir.

Q. Was there anyone with him at that time? A. Yes, sir, there was a girl with him, and I was introduced to her.

Q. Do you know whether or not the girl drove off with Mr. Donnelley in the car? A. Yes, sir.

Q. Where did you go after boarding the trolley car at East 18th Street? A. Directly over to the ferry.

Q. Whom did you see there? A. Mr. Donnelley and this girl.

Q. Did you get the car? A. Yes, sir.

Q. What did you do with reference to bringing the car back? A. I called up Mr. Smith's home immediately, and tried to get him; it must have been about 1:30, because he usually was home about that time on Saturday, and he was not at home; so I called Mr. Fairhurst and told him what had hap-

pened, and asked him if he could get Mr. Smith, or get Mr. Thetge, the garage man, and ask him if he could come over and get the car, and that I would start back with the car; and Mr. Fairhurst was to go to the station to see if he could find Mr. Smith and bring him over to help me back with the car.

Q. Mr. Fairhurst came over with Mr. Thetge and came back with you? A. Yes, sir.

Q. Did Mr. Fairhurst ever visit you at your mother's home before your marriage? A. Yes, sir.

Q. How often? A. Maybe three or four—

Q. Did you ever take him down town in the car? A. Yes, sir, often.

Q. How often? A. I don't know.

Q. Did you ever take his father down town in the car? A. Yes, sir.

Q. Did he ever go out riding with you in the car? A. Yes, sir.

Q. Did he ever go out riding with you irrespective of your taking him down town? A. Yes, sir.

Q. You recall an occasion when your husband went away, and Mr. Fairhurst and you took your husband to get the train, the time he went to Plattsburgh? A. Yes, sir.

Q. Coming back, where did Mr. Fairhurst take you? A. We started for home and Mr. Fairhurst lost his way—that is what he said. He stopped and thought for a while, and finally I insisted on his getting out and going into a house to inquire his way, but he said he guessed he could find his way, after some consideration, and he started off again.

Q. What time did you get home that night? A. I guess it was about 12 o'clock.

Q. What time did you leave New York? A. I really don't know.

Q. Did he attempt to force his attentions on you that night? A. Yes, sir, very much so.

Q. And you insisted on going home? A. Absolutely.

Q. Did you ever walk over to Susquehanna tracks, between the Broadway Station and Park Avenue, and beyond Park Avenue, with Mr. Donnelley? A. No, sir, I never did.

Q. It has been testified that upon one occasion you were walking along the tracks south of Park Avenue, along the Susquehanna Railroad tracks, and about 200 feet up the track with Mr. Donnelley; is that correct or not? A. That is not correct.

Q. It has been testified that upon one occasion you were with Mr. Donnelley between the Broadway Station and Park Avenue, adjacent to the Susquehanna railroad tracks, and upon the lights being turned on, you separated, and Mr. Donnelley crossed the tracks and you came out to Park Ave., between the tower-house and the building there; is that so or not? A. That is not so.

Q. Do you remember any occasion when you dropped a purse on Park Avenue? A. Yes, sir, I do.

Q. Had you been with Mr. Donnelley that evening? A. No, sir, I had not seen him.

Q. Where did you drop the purse? A. Around at the trolley switch.

Q. Where had you been? A. I had been to a girl's house for the evening.

Q. How had you come back? A. I went down to the soda store on the corner of 22nd Street and Broadway, and through Second Street on the West side of the street, and as I arrived at the crossing I saw a trolley or a jitney, and I ran across and dropped my purse as I did so; I stopped and picked

it up, and saw Mr. Spagnola standing there, and I said "Good evening" to him and went on.

Q. Where did that girl live that you were visiting that night? A. On 23rd Street and Broadway.

Q. Do you remember Mr. Spagnola making some comment to you later, that somebody had said you were with a man? A. Yes, sir, he said something to me; I went in there one day to buy some fruit, and he said that somebody—I thought he said the towerman, or somebody had mentioned to him that he had seen me with some man, and Mr. Spagnola said, "I thought I had better tell you"; and I said, "I am glad you did"; I said, "Of course, it is ridiculous, but thank you just the same."

Q. Did Mr. Donnelley ever have his arms around you or ever embrace you? A. No, sir, he did not.

Q. Mrs. Smith, with reference to Asbury Park —to revert for a moment—was there an occasion when you were on the boardwalk out towards Allenhurst with Mr. Donnelley? A. Yes, sir.

Q. Relate to the court that circumstance. A. We were down there for that summer; my little girl had been ill, and this friend of mine was staying at the same hotel with me, and other friends were at other hotels; we were always all together; and I think Mr. Smith had gone on a pleasure trip this week-end to Bermuda, and Mr. Donnelley came over to the hotel to see the girls.

Q. Whom did he come over to see? A. Any of the girls.

Q. Where was he stopping? A. I think he was stopping with the Simons' at Allenhurst; I said, "Let us walk down to the boardwalk and look for the girls;" they were all out; there were three sisters at another hotel, but they usually came over to the hotel where Miss Davis and I were stopping.

Q. Did Mr. Donnelley bring any men with him? A. No, sir.

Q. Had you any appointment with Mr. Donnelley? A. No, sir, I did not know he was coming.

Q. Proceed. A. And we walked along the boardwalk and did not see anything of the girls, and finally he said, "Why don't you come over and dance for a little while?" I had nothing to do, and I said I would be glad to do it; and we went over to the Allenhurst Club and stayed for about an hour or two.

Q. Whereabouts? A. Right at the Club—it is the Allenhurst Club.

Q. Describe to us the character of the boardwalk—the boardwalk at Asbury Park is a broad boardwalk? A. Yes, sir.

Q. Then you recall where it ended leading over to Allenhurst? A. Yes, sir.

Q. How great a distance is there between the end of the boardwalk—how great is the distance across that strip of sand at the end of the boardwalk? A. I don't just remember there being any sand there; I think it is all just a plank walk.

Q. But you get off the main boardwalk, don't you? and then there is another boardwalk? A. Yes, sir, just a small plank walk.

Q. How great a space does that small plank walk cover? A. Probably fifty or one hundred feet.

Q. It is light there? A. It think it was.

Q. Do you remember whether there is an electric sign there? A. Yes, sir, there was, and it was light.

Q. Did you stop at all going over there? A. No, sir.

Q. Were you ever off of that boardwalk at all? A. No, sir.

Q. And on your way back did you come directly back from the Club House? A. Yes, sir.

Q. About what time? A. About 11 o'clock.

Q. Did you ever make any appointment with Mr. Donnelley at Asbury Park? A. No, sir.

Q. On the occasions when you did see Mr. Donnelley, do you know whom he came to see? A. Yes, sir, when he came to the hotel he always just dropped in to see the girls.

Q. Was he any particular friend of yours? A. No, sir, not at all.

Q. Did Mr. Donnelley ever call at your home when Mr. Smith was there? A. Yes, sir.

Q. How often? A. Maybe three or four times.

Q. With whom? A. One evening with a girl.

Q. Who was the girl? A. Miss Camwell, and one Sunday he had had the two Camwell girls out riding, and they stopped at our house, and we asked them to stay for supper, but they could not; and then he has been there a couple of times with my brother.

Q. Did he ever call at your home alone? A. No, sir.

Q. Was he ever in your house alone with you? A. No, sir.

Q. Has Mr. Donnelley ever kissed you or caressed you during your entire acquaintanceship with him? A. No, sir.

Q. Has he ever addressed any endearing remarks to you? A. No, sir.

Q. Has he ever called you any loving names, or anything of that kind? A. No, sir, he has not.

Q. Have you any affection for Mr. Donnelley? A. I have no affection at all for him.

Q. Did he ever show any affection towards you in any way? A. Not in any way.

Q. Now, reverting for a moment to Asbury Park, do you remember an occasion when Mr. Donnelley called at the hotel when Mr. Smith was there? A. Yes, sir.

Q. What kind of a group was there? A. Mr. Donnelley and two or three other boys came up and everyone was on the porch—Mr. Davis and Miss Davis and everyone was there.

Q. Mr. Smith was there? A. Yes, sir.

Q. And Mr. Fairhurst was there? A. Yes, sir, Mr. Fairhurst was there; he was always there.

Q. Did Mr. Donnelley ever show as much attention to you as he did to the unmarried girls in this set? A. Of course, not.

Q. Mrs. Smith, it has been testified that there was an occasion when Mr. Donnelley entered your home about a year before the last hearing, about 8:30 in the evening, in the kitchen door; do you recall any such incident? A. Yes, sir, I do, most everyone used our kitchen door; it was right on the street, and people came down 30th Street and would just run into the house instead of going round to the front. I remember one evening my brother came and asked me for my curling iron, and I asked him to wait, and he said, "Jimmie is outside"; and I said, "Tell him to come in"; and he went to the door, and as I went upstairs he went to the door and brought Jimmie in, and they were in ten or fifteen minutes.

Q. Now, about Mrs. William Smith—do you recall an incident about a key? A. Yes, sir, I do.

Q. What about it? A. When Mr. and Mrs. Smith left Mr. Smith's home, our home, they took the key; they never gave it up, and they would come to our house and help themselves to anything they wanted, and muss up the house if they wanted to

but never put anything back, and I finally thought there was no reason why they should have a key to my house, and I asked Mr. Smith if he would not ask his mother for the key, and he decided that there was no reason why they should have a key, and he asked his father and his mother to give up the key.

Q. Was there any feeling about that? A. Yes, sir, Mr. and Mrs. Smith had a feeling about it—Mrs. Smith especially.

Q. Mrs. Wainright, the sister of your husband, testified that in the spring of 1921 there was a telephone call from you about 4:30 P. M. with reference to your coming to her home for dinner; do you recall that? A. Yes, sir.

Q. And that you telephoned later that you would not be there? A. I had been in New York shopping all day, and thought I would go out there and stay for dinner; and I went on shopping and finally found it was six o'clock; I was terribly tired, and my head ached, and I decided to go home.

Q. That is all there was to that? A. Yes, sir.

Q. Do you recall going to the place where your husband had his car repaired, the place owned by a man named Thetge? A. I went there a great deal.

Q. Did you ever go with Mr. Donnelley? A. No, sir.

Q. Did Mr. Donnelley ever wait there for you? A. No, sir.

Q. Did anyone else ever go there with you? A. Yes, sir, lots of people.

Q. Can you recall who? A. I have been there with my sister and with all the girls I know; I have been there with Mr. Fairhurst and Mr. Smith and my younger brother.

Q. Do you recall an incident when you went to

the garage and left the car, and then went out with somebody? A. Yes, sir, I do.

Q. What about that? A. I had walked over—I went down to get the car, I think; I had walked over with my brother; he had been at my house, and I had walked with him, and I went over to get the car, and he had stopped at a store, and I went and got the car, and then I picked him up and took him to my sister's; I met him on 24th Street, just south of Market; he had stopped at a shop while I went to the garage, and on my way back, I met him.

Q. Mr. George Wiseman testified, that on one occasion he told you that you were keeping company with people who were no good, and that you said you would break off right away; do you recall any such incident as that? A. He said he did not approve of the girls I was going around with, and I told him they were perfectly lovely girls, and there was no reason why I should stop going with them.

Q. Did he ask you if you were crazy? A. Who?

Q. Mr. Wiseman. A. No, sir, of course not.

Q. Mrs. Smith, do you recall the 19th of November, 1921? A. Yes, I do, Mr. Ward.

Q. At about that time how old was your sister's child? A. She was just a baby, about three or four months old.

Q. Did you ever go to your sister's home at night? A. Yes, sir, often.

Q. For what purpose did you go there? A. To take care of the baby for them.

Q. Why? A. Because Mr. and Mrs. Blue had no one to keep the baby, and I would go down and stay with the baby for them while they went to the movies—as there was always somebody at my house.

Q. Had you ever seen Mr. Donnelley there? A. Yes, sir.

Q. With whom was he when you saw him there? A. With Mr. and Mrs. Blue and Mr. Donnelley.

Q. On the 19th, how long before the 19th did you know you were to go there that evening? A. I don't know—I think maybe two days before.

Q. What time did you get there on the 19th?
10 A. I would say about 8 o'clock.

Q. Did your husband know you were going or not? A. Yes, sir, of course, he knew.

Q. When you got there, who was there? A. Mr. and Mrs. Blue and the baby and myself.

Q. What time did Mr. and Mrs. Blue leave? A. Probably about 8.15—just a few minutes after I arrived.

Q. After they had left, did anyone come there? A. Yes, sir.

20 Q. Who? A. Mrs. Marsden came.

Q. Explain to his Honor and tell us the general situation of the house; how close is it to the street? A. It is built practically on the street, on the side walk; it is a three-story house; it is on Pennington Street.

Q. It is on the Easterly side of the Street? A. Yes, sir.

Q. And the entrance is on the right hand side of the house? A. Yes, sir.

Q. It is an ordinary three-story, three-family
30 house? A. Yes, sir; as you enter it there is a floor, and on the left is a living room and an entrance from the hallway into the living room.

Q. The living room is the ordinary sized room? A. Yes, sir.

Q. Back of that is what? A. A dining room.

Q. Between the dining room and the living room is what? A. Not anything.

Q. Are there folding doors? A. There may be, but I have never seen them opened.

Q. Then back of the dining room is what? A. The kitchen.

Q. The door to the right side of the dining room leads into the kitchen? A. No, sir, not the right hand side, it is right straight ahead—the apartment lay right straight through; on the right is a bedroom, and on the right of the kitchen is another bedroom.

Q. The ordinary door and entrance from the dining room into the kitchen? A. Yes, sir.

Q. Is there any hallway there? A. No, sir.

Q. What time was it that Mrs. Marsden came to your sister's home? A. About 8.30.

Q. Did she remain there? A. Yes, sir; she rang the bell and I answered it, and she asked me if my mother was there, and I said "No;" and she said, "I have been to your mother's home and she is not there; do you know where she is?" and I said, "No, but won't you come in?"

Q. Had you known Mrs. Marsden before? A. Yes, sir, I have known her for a number of years.

Q. Had she ever called, to your knowledge, on your mother before? A. Yes, sir, very often.

Q. Whereabouts did your mother live at that time? A. On Park Avenue, at Pennington Street —just down the block.

Q. How far was your mother's place or home from your sister's home? A. Half a block.

Q. Now, standing upon the street, can you or not, if the shades are up, look into the living room of your sister's home? A. Yes, sir.

Q. Can you from the street see into the dining room? A. I don't believe so; I don't think you could see through that far.

Q. Why not? A. Of course, if the lights were lighted you could see all right.

Q. What next occurred after Mrs. Marsden got there? A. We were sitting talking, and about 9.15 the doorbell rang again, and I went to the door and found Mr. Donnelley there, and, of course, I was sort of surprised to see him, and I asked him to come in; I said, "Hello, Jimmie, won't you come in?" and he came in, and we sat and talked, and he immediately produced a letter, and he said, "I came to see what this important business is that you have with me," and I laughed, I said, "I have no important business with you"; and he said, "Why, I received a letter to-day saying you wanted to see me here to-night on important business, and your name was signed to it." I said, "That is absurd; I never wrote you a letter in my life." So he finally produced the letter and showed it to me and to Mrs. Marsden, and I said, "This is a joke; somebody is doing it to fool you and me;" and he said, "Well, I think it is a pretty good joke"—because he naturally thought I had something to say to him. We talked about the letter, and finally I said that we were going to have some coffee and crackers, and would he stay, and I went out to prepare them; and then we went in the dining room and we sat and talked more, and Mr. Donnelley and Mrs. Marsden were interested in over seas, and then we went back to the living room and sat there for a few minutes, and about 10.30 or 10.45, Mr. Donnelley decided to go home. He had his hat lying on the couch right alongside

of him, and he picked it up to go; and I stood up as he did, to go to the door, and Mrs. Marsden sat there, and we talked a minute longer, and then we heard this noise at the back of the house. I am not afraid, but I was nervous, and he offered to go and investigate, so I went along, and as we stepped into the kitchen Mr. Blue was just coming out of the baby's bedroom.

Q. That is the room that leads off from the kitchen, is it? A. Yes, sir. As we stepped in the room, Mr. Blue came quietly out of the baby's room and it startled me, and he came at Mr. Donnelley and shouted something about "You dirty dog; what do you mean by coming to my house?" I was frightened to death, and everyone else seemed to be wanting to fight; Mr. Donnelley resented what he called him, and I flew to the kitchen door and slammed it, so that Mrs. Marsden would not hear what was going on, and for a few minutes it seemed as if there was going to be a fight; we could not explain to Mr. Blue; he seemed to be perfectly crazy, and he would not listen to anyone; I yelled at him, but he would not listen; he thought Mr. Donnelley and I were there alone, and he wanted to fight. Finally the doorbell rang and Mr. Blue left us, and he flew out of the room; and I said to Mr. Donnelley, "Please go, Jimmie." But at first he did not want to; he wanted to stay and see it through, but finally, I persuaded him to go before Mr. Blue came back, and he turned to go, and I asked him not to go through the front of the house, because he would meet Mr. Blue again, and I asked him to leave by the back door, and he did so; he already had his hat in his hand when he was leaving, and, he did not wear an over-

coat; and he left, and I don't know what happened after that to him. I flew into Mrs. Marsden and asked her to excuse me for a minute; she wanted to go out, but I begged her to stay, and I turned back to go to the kitchen, and Mr. Blue came back.

Q. After you had asked Mrs. Marsden to stay, did she see Mr. Blue come back? A. Mr. Blue came back from the door; I don't know whom he had talked to, and I went back in the kitchen, and Mr. Blue and I sat out there and talked a few minutes.

Q. About what? A. About what had happened; he said when he came in, he had thought that we were there alone; he said that somebody had been telling him things about me, and he had been convinced that I was going to be there alone that night with Mr. Donnelley; and he came into the room and saw Mr. Donnelley and me standing where we were standing, and that he was fully convinced that we were there alone.

Q. How were you dressed? A. I was fully dressed; I had on a little suit and a shirtwaist.

Q. Is that the suit you wore in court one day? A. Yes, sir, and we were standing in the kitchen between the two doors; there is a door leading from my sister's bedroom to the kitchen, and one from the dining room into the kitchen.

Q. How was Mr. Donnelley dressed? A. He was fully dressed, with his hat in his hand.

Q. Was there no time at all that evening when you were alone with Mr. Donnelley? A. No, sir.

Q. Did you say anything to Mr. Blue about the letter? A. Yes, sir, I told Mr. Blue about the letter.

Q. Did Mr. Blue tell you who had made these intimations to him about you and about your being there that night?

Mr. Lane—Objected to.
The Court—Objection sustained.

Q. After your conversation with Mr. Blue, what became of Mr. Blue? A. I don't know; he also left by the back door; he did not want to see Mrs. Marsden.

Q. What time did Mrs. Marsden leave? A. It was nearly twelve o'clock.

Q. Did you see Mr. Donnelley again that night? A. No, sir.

Q. What time did Mr. Blue come back? A. Mr. and Mrs. Blue came back about 1 or 1:30, about 1 o'clock maybe.

Q. Did you remain there that night? A. Yes, sir.

Q. When did you next return to your home? A. The following morning, Sunday morning.

Q. Was Mr. Roy Smith there? A. Yes, sir.

Q. Did you have any talk with him about the occurrences of the night before? A. No, sir; I think he went out right after I arrived at the house.

Q. Then, when did he return? A. In time for dinner.

Q. Was there company there at that time? A. My family was there for dinner; they left in the evening, maybe at 8:30, or 9 o'clock.

Q. When did you speak to your husband about it? A. That night. I told him Mr. Andy Blue had made a terrible row at his house the night before, and he asked me about it, and I told him exactly what had happened, about Mr. Donnelley coming there and asking me about the letter; and, of course, I denied having written the letter, and when I told him about us hearing the noise, and Mrs. Marsden being there—I told him the whole story.

Q. Did you tell him what Mr. Blue had said to you about the reports that had been brought to him? A. Yes, sir.

Q. Did you tell him who Mr. Blue said told him these things? A. I certainly did.

Q. Who, did you tell him, had told these things to Mr. Blue?

Mr. Lane—Objected to.

The Court—Objection sustained.

Q. What did you say to him? A. I told him what Mr. Blue had told me about it, that Mr. Fairhurst had come to him with a lot of stories about me, and had convinced him that I was going to be in that house on Saturday night, and that Mr. Donnelley was going to be there. Mr. Smith said I was crazy—that Mr. Fairhurst would not do such a thing. I also said that I thought Mr. Fairhurst had written that letter, because no one else knew that Mr. Donnelley and I were going to be in that house that night but Mr. Fairhurst, because he had convinced Mr. Blue that we were going to be there.

Q. And that is why you thought he had written the letter? A. Yes, sir.

Q. What did Mr. Roy Smith say? A. He said I was crazy for accusing Mr. Fairhurst, that Mr. Fairhurst could not do such a dirty trick to anyone.

Q. What did he say about this meeting there? A. He thought, of course, that Mr. Blue was crazy.

Q. Did he say so? A. Yes, sir.

Q. Your husband did? A. Yes, sir, he said, "I don't see why Andy should have made such a scene; why didn't he find out what he was doing before he did it?"

Q. Did he question your being there with Donnelley at that time? A. No, sir.

Q. That was Sunday night? A. Yes, sir.

Q. And on Monday, what happened? A. I don't remember what happened during the day, but I remember in the evening I went to the movies.

Q. Who do you mean? A. Mr. Smith and my sister, and Mr. Blue and myself.

Q. Was there anything said about the occurrence? A. Yes, sir, we talked about it.

Q. Your sister and you and Mr. Blue and your husband? A. Yes, sir.

Q. What was said at that time? A. I don't recall the exact conversation; I remember Andy saying something about what a boob he had made of himself two nights previously; and I remember my sister making the same remark about it, but I don't remember just what she said.

Q. On Monday night you and your husband were together? A. Yes, sir.

Q. Slept together? A. Yes, sir, we did.

Q. And on the Sunday night after you had had this conversation with him, you slept together? A. Of course.

By the Court:

Q. After the event you have told us about, this meeting between Blue and Donnelley in your sister's house, you and your husband slept together? A. Yes, sir.

Q. And had sexual intercourse? A. No, sir, we did not.

Further Direct:

Q. On Tuesday, what happened? A. On Tuesday, the girl and I had been cleaning house all day.

Q. Did you see your husband on that day in the morning? A. Yes, sir.

Q. Did he come home? A. He came in at noon.

The Court—What was the date of the final separation?

Mr. Ward—The Tuesday following November 19th—that would be November 22nd.

By the Court:

Q. Do you say you slept with your husband after this 19th of November—didn't you have sexual intercourse with him between that period and the time of the separation? A. We were only together two nights after that.

Q. Did you sleep in the same bed both those nights that you were together? A. Yes, sir, we did.

Q. Was it usual or unusual for your husband to come home in the daytime? A. It was not unusual.

Q. When he came in, what happened, I mean at the noon hour? A. This girl and I were working round the house and had not had time to think about luncheon. Mr. Smith rushed in and I asked him if he would please go to the store and buy us something for lunch, and he did.

Q. Did he act naturally or unnaturally? A. I could not say which; he rushed in—

Q. Did he speak to you? A. Yes, sir.

Q. Did he kiss you? A. No, sir.

Q. What did he do? A. He simply came in; I

don't know what he said; I asked him to go to the store for me, and he did so, and he brought back some food and then went out again.

Further Direct:

Q. Did he stay to luncheon? A. No, sir, he did not.

Q. When did you next see him? A. I next saw him that night.

Q. What time? A. About 8 o'clock, I guess.

Q. Where? A. I talked to him on the telephone.

Q. Where? A. At his home.

Q. Had you gone out that afternoon? A. Yes, sir, I had taken the children out to my mother's to dinner.

Q. Had you told him you were going to do that? A. I called him on the telephone and asked him to come there for dinner.

Q. Did he come? A. No, sir, and after dinner we all went up to the house.

Q. Who did? A. My father, my two children, Mr. Blue and myself.

Q. Was there any particular reason for your all going up? A. Papa was going up; he went up there to fix something for Mr. Smith; Mr. Blue came up; he did not come up with us, but he met us at the house.

Q. Was there any reason for you all going up? A. No, sir.

Q. When you got to the house, what happened? A. I found the chain there on the front door; I don't know whether I rang the bell, but I remember Mr. Smith came to the door; it was open as far as the chain would permit it, two or three in-

ches—and he said, "You cannot come in here", and closed the door. That was Tuesday night.

Q. Where were your children? A. They were down on the sidewalk with papa.

Q. What did you do? A. Mr. Blue was with me then; he tried to put his hand in the door to keep Mr. Smith from closing it, and Mr. Smith almost snapped his fingers off getting it closed.

Q. Where did you go then? A. We all turned back and went down to my mother's.

Q. Did you see Mr. Smith after that? A. Yes, sir, I did.

Q. On the first occasion, did he give you any opportunity to say anything? A. Not a word; Mr. Blue tried to keep the door open, but he slammed it to, and pushed it.

Q. Have you ever been given an opportunity to make any explanations to him? A. No, sir.

Q. Did you ever know what the real charges were against you until the papers were filed in this case? A. No, sir.

Q. Do you recall an occasion when there was an interview in the office of Mr. Wiseman, or of Mr. Edmunds, when your counsel, Mr. Ward, was present? A. Yes, sir.

Q. Mr. Wiseman stated, as I recall, that Mr. Ward had said, that even though you were or might have been indiscreet that nevertheless, he should not desert you and your children. Tell the court what was said on that occasion. A. Said by whom?

Q. By Mr. Ward. A. I remember perfectly what you said, "even though you may feel that your wife has been indiscreet, I want to tell you man to man, that there is not any reason why you should not live with her." You said you had won my confidence, and that you felt sure.

Q. Is that the last time you saw your husband except on the street casually, and in court? A. Yes, sir.

Q. Have you ever committed adultery with James Donnelley? A. No, Mr. Ward, I have not.

Mr. Ward—I may have omitted something.

The Court—If you have omitted anything, you will be allowed to put it in afterwards.

Cross-Examination by Mr. Lane:

Q. Mrs. Smith, you made your explanation to your husband, didn't you? A. I would not call it an explanation; I told him what had occurred.

Q. What is the difference between telling him everything that occurred and an explanation? A. I had done nothing that required an explanation.

Q. Then you do not complain because you had not been given an opportunity to explain? A. I complain of what he has done.

Q. Everything that had occurred on the night of the 19th, you told your husband, as I understand you on Sunday morning or Sunday night? A. Sunday night.

Q. So that, so far as your story of what occurred on that night is concerned, he had your story? A. Yes, sir.

Q. And you later came to the conclusion on the Tuesday, that he had gotten information from somebody else? A. No, sir.

Q. Did not Mr. Blue tell you he had gotten the information from somebody else? A. No, sir.

Q. Did you ask your husband why he came home in the daytime? A. No, sir.

Q. You told him about the letter on Sunday night? A. Yes, sir.

Q. Did he ask to see it? A. No, sir.

Q. You accused Mr. Fairhurst of writing it? A. Yes, sir.

Q. Did you know Mr. Fairhurst's handwriting? A. I think I do.

Q. Did it look like Mr. Fairhurst's handwriting to you? A. I don't remember; I don't remember well enough to know whether he wrote it.

Q. But you had accused him in your own mind and to your husband, you had accused Fairhurst of writing this letter? A. Yes, sir.

Q. Why didn't you find out where the letter was? A. How could I? It disappeared.

Q. When did you last see it? A. I last saw the letter that night at my sister's home.

Q. Did you show it to Mr. Blue? A. No, sir.

Q. Why not? A. Because Mr. Donnelley left in a hurry, and I did not ask him for the letter before he left.

Q. Did you tell Mr. Blue about this letter? A. I told Mr. Blue about the letter.

Q. Did you go in the other room to see if it had been left there? A. No, sir.

Q. You spent three-quarters of an hour talking with Mr. Blue? A. After Mr. Donnelley had left, I did. I recalled, or I thought that Mr. Donnelley had taken the letter with him.

Q. Why didn't you suggest to Mr. Blue that he see Mr. Donnelley and get the letter? A. I did not think of it.

Q. Why didn't you suggest to your husband to get the letter from Mr. Donnelley? A. I did not know it was going to be so important; if I had been given an opportunity later, I might have done it.

Q. You did not think it important when you were accusing Mr. Fairhurst, your husband's friend,

of writing a decoy letter to get you in a compromising position with Mr. Donnelley— A. I did not think so.

Q. You realized that is what Fairhurst was trying to do? A. I did not think about it.

Q. Mr. Blue had told you, hadn't he, that these stories had been floating around with respect to you, and that Mr. Fairhurst had said that on that night Mr. Blue would catch you and Donnelley alone in that house? A. Yes, sir, Mr. Blue had said that.

Q. That made no impression on your mind as being important? A. Not in connection with the letter, no, sir.

Q. In connection with anything did it impress you as being important? A. I did not expect to see the letter again.

Q. Did the fact that Mr. Fairhurst was trying to put up a job on you, impress itself upon your mind as being important? A. Yes, sir, it did.

Q. And the proof of it was in the letter? A. I did not think of that.

Q. But you accused Mr. Fairhurst that Sunday night of having written that letter? A. I still accuse him.

Q. You accused him then? A. Yes, sir.

Q. But you never thought of getting the evidence? A. I did not think of it as evidence.

Q. You never thought of getting the thing that would prove whether he wrote it or not? A. No, sir, it did not mean that much to me.

Q. When did you think of getting this letter? A. I did not think about it.

Q. When did you think of getting it? A. I never thought about getting the letter.

Q. Not even after the Tuesday when your hus-

band shut you out of the house? A. Yes, sir, I thought of it.

Q. When did you first think of the letter? A. Really, not for weeks after.

Q. When? A. I could not tell you.

Q. Your husband shut you out of your home on Tuesday. Let me ask you this question: When you were down at Mr. Evans' office with Mr. Ward, did you tell Mr. Evans and the people who were there assembled that this letter was in existence? A. I don't think I said half a dozen words that night, except to contradict something that Mr. Smith said.

Q. Did you tell the people there assembled, that on that Sunday night you had explained the situation to Mr. Smith? A. No, sir, I did not.

Q. Why not? A. Why should I?

Q. Charges were being made against you there? A. No, sir, they were not.

Q. Why did Mr. Ward assure Mr. Smith, man to man, that there was nothing in the charges? A. Because of things Mr. Smith said.

Q. Then charges were being made at the conference? A. Yes, sir, but I was not talking.

Q. Why didn't you say, "This thing is a frame-up, a letter brought Donnelley there?" A. Because Mr. Smith hadn't given me an opportunity to talk.

Q. You wanted an opportunity other than that one? A. I wanted a chance, yes.

Q. Why didn't you then say, "Why, Mrs. Marsden was there and I can produce her here to show there were three people in the room?" A. Because I did not think they needed to be told that.

Q. Did not you think that the production of Mrs. Marsden would have had more effect upon that assembly than Mr. Ward's assurance given man to man, as he said? A. If Mr. Smith had given me

an opportunity to talk in the beginning, I would have told them anything they wanted to know.

Q. This conference was when? How long after the event? A. Several weeks; I don't remember just how long.

Q. At whose request was that conference called? A. At Mr. Wiseman's and Mr. Evans'—

Q. Sure it was not called at Mr. Ward's request? A. It was not; I know it was not.

Recess to 2 P. M.

After recess.

MRS. FRANCES B. SMITH resumes the witness stand.

Cross-Examination (continued) by Mr. Lane:

Q. Mrs. Smith, before this conference that you had at Mr. Wiseman's office, at which there were present Mr. Evans and Mr. Ward, you had another conference at Mr. Wiseman's office, didn't you? A. Yes, sir, I did.

Q. Attended by your sister and yourself? A. Yes, sir.

Q. And Mr. Wiseman? A. Yes, sir.

Q. When was that? A. I think it was the day after, the Wednesday, that this all happened on Tuesday.

Q. What was the purpose of that conference? A. I called Mr. Wiseman; I called him the second time, because I had to break my first appointment with him. I asked him if he could see me for a few minutes.

Q. What did he say? A. He said "Yes", and we made a time.

Q. Did you tell him on the telephone what you wanted to see him about? A. No, sir.

Q. Did he ask? A. No, sir.

Q. You had known him for some time? A. Yes, sir, for a long time.

Q. Mr. Wiseman and Mr. Evans moved in the same circle of society that you did? A. Yes, sir, at that time.

Q. And for some time prior thereto? A. Yes, sir.

Q. Did you call upon him as a lawyer or as a friend? A. I thought he was a friend of mine.

Q. Then you called on him as a friend? A. Yes, sir.

Q. And you called on him as a friend of yours? A. Yes, sir.

Q. As distinguished from a friend of your husband's? A. I thought he was a friend of both.

Q. You called on him not in anywise as a lawyer? A. No, sir.

Q. What did you say to him when you got there? A. I don't remember exactly what I said to him; I remember saying something about the children, asking him if he could not see Roy about what he had done.

Q. What did you mean? A. By locking the children and myself out.

Q. What did he say? A. He said he would talk to Mr. Smith.

Q. How long were you there at the office? A. Not more than five minutes.

Q. What other conversation took place? A. I really don't remember; that was what I was interested in.

Q. Did you tell him what had happened, or did he tell you what had happened? A. No, sir.

Q. Was it assumed that each of you knew what had happened? A. I don't remember that any assumption was made.

Q. You must have assumed something— A. I told him exactly what I told you; I wanted him to see Mr. Smith.

Q. Did you explain the circumstances of the 19th? A. No, sir, I did not.

Q. Did you tell Mr. Ward you wanted an opportunity to explain the circumstances of the 19th? A. No, sir, I did not.

Q. Did you tell Mr. Ward that it was all a mistake, and that the circumstances that had occurred on the 19th had been related to Mr. Smith? A. No, sir, I did not.

Q. Did you tell him anything about there being a letter which you thought was written by Mr. Fairhurst as a decoy? A. No, sir.

Q. Did you tell him anything about Mrs. Marsden? A. No, sir.

Q. Why not? A. Why should I?

Q. But you were endeavoring to get Mr. Wiseman to intervene, so as to have your husband change his position with respect to you, were you not? A. I did not see any reason why I should tell my reasons for everything that I wanted to do; there was no reason why I should explain my reasons for wanting to see my husband.

Q. You were talking to a friend? A. I did not discuss my personal affairs with my friends.

Q. Why did you go to him? A. I had a right to ask a friend to do a favor, I thought.

Q. So that the only reason you went to Mr. Wise-

man was to ask him to ask your husband to do what? A. To see me.

Q. What was the reply finally? A. He said he would see what he could do.

Q. What was the result of that? A. He said, "No", that Mr. Smith absolutely refused to see me.

Q. As a result, this conference took place, at which you and your husband were present and counsel on both sides? A. No, sir, that conference took place because I had been hearing stories about Mr. Smith taking the children away from me.

Q. The conference took place because you had been hearing stories about Mr. Smith taking the children away from you; and what did you do? A. I wanted that fixed up.

Q. What did you do? A. I asked Mr. Ward—I asked my attorneys if they could not do something about it, and as a result of that the conference took place; and I think they finally made the appointment; that is the way I remember it.

Q. What was the purpose of this conference? A. To see if we could not come to an arrangement about my children.

Q. What was said that drew from Mr. Ward his assurance, man to man, that there was nothing in these charges? A. I had been hearing lots of wild tales.

Q. You have testified you recollect so distinctly exactly what Mr. Ward said; now, try to recollect as distinctly what was said by somebody before Mr. Ward had made his assurance? A. I don't know what was said by anyone at the conference, but I know we had all heard these stories.

Q. What was said at the conference which drew from Mr. Ward the assurance "man to man"? A.

I don't remember, but I know there were accusations that Mr. Smith was making.

Q. Which you listened to in silence? A. Yes, sir, I did.

Q. Although you knew at the time that you had a perfect answer? A. I think before, I said I had not spoken a half a dozen words, and that was one time when Mr. Smith made a statement that I wanted to contradict.

Q. I am not asking you how many words you spoke; I say you permitted the charges to go unchallenged, although you knew you had a perfect answer, to wit, the letter and Mrs. Marsden? A. I had been instructed by my lawyer not to talk.

Q. Then your lawyer had instructed you before; why didn't you say that before recess? A. You did not ask me that question before recess.

Q. I gave you no opportunity before recess to tell why it was that you let these charges pass without referring to the letter or to Mrs. Marsden? A. You did not ask me that question before recess.

Q. But you had it in your mind before recess? A. I had that in my mind before recess.

Q. With whom did you dine? A. Mrs. Marsden.

Q. With no one else? A. No, sir.

Q. You have not talked with your counsel since you left the witness chair? A. Yes, sir.

Q. Did you talk about this? A. No, sir.

Q. Did your counsel refer to the fact that he had instructed you not to mention Mrs. Marsden and this letter? A. No, sir, my counsel did not.

Q. Did your counsel know of the letter at that time? A. At what time?

Q. At the time of the conference in Mr. Wisemn's office? A. Of course, they did.

Q. You are sure of that? A. Yes, sir.

Q. You are sure that your counsel knew within a month after this event of the circumstances of this letter; is that right? A. Yes, sir, they did.

Q. Did you look for it then? A. I could not go and look for it.

Q. Did you ask anyone to do so? A. Mr. Donnelley was asked about it by all of us.

Q. When? A. That I could not say.

Q. About when? A. After the case was started.

Q. When did you first tell your counsel about the letter? A. When I told them everything else I knew.

Q. When you first went to them? A. Yes, sir.

Q. And as I understand it your counsel directed you—so that they had this letter, or knowledge of the existence of this letter, and knowledge of Mrs. Marsden being present—your counsel instructed you not to say anything about it at this conference? A. They told me not to talk; they did not mention anything I should not say; they simply said that Mr. Ward was to do the talking; it was hard for me to only listen at times, but I did it.

Q. Had your counsel instructed you not to talk when you went to Mr. Wiseman's office? A. No, sir, they thought then that Mr. Wiseman was a friend.

Q. So there was no reason why you should not have told him all the facts? A. There was no reason that I should.

Q. Except that you wanted your husband back? A. I did not want him back.

Q. So at that time you did not want him back? A. No, sir.

Q. And you never wanted him back since? A. Not for a minute.

Q. Then what induced you to go to Mr. Wiseman? A. My chidren.

Q. Simply your children? A. Absolutely.

Q. Did Mr. Wiseman offer to take any message to your husband that you might give? A. No, sir, he did not.

Q. Are you sure of that? A. I am positive of it.

Q. What time in the evening was it that Mr. Blue came into the apartment on the 19th of November? A. I am not sure of the time, but I would say between 10:30 and 11 o'clock, as near as I knew the time.

Q. Which one of the rooms in that apartment was known as the baby's room? A. The room off the back porch.

Q. It has a window? A. Yes, sir.

Q. Mr. Blue came in through that window? A. Yes, sir, he did.

Q. Did you see him coming through the window? A. No, sir.

Q. Where were you when he came through the window? A. I must have been in the front of the house; that must have been the noise that we heard.

Q. He told you he had come through the window? A. There was no other way he could get into the house.

Q. So that you surmised he came through the window? A. Yes, sir.

Q. There is a bedroom off the kitchen, isn't there? A. Both the bedrooms are off the kitchen; one has an entrance from the dining room also.

Q. Now, in one of those bedrooms, on the bed, when Mr. Blue first came through the kitchen and

opened the door, you and Mr. Donnelley were lying? A. That is not true.

Q. Did Mr. Blue tell you that that is the way he found your during this three-qurters of an hour conversation you had with him? A. He did not.

Q. Did he ever make any such statement in your presence? A. No, sir, never.

Q. You are sure of that? A. I am positive of it.

Q. You were undressed, were you not? A. No, sir, I said I was fully dressed.

Q. And Donnelley had his vest and coat off? A. That is not right.

Q. Didn't you hear Mr. Blue, your brother-in-law, state that during the course of this talk (question withdrawn)—state that in the presence of your sister, after your sister and Mr. Blue returned from the dance that night? A. Mr. Blue said nothing of the kind that night.

Q. And did not Mr. Blue, when he entered the bedroom, say "I have caught you now?" A. He did not, because he did not enter the bedroom.

Q. And did not Mr. Donnelley then jump up and grapple with him, and didn't you then shout, "Don't, Andy, Andy; I love him, I love him?" A. I did not.

Q. Did not Mr. Blue say to your sister in your presence that night or the next morning, that that is what happened on that occasion? A. He did not.

Q. Or anything that sounded like that? A. Nothing like that.

Q. Did not Mr. Blue then order Mr. Donnelley out of the house, and didn't you plead with Mr. Blue to let Donnelley remain? A. I cannot answer that question, because the other things were not true.

Q. During any part of this occasion did Mr. Blue

order Donnelley out, and did you plead with Mr. Blue to permit him to remain? A. No, sir, I did not.

Q. Did he order Mr. Donnelley out? A. Yes, sir, he did, from the kitchen, not from any bedroom—

Q. At any time, did Mr. Blue order Mr. Donnelley out? A. He did.

Q. At any time did you ask Mr. Blue to permit Mr. Donnelley to remain? A. I did not.

Q. Did Mr. Blue that night or the next morning, in talking this matter over with your sister, say that that is what occurred? A. No, sir, he did not.

Q. Did Mr. Blue ask you if you thought Donnelley would marry you in case Mr. Smith ever found this out and divorced you? A. Mr. Blue never said such a thing in his life.

Q. Did he say in the presence of your sister that night or the next morning, that that is what had occcurred on the 19th? A. He did not.

Q. Did Donnelley say he would marry you, or did Donnelley say he would not marry you? A. No, sir, it was never mentioned.

Q. Did Mr. Blue state, in the presence of your sister and in your presence, either that evening or the next day, that that is what occurred? No, sir, he did not.

Q. And did you then say that you would marry him because you loved him better than anybody? A. Did I say that to Mr. Blue?

Q. Yes. A. No, sir, I did not.

Q. Nothing like that? A. Nothing at all like that.

Q. During this three-quarters of an hour that you talked with Mr. Blue, you say Mrs. Marsden was in the house? A. She was.

Q. You told Mr. Blue that she was in the house? A. Mr. Blue already knew it.

Q. Did Mr. Blue talk to Mrs. Marsden? A. I don't know.

Q. Did Mr. Blue talk to Mrs. Marsden? A. I dont know; I did not see him talk to her.

Q. Why didn't you bring Mrs. Marsden up there and say, "Now, here she has been here all the evening, and she can corroborate what I have said?" A. Mrs. Marsden was not a friend of my family, and there was no reason why I should bring a stranger out and get her mixed up in a family squabble.

Q. This was more than a family squabble? A. It was not at that time, no.

Q. Notwithstanding the fact that Mr. Fairhurst had put up a job on you so as to make it look as if there were at least indiscretions between yourself and Mr. Donneley? A. I did not know just exactly what Mr. Fairhurst had said and done.

Q. Did you realize what the import of this letter was when Mr. Donnelley read it? A. No, sir.

Q. Why did your mind jump to Fairhurst? A. It did not, at that time.

Q. When did it? A. After my brain started working, I guess.

Q. When? A. When I knew that he was the one that had talked to Mr. Blue.

Q. When? A. Probably, the next morning, I don't know.

Q. But not that night? A. I don't think so.

Q. Not while you were talking with Mr. Blue? A. I don't think so; I don't remember, really.

Q. You told Mr. Blue about the letter? A. Yes, sir.

Q. Did not Mr. Blue immediately realize that he

was imposed upon in a most outrageous way? A. Yes, sir, he did.

Q. Didn't he want immediately to see that letter? A. I don't think he asked me for the letter.

Q. What did you talk about the three-quarters of an hour? A. I don't remember everything we talked about.

Q. As I understand it, you told Mr. Blue about the letter—he knew Mrs. Marsden was there, and you then talked for three-quarters of an hour; what did you talk about? A. I said from half an hour to three-quarters of an hour.

Q. What did you talk about? A. I told him exactly what had happened that evening, how Mrs. Marsden had come there and just exactly what we had done.

Q. You did not have to tell—he could see for himself that Mrs. Marsden was there? A. Yes, sir, but he could not see for himself what time she got there.

Q. And that took you half an hour— A. We talked about other things; Mr. Blue talked about coming down from the dance.

Q. Did Mr. Blue tell you he had had a conversation with Mr. Fairhurst some days before in his office in New York? A. No, sir, Mr. Blue did not tell me that.

Q. Did Mr. Blue tell you that Mr. Fairhurst had told him, Mr. Blue, that the people with whom you associated were beginning to talk about Donnelley's attentions to you? A. Mr. Blue did not tell me what Mr. Fairhurst told him.

Q. Did he tell you that he told Mr. Fairhurst that he thought you had been acting very queerly of late? A. No, sir, he did not tell me that.

Q. Did he tell you that one of the things that

impressed him as queer was the fact that you refused to permit him to take you home after having been at his house until late in the evening. A. No, sir, he never said that.

Q. Did he tell you he told Mr. Fairhurst that one evening he felt so worried about you that he followed you? A. No, sir.

Q. Did he tell you that he had called up Mr. Smith on the telephone and asked Mr. Smith to call him immediately when you arrived home? A. No, sir, he did not.

Q. Did he tell you that he had told Mr. Fairhurst that upon that occasion Mr. Smith called in about three-quarters of an hour? A. No, sir, he did not tell me anything.

Q. Did he tell you that he told Mr. Fairhurst that another thing, which, in view of all the circumstances, impressed him as peculiar, was the fact that he had noticed a smell of lysol in the bathroom after you had been there? A. No, sir.

Q. Did he tell you that he had told Mr. Fairhurst that he was anxious to find out the truth, and that he would have an opportunity on November 19th, as Mr. Blue and his wife had arranged to attend a dance at Pompton? A. He did not tell me that.

Q. Did he tell you it was his suggestion about November 19th, and not Mr. Fairhurst's at all? A. No, sir, he did not.

Q. Did you know where Mr. Smith was to be on the 19th? A. Yes, sir, at Mr. Evans' home.

Q. When did he make that appointment; do you know? A. Maybe the day before, I really don't know.

Q. Tell me about how long before? A. Probably the day before.

Q. When did your sister and her husband make their arrangement to go to the dance at Pompton? A. Probably three or four days, or a week before.

Q. When did you make your arrangement to go there and mind the baby? A. Probably at the same time.

Q. You said this morning two weeks—which is right? A. I think they spoke to me three or four days in advance.

Q. How did Mr. Fairhurst know you were going to that house that night? A. I don't know.

Q. You don't know how he got that information? A. He probably knew it, I probably told him; I may have done so.

Q. Mr. Blue never told you that he told him? A. No, sir, he did not.

Q. Did Mr. Blue tell you that outside Mr. Shorter and Mr. Schofield were waiting? A. No, sir, he didn't tell me that.

Q. You mean he did not tell you during this three-quarters of an hour the fact that he had come from Pompton with Mr. Schofield and Mr. Shorter and that they were on the outside? A. No, sir, he did not tell me that.

Q. He did not tell you anything about that? A. No, sir.

Q. And you did not know that Shorter and Schofield were out there until when? A. I don't know when I first learned it.

Q. That night when your sister and your brother-in-law came home— A. No, sir, I did not learn it until after the 22nd.

Q. During the talk that you had between yourself and your sister and your brother-in-law that

evening, after they came home from the dance, nothing was said about Mr. Schofield and Mr. Shorter? A. That evening I know that nothing was said.

Q. And nothing was said on Sunday? A. I don't remember.

Q. Did Mr. Blue appear to be quite satisfied with your explanation when he left that night? A. I think Mr. Blue was terribly excited and dreadfully upset, but he seemed to take the attitude that he had been told so many things, and what was he to believe; they had fully convinced him, and he still seemed to act that way.

Q. You mean, he thought, after your talk for three-quarters of an hour, that you were guilty? A. Oh, no, he did not think I was guilty.

Q. What then? A. That Mr. Fairhurst had almost convinced him of these things; he knew I was not guilty.

Q. Mr. Fairhurst had convinced him of what? A. Of the stories about me.

Q. What was it that he was convinced of after he left, after the three-quarters of an hour conversation with you? A. That I was not guilty.

Q. Then when he left after the three-quarters of an hour's conversation, or the half-hour's conversation, he was perfectly satisfied? A. He still thought of the stories that this man had told him.

Q. He was satisfied of what had occurred that night? A. Yes, sir.

Q. You are sure of that? A. Yes, sir.

Q. He left there perfectly satisfied? A. He was still excited.

Q. As to what had occurred that night? A. Yes, sir.

Q. Is Mrs. Marsden's name "Mrs. Marsden"? A. Yes, sir.

Q. Have you known her by any other name? A. No, sir.

Q. Did you ever hear the name of "Scowcroft"? A. Yes, sir, I have.

Q. Is that her name? A. I have never known her except as Mrs. Marsden.

Q. When did you hear the name Scowcroft? A. I have heard it mentioned.

Q. As her name? A. Her name was Scowcroft, but I really don't know about it; I don't know anything about it; I only know her as Mrs. Marsden.

Q. Where does she live? A. She lives at 3 Graham Avenue.

Q. With her husband? A. Yes, sir.

Q. Do you know she purchased that property with her husband on April 30, 1921? A. I don't know.

Q. Do you know Mr. Marsden? A. No, sir, I do not.

Q. Do you know a man named Jackson? A. No, sir, I do not.

Q. A restaurant keeper in New York? A. I know a restaurant keeper, but I don't know his name.

Q. Known as "Jackie?" A. Yes, sir.

Q. Where does he keep a restaurant? A. On one of the streets off Fifth Avenue, New York.

Q. Do you know the man who keeps the restaurant? A. Yes, sir.

Q. When did you meet him? A. Some few months ago.

Q. Through whom? A. Through some friends of mine in New York.

Q. Through whom? A. Two girl friends of mine.

Q. What are their names? A. They would rather not have their names mentioned.

By the Court.

Q. You must mention their names. A. A Miss Lillian Suyler and a Mrs. McGee.

Q. Through which one of these women were you introduced to Jackie? A. I think by Miss Suyler.

Q. When? A. A few months ago.

Q. How often have you seen him? A. Maybe three or four times.

Q. With whom? A. I have been there to dinner twice with Mrs. McGee and this girl.

Q. In company with Mr. Jackson? A. No, sir, he has never even been at the table, except to stand and talk for a few minutes.

Q. When have you had dinner with him? A. Never.

Q. Where were you introduced to him? A. At the restaurant.

Q. How did you come to go to the restaurant? A. It is a mighty fine restaurant.

Q. How did you happen to come to go there? A. I will tell you in my own way: We three girls were out one evening, and I wanted to go some place where we could have some good food, and the girls said, "Why not go to Jackie's?" and we went there, and that is the first time I met him.

Q. How often have you been there since? A. Probably three or four times.

Q. Did he ever give you any money? A. No, sir.

Q. Did he give you $100.00 to buy a coat? A. No, sir, he did not.

Q. Did you buy a coat from Franklin Simons? A. Yes, sir.

Q. Recently? A. Yes, sir.

Q. You paid how much for it? A. $85.00.

Q. When? A. Just before Christmas.

Q. Where did you get the money? A. My mother loaned it to me.

Q. Your mother loaned you the money? A. Yes, sir.

Q. Did you tell Mrs. McGee you got that money from Jackie? A. No, sir, I did not.

Q. Did you ever have any conversation with Mrs. McGee with respect to Jackie? A. No, sir.

Q. Did you tell Mrs. McGee about this coat? A. Mrs. McGee saw my coat.

Q. Did you tell Mrs. McGee; did Mrs. McGee say that somebody had told her that you were going around with Jackie, and that she did not like it? A. No, sir.

Q. And did you deny that you went with Jackie and had dinner? A. No, sir, I did not.

Q. You and Mrs. McGee are not on good terms now, are you? A. Yes, sir, we are.

Q. Are you sure of that? A. Yes, sir, I am quite positive.

Q. Have you been on bad terms with her recently? A. No, sir.

Q. You are sure you have always been on good terms with her? A. Yes, sir, always.

Q. You never met Mr. Pearsall in Mrs. McGee's house? A. I don't ever remember having seen Pearsall there.

Q. You would remember it? A. Yes, sir.

Q. Will you read this affidavit; that is Mrs. McGee's signature, isn't it? A. Yes, sir, it is.

Q. Read that paper and then tell me if it refreshes your recollection. A. What do you mean—

Q. Read Mrs. McGee's affidavit, and then tell me if it refreshes your recollection upon two things—first, whether you and she have always been on good terms; and second, whether you ever were at her house with Mr. Pearsall? A. This is Mr. Smith's writing.

Q. It is her signature, though; read it over to yourself. (Witness does so.) A. It does not.

Q. Do you know any reason why Mrs. McGee should say that you were there, if you were not?

Mr. McGinnis—I object; there is no evidence that Mrs. McGee has said she was there.

The Court—Objection overruled.

A. I cannot answer that question.

Q. But you are sure you are still on good terms and have always been so with Mrs. McGee? A. Yes, sir.

Q. But you say you don't recollect being at Mrs. McGee's when Mr. Pearsall was there; are you certain about it? A. I am not certain about anything; I have told you that; it is all so long ago that I don't remember whether I was or not.

By the Court:

Q. When was the last time that you were at Mrs. McGee's house, that you recall? A. I do not recall.

Q. Two years, three years, or what? A. I don't remember.

Further Cross:

Q. It was in 1918 when you met Mr. Pearsall? A. Yes, sir.

Q. And the early part of 1919? A. Yes, sir.

Q. Now, can you tell me whether you met—positively whether you met Mr. Pearsall at Mrs. McGee's house? A. I cannot tell you positively anything of the kind, but I don't remember ever seeing him at Mrs. McGee's home.

Q. Is your uncertainty now induced by the fact that you read this affidavit? So that you are now uncertain as to whether you met Mr. Pearsall at Mrs. McGee's house or not? A. No, sir, that affidavit has not changed my mind at all.

Q. You are uncertain, is that right? A. Yes, sir, I am not sure.

Q. If you met him at the house of Mrs. McGee, how did you come to meet him there? A. I don't know.

Q. Do you know how the appointment would be made, if you had done so; how is it possible that you should have met him there?

Mr. Ward—Objected to.
The Court—Objection overruled.

Q. Do you know how the appointment would be made? A. How can I answer that? I cannot answer the question.

Q. You never saw Mr. Pearsall alone while you were at Oxford? A. No, sir, except that one time when we went to the Fair.

Q. How soon after the episode in Oxford did you get the first telephone making the appointment in New York? A. That I could not answer, because I don't remember.

Q. About how long? A. I would not even know that.

Q. How was the appointment made? A. I really don't remember.

Q. Haven't you any recollection at all? A. I don't remember whether Mrs. McGee called me or whether I happened to be at Mrs. McGee's home.

Q. What is your best recollection? A. That is the best I can answer that.

Q. How was the second meeting? A. I don't remember.

Q. You have no recollection of it at all? A. No, sir.

Q. It did not make much impression on your mind? A. No, sir.

Q. You said this morning, or started to say, that it was not important? A. No, sir, it was not.

Q. You knew Mr. Pearsall was married? A. Of course.

Q. And you knew you were married? A. Yes, sir.

Q. You thought it was quite the proper thing under the circumstances for you to receive telephone appointments from a married man through a third person, without your husband's knowledge? A. My husband knew it.

Q. When did you tell him about it? A. I don't remember just when I told him.

Q. When did you tell him you were meeting a man that was married and whom he had never met, in restaurants over in New York? A. He had always heard of Harry Pearsall and knew all about him; I told him either before or after I had been over there.

Q. When? A. I cannot recall just when.

Q. After the first time or after the second or

after the third time, or when? A. Either before or after—each time.

Q. Are you sure of that? A. Yes, sir.

Q. He made no objections? A. Of course not.

Q. You told him each time; did he ever suggest he would like to meet Mr. Pearsall? A. I don't remember whether he did nor not.

Q. Did you tell him that the telephone messages were coming? Why were the telephone messages sent to Mrs. McGee's house instead of to yours? A. Because she was living in Brooklyn, and I spent quite a little time with her; and he was in New York, Mr. Pearsall would come to New York; it was easier.

Q. He was your friend? A. Yes, sir.

Q. Why didn't he notify you? A. I don't know why.

Q. As I understand it, he telephoned through a third party? A. Because it was easy for her to get in touch with him.

Q. Why didn't he do the obvious thing, and telephone to your own home?

Mr. Ward—Objected to; he is inquiring into the processes of the man's state of mind.

The Court—Objection overruled.

Q. Do you know why he did not telephone to your own home? A. No, sir.

Q. Did you tell your husband that the appointments were being made through Mrs. McGee? A. I probably did.

Q. Why should you tell him that detail? A. Well, I mentioned it along with everything else.

Q. You told your husband you were going to

dinner in New York at a restaurant with a man who is married and has a wife in Boston; now, I would like to know what you said— A. I don't remember what I said—that is five years ago.

Q. Can't you tell me what you said on any one of the occasions that you told your husband? A. I probably told him I was going to luncheon and wished he would go along; that is probably what I would say.

Q. Tell me, if you can, whether you recollect having said that? A. I know I told him.

Q. What did you say when you told him? A. I don't know.

Q. Did you tell Mr. Pearsall you had told your husband? A. That I don't remember.

Q. What did your husband say when you told him you were going to dinner with this man in New York? A. He had no objection.

Q. What did he say? A. I don't remember what he said, any more than I don't remember what I said myself.

Q. Did he ask you what hotels you had gone to? A. I don't remember whether he asked me, but I probably told him without being asked.

Q. Do you remember whether you told him or not? A. Not any more than I remember anything else about it.

Q. How many times did you go? A. I would say three or four times.

Q. Where was the first time? A. I think we lunched at the "Manhattan.".

Q. Where was the second time? A. The second time I think we had dinner at "The Bozart."

Q. Where was the third time? A. I think it was at the same place.

Q. Where was the fourth time? A. I don't remember any other time.

Q. Might there have been another time? A. I don't remember if there was.

Q. And each one of those occasions you told your husband about? A. Yes, sir.

Q. Did you invite Mr. Pearsall over to your home? A. I had said I would love to have him come out to Paterson, and he said he would like very much to come out sometime.

Q. Did Mr. Smith say why it was that he did not want to go to dinner in New York? A. No, sir, he did not.

Q. Were there any other occasions where you were in New York and dined with a woman friend and a married man, that you told your husband about? A. I don't remember any.

Q. So far as you now remember, this is the only one you told your husband about, and the only one you ever dined with? A. That is right.

Q. How well acquainted were you with Pearsall at the end of the three days up in Oxford? A. Just as well acquainted with him as I was when I first saw him.

Q. You got a little better acquainted than that? A. We were introduced by our first names.

Q. That is the reason why you call each other by your first names? A. Yes, sir.

Q. Did you call up Mrs. McGee on the telephone this week? A. Last week, do you mean?

Q. Yes. A. I probably did.

Q. Did you have a conversation with her over the affidavit that she had signed for Mr. Smith? A. No, sir, I did not.

Q. Did you say to her over the telephone: "You know I never was at your house with Mr. Pearsall?" A. No, sir, I did not.

Q. Did you talk over the telephone at all about your being at her house with Mr. Pearsall? A. No, sir.

Q. Neither you nor anyone with you registered at that hotel for you as "Mrs. Smith, Newton?" A. No, sir.

Q. And you did not have Room 15 in that hotel? A. I have never been there in my life.

Q. Are you sure of that? A. I am positive of it.

Q. Mrs. Smith, will you take a pencil and paper and write down, "Mrs. H. A. Smith, Newton, N. J.?" A. I could not now; I will do it later for you.

(Witness had to stop the proceedings for a while, as she was crying.)

A. I think I can now, Mr. Lane. (Witness writes it out on a piece of paper.)

Q. Now, write underneath, "Newton"—"Newtown." (Witness does so.)

(Mr. Lane takes it way from her after she has compiled with his request.)

Q. Now, will you say that this tracing of a signature is not in your handwriting?

Mr. Ward—Objected to, on the ground that it is not the document itself—it is a mere tracing.

The Court—The objection is sustained, Mr. Lane. You want to get the best evidence.

(Insert on Page 512, after first question and answer from the top of page.)

Q. What did you talk about? A. I don't remember.

Q. A friendly conversation? A. Yes, sir.

Q. Any rift at all? A. No, sir.

Q. No trouble, no difficulty? A. Not any.

Q. You did not mention Jackson, and she did not mention Jackson? A. No, sir.

Q. Why did you stay at the United States Hotel, Paterson, N. J., upon the 20th of July, 1922? A. What do you mean—all night?

Q. Yes. A. I have been even upstairs there.

Q. Were you not registered there? A. No, sir.

Q. Were you in that hotel on the 20th of July, 1922? A. I may have been in the restaurant; I have been there several times to dine, but I have never been in the hotel part.

Q. Were you registered there? A. Never in my life.

Q. Were you registered as Mrs. Smith of Newton? A. No, sir; never in my life.

Q. Are you sure of that? A. I am positive of it.

You had better prove it before you propound the question. I shall sustain the objection.

Mr. Lane—I will ask that that be marked for identification.

Marked "Z. A. 2 for identification."

Mr. Lane—I ask that this signature that the witness has written, be marked for identification.

Marked "Z. A. 1 for identification. C. E. R."

Q. I show you a letter written to "Anita", and marked "Mother", and ask you if that is in your handwriting? A. Yes, sir, it is.

Mr. Lane—I offer that for identification.

Marked "Z. A. 3 for identification."

The Witness—May I see that?

Mr. Lane—It is not offered in evidence.

Q. Will you tell me when this letter was written, Mrs. Smith? A. I don't know when it was written.

Q. Can you tell me when it was written? A. It was written recently.

Q. Now you are sure that on or about the 20th of July, 1922, you did not register at the United States Hotel in this city as "Mrs. H. A. Smith, Newtown, N. J.?" A. I am positive of it.

Q. And you were not there from 10:40 in the evening until 8 o'clock the next morning? A. No, sir, never.

Q. Do you know Mr. Anderson in Montclair?

The Witness—Your Honor, are they permitted to ask me such questions?

The Court—Yes.

A. Yes, sir, I do.

Q. Where does he live? A. I don't know, except that he lives in Montclair.

Q. Where did you meet him? A. He was a very good friend of a girl friend of mine in East Orange.

Q. Where did you meet him? A. I really don't remember.

Q. Where? A. I think at her home.

Q. What is her name? A. Mrs. Rue, at the home of Mr. and Mrs. Rue I met him.

Q. Have you been out automobile riding with him? A. Yes, sir, but never alone.

Q. Did you take a bus from Paterson and get off the bus in Montclair and meet him in Montclair? A. I did.

Q. When? A. I don't remember just when it was.

Q. Where did you go after you met him? A. To Mr. and Mrs. Rue's home in East Orange.

Q. She lives where? A. In East Orange.

Q. Where? A. On Harrison Street—I don't know the number.

Q. Do you know whether Mr. Anderson is married or not? A. He is not married.

Q. Do you know his business? A. I think he is a landscape gardener in Montclair.

Q. How long have you known him? A. I don't know.

Q. How often have you been out with him? A. I have not been out with Mr. Anderson; I have never had an appointment with him or anything like that.

Q. Did he happen to be at the end of the Montclair bus line when you got there? A. No, sir, he was there by Mr. and Mrs. Rue's appointment; he was there to meet me at their request.

Q. How often did that happen? A. Once.

Q. How often have you been out with him at other times? A. I have never been out with him alone, but I have been to Mr. and Mrs. Rue's home several times when he has been there.

The Witness—Why are they permitted to ask me such questions?

Q. Did you know him before your separation? A. I don't think I did—yes, I did, I knew him, because I met him about three years ago.

Q. Where? A. Just to be introduced to him.

Q. Did your husband know him? A. No, sir.

Q. Did you ever speak to your husband about him? A. No, sir, I simply met him at a friend's home.

Q. Did your husband know this friend? A. Yes, sir.

Q. Has he ever been over there? A. Yes, sir.

Q. To the Rues'? A. It was not the Rues; I met Mrs. Rue and him the same day when a friend of mine was going away.

Q. Who introduced you? A. A girl friend of mine, a Mrs. Badgley.

Q. Do you know Harold Kell? A. No, sir, I do not.

Q. You don't know him at all? A. No, sir.

Q. You have never been out in his car? A. No, sir, I have not.

Q. You were not out with his car on the 21st of September of this year, 1922, in a Packard car? A. I don't know him.

Q. You have not been out in a Packard car, the license being "12854, N. J.?" A. No, sir.

Q. Since September? A. No, sir, I have not.

Q. What did you tell your husband with respect to this accident that had occurred to your car? A. You mean the day that Mr. Donnelley had the car?

Q. Yes. A. I told him that I had had an accident.

Q. What else did you tell him? A. I told him I was on my way over to New York to do some shopping.

Q. What else did you tell him? A. That is all that I remember.

Q. You told him you were on your way over to New York—what did you tell Mr. Fairhurst? A. I probably told him the same thing.

Q. Don't you remember you told your husband and Fairhurst that you were on your way to surprise your husband and meet him in New York early? A. No, sir, I am positive I did not.

Q. Why did you tell an untruth about it? A. Because I did not dare to tell him the truth.

Q. But you dared to loan the car? A. I did it because it gave me some extra money; I was glad of an opportunity to have some money.

Q. You dared to loan the car? A. Yes, sir.

Q. But you did not dare to tell the truth about it? A. No, sir.

Q. You did not dare to tell the truth? A. No, sir, I have loaned it several times.

Q. How many times did you loan it to Donnelley and get $5.00 for the loan? A. Four or five times.

Q. The first time you loaned it was the time that Fairhurst saw it? A. Yes, sir.

Q. So that you knew within three or four days after you loaned the car, that the loan of the car had gotten you into trouble? A. I had done nothing.

Q. Mr. Fairhurst had sent for you? A. That was not trouble.

Q. You had gone in response to his call? A. That was not unusual—my talking to Mr. Fairhurst.

Q. You had gone to his mill and listened to a lecture from him? A. No, sir, I had not.

Q. What did he say to you? A. He simply asked me if I was in my car on Saturday, and I said "No, I was not"; and he said, "Jimmie Donnelley was in your car on Saturday", and I admitted that he was; and he asked me to find out who was with him in my car on Saturday; and I told him I was not going to do anything of the kind.

Q. Why didn't you tell him it was none of his business? A. I don't use that language to anyone.

Q. Any equivalent to it? A. I don't use that language to anyone.

Q. This man Fairhurst was a man who had been in love with you and who was pressing you with obnoxious attentions continually; that is true, isn't it? A. Yes, sir.

Q. And he had presumed to criticize your loaning this car to Donnelley?

Mr. Ward—I object to that, on the ground that it is not so.

Q. What did you think he sent for you for? A. To find out who was in the car.

Q. What did you think he wanted to know that for? A. Because he cannot keep out of anyone else's business.

Q. The fact that you had loaned this car to Mr. Donnelley had become known to that busybody the very first time you loaned it? A. Yes, sir.

Q. And the busybody was a person who had been in love with you; and you did not anticipate any trouble? A. Of course not; I thought he would not dare to go to anyone about it.

Q. About what? A. About any trouble that you are talking about my anticipating.

Q. I am trying to find out now what you meant when you said he would not dare to go to anyone about it? A. That he would not dare to go to anyone.

Q. You say that you thought that he would not dare to go to anyone about the trouble; what trouble do you mean? A. You were the one that mentioned the trouble.

Q. You must have had something in your mind when you said you thought he would not dare to go to anyone about the trouble?

Mr. Ward—Objected to.

The Court—The objection is overruled.

A. I really did not think about it at all.

Q. Did he tell you why he wanted to know who was in the car? A. No, sir, he did not tell me why.

Q. Did you ask him? A. I did not need to ask him.

Q. Why not? A. I told you before that he wanted to know as much of everyone's business as he could possibly know; he is that kind of a person.

Q. So you thought he was just curiosity seeking? A. Yes, sir.

Q. You did not ask what had happened? A. Yes, sir, I did.

Q. Whom did you ask? A. Mr. Fairhurst.

Q. When? A. That day.

Q. What did he say? A. He said, "I want to find out from Jimmie Donnelley where he had the car and who was in it."

Q. Then did you ask him why he wanted to know? A. No, sir.

Q. Why not? A. I did not need to ask him.

Q. Did you assume when you talked to Mr. Fairhurst, from anything that Mr. Fairhurst had said —(question withdrawn). Did Mr. Fairhurst tell you he had seen the car? A. I don't remember whether he told me he had seen it or not.

Q. What did he tell you about it? A. I told you what he asked me and what I told him.

Q. You walked in, in response to this message you say, and— A. I did not walk in; I simply drove over to his place of business and he came out and talked to me for a few minutes.

Q. As soon as you saw him, he simply said, "I want you to find out from Jimmie Donnelley who was in that car", and that ended did, did it? A. No, sir.

Q. You said you would find out? A. No, sir.

Q. That ended it? A. Yes, sir.

Q. That is all that was said? A. That was all that was said then, I think.

Q. Did you have any further conversation with him any other day about that? A. Yes, sir, he nagged me for months to find out who was in the car and where Mr. Donneley had had it; he asked me for months afterwards.

Q. How many times? A. I would say at least a dozen.

Q. Why did you call up this busybody and ask for assistance after the car had been injured in July? A. Because he was the only person that

Mr. Smith went with; he was always at our house; I was doing favors for him all the time; I was cooking dinners and having him there and entertaining him all the time, and I felt I could ask that little favor of him.

Q. But you were desirous at that time of concealing what had occurred to the car? A. I was not telling him.

Q. And you call him a busybody? A. Yes, sir.

By the Court:

Q. Why was it you went down to the mill to his office in response to his call after his attentions to you had become offensive? A. They were not always offensive, your Honor; I said before, that he was the only person that Mr. Smith went out with, and I did not want to have anything unpleasant happen, and I felt I could handle Mr. Fairhurst; he meant nothing to me. He did lots of things for me and I did lots of things for him.

Q. Even after his attempts became offensive? A. They would only be offensive at times, and other times he would just be nice.

Further Cross:

Q. During the year 1921 do you remember how much money in cash you received from your husband? A. No, sir, I do not.

Q. You received $30.00 a week regularly? A. Yes, sir.

Q. That was $1560.00 a year? A. I don't know; I cannot figure that out.

Q. Do you remember that during that year you also got in cash $732.00? A. I don't remember.

Q. The reason why you loaned this car to Don-

nelley, and the only reason for it, upon the occasions you loaned it, was to get the five dollars for extra spending money? A. Not "extra spending money", for spending money.

Q. Did you ask your husband for more money? A. Often.

Q. During 1921? A. I suppose so.

Q. Did you ever loan your car to anyone else? A. Mr. Fairhurst may have had it.

Q. Did you ever get any money for the hire of your car from anyone else? A. No, sir.

Q. And the way you started to loan your car or hire your car to Mr. Donnelley was just accidental? A. Yes, sir, it was.

Q. After you had your talk with Fairhurst, did you speak to Mr. Donnelley about it? A. No, sir, I did not.

Q. Why not? A. Why, I had hired the car to him; what he did with it was not my business.

Q. But it had involved you to the extent of having Fairhurst ask the question? A. But I knew Mr. Fairhurst so well.

Q. You did not think it necessary to ask Donnelley what had occurred? A. That is it exactly.

Q. As a matter of fact, you and Donnelley never had any conversation as to what had occurred? A. No, sir.

Q. You never knew, in fact, what had occurred on this day until when? A. Until that was mentioned in the papers that Mr. Smith served on me.

Q. Then you did not have Donnelley's side of it? A. No, sir, but I soon did have it.

Q. So the first explanation from Mr. Donnelley of what had occurred on that day was after the suit was started? A. I think so.

Q. Did you know how the settlement was made with Mr. Griffin for the damages done to his car? A. No, sir, I did not.

Q. Did you know the details of that? A. No, sir.

Q. Did you know that the matter had been settled? A. Yes, sir, I knew the matter had been settled.

Q. Did you know that Donnelley had anything to do with the settlement? A. I expected him to take care of it.

Q. Did he tell you how he had done it? A. No, sir.

Q. You never knew how it had been done? A. No, sir, I did not.

Q. When did you have any talk with Mr. Donnelley as to what was to be done as to the settlement? A. I don't remember that; I think he called me in about a week and asked about it.

Q. What did he say? A. I asked him if he would take care of it, and he said he would.

Q. It was 12:30 when the telephone message was received by you at your sister's house? A. No, sir, I said about 12 o'clock.

Q. What did you do then? A. I went over and took a Hudson River trolley and went over to the ferry, and I got to the ferry about 1:30.

Q. Where did you telephone from? A. The ferry house.

Q. Before you saw Donnelley? A. No, sir, afterwards.

Q. What did Donnelley say to you when you met him there? A. He simply said they had had an accident.

Q. What else? A. He asked me if I wanted

him to take the car back to Paterson, and I asked him if it was able to run, and he said it was, so I said I would get in touch with the garage myself; I thought I could get it home as long as it would run.

Q. And then you telephoned to Mr. Fairhurst? A. I telephoned first to Mr. Smith, but could not get him, and after that I telephoned to Mr. Fairhurst.

Q. Where did you meet Mr. Fairhurst coming home? A. I think it was on the Leonia Hill.

Q. And then was that the first time you told Mr. Fairhurst you had been going over to New York shopping, or did you tell him on the telephone? A. I told him I was going to New York shopping and that I had had an accident.

Q. When did you tell your husband that? A. When I saw him that afternoon.

Q. Where? A. At home.

Q. What did Mr. Donnelley tell you over the telephone? A. He simply said he had had an accident.

Q. What else? A. And I asked him where, and he said "On the Fort Lee hill"; and I said, "Where are you?" and he said, "At the ferry"; and I said, "I will be right over."

Q. Did you see them start out that way? A. Yes, sir.

Q. From where? A. From the Y. W. C. A.

Q. Where had you given him the car? A. At the Y. W. C. A.

Q. Did you have any talk with Miss Myers that day? A. I don't remember that we talked.

Q. When were you introduced to her? A. I think that was the first time I met her.

Q. You did not know that she was the woman in the car that Fairhurst talked about? A. No, sir, I did not know she was the woman.

Q. You did not know there was a woman in the car? A. Yes, sir, but Mr. Donnelley had not told me there was a woman in the car.

Q. Did you see them start out that day—the day that Mr. Fairhurst saw them? A. No, sir, I did not; I had left the car at the Y. W. C. A.

Q. But you knew he was going to take some woman with him? A. I knew he was going to take somebody out with him.

Q. How many times had you loaned the car between those two occasions? A. I think only twice —twice between those two occasions.

Q. When was the second time? A. Both times, I think, were in the early spring of 1921.

Q. And where did he go? Give me the details of the second occasion. A. I don't know anything about what he did that day.

Q. Tell me the details, how it happened and all. A. My brother called me and asked me if I was going to use the car, and he said Mr. Donnelley would like to have it if I was not going to use it, and I told him I would be glad to let him have it.

Q. Do you know when that was? A. No, sir, I do not; it was in the spring of 1921; I think.

Q. What time did he get the car? A. Around ten o'clock, I think.

Q. Are you guessing? A. I would say about 11 o'clock.

Q. Do you remember? A. Not perfectly, no, sir.

Q. You remember the other two occasions perfectly? A. Something happened on the other two occasions.

Q. So that, what had happened with respect to Fairhurst was important enough, at least, to seal that in your memory? A. Yes, sir.

Q. But not important enough for you to find out what foundation there was for what Fairhurst said? A. Coming from Mr. Fairhurst, no, sir.

Q. What time did he return it on the second occasion? A. He always had it back by four o'clock in the afternoon.

Q. The particular occasion I am asking you for now? A. I cannot tell you.

Q. Do you know when the next occasion was? A. There were two occasions that were similar; he was out from ten or eleven until four o'clock in the afternoon.

Q. Do you know whether he had a lady with him on that occasion? A. No, sir.

Q. Do you know whether he was on business or pleasure? A. I don't know.

Q. You don't know whether, in fact, he told you? A. He did not tell me; I did not ask him.

Q. You knew the first time? A. What do you mean?

Q. You knew what he wanted it for the first time he took it in December? A. I did not know whether it was a pleasure or a business trip.

Q. Didn't he tell you he was going to Westfield? A. No, sir.

Q. Are you sure he did not tell you and your sister? A. I don't know.

Q. So that on the first occasion when he borrowed the car, you did not know where he was going to take it? A. I don't remember anything about it.

Q. The last occasion, which resulted in the smash-up, did you know then where he was going? A. No, sir, I did not.

Q. You did not know whether he was going to New York or where? A. No, sir.

Q. Did you know? A. No, sir.

Q. So that when you got word on the telephone from the 125th Street ferry, the Fort Lee ferry, that was the first knowledge that you had that he might be in that neighborhood? A. Yes, sir, it was; I had to ask him where it was.

Q. Had you used the car before to go shopping in New York? A. Yes, sir.

Q. Did you use the Fort Lee ferry? A. Very often, usually the 42nd Street; it is handier to the shopping district.

Q. If you were going to your husband's place of business, what ferry would you use? A. I did go to my husband's place of business just once or twice, but I don't think I went there directly from the ferry, so I don't know.

Q. Was there ever any occasion that you stated that you were going to be at Mrs. Wainwright's, and then you subsequently called up and told her you would not be there—when you did not go home that night, but stayed at Mrs. McGee's house, at all? A. No, sir, there was not.

Q. Was there ever any occasion when you stayed in Mrs. McGee's house in New York over night? A. Yes, sir.

Q. When? A. I often stayed with Mrs. McGee as long as I have known her.

Q. But never an occasion when you said you were going to Mrs. Wainwright's and then telephoned and broke the engagement? A. I don't remember having done that..

Q. But you remember distinctly this occurrence when you did intend to go to Mrs. Wainwright,s and then changed your mind and continued shopping? A. Yes, sir, I remember that.

Q. You are sure you went home that night, you did not stop at Mrs. McGee's house? A. I went to my mother's home first; I stopped at my mother's first and had a cup of tea before I went on home.

Q. But you went home that night? A. Yes, sir, I did.

Q. When was it that Mr. Blue stated that he had made a boob of himself? A. I think it was Sunday morning.

Q. In whose presence was it? A. I really don't remember whether my sister was there with us or whether we were there alone.

Q. Who told you when you went to the house on Tuesday—you knew you were not going to get in, didn't you? A. No, sir, I received the shock of my life.

Q. What time did you go home that night? A. I would say anywhere from 7:45 to 8:15.

Q. You had Mr. Blue with you? A. Yes, sir, and my father was there.

Q. And that was a pure coincidence? A. No, sir, it was not; papa often came up to our house, and did everything in the world to help Mr. Smith.

Q. They were there, not because there was any idea that you would not be let in the house? A. I had no such idea.

Q. Where did you meet Mr. Blue that afternoon? A. I had not seen him that afternoon.

Q. Where did you meet him that night, then? A. At my home, I said, just as we were going up the steps, as I remember it.

Q. He was going to the house at the same time? A. Yes, sir.

Q. On the way to your house—he was on the way to your house? A. He was evidently on his way to catch up to me.

Q. And you just accidentally met there? A. No, sir, his intention evidently was not accidental, but as far as I knew, it was.

Q. What did he say his intention was? A. He did not tell me at that time.

Q. When did he tell you? A. I don't remember if he ever told me.

Q. Did he tell you at any other time? A. I don't know.

Q. Did you hear from anyone? A. I don't think I would need to hear that to know it now.

Q. What was it, then, what was the purpose of his being there? A. I don't know.

Q. Why was Mr. Blue there? A. He did not tell me.

Q. Did you ever find out? A. I don't remember finding out.

Q. You say it apparently was intentional on his part? A. It seemed to be.

Q. What seemed to be? A. I did not know anything about it.

Q. What indicated to your mind that he was there not accidentally, but on purpose? A. I could not see any reason for his being there.

Q. Did you ask him why he was there? A. No, sir.

Q. Why not? A. When Mr. Smith did what he did, I decided that Mr. Blue had come there to help me.

Q. But he never told you so? A. No, sir.

Q. Did he tell you how it was that he knew there was going to be trouble that night? A. No, sir.

Q. Did he ever tell you? A. No, sir, he never did.

Q. Did he tell you that Mr. Smith and Mr. Wise-

man had been over to his office that day? A. No, sir.

Q. Did he tell you that Mr. Wiseman and Mr. Smith told him that they had finally told, that morning, Mr. Smith of what had occurred on the 19th? A. No, sir, he never told me that.

Q. And did he tell you they had asked him to sign an affidavit as to what had occurred on that night, and he said, "No, I will not sign an affidavit. at this time, but if you wait for six months I will go on the witness stand and tell the truth?" A. He never said that.

Q. Did he say anything that sounded like that? A. No, sir.

Q. But something apparently had occurred which brought him to your house that night? A. Apparently so.

Q. And he never told you what? A. No, sir, he did not.

Q. And he never told you, "Mr. Smith is going to refuse to permit you to go in the Smith house and make these charges against you, although I know you are innocent, and I told him so?" Was anything like that said? A. I did not even know that I was not going to be permitted to go in.

Q. I say, after you found out that you were not permitted to go in, what did your brother-in-law say to you? A. I have no idea what anyone said to me that night.

Q. What did they say to you the next morning? A. That I don't remember, either.

Q. What did they say to you the next morning? A. I don't remember a lot of mornings after that.

Q. Do you remember anything that was said by Mr. Blue afterwards with respect to what occurred between himself and Mr. Smith? A. No, sir, I don't recall anything.

Q. Did you ask Mr. Blue about it? A. No, sir.

Q. You knew the whole trouble was based on the occurrence of the 19th? A. No, sir, I did not know it.

Q. What did you think they were based on? A. I did not know what they were based on.

Q. Had anything else occurred except on the 19th, to your knowledge, upon which the action of Mr. Smith could have been predicated? A. No, sir, I thought Mr. Smith had a perfect right to do what he did; he had always told me the home was not mine; he said he had legal advice on it, and I thought he had a perfect right to do that if he wanted to; it was his home and not mine.

Q. So that you acquiesced? A. What else could I do?

Q. You acquiesced at that time; you did not think then that Mr. Smith then was acting upon anything that had occurred on the19th? A. No, sir, I did not.

Q. You thonght he was just putting you out of your home because he owned the home and could put you out because he wanted to? A. Absolutely.

Q. With absolute disregard, with no regard whatever to what had taken place on the 19th—do you mean that? A. I mean, that I had no thought of the 19th when that happened to me.

Q. The fact that on the 22nd, when Mr. Smith put you out of the house, or refused to let you come in the house, you did not connect up the events on the 19th with keeping you out of the house, at all? A. I mean just that.

Q. And you thought he was acting solely because of his power as the owner of the house, without

regard to what had occurred? A. He never regarded me or my wishes.

Q. You thought at that time he was acting solely because he wanted to do it, irrespective of what took place on the 19th? A. Absolutely.

Q. And the two things did not connect up in your mind at all?

Mr. Ward—Objected to; he has asked the question three distinct times.

The Court—The objection is overruled.

Q. (Question read.) A. I don't think they did.

Q. When did they connect in your mind? A. When my brain started working after that.

Q. When? A. Well, maybe it was not until after the papers were served on me.

Q. After the divorce suit was started? A. Yes, sir.

Re-direct Examination by Mr. Ward:

Q. Mrs. Smith, is this Anderson anything more than an acquaintance of yours? A. No, sir, of course not.

Q. And this Jackie, is he any more than an acquaintance? A. No, sir, I have never seen him outside of his restaurant in my life.

Q. Will you describe to his Honor the size and general appearance of this girl whom you met with Donnelley at the time of the accident to the car; how tall is she with reference to yourself? A. She is very similar to myself; I would say she is just about my build; she may be a little shorter.

Q. And just about your build? A. Just about.

Q. With reference to the settlement of this car —do you know what the actual bill was—the cost of repairing the car? A. Yes, sir, Mr. Ward, I think it was something in the neighborhood of $43.00.

Q. Do you know what the bill was that Roy Smith sent in to Griffin? A. Yes, sir, he sent a bill to him for $73.00 or $65.00.

Q. As the costs of repairing the car? A. Yes, sir.

Q. What did you do with the $30.00 a week that was given to you; what did that cover? A. I was supposed to pay the milk bill, all the groceries and the butcher, all fruits and everything like that, and the maid and myself, everything.

Q. And when you asked him for extra money for yourself what did he reply, what did Roy Smith say? A. He would tell me that I had as much as I needed, that I could get along on $30.00 a week.

Q. After he closed the door upon you and your children that night, why didn't you go back to that house? A. What do you mean, Mr. Ward?

Q. You went back that night? A. Yes, sir.

Q. I omitted that in my direct examination; how soon after he had closed the door upon you and your children did you go back? A. I went back at about 11 o'clock.

Q. What did you do? A. I went back with my father.

Q. Did you gain access? A. No, sir, I rang the bell and I think there was a light in the front hall; there is a glass in the front door, and he came to the door and pulled up the shade and saw who was there and pulled it down again, and did not open the door; and then I went away.

Q. After that, why didn't you go back? A. I would not go back after that.

Q. Why not? A. I think the reason is obvious.

Q. I am asking your reason. A. Mr. Smith had closed the door on me, and I would never go back.

Q. With reference to the Franklin Simon coat that you purchased for $95.00, where did you get the money?

The Court—She said she borrowed it from her mother.

Re-cross Examination by Mr. Lane:

Q. Mrs. Smith, what time was it in 1922 that you had the conversation with Spagnola? A. I don't remember when it was.

Q. Do you remember about what time it was, the time of the year? A. No, sir, I don't remember that.

Q. Was it before or after you had the accident to your car? A. I could not truthfully answer that, because I do not remember.

Q. Spagnola said, as I remember it, that the switchman or the towerman had said, that you had been several times along the tracks with Donnelley? A. He did not say that to me; he said something about that the towerman had said that he had seen me with a man; he did not say who the man was; he said that the towerman had told him he had seen me with a man, and he asked me who I was with that night when I passed and dropped my purse.

Q. And what did you say? A. He said that he thought he ought to tell me about it, and I thanked him and told him it was ridiculous, of course.

Q. What was ridiculous? A. His having said that he saw me with a man there.

Q. Is that all you did about it? A. Yes, sir.

Q. You had never been along those tracks on any occasion? A. Not with Mr. Donnelley.

Q. Nor with any man? A. No, sir, I had not, except with Mr. Smith, and I don't remember being there with anyone else.

Q. You never were there with any man's arms around you, at any rate? ?A. No, sir, I was not.

Q. Where were you coming from that night that you dropped your purse? A. From a friend's house on Broadway.

Q. Whose house? A. Miss Davis' house.

Q. Where do you live? A. On 30th Street and 17th Avenue.

Q. Why did you go home that way? A. I had stopped at 22nd Street and Broadway at Zendler's old store for a soda, and came through 22nd Street on the West side of the street, and crossed over the tracks there.

Q. As a matter of fact, to get to the point you were at the time Spagnola spoke to you, you had to go away from your home, didn't you? A. Yes, sir.

Q. How far—two blocks? A. One block.

Q. Why did you go there? A. For a soda.

Q. For yourself? A. Yes, sir.

Q. Alone, were you? A. Yes, sir.

Q. Was it on your way that you got the soda? Wasn't it still further out of your way? A. I don't understand you.

Q. If it had not been for the fact that you desired to get the soda, you would not have gone in that direction? A. No, sir.

Q. You would have gone in a direction which would have carried you at least two blocks away? A. I probably would have taken a troïley on Broadway.

Q. That is the way you usually go? A. I don't usually do anything, I usually get sodas.

Q. Have you ever gone from the place where you were to your own home by taking the car at Broadway? A. Yes, sir.

Q. And that is what you would have done if you had not gone for a soda? A. Yes, sir.

Q. And the getting the soda put you in the position where you had to talk with Spagnola? A. I was more apt to go a few blocks out of my way for a soda than to take a direct route home.

Q. Did you make any inquiry of Spagnola as to what this towerman said? A. No, sir, I did not.

Q. How well did Spagnola know you? A. I have known him for years, from buying fruit from him, and I always spoke to him.

Q. He was taking quite a liberty to talk to you about a subject of that kind? A. I think it was a kindness.

Q. If you thought it was a kindness, why didn't you get more information, so that you could nail it? A. I thought he had told me everything he knew.

Q. And that was, that the towerman said you were on the railroad track with a man? A. No, sir, that the towerman said he had seen me with a man, but he did not say where.

Q. You said that was ridiculous? A. Yes, sir.

Q. How did they mean it? A. I thought they meant some other man than Mr. Smith.

Q. How? A. He would hardly remark on seeing me with Mr. Smith.

Q. But was it ridiculous for you to be seen with another man on the streets of Paterson? A. I did not stop to think of that; I knew Mr. Spagnola meant something.

Q. You said it was ridiculous, of course; is it ridiculous for you to be seen on the streets of Paterson with a man other than your husband? A. No, sir.

Q. Then what was it you thought that Mr. Spagnola meant that was ridiculous? A. I don't know.

Q. You said it was ridiculous? A. Yes, sir.

Q. What was ridiculous? A. He explained that he was taking the liberty of telling me something, and I decided it was somebody other than Mr. Smith.

Q. Where? A. That I don't know, Mr. Lane.

Q. On the streets of Paterson? A. It may have been.

Q. But not in the railroad yard? A. No, sir, he did not mention the railroad yard.

Q. You did not assume he meant on the railroad track or in the railroad yard? A. No, sir.

Q. Was there anything ridiculous in your being seen on a public street with a man other than your husband?

Mr. Ward—Objected to; that question has been asked a half a dozen times.

The Court—She says it was ridiculous; objection sustained.

Q. I understand now, that you say that you did not know when you talked with Spagnola, that he meant along the tracks at all? A. I did not know that he meant along the tracks.

Q. So that, for aught that Mr. Spagnola said, it

might have been that you were seen walking along the main street? A. I don't understand the question.

Q. From anything that Mr. Spagnola said, he might have meant that you were seen walking along Main Street with a man other than your husband? A. He may have meant most anything.

Q. And that was ridiculous? A. Yes, sir.

Adjourned to 10 o'clock March 21, 1923.

Sixth Day

(Title Omitted.)

LOFTUS HENGEVELD, being duly sworn in rebuttal, testified as follows:

Direct Examination by Mr. Lane:

Q. Where do you live? A. 40 Goshen Street, Paterson, N. J.

Q. You know James Donnelley? A. Not personally, but I know him by sight.

Q. Did you see him on the night of November 19th? A. I don't just recall whether it was the 19th or not; it was about that time.

Q. What impresses it on your memory? A. Shortly after that particular time the remarks that were going around the neighborhood about what had occurred on that night, that brought it back to my memory. I saw him at the corner of 17th Avenue and 18th Street; I was walking over South on 18th Street about 11 o'clock at night, I think it was, and as I got to the corner of 17th Avenue,

where I lived at that time, I noticed him running up to the corner, and then South on East 18th Street.

Q. What do you mean by running? A. He was running.

Q. He was not walking? A. No, sir.

Q. Did he pass you? A. Yes, sir.

Q. How close to you? A. I should say about six feet.

Q. Did you see how he was dressed? A. Why, it was my impression, I believe he was fully dressed, with the exception of a hat; I don't believe he had a hat on.

Cross Examination by Mr. Ward:

Q. You don't know whether he had a hat on or not? A. No, sir, but I don't believe he had.

Q. You don't know? A. I would not say that I don't know, but I don't believe so.

Q. The incident made so little impression on you that you don't know positively? A. No, sir.

Q. You don't know the date, do you? A. No, sir.

Q. Did you hear something shortly thereafter which brought it to your mind?

Mr. Lane—Objected to.
The Court—Objection overruled.

A. Two or three days, when remarks in the neighborhood of what occurred were made; I was with my wife at the time that the happening occurred, when I saw him at the time I have stated.

Q. Did you have to step aside when he passed you? A. He was only about six feet from us when he passed; we came up to the northwest corner,

and then, as was our custom, we cut across the street to go home, and he ran past us about six feet from us, and then south of East 18th Street.

JAMES DONNELLEY, being recalled, testified as follows:

Direct Examination by Mr. Lane:

Q. Do you know Mrs. McGee? A. I do.

Q. When did you meet her? A. Several years ago.

Q. When did you last telephone to her? A. Several years ago.

Q. Your last telephone to her was several years ago? A. Yes, sir.

Q. You did not telephone her last night? A. No, sir.

Q. You did not telephone her the night before? A. I did not, no, sir.

Q. Did you talk with her over the telephone?

Mr. Ward—I object.

The Court—I cannot tell at present whether it is material or not, and I will deal with it afterwards.

A. No, sir.

Q. Did you talk with her yesterday? A. No, sir.

Q. You have had no telephone conversation or talks with Mrs. McGee this week? A. I have not.

Q. Have you been present when there was any conversation between anyone else and Mrs. McGee on the telephone? A. No, sir.

Q. When did you last see Mrs. McGee? A. A few years ago.

Q. You have not seen her since this suit was started? A. No, sir, I have not.

No cross examination.

Mr. McKee—I move to have that testimony stricken out.

The Court—Let it stand; it does no harm. The Court will deal with it on the final conclusion of the case.

GEORGE SCHOFIELD, being recalled in rebuttal, testified as follows:

Direct Examination by Mr. Lane:

Q. Mr. Schofield, on the night of November 19th were you so that you could see the front door of the Blue home? A. Yes, sir.

Mr. McKee—That was all gone into.

Mr. Lane—No, it was not.

Q. And did you have that front door under observation from the time of Mr. Blue's entering into the house until after Mr. Donnelley left?

Mr. Ward—Objected to as leading.

Q. From what time to what time did you have the door under observation?

Mr. Ward—Objected to as assuming a fact not proven.

By the Court:

Q. Did you see Mr. Blue go in? A. No, sir, I did not.

Q. Did you observe the front door? A. Yes, sir.

Q. How long were you watching the front door? A. Probably an hour and a quarter.

Further Direct:

Q. From the time Mr. Blue left the car until the time Mr. Donnelley came out, what was your position?

Mr. Ward—Objected to on the ground that the witness has not shown that he had any knowledge of when Mr. Blue left the car.

Q. Were you in the car when Mr. Blue left it? A. We got out of the car together.

Q. Where did you leave Mr. Blue? A. On 17th Avenue.

Mr. McGinnis—Objected to on the ground that none of this testimony is rebuttal.

The Court—Objection overruled.

A. (Continued) At the empty lot on 17th Avenue.

Q. And then where did you go? A. Directly across the street from Mr. Blue's home.

Q. Did you see Donnelley come out? A. Yes, sir.

Q. From where; from the time you left Blue to

the time you saw Donnelley come out, were you in a position to see the front door? A. Yes, sir.

Q. Did you watch the front door? A. Yes, sir.

Q. Did anyone ring the bell? A. No, sir.

Q. Did anyone go up to the front door? A. No, sir.

Q. Did you go—after Mr. Blue came back—did you go with him back to the dance? A. Yes, sir, I did.

Q. Was there talk in that car? A. Yes, sir.

Q. During the course of the conversation in that car, did Mrs. Blue say anything about Mrs. Marsden?

Mr. Ward—Objected to; that cannot be binding upon either the defendant or the interpleader.

A. Nothing was said of Mrs. Marsden.

Q. Was anything said at that time about any letter? A. Not a word.

Mr. Ward—Objected to.

Q. Did you come back in the car from the dance? A. Yes, sir.

Q. When Mrs. Blue and her husband were in the car? A. Yes, sir.

Q. Was anything said on the trip back as to a letter or as to Mrs. Marsden?

Mr. Ward—Objected to; it cannot be binding on the defendant.

The Court—I will deal with it.

A. Not a word.

Q. When did you first hear Mrs. Marsden's name, or about any letter in connection with this case? A. During the testimony in court.

Cross Examination by Mr. Ward:

Q. No one but Donnelley came out of that house that night while you were watching? A. A lady came out beside Mr. Donnelley.

Q. You did not see the woman who followed Donnelley up the street? A. I did.

Q. Didn't she come out of the house? Yes, sir.

Q. Then there was somebody came out of that house besides Mr. Donnelley? A. Yes, sir.

Q. Right during this occurrence there was somebody came out of that house? A. When Mr. Donnelley came out of the back door, out of the alleyway—both persons came out of the alleyway.

Q. You, I presume, heard every word that was said both going and coming to and from Pompton that night? A. Yes, sir.

Q. Every word that Mr. Blue said to his wife? A. Yes, sir.

Q. And you are sure you did not miss a single word? A. Not a word.

Q. Why? A. Because the subject was so interesting I paid all attention I could to the conversation.

Q. Why did you listen to every word? A. Because it was a very serious happening.

Q. And you are absolutely positive there was not a word exchanged between Mr. Blue and his wife that night that you did not hear? A. Not a word.

By the Court:

Q. Did you recognize the woman that came out of the alleywy? A. No, sir.

Re-direct Examination by Mr. Lane:

Q. What kind of a woman was she? A. Rather short.

Q. Did you hear her say anything? A. "Come back."

Q. Did you hear her say anything else?

Mr. Ward—Objected to.
The Court—Objection overruled.

A. No, sir.

ROY U. SMITH recalled in rebuttal, testified as follows:

Direct Exmination by Mr. Lane:

Q. On Sunday, the 20th of November, was anything said by your wife as to what had occurred on the night of the 19th? A. Nothing, absolutely nothing.

Q. On the 21st, do you remember going to some movie, or something of that kind with Mr. and Mrs. Blue? A. Mrs. Blue and Mrs. Smith and myself; that was on Monday, the 21st.

Q. What time? A. I should say about eight o'clock. Mr. Blue, I believe, was not with us.

Q. Was there anything said during that evening as to the events of the 19th? A. Absolutely not a word.

Q. Did you know anything about the events of

the 19th at that time? A. I knew nothing of the events of the 19th at that time.

Q. When did you first receive any information with respect to the events of the 19th? A. In Mr. Evans' office on the morning of Tuesday, the 22nd.

Q. Who was present? A. Mr. Wiseman, Mr. Evans and my father.

Q. When did you first see Mr. Blue after the 19th? A. In the early afternoon of the 22nd.

Q. Where? A. At his place of business in New York City; I was accompanied by Mr. Wiseman.

Q. Were the events of the 19th discussed?

Mr. Ward—Objected to.
The Court—Objection overruled.

A. The event was discussed; the details were not discussed.

The Court—He answered that before.

Q. Did you have a subsequent conversation with Mr. Blue? A. On that subject?

Q. Yes. A. No, sir.

Q. Was there any paper prepared before you went over on the 22nd to see Mr. Blue? A. There was; Mr. Wiseman had it in his pocket.

Q. Did Mr. Blue read that? A. He did not.

Mr. McGinnis—That is objectionable, sir.
The Court—Objection overruled.

Q. You were present, of course, at the conference at Mr. Evans' office, at which your wife and her counsel were present? A. I was present at a conference in Mr. Wiseman's office.

Q. When did you first hear about any letter said to have been received by Mr. Donnelley? A. During one of the early days of this trial.

Q. Was there any suggestion of that before? A. None that I ever heard.

Q. When did you first hear of a Mrs. Marsden having been present? A. During one of the early days of the trial in this court.

Q. Was there any suggestion of that before? A. Absolutely none.

Q. What time was it in the afternoon or evening of the 19th, if you can recollect, that Mrs. Smith called up the Evans' house?

Mr. Ward—Objected to on the ground that that has been fully gone into.

The Court—Objection overruled.

Q. It has been fully gone into, but I don't think the hour was given. A. The first time was sometime about 9 o'clock.

Q. When was the second time? A. In the neighborhood of 11:30; that was on Saturday night the 19th.

Q. Have you made a record of the money you gave to your wife during the year 1921? A. I cannot give it to you in detail.

Q. Do you know how much it is?

Mr. Ward—Objected to; that was brought out on cross-examination of Mrs. Smith.

The Court—I will allow this question.

Mr. Ward—The matter was purely collateral on the examination of Mrs. Smith.

Q. During the year of 1921?

The Court—The question is evidential and proper.

A. During the year of 1921 up to the time of the separation, the amount of which I have a record, was just under $2300.

Q. Where is your record? A. The records are the stubs in my check book, and also a regular allowance of $30.00 a week in addition to that amount I had given her.

By the Court:

Q. Have you any record? A. I have the checks, but they are not here.

Mr. Lane—He can testify without the record; he can now testify without the record.

The Court—If he can do that, I will allow him to testify.

Cross Examination by Mr. Ward:

Q. You say you have a check book? A. I have the stub of the check book.

Q. The stubs show the amount of money that you say you gave to Mrs. Smith? A. They show the amount of the checks that I gave her.

Q. And, without having refreshed your recollection from that, you would not be able to tell how much you had given to her, would you—without refreshing yourself by looking at this record of the check stubs, you would not be able to tell how much you had given her in a year? A. I can give an estimate.

Mr. Ward—$30.00 we do not dispute.

By the Court:

Q. How much did you give her last year in addition to that? A. In going over my stubs I took into account only checks which I had drawn to her order; the amount was between $725 and $750, in addition to the $30.00; besides that, I had given her cash amounts of various sizes at different times.

Further Cross by Mr. Lane:

Q. During the year 1921, do you remember buying her a fur coat? A. Yes, sir.

Q. How much did you pay for it? A. I am not sure that it was during 1921, but I bought her a fur coat for $475.00.

Q. Was it during the year 1921 that you refurnished the house? A. It was earlier than that—perhaps a year or two earlier.

Q. This $30.00 a week, what was that for? A. To cover the expense of setting a table and the maid.

Q. Did that cover the full salary of the maid? A. Yes, sir—I beg your pardon, Mr. Lane; at one time I gave Mrs. Smith extra money for half the wages of the maid.

Q. Was that during 1921? A. Yes, sir.

Q. Did Mrs. Smith tell you of the dinners that she had had or the times she had met Mr. Pearsall in New York? A. I knew nothing about it until after this case came up.

Q. When did you first hear that? A. It must have been during the week following the 22nd of November, two or three days afterwards.

Q. I am talking now, not about Mr. Pearsall—not about the episode in Oxford—but the times that Mrs. Smith met Mr. Pearsall in New York; do you remem-

ber when you first heard of that? A. That was what I meant—a day or two after the night of the 22nd.

Q. Do you know any of the details—who told you about it? A. My mother and father told me about it.

Q. Do you know any of the details? A. They told me at that time.

Q. About Mr. Pearsall meeting her in New York? Did you know any of the details of Pearsall meeting your wife in New York—on the 22nd? A. No, sir, I simply knew they had met; I did not know any of the details until I heard of them in the court.

Q. Was it the testimony of Pearsall, which gave you the first information you had as to details? A. I believe it was.

Q. Did Mrs. Smith ever complain to you about the attentions which Mr. Fairhurst, she has testified, paid her? A. She never complained to me about any attentions that Mr. Fairhurst was paying to her.

Q. Did you ever say to her—did she ever tell you, rather, that Fairhurst was making improper advances to her? A. No, sir.

Q. Did you ever say she was crazy, or words to that effect, for saying such things? A. I never did.

Q. Did any conversation of that kind ever take place? A. It did not.

Q. You never said to her that she was crazy to think that Fairhurst had written this letter? A. I had no knowledge of the letter; I did not say such a thing.

Q. Mr. Smith, did you continually make love to Mrs. Edna Blue? A. I did not.

Q. Did you insist on holding her and kissing her? A. I did not.

Q. Mrs. Blue has testified to an episode said to have taken pace when Borden's milk men were on strike—have you read her testimony as to that—in the first place, you heard it in the court room? A. Yes, sir.

Q. Have you read it since? A. I have not.

Q. Did you sit on the edge of the bed beside her on that occasion, insisting on making love to her, kissing and embracing her and holding her? A. I did not.

Q. Did she say to you: "Roy, you cannot do this; Andy would be very provoked about it, and I am ashamed of you in acting this way" or words to that effect? A. No, sir.

Q. Did you say to her, "If you will put your arms around me and kiss me, I will let you go?" did you say that? A. I did not.

Q. And did she thereupon kiss you? A. She did not.

Q. Do you remember that episode? A. I knew nothing about it; the first I heard of it was in this court room.

Q. Do you remember when Borden's milkmen were on strike? A. I heard they had a strike.

Q. Do you remember any episode about that time when you got some milk for her? A. I do not.

Q. Did you ever, during that strike, get any milk for her at her request? A. No, sir.

Q. Were there any occasions when you went out with Mrs. Blue in the car alone with her? A. I have taken her home from the moving pictures when we have been together.

Q. On any one of those occasions, did you refuse to bring her home unless she would allow you to kiss and embrace her? A. I did not.

Q. Do you remember any occasion way out by a railroad track when you insisted on staying there until she sat in your lap and let you embrace her? A. I heard that in the court room; I don't know what she is talking about; there was no such occasion as that.

Q. Was there ever a time when you asked her to go to the movies and she refused to go? A. There may have been; I don't recollect any.

Q. When did you first hear of the accident to your car that has been talked about? A. You mean on July 9th?

Q. Yes. A. That was in the late afternoon.

Q. How? A. I believe Mrs. Smith told me when I got home; I was at home reading; she told me she had had an accident to the car.

Q. Did she tell you the details? A. She said she had been on her way to New York to meet me at my office as a surprise, and that we would have lunch together.

Q. Did you ever know that your car was being used by Donnelley? A. I did not.

Cross Examination by Mr. Ward:

Q. You were with your wife on the Sunday following the 19th of November, were you not? A. We were home together.

Q. All day long? A. No, sir, I was out in the afternoon.

Q. Did you see Mr. Fairhurst that day? A. I don't think I did.

Q. You saw him in the park, didn't you? A. No, sir, I did not.

Q. Didn't you attend a football game and see Fairhurst there? A. No, sir, I did not.

Q. You saw Andy Blue there? A. I took him up there.

Q. When did you next see Fairhurst after the 19th? A. When he came to my office late on Monday afternoon.

Q. That was the first you saw of him? A. Yes, sir.

Q. You had a conversation with him, of course? A. We came home together on the train.

Q. And you were with Mrs. Smith on Monday night? A. I was.

Q. Yet you say you knew nothing about these incidents? A. That is right.

Q. And Fairhurst was your best friend, wasn't he? A. Yes, sir.

Q. And you know now that he knew about the incident of the 19th of November when you saw him on Monday? A. Yes, sir.

Q. And yet he never said a word to you about it? A. No, sir.

Q. Did he tell you about it afterwards? A. No, sir.

Q. You have consulted with him since the conference in Mr. Evans' office? A. Yes, sir.

Q. You slept with your wife Monday night? A. Yes, sir.

Q. Then on Tuesday you say you had this conference in Mr. Evans' office? A. Yes, sir.

Q. Was Fairhurst there? A. No, sir.

Q. And after having had this conference on Tuesday, you returned to your home, didn't you? A. At noon time, yes, sir.

Q. And you acted the same way that you had acted Sunday and Monday, didn't you? A. Acting under advice of counsel, I did.

Q. I did not ask you that? A. Yes, sir, I did.

Q. You acted just as cordially, and your demeanor towards your wife was the same as it had been on Sunday and on Monday? A. I tried to make it so.

Q. And you never said a word to her, did you, about what you say you learned for the first time at Evans' office on the 22nd? A. I went directly from Evans' office to my house; I said nothing to her about it.

Q. What caused you to go home on Tuesday? A. It was my custom to have Mrs. Smith drive me to the train, and I had made that arrangement with her that morning.

Q. Why did you return that day? A. I went back to keep my engagement with her to have her drive me to the train; when I got home I found the house all torn up. I told her I would leave the car at the washer's to be washed.

Q. You had a telephone in your home? A. Yes, sir.

Q. You could have telephoned her? A. Yes, sir.

Q. That never occurred to you, that you could have telephoned to your wife? A. I did not.

Q. Have you made an affidavit with reference to the $725.00 or $730.00 that you gave to your wife, you say—since you filed your affidavit in reply to her application for alimony pendente lite? A. I made it at the time of replying to her application.

Q. Did you make any mention of this large sum in your affidavit? A. It was all included in the estimate that I made.

Q. That is your estimate, isn't it? (Showing witness a paper). A. Yes, sir.

Q. And this amount that you have testified that

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you gave to her from the first of the year up to the time of your separation, is not mentioned in there? A. No, sir, it is not; that was household expenses—costs of running the house.

Q. That was the amount of money that you expended, wasn't it—that you swore to? A. For living expenses, yes, sir.

Q. Didn't you have charge up cosmetics and drugs for her? A. Certainly, that was all part of the living expense.

Q. Why didn't you mention your club dues? A. May I see it? (Counsel shows it to him.) That is not in the same statement you showed me first.

Q. It is on the front sheet of your affidavit? A. Yes, sir.

Q. Now, then, Mr. Smith, you even in your affidavit mentioned your club dues, didn't you? A. Yes, sir.

Q. And your own clothing? A. Yes, sir.

Q. Then why didn't you mention the amount of money you gave to her—this $725.00 that you are now swearing to? A. It must be in there somewhere, Mr. Ward.

Q. That is an after thought, isn't is—a thought since her evidence of yesterday? A. No, sir, I took it from the figures I used at that time.

Q. You mentioned "Allowance to wife, including table expenses of $130.00 a month;" is not that the $30.00 a week to which reference has been made? A. Yes, sir.

Q. Then the $30.00 a week included the allowance to your wife? A. It was an allowance to my wife.

Q. It included the allowance you made her? A. It did not include extras.

Q. If you were giving her this money, why didn't you figure her allowance each week and give it to her; why didn't you do that? A. I don't know that there was any reason for it; she wanted extra money all the time.

Q. If you found it necessary to give her extra money right along, and you were so particular as to give her $725.00 from January 1 to November 19, why didn't you increase her allowance? A. Because I think it is a husband's duty to husband his resources; I gave her extra money as she needed it.

Q. But you found she was needing it right along? A. I felt that if I had increased it she would still have wanted more; she is very fond of pretty clothes and things.

Q. In your affidavit you said that your income was $5,000 a year, and that you spent annually in the entertainment of customers, etc. $1,000 of that; is that true? A. Yes, sir.

Q. That reduced your income to $4,000? A. Yes, sir.

Q. And you state that your salary has been about $4,000; you state that in your affidavit? A. Net, yes, sir.

Q. Now, then, according to your affidavit, your monthly expenses, irrespective of what you say you gave your wife extra, was $322.00 a month? A. Yes, sir.

Q. And twelve times that makes $3984.00? A. Yes, sir.

Q. And your club dues were $135.00? A. Yes, sir.

Q. Making $4,119.00 a year? A. Yes, sir.

Q. Irrespective of your clothes? A. Yes, sir.

Q. And you were only making $4,000 a year? A. Yes, sir.

Q. Where did you get the $725.00 to give your wife? A. I had to draw on my principal, owing to poor business; I was running behind at that time.

Q. And irrespective of the fact that you were running behind, you say you gave your wife this extra money, although you were not willing to increase her allowance? A. Yes, sir.

Q. Why didn't you set that forth in your affidavit? A. What?

Q. That you had given her $725.00 or $730.00 during the year up to the time of your separation, extra? A. Mr. Ward, I have said that that is in there.

Q. Can you find it; see if you can find it. A. (Witness looks it over.) I don't know where it is here.

Q. You are given the opportunity to find it now, are you not? A. It is a combination of this statement and the club dues afterwards.

Q. That is your best explanation? A. It is, Mr. Ward.

Q. And you have been unable to find in your affidavit anything with reference to the $725.00 or $730.00 that you now testify you gave to your wife extra? A. It was split up month by month, a few dollars at a time.

Q. Where was it split up? A. In my accounts; this is an average month; it is not a specific month.

Q. You mean then, that this was an average of what you gave your wife? A. It is an estimate.

Q. And an average? A. Not what I gave her, but what it cost to maintain—

Q. Wasn't that your allowance to your wife? A. That was the regular allowance.

Q. And that was not for the one particular month on an average? A. Yes, sir.

Q. So you were averaging up what you gave to your wife? A. Yes, sir.

Q. And what you gave to her averaged $130.00 a month, didn't it? A. Yes, sir.

Q. And that was all you gave her? A. It was not all I gave her.

Q. Then why didn't you include it in your average that you put down here in your affidavit? A. I don't know why it was not included.

Q. Now, at the time you come into court with your affidavit on your wife's application for alimony pendente lite, you knew then that it was to your interest to keep your expenses down, and the amount of money you spent, as low as possible, didn't you? A. I don't understand the question.

Q. You knew that the larger showing you made here in court the more alimony your wife would get, didn't you, your wife and your two little girls? A. Yes, sir.

Q. That did not influence you at all in not putting in the $725.00 that you now say you gave your wife? A. It did not; I made what I believed was a true statement.

Q. Then why didn't you put it in? A. I am saying I don't know why it is not in there.

Q. You say you did hear about Pearsall from your father and step-mother? A. It must have been about November the 24th or the 25th.

Q. Before that—I don't mean about what they say happened, but I mean you knew that Pearsall had been up at Oxford? A. Yes, sir, I knew there was a Harry Pearsall, and I knew he had been in Oxford.

Q. At the time your wife was there with your children? A. Yes, sir.

Q. That was generally discussed between you and your father and your step-mother? A. I would not say generally discussed; I knew he had been there, that was all.

Q. It was talked about? A. Yes, sir.

Q. Did they tell you they had invited him to come on and visit you in Paterson? A. I believe so.

Q. There was never a mention made of what they testified to in court? A. They did not mention it to me.

Q. Although you knew there was some feeling between your father and your step-mother and your wife; you knew that? A. No, sir, I did not.

Q. You did not—about the key? A. That was a slight feeling; that was not serious—yes.

Q. Did your wife speak about the trip she had made with Pearsall to the fair, to Norwich? A. Yes, sir.

Q. And that was talked about between your father and your step-mother and yourself as well, generally? A. It may have been at some time.

Q. Mrs. Smith told you about that, too, didn't she? A. She did.

Q. You do remember Borden's milk strike? A. Yes, sir.

Q. And you know that Mrs. Blue had a young baby at that time? A. I think she had a baby at that time.

Q. What impresses the milk strike on your mind? A. I read about it in the newspapers.

Q. Aside from that? A. Nothing, that I recall.

Q. And you never were requested by your wife during that strike to take milk down to Mrs. Blue? A. I was not.

Q. You would have done it if you were asked? A. Certainly.

Q. And you got the milk for your own family, didn't you—with your automobile—during that time? A. I don't remember having done it.

Q. There was no one to get it for Mrs. Blue, was there? A. Mrs. Smith could have got it; she had the car all day long.

Q. It was natural; do you know whether she did or not? A. I do not.

Q. Will you say positively you did not get milk in your car on the occasion of that strike? A. I have no recollection of it.

Q. Of course, you did kiss Mrs. Blue? A. I have at times, yes, sir; she is one of the family.

Q. And you have embraced her at times? A. Yes, sir.

Q. So that the difference between what you say and what she says, is simply the degree of your ardor? A. I take it that way.

Q. You went down to see Andy Blue, you and these mutual friends of yours, and of your wife, didn't you? A. I don't know to whom you refer?

Q. I am referring now to Mr. Wiseman—you and Mr. Wiseman went down? A. On the afternoon of the 22nd?

Q. Yes. A. Yes, sir, we did.

Q. And you say you had an affidavit, a paper? A. We had a paper, it never became an affidavit.

Q. I understand you had prepared in Mr. Wiseman's office, before consulting with Mr. Blue, a paper, which, after having been tested, would have been an affidavit? A. That is correct.

Q. Was that prepared under your supervision? A. No, sir.

Q. Under Mr. Wiseman's supervision? A. I believe he wrote it.

Q. And that was for Mr. Blue to sign, and he did not sign it, and was not there when it was written up? A. I believe so.

Q. Isn't it true that Mr. Blue denounced you and Mr. Wiseman and what you were doing in his New York office? A. He disagreed with what we were doing.

Q. Didn't he say it was a shame and an outrage for you to assume the attitude you had taken, and that it was your duty to stick to your wife and children? A. No, sir.

Q. Nothing to that effect at all? A. No, sir.

Q. Mr. Smith, did not Andy Blue on that occasion tell you that you ought to stick to your wife, and that you were foolish in assuming the attitude you assumed? A. No, sir, he did not.

Q. Then, when this conference took place at Wiseman's office, you will recall that Mrs. Smith at one time attempted to speak, and that her counsel told her not to, that he would do the talking, do you recall that? A. I recall that Mrs. Smith said something; I don't remember what it was.

Q. And she was interrupted and stopped by her counsel? A. I don't remember that.

Q. And was there only one remark she made during that entire interview, or attempted to make? A. I believe that is true.

Q. And this case was not discussed, was it? A. We were discussing the children.

Q. And that is what the conference was about, at Mr. Wiseman's office? A. It was not entirely confined to that subject.

Q. Was not that the only thing that was discussed? A. It was not, Mr. Ward, you started—

Q. Wait a moment—well, there were no accusations made at that time against Mrs. Smith, were there, in Mr. Wiseman's office? A. There was only a general accusation made.

Q. In other words, you said you wanted your children, and you did not want her to have them? A. Yes, sir.

Q. And that was the general accusation? A. It was said that she had done some terrible things.

By the Court:

Q. Who said that she had done some terrible things? A. I think I said so.

Q. Did anyone else say it? A. I don't recall; most of the conversation was between Mr. Ward and myself.

Q. And you made inquiry as to what those terrible things were that she had done, didn't you? A. I did not, at that time.

Further Cross:

Q. And then it was at that time that your wife's counsel said that he knew and firmly believed that she had not done terrible things, wasn't it? A. I do not recall your having said that, Mr. Ward.

Q. The accident to your car in July, 1921, was called to your attention by your wife, you say? A. Yes, sir.

Q. And thereafter you had the car fixed? A. Yes, sir.

Q. What was the cost of the repairs—$46.00, wasn't it—the accident to the car at Fort Lee ferry? A. I think it was about $46.00.

Q. You sent a bill for $75.00, didn't you? A. Yes, sir.

Q. To Mr. Griffin? A. Yes, sir.

Q. You wanted to make about $30.00 on the accident? A. That was not the idea.

Q. What was the idea? A. The idea was the difference between the cost of the new parts and the old parts; I used the old parts; subsequently, the bill was compromised for $50.00, so there is a difference there of $4.00.

Q. But you sent the bill back to Mr. Griffin, representing that the cost of the repairs to your car was $75.00, didn't you? A. I did, yes, sir.

Q. And that was untrue, wasn't it? A. It was not untrue.

Q. Were the costs of the repairs to your car any more than $46.00—"Yes" or "No." A. Yes, sir.

Q. How much more? A. I was entitled to new parts.

Q. I am not asking you that—I am asking you if the costs of the repairs to your car were any more than $46.00?

The Court—He says it was, yes.

Q. The actual costs of the repairs to your car were $46.00? A. Yes, sir.

Q. Yet you sent a bill in to Griffin representing they were $75.00? A. Yes, sir.

Re-direct Examination by Mr. Lane:

Q. Have you the check stubs upon which you made this calculation of seven hundred and some odd dollars? A. They are not in the Court, but I can get them by two o'clock.

Re-Cross Examination by Mr. Ward:

Q. I omitted something. You gave the thirty dol-

lar check to your wife Friday nights? A. Friday or Saturday nights.

Q. Wasn't it your habit frequently to borrow money back from her? A. I may have done at times.

Q. And then wouldn't you repay her that by check? A. I may have, I don't know.

Re-direct Examination by Mr. Lane:

Q. You have been asked by counsel as to whether Andy Blue at the conference you had with him, did not make certain remarks to you—what did he say? A. I don't understand the question.

By the Court:

Q. What did he say when you went over there to see him? A. He did not deny that all these things were true?

Q. What did he say? A. He wanted me to wait for six months; he refused to sign the affidavit which we had; he said he would sign it if I waited six months, if I wanted it at that time.

Q. Was there any talk at that time about what occurred on the 19th? A. Only general talk.

Q. What was the general talk; what was said? A. Mr. Wiseman told Mr. Blue he had come to have him sign an affidavit of the events of the 19th. Mr. Blue then told us that he wanted me to give her another chance, and that he would not sign the affidavit for six months, but that he would sign it at the end of that time if I wanted it.

Further Re-direct:

Q. What else was said—did he say why he took that position? A. Because he thought I ought to give her another chance.

Q. Did he say anything about his wife? A. He did not, at that time.

By the Court:

Q. Is this the first conversation you had with Mr. Blue relative to the events of the 19th? A. It is the only conversation.

Q. What date did it occur? A. On the afternoon of November 22nd.

Q. Didn't you ask Mr. Blue what had occurred on the 19th at this conference? A. No, sir.

Further Re-direct:

Q. Why not?

Mr. Ward—That is objected to.

The Court—The objection will be overruled.

A. Because he assumed a rather belligerent attitude and—

Q. Was it in the affidavit— A. Everything was in the affidavit; probably that was the reason it was not discussed.

The Court—Strike that answer out.

Q. Was it in the affidavit? A. The details were in the affidavit.

Q. Did Mr. Blue say, during the course of that conversation, do you recollect, did Mr. Blue say what would have happened if it had been his wife?

Mr. Ward—Objected to as leading.

The Court—I shall sustain the objection.

Q. Did he say anything further, Mr. Smith, at that conference? A. I think that he said he was afraid he would have done something very desperate.

Further Re-direct:

Q. Do you remember his exact words? A. I don't know whether he said it or not, but I took the meaning to be—

Q. Answer the question; tell us what he did say —not what you conceive his meaning to be, but what he did say.

Mr. McGinnis—Your Honor directed the question to him to tell the entire conversation, and he gave the conversation and stopped.

The Witness—I don't recall the details of this conversation.

Q. You cannot tell us the details of this important conversation with Mr. Blue? A. I cannot.

Further Re-direct:

Q. How soon after the conference at Mr. Wiseman's office was it that you saw Mr. Blue? A. I met him on the train since then, but never to discuss this matter.

Q. How soon after the conference at Mr. Evans' office was it that you saw Mr. Blue? A. It may have been a week or two.

Q. It was the same day, wasn't it? A. At Mr. Evans' office; I left Mr. Evans' office about 11:30, and we got to Mr. Blue's office that afternoon around two o'clock.

Q. Did you go right from Evans' office to Blue's office? A. I went home first; I stopped at my home first.

Q. When did you leave Mr. Evans' office? A. About 11:30 on the 22nd.

Q. Where did you go? A. I went to my home.

Q. From thence where did you go? A. I went to New York.

Q. Where did you go then? A. To Mr. Blue's office.

Q. Were you alone? A. I was accompanied by Mr. Wiseman.

Q. Where did you meet him? A. At the railroad station in Paterson.

Q. Did you stop anywhere between the time you left the railroad station in Paterson and the time you got to Mr. Blue's office? A. I stopped at my office a moment.

Q. During the conference between yourself and Mr. Blue, was Mr. Wiseman present during all the time? A. Yes, sir.

Q. Were your present when the affidavit was dictated? A. I was not.

Q. Who was present at the conference in Mr. Evans' office? A. Mr. Wiseman, Mr. Evans, my father and myself.

Q. Who was the person that imparted to you the information as to what had occurred on the night of November 19th?

Mr. Ward—Objected to.

A. Mr. Evans.

The Court—I will let it stand, Mr. Ward; I will note the objection.

Q. Did you, during the course of the conference in Mr. Wiseman's office, I think it was this time, in which there was talk between yourself and Mr. Ward, did you say anything about any evidence that you had? A. I think not.

RUDOLPH A. WISEMAN, recalled.

Direct Examination by Mr. Lane:

Q. Mr. Wiseman, were you present at Andy Blue's office in New York at the time there was a conference between Mr. Blue and Mr. Smith and yourself? A. Yes, sir.

Q. Will you tell us what took place from the time you went in until the time you went out? A. Mr. Smith and I went there for the purpose—

Mr. Ward—I object to the purpose for which they went.

Q. Tell us what happened. A. We saw Mr. Blue at his office and told him that we had come there for the purpose of having an affidavit executed which I had in my possession.

Mr. McGinnis—We object to all this conversation.

The Court—I think the door was opened to what Mr. Blue said—

Q. Did you have a conversation with Mr. Blue that day at the office? A. I told him we had come there for the purpose—

Q. What did Mr. Blue say to you?

Mr. Ward—Objected to on the ground that while the door may have been opened with reference to Mr. Smith, but not with reference to this witness.

A. Mr. Blue said he would very gladly sign the affidavit provided Mr. Smith would wait for a period of six months; he said his actions on November 19th, that is, Mr. Blue's, had put him in a very bad position with his wife, and that it had caused considerable home trouble, and that is the reason he refused to sign the affidavit at that time.

Mr. Ward—I ask that that be stricken out; he is giving his opinion.

The Court—The objection will be overruled.

Q. Did Mr. Blue say what had happened then? A. Yes, sir, he said on the night of November 19th he had entered in his home and found Mrs. Smith and Donnelley in bed together, and Mrs. Smith was very scantily clad, having on a kimona, which was rolled up to her armpit; that Mr. Donnelley was partly clad, though not naked; I believe his coat and vest were off; he said that as he entered the room Mrs. Smith screamed, and Donnelley, — or rather, Mr. Blue attacked Donnelley, and Mrs. Smith said, "Don't kill him, I love him and not Roy Smith."

By Mr. Ward:

Q. Was this at Mr. Blue's office? A. Yes, sir.

Q. Was Mr. Smith present? A. Yes, sir, and Mr. Blue said that if this same thing had happened to him he would have killed his wife.

Further Direct:

Q. How long were you in Mr. Blue's office? A. We were probably there in the neighborhood of an hour.

Q. Were you present at Mr. Evans' office at the time Mr. Smith was informed of the events of the 19th? A. Yes, sir.

Q. Who else were present? A. Mr. William Smith and Mr. Roy U. Smith.

Q. Who imparted the information? A. Mr. Evans.

Q. What was said by Mr. Smith, by Mr. Roy U. Smith?

Mr. Ward—Objected to.
The Court—Objection sustained.

Q. Were you there and did you observe Mr. Smith at the time he first got the information? A. Yes, sir.

By the Court:

Q. Where was that?

Mr. Lane—In Mr. Evans' office.

Q. Were you there from the time Mr. Smith got into the office until the time he left? A. No, sir, he was there at the time I arrived.

Q. Had there been any talk going on? A. There may have been previous to my entry.

Q. About this case?

Mr. Ward—I object to that.

By the Court:

Q. After you got there? A. Yes, sir.

Further Direct:

Q. Were you there when Mr. Evans started to explain the situation to Mr. Smith?

Mr. Ward—Objected to as leading.

The Court—Objection sustained.

Mr. Ward—I ask that the answer be st
ken out.

The Court—Strike out the question and the answer.

Q. After you got there, what happened?

Mr. Ward—Objected to.

By the Court:

Q. Did you go to Mr. Evans' office? A. Yes, sir.

Mr. Lane—It is the conference on the 22nd; counsel has objected to my drawing the witness' attention to a particular occasion, so I shall have to ask him the question as to what happened.

Mr. Ward—Of course, we object to that—

The Court—Is this another conference?

Mr. Lane—This conference at the office of Mr. Evans, on the morning of the conference at Mr. Blue's office, between Mr. Smith, at the time Mr. Smith—the conference at which Mr. Smith testifies he first got the information; now, it is highly important as to when he first got the information.

Further Direct:

Q. Were you presenet at the conference at Mr. Evans' office on the morning of the 22nd? A. Yes, sir.

Q Were you there at the time Mr. Evans spoke to Mr. Smith?

Mr. Ward—Objected to as leading.

Q. After you got there, what happened?

Mr. Ward—Objected to.

The Court—The objection will be overruled.

A. Mr. Evans told what he had heard as to the happenings of the night of November 19th.

Q. What did he say?

Mr. Ward—Oh, no, if your Honor please, we object.

The Court—Objection sustained.

Q. What did Mr. Smith say?

Mr. Ward—I object to that.

The Court—Objection sustained.

Q. Did it appear that Mr. Smith was surprised or not?

Mr. Ward—Objected to as leading.

The Court—Objection sustained.

Q. Could you tell from the demeanor of Mr. Smith as to whether he was surprised or not?

Mr. Ward—Objected to.

The Court—Objection sustained.

Q. What did he say upon being informed; how did he act upon being informed?

Mr. Ward—Objected to.

The Court—If he laughed or not, I will let that go in, if that is it.

Mr. Lane—I want to get the record straight.

Q. How did he act when he received this news?

The Court—That is overruled. The witness desires to confer with Mr. Lane.

Mr. McKee—We object to that.

Mr. Lane—You may address me from the witness stand; the probabilities are, that I have overlooked asking him something.

The Court—The rules of the Court of Chancery are so elastic, that if anything is overlooked in a matter of this character, the witness may be recalled again; I thought it might save time to have him now talk to his counsel, but if you don't desire it, I will let him be recalled.

Mr. Ward—We have no questions.

MRS. FRANCES B. SMITH, the defendant, recalled.

Direct Examination by Mr. Lane:

Q. Mrs. Smith, I show you a paper, which purports to be the register of the United States Hotel

for Thursday, July 20th, 1922, and draw your attention to the signature which appears in that register: "Mrs. H. A. Smith, Newtown, N. J., 15," and ask you if that is in your handwriting? A. It is not.

Q. You are sure of that? A. I am positive it is not; I have never seen the register before in my life.

Q. I ask you to look at that; does it look like your handwriting? A. No, sir.

Mr. Lane—I ask that this be marked for identification.

Marked "Exhibit Z A. 5½ for identification."

JULIUS KUNZ, being duly sworn in rebuttal, testified as follows:

Direct Examination by Mr. Lane:

Q. What is your business? A. My business is clerking.

Q. I show you what purports to be a hotel register of the United States Hotel for Thursday, July 20th, 1922, and ask you if that is the hotel register for that date? A. Yes, sir, it is, at that time.

Q. The word "15" opposite the signature of Mrs. H. A. Smith, Newtown, N. J., does that signify the room occupied by the person who so registered? A. Exactly.

Q. There is nothing in this register, is there, to show the hours during which that room was occupied? A. No, sir, I don't think so; there never was.

Q. Have you examined any of your records to

find out what hours that room was occupied? A. Well, I am not employed at the United States Hotel at the present time, but at that time we did keep the records of each and every person that registered.

Q. But you are not employed there now? A. No, sir.

Q. This was the register kept during the time you were there? A. Yes, sir, the year 1922.

Cross Examination by Mr. Ward:

Q. Have you ever seen Mrs. Smith, the defendant, before to-day? A. No, sir.

Q. You were the clerk in attendance at the time on the 21st of July? A. I was, yes, sir.

Re-direct Examination by Mr. Lane:

Q. You say you never saw Mrs. Smith? A. No, sir.

Q. You were there during the daytime? A. Well, not at that time.

Q. What time were you on duty? A. From six o'clock at night.

Q. Do you recognize every woman you have ever seen? A. Pretty nearly.

Q. And you can say positively that after six o'clock at night you never saw Mrs. Smith sitting in the hotel, or at the restaurant, or anywhere; is that right? A. Well, pardon me, I cannot tell you about the restaurant—

Q. Why not? A. I was the clerk at the desk.

Q. Have you ever seen her in the restaurant? A. Never.

Q. Then you can tell us about the restaurant—that you did not see her? A. I never paid any attention to the restaurant.

Q. Would you recognize Mrs. W. M. Dyer, of Chestnut Hill, Pennsylvania, if you happened to see her? A. It would be a pretty hard thing.

Q. Then how can you say you never saw Mrs. Smith? A. Not to my knowledge.

Q. What do you mean—not to your knowledge?

Mr. Ward—I object to the question on the ground that it is not re-direct.

The Court—The objection is overruled.

Q. What do you mean by that,—not to your knowledge? A. I cannot remember.

Mr. Lane—Now, I offer in evidence this register and the writings which were marked for identification before.

The Court—I will receive it for what it is worth.

Mr. Lane—And while the register is here at this time, I am going to have a photograph of it taken, and then substituted, but while the original register is here, I want your Honor to look at the signature of July 20, 1922, and that which Mrs. Smith wrote here yesterday, which is on that sheet of paper; and also, this is the signature, and that is what she wrote here yesterday, and that other is her admitted handwriting. You will find the letters formed in precisely the same way throughout that writing.

The Court—You say you want to have a photograph taken of that?

Mr. Lane—Yes, and I want to have it substituted, and also to have it enlarged.

ALBERT GUYET, sworn in rebuttal, testified as follows:

Direct Examination by Mr. Lane:

Q. Where do you live? A. 79 Bank Street, Newark, N. J.

Q. What is your employment? A. Investigator.

Q. For what agency? A. Cosgrove Agency.

Q. Do you recognize the lady who is sitting along side of Mr. Ward there? A. Yes, sir, I had a room at No. 38.

Q. Answer the question and no more; do you recognize her? A. Yes, sir.

Q. On the 19th of July, 1922, did you see her—on the 20th of July, 1922, did you see her?

Mr. Ward—Objected to.

A. Yes, sir, I saw her around at 7 o'clock at night, at 87 Jasper Street, Paterson, N. J. She came out of a residence there; I was across the street at No. 88.

Q. Where did she go? A. She had two young girls with her who, I got to know, were her daughters; she got on the trolley car and transferred on to the Park car; got off at Pennington Street and Park Avenue and walked down to a house on the left that I found after she entered at 25 Pennington Street. I waited for a while, and it must have been a little after 8 o'clock or so, and she came out alone and walked down to the Garden Theatre on the right near the depot, down on Market Street near the depot; she went over to Colt's Restaurant; I entered about five or ten minutes later and had a cup of coffee, and I saw her sitting there with a man aged about 35, weight about 145 pounds—

Q. Proceed. A. After I had my coffee I got on the outside and covered, and she came out with this gentleman friend of hers, and walked in back of the City Hall and into the United States Hotel; that was around 11 o'clock. I then entered the grill and walked into the rear and looked into the restaurant and saw them sitting in the restaurant, and I went into the barroom, and when I went back they were not in the restaurant; I waited until around one o'clock or so. The next morning around 10 o'clock in the morning I got back to the United States Hotel.

Q. You did not see her there? A. No, sir.

Q. If they had gone out of the restaurant into the street, from the position you were in could you have seen them? A. Yes, sir.

Q. Did they go out of the restaurant before one o'clock? A. No, sir, I saw no one leave at all from the dining room.

Q. Is there any other way by which they could have gotten out of that hotel without your seeing them? A. There is one way; they could have gotten out of the rear into a side street, but as I understood the help mostly used that.

Q. But that is not an entrance for guests? A. No, sir.

Cross Examination by Mr. Ward:

Q. You are a private detective? A. Yes, sir.

Q. And have been for how long? A. Seven years.

Q. And in the practice of your pursuit, you frequently come in contact with people to whom you have to make misrepresentations, don't you? A. Not in my experience.

Q. You never make misrepresentations to persons in your investigations? A. No, sir.

Q. If you were asked if you were a detective, you would tell them so? A. No, sir, that is the last thing we would do.

Q. You represent yourself to be something else rather than a detective? A. We don't misrepresent ourselves; we don't give any wrong names or anything.

Q. Do you come in contact with persons that you misrepresent what you are to? A. If I am asked the question if I am working or anything, I simply tell them "No."

Q. You have had no hesitation in deceiving people, have you? You have no hesitation in lying to people, have you? A. We give nothing but honest facts.

Q. It is your common practice to lie about what you are? A. No, sir.

Q. And about what you do, or what you are doing ? A. No, sir, I don't have occasion to do that.

Q. When were you first put on this case? A. Around the early part of July, 1922.

Q. How early? A. I could not exactly tell you the date; it may have been around the 12th or 10th or something like that; I don't know; I have not my memorandum book with me.

Q. Why not? A. I was called in suddenly off another case.

Q. You knew you were going to testify in this case? A. Not until last night.

Q. You had not been notified before that, that you would have to testify? A. No, sir.

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

Q. How did you remember the date so well when

you say you saw Mrs. Smith? A. Facts like that—from the same facts that come to you.

Q. The fact that you start on a case is an important fact, isn't it? A. No, sir.

Q. And you have not had your recollection refreshed with reference to the date, either, the date you saw Mrs. Smith go into the United States Hotel? A. I could not exactly give you the date that I started in here at Paterson, I don't think I could.

Q. You don't know whether it was the 18th or 20th or the 25th? A. It was around the 10th or 12th.

Q. That you saw Mrs. Smith? A. I saw Mrs. Smith before that; it was on the 20th.

Q. Was it before the 10th or the 12th that you saw Mrs. Smith? A. No, sir, I never saw her before I reached Paterson; I saw her around the 12th; I saw her on the 20th at the United States Hotel, I know that.

Q. Why are you sure of that date if you have not refreshed your recollection from your own record? A. By the fact of my being there, and locating her there that night, and being there the next morning, and tracing over the names on the book with the clerk in the hotel; those facts I recall without my memorandum.

Q. How does that enable you to recall the specific date? A. I was there at the hotel two days.

Q. I want to know why it is that you are sure about the 20th, but not sure about the date when you started in on this case? A. I know that happened on the 20th, I can recall.

Q. Something happened on the 10th or the 12th; you came to Paterson; you took up a new case and saw the party you were going to follow and watch

for the first time; those were all significant facts, were they not; here you were taking up a new case and seeing a new woman for the first time? A. Yes, sir.

Q. Yet you cannot remember what date that was, can you? A. It was either the 10th or the 12th.

Q. Well, you are sure of the 20th? A. Yes, sir.

Q. Why are you so sure of that? A. On account of going there and trying to locate them after I had been waiting, and then going around the next morning about ten o'clock.

Q. Who pointed Mrs. Smith out to you when you first came here to Paterson? A. No one at all; I never saw her before; all I got was the description of her and the address.

Q. You know the porter who was around at the United States Hotel, the man with the cast in his eye? A. I don't think so.

Q. Did you hire an automobile while you were following Mrs. Smith? A. Yes, sir, twice.

Q. And you hired an automobile from the front of the United States Hotel? A. Yes, sir.

Q. You know the driver of the automobile? A. Yes, sir.

Q. You told him you were up here watching somebody, didn't you? A. Yes, sir.

Q. And you know the man I mean, don't you; you know the particular man I mean? A. Yes, sir.

Q. He has a cast in his eye? A. Yes, sir, Googy.

Q. Did you go to him and ask him to swear that he had taken Mrs. Smith up to her room in the United States Hotel? A. No, sir.

Q. Didn't you go to him and ask him to testify to that, and didn't he say that it was not true? A. No, sir.

Q. Didn't you tell him you would make it worth his while? A. No, sir.

Q. You did have a talk with him? A. No, sir.

Q. You had a talk with him about this case? A. Yes, sir.

Q. About Mrs. Smith? A. Yes, sir.

Q. About the incident at the hotel? A. Yes, sir.

Q. And you told him he was there and had taken Mrs. Smith up? A. Yes, sir.

Q. Then why did you deny it? A. I did not deny it.

Q. Did you tell him that he was the man that had taken Mrs. Smith upstairs? A. Yes, sir.

Q. And he denied it? A. Yes, sir.

Q. And you wanted him to testify to that? A. Yes, sir.

Q. And he said he could not because it was not true? A. He claimed he did not want to get mixed up in it.

Q. Didn't he say it was not true? A. No, sir.

Q. And didn't you still insist on his testifying? A. No, sir, he said he did not want to mix in it.

Q. Was he the man that took her upstairs? A. I don't know; there were two employees of the hotel told me Googy brought her upstairs.

Q. Do you know who took her upstairs, of your own knowledge? A. Not from my own sight, no, but I was told.

The Court—You are assuming she was taken upstairs now.

Q. Do you know of your own knowledge whether or not Mrs. Smith went upstairs, from what you

saw? A. I don't know; I did not see her go up.

Q. You say she went into the restaurant with a companion? A. Yes, sir.

Q. You went into the grill? A. Yes, sir.

Q. And then you stepped back and looked into the restaurant? A. Yes, sir.

Q. Then you went back into the bar part? A. Yes, sir.

Q. Then when you went back again and looked sometime later, she was gone? A. Yes, sir.

Q. And during all the interval between the occasion of your first looking, when you saw her in there, and the occasion of your last looking, when she had gone, how long a time elapsed? A. A little over an hour.

Q. And during that hour you did not look? A. Yes, sir, I did; I went on the outside and came back into the hotel; I was getting uneasy.

Q. Were you in the grill during that hour? A. Yes, sir.

Q. All of it? A. No, sir.

Q. How much of the time; how long a period of time all together were you in the saloon part? A. Ten minutes, that is on three or four trips.

Q. When you come back the last time and looked you did not know whether she was in there or not, did you? A. No, sir.

Q. And you went back to ascertain that fact, didn't you? A. Yes, sir.

Q. And you found out that she had gone? A. I did not find out she was gone, but I found out she was not in the restaurant.

Q. You found out she was not there? A. Yes, sir.

Q. The United States Hotel is on the Southerly side of Market Street? A. Yes, sir.

Q. How many entrances are there to that hotel on the front? A. I got on the corner there—

Q. (Question read.) A. I know of two, that is, on Market Street.

Q. You know there are three? A. I don't know.

Q. There is one to the restaurant? A. The grill and the restaurant entrance are the only ones I know.

Q. There is another which leads into the hotel, proper, isn't there? A. Yes, sir.

Q. Are not there three entrances? A. I can only see two; there may be three doors, but I saw only two entrances.

Q. What was your business before you were an investigator? A. Clerk.

Q. Where? A. In Newark, New Jersey.

Q. How long were you a clerk? A. Fifteen or sixteen years.

Q. For whom? A. For myself.

Q. Where? A. We had a business.

Q. Whose business? A. I was a salesman in household goods.

Q. You were a clerk for fifteen or sixteen years, you say? A. Yes, sir.

Q. Where? A. In Newark, New Jersey.

Q. Who employed you? A. I worked for P. J. Feeney for five or six years.

Q. And who else? A. C. F. Adam, in Newark, New Jersey.

Q. For how long? A. Two years.

Q. When? A. I don't recall the exact date; it runs back about ten years, nine years.

Q. What was the address? A. They were at 37 Market Street, Newark, N. J.

Re-direct Examination by Mr. Lane:

Q. From the time you saw Mrs. Smith go into the hotel to the time you discontinued, did you cover the entrance of the hotel to see she did not go out?

Mr. Ward—Objected to as leading.
The Court—It is leading.

Q. What did you do? A. I stood on the corner and walked through the grill and made three or four trips, but on one of my trips I saw they were not in the dining room any more, and I went back to the corner.

Q. If they had gone out of the hotel by any one of the entrances, would you have seen them? A. Yes, sir.

By the Court:

Q. You say you had a conversation with the cab driver in front of the hotel; what did he say to you? A. That was not the same night; this was just before I was called in off the case.

Re-cross Examination by Mr. Lane:

Q. How long were you on the case? A. Six weeks.

MRS. WILLIAM SMITH recalled.

Direct Examination by Mr. Lane:

Q. Mrs. Smith, did you ever say to Mrs. Florence Barlow, who is the sister-in-law of Mrs. Frances

Smith, that you would see that Frances and Roy never ended their days together, if you had anything to do about it? A. I never did.

Q. Or words to that effect? A. No, sir.

Q. Did you ever say to Mrs. Barlow that Frances was very ungrateful and did not appreciate what you had done for her, or words to that effect? A. No, sir.

Q. Did you ever say to Mrs. Barlow that Frances had caused you to lose your home? A. No, sir.

Q. Did you ever say to Mrs. Barlow that Frances had had you moved to the Kelsey House? A. No, sir.

Q. Do you remember an occasion when you went to her house, or any occasion on which you remarked to Mrs. Barlow that Frances and Roy would never end their days together if you had anything whatever to do with it? A. No, sir.

Mr. Ward—May I ask that the investigator be told to remain here?

The Court—The investigator will remain for a while.

Q. Did you have a conversation with Mrs. Barlow at any time at which Mrs. Frances Smith's name was mentioned? A. No such conversation did I ever have with her, but we often used to talk together, not about anything in particular.

Q. Do you remember any conversation in which the word "scandal" was used? A. Yes, sir.

Q. Do you know when it was? A. Not with Mrs. Jim Barlow.

Q. This is Mrs. Florence Barlow? A. Yes, sir, I do remember that.

Q. When was that? A. It was in the winter of 1920 and 1921, and I think just before the holidays.

Q. How did that conversation come to take place?

Mr. Ward—Objected to.

The Court—That calls for a conclusion.

By the Court:

Q. Where did you meet? A. In Quackenbush's store.

Further Direct:

Q. What was said?

Mr. Ward—Objected to.

The Court—Objection overruled.

A. I asked Mrs. Barlow how her little boy was.

Mr. Ward—She should be confronted with the questions and answers.

The Court—Objection overruled.

A. (Continued.) And she said he was all right, and then we got into a general conversation; she was talking loud, and she said "Have you heard who Frances' latest affinity was?" and she said, "Make a guess;" and I said, "Tom Kelley," because I had heard rumors, and she said "No," he was Edna Blue's beau, and she said "Guess again;" and she said, "Somebody from the cradle;" and I said "Jimmie Donnelley;" and she said, "Yes;" and she said, "I found Frances and Jimmie Donnelley in a pretty mess at the Lakelyn Hotel, Asbury Park," and she

said Frances was very much flustered and said, "It is perfectly all right, isn't is?"

Q. Who said "It is perfectly all right?" A. Frances Barlow Smith said that; she said, "It is perfectly all right, isn't it, Florence?"

Q. Mrs. Smith did not say that to her? A. No, sir, to this other woman.

Q. Did Mrs. Barlow say to you during the course of this conversation, or at any other time, that you were talking maliciously of Mrs. Frances Smith? A. She did not.

Q. Mrs. Smith, was this conversation in the Quackenbush store after the occurrence that you have related at the Pearsall home? A. Oh, yes, this was in 1920, at the Pearsall home; this was after the Pearsall affair.

Q. Did you ever tell Mrs. Barlow that you were bitter towards Frances because of the key incident? A. No, sir, I never mentioned such a thing. I was never bitter towards her.

Q. Were you bitter about the key? A. No, sir, I was never bitter towards Frances; I always shielded her in everything.

The Court—Strike that last out.

Q. At any talk you had with Mrs. Frances Barlow, was anything said about a car? A. Yes, sir.

Q. What? A. At that same time she said Frances had caused Roy's car to be called "A scandal car."

Q. Now, did you upon any occasion, say to the mother of Frances Smith words to this effect: "Mrs. Barlow, I am sick and tired of being a scul-

lery maid for Frances; I am not used to it?" A. No, sir, I never mentioned such a thing.

Q. Did you use words to this effect. "I think it is a shame that I should drudge here?" A. No, sir, never.

Q. Did you say to Mrs. Barlow, "Your daughter, I should pronounce her a street walker," or words to that effect? A. No, sir.

Q. Did you ever call Frances Smith "a street walker" to anybody? A. No, sir, never.

Q. And did Mrs. Barlow, at any time when you were discussing Mrs. Frances Smith say to you: "You have never become a mother and you have not got that real motherly feeling?" A. No, sir.

Q. And did she say, "If you think it is nice for me to stand here and hear you call my daughter a street walker," or words to that effect? A. No, sir.

Q. Did she say to you: "If you think that, it would be better to speak to Mr. Smith about it?" A. No, sir.

Q. And did you say? "No, Mrs. Barlow, pardon me; I did not mean it that way"? A. No, sir.

Q. And did she then say: "What do you mean?" and did you say: "I mean that your daughter does too much gadding on the street when she ought to be home doing her housework?" A. No, sir.

Q. Did you ever have a conversation with Mrs. Barlow, the mother, with respect to her daughter Frances Smith, and the conduct of her daughter? A. No, sir.

Cross Examination by Mr. Ward:

Q. Did you ever have any conversation with

Mrs. Barlow, Sr.? A. No special conversation.

Q. How often have you met Mrs. Barlow? A. Whenever she would come up to the house.

Q. She has been at the house frequently when you were there? A. She came occasionally on Sunday night to dinner and holidays.

Q. During those visits you carried on conversations with her? A. She has been at the table where we all talked in general.

Q. You never talked to her as much as counsel has read to you from the book of testimony? A. No, sir.

Q. There was no reason why you should not have? A. No, sir.

Q. You were friendly? A. Yes, sir.

Q. It just happened that you did not? A. I never did.

Q. You say there was no feeling between you and Mrs. Frances Smith? A. No, sir.

Q. No feeling about the key incident? A. No, sir.

Q. Why did you stop coming to her home? A. I felt hurt.

Q. And you felt hurt to the extent of ceasing your visits to her home? A. Yes, sir, I did not go after that.

Q. And yet you had knowledge of all these things and never imparted them? A. I always shielded Frances.

MRS. MOLLIE MARSDEN recalled for further cross examination.

Cross Examination by Mr. Lane:

Q. Mrs. Marsden, is your name Mrs. Marsden?

A. Well, it is my professional name, it was my first husband's name.

Q. What is your name that is not your professional name? A. Mrs. Scowcroft.

Q. Where do you live? A. 3 Graham Avenue.

Q. What is your husband's name? A. Alfred.

Q. What was Mr. Marsden's name? A. James Marsden.

Q. When did he die? A. A number of years ago.

Q. Where? A. Lancashire, England.

Q. When did you marry Mr. Scowcroft? A. Some years ago.

Q. Where? A. Paterson, N. J.

Q. How many years ago? A. Quite a number of years ago.

Q. How many? A. Quite a number; to give the exact date and the year, I think it was about 1912, as near as I can give the correct date.

Q. 1912? A. 1912, or 1913.

Q. Do you know the date? A. Not without looking.

Q. Can you look? A. The City Hall will give it.

Q. Will you look and let us know the date; can you find it by two o'clock? A. Is it necessary?

The Court—Yes.

Q. You said that Mrs. Marsden was your professional name? A. I have always gone under that name, and always known by that name.

Q. I think you used the word "professional"; what was your profession? A. Nursing.

Q. Where did you have your place of business, if any? A. Oh, well, all over.

Q. You had a place at 13 Park Avenue? A. Yes, sir.

Q. What years did you have that place? A. I think I gave it up four years ago last December.

Q. You had it during the years 1917-1919, didn't you? A. Yes, sir.

Q. What business did you do there? A. Nursing.

Q. Did you live there? A. Yes, sir.

Q. With your husband? A. No, sir.

Q. Where did your husband live? A. He lived in several places.

Q. What was the place he was living in during 1917 and 1919? A. He lived on 24th Street, and he lived in Newark, New Jersey.

Q. You were not living with him then? A. No, sir, not then.

Q. You were separated? A. Yes, sir.

Q. How many rooms did you have at 13 Park Avenue? A. Two bedrooms, front room, dining room, kitchen and bathroom.

Q. Was that your home? A. Yes, sir.

Q. Who were staying there with you at that time? A. No one at all stayed with me.

Q. No one? A. No, sir.

Q. Did you know Theresa McGowan? A. No, sir.

Q. You never heard of her? A. No, sir.

Re-direct Examination by Mr. Ward:

Q. When you commenced nursing, were you at

that time the widow of Mr. Marsden? A. When I started, yes.

Q. And did you or not acquire your practice under the name of Mrs. Marsden as a nurse? A. Yes, sir.

Q. Is not that the reason why you continued under that name professionally? A. Yes, sir.

Q. Were you living with Mr. Marsden when he died in Lancashire, England? A. Yes, sir.

Q. You were in Lancashire, England, when he died? A. Yes, sir.

Q. What date was it? A. I made two trips to America in a very short time.

Q. Did you come to America before his death? A. I came the first time, I think it was just when McKinley was shot; I was on my way back when President McKinley was shot, and Mr. Marsden was alive at that time. He came with me to the States in 1908.

By the Court:

Q. Have you any children? A. Two adopted children only.

Q. You were married in 1912 to Mr. Scowcroft? A. As near as I can give it.

Q. Why did you keep the name of Marsden? A. Because I am known by all my English friends and acquaintances by that name, and I took it as a professional name, being better known.

Further Re-direct:

Q. What is your telephone number? A. Mr. Leighton's house telephone number was the one I used.

Q. Do you carry the name Marsden in the directory? A. I did not have a telephone number.

Q. Do you advertise under that name? A. I have a card under that name; I have several here now.

(Witness exhibits some cards.)

Q. Did Mrs. Smith ever know that your name was Scowcroft? A. Well, Mrs. Barlow knew, but I don't say that they all knew my personal affairs, because I did not go into my private affairs with outsiders.

Q. I show you this card; you have not the place at 13 Park Avenue now? A. No, sir.

By Mr. Lane:

Q. What are you carrying that for then? A. That is my nurse card, and I crossed the place off.

Mr. Ward—I offer it in evidence.
Marked "Exhibit Z. A. 1."

Q. You don't know whether Mrs. Smith and Mrs. Barlow knew that you were married to Mr. Scowcroft or not? A. Well, I think Mrs. Alfred Barlow knew, because I had used the telephone in answer to Mr. Arthur Scowcroft; I spoke to him over the telephone from Mrs. Brown's and Mrs. Alfred Barlow's.

Mr. Ward—The card reads as follows: "Telephone 1597, Mrs. Marsden, Nurse, Paterson, N. J., 13 Park Avenue."

Recess to 2 P. M.

After Recess

WALTER DUNSTAN recalled.

Direct Examination by Mr. Lane:

Q. Do you remember you testified some time ago in this case with respect to some episode at which it is said you saw Donnelley? A. I did.

Q. On that evening, when did you first see Donnelley?

Mr. Ward—Objected to; they are opening their case in doing that.

Mr. Lane—The object is, to contradict the statement made by the witness Barlow that he was there at the time.

The Court—I will allow it for that purpose.

Q. (Question read.) A. Oh, around seven or eight o'clock at 30th Street.

Q. How far from the Smith house? A. Well, the first time I saw him he was about five hundred feet—

Q. Was he within your sight until he went to the Smith house? A. About 25 feet ahead of me.

Q. Did you see Mr. Barlow with him? A. No, sir.

Q. Did you see Mr. Barlow at all at that time?

Cross Examination by Mr. Ward:

Q. When was it you said you saw Donnelley?

A. In the evening, along about seven or eight o'clock.

Q. You just said seven o'clock? A. Apparently, at that time.

Q. Is your recollection clear? A. I believe so.

Q. Do you remember testifying at the former occasion: "Ques. Can you tell me what time it was? Ans. Around eight or eight-thirty in the evening." A. It was around that time in the evening, I know.

Q. Why do you change now and say it was about seven o'clock? A. Well, I just made a guess at it; you might say from seven to nine.

Q. You are guessing at all of it? A. No, sir, I am positive of the rest.

ROY U. SMITH recalled in rebuttal, testified as follows:

Direct Examination by Mr. Lane:

Q. Do you remember the testimony of Mr. Donnelley with respect to an occasion at which he took Mrs. Smith home? A. I do.

Q. The same occasion testified to by Mr. Wright; do you remember that? A. I recall it, yes, sir.

Q. Did you see Donnelley and Mrs. Smith that night?

Mr. Ward—That was asked; he was on cross examination—whether or not he had driven up in the automobile.

The Court—Objection overruled.

A. I did not.

Q. Did Donnelley say "Hello," to you on that occasion? A. He did not.

Q. Do you know of any occasion on which Donnelley took Mrs. Smith home and you met him outside and he said, "Hello," or words to that effect? A. I know of no such occasion.

Q. Have you produced your check book showing the stubs which you used for the purpose of making up the $700 which you testified to this morning? A. You have them in your hand.

Q. These are those? A. Yes, sir.

No Cross Examination.

(Mr. Shorter was called by Mr. Lane, but was not present.)

(Mr. Fairhurst was called by Mr. Lane, but was not present.)

Mr. Lane—With the exception of Mr. Shorter and Mr. Fairhurst and Mr. Evans, who will testify with respect to the interview, and also the interview with Mr. Donnelley, and the production of a photograph, we rest. Mr. Shorter will be here later in the day; he has the photograph. Mr. Evans is in Trenton. We rest otherwise.

The Court—All right.

SUR-REBUTTAL

JOHN AMENDOLA, being duly sworn in surrebuttal, testified as follows:

Direct Examination by Mr. Ward:

Q. What is your business? A. Taxi business.

Q. Do you know that man? (Indicating.) A. Yes, sir.

Q. Do you remember having a conversation with him last summer? A. Yes, sir.

Q. At that time did he or not, say to you in words, or in effect, that you had taken a Mrs. Smith upstairs to a room?, A. Yes, sir.

Q. Did he want you to so testify? A. Yes, sir.

Q. What did you tell him? A. That I did not know the woman.

(Note, that the man indicated was the investigator from Cosgrove's Detective Agency, Mr. Guyet.)

Cross Examination by Mr. Lane:

Q. Where do you live? A. 591 River Street.

Q. Are you employed in the United States Hotel? A. No, sir, I run a taxi business.

Q. Where? A. At the United States Hotel.

Q. How long have you been doing that? A. Two years.

Q. In connection with the hotel? A. No, sir.

Q. Do you know Mr. Ward? A. Just as a counsellor.

Q. How long have you known him? A. For fifteen years.

Q. How long have you known him? A. I have driven Mr. Ward at different times.

Q. Who spoke to you about this case first? A man from Newark, New Jersey.

Q. I mean, who got you to come as a witness here, and when? A. Why, they have asked me on different occasions.

Q. When did you first see Mr. Ward with re-

spect to this case? A. I have seen him quite a while ago, I should judge four or five months, and longer than that.

Q. Mr. Ward? A. Yes, sir.

Q. In regard to this case? A. No, sir.

Q. When did you first see him with respect to this case? A. I have never seen him with respect to this case.

Q. How do you come to be here, then? A. I was supposed to have taken this woman upstairs to show her the room.

Q. Who told you that? A. The gentleman from Newark, New Jersey.

Q. When? A. Three or four months ago.

Q. Who told you to come here to-day? A. I was subpoenaed.

Q. By whom? A. I have it in my pocket here.

Q. Who served it on you? A. Mr. George something; I don't know his name.

Q. Did you talk to Mr. Ward about the case before you went on the witness stand? A. No, sir.

Q. Whom did you talk to about it? A. Nobody.

Q. Do you mean to say you did not tell your story to anyone? A. Only that I did not bring the woman up to show her any room.

Q. Whom did you tell that to? A. To Ward and McGinnis.

Q. When? A. About two or three months ago.

Q. Are you sure of that now? A. Yes, sir.

Q. You told Ward and McGinnis two or three months ago that you had been asked to give some testimony with respect to Mrs. Smith's being at the United States Hotel; is that right? A. What do you mean—that I showed her to the room?

Q. Yes. A. I never saw the woman.

Q. What did you tell Ward and McGinnis two or three months ago? A. That I never saw the woman.

Q. How did you come to go to Ward and McGinnis' office A. I did not go there, I saw them in front of the hotel.

Q. Did they come to see you? A. No, sir, we accidentally met there.

Q. Who did? A. Ward and McGinnis.

Q. Which of them? A. Both of them.

Q. Anyone else there? A. No, sir.

Q. What time of the day was it? A. I cannot just recollect; they asked me if I ever showed that woman to a room, and I told them "No;" the bartender said that I showed this woman to a room.

Q. How do you know the bartender said so? A. The fellow that was here this morning said so.

Mr. Ward—That man was the private detective; I would like that on the record.

A. The private detective and myself looked the register over.

Q. Who said you had taken the woman up? A. The bartender thought I did, but I did not.

Q. Did the bartender say he thought you had done it? A. Yes, sir.

Q. What was the name of the bartender? A. Jevetts.

Q. When did he say that? A. When he was brought into this case.

Q. When was that? A. Three or four months ago, to my recollection.

Q. Now, do I understand that Messrs. Ward and McGinnis came to you or met you on the street, then asked you if you had taken that woman up to the room that night? A. They wanted to know if I did, and I said "No;" they had heard that that woman's name was on the register, and wanted to know if I took her up, and I said "No."

Q. Who said that? A. The counsellors there.

Q. Which counsellor? A. Both of them.

Q. Mr. Ward and Mr. McGinnis? A. Yes, sir.

Q. They said to you two or three months ago that they had heard that that woman's name was on the register, and wanted to know whether you had taken her up to a room; is that right? A. Yes, sir.

Q. And what did you say? A. I said "No," that I never did.

Q. Did they go in and look at the register? A. No, sir.

Q. What did they do? A. They went on about their business.

Q. When did you next hear of that? A. The private detective asked me if I would not go and testify about my taking her to the room.

Q. Did you talk to Ward and McGinnis before the private detective asked you to testify? A. I don't just recollect that.

Q. You do not recollect that? A. I did not think I was going to be brought into it.

Q. Which one spoke to you first, the detective or Ward and McGinnis? A. The detective was the first who spoke to me.

Q. And what did he say? A. He asked me if I would not go up and testify that I took this woman upstairs and showed her through her room on such a day, and I said "I never saw the woman," and he said, "Didn't you take her up?" and I said no.

Q. Is that all? A. That is all, of my knowledge.

Q. Was this at the same time that the bartender had said that you— A. He had seen the bartender previous to that.

Q. So that he was acting on information gotten from the bartender; did he say that? A. No, sir, he just told me he was brought into this case, and he did not even know the woman himself, and neither did I; I never saw this woman get a room at that hotel.

Q. Did he say that the bartender told him that you had taken the woman up?

Mr. Ward—I object to that.
The Court—Objection overruled.

Q. Did this private detective say that to you? A. He had said that; he said that Jevetts thought that I was hopping-bells that night—

Q. Were you hopping-bells that night? A. I don't know; I helped the fellow out occasionally.

Q. When did you first see Mrs. Smith? A. The night that the private detective hired me to go from the United States Hotel and trace her, and we followed her as far as the Garden Theatre.

Q. When was that? A. I don't remember.

Q. About when? A. I don't remember.

By the Court:

Q. Did you see her? A. Yes, sir.

Further Cross:

Q. Was that before July 20th or after? A. I could not say.

Q. Was it before the time that they said that you had taken her up to a room? A. Yes, sir.

Q. So you did know her? A. No, sir, I did not know her, only through following her with this man.

Q. You knew who she was? A. He said "I am trailing this woman."

Q. You knew her to the extent that if you saw a woman you would know whether it was she or not? A. I would not know.

Q. So if she had come to the hotel after you had trailed her, you would not have known whether it was she or not? A. No, sir.

Q. Do you recognize her here in the court now? A. Yes, sir, I have seen her since.

Q. How soon after you trailed her was it that you saw her?

Mr. Ward—Objected to.
The Court—Objection overruled.

A. The next time that the woman was pointed out she was passing the hotel, and she went in there, I suppose, and had her lunch with some other woman, and that is when I recognized who the woman was.

Q. When was that? A. Maybe two or three weeks ago.

Q. So you had not seen her between July, 1922, and two or three weeks ago? A. No, sir, I had not seen her.

Q. Who pointed her out two or three weeks ago? A. People standing in front there having a conversation, that is, people stand in front of the hotel that I don't know.

Q. Mr. Ward did not point her out? A. No, sir.

Q. Did you talk to Mr. Ward yesterday about this case? A. No, sir.

Q. Did you see Mr. Ward at noon time? A. I told him I was subpoenaed to go into court.

Q. You had to tell him? A. I would not have come if I had not been subpoenaed.

Q. Let me see your subpoena. A. (Witness hands it to Mr. Lane.)

By Mr. Ward:

Q. Do you remember on the occasion when you saw Ward and McGinnis in front of the United States Hotel when you spoke to them about what this Newark detective had sought to get you to say, do you remember you volunteered this to us?

Mr. Lane—Objected to.
The Court—Objection sustained.

Q. At the time you talked to us about this incident, who opened the conversation in regard to this matter? A. I started it.

FRANCES SMITH, the defendant, recalled.

Direct Examination by Mr. Ward:

Q. Mrs. Smith, in July of last year, did you or

not know that you were being followed? A. Yes, I did.

Q. When was that first called to your attention? A. On July 14.

Q. By whom? A. By you and the Senator.

Q. And where? A. At your office.

Q. Did you thereafter observe whether or not you were followed? A. Yes, sir, I did.

Q. Do you recall any particular occasion when you observed that? A. Why, I did notice it several times; yes, I remember an occasion when I left their office, I think Mr. Shea came upstairs and said this man was standing downstairs, and asked me to go down, and I went down to see the man.

Q. Did you observe whether or not this man followed you? A. Yes, sir.

Q. It was not this man here in court? A. No, sir, I don't think it was he.

Q. Were you or not, told by your counsel at that time to make a mental note of the date when you were informed of this? A. Yes, sir, that date was July 14th.

Cross Examination by Mr. Lane:

Q. Is that the first time that you had thought you were followed? A. Yes, sir.

Q. When was the last time? A. I don't remember.

Q. About when? A. No, sir, I don't remember; it sort of died out during the summer.

Q. So that, so far as you know, you have not been followed since the summer of 1922? A. I don't know anything about them.

Q. Nothing occurred which indicated it to you, is that right? A. Well, that I don't know.

Q. Well, did anything occur which indicated it to you; you must know that? A. I don't remember anything right now.

Q. Can't you tell me whether anything did or not? A. I would tell you if I could.

Q. You remember this particular occasion of which you made a mental note at the suggestion of your counsel? A. Yes, sir, because we thought it was very important.

Q. What was important? A. Finding out that this man was watching.

Q. What had occurred which indicated to you that you were being followed? A. It was told to me by my counsel, Mr. Ward, and the Senator.

Q. They told you what? A. They told me that I was being trailed.

Q. Did they tell you how they knew? A. No, sir.

Q. Did you ask how they knew? A. I don't remember asking.

Q. What was said about a mental note? A. We all thought it was so important that we should make a note of it.

Q. Where did that idea of writing it upon the tablets of your memory occur? A. I don't understand you.

Q. Why didn't you put it down on paper? A. I did not think it was necessary.

Q. How many were at this conference? A. I think just Mr. Ward and the Senator and myself.

Q. You three said that it was wise to make a mental note of this thing? A. I don't know whether Mr. Shea was there or not.

Q. Who made the suggestion of the making of the mental note? A. Mr. Ward.

Q. And no one said how it was that they knew that you were being followed? A. Mr. Ward said he had heard of it.

Q. What was the first thing that indicated to you that you were being followed? A. Why, the day that I went down and looked at the man and saw him and watched him follow from across Market Street.

Q. How far did he follow you? A. Up to the City Hall, and then I went over and got on a trolley; whether or not he came home with me I don't remember.

Q. What do you mean? A. I crossed to the City Hall to get a trolley or a bus, I suppose, and whether or not he went up on the same trolley or bus I don't remember.

Q. Was there any other occasion on which you thought you were being followed? A. No, sir.

Q. Do you remember being out in an automobile one day with another person and stopping your automobile and raising a disturbance and saying you were being followed? A. I don't remember anything like that.

Q. Do you remember the 13th of October, 1922? A. No, sir, I do not.

Q. Do you remember being at the United States Hotel that day? A. No, sir, I do not.

Q. Do you remember being out on an automobile trip that day with Mrs. McGee? A. That day?

Q. Yes. A. No, sir, I do not.

Q. Do you remember being out on an automo-

bile trip with Mrs. McGee in October? A. No, sir, I do not.

Q. Do you remember being in Montclair? A. Yes, sir, I do.

Q. On October 13th? A. I don't know what date it was.

Q. With Mrs. McGee? A. Yes, sir, I do.

Q. Do you remember being in an automobile on that day with Mrs. McGee? A. I cannot say that I was in an automobile that day, because I don't remember the date.

Q. Do you remember stopping at the Ridgefield Hotel on that day and going in? A. I don't know where it is.

Q. Did you stop at any hotel on the day you were with Mrs. McGee in Montclair? A. No, sir, I did not.

Q. Do you remember on the way home, or towards Paterson, in Upper Montclair, stopping the car and you got out of the car and held up a car in the rear, back of you? A. We had gone over to Montclair—are you talking about in the daytime?

Q. I am talking about nine o'clock in the evening. A. That is true.

Q. Do you remember it now? A. Yes, sir, I do.

Q. What do you remember about it? A. I remember Mrs. McGee was visiting me, and she had —I don't know whether you call it a case, or what you call it—she had a judgment against her; we had gone over there in the afternoon to see the woman, and she asked me to go with her, so that I could be a witness for her; we could not see the

woman, and we went back home; we had gone on the bus and came back on the bus; that night Mrs. McGee called a friend of hers from Newark, New Jersey, the son of a friend in Brooklyn—he lived in Newark, New Jersey, and she called him up and asked him if he would come over and take us to this woman's house in East Orange, because she had left word with the maid that she was coming back that night; he offered to do that; we had already started for East Orange, and I told her to tell him we would meet her in Passaic. We met him in Passaic and started over towards Newark, New Jersey; I don't know how we went; we went through one of the streets, and I called to him that he was making the wrong turn; and as he went to back up, I noticed another car back of us, and I heard him slam on his brake. I looked back and I noticed this man was trailing us.

Q. Is that all that occurred? A. Yes, sir.

Q. Did'nt you stop your car and get out and hold up the other car? A. Yes, sir, after I had watched to see several times; when I saw this man was trailing us, I said that I wanted to go back home, and I asked them to start back towards Paterson to go back home, and we started; we turned towards Paterson, and this man drove, and we watched the other car drive into a driveway, and then we turned around and went back, and we noticed then that the car came on again, and I said I was going to find out, and I asked the man to stop the car, which he did, and the other man had to stop his car, because we stopped in such a hurry; and I went out and went back, and the other man started to drive off, but I stood in front of his car.

Q. What did you say? A. I don't remember saying anything.

Q. You did not just stand there? A. The man got out and did the talking; they went off, talking together.

Q. You were the person that stood in front of the moving car to stop it? A. Yes, sir.

Q. What did you say when the car stopped? A. Nothing; this man hopped out immediately, and the two men talked together.

Q. Did he explain why it was that he was following you? A. No, sir.

Q. Didn't you hear him say he had a picture of somebody and thought this man who was in the car was the one he was looking for? A. I did not hear him say anything.

Q. Who was the man in the car with you? A. Mr. Barton; he lives at an hotel in Newark, New Jersey.

Q. A friend of Mrs. McGee? A. He is the son of a very good lady friend of Mrs. McGee.

Q. How old is he? A. Probably 23 or 24.

Q. Did he own the car? A. Yes, sir.

Q. Mrs. McGee called up this friend of a friend of hers? A. The son of a friend of hers.

Q. For the purpose of getting the son of her friend to take you on this errand? A. This Mrs. Barton is a very good friend of Mrs. McGee's.

Q. Was it for the purpose of having this friend take you on this errand that you got him? A. Yes. sir, and I would like to explain why she called him.

Q. (Question read.) A. Yes, sir, it was.

Q. So that it was to take you from Paterson to East Orange? A. Yes, sir.

Q. That you called this man in his car from Newark, New Jersey? A. Yes, sir.

Q. And in order to save time you went from Paterson to Passaic in order to meet the car that was to take you to East Orange? A. Yes, sir.

Q. And you never stopped at any hotel during that trip? A. Yes, sir, we stopped at this man's hotel on the way back.

Q. I mean the Ridgefield Hotel, or any hotel outside of Newark? A. No, sir, I did not.

Q. Do you know which hotel you stopped at in the City of Newark? A. No, sir.

Q. Was it the "Robert Treat"? A. No, sir.

Q. Was it the "Berwick?" A. I don't know the name.

Q. Do you know what part of the City of Newark it was in? A. No, sir, it was night, and I did not notice; we simply went in the restaurant and had a sandwich in the restaurant at the hotel.

Q. Do you know whether it was in the business section of the town or whether it was up on Clinton Avenue? A. I don't know.

Q. What time did you get home that night? A. That I don't remember, probably half-past eleven or twelve o'clock.

Q. Did he drive you home? A. Yes, sir, he did.

Q. Let me see; you got in this car where? A. At Passaic.

Q. From there you went where? A. Through Montclair to East Orange.

Q. When did you leave East Orange? A. About 10.30 that night.

Q. Then you went where? A. Back to Newark, New Jersey, and then to Paterson.

Q. What time did you get to Newark? A. I don't remember the time.

Q. How long did it take you to eat the sandwich? A. We were probably there from three-quarters of an hour to an hour.

Q. What time did you get back? A. I don't really remember the time; I think it was about 11.30 or 12 o'clock.

Q. Where did you meet Mrs. McGee that day? A. That I don't remember.

Q. Well, how did you come to meet her? A. She was visiting at my home.

Q. You started from your own home together? A. Yes, sir, we had been there in the afternoon.

Q. There was no suggestion that this car—(question withdrawn). What time was it that you met this gentleman in Passaic? A. That I really don't remember, perhaps 8.30 or 9 o'clock.

Q. Now, that was the second time that day you had been in East Orange? A. Yes, sir, it was.

Q. With Mrs. McGee? A. Yes, sir.

Q. How did you go the first time? A. By bus.

Q. What time did you go the first time? A. We went right after luncheon, we left before one o'clock, and we did not get home until almost 6.30.

Q. Then you turned around and went back again? A. Yes, sir, almost immediately.

Q. Why? A. Because Mrs. McGee wanted to see this woman in East Orange; she wanted to see her before she went back.

Q. But the woman you went to see in East Orange was not at home at first? A. No, sir.

Q. You went to East Orange and then came back, and you had your dinner? A. Yes, sir.

Q. Didn't you have your dinner at the United States Hotel? A. No, sir.

Q. Did you stop at the United Statel Hotel that day? A. No, sir, we did not.

Q. Well, that was an occasion of which you did not make any mental note? A. No, sir, I did not.

Q. You had forgotten it? A. No, sir.

Q. When I asked you a short time ago with respect to any other occasions that you thought you were followed, you said you did not remember any? A. I simply remember the time when I knew I was being watched from the beginning; I remember the date that they started; I don't remember any other date.

Q. When I first asked you about this episode of stopping this car, if that was true, you thought I referred to the daytime instead of the night; is that right? A. Yes, sir, I thought it was the daytime you were talking about.

Q. Have you examined this signature again of July 20th, 1922? A. Of what?

Q. Of July 20, 1922.

Mr. Ward—That has been gone into on several occasions; I object.

The Court—The objection will be overruled.

A. I have not seen that since you showed it to me this morning.

Q. I want to be as fair as I can; look at it once more. A. If I looked at it forever, I could only swear it was not mine; I know my signature, and could not possibly be mistaken.

Q. Do you think it is a forgery? A. It is not even my name.

Q. Does it look like your signature? A. The "Smith" looks rather like it—no, that "H" is not like mine; and that is not like mine; the rest of it is; that is not like mine.

Q. Is the capaital "H" like yours? A. No, sir, it is not.

Q. You think the capital "H" is not like yours? A. No, sir, it is similar, but that is all; I admitted that this morning.

The Court—This morning you said it was not.

Q. Do you see the similarity now? A. Yes, sir, and I saw it this morning.

Q. When I was examining you? A. Yes, sir; and you asked me that and I believe I answered it.

Q. Notwithstanding the similarity, it is not your signature? A. No, sir, it is not.

Re-direct Examination by Mr. Ward:

Q. Was Mrs. McGee with you all the time on this trip? A. Yes, sir.

Q. I am now referring to the trip to Orange in this man's car? A. Yes, sir.

Q. What explanation did you wish to make which you were cut off by counsel with reference to Mrs. McGee telephoning to this young man? A. Mrs. Barton is a very dear friend of Mrs. McGee, in Brooklyn, and she has said to Mrs. McGee often, "When you go to Paterson why don't you

call Alfred, and you will be doing me a favor in calling him," and that is the reason she wanted to call him and see him.

Mr. Ward—I have here a copy of the record of the Board of Health and Bureau of Vital Statistics, which shows that Alfred Scowcroft, 47 years of age, birthplace England, and Mary Marsden Tifferington, aged 40, were married on the 14th of November, 1912. We have nothing further. I offer this in evidence.

Marked "Exhibit Z-Y 2½."

EDWARD FAIRHURST, recalled in rebuttal, testified as follows:

Direct Examination by Mr. Lane:

Q. Prior to the night of November 19, 1922, had you had a talk with Mr. Blue? A. Yes, sir.

Q. How long prior to the night of the 19th?

Mr. Ward—He is asking how long prior to the night of November 19th had he had a conversation with Mr. Blue; that was all gone into.

The Court—It is repetitious, but I shall have to let it go in, Mr. Ward, I don't recall.

A. Yes, sir.

Q. How long before? A. On the Tuesday afternoon before.

Q. Where? A. In New York.

Q. Where, in New York? A. At. Mr. Blue's office.

Q. At that conference, or at any other time prior to November 19th, did you suggest the fact that a good opportunity would be on the night of November 19th?

Mr. Ward—I object to that. It is not proper rebuttal; there is nothing in the case upon which that question can be founded.

The Court—I will allow the question.

A. I did not.

Q. Who did?

Mr. Ward—Objected to.

The Court—Objection overruled.

A. Mr. Blue did.

Mr. Ward—I move to strike it out.

The Court—Strike it out.

Mr. Lane—Your Honor will recollect that during Mrs. Smith's examination she was permitted by her counsel to answer questions with respect to an interview which she had with Mr. Blue, and she told in great detail how Mr. Blue had told her that Mr. Fairhurst had put up this job, and that Fairhurst had been the one that suggested the night of November 19th. I think under those circumstances we are entitled to a rebuttal.

The Court—You are entilted to a rebuttal on that.

Mr. Lane—I want to avoid hearsay as much as I can.

Q. Mr. Fairhurst, after the night of November 19th, when did you first hear, after the night of November 19th, when did you next see Mr. Blue? A. On Sunday afternoon.

Q. Where? A. In Eastside Park.

Q. Were the alleged events of November 19th discussed—"Yes" or "No". A. Yes, sir.

Q. How long did that conference that place, about? A. About fifteen or twenty minutes.

10 Q. During the course of that conversation, was anything said by Blue to you with respect to any alleged letter having been written to Donnelley?

Mr. Ward—Objected to.

The Court—This witness has a right to answer in rebuttal whether he had anything to do with the letter, and I want his credibility established on that point. I will allow him to answer.

20 A. Mr. Blue did not mention any letter.

Q. During the course of that conference was anything said with respect to a Mrs. Marsden, or any other woman?

Mr. Ward—Objected to on the same ground.

The Court—Objection overruled.

30 A. There was no remark concerning Mrs. Marsden.

Q. Did you, as a matter of fact, write a letter to Mr. Donnelley asking Mr. Donnelley to call at the Blue house?

Mr. McGinnis—Objected to.

The Court—Objection overruled. You know the rules of this court in taking testimony. The court will admit it for the present, and you will have the benefit of your objection, and the court will deal with it later.

A. I did not.

Q. Mrs. Smith, if I recollect correctly, has testified, that when you had the talk with her after the episode, the hunting episode, you said to her that you did not know who was in the car at the time you saw the car; did you make any such statement to her at that time or any other time? A. I did not.

Q. I ask you the general question. Mrs. Smith has testified that from the time that she was married down to the time that she separated from her husband almost, you pressed your attention on her, attempted to caress her. Did you upon any occosion after her marriage, do anything of that kind? A. I did not.

Q. You are a friend of Mr. Smith's of how long standing? A. All our lives.

Q. And of Mrs. Smith of long standing? A. Since she was a young lady.

Cross Examination by Mr. Ward:

Q. You did seek Mr. Blue in New York? A. Yes, sir.

Q. You saw Mr. Smith in East Side Park on the 20th, didn't you? A. I did not, no, sir.

Q. Did not Mr. Smith bring Andy Blue and his father-in-law, Mr. Barlow, to the park that day in his automobile? A. It is very possible that he did, but I did not see him, though.

Re-direct Examination by Mr. Lane:

Q. Can you tell me what time it was that you got the telephone message from Mrs. Smith on the day of the accident to the car? A. Not exactly, sir, no, sir.

Q. Can you give it approximately? A. It was about 1 o'clock.

Q. Where did you meet Mrs. Smith? A. That has been all gone into, the whole incident.

Q. Where did you meet Mrs. Smith? A. On Leonia Hill.

Q. At what hour? A. I met a train that Mrs. Smith told me Mr. Smith usually came on, that arrived at the Broadway station at about 2 o'clock; I am not sure.

Q. It is all in the record. A. And she asked me to get out a service man, which I did. I met Mrs. Smith at Leonia Hill.

Q. Do you know how long it took you to drive —how long did it take you that day to drive from Paterson to the 125th Street ferry? A. I drove to Leonia Hill only.

Q. How long did it take you? A. It would probably take me within twenty minutes and half an hour.

Q. How long would it take you to drive from Paterson to the 125th Street ferry? A. That would depend on the speed, at twenty miles an hour, you would do it in a little over half an hour.

Q. How many miles is it? A. About thirteen miles.

Q. Do you think you could do it in half an hour—you know the distance, 13 miles? A. Yes, sir, and on the way you go through Paterson and Hackensack and across the meadows.

Mr. Lane—We shall have to arrange to take Mr. Evans' testimony some other time. We may be able to get him down here tomorrow morning before he goes to Trenton.

The case is closed with the exception of the testimony referred to, and whatever rebuttal there may be of that.

The Court—We will adjourn until tomorrow morning at ten o'clock, and you can try to get Mr. Evans here at that time.

(Titale Omitted)

Seventh Day.

Continuation of the taking of testimony in the above entitled cause, at the Chancery Chambers, Paterson, New Jersey, on the twenty-second day of March, nineteen hundred and twenty-three, before Hon. Vivian M. Lewis, Vice Chancellor.

Same appearances as before noted.

LEWIS R. SHORTER, being recalled, testified as follows:

Direct Examination by Mr. Lane:

Q. During the trip on the night of the 19th of November from Paterson back to Pompton, you were in the car? A. Yes, sir.

Q. Did Mr. Blue discuss the events of the 19th on the way back? A. Yes, sir.

Q. During that trip back was there any mention

of a Mrs. Marsden, or any other woman being at that house, the Blue house?

Mr. Ward—Objected to.
The Court—Objection overruled.

A. No, sir.

Q. Was there anything said about any letter at all? A. No, sir.

Mr. Ward—We make the same objection.
The Court—Objection overruled.

Q. When was the first time when you had any knowledge of Mrs. Marsden having been there or of the letter?

Mr. Ward—Objected to on the ground that it is not rebuttal and is irrelevant and immaterial.

The Court—The objection will be overruled.

A. Here in the court room, I guess.

No Cross Examination.

MRS. FRANCES B. SMITH, recalled.

Direct Examination by Mr. Lane:

Q. Mrs. Smith, how soon after your marriage was it that Fairhurst started these attentions which you have described?

Mr. Ward—That question was asked and answered, if your Honor please.

A. The summer we were at Milford.

Q. Will you give us the date? A. I am not sure, but I think it was the summer of 1913.

Q. How long did that continue? A. They always continued to within a week of the separation.

Q. When was the first time you spoke to your husband about it? A. Several years ago.

Q. Can you tell me about when? A. No, sir, I cannot.

Q. How many years after 1913? A. That I could not tell you.

Q. Was it before 1915? A. That I could not tell you.

Q. Was it as much as six years ago? A. I don't remember.

Q. At least it was several years ago? A. Yes, sir, I would say it was several years ago.

Q. Do I understand that the attentions became progressively worse? A. Yes, sir, recently they did.

Q. About when? A. I would say, probably, the last two years that I was with Mr. Smith.

Q. You continued friendly with Mr. Fairhurst? A. Yes, sir, I did.

Q. You even wrote him postals such as this one I show you? A. Yes, sir.

Q. Ending "with love?" A. Yes, sir, I did.

Q. But he was pressing obnoxious attentions on you? A. I don't know when this was written?

Q. 1918, or had he not begun at that time? A. I don't know whether he had or not.

Q. Do you now want to correct your testimony? A. No, sir, I told the truth.

Q. So that, notwithstanding his obnoxious attentions you were writing him little postal cards in which you addressed him as "Dear Eddie," in which you said, "What do you mean by dolling off to Philly," and ending "With love?" A. May I see it? (Witness examines it). I wrote this postal.

Q. "What do you mean by dolling off to Philly. Love, Frances." That is all? A. Yes.

Mr. Lane—I offer it in evidence.

(Marked "Exhibit Y. A. 5½.")

Said postal reads as follows: "Mr. Edward Fairhurst, E. 29th St., near 14th Avenue, Paterson, N. J. Dear Eddie: What do you mean by dolling off to Philly? Thought you were a busy man these days. Have you seen Roy? I'm still here, and apt to stay, but I really like it.

Love.

Frances."

MR. WILLIAM W. EVANS, being duly sworn, testified as follows:

Mr. Lane—Mr. Evans is to be called for fixing a date only; it is the date of that conference.

Direct Examination by Mr. Lane:

Q. Mr. Evans, Mr. Donnelley has testified on cross-examination, to a conversation which occurred between yourself and himself; do you remember the

date of that conference? A. I don't recollect the exact date, but I remember it was a few days prior to Columbus Day, 1921.

Q. You are the attorney of record in this case? A. No, I am not.

Q. You are a friend of both Mr. and Mrs. Smith, or were? A. I am a friend of Mr. Smith and was a friend of Mrs. Smith.

Q. And you were one of those present at that conference between Mr. Ward, Mr. Wiseman, Mrs. Smith and yourself? A. Yes, sir.

Q. And you have been in close touch with this case? A. Yes, sir.

Q. When was it you first heard anything with respect to a Mrs. Marsden, or as to a letter?

Mr. Ward—Objected to; it is not binding on Mrs. Smith.

The Court—Objection overruled.

A. When it was brought up at the trial of this case.

No Cross Examination.

All Rest.

Mr. Lane—I am willing to argue the case now.

Mr. Ward—We did not anticipate arguing the case to-day.

The Court—I should like to scan the record before it is delivered to counsel; I may decide to strike some of it out. When would you be ready? The sooner you are ready the better.

Mr. McGinnis—Part of this evidence was taken last December 6th or 7th; then there were two more days,—then there was this great lapse of time as an accommodation to Mr. Evans from the first of the year on to the present time. Under those circumstances, I think we ought to have a little time to make a proper argument. It is a serious case, of course, and I presume by the time this record is written up there will be seven or eight hundred pages of testimony—some twenty or thirty incidents to be analyzed. I purpose making the argument, and I could not begin to get this case ready in a few days.

The Court—I think in view of the situation, and its importance to your client, that I will give you an opportunity to prepare your argument. I will tell you what I will do with the matter, and I shall expect counsel to come in on that day and argue it. I will talk to Mr. Roberts and find out how soon he can get it out, and when it is written out, I will let you know the day of the argument. The Court, I think, will decide the matter when the argument is closed.

Mr. Lane—It is a great task to get familiar with 565 pages and then forget it, and then to have to become familiar with it again.

Mr. Ward—We have not read the testimony yet.

The Court—The Court will speedily dispose of it as soon as you are ready to argue it. The Court will give you that opportunity.

CERTIFICATE.

(Title Omitted.)

I, George R. Beach, one of the Masters in Chancery of this Court, certify that the annexed depositions were taken before me on the sixteenth day of June, A. D., 1922, in the presence of W. W. Evans, Esq., Associate Counsel with the Petitioner, and Messrs. Ward & McGinness, Solicitors for the Defendant, and I certify the same herewith this twenty-first day of June, A. D., 1922.

George R. Beach,
Master in Chancery of New Jersey.

DEPOSITIONS.

(Title Omitted.)

Depositions of Thomas D. Griffin, taken before me, a Master in Chancery of New Jersey, at my Chambers, No. 75 Montgomery Street, Jersey City, New Jersey, on Friday, June 16th, 1922, at three o'clock in the afternoon, under an order made by me on the 14th day of June, 1922, directed to the said Thomas B. Griffin, in the presence of W. W. Evans, associate counsel with Merritt Lane, Esq., Solicitor for the petitioner, and Ward & McGinness, Esquires, by Mr. Ward, Solicitors for Defendant. The Master puts in the record copy of the Master's Summons with affidavit of service endorsed thereon, and a copy of the Master's Notice to Ward & McGinniss, Esquires.

George R. Beach,
Master in Chancery of New Jersey.

Thomas D. Griffin—direct

THOMAS D. GRIFFIN, being duly sworn, according to law, upon his oath, testifies as follows:

Direct Examination by Mr. Evans:

Q. Mr. Griffin, what is your full name? A. Thomas Daniel Griffin.

Q. Where do you reside? A. 81 Charles Street, Jersey City, N. J.

Q. What is your business? A. Marine Engineer.

Q. Where are you at present employed? A. Fletcher Dry Dock Corporation of New Jersey.

Q. Where are they located? A. 14th Street and Hudson Street, Hoboken, New Jersey.

Q. What are you employed doing there? A. Foreman machinist.

Q. Are you engaged on working on a ship at the present time? A. Yes.

Q. What ship? A. S. S. Philadelphia.

Q. Do you expect to remain there for any period of time? A. No, sir, not definitely.

Q. When do you expect to leave, if you do? A. About the 15th of July.

Q. And if you leave at that time, where will you be engaged? A. Running between Geonia, Italy and New York.

Q. So you don't know whether you will be in New Jersey in the month of December, do you? A. No, sir.

Q. Are you the owner of an automobile? A. Yes, sir.

Q. Where was this automobile on July 9th, 1921?

Mr. Ward—I object to the question on the ground that it is leading.

A. In the vicinity of Fort Lee, New Jersey.

Q. Do you recollect what road that was on? A. I know but I can't mention the name.

Q. Where is it with reference to the vicinity of any other road? A. Within ten minutes of Anderson Avenue.

Q. Is it a straight road or a hill? A. It is a hill. Sort of a subdivision of the main road.

Q. Where does it go from and to where? A. I was going to a resort called Hazzards Point.

Q. Just where is that situated? A. Well, I should judge that is about opposite 126th Street.

Q. How far removed were you from this point, when you were driving op this hill? A. Ten minutes' ride.

Q. Where did the road up the hill lead to? A. I hadn't been over that road in a year until that particular day, and I can't answer that question, because I can't say definitely.

Q. Is that road a direct road to Hazzards point?

Mr. Ward—I object to the question on the ground that it is leading.

A. I can't say.

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

Q. While you were driving up this hill, tell us what, if anything, happened to your car. A. There was a slight accident occurred, which caused the rear axle on the left hand side to fall off.

Q. Just describe how this accident occurred. What sort of a car was it that hit you? A. A car was parked on the left hand side of the road, facing south, presumably a Ford. I should judge about two hundred yards ahead of me there was a hill,

a very sharp turn to the left of the road. I was in conversation with the occupants of my car at the time, and before I realized it, I was abreast of the car that was parked, and in the middle, going south was a Cole Eight Sedan.

Q. What, if anything, happened to your car as to the Cole Sedan? A. The Cole Sedan's forward wheel on the left side hit my rear wheel on the left hand side.

Q. Did you observe who was driving the Cole car? A. For a time since the accident occurred, I presumed it was a gentleman. Since that time I have been in conversation with the occupants of my car, and they didn't agree to the fact that there was a gentleman driving. They couldn't say definitely.

Q. Your recollection was what, as to who was driving the car at the time? A. My recollection is—I was in conversation with the lady occupant of the car regarding the accident, which only lasted a couple of minutes.

Q. What conversation did you have with the lady? A. Owing to my appearance at the time, I was dressed in bathing regalia. I didn't care to converse with the young lady any longer than I could possibly help, and I told her to refer to my license plate, and that I would do likewise.

Q. Did she take a notation of this license plate? A. Yes, sir.

Q. What was your license number? A. For 1921? I haven't the license with me.

Q. You haven't the number of your license, have you? A. The license number is on one of your letters of communication or correspondence.

Q. The license number as was referred to in cor-

respondence was the correct license number of your car? A. Yes, sir.

Q. Did you have any correspondence with anybody with reference to this accident? A. Since it occurred?

Q. Yes. A. Correspondence with Mr. Smith.

Q. With Mr. Smith? A. Roy U. Smith, the owner of the Cole eight.

Q. Now in describing this car as a Cole Sedan. What do you refer to as a Sedan? A. A closed car.

Q. Did you notice whether it was a very large car, whether the body was a large or a small body? A. I wouldn't call it large or small, I would just say intermediate.

Q. Do you know the difference between a Sedan and a Coupe? A. Yes, I do.

Q. What is the difference? A. The coupe is usually a four passenger car and the sedan can hold six or seven.

Q. You say this car was of what type? A. More of the coupe type.

Q. You say your first recollection was that there was a gentleman present at the time?

Mr. Ward—I object on the ground that the witness has not stated that his recollection was that, but that at the time of the accident he presumed it was a gentleman, but in a talk with the occupants of his car he came to the conclusion that it was not.

Q. Did you have any conversation with this gentleman?

Mr. Ward—I object as the question is indefinite.

Q. This gentleman whom you presume was an occupant of the car?

Mr. Ward—I object on the ground that it assumes that there was an occupant of the car who was a gentleman, when witness has stated that he simply presumed at the time of the accident that there was a gentleman, but he had conversation with a lady and afterwards became convinced that it wasn't a gentleman.

A. No, sir. When the accident happened there was a party of three or four people. They came out of the houses of that vicinity, of course when the mudguards hit they heard a crash, and of course, I had gone quite a distance after the accident had occurred, I will say about a city block, and I then backed up. During that time people had gathered. I can't say definitely being it was only a two minutes conversation, just signing our signatures, whether the people I had conversation with were really in the car. Everyone wanted to get in conversation regarding how the accident happened. I can't say definitely, I only presume.

Q. What conversation did you have with any gentleman at that time?

Mr. Ward—I object on the ground that it is leading, and on the further ground that any conversation had with any gentleman has no relevancy, materialcy and would not be binding upon the defendant.

A. Pertaining to my name. I referred to my license plates.

Q. Did you give your name?

Mr. Ward—I object on the ground that the question is exceedingly leading.

A. No, sir.

Q. You simply referred to the license plate? A. Yes, sir.

Q. Have you discussed this matter with any one since this accident happened? A. Only Mr. Smith and Mr. Fairhurst.

Q. Where did you discuss this matter? A. At my home.

Q. Did you at any time ever tell Mr. Smith that there was a gentleman, a big tall gentleman whose name you found out was Joseph Donnelley, and who was driving the car and was coming like hell down the hill?

Mr. Ward—I object to the question as leading, and is an effort to impeach, and upon the further ground that the witness is his own witness and therefore the effort is improper, and on the further ground that anything that might have been said by the witness to any other person not in the presence of the defendant, would have no binding force or effect upon her and is improper.

A. At my first interview with Mr. Smith I strongly impressed him that I didn't wish to be drawn into this subject, in any way, shape or form, and at the time I took it for granted that it was settled with the settlement as far as damages were concerned, but realizing the fact that there was a probability of

some gentleman being in the car at the time, I assumed it might have been possible. I didn't say definitely.

Q. Did you have that conversation, that we just recited, with Mr. Smith? A. Yes, we did.

Q. By that conversation I mean referring to Joseph Donnelley as driving the car?

Mr. Ward—I object on the ground that it is leading, and the same objection as to the form, because it is an effort to impeach his own witness, it is leading and has no force or effect with reference to the defendant in this case, inasmuch as she was not present at the time.

Q. You can't say then definitely, that there was a young man in the car with whom you had this conversation?

Mr. Ward—I object on the ground that there is no evidence that he had any conversation with any young gentleman that was in the car, and that the question is leading, inasmuch as it does not appear that the defendant was present and that any conversation took place.

A. There was several men in the vicinity.

Q. I am referring to this young man I referred to before?

Mr. Ward—I object on the same grounds, and on the further grounds that there is no connection in the evidence between any young

man and the person referred to by counsel as Mr. Donnelley.

A. As far as that is concerned there were several young men in the vicinity. Two or three any way.

Q. You did have a conversation with one man who stepped out of the car?

Mr. Ward—I object on the ground that he has not stated he had any conversation with any young man who stepped out of the car, on the further ground that it is leading, and has no binding force or effect on the defendant who was not present at the time, and as an effort to impeach on the witness.

A. In mentioning Donnelley. I don't know Donnelley from the man in the moon, and I don't know whether it was Donnelley. I am mentioning a man's name who I don't know. Why should I commit myself and Donnelley? I wouldn't know Donnelley. It is not a justice to myself to mention Donnelley. That is to say that I am taking this name and using it and referring to it under oath without any knowledge of the gentleman, who he is or what he is or what he may have been. I only know it was Donnelley from hearsay. I don't know him personally.

Q. When did you first hear his name mentioned? A. I heard his name through Mr. Smith and through Mr. Fairhurst.

Q. Is that the first time you heard it mentioned? A. Yes.

Q. Who first stepped out of the car after the accident occurred? A. My car stopped exactly two city blocks away and by the time I backed up, I

didn't know who stepped out. There happened to be a party of six or eight at the time I backed up. I didn't see anybody step out. They were out.

Q. Just give us in detail what you said to anybody that stepped out of the car?

Mr. Ward—I object on the ground that the witness didn't say anybody.

A. I just referred them to my plate number, and not being presentable to talk to a lady; I was in a swimming outfit, I only had a khaki shirt and pants.

Q. Did the lady say who she was? A. No, sir. I didn't know who it was until I received a communication from Mr. Smith regarding the accident.

Q. Will you tell us what you told Mr. Smith with reference to this accident in the presence of Mr. Fairhurst?

Mr. Ward—I object on the ground that it has no relevancy, the conversation having taken place when the defendant was not present, and therefore has no force and is not binding upon her.

A. When Mr. Smith called at the house I impressed upon his mind that I did not wish to be drawn into this dispute or controversy or family affair, and told him or asked him if this accident had been settled satisfactory to him and he replied that it was, that he wasn't referring to the accident, as that was all settled, all he was interested in was whether there was an occupant in the car besides Mrs. Smith. I don't just recollect the rest of the conversation.

Q. Tell us just what you told him with reference

to who was in the car? A. Mr. Smith called, and I told him I didn't recollect definitely, and in order to avoid any complication, I told him I would consult my lawyer regarding the instance.

Q. Consult whose lawyer? A. My lawyer.

Q. Who is your lawyer? A. At the present time I don't wish to refer to him.

Q. Where does he practice law? A. Bayonne.

Q. Know his name? A. Not definitely.

Q. Does he occupy any city position? A. I can't say.

Q. How long have you known him? A. Two or three years.

Q. You have known his name for three years? A. Personally I have never met him. I have his card home.

Q. Do you know where his office is located? A. No, sir.

Q. What was done with reference to the damages claimed by Mr. Smith in this car?

Mr. Ward—Question objected to on the ground that it is binding on the defendant.

Q. Did you ever pay Mr. Smith any money? A. I forwarded Mr. Smith money order for $50.00.

Q. Who was this forwarded by? A. Myself.

Q. Not by your attorney? A. No, sir. He merely advised me to settle without court proceedings.

Q. You say you didn't want to get mixed up with any family affairs? A. Yes.

Q. How would you be getting mixed up with any family affairs if you told who was in the car at the time the accident happened?

Mr. Ward—I object on the ground that the

witness has decidedly stated that he did not know who was in the car at the time the accident happened. The only person to whom he talked after the accident was a woman. It does not appear that there was any other person in the car besides one woman. Also because the question is immaterial on the ground that it is asking for the mental process of the witness.

A. Well, I was under the impression, being that I was out for a ride this afternoon, that there may be a question in connection with my wife in regards to what I would have to do with Mrs. Smith in case there was an inquiry made regarding this subject, when I was not at home.

Q. So you felt this would involve you and Mrs. Smith? You felt then that this would involve you and Mrs. Smith?

Mr. Ward—Object to the question as leading and inquiring into the witness's mental processes, which is improper.

A. In the event that I happened to be out of town I have been prompting myself by going into details personally with Mr. Smith. As far as my connection with Mr. Smith was concerned, it was regarding an automobile accident and not a dispute between him and his wife.

Q. So, as a matter of fact, you wouldn't be getting involved into the domestic affairs of Mr. and Mrs. Smith if you did tell the truth?

Mr. Ward—I object on the ground that it

assumes that the witness is not telling the truth; 2nd, on the ground that it is leading; and 3rd, on the ground that it is argumentative; 4th, it is irrelevant and immaterial; and 5th on the ground that it is incompetent.

A. I don't just recollect just what you would call the truth. I consider that an insinuation.

Q. Just answer the question? A. I couldn't answer that question.

Q. "Question repeated." I don't understand what you mean by telling the truth.

Q. How could you be involved in the affairs of Mr. and Mrs. Smith if you told what had happened on that occasion?

Mr. Ward—Objected to on the ground that is an effort to impeach his own witness; and second, it states that the witness has not told what the witness has told or has told to the best of his recollection what occurred on that occasion; third, it is argumentative; fourth, because it is leading; and fifth, because it is irrelevant and incompetent, and sixth, because it has no binding force or effect on the defendant; and 7th, because it is inquiring into the witness's mental processes.

A. I will have to think that over. I do not wish to discuss this question.

Q. Who was with you in the car at the same time that this accident took place? A. Two brothers.

Q. What are their names? A. Dennis A. and Gerald D.

Q. Where do they reside? A. Same place.

Q. Who resides there with you? A. Father and sister.

Q. Are you married? A. Yes, sir.

Q. Where did you get this $50. with which to pay the debt of Mr. Smith?

Mr. Ward—I object to that as irrelevant and immaterial.

10

A. I object to answering that question.

Q. Did you withdraw it from the bank? A. I object to answering this question.

Q. Did you get anything for your share of the injury to the car? A. I also object.

Q. You refuse to answer, in other words? A. Yes, sir.

Q. Did you tell Mr. Smith at the same meeting with Mr. Fairhurst that you didn't propose to be drawn into any court proceedings? A. Yes, sir.

20

Q. You also told him that you did not desire to be drawn into any domestic family trouble? A. Yes, sir.

Q. Meaning by that Mr. Smith's family trouble? A. Yes, sir.

Q. Did you tell Mr. Smith at that time that there was a man with Mrs. Smith?

Mr. Ward—I object on the ground that it is an effort to impeach his own witness, leading, irrelevant and immaterial and not binding upon the defendant, and that the witness has testified already that he did not tell Mr. Fairhurst that there was a man in the car at the time.

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A. I think I answered a question similar to that before.

Q. "Question is repeated"? A. No more than I said in the first instance, that after I backed up the car there were several men witnessing the accident, and presumably that the man he was referring to might have been an occupant of the car.

Q. Did you tell Mr. Smith he was a young man about thirty-five years of age and about the same build as yourself?

Mr. Ward—Same objection as to the previous question.

A. I have a slight recollection of stating that if there was a gentleman occupant in the car there was a man that was presentable after the accident occurred. It might have been one of the occupants, but is a man that I described to Mr. Smith.

Q. Did this young man say that he was a City offical of Paterson and proceeded to blame the entire accident on you?

Mr. Ward—I object to the question on the ground that in referring to "this young man" is indefinite.

Q. Did this young man say in the presence of Mrs. Smith that he was a City official of Paterson?

Mr. Ward—I object to the question on the ground that it assumes that "this young man" is a man referred to as being an occupant of the car. The question is leading, and improper, and is an effort to impeach his own

witness, and that whatever was said by the witness to Mr. Smith, or in their presence, not in the presence of the defendant, is improper evidence and not binding upon him.

A. I do not recollect.

Q. Did this man say that he didn't want to have any noise about this case and he would like to have the matter settled quickly and without any trouble to any of the parties?

Mr. Ward—Same objection as to the previous question.

A. I think that question is misleading.

Q. Well, is that right? Answer that so far as you can, Mr. Griffin. A. I cannot answer that question.

Q. Why can't you answer it? A. Because you are still referring to this prospective Mr. Donnelley, whom I do not know and whom I refuse to jeopardize under these conditions.

Q. Did you give the young man your card, Mr. Griffin, in the presents of Mrs. Smith?

Mr. Ward—I object to the question on the ground that it is irrelevant, immaterial and incompetent.

A. No, sir, I didn't have any card. I was in bathing house regalia at the time.

Q. Did you tell Mr. Smith that you had turned the letter you had received from him over to his friend, who was a lawyer, and who is private sec-

retary to one of the Commissioners at the Jersey City City Hall?

Mr. Ward—I object to the question, first, because it is an effort to impeach his own witness; 2nd, it is leading; 3rd, it is irrelevant and incompetent; 4th, it is improper in view of the fact that Mrs. Smith was not present; and 5th, because it is duplicious.

Q. Did you tell Mr. Smith at that time that you heard no more about the case but that your friend, the lawyer, told you that it was all settled?

Mr. Ward—Same objection.

A. When Mr. Smith interviewed me I told him that anything I had to say was strictly confidential and I did not wish to go into details regarding this matter, that I was satisfied as far as the accident and damages were concerned, it was all I was interested in.

Q. Did you tell Mr. Smith that the accident hadn't cost you a cent? A. I don't recollect that.

Q. Do you recollect saying that the accident hadn't cost you a cent, and laughed about it?

Mr. Ward—Same objection.

A. I do not recollect.

Q. Did you tell him that you didn't know who paid the bill and that you promised to endeavor to find out the name of the Paterson lawyer who settled the matter, and also the name of the client?

Mr. Ward—Objected to on the same ground.

A. Well, I promised Mr. Smith that I would give him all the information I could possibly obtain regarding the way the case was settled. Owing to the fact that I was away at the time I couldn't say anything definitely regarding the matter, but would consult the lawyer who handled the situation for me.

Q. You didn't want to get that lawyer involved in the matter, did you? A. No, sir.

Q. Did you meet Mr. Smith again on Wednesday, June 7th? A. Yes, sir.

Q. And you had another conversation with him at that time? A. Not regarding the case.

Q. Did you tell him that you had seen the Paterson lawyer who had handled the matter for Mrs. Smith? A. No, sir.

Q. You didn't say that you had seen Alexander McCloud of Paterson, lawyer, who handled the question for Mrs. Smith?

Mr. Ward—I object on the ground that it is an attempt to impeach his own witness any conversation that took place between the witness and Mr. Smith is irrelevant, immaterial and incompetent.

A. No, sir.

Q. Did you tell him that you didn't know from whom the money came and you wondered whether James Donnelley or Mrs. Smith had paid it?

Mr. Ward—I object on the ground that

it is an effort to impeach his witness, and because of its immaterialcy and incompetency.

A. I don't recollect the question.

Q. Now, Mr. Griffin, the reason you have answered these questions in the negative is because you did not want to involve the parties, your own lawyer, Mr. Donnelley, Mrs. Smith and Mr. McLoud?

Mr. Ward—I object to the question on the ground that it is misleading and improper. There might be a desire on the part of the witness not to involve his own lawyer and no desire to save anybody else; on the ground that the question is leading, dupicious and an effort to impeach his witness.

A. I do not wish to discuss this under the present conditions.

Q. You can find out the name of your lawyer, can you not? A. I think I have his card.

Q. Did you ever go to his office? A. No, sir, I just met him incidentally and went into details regarding it and took his advice regarding it.

Q. Where did you meet him? A. I couldn't say that just at present.

Q. Where do you ordinarily reach him when you want him? A. I don't want him as a rule.

Q. Where did you have your conversation with him in this matter? A. In Villa Richardi.

Q. You meet him in Jersey City once in a while? A. I don't now wish to discuss that.

Mr. Ward—We object to any continuance

of the hearing on the ground that the Master has no authority, the power to continue the hearing.

Cross Examination by Mr. Ward:

Q. Mr. Griffin, as I understand you, you were approaching Hassard's Point at the time of the accident? A. Somewhere in the vicinity.

Q. And you have no definite idea of the location of the road where the accident took place? A. Only if I went up there.

Q. But you can't give any description of the place? A. Not definitely.

Q. You paid no attention to this car until the accident happened, did you? A. No, sir.

Q. And as the car passed you you didn't notice anything particular about it or its occupants? You didn't know how many occupants it contained? A. I was in conversation with the rest of the people in the car and I couldn't say definite.

Q. And just as it was about to complete passing it struck your rear left wheel, is that correct? A. Yes, sir.

Q. And you went on for two blocks? A. Possibly two City blocks.

Q. And then you backed up? A. Yes, sir.

Q. And when you got back to this car was the car standing at the side of the road? A. Why when I was approaching the car I saw a Ford car parked, and as I approached the Ford car the other car came in between us and we just had room enough on that road.

Q. After the accident happened you backed your car up? A. Yes.

Q. And when you backed up to the place where the Cole car was, was the Cole car to the side of the road then? A. Side of the road.

Q. And whoever had occupied the car was out? A. Yes, sir.

Q. And there were a number of people around there? A. Yes, sir.

Q. And a number of men? A. Yes, sir.

Q. You talked, however, to some woman? A. Yes, sir.

Q. And all the conversation that you had as I understood you to say, was that this woman wished to take the number of your car and you would take the number of the car she had been driving? A. Yes, sir.

Q. That entire conversation didn't occupy over a few moments, did it? A. No, sir.

Q. Then after you had had conversation with the other occupants of your car you came to the conclusion that it was a woman who was driving the car at the time the accident happened? A. Recently, to make sure of myself, I made inquiries of the occupants of my car, and they wouldn't say.

Q. Well, Mr. Griffin, later on some man by the name of Fairhurst came to see you? A. Yes, sir, just recently.

Q. Accompanied by Mr. Smith, the person you see here? A. Yes, sir.

Q. And Mr. Fairhurst seemed to evince a great deal of interest?

Mr. Evans—I object to that as calling for a conclusion.

A. He didn't seem to be any more interested

than Mr. Smith but it was noticeable that he was doing his utmost to cross-question me in Mr. Smith's favor.

Q. In other words, he tried to get you to say things of which you were not sure? A. In the drift of conversation I didn't think that it would go as far as it have gone now and I said things that I wasn't positively certain of, that I wouldn't positively swear to and specify in writing. It was a good-fellowship conversation which wasn't going to involve me.

Q. And suggestions were made to you? For instance, the name Donnelley was mentioned to you? A. Not at that time.

Q. But other suggestions were made to you by Mr. Fairhurst for instance where you expressed any doubt about anything he would try to make you certain? A. No, I wouldn't say that. No. we just talked along the lines of what the probabilities were of getting the occupants, and I said nothing definitely but just assumed and swore to nothing.

Q. Didn't he ask you if it wasn't a man who was driving the car? A. If I recollect he may have inquired as to that but I wouldn't say definitely.

Q. Then when you said you didn't know what did he say then? A. I do not recollect.

Q. How many times has Fairhurst seen you? A. Twice.

Q. And I believe you stated you were in a hurry to get away that day because you considered your appearance unpresentable? A. Yes, sir.

Q. Now, in many of these questions asked by Counsel for the petitioner is it not true that you have had difficulty in answering them because

they have assumed facts about which you were doubtful? A. Yes, sir.

Q. Questions that involved the discussion or mention of Mr. Donnelley, did you not find it difficult to answer in view of the fact that you don't know Mr. Donnelley? A. Yes, I don't know Mr. Donnelley.

Q. I believe you have said that Mr. Smith and Mr. Fairhurst were the first persons to mention the name of Donnelley to you? A. I couldn't say that definitely.

Q. But you know that they did mention the name of Donnelley to you? A. The mere fact that Donnelley had been mentioned so much recently I don't know who was the first party. It seems to be a pass-word at the present time.

Q. But it was mentioned by Smith and Fairhurst to you, the name Donnelley? A. I believe it was mentioned.

Q. Did they give you a description of him? A. I couldn't recollect.

By Mr. Evans:

Q. Could it have been your own lawyer that mentioned the name Donnelley to you?

Mr. Ward—I object because of its immaterialcy and incompetency and irrelevancy, and because it is leading.

A. Possibly.

Q. Was it not upon the second occasion that you met Mr. Smith and Fairhurst that the name Donnelley was mentioned by you after getting the

name from your lawyer and that Mr. Donnelley lived on 23rd Street, Paterson?

Mr. Ward—I object to the question on the ground that it is immaterial, incompetent and irrelevant.

A. I couldn't swear to this under oath. I can't say definitely one way or another.

Q. It might have been though? A. I wouldn't say that.

Q. You wouldn't say yes or you wouldn't say no? A. Yes.

Q. Is it because your recollection is uncertain? A. Yes, sir.

IN CHANCERY OF NEW JERSEY

Between Roy U. Smith, Petitioner, and Frances B. Smith, Defendant.	On Petition for Divorce

OPINION

Mr. Merritt Lane and Mr. William W. Evans for petitioner.

Messrs. Ward & McGinnis for defendant.

Mr. Wood McKee for James J. Donnelley, corespondent.

V. C. Lewis.

This is an action for divorce on the ground of adultery. The answer is a denial and an attempt is made to show extreme cruelty, but I am unable to discover a scintilla of evidence to sustain such a charge. Moreover, extreme cruelty is not a defense to adultery. The defense does not attempt to show condonation. The case took about a week to try and there is a great mass of testimony. Several of the witnesses, sworn in behalf of the petitioner, were close and intimate social friends of both the petitioner and defendant for many years. They attended the same social functions and were well acquainted with them. They maintained their friendship for both until they obtained knowledge of the misconduct of the defendant with the corespondent, Donnelley. Most

of these witnesses are well known residents of Paterson and are of unquestioned integrity. It is quite evident that some of them were extremely loth to testify against the defendant.

The petition filed by the husband names two corespondents, Harry E. Pearsall, of Boston, Massachusetts, and James E. Donnelley, of Paterson, New Jersey. The time fixed for wrongdoing between Pearsall and the defendant is August, 1918, at the home of Mrs. Pearsall, the corespondent's stepmother, at Oxford. Mrs. Frances B. Smith, the defendant, was a visitor at the Pearsall home at this time with Mr. and Mrs. William H. Smith, her father-in-law and mother-in-law, and Pearsall was also visiting there. It appears from the testimony of Pearsall, who is a married man having a wife living in Boston, Massachusetts, and from the testimony of Mr. and Mrs. William H. Smith, that the defendant and Pearsall grew very friendly and intimate almost immediately upon meeting one another. Pearsall stayed at his stepmother's home for several days. His explanation of his visit there is that he came to settle up a small estate left by his father, but it appears that he only made one visit during his stay to the lawyer of the estate. He found time, however, in addition to taking out the defendant with other parties at his stepmother's home, to take her out on a trip alone to a county fair. His explanation for taking her alone on this trip was that he found her so agreeable. Mr. and Mrs. William H. Smith, the father-in-law and mother-in-law, testified that after they had retired at night at about eleven o'clock they left Pearsall and the defendant downstairs in the house, and that on two nights after they had gone

to their bedrooms they heard someone tiptoeing from Pearsall's room in the direction of the defendant's bedroom. These witnesses heard the defendant and Pearsall come upstairs together and heard Pearsall go to his room which adjoined theirs. It was only a few minutes afterwards that they heard him going through the hall toward the defendant's room. It was a very soft tread, they avow, and that he stopped at the defendant's room, for there was no other place to go. The defendant's room, from the diagram produced, appears to have been in the front of the house and there was nothing else in this locality. They discussed the matter but did not tell the petitioner of it until after the occurrene of November 19, 1921, in the Blue home.

This proof standing alone I, of course, would not be willing to accept as satisfactory to establish a charge of adultery, although the testimony as to the conduct of the defendant and Pearsall at the Oxford home shows them to have been on terms of greatest familiarity and friendship and ample opportunity was there offered for the commission of the offense.

William H. Smith, among other things, tells of finding Pearsall and the defendant in the bathroom on one of the mornings after the night he heard Pearsall go into Mrs. Smith's room. Pearsall was in the bathroom and the defendant in the doorway. The corespondent was dressed and the defendant had on a kimona. He says that he said to the defendant, "Are you crazy?" And she replied, "It is none of your business what I do".

The evidence discloses a continuation of the friendship, and relationship, between Pearsall and the defendant. After the meeting at the Oxford

home they met in New York on various occasions and had luncheon and dinner together—they say in company with a Mrs. McGee. They danced together on these occasions. The defendant says that she told her husband she was going to meet Pearsall in New York but he denies having any knowledge of their meetings. All agree that he never met Pearsall and, strange to say, according to Pearsall and the defendant, it appars that all the appointments made for meetings between them were through Mrs. McGee. Pearsall, in his testimony, says that he never met Smith, the petitioner, and never telephoned to the defendant to make appointments. He knew that she had a telephone at her home and could readily have been reached by him in this way.

Mrs. McGee, who arranged all the meetings between the defendant and Pearsall, was not called as a witness. It is alleged that she is a resident of New York State but, from the testimony of the defendant, it is shown that she was on terms of intimacy with her at the time of this trial. In fact, she testified that Mrs. McGee had recently visited her in Paterson and that she had been on a long automobile ride with her. The defendant could, without doubt, have procured her attendance at the hearing and her testimony would have thrown some light on these clandestine meetings of Pearsall, the married man from Boston, and the defendant. The defendant's explanation of their meetings, which were had, as is apparent, without the knowledge of Pearsall's wife or the defendant's husband, is entirely unsatisfactory and I cannot but conclude, under all the circumstances, they were for guilty purposes.

Now relating back to the testimony of Mr. and Mrs. Smith, father-in-law and mother-in-law, I believe they told the truth as to the relationship between Pearsall and the defendant at the Oxford home. Their evidence of what happened there, together with the further testimony of secret meetings in New York, are to my mind sufficient to warrant the Court in finding that Pearsall and the defendant were guilty of the charge contained in the petition.

The charges against the corespondent, Donnelley, are sustained by convincing evidence. A large number of witnesses have testified to having seen the defendant and Donnelley together under circumstances which preclude the belief that their meetings were innocent and for innocent purposes. I do not need now to give the names of all the parties who have appeared as witnesses in this action and have testified to having seen them together. Evidence is offered to show that they were at Asbury Park together and at one time, while the petitioner was absent, it appears that Donnelley and the defendant went to the Allenhurst Club to a dance in the evening. They walked from Asbury Park to Allenhurst along the boardwalk. Frequently they were seen out in the automobile belonging to the husband of the defendant and it is established, beyond peradventure, that this was without the knowledge of the petitioner. The defendant testifies that she was in the habit of renting her husband's car to Donnelley to take out other young women. Her explanation for doing this was that she wanted to get a little extra money as her husband was not supplying her with sufficient funds, although it appears that he was liberal to her considering his earning capacity. He al-

lowed her Thirty Dollars ($30.00) a week for household expenses and, during the- last year they lived together, he had given her besides that in the neighborhood of Seven Hundred and Thirty Dollars ($730.00). The story of renting her husband's car to Donnelley is absurd and, in my belief, was manufactured for the purpose of meeting the testimony of Edward Fairhurst as to the occurrence on December 4, 1920.

The witness, Fairhurst, who is a young man of excellent reputation and a well known resident here, has known both petitioner and defendant for many years. He says he was taking a horseback ride on an unfrequented road in the neighborhood of Warren Point on December 4, 1920, and that, as he was passing through the woods to the Dunkerhook Road, he saw the car of Smith, the petitioner, parked about twenty-five feet off the road. In the car he saw the defendant and Donnelley on the back seat and they were embracing and kissing each other. The defendant denies that she was in the car on this day and tells of meeting the corespondent, Donnelley, at the Young Women's Christian Association on Ellison Street on that day and renting him the car to take out a young girl friend of his named Miss Myers. Donnelley swears that this was the girl that Fairhurst saw him with on this occasion.

I am satisfied that Fairhurst tells the truth in this matter. His credibility is not impaired in any way and other circumstances corroborate his story. Fairhurst, undoubtedly as an act of friendship, called up the defendant after the event and asked her to see him. She came to his office and he spoke to her in a most friendly manner cautioning her

against her conduct and the perils involved. She told him that it was none of his business, that she would look out for herself, and forthermore said:

> "If I am interfered with I will lie. I will stop at nothing and if this thing goes into Court and any attempt is made to take those children away from me I will swear they are not Roy Smith's."

On the witness stand the defendant endeavored to convey the impression that Fairhurst's charges against her on this occasion were prompted by jealousy on his part, as she says he had been in love with her before her marriage—had proposed marriage to her—and that subsequent to her marriage almost every time they met he had obnoxiously forced his attentions on her, all of which Fairhurst denies and which appears to be without the slightest foundation. If his attentions to her were obnoxious and offensive, why should she have gone to his office after the occurrence on the roadside of December 4, 1920, which Fairhurst has related? On the last day of the taking of the testimony a picture postal card, written by the defendant while she was away on a summer vacation to Fairhurst, was put in evidence which reads as follows:

> "Mr. Edward Fairhurst,
> East 29th Street, nr. 14th Ave.,
> Paterson, N. J.
> Dear Eddie:
> What do you mean by dolling off to Philly? Thought you were a busy man these days. Have you seen Roy? I am still here and apt to stay, but I really like it. Love.
> (Signed) Frances"

This communication certainly doesn't indicate an unfriendliness towards Fairhurst. It was suggested that it may have been written to Fairhurst, her husband's closest friend, for the purpose of keeping track of her husband's movements. It certainly stamps her story of her attitude toward Fairhurst as false. Her husband has entered a flat denial of her statement that she complained to him about Fairhurst's attentions.

Another charge against the defendant is laid on the night of November 19, 1921. It is shown that she and Donnelley spent that evening together at the home of her sister, Mrs. Edna Blue. Her sister and her brother-in-law were at a dance that night at Pompton Lakes. Mrs. Smith, it is said, went to her sister's house to take care of her sister's baby. Donnelley, however, appeared upon the scene. Donnelley says that he came there that night in response to a letter signed by the defendant saying that she wanted to see him. The letter, he says, has been lost. The defendant says she saw the letter and thought someone was playing a practical joke. Andrew Blue, the brother-in-law of the defendant, arrived at home about eleven o'clock. When he reached there he found Donnelley in the house. There was an immediate row, the cause of which was not disclosed, as Blue was not put on the witness stand although he lives at this house with his wife, the sister of the defendant, in the City of Paterson. A Mrs. Marsden testifies that she called at the Blue house that night and that the defendant, Donnelley and herself spent the evening together partaking of light refreshments. The defendant says that Mrs. Marsden arrived first and stayed until Donnelley had

gone. Blue, of course, knows whether Mrs. Marsden was there when he came home and had the row with Donnelley, but he is not called as a witness. I am disinclined to believe that Mrs. Marsden spent the evening there. Why is it that an important witness such as Blue should be kept from the Court when his presence and testimony, if Donnelley's visit to his sister-in-law was for innocent purposes, might have led the Court to another conclusion than that the object of the meeting on this November night was for wrongdoing. As aforesaid, there was an immediate row between Donnelley and Blue, and Donnelley was seen rushing from the house after Blue had entered. He was pursued by an elderly lady, who also was not produced. Donnelley admits on the witness stand that Blue called him a dirty dog and acted like a wild man, and yet he claims that his visit that night was an entirely innocent one. A hasty examination of Donnelley's testimony, under cross examination, indicates clearly what was going on at the Blue home and sheds great light on his entire relationship with the defendant. When the information was conveyed to Smith, the petitioner, as to what had taken place at the Blue house on the night of November 19, 1921, he severed relationship with his wife and refused to live with her.

There is other testimony as to meetings between Donnelley and the defendant. One witness, Harry Burns, a crossing tender at the New York, Susquehanna and Western Railroad in the locality of the home of Donnelley and the defendant, says that he saw them repeatedly during the summer months of 1921 around eleven o'clock at night standing

on the pathway between the crossing and the Broadway Station, which is an unfrequented passageway at this hour of the night. He says they were very loving and were kissing each other. Rudolph Wiseman (a member of the Bar in this State) testifies to having seen the defendant and Donnelley going up the railroad tracks (New York, Susquehanna and Western Railroad) towards Seventeenth Avenue at eleven o'clock one night. This evening he had accompanied Smith, the petitioner, on a hunt for his wife, her absence from her home being unaccounted for on this occasion. He did not inform the petitioner at the time of his discovery because he felt delicate about doing so.

Thomas Spagnola, a fruit dealer with whom the defendant had dealt and who had a store near the New York, Susquehanna and Western Railroad crossing at Park Avenue, testified to having told the defendant that he had been informed that she was meeting Donnelley in that locality. James Wright testifies to having seen Donnelley and the defendant near the Smith home in an automobile about eleven o'clock at night when he had left the petitioner downtown at a lodge meeting, and Walter L. Dunstan tells of seeing Donnelley and the defendant automobiling through Passaic City and on one evening having seen them entering the Smith homestead through the kitchen door about eight-thirty. Smith, the petitioner, testifies that he never saw Donnelley at his home.

Donelley is a single man and was not a friend of the petitioner, or even on terms of intimacy with him, and it does not appear that he was ever with the defendant when her husband was present.

Rudolph Wiseman, the witness beforementioned, testified that Blue had told him that when he entered his home on the evening of November 19, 1921, he found his sister-in-law and Donnelley in bed but this testimony is objectionable and I have ruled it out and not considered it in reaching my conclusion. In fact giving no consideration to all testimony objected to by the defendant's solicitors I am led, however, to the inescapable conclusion that the charge of adultery against the defendant and the corespondent, Donnelley, has been proved.

There is other testimony affecting the defendant's conduct—one an occurrence in the United States Hotel in Paterson where a detective testified that he saw her in the restaurant at eleven o'clock at night with a tall, dark-haired man. They were having supper. This was on July 22, 1922. He watched for them to come out but at one o'clock, although they had disappeared from the restaurant, he had not seen them come out. An effort was made to have Mrs. Smith admit that she spent the night at the hotel and, while admitting that she was in the restaurant, says she left there about eleven o'clock. The man with her was not her husband. No attempt was made to amend the pleadings and there is no charge of adultery based on the meeting at this hotel.

Smith, the petitioner, is a silk salesman and a resident of Paterson. He is a young man of good character and standing. None of the witnesses had any charge of misconduct to make against him, save that an attempt was made by Mrs. Blue, the sister of the defendant, to show that he had made improper advances to her. It was quite apparent, however, that the object in view was to

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

ROY U. SMITH, *Petitioner-Appellee,* *and* FRANCES B. SMITH, *Defendant-Appellant.*	*On Appeal from Decree in Chancery.* *Absolute Divorce.* *Adultery.* *Lewis, V.-C.*

BRIEF FOR APPELLEE.

Statement of the Case.

Opinion Addendum to Case, page .

The petition was filed February 23rd, 1922, charging adultery on August 27th and 29th, 1918, and on other days in the month of August, 1918, with Harry E. Pearsall, at Oxford, Chenango County, New York; with James Donnelly on December 4th, 1920, at Warren Point, Bergen County, New Jersey; on November 19th, 1921, and on other days in the month of November, 1921, with James Donnelly at the home of Andrew Blue (a brother-in-law of defendant, married to defendant's sister) in Paterson, New Jersey; at various times, the dates being unknown to petitioner, during the years 1919, 1920 and 1921, with James Donnelly at the home of petitioner and defendant in Paterson, and at the home of Andrew Blue and at other places unknown to petitioner.

The parties were married September 19th, 1911. They lived together in Paterson until November 22nd, 1919, on which day the husband was informed of the events which had occurred at the house of Andrew Blue on November 19th (p. 545). Petitioner at the time of the hearing was thirty-five years old and his wife thirty-one. There were two children, girls, aged six and seven.

The co-respondent, Pearsall, did not intervene, but did testify at the hearing (p. 157). The co-respondent, Donnelly intervened, filed an answer and testified (p. 9). He did not appeal.

After hearing, which took some six days, and at which some thirty-three witnesses were examined, the Court found defendant guilty of the charges of adultery both with Pearsall and with Donnelly, and thereupon advised a decree *nisi* dated May 16th, 1923 (p. 13). From that decree the present appeal is taken by defendant, Frances B. Smith.

The question is one solely of fact.

There is no doubt but that, if the Court believed the witnesses produced by petitioner, there was more than sufficient evidence upon which to base the finding of guilt. In the Pearsall incident defendant and the co-respondent, Pearsall, not only denied the act of adultery charged, but likewise denied the existence of the incriminating circumstances or of most of them. If the witnesses for petitioner with respect to this incident, to wit, William H. Smith (p. 98) and Alice Smith (p. 79), are to be believed the act of adultery was shown, for they testified that, upon two occasions, after the household had retired, they heard Pearsall leave his room and go to the room of Mrs. Frances B. Smith and there remain (pp. 82, 85, 100, 102), and there was evidence from Mrs. Alice Smith (p. 83) that she told Pearsall that she had heard him go through the hall and that he had said, "Yes, I wanted to ask Frances how to set the alarm" (p. 83). And likewise William H. Smith testified to having found Pearsall and defendant at the bathroom, together, at which time William H. Smith said to defendant, "Are you going crazy?" and she replied, "It is none of your business what I do" (p. 101). William H. Smith is the father of Roy U. Smith, petitioner, and Mrs. Alice Smith is his wife and the stepmother of Roy U. Smith. There was also evidence from both Mrs. Alice Smith and William H. Smith with respect

to defendant and Pearsall remaining downstairs at night after the others had retired, and that they had gone on a ride together alone, etc. The Vice-Chancellor said: "This proof standing alone I, of course, would not be willing to accept as satisfactory to establish a charge of adultery * * *." The context of the Vice-Chancellor's opinion indicates that what he meant by this was that, in the face of a full and fair denial on the part of defendant and Pearsall, or a full and fair explanation of the circumstances, he would resolve any doubt in favor of defendant and would hold either that Mr. William H. Smith and Mrs. Alice Smith did not tell the truth or that they were mistaken. If their testimony is to be believed adultery was shown. It is, therefore, highly important to consider the explanations made by defendant and by Pearsall. The testimony of Pearsall is found on page 157 and his cross examination on page 170, and I refer particularly to his cross examination commencing at page 170, from which it appears, among other things, that, during the year succeeding the meeting between defendant and Pearsall at Oxford, they met at various hotels in New York, unknown to the husband, petitioner (p. 548), the appointments being made by telephone, through a third party, a Mrs. McGee (p. 171). The explanation of defendant is found in her testimony, pages 444, 454, 503, 511.

Upon a consideration of the denials and the attempted explanations of Pearsall and defendant and the new matters brought out by their cross examination the Vice-Chancellor was convinced that Mrs. Alice Smith and William H. Smith told the truth with respect to the Oxford episode, and he found defendant guilty of adultery upon that occasion.

And so with respect to the charges of adultery with Donnelly. The evidence produced by petitioner from Edward Fairhurst, page 17; Harry Burns, page 57; James Spanolga, page 60; John Kilpatrick, page 69; James N. Wright, page 74; Rudolph A. Wiseman, page 75; George Wiseman, page 96; George Scofield, page 113; Louis R.

Shorter, page 118; Lawrence Thetges, page 122; Catherine Thetges, page 124; Roy U. Smith, page 125; Alexander MacLeod, page 154; Wallace K. VanNess, page 155; T. Albert Guyet, page 576, was quite sufficient to justify a finding of guilt for, by that evidence, defendant and Donnelly are placed, on the 4th day of December, 1920, off a lonely road in Warren Point, New Jersey, alone, in the back seat of petitioner's automobile, in each other's arms, embracing each other (p. 21); on the 9th of July, 1921 (p. 28), defendant is placed in petitioner's automobile with Donnelly, unknown to the husband, at Palisade, New Jersey, along the Hudson River (p. 29); she is placed with Donnelly on numerous occasions in 1921 along the tracks of the New York, Susquehanna and Western Railroad at 22nd street, at a lonely spot at Park avenue (p. 58) alone, "very loving," embracing each other (p. 59); in the dark half a dozen times during the summer; when the lights went on they broke away (p. 70); the conduct of defendant was such as that the keeper of the fruit store spoke to her about it (p. 66); on the night of November 19th, 1920, defendant is placed in the home of Andrew Blue with Donnelly unknown to her husband in the absence of Andrew Blue and his wife and on an occasion when she went there to spend the night to take care of the Blue's baby left home alone while Blue and his wife attended a dance, and upon which occasion Donnelly fled the house upon the unexpected return of Andrew Blue at 11 o'clock at night (pp. 113, 118); defendant is placed on another occasion in the fall of 1921 alone with Donnelly along the line of the Susquehanna Railroad coming up the railroad tracks (p. 76) and this at a time when her husband was out looking for her and when she was supposed to be at the house of her sister, Mrs. Blue (p. 77); she is placed by the Thetges (pp. 122, 125) in the position of going to their garage and having Donnelly wait for her. And there was other evidence of surreptitious meetings between defendant and the co-respondent, Donnelly.

The evidence was clearly sufficient to establish guilt, if believed.

Here, as in the Pearsall incident, it is extremely important to consider the explanations of defendant, the co-respondent and the various witnesses produced by them. Their testimony speaks irresistibly of guilt. A consideration and comparison of the testimony of Mrs. Edna Blue, a sister of the defendant (pp. 214, 217, 218, 219, 220 to 265, 270 to 278) and that of Donnelly (pp. 305 to 319, 321 to 442); Mrs. Frances B. Smith (from pp. 444 to 459, 463 to 479, 485 to 537) will indicate guilt. Not only does the testimony of defendant and the co-respondent and that of her sister, Mrs. Blue, indicate guilt, but it likewise indicates that the testimony of Mollie Marsden (pp. 281 to 305) (considered in conjunction with that testimony), is deliberately false and that the "presence" of Mollie Marsden was created to overcome the inference, arising from the circumstances that, without the knowledge of her husband, defendant and the co-respondent were alone in the Blue house on the night of November 19, 1920, and the co-respondent was driven out of that house on the night in question at the point of a revolver upon the unexpected return of Blue at 11 P. M., and also that the "letter" which is given as the excuse for the co-respondent being at the Blue house on the night in question is a pure concoction of the mind, and the letter was not produced. A consideration of the testimony of defendant's witnesses is highly important for it was upon such consideration that the Vice-Chancellor reached the conclusion as he stated in his opinion that "I am disinclined to believe that Mrs. Marsden spent the evening there" (p. 657).

The co-respondent Donnelly admitted that he was in the automobile at the various times he was seen in it, but denies that defendant was with him on any occasion, introducing a Miss Meyers as the person who was with him. Miss Meyers was in court, brought there by defendant, for some of the days of the trial, but was not produced. Donnelly and the defendant insist that defendant

"rented" petitioner's car to him. A consideration of the testimony of defendant and co-respondent and the defendant's witnesses quite justifies the remarks of the Vice-Chancellor (p. 654) "The story of renting her husband's car to Donnelly is absurd, and, in my belief, was manufactured for the purpose of meeting the testimony of Edward Fairhurst as to the occurrence on December 4, 1920."

Miss Meyers, who is said to have been in the car with Donnelly on the occasions on which he was observed in the car, with a woman, is not produced. Mrs. McGee, the friend of defendant, through whom the appointments to meet Pearsall were made in New York, and with whom the appointments were kept, and who likewise was the companion of defendant on trips after the bringing this suit, with men other than those named as co-respondents, and which to say the least were not strictly conventional (pp. 606 to 612, p. 514), is not produced. Andrew Blue, the brother-in-law of defendant, at whose house Donnelly was caught on the evening of November 19, 1919, by Shorter, Scofield and Blue, the latter of whom drove Donnelly out of the house at the point of a revolver and called Donnelly "a dirty dog" and some other language of similar import is not produced. Nor are the Misses Camwell and Davies, who it is said had much to do with the acquaintance of Donnelly and defendant produced. The acquaintance was unknown to the husband.

THE LAW.

There is no dispute with respect to the law applicable. The rule in this State is settled in *Hurtzig* v. *Hurtzig,* 44 N. J. E. 329, affirmed 45 N. J. E. 869, and the rule so settled has never been departed from by this court.

> "It has been held that where it is established that the defendant and her *particeps criminis* had the will and the opportunity to commit the crime, the court will infer guilt."

> "* * * To establish adultery by inference, the circumstances from which the inference is to be drawn must be such as would lead the guarded discretion of a reasonable and just man to the conclusion of guilt."
>
> *Rector* v. *Rector,* 78 N. J. E., at p. 401.

In view of the explanations of the defendant and the co-respondents the language of Vice-Chancellor Backes in *Slack* v. *Slack,* 89 N. J. E. 589, affirmed on his opinion in this Court, 89 N. J. E. 596 is apt.

> "To overcome or to neutralize the presumption of guilt, her explanations must be probable; they must have the ring of truth; they must be supported. I do not say supported by the testimony of others, but by the surrounding circumstances, at least, to lend probability. It is true, as her counsel argued, that we cannot conjecture, we cannot speculate, as to crimes of this kind having been committed, and that we must have proof, clear and convincing, but when we have that proof in the form of admitted circumstances of a decidedly incriminating nature, unsatisfactorily explained, we are not driven to either in arriving at a verdict."

ARGUMENT.

This is a typical case in which the solution depends upon the credibility to be given to the respective witnesses depending to some extent upon the impressions made by the witnesses upon their examination upon the stand. The Vice-Chancellor saw the witnesses and heard the testimony as it was given and his conclusion was that the defense, particularly in the matter of the Donnelly charge, was manufactured; that Mrs. Marsden was not present in the Blue house during the time that it is conceded defendant and Donnelly were there otherwise alone; that the letter which it was said brought Donnelly to the house was never, in fact, written; that the explanations with respect to the "renting" of the husband's car was, in the langauge of the Vice-Chancellor "absurd" and in his belief "manufactured for the purpose of meeting the testi-

mony of Edward Fairhurst as to the occurrence on December 4, 1920."

Under the circumstances it is extremely difficult to brief the case in such a way as to put this Court in the position of the Vice-Chancellor and all that counsel can do is to point out some of the significant features which must have had the effect of impressing the Vice-Chancellor to the conclusion which he reached. Any attempt to consider all of the testimony in detail is doomed to failure.

The Oxford-Pearsall Episode.

Pearsall is a man residing in Massachusetts, 41 years of age, married in 1899 or 1900, with two children, who expresses on page 158 the greatest love and affection for his wife. Prior to his going to Oxford, New York, in the summer of 1918, he did not know that defendant existed (p. 158). He knew Mrs. Alice Smith, the stepmother of petitioner, from the time he was a boy. He went to Oxford to look after the interest of the estate of his father (p. 159). Notwithstanding that he did not know of the existence of defendant, upon the Wednesday after he arrived, he having arrived on Tuesday morning, when he was introduced to her, he took Mrs. Smith alone to a country fair in a runabout carriage. He says he does not remember when they got home but that it was not after nine o'clock in the evening, as testified to by Mrs. Alice Smith and William H. Smith (p. 163). He says he took defendant to the country fair "because they were congenial; we really had a good time," and they did not take the children with them because there was no room. He denies the visits to the room of defendant testified to by Mrs. Alice Smith and William H. Smith and says (p. 160), "It is not true; it is ridiculous; it is contemptible." He denies any affection (p. 167). Roy U. Smith, petitioner, was expected at the Oxford place on Saturday (p. 85), Mrs. Alice Smith says that Pearsall left on Friday at 9:30 in the morning (p. 85), and that defendant said:

"Wasn't I lucky to get rid of Harry before Roy arrived." Pearsall admits (p. 171) that Roy U. Smith was expected on Saturday morning and that he left on Friday but he says that his leaving just before Mr. Smith's arrival was but coincidental (p. 170), notwithstanding that he stayed in Oxford from Tuesday until Friday, although he only spent an hour and a half or two hours (p. 163) on the estate business on which he came and although he desired as speedily as possible to get back to his wife. He says (p. 171) that he met defendant in New York, after the Oxford incident, within about two months, at lunch at the Manhattan Hotel; at the Beaux Arts (p. 173), and again at the Beaux Arts and his story with respect to these meetings (p. 171) etc., is illuminating. All of the appointments were made through Mrs. McGee, a friend of defendant, and the reasons why he telephoned to Mrs. McGee and had her arrange the appointments was because, as he says, Mrs. McGee lived in New York and Mrs. Smith lived in Paterson (p. 179). He had never met Mrs. McGee until he telephoned her the first time to make the appointment with Mrs. Smith (p. 177). He knew nothing about her except that defendant had said, while they were in Oxford, that she was a very close friend of hers (p. 177). He knows Mrs. McGee's first name (p. 178) but he does not know what her husband's name is. He never did. He never accompanied the ladies home because it was a good ways to Brooklyn and back again (p. 176). His wife did not know defendant (p. 173). He did not think to inquire of Mrs. Smith whether her husband knew she was taking luncheon with him in this way (p. 172). He never suggested that petitioner should come along, and his testimony is (p. 172):

"Q Did you suggest that Mr. Smith come along?
A No, sir.
Q Why not? A She was a married woman."

When it is put to him (p. 170) that he remained in Oxford just as long as he possibly could and not meet petitioner, he said that it is a pure coincidence and "So

that you waited as long as you could wait, so that you might get home and not meet Mr. Roy Smith? A That is putting an entirely wrong phase on it. Q It is a fact, nevertheless? A Yes, sir."

They danced at these various places (p. 173). Defendant was sent home by Pearsall to Mrs. McGee's house in a taxi (p. 173), and Pearsall at least had something to drink (p. 176). He does not remember any desire expressed on his part to meet her husband nor any desire expressed on her part that he should meet her husband (p. 176) and, notwithstanding his love and affection for his wife, which induced him to so emphatically deny the suggestion of adultery when first put to him, he says that he does not remember, that he does not know for sure, whether he told his wife about these luncheons, dances, etc., with Mrs. Smith in New York, although he insists he had nothing to conceal and he says that she knows all about it *now* (p. 177). He says that the reason why they went to the Beaux Arts was that one of the ladies suggested it (p. 181). His reason for this course of conduct, taking this married lady out, without the knowledge of her husband, to these luncheons and dances in New York, making appointments with her through a third party, Mrs. McGee, and all without the knowledge of his own wife was that, as he put it, he "enjoyed her company; she was congenial; he had nothing to do—" (p. 173). He insists that Mrs. McGee was, to use his language, "with Frances every time that I ever saw her in New York" (p. 176). But Mrs. McGee is never produced.

We find the explanation of defendant with respect to the Oxford incident on page 444, etc.; she denies the testimony of Mrs. Alice Smith and William H. Smith and says that "it is dreadfully untrue" (p. 446). Her cross examination is found on page 503. Pearsall had denied that he met defendant, at any place in New York other than the restaurants. He stated that he had always sent her home with Mrs. McGee in a taxi. But when Mrs. Smith is interrogated (p. 505) upon that subject she says

that *she does not remember having seen Mr. Pearsall at Mrs. McGee's house.* She says she *is not certain* that she was not at Mrs. McGee's house when Mr. Pearsall was there; that she *does not remember* (p. 506), and again she repeats, on page 507, that *she is uncertain.* She does not remember *how* the appointment was made. She does not remember whether Mrs. McGee called or *whether she happened to be at Mrs. McGee's home* (p. 508). She insists that her husband knew all about these appointments with Pearsall, but she *does not remember when she told him* (p. 508). She says it was either before or after each time and that he had no objection; she *does not remember* whether he suggested that he would like to meet Pearsall (p. 509); she *does not know* why Pearsall did not do the obvious thing and telephone to her direct. She says she *probably* told her husband that the appointments were being made through Mrs. McGee (p. 509); that she *probably* told him that she was going to luncheon and wished he would go along; that is *probably* what she would say (p. 510); she says she told Pearsall that she would love to have him come out to Paterson and he said he would like very much to come out sometime, but no reason is given why he did not follow this up and come.

Roy U. Smith denies absolutely that she told him anythings about these meetings (p. 548). She *does not remember* how many times she went; she knows of three times (pp. 510, 511). Pearsall says that all three times he saw her she stayed with Mrs. McGee. This went on for from six to nine months (p. 174) after the Oxford episode.

The testimony of defendant with respect to the restaurant keeper Jackie, is significant. She met Jackie, who keeps a restaurant on one of the streets off Fifth avenue, New York, through some friends in New York, who would rather not have their names mentioned (p. 504). "Q How did you happen to come to go there? A I will tell you in my own way. We three girls were out one evening and I wanted to go some place where we could have some good food, and the girls said: 'Why not go to

Jackie's?' (And consider the conduct of defendant accompanied by Mrs. McGee with Anderson and Barlow (pp. 514, 606. 612))"and we went there and that is the first time I met him."

That defendant was making secret appointments in New York is indicated by the testimony of the sister of petitioner, Mrs. Wainwright (p. 109). It is quite apparent from the testimony that defendant informed petitioner that she was going to take dinner with his sister; she telephoned his sister to that effect and later telephoned that she could not come, that she was in New York and she asked Mrs. Wainwright if anyone called for her to say that she would be home later (p. 112).

The admitted conduct of Pearsall and defendant after the Oxford incident, is of such a nature as to lend credence to the testimony of Alice Smith and William H. Smith. Their testimony is (pp. 79, 99) that they were staying at the house of the sister of Mrs. Alice Smith, a Mrs. Emily Pearsall, in Oxford; Harry Pearsall, who was a step-son of Emily Pearsall, came to the house on Tuesday morning. Pearsall had a business engagement that evening; defendant volunteered to go with him; they left after dinner at six-thirty and got back at nine o'clock; the rest of the family retired about eleven o'clock, leaving Pearsall and defendant down in the library; an hour later they heard defendant and Pearsall come upstairs; Pearsall went to his room which adjoined their room; he remained in the room a short time and then softly, as if in his stocking feet, passed their door and went to the front of the hall where defendant's room was; they remained awake for a considerable space of time and did not hear Pearsall return to his room; it appeared from the testimony that defendant's room was the only room in the front of the hall, but, irrespective of this, the testimony is not met by Pearsall with an admission that he left his room and an explanation of the purpose for which he left it, but with an absolute denial that he left his

room at all; the next morning Mrs. Alice Smith, who was accustomed to getting the breakfast, defendant never rising until late, went downstairs to get the breakfast as usual and found defendant coming upstairs and she stated that she had already made the coffee for Pearsall who had an early morning appointment; on the next day Pearsall took defendant with a horse and buggy to the country fair leaving shortly after lunch and not returning until nine o'clock at night, and defendant stated that they had only stayed a short time at the fair grounds; that evening Mrs. Alice Smith said to Pearsall, "I heard you go through the hall last night," and he said, "Yes, I went in to ask Frances how to set the alarm" (this is absolutely denied by Pearsall and of course either Mrs. Alice Smith or Pearsall must be perjured); on Wednesday night the family retired as usual leaving defendant and Pearsall downstairs but nothing happened that night so far as Mrs. Alice Smith or William H. Smith know; on Thursday night, however, the same thing happened as had happened on Tuesday night, that is, after the family had retired Pearsall left his room and went past the room of Mrs. Alice Smith and William H. Smith; Mr. William H. Smith got up but Mrs. Alice Smith would not permit him to leave the room; Pearsall went past their room as if in his stocking feet to the front of the house where defendant's room was, and they did not hear him return although they were awake for from half an hour to an hour; on Wednesday morning Pearsall, defendant and her children, Emily Pearsall and Alice Smith and William H. Smith went to see some lumber yard; they got to one of the farms of the estate of the father of Pearsall, whereupon defendant and Pearsall left the automobile and went to the house, leaving the rest, and when she came back defendant said that she had such fun; that Pearsall went in the house through the window and pulled her in after him; they were gone for approximately half an hour; on Wednesday morning, when William H. Smith got up, he went to the bathroom and there found Pearsall shaving

with defendant standing in the hallway facing him; he was dressed; defendant had a kimona on; William H. Smith said to her, "Are you going crazy?" and she said to him, "It is none of your business what I do;" this was shortly after six-thirty in the morning; it was contrary to defendant's custom to get up early and Mrs. Alice Smith was the person who got the breakfast.

This meeting in the bathroom is admitted by defendant (p. 450), but an innocent construction is put upon it. She says she went to the bathroom, which has two entrances, and went to the door and as she did so Pearsall opened the door and said, "Good morning; I am in here," and that she then looked up and saw William H. Smith standing at the other door; when asked whether William H. Smith said, "Frances, you must be crazy," or words to that effect, she says *"Not that I heard."*

Pearsall's explanation of this incident is found on pages 164 and 165 and he says, page 164: "A I was up and downstairs in the bathroom shaving; I was dressed, with the exception of my shirt and collar and I was shaving; the bathroom door is on the ground floor of the house; at the rear end of the house, and can be entered by two doors, the one from the kitchen and one from what is now used as a sewing room, and has an entrance from the living room and dining-room; but the door leading to the living room and dining-room does not lock, and it never has locked; the bathroom which leads into this sewing room, and then into the living room, does not lock—that is, it locks very hard, and I don't know that it will lock at all; and while I was shaving, I heard someone coming to the door and I naturally stepped to close it or hold it, and it was Mrs. Frances Smith. I very likely said, 'Good morning,' or something like that, because the door was open; she must have opened the door, because the door was open;" he says he saw Mr. William H. Smith there, but he didn't hear William H. Smith say to Frances Smith, the defendant, "Frances, are you crazy?" "A He did not, not in my presence."

Roy U. Smith, the petitioner, was expected on Saturday; Friday morning about nine-thirty Pearsall left and defendant said to Mrs. Alice Smith, "Wasn't I lucky to get rid of Harry before Roy arrived."

This testimony is met with an absolute denial that Pearsall left his room on the two occasions upon which Mrs. Alice Smith and Mr. William H. Smith say he did; by an absolute denial of the conversations alleged to have taken place between Mrs. Alice Smith and Pearsall with respect to his leaving the room and between Mrs. Alice Smith and defendant with respect to the "getting red of Harry," etc.; by an absolute denial that on the trip to the lumber yard defendant and Pearsall were at any time out of the sight of the other members of the party; by an absolute denial of the statement alleged to have been made by defendant to Mrs. Alice Smith with respect to defendant having fun and being pulled through a window, etc.; by an admission of the meeting in the bathroom, but a denial of the conversation alleged to have taken place there; by an absolute denial that Pearsall left at 9:30 in the morning of Friday, but an assertion that he left at midnight Friday; by a denial that he left because petitioner was expected the next morning but no explanation of the coincidence of his leaving and the expected arrival of the husband of defendant; by an appeal to the Court that such a thing could not possibly have happened, based upon the love and affection that Pearsall had for his wife left in Boston, followed up, however, by admissions of surreptitious meetings between Pearsall and defendant without the knowledge either of Pearsall's wife or defendant's husband, arranged through a third party in New York extending over a period of from six to nine months after the Oxford episode.

Pearsall can give no explanation as to why Alice Smith and William H. Smith should perjure themselves. When asked (p. 179): "What is your explanation as to why they should each of them falsify with respect to your conduct at Oxford," he answered, "The only explanation

that I can possibly conceive of—it is the most contemptible thing that I have ever heard of in my life—is, to aid Mr. Roy Smith in succeeding in getting his divorce."

Defendant said on page 450: "Mr. William H. Smith was always friendly with you? A Yes, sir. Q And treated you cordially? A Yes, sir."

An attempt was made to impeach Alice Smith and William H. Smith by showing that there had been difficulty between them and defendant with respect to the stepmother living with defendant and her husband and also because Alice Smith and William H. Smith concealed their knowledge of what had happened in Oxford. But the feeling of Alice Smith was not sufficient to induce her to commit perjury of this nature and, so far as the concealing of the knowledge is concerned, it is not at all unusual for a father to conceal knowledge of this kind with respect to the wife of his son where there are children involved. The concealing of knowledge of this nature is a matter of daily occurrence. It is kept concealed until there is some other break between the parties and then it is disclosed. No one desires to be responsible for the break.

The testimony of Mrs. Emily Pearsall (p. 184), offered to corroborate Pearsall and defendant, was properly disregarded by the Court. It is clear that she is testifying because of the control of Pearsall over her income (p. 193). After the suit was started Emily Pearsall went to petitioner and attempted to get him to leave Pearsall's name out (p. 199). Mrs. Emily Pearsall would have us believe that there was no change in the attitude of Pearsall and defendant from the time they met until Pearsall left Oxford (p. 191) and this notwithstanding that defendant and Pearsall had not met before Pearsall came to Oxford, and *by their own admissions* their relations were certainly of a most friendly nature when he left three days later. An examination of the testimony of Emily Pearsall from page 194 to 199, where she is interrogated with respect to what Mrs. Alice Smith told her

of the relations between Pearsall and defendant stamps her testimony as an apparent attempt to shield Pearsall. It is inconceivable that Mrs. Alice Smith and Emily Pearsall should have the admitted conversations they had without Mrs. Alice Smith telling Mrs. Emily Pearsall the circumstances. In any event, Mrs. Alice Smith told Mrs. Emily Pearsall sufficient to induce Mrs. Emily Pearsall to say at page 197: "Q Did you express your views? A I think she said to me, 'I did not intend to tell you this'; and I said, 'Well, I am glad you did, because if there was anything of that sort going on, I would like to know it.'"

The Vice-Chancellor had before him Alice Smith, William H. Smith, Pearsall, defendant, and Mrs. Emily Pearsall and, as stated in his opinion, he believed the testimony of William H. Smith and Mrs. Alice Smith, and if that testimony is to be believed there was sufficient evidence to justify a finding of guilt.

And in weighing this testimony the relations between Donnelly and defendant and the manner in which she acted with respect to Donnelly must be taken into consideration because it all goes to indicate that what is charged to have taken place in Oxford in August of 1918 may well have taken place.

The Charges of Adultery with Donnelly.

Donnelly is a young man, twenty-four years of age (p. 305), who knew Mrs. Barlow, the mother of the defendant, also Mrs. Blue, her sister, and Mr. Andy Blue, her brother-in-law (p. 306), but who did not know defendant until her marriage (p. 306). He testifies that he met defendant at the home of her mother's family, but Donnelly's acquaintance with the Blues was but slight, he had called at their house only three or four times (p. 72); that he had visited defendant in her own house probably half a dozen times, twice with a Miss Camwell and a Miss Davis (p. 306); only on one occasion does he re-

member her husband being home (p. 308); he quite often visited Miss Camwell (p. 310) and there met Mrs. Smith, and, on occasions, took Mrs. Smith to her home (p. 310); Roy U. Smith knew Donnelly but slightly (p. 139). Donnelly never was a visitor at their house socially.

It is significant that neither Miss Camwell nor Miss Davis, who are said by Donnelly and by Mrs. Smith to have been present so many times when Donnelly and Mrs. Smith were together, without the knowledge of petitioner, are produced.

Edward Fairhurst, thirty-six years old, who has known defendant for over fifteen years and is a friend of both petitioner and defendant, testified that he was a member of the social set in which petitioner and defendant moved; he knew Donnelly; he was not a member of that set (p. 19); in the summer of 1920 he saw defendant and Donnelly walking on the boardwalk in Asbury Park; he attributed no importance to it; during the fall of 1920, he observed defendant and Donnelly quite often in petitioner's car driving around the city; on December 4, 1920, he was horseback riding at Warren Point and about a quarter of a mile from the main road he saw petitioner's car parked twenty-five feet off the road and saw James Donnelly and defendant in the car kissing and embracing and in each others arms; his horse became frightened and after he brought the horse under control he turned around and observed the Smith car being backed out into the road and rapidly driving away in an opposite direction and away from Paterson; on December 6th, he telephoned defendant and she came over and saw him at his office; he asked her where she had been on the Saturday afternoon preceding; she asked him why he wanted to know and he told her that he knew where she was, that she was out with James Donnelly in the car; she said that somebody had been gossiping about it; he told her that they had not but that he knew that she was out in the car with James Donnelly and she then told him that she had loaned the car to James Donnelly that afternoon;

she became angry and said that it was none of his business; that James Donnelly was just a darling boy (p. 124) "*If I am interfered with I will lie; I will stop at nothing, and if this thing goes into court and any attempt is made to take these children away from me I will swear that they are not Roy Smith's;*" upon Fairhurst's threat to tell petitioner she told Fairhurst that she would not see Donnelly again; upon a subsequent occasion, when he again remonstrated with her with respect to Donnelly, she wept and told him that she did not love Roy Smith, and she repeated this on another occasion (p. 27); she told him that if she had money enough she would leave Paterson "tomorrow" and take her children with her; she said she was disgusted with Paterson and with the people in it that if she had money she would leave Mr. Smith and take the children; on July 9, 1921, defendant telephoned Fairhurst stating that she was in Palisade, N. J., that she was in trouble, *that she had had an accident with her car* and could not reach her husband at the office and asked Fairhurst to get the service man, Fairhurst did and went over and found defendant coming over the Leonia Hill and driving the car under its own power.

On cross examination Fairhurst was asked with respect to conversations which he is alleged to have had with Mrs. Camwell (the mother of Miss Camwell) in which it is intimated that he attempted to get her to testify; on redirect examination he is asked for the conversation, counsel for defendant having opened the door, and he said that Mrs. Camwell told him that she had discovered that defendant was meeting Donnelly at her home; that she believed that they were using her home for a meeting place; that she had walked into a room and found them together that she had remonstrated with no effect (p. 54). Although counsel for defendant in his cross examination (p. 36) indicates that Mrs. Camwell had talked to him and had told a different story, she is not produced; she is under the control of defendant being the mother of

a friend of Donnelly's and of defendant so that neither the mother nor the daughter is produced nor is Miss Davis.

Harry Burns, a crossing tender for the New York, Susquehanna and Western Railroad, at 22nd street and Park avenue, no connection whatever with either of the parties, testifies that during the summer of 1921 (p. 58) he saw Donnelly and defendant at night, about eleven o'clock, repeatedly meet along the railroad tracks, Donnelly with his arm around defendant; sometimes the lights would flash on and they would then usually separate.

Thomas Spagnola, a fruit merchant, immediately adjoining the railroad, knew both defendant and Donnelly. This witness was reluctant. It is quite apparent that he had been approached by defendant (see the cross examination of Fairhurst by defendant's counsel pp. 34 and 35). When confronted with an affidavit which he had made this witness, however, testified that, the statements made in the affidavit were true and finally said that he saw defendant in the summer of 1921, come from the neighborhood of the tracks of the New York, Susquehanna and Western Railroad; Kilpatrick called his attention to it; defendant dropped something which Spagnola picked up and returned to her; he saw Donnelly a little later crossing the tracks (p. 65) coming from out of the railroad pathway along the tracks; subsequently he talked to defendant about it and told her that his attention had been called to the fact of her being there coming from the tracks with Donnelly and she said that it was ridiculous for anyone to talk anything like that (p. 66); he said to her "Mrs. Smith, Mr. Kilpatrick called my attention to your coming out through there and being with Mr. Donnelly" and she said that it was ridiculous (p. 67).

Kilpatrick testifies (p. 69) that he was a car washer; he remembers the Saturday night in the summer of 1921; he saw a woman and a man standing together on the pathway with the lights out, standing midway between the station and the power house, and when the lights

were brought on "they broke away;" when the lights flashed she whizzed around and started away; the woman dropped something and Spagnola picked it up and returned it to her; Donnelly came walking up a few moments after defendant came up.

Both Donnelly and defendant deny that they were at this place together; Donnelly does not deny that he was at the place but leaves the intimation that he was there with some other woman.

Rudolph Wiseman (p. 75), a lawyer and a friend of Mr. and Mrs. Smith, testifies that, one evening in the fall of 1921, he had been out motoring with petitioner and when they got home at about ten-thirty in the evening defendant was absent; he suggested taking the machine and going and getting defendant at Mrs. Blue's residence, where she was supposed to be visiting; they went to the residence of Mrs. Blue and found that defendant was not there; they went back to petitioner's house and found that defendant had not yet come home and they had not seen her en route; so they again traversed 17th street in the hope of meeting her but did not meet her; they then went down town; they then came back up Park avenue towards petitioner's residence, and at the intersection of the Susquehanna Railroad and Park avenue the witness saw Mr. Donnelly and defendant coming up the railroad tracks toward 17th avenue about eleven o'clock at night (p. 76); he said nothing to petitioner about it.

In considering this testimony I point out that both Donnelly and defendant absolutely deny their presence together *at any time* near these railroad tracks. They do not admit and explain, but absolutely deny and either they or the four witnesses who say they were there must he perjuring themselves— They deny because they can think of no innocent explanation.

Walter L. Dunston (p. 72) in the summer of 1922, around eight or eight-thirty in the evening saw Donnelly go into petitioner's house by the kitchen door and upon

another occasion saw them riding in Passaic in petitioner's car.

James N. Wright (p. 74) saw Donnelly and defendant in a Ford coupe about eleven o'clock at night sitting talking to each other adjacent to petitioner's house. Upon this occasion petitioner was not home (p. 107).

George Wiseman who had known the Smith's for eight or nine years and was a friend of the family (pp. 97, 98) remonstrated with defendant with respect to the company she was keeping in September, 1921, and she said she would try to stop it; he also had seen defendant and Donnelly in petitioner's car together.

George Schofield, a friend of Mr. and Mrs. Smith and a member of the same social set, on the evening of November 19, 1921, met the witness Louis R. Shorter (p. 118) at nine o'clock downtown in Paterson and from there went to a dance at Pompton, being attended by Mr. and Mrs. Blue, picked up Mr. Blue and returned to Paterson and went to the Blue house. Shorter stayed with the automobile. Blue went to his home. The witness heard screaming and then Donnelly came out of the Blue house, followed by an elderly lady, who returned after two or three minutes, retraced her steps to the alleyway, went up on the front porch and entered through the front door of the Blue house. This elderly lady is not accounted for by defendant. It is clear from defendant's story that she was the mother of Mr. Blue who lived above the Blues (p. 128), in the same house, in a separate apartment, although she is not accounted for by defendant in any way. She is not the Mrs. Marsden who testified for no one says that Mrs. Marsden did anything like what this elderly woman is said to have done. Blue came back and met Shorter and they returned to the automobile and they all went back to Pompton. The drop light in the kitchen of the Blue house was partly turned on (p. 116); there were no other lights.

The witness, Louis R. Shorter, likewise a friend, of both Mr. and Mrs. Smith for many years, accompanied

the witness Schofield and Blue; after Blue went into the Blue house he saw Donnelly, who had a light suit on, with no overcoat, being chased by the elderly lady (p. 119). They returned to the dance and got Mrs. Blue and then they all drove back to Paterson.

Loftus Hengeveld testified in rebuttal (p. 537) that while he does not remember specifically the night of November 19th, he remembers an occasion about that time when he saw Donnelly about eleven o'clock at night running up the corner of 17th avenue, and then south on E. 18th street, that is, from the Blue house; he does not remember whether Donnelly had a hat on; but believes he did not; he was with his wife at the time and remarks in the neighborhood a few days later as to what had occurred fasten it in his memory.

Considerable point is made in the brief of counsel with respect to the testimony of this witness because he says that he thinks that Donnelly did not have a hat on whereas Shorter and Schofield testified that he did (p. 79 of counsel's brief) but this is a discrepancy which adds credence rather than the reverse to the testimony of all three. Hengeveld is a witness not connected with the parties in any manner whatsoever, except that he knows Donnelly, and that he knew anything was unknown to counsel for petitioner until after petitioner's main case had closed.

Petitioner upon the night in question November 19, 1921, was at a stag party at the house of Mr. Evans (p. 127); his wife; the defendant, left her home stating that she had arranged to go to her sister's, Mrs. Blue's house, to take care of the child while Mr. and Mrs. Blue went to the dance (p. 128); she took her night things; about nine o'clock she called her husband up, from the Blue house, telling him that she was at her sister's and she just wanted to say good-night (this does not at all fit in with her present story that Mrs. Marsden was there and likewise Donnelly) at eleven-thirty she again called up stating to her husband that she wondered whether he was having a good

time; she insisted that he name everybody who was present asking particularly if Edward Fairhurst was there (p. 135); this was after Donnelly had been driven out by Blue and she wanted to find out who had accompanied Blue.

Petitioner was not told of what had occurred at the Blue house on November 19th, until the Tuesday following at eleven-thirty at the office of Mr. Evans (p. 131). When his wife returned home on Sunday *she said nothing whatever with respect to the occurrence of the night before* (p. 130); nor did she on Monday, nor did she at all (p. 131).

As soon as petitioner was told of the occurrence of November 19th, he separated from his wife.

The witness, Lawrence Thetge, testifies that he saw Donnelly waiting for defendant when she was at the garage. His wife, Catherine Thetge (p. 124) saw Donnelly waiting outside the garage for defendant to come out and on other occasions had seen him waiting across the street for her to come out and saw him join her after she did come out, and they went off together.

The witness, Thomas D. Griffin, whose car it was which was in collision with the car of petitioner in July of 1921, was examined *de bene esse* and his testimony is instructive. It was taken on June 16, 1922, the trial not opening until some months later. It is clear from this witness' testimony that he had been in consultation with defendant or someone for her before he was examined. He insisted that his conversations after the accident were with *the lady occupant* of the car (p. 628). He admits that for a time after the accident he presumed it was a gentleman who drove the car, but he said "Since that time I have been in consultation with the occupants of my car and they didn't agree to the fact that there was a gentleman driving (as a matter of fact it was a lady who drove the car, *i. e.*, whose car it was)"; he had no conversation with the gentleman; he does not know the gentleman was Donnelly if there was a gentleman (p. 633); he never

heard the name Donnelly mentioned until petitioner interviewed him; the lady did not say who she was (p. 634); he says he paid the damages claimed by petitioner to his car (p. 635); he refuses to answer where he got the fifty dollars which he paid to Mr. Smith for the damages (p. 638); again on page 639 he indicates that he does not know whether there was a man in the car or not; he refuses to say that it did not cost him a cent to pay the damages to petitioner's car or that Alexander MacLeod of Paterson had anything to do with it (p. 642) and his testimony (p. 643) is illuminating: "Q Did you tell him that you didn't know from whom the money came and you wondered whether James Donnelly or Mrs. Smith had paid it? A I don't recollect the question. Q Now, Mr. Griffin, the reason you have answered these questions in the negative is because you did not want to involve the parties, your own lawyer, Mr. Donnelly, Mrs. Smith and Mr. MacLeod? A I do not wish to discuss this under the present conditions." The cross examination, commencing on page 644, indicates that the theory of the defense at that time was that *Mrs. Smith was in the car* and that *Donnelly was not in the car.* This theory later had to be abandoned and the story now is that *Donnelly was in the car with another woman,* and that Mrs. Smith *was not there.* The cross examination of Griffin, in view of the story which is now told with respect to this accident, is a clear indication of the manufactured nature of the explanation of the defense.

Alexander MacLeod, a lawyer in Paterson, testifies (p. 154), that he had something to do with an accident in July, 1921, in which Donnelly was interested; he thinks the name of the other party was Griffin or Griffith; he represented Donnelly.

Donnelly upon his examination conceded that he paid to Griffin the money which Griffin paid to petitioner for the damages to petitioner's car, and he said that the reason why he did it in this underground, surreptitious manner was (p. 355) to conceal his participation in it from

petitioner (p. 356); he says that he was afraid of his participation in the transaction coming out because he had borrowed the car in that instance.

Van Ness, a friend of both Mr. and Mrs. Smith, testified to having seen Donnelly and defendant in the summer of 1920 in Asbury Park alone on the path leading from Asbury Park to Allenhurst at night, first at eight-thirty o'clock and again at eleven-thirty o'clock.

This testimony did not come from detectives or the class of witnesses usually produced in divorce cases. It came from friends of both Mr. and Mrs. Smith; members of their own social set; persons who had known them for years, and from Spagnola, Burns and Kilpatrick and nothing was shown which would indicate that these witnesses, two of them railroad employees and one a fruit dealer, would falsify. The witness, Spagnola, it quite clearly appeared, had been approached by defendant and testified with great reluctance.

The testimony was of surreptitious meetings between Donnelly and defendant wholly without the knowledge of the husband; of meetings in dark and lonely places, along railroad tracks, where people do not usually meet for lawful purposes; of kissing and embracing in these lonely places and of kissing and embracing on the back seat of an automobile on a lonely country road, parked twenty-five feet away from the road; of the presence of Donnelly at the house of Andrew Blue when Andrew Blue and his wife were away at a dance in Pompton; of Donnelly's fleeing from the house upon the unexpected return of Andy Blue, and of the presence in that house at that time of defendant, who had gone there to stay over night and take care of the Blue child while Mr. and Mrs. Blue went to a dance, the Blues having no one to leave with the child. We have, from the petitioner's side the elements of affection and of secrecy which are the natural concomitants of adultery and we have the opportunity.

It is important to turn to the explanations offered by defendant, and I ask the Court to read the examination

of Donnelly, commencing at page 315 of the record and that of defendant commencing at page 485; the cross examination of Edna Blue, the sister of defendant, commencing at page 234, and that of Mrs. Marsden commencing at page 286, and I submit that the testimony of these witnesses indicates beyond peradventure, as stated by the Vice-Chancellor (p. 654), that the story of loaning her husband's car to Donnelly is absurd, and was manufactured for the purpose of meeting the testimony of Edward Fairhurst as to the occurrence on December 4, 1920; Mrs. Marsden was never at the Blue house on the night of November 19th; by their own testimony defendant and the co-respondent are convicted.

The explanation of Donnelly with respect to the episode of December 4, 1920, at which time he was seen with defendant in the back seat of an automobile on a lonely country road, parked twenty-five feet off the road, embracing, is that (p. 310), he met defendant and Mrs. Blue, her sister, accidentally; he mentioned that he had an appointment that he had to keep and was on his way downtown to hire a car; it was suggested that he might take the Smith car; he said he would take it only upon condition that he pay five dollars toward the cost of gas and oil; they dropped him off at the City Hall and he was to go back to the Y. M. C. A. and get the car in five minutes and return the car at three or three-thirty in the afternoon; he went out and had a lady with him, a Miss Clara Meyers, who is not produced; he went to Westwood; on his return he did not go directly back to Paterson but stopped on this back country road twenty feet about off the road, watching hunters (p. 312); he saw Fairhurst (p. 341); he was interested in the hunters (p. 341); he gives no explanation as to why, in the first instance, he took this country road; he watched the hunters for about fifteen minutes, and then drove off in a direction away from his destination because he had seen Fairhurst and he did this because he had Mrs. Smith's car and he knew that Fairhurst was a friend of Smith's and that Smith

was not aware that he had the car; he did not want to meet Fairhurst because he did not know whether Fairhurst had seen him or not (Donnelly's story on cross examination (p. 395) of what the hunters and the dogs were doing is perfectly ridiculous); he did not want Fairhurst to see him because he knew that it would get back to the family and he did not want it known that he had borrowed the car (and this, notwithstanding that he had passed through the streets of Paterson in open daylight with the car, and if his testimony is to be believed he had done that a great many times).

It is conceded by defendant in her examination that she had a talk with Fairhurst the Monday following December 4th, as Fairhurst says she did; she denies some of the things that Fairhurst testifies to, but she admits the conversation nevertheless and Donnelly testifies (p. 347) that she never referred to that conversation to him and that he went right on borrowing the car.

Donnelly says William M. Evans remonstrated with him with respect to his conduct (pp. 346, 348) but he went right on borrowing the car, and this notwithstanding that, before he had talked with Mr. Evans, he was so afraid of being seen by Fairhurst, notwithstanding *that another woman* was with him in the car, that he turned around and went the other way, away from his destination (p. 350); notwithstanding that he knew that he came within an ace of being seen by Fairhurst he went right on borrowing the car.

His explanation of the incident in which the accident happened to the car in July, 1920, is even more ridiculous. He says he borrowed or rented the car that day to go to New York (p. 314); he had the Miss Meyers with him; they had an accident; he then telephoned from the 125th Street Ferry to Mrs. Smith, who was at her sister's home in Paterson, that he had had a little trouble, that he had a very important appointment in New York and asked her if she wanted him to take care of it and bring the car back, she said "no"; that she would take care of it and

for him to go over to New York and keep the appointment (p. 315). He is rather indefinite as to this appointment, and what it was all about (p. 334).

He says the young lady talked to the man in the other car (p. 335); he does not explain why; and it is, of course, to meet the situation developed by the Griffin testimony. At the time of the taking of the Griffin testimony the theory of the defense was that *Donnelly was not* in this car, and that *Mrs. Smith was;* Griffin was induced to testify to the effect that *the woman talked to him.* When the theory of the defense was changed and it became necessary to put *Donnelly in the car* and *Mrs. Smith out of the car* Donnelly had to take the position that *the woman did the talking.* Now, if the story of Donnelly be true and Mrs. Smith was not in the car, it was not the owner of the car, but Miss Meyers, whom he was taking as a companion on this very important trip to New York and the question naturally arises *why she should talk to the owner of the other car.*

But what he would have us believe (p. 334) is that he called up Mrs. Smith at her sister's house, said nothing to her whatever with respect to details, did not even tell her whether the car would operate under its own power or not; she did not know what was the matter with the car (p. 336); she did not know whether it would run or not (p. 336); Paterson was thirteen miles at least from the 125th Street Ferry; she had to come in a trolley car; she came in a trolley car and took the car back, although she did not know anything about the accident whatever or what the injury was to the car; Miss Meyers and Donnelly waited at the 125th Street Ferry for Mrs. Smith to come; when she got there she wanted to know where the car was and was told that it was outside, and that it was not damaged enough that it could not be run, so they went out and looked at the car (p. 351); Donnelly suggested that all three drive back but she said no, for him to go on over to New York and she would drive the car back and get in touch with a garage man and have him

come over if necessary and he then left and went to New York with Miss Meyers; he left defendant with a crippled car without any knowledge as to whether she could get back or not (p. 352) because there happened to a boat in; he never took the trouble afterwards to ascertain how she did get home (p. 354), although he paid the money to Griffin to pay the bill of Smith for the damages to the car, through MacLeod (p. 355). How utterly ridiculous all this is.

He says he telephoned defendant to come to the 125th Street Ferry to get the car because he did not want anyone to see him with the car. But he had driven all through Paterson and Hackensack with the car not only upon this occasion but upon other occasions if his testimony is to be believed. He says there were lots of people crossing the ferry and if they saw him with the car, not knowing the circumstances, they would probably think a lot seeing him there "with this other young lady, alone in the car." But he had come from Paterson with this "other young lady alone in the car" and intended to cross the ferry all the time. But Mrs. Smith's husband did not know he had the car (p. 358). This idea of being afraid to be seen in the car with the "other young lady" is entirely exploded by his cross examination on page 350, etc.

And Mrs. Smith's testimony is to the same effect (p. 523). She had a very *indistinct* recollection of Miss Meyers. She does not even remember that she talked to her. And I ask the Court to read the testimony of Mrs. Smith on cross examination with respect to the renting or loaning of the car (pp. 523 to 526). She concedes that she called Mr. Fairhurst up for assistance that day (p. 516); she told him an untruth with respect to what she was doing with the car; she says she told Fairhurst to tell her husband that she was on her way over to New York to do some shopping (p. 516); she says she told him that because *she did not dare tell the truth,* notwithstanding that, if her story is to be believed, *Fairhurst knew that she*

had loaned out the car as early as December 4th, 1920. Why then conceal it from Fairhrust who already knew?

Edna Blue's testimony is to the effect that Mrs. Smith was at her house and told her that she had loaned the car to Mr. Donnelly (p. 220); Donnelly called defendant on the telephone and Mrs. Blue overheard Mrs. Smith say, "No, I will come and get the car;" defendant then stated that she was going to get the car, that "Jimmie" had had an accident with it; she said nothing as to where the car was; she went out immediately without saying whether she knew if the car was disabled or not; she had to go on a trolley car, but there was no discussion as to how long it would take her; she didn't discuss the matter with her sister at all, notwithstanding that Mrs. Smith went from her sister's house to get this crippled car, although the sister saw her a couple of days afterwards, there was no discussion as to how she had gotten home or what had happened to the car (pp. 223, 224).

It is quite apparent from the story told by Edna Blue on direct and on cross (p. 221) that it is a prepared tale. In her testimony, pages 225, 226 and 227, she forgets the sequence of events, as it has been told her, and places the accident in July of 1921 before the episode of December 4th, 1920; she forgets the conversation which she testified to on direct; she loses the thread of her story until recalled by the injection of counsel for defendant "Y. W. C. A. occasion" (p. 227), and then, when prompted, she retails the same conversation that she did on direct, almost in *hac verba* (p. 228). She does not remember (p. 231) of any other occasion upon which Donnelly borrowed the car except these two occasions, upon one of which he was caught by Fairhurst and upon the other of which he suffered the accident. But Donnelly tells a circumstantial story (p. 364), with respect to borrowing the car upon several other occasions for the purpose of going to New York and he tells (p. 365) a circumstantial story of almost a repetition (barring the accident) of the occasion upon which the accident happened. Again it was Miss Meyers

who accompanied him, and yet, notwithstanding all these occasions upon which he borrowed the car and openly rode through Passaic and Paterson and other places with it, he would have us believe that he adopted the secretive course he did upon the December 4th, 1920, occasion, and with respect to the occasion upon which the accident happened because he did not want to be seen (p. 367).

Edna Blue, when pressed, refused to remember any other occasions except the two about which she knew we knew when Donnelly had the car (p. 233). Donnelly would have us believe that he kept on *merely borrowing* this car or hiring it even after he had talked with Evans and was advised of the talk that was going around about his relations with Mrs. Smith (pp. 345, 348).

I will now pass to the explanation of defendant and of the witnesses with respect to the occasion upon which Donnelly was caught at the Blue house and fled upon the unexpected arrival home of defendant's brother-in-law, Blue. Donnelly's explanation on direct is found on page 325. He says that: in the afternoon of the 19th of November he received a letter in a woman's handwriting signed by defendant; in response to the request contained therein he called at the Blue house at nine o'clock; defendant answered the door; he went inside and found Mrs. Marsden there; he went in and defendant asked him to sit down and started talking and he asked her what she wanted to see him about and she said that she did not want to see him, and he said "It is very funny—did you not send me a letter to that effect?" and she asked "What letter?" and he said, "The letter you sent me asking me to come down here this evening, that you had something very important to see me about," whereupon he produced the letter, and she said she did not write it; it was signed "Frances Smith," in a feminine handwriting; the letter was read, read in the presence of Mrs. Marsden (p. 327); defendant suggested that it must be a joke; somebody had been playing; at that moment they were about to have

some coffee and asked him to stay and have some with them; he stayed until, in the neighborhood of eleven o'clock, when they heard a noise, just as though someone was in the house and defendant made the remark, "Did you hear that?" and he said, "Yes," and he said, "do you want me to go back there and see," and she said she did, "Yes;" "So I went back towards the kitchen, and she was right behind me." They found Blue, who was like a wild man "and started to bawl me out, and asked me what right I had to be in his home; and he would not give me a chance to explain; he called me a 'dirty dog;' " he tried to explain and tell the circumstances; the letter was in the living room (p. 330); Blue would not stand for any explanation; he was raving like a wild man; he had a gun," Donnelly was trying to explain the story; the door bell rang; Blue went to the front of the house to answer the door bell. (The door bell undoubtedly was rung by the mother of Blue who lived upstairs and who had heard the commotion and *she* was the elderly lady who must have entered at that time; neither Donnelly nor defendant explained who it was that Blue went to the door to admit nor does Mrs. Marsden); when Blue went to the front door defendant said, "You had better get out, because it will only come to blows," (why come to blows if the decoy letter was in evidence and Mrs. Marsden was there and Blue was satisfied, p. 502); whereupon he went out the back door; he does not remember running; he had no overcoat on; he remembers leaving the letter in the living room of Mrs. Blue; it was on the table; he has never seen it since (p. 332).

This is the story on direct examination. He testifies to the existence of the letter and to the presence of Mrs. Marsden.

The letter is not produced. It is, of course, a most important bit of evidence. Notwithstanding that defendant was denied entrance to her house on the Tuesday following (within three days) Donnelly did not see her until he

had a conference with her counsel although in touch with her brother all the time (p. 367) to whom he had explained the situation and to whom he said that Andy (Blue) was ridiculous and to whom he explained all about the letter; he did not see Mrs. Marsden until a month later; he told the brother, Barlow, however, that Mrs. Marsden was there (Barlow, although called, does not corroborate this); the brother did not ask for the letter; Donnelly did not ask where the letter was, notwithstanding that he knew that it was "proof of the joke" (p. 369); he made no inquiries with respect to the letter.

He testifies (pp. 369, 370) with respect to his attempts to explain to Blue "that there was a third party there" and he said that he had told Blue that Mrs. Marsden was present (pp. 369, 370), but that Blue was in such a rage that he would not stand for any explanation and this although "Blue was saying at the time that Donnelly was taking advantage by being there alone." He met Blue on the Monday night following and although Blue desired to talk to him he, Donnelly, refused, saying, "You cannot talk to me, and I kept on going."

Defendant's story of the night of November 19th agrees with Donnelly (p. 476) on direct. She says that: the door bell rang about 9:15 when she was talking to Mrs. Marsden and she said, "Hello, Jimmie, won't you come in," and he came in; he immediately produced a letter, and he said, "I came to see what this important business is that you have with me," and she laughed and said, "I have no important business with you," and he said, "Why, I received a letter today saying you wanted to see me here tonight on important business, and your name was signed to it"; she said that it was absurd; he finally produced the letter and showed it to Mrs. Marsden and herself and she said, "This is a joke, somebody is doing it to fool you and me," and Donnelly said, "Well, I think it is a pretty good joke"—"because he naturally thought I had something to say to him;" they talked about the letter, had coffee and then

they heard a noise, and she was frightened to death (p. 477) and they went out to see what it was and Blue came in and shouted to Donnelly, "you dirty dog;" "What do you mean by coming to my house?" Donnelly resented what he was called; she flew to the kitchen door and slammed it so that Mrs. Marsden would not hear what was going on; the door bell rang; Blue left them and as he flew out of the door she said to Donnelly, "Please go, Jimmie;" he did not want to go; finally she persuaded him to go and he went out by the back door, and defendant flew into Mrs. Marsden and asked her to excuse her for a minute and defendant then went back to the kitchen; she does not know who Blue talked to; she and Blue talked together for a few moments; she told Blue about the letter, and Blue also left by the back door, because he did not want to see Mrs. Marsden (p. 479) (but he had seen her, Mrs. Marsden says); on cross examination she says (p. 486) that: she suspected that Fairhurst had written this letter, a decoy letter; she last saw the letter that night at her sister's home; she did not show it to Blue, but did tell him about it; she did not go into the other room to see if it had been left there.

Although her story was that Donnelly had been decoyed there by a letter purporting to be sent by her and although she spent three-quarters of an hour talking to Blue after Donnelly left there was no suggestion of getting the letter.

She would have us believe that she told her husband about the whole occurrence on Sunday night, the day after (p. 485), telling him all about this letter, but no effort whatever was made to find the letter. Her husband denies that she told him anything about the occurrence of the 19th, about the letter or anything else (p. 544).

The testimony is clear that this letter and the presence of Mrs. Marsden was never mentioned to anybody connected with this case until the trial opened, notwithstanding that there were conferences between the parties and their counsel prior to the suit being tried.

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Blue ordered Donnelly out of the house (p. 497); although she told Blue about the letter and Blue immediately realized that he had been imposed upon in a most outrageous manner (p. 498) he did not ask to see the letter. He knew when he left the house, however, that Mrs. Marsden was present. Blue was satisfied when he left the house that night with respect to what had occurred (p. 503).

Now, turning to Mrs. Marsden's testimony (p. 281). She says she remembered the 19th of November, 1921; she is a friend of the mother of defendant and that evening she went to the mother's house but not finding the mother home went to the Blue house thinking that perhaps the mother was there, and not finding her but finding defendant she was invited in and asked to stay for the evening; this was about nine o'clock; (about the time defendant called her husband at Evans' house and said she was ready for bed (p. 135), shortly after the door bell rang and defendant went to the door and said "Hello Jimmie, come in" and it was Donnelly and they spoke about a letter and Donnelly said "Frances, I want to know what this important business is you want me for" and she said "Important business, why, nothing I know of" and she said "I don't want you at all for any important business" and he said "I have got a letter" and the letter was kind of "long;" she saw it and it simply asked him to call on this important business; and she laughed and thought it was a joke; she said "somebody has played a joke on you;" and then she asked him if he would have some coffee and he said "yes" and they sat down and they talked and there was not very much said about the letter afterwards only that it was a joke; they had some coffee and then "Mr. Donnelly made a break to go;" he got his hat and they were just saying good night when there was a noise which startled them and Donnelly asked whether they wanted him to investigate and defendant and Donnelly went toward the kitchen and she heard defendant say "Andy, listen to reason" and of

course Andy was very angry, and I naturally thought it was a family squabble, and I did not bother; she heard the noise and heard Blue say to Donnelly "you dirty dog," and they slammed the door, and then a few moments afterwards Andy came rushing through the room, went to the front door and who was there I don't know; he spoke to someone, and then closed the door and came back, and she was sitting just near the telephone and he saw her and said "How do you do; how long have you been here?" "and I said, 'practically all the evening,' and he walked out kind of sheepish;" Blue then returned to the kitchen:; no one paid very much attention (p. 289) to the letter; they did not find out where it was mailed from; "She," referring to defendant, was kind of confused at the time when he said she had important business with him; he said he could not understand it when she said she did not send it" (p. 289).

That her story is prepared is indicated on page 291 when she tells it again *in hac verba.*

She says that after Blue answered the front door and saw Mrs. Marsden he returned to the kitchen and there stayed for ten or fifteen minutes talking to Donnelly and defendant (p. 291); Donnelly, Blue and defendant were all talking together and that this was *after* Blue had seen her. In other words she says that first Donnelly, defendant and Blue were in the kitchen together, Blue called Donnelly a dirty dog and there was other harsh language, and then the door bell rang, and then Blue went to the front door and answered the bell and spoke to someone, and then returned and saw Mrs. Marsden and then went back into the kitchen and continued to talk to Donnelly and defendant for ten or fifteen minutes and she makes this positive (p. 292).

Recess then occurred (p. 292) and *after recess* she attempted to correct her testimony given in the morning and said that she *did not* hear Donnelly, Blue and defendant talking together after Blue had gone to the front door, and returned and had seen her.

It was necessary for her to do this in order to make her story fit in with that of Donnelly and defendant. She says that during recess counsel for defendant drew her attention to the mistake which she had made (p. 302).

On page 299, on cross examination she again repeats her story *in hac verba.*

If this story of defendant be true the presence of Mrs. Marsden and the receipt of the letter was, of course, of extreme importance. Defendant would have us believe, however, that when Blue broke into the house, thinking that his sister-in-law and Donnelly were alone, about eleven o'clock at night, Mrs. Marsden was there and during all of the high talk, in which Donnelly was ordered out and called a dirty dog, etc., although Mrs. Marsden knew that the reason for the statement of Blue was that he thought his sister-in-law and Donnelly were alone together, she, Mrs. Marsden, did not move to set the situation right, although she realized that by stepping into the next room she could explain the entire situation (p. 305).

They would have us believe that, although Donnelly attempted to explain and although he mentioned Mrs. Marsden's name he never called Mrs. Marsden in although she was in the next room.

That, although they believed that Donnelly had been brought there by a decoy letter and the letter was in the house and had just been read and although they mentioned the letter to Blue they did not produce the letter nor did Blue ask for it (p. 499).

But the testimony of Donnelly and defendant is to the effect that, while they were in the kitchen and *before* Blue had gone to the front of the house to answer the bell, they told him that Mrs. Marsden was there and yet Mrs. Marsden would have us believe that when Blue went to the front of the house he *was surprised* that Mrs. Marsden was there for her testimony is (p. 297) that he said when he saw her "Why, Mrs. Marsden, I am surprised; have you been here all evening" and he said "How do you do;

how long have you been here;" that is when he came back *from* the front door; but Donnelly and defendant say that they had *already* told Blue that Mrs. Marsden was there.

Donnelly and defendant both put Blue, the brother-in-law, in the position of knowing of the existence of the letter and of the presence of Mrs. Marsden *when he left the house.*

When he left the house he rejoined Shorter and Schofield and went back to the dance at Pompton and got Mrs. Blue, and then the four of them returned to the Paterson-Blue house, and the Blues went home.

Although on the trip back to Pompton what had taken place in the Blue house was discussed Blue *never mentioned Mrs. Marsden and the letter* (Shorter p. 619) (Schofield 542). On the trip back from Pompton when they had Mrs. Blue, the sister of defendant, with them and the events of the evening were discussed between Edna Blue and her husband (pp. 237, 241), Shorter and Schofield being in the front seat and Mrs. Blue and her husband in the rear seat, she crying because of what had happened, Blue *did not tell his own wife that Donnelly had been brought there by a false letter* (p. 264) and Edna Blue did not know that the story was that Donnelly had been brought there by a false letter until *Sunday morning* and nothing was said on the way back from Pompton to Paterson by Blue with respect to *either the letter or Mrs. Marsden* (p. 242).

Edna Blue would have us believe that, although Blue had caught her sister and Donnelly under the circumstances apparently alone, because he did not mention to his wife the fact *either that Mrs. Marsden was there or of the existence of the letter,* she went to bed that night without talking to her sister, and without having an explanation, except that her sister said to her "Has Andy told you the terrible thing that he has done" and that she said to her sister "Yes, I was very provoked at hearing of it" and the following question put by the Court and the

answer thereto is illustrative of the witness' testimony, "Q Do you mean to tell the Court that you and your sister, talking there quietly and confidentially, did not talk this thing over together; do you mean to tell the Court that you and your sister did not discuss these terrible things that you are talking about? A I don't think we did. Q You let it pass? A Yes, sir." And see her testimony pages 257, 258 and 259.

The sister had not expected Donnelly to be there (p. 258); she was surprised that Donnelly was found there and then the following—(p. 259)— "Q If you were so surprised under the circumstances, why didn't you say to your sister, 'How is it that Donnelly was here when I knew nothing about it?' A I said we did not discuss it that evening. Q I want to get your attitude of mind as to why you did not. A Mr. Blue wanted us to go immediately to bed because we were both tired, and not talk about it at all. * * * Q So you went to bed that night without having any explanation from your sister as to the occurrences of the night of November 19th; is that right? A I think I did. By the Court: Q Will you swear that you did, Mrs. Blue? Tell us what you did discuss? A We did not discuss it at all, except what I have said."

But Edna Blue knew about the letter the following day (Sunday) and yet she has never seen it; she does not know what was done with it; defendant never suggested what was done with it; the witness realizes it is probably the most important thing in the matter, but no inquiry, to the witness' knowledge, has been made for it, and she did not know that track had been lost of it until sometime after suit was brought (p. 277).

This witness, Edna Blue, testified (p. 238) that on Monday night, when Mr. and Mrs. Blue and Mr. and Mrs. Smith went to the movies, Fairhurst was discussed; defendant told her sister, Mrs. Blue, that she had told petitioner what happened on the night of November 19th (p.

240) that defendant was provoked but accepted her explanation (p. 244); he was provoked at defendant (p. 245) on account of what had occurred on the 19th (p. 244); petitioner on this occasion at the movies was rather distant; he was angry but accepted her explanation (p. 246).

But on page 250, Edna Blue says that she does not believe defendant ever did explain to petitioner. But she says that what she means by this is that defendant never explained to petitioner after his attitude had changed.

Petitioner's attitude changed on Tuesday night. The witness, Edna Blue, was informed of this change *by her husband* when he came home (p. 249); she then tried to communicate with petitioner and also telephoned Mr. William H. Smith, the father of petitioner (p. 253); again, on page 254, she says that it was Blue who told her of the changed attitude of petitioner.

This so-called change in attitude was, of course, due to the fact that before Tuesday, the 22nd, petitioner did not know anything of what had occurred; he was not informed of what had occurred until at Evans' office on the 22nd (p. 132); after he had been informed at Evans' office he went over to see Blue and got Blue's story (p. 545) and he thereupon refused longer to live with his wife.

And this is the reason why Edna Blue says that it was her husband who told her of the changed attitude of petitioner (p. 249); petitioner got the information from Evans' office; he then went over to Blue to verify it; acting upon the information to got from Evans, likewise from Blue, he took the position which he did.

And yet, if Edna Blue and defendant are to be believed Blue knew that defendant was not alone; he knew about the letter; he knew about the presence of Mrs. Marsden; but he did not tell petitioner about them. Why not?

I have already stated that Schofield and Shorter swear that they never heard of the letter or of the presence of Mrs. Marsden until the trial. Petitioner (p. 544) denies

absolutely that his wife ever told him anything of the events of November 19th, and reiterates that he heard nothing about it until in Mr. Evans' office on the 22nd. He had never heard of Mrs. Marsden being present and he never heard of the letter or a suggestion of it until the trial (p. 546).

Notwithstanding the fact that there was a conference between Mr. Ward, representing defendant, Mr. Wiseman and Mr. Evans representing petitioner, defendant herself and petitioner with respect to the custody of the children and although the merits of the case were discussed to some extent at least no mention was made by defendant or her counsel of the presence of Mrs. Marsden at that house or of the existence of this letter (pp. 488, 492).

Defendant says she did not, at this conference, refer either to the letter or Mrs. Marsden because she had been instructed by her counsel not to talk (p. 493).

But prior to the conference at which all were present she had had another conference attended by Edna Blue, her sister, and herself, and by Mr. Wiseman; she requested that conference; she went to him not as a lawyer, but as a friend (p. 490); the matter was discussed, but neither the presence of Mrs. Marsden nor the existence of the letter was mentioned.

Notwithstanding that the defendant says that she did not mention the letter or Mrs. Marsden at the conference because her counsel instructed her not to, she insists (p. 485) that she told her husband on Sunday night, the 20th, the entire story (p. 485) and, insisting that she told her husband the entire story, including the reference to the letter and to Mrs. Marsden, she also insists her husband never asked to see the letter (pp. 486, 480, 479).

In considering this evidence the testimony of petitioner that on this night in question, November 19, defendant called him up at nine o'clock at the stag party at which he was, stating that she was ready to go to bed and wanted to say good night (at this time, according to the wife's

story, Mrs. Marsden was there) and that she called him up again at eleven thirty and wanted to know exactly who were at the stag party, must be taken into account. Why when she called her husband at eleven thirty, after Donnelly had been driven out by Blue, did she not ask her husband to come to her? If she were innocent and believed she was the victim of a decoy letter, and had the letter and Mrs. Marsden to prove both her innocence and the fraud on her this would have been her first impulse. Instead she called up to see if she can locate anybody as being with Blue.

The testimony of Shorter and Schofield was to the effect that there was a light in the kitchen and that the remainder of the house was in darkness. This is attempted to be explained by defendant and Mrs. Marsden by the fact that the lights were low in the living room, and they were defective, and therefore might have seemed to be out when, in fact, they were not. This is the effect of their testimony (p. 271).

We have this situation: An admission by defendant and the co-respondent of their presence in the Blue house; an attempted explanation of that presence by the injection of an alleged forged letter, purporting to be written by defendant to the co-respondent asking him to call on important business; the attributing the writing of this letter to Fairhurst, although the defendant, Frances B. Smith, frankly says (p. 501) that she cannot conceive how Fairhurst could know that she would be at the Blue house that night; the injection of Mrs. Marsden into the situation as being present at the Blue house during the entire evening, including all of the time that Donnelly was there; the suppression of the fact of the existence of the alleged forged letter or of the presence of Mrs. Marsden at the house until the trial; the loss of the alleged forged letter; the failure to take any steps immediately after the event to find it or to preserve it, or to ascertain in any manner its whereabouts (p. 494). The story is ridiculous upon its face. The witness would have the Court believe that,

although Blue made this raid upon his own house and found Donnelly there, and called him a dirty dog, and ordered him out, he was advised before he left the house that night of the presence of Mrs. Marsden and of the existence of the forged letter, but neither asked to see the letter (p. 499) nor on his return to his companions, who had accompanied him from Pompton and who accompanied him back to Pompton, referred to the alleged forged letter or to the presence of Mrs. Marsden, although he told them of what had occurred that night, and that on the return trip when he was accompanied by his wife, the sister of defendant, and to whom he imparted information as to what had occurred, he never referred to the alleged forged letter or to the presence of Mrs. Marsden.

They would have the Court believe that, when the sister and her husband returned to the house that night, there was no discussion between the sisters as to the terrible things that had occurred (pp. 257, 258, 260) that the sister learned, however, of the alleged forged letter upon the following day, but made no effort to see it; made no inquiry with respect to its whereabouts (pp. 275, 276).

Defendant contends that she told her husband of the existence of the alleged forged letter and of the presence of Mrs. Marsden on the Sunday night following the Saturday, November 19th, but her husband made no attempt to see the letter (p. 486); she insists that, at a conference which she asked from Rudolph Wiseman, as a friend, attended by her sister and herself, she did not refer to the alleged forged letter or to the presence of Mrs. Marsden (pp. 489, 490) and Wiseman denies that he ever heard of it until the trial, and she further insists that at a conference attended by her counsel and by petitioner and Mr. Evans and Mr. Wiseman, who were not only lawyers in the case but old friends of herself and her husband, and when the question of the custody of children was being discussed and charges were being made with respect to her conduct, involving the events of November 19th, she made no statement or suggestion of the existence of

the alleged forged letter or of the presence of Mrs. Marsden, and she says that she did not do so because of the advice of her counsel not to talk (pp. 488, 491, 492, 493) although if her story be believed she had already, on the Sunday succeeding the Saturday, told her husband all about it.

And on page 488, defendant swears she did not think of the letter "Really not for weeks after." Think of it defendant, who was involved in this difficulty by the sending of a forged letter which she thought Fairhurst had written and whom she had accused of writing to her husband, and which letter had resulted in a chain of events causing her husband to leave her, did not think of this letter "until weeks after."

It is absurd to think that this Mrs. Marsden would sit by the telephone in the sitting room while she heard this terrible disturbance in the kitchen, which she could stop by an explanation in a moment by stepping out and letting her presence be known. An examination of her testimony and a comparison with that of Donnelly and of defendant indicates that, with respect to the alleged occurrence on the night of November 19th, the story is prepared. Neither Mrs. Marsden nor Mrs. Blue can testify accurately when they lose the thread of their story. So long as they were permitted to testify in sequence they each of them repeated it several times almost *in hac verba* indicating that they were not calling upon their recollection of the events which took place but upon their recollection of what they had been told.

And not a single one of those engaged upon the part of petitioner, either as counsel or witnesses, although most of them were friends of both petitioner and defendant, had any knowledge or suspicion of the claimed existence of the alleged forged letter or of the presence of Mrs. Marsden until the testimony was given upon the stand, and yet defendant complains that she was given no opportunity for explanation (p. 484) (Counsel's Brief, p. 10)

notwithstanding that she says that she told her husband all about it upon the Sunday night (p. 485).

The Court had the right to find, as matter of fact, that Donnelly and defendant were alone in that house; that Donnelly was there without excuse; that he was there surreptiously without the knowledge of the husband; that when the brother-in-law came in he fled. So finding with the other evidence in the case of the relation between Donnelly and defendant, without the knowledge of the husband, the Court had the right to find that adultery was there committed. The opportunity was present; the meeting was secret; the inclination had already been shown by the testimony with respect to the embracing and kissing, the episode of the automobile on December 4, 1920, twenty-five feet off the lonely road; the surreptious meetings and embracing along the tracks of the New York, Susquehanna and Western Railroad Company; the various other secret meetings which have already been referred to and some which have not been mentioned which appear in the testimony and are referred to in the opinion of the Vice-Chancellor.

Moreover, the Court had the right to take into consideration the built-up case of defendant, which is itself an evidence of guilt. It had the right to take into consideration the absurd stories told with respect to the loaning or hiring of the petitioner's automobile, and the failure of defendant to call important witnesses within her own control.

Defendant did not rest upon petitioner's testimony but went forward and the Court was entitled to take into consideration *all* the testimony.

Counsel say that petitioner should have called Blue. But it is quite apparent from the testimony of Edna Blue with respect to her attitude toward her husband for what he had done upon this occasion and the statement made by Blue to Mr. Wiseman (p. 568) that in order to save his own situation with his wife, if called by petitioner he

might be driven to commit perjury, but if called by defendant he would have told the truth. Blue is *her* brother-in-law. The circumstances are sufficient to impute guilt. There is no feeling of hostility between herself and her brother-in-law. His wife, her sister, is called. Why is not Blue called? He could explain the circumstances of guilt away if anyone could. If called by petitioner he could not be faced by the statements he had already made (p. 568). If called by defendant he could be and would be forced to tell the truth.

And why is not Miss Meyers called? She is the person whom Donnelly and defendant say is the lady who accompanied Donnelly on these various trips upon which the witnesses say defendant accompanied him. And defendant testified even that Miss Meyers looks somewhat like her (p. 531). Why was not the Court permitted to see her? In view of the story of the renting or loaning of this car, absurd as it sounds, it would seem that Miss Meyers should have been called. Counsel excuse their failure to call her by the statement that she is in Pennsylvania somewhere. But there is nothing to indicate that she could not have been produced or that her testimony could not have been taken *de bene esse*. There is no excuse given for the failure to call Miss Meyers and while it may be true that she is not within the control of defendant there is no statement in the brief that she is not within the control of Donnelly who has intervened in this case as a party defendant and Miss Meyers was, in fact, in court upon at least one trial day and not called. Although Donnelly said he took Miss Meyers on many trips he does not know her first name (p. 341).

And why is not Mrs. McGee called? She is the friend of defendant, her close friend, whom she was anxious to have Pearsall meet when he was in Oxford and through whom the appointments were made which resulted in the meeting of defendant and Pearsall in New York, at luncheon, dinners, etc., without the knowledge of her husband,

and she is likewise the friend at whose house she says she is "uncertain" whether she met Pearsall, and she is likewise the friend who accompanied her on her trip with Barton (pp. 607, 611); and the friend at whose house she after stayed all night (p. 526) and she is still friendly with her (p. 505).

And Donnelly explains his acquaintance with defendant, by stating that he met her quite often at the house of Miss Camwell and at parties at that house with Miss Camwell and Mrs. Davis, and the names of Miss Camwell and Miss Davis are often brought into the case by Donnelly in explanation of his acquaintance with defendant and defendant explains her presence near the tracks of the New York, Susquehanna and Western Railroad upon the occasion upon which Spagnola spoke to her by saying she was visiting Miss Davis (pp. 467, 537) but neither Miss Camwell nor Miss Davis is called.

There are incidents of minor importance, the explanations of which are almost as ridiculous as those which have been referred to. In explanation of the testimony of Dunston that he saw Donnelly enter the Smith house upon one occasion from the kitchen, about eight or eight thirty in the evening, Donnelly says that he went there with the brother of defendant; they had been to the movies and Mrs. Barlow, the wife of the brother of defendant, asked Barlow to go over to defendant's house and get her curling iron and they went over and there was a light in the kitchen, and Barlow went in stating that he would be out in just a moment, and he, Donnelly, waited outside and in the course of a minute or two Barlow came to the door and said "come on in;" they went in and probably stayed ten or fifteen minutes, and then brought the curling iron back; he is not positive but thinks while he was waiting outside Mr. Dunston came along (p. 309).

His explanation of the testimony of Van Ness (p. 155) who swore he saw them along the boardwalk between Asbury Park and Allenhurst, first at eight o'clock in the evening and then at eleven o'clock is (p. 315) that he

wanted to take Miss Camwell to the Allenhurst Club to a dance; she was stopping at the same hotel as defendant; when he got to the hotel he met defendant who said that Miss Camwell had gone down to the boardwalk and he then said "I will go down and look for her" and she said "I am going down; I want to see her too," and they went to look for Miss Camwell, but could not find either Miss Camwell or Miss Davis "so she said she did not have anything to do that evening as long as she could not find the girls, 'I said would you care to go over' and she decided to go along and we went over the boardwalk to Allenhurst" and returned at about ten thirty or eleven o'clock and he took defendant back to the hotel.

It is significant that *this* is the *only* time that he walked out with defendant alone—that he was seen by someone who now tells about it is a pure coincidence (p. 412).

He says he went to two hotels to find Miss Camwell and Miss Davis, the last of which was the hotel at which defendant happened to be stopping (p. 414); they danced during the evening; he met some friends who danced with defendant; he cannot remember any of these friends however, whom he can produce (pp. 415, 416); they did not meet the girls at all that night (p. 418). During the entire summer that was the *only* dance that he contemplated taking the girls to (p. 419), another coincidence. And his testimony on page 420, shows how important, from his standpoint, the testimony of Miss Camwell and Miss Davis would be.

The story of James Wright (p. 74) with respect to having seen defendant and Donnelly in a Ford Coupe in the early part of November, 1921, outside of the Smith house about eleven o'clock at night, when Smith was away at Lodge meeting (p. 107) is explained by Donnelly at p. 322, as an occasion upon which he took defendant home from Miss Camwell's; he was calling there on Miss Camwell and defendant just happened to be there and he concedes that he took defendant home upon several occasions in the

same way. Again, Miss Camwell is brought into the situation, Donnelly and defendant both say that upon this occasion they waited until petitioner himself drove up. This is denied by Smith (p. 595).

Donnelly denies absolutely ever walking with defendant in the neighborhood of the New York, Susquehanna and Western Railroad tracks (pp. 322, 324) and thereby contradicts not only Burns and Kilpatrick but likewise Rudolph A. Wiseman (p. 75). And counsel for defendant can do no better with this testimony than to, in effect, say that Wiseman is falsifying (p. 127 of their brief).

Defendant likewise denies absolutely the incidents testified to by Catherine Thetge and Lawrence Thetge (pp. 122, 133). (See her testimony, pp. 472, 473.) Just as Donnelly with respect to the New York, Susquehanna and Western Railroad track episode and the automobile episodes injects the idea of mistaken identity, *i. e.*, another woman, defendant with respect to the Thetge incidents injects the idea of another man, to wit, her brother (p. 473) who might have been mistaken for Donnelly.

While the brother, Alfred Barlow, is called (p. 208) and does, in fact, corroborate the story of Donnelly with respect to the curling iron incident (p. 209) he signally failed (and he is not asked) to corroborate Donnelly's testimony that upon most of the occasions when the automobile was loaned or rented by Donnelly the arrangements were made through Alfred Barlow (pp. 314, 365) and he is likewise not asked to corroborate Donnelly's testimony with respect to the letter (p. 368) and Dunston being recalled (p. 594) testified that he watched Donnelly come to the Smith house and enter through the kitchen and that Barlow was not with him (p. 594).

Defendant's case is made up on mistaken identity, Miss Meyers for defendant, defendant's brother for Donnelly; a forged decoy letter not produced; an injection of an alleged third party at the Blue house, November 19, 1921; an absurd story of renting petitioner's car which gave the

opportunity for the mistaken identity; a charge that the witness Fairhurst was in love with defendant. This defence the Vice-Chancellor has in effect said was manufactured by defendant. That it was is proven by the fact that when petitioner shut the door of the house upon defendant, although efforts were made to get him to relent (p. 247) and although conferences were afterwards held at which ample opportunity for explanation was given *not one single one of these items of defence were mentioned.* Why not?

And defendant insists (p. 527) that she did not know when her husband locked her out on November 22nd, that it was because of what had occurred on November 19th, although petitioner had not seen Blue that day, and Blue had verified the story told in Evan's office and knew of petitioner's changed attitude (p. 249) and although Blue hurried, that day, to defendant (p. 527), but she insists he did not tell her why (p. 529) told her nothing of what had taken place between Blue, Wiseman and petitioner, that afternoon (p. 568).

Edna Blue insists they did not discuss the episode of November 19th, when they returned that night from Pompton (pp. 241, 242) or at any time, defendant says the same thing and likewise insists that Blue did not tell her of anything which had transpired between himself and petitioner on the 22nd (p. 528) although that was what had sent him to her (p. 529). The purpose of denying conversations, which must have taken place, was, of course, to keep out statements made by Blue, defendant well knowing that if petitioner ~~faced~~ forced Blue on the stand against the sister of his wife, Blue would perjure himself and petitioner would be helpless to contradict him for petitioner could not impeach his own witness. Edna Blue's testimony is sufficient to indicate the pressure on Blue. Still Blue would not perjure himself if defendant forced him on the stand and that is the explanation as to why defenadnt did not call him.

Counsel for defendant opened the door to what took place between Blue, Smith and Wiseman, on the cross examination of petitioner (pp. 559, 560) by going into what was said at that conference, and it was after the door was opened that Wiseman testified to what had taken place (p. 568), Smith (p. 563). Counsel for defendant in his cross examination of petitioner (p. 560) indicated that Blue had said something quite different from what Wiseman and Smith say he said. One of the things Blue said as testified by Wiseman, was that what he had done had gotten him in a bad position with his wife. He wanted petitioner to postpone action for six months (pp. 568, 563). Why was not Blue called to refute this? This testimony the Court wholly disregarded but it is important as indicating why petitioner did not call Blue and why defendant should have called him.

Conclusion.

To follow and analyze the 144 pages of appellant's brief would require a document as long. No attempt will be made to do it. I will rest by drawing attention to one statement which I think is indicative of the manner in which the inferences to be gathered from the testimony are treated throughout the brief. Counsel says (p. 128)—"From the beginning to the end of her association with him, never once, was it brought to her attention that it was against the consent of her husband, or that she was pursuing a course that did not meet with his approval. The contrary was the fact. Her relations with him were known to her husband, who did not object, and the acts with which she is associated with Mr. Donnelly were those of a most ordinary and usual character."

There is not a scintilla of evidence in the case that her relations with Donnelly were known to her husband. He could not object because he did not know; the secret meetings, etc., and the acts with which defendant is associated with Donnelly are not, it is submitted, of any ordinary and usual character.

The only time that Donnelly was ever at the Smith house when petitioner was there, according to his own testimony, was once during the entire course of the married life of Mr. and Mrs. Smith. It is true that upon one occasion at Asbury Park petitioner was one of a group on a hotel porch of which Mr. Donnelly constituted another one.

Far from there being evidence of any kind, nature or description of the relations between Donnelly and defendant being known to petitioner, the testimony of Donnelly is to the effect that he deliberately concealed his relations, so far as the renting or loaning of the car was concerned, and did everything in his power to prevent petitioner from knowing anything about it (p. 342) even going to the extent of giving Griffin money to pay Smith for damage to Smith's car alleged to have been caused by Griffin's car.

While it is true, perhaps, that never once to the end of her associations with Donnelly was it brought to her attention that it was against the consent of her husband, for her husband knew nothing about it, nevertheless by her own admissions she was warned by Fairhurst, she was warned by Wiseman, and Donnelly was warned by Evans, and yet both she and Donnelly persisted in their course.

The relationship was concealed, by the friends of both, from the husband until the last moment. He was the last one to know. He knew nothing whatever of the relationship until November 22, 1921. His friends knew. His friends warned his wife; he did not know.

There is no support whatever for the statement contained on page 128 of counsel's brief.

There is less support in the evidence for the statement of counsel on p. 5 that Donnelly was "an old friend" of defendant and that he "was also friendly with her husband."

Counsel said on page 53 that defendant denied meeting Pearsall at Mrs. McGee's house. He is mistaken, defendant "does not remember" she is uncertain (pp. 505, 507).

The statement of counsel on page 54 as to the husband's knowledge of the Pearsall appointments in New York, is I submit a misconception of defendant's own testimony. It is clear petitioner knew nothing of them.

Counsel on page 89 of his brief speaks of Mrs. Marsden as an old friend of Mrs. Barlow, Sr., and Mrs. Smith and Mrs. Blue and says she also met Donnelly about a year before at the home of Mrs. Smith's sister-in-law. Reference to page 281 indicates that Mrs. Marsden says she met Donnelly at the Brown's house. If Mrs. Brown is identified as a sister-in-law of Mrs. Smith, I have overlooked it. Mrs. Marsden was such a good friend of Mrs. Smith as that Mrs. Smith did not know her real name which was Scowscroft (pp. 503, 589, 594). Marsden, she says, is her professional name. It was the name of her first husband. She has been married to Scowscroft since 1912, and is still living with him (p. 592, etc.).

Counsel attempts to excuse the failure to communicate with Mrs. Marsden or mentioning her (recognizing the importance of these omissions as indicating a built-up defense) by claiming that there never was any discussion between Mr. and Mrs. Smith as to the occurrence of that night and that no charge of adultery was made until the petition was filed. If counsel be correct as to there not having been a discussion between Mr. and Mrs. Smith as to this occurrence (and he is) his client must have told an untruth when she swore she told her husband all about it Sunday night (p. 485) and her sister likewise must have been falsifying (pp. 244, 245). In view of the fact that petitioner closed the door of his house against defendant on November 22nd, and that defendant knew he did it after a talk with Blue, and her sister's attempts to get petitioner to relent, and of the conferences which followed at one of which Mr. Ward, her counsel, said to peti-

tioner that he, Ward, had won the confidence of defendant, and assured petitioner as man to man, that there was no reason why petitioner should not live with defendant (pp. 484, 488, 489, 492, 493) and in view of the warnings she had received from Fairhurst and which Donnelly had received from Evans and of the conversations which had taken place between Smith, Wiseman and Blue, the position of counsel is as inconsistent with the admitted facts as is that of his client (p. 530). Counsel conceding that the failure to produce or communicate with Mrs. Marsden is significant, if unexplained, and the explanation on page 94 of the brief being the only one offered and that not being reasonable the inference is that Mrs. Marsden was, as the Vice-Chancellor finds, not at the Blue house on November 19th, but her presence is a *post litem* invention of defendant.

Counsel says on page 105 that "defendant's brother, Alfred Barlow, and Mr. Donnelly were close friends since boyhood." (See Alfred Barlow's testimony, p. 209, ll. 1 to 15.) Reference to these lines show that what Barlow said was:

> "Q Do you know James Donnelly? A Yes, sir. Q How long have you known him? A Oh, ever since we were boys. Q Have you ever associated with him? A Oh, yes."

This testimony can hardly support an assertion that they were "close friends."

Counsel says that, in company with Alfred Barlow, Donnelly visited the home of petitioner several times. Barlow denies (pp. 211, 212) that he ever visited the home of petitioner socially with Donnelly, he says he never took Donnelly to call on either Mr. or Mrs. Smith.

Counsel says Donnelly was acquainted with petitioner (p. 105 of brief) and this is corroborated by the petitioner himself (p. 141, bottom). What petitioner said was:

> "Q Mr. Donnelly has visited your home with her brother, Mr. Barlow, when you were there? A

I have a vague recollection of his coming there once."

Counsel is entirely mistaken in his resume of the Burns' testimony (p. 108, of his brief). He says Burns did not identify Mrs. Smith in court, but Burns did (p. 58). Counsel leaves the inference that the witness did not know Mrs. Smith. He did not so testify and the inference is that he did. He was subject to cross examination. Counsel examined him as to his knowledge of Donnelly but failed to do so as to his knowledge of Mrs. Smith. Counsel says (p. 107) that this place is a private street along the tracks and lighted with electric lights. There is no evidence it is a street. There is evidence it is a path (p. 72). There is no evidence it had electric lights. There were lights which lit it when flashed on (pp. 70, 72, 59).

Counsel on pages 120 and 121, in commenting upon the incident of the accident to the automobile in July, 1921, says there was no reason why defendant should not have told the truth to petitioner with respect to it but he overlooks his client's evidence (p. 516) where she admitted she told an untruth about this trip to both Fairhurst and her husband "because I did not dare to *tell* him the truth."

Another matter which throws some light on defendant's case is the answer setting up extreme cruelty (p. 4) and the failure even to attempt to support the charges made, the attempt of defendant to discredit Fairhurst by showing his love for her and the lengths to which she went on this (p. 461); the use of her sister to discredit petitioner by showing petitioner's alleged improper advances to the sister and the length to which the sister was induced to go (p. 214) on this and the abortive attempt to show a condition which would result in condonation. The Vice-Chancellor properly found that the charges made by defendant against Fairhurst and by the sister against petitioner were without foundation. That they *were* made however is an element to be taken into consideration in examining defendant's case and particularly is this true

with respect to the Pearsall incident for counsel for defendant states pages 21 and 136 of the brief that *the evidence offered on the part of petitioner with respect to Pearsall is, if believed, conclusive of guilt.*

Considerable stress is laid by defendant upon the fact that the petition for divorce was filed after a bill for maintenance but in *this* case the matter was solely in the hands of counsel (pp. 279, 280).

It is respectfully submitted that the decree appealed from should be affirmed.

Respectfully submitted,

MERRITT LANE,
Of Counsel with Appellee.