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New Jersey Court of Errors and Appeals.

Between
JAMES B. DUKE,
Petitioner and Respondent,
and
LILLIAN N. DUKE,
Defendant and Appellant,
and
FRANK T. HUNTOON,
Intervenor and Appellant.

On Appeal from Final Decree in Chancery.

NEW YORK HERALD, PARIS EDITION, PERSONALS.

(New York Herald, Paris Edition, Thursday December 8, 1904.)

PERSONAL.

JOHN.—Longing for cable announcing safe arrival; your prophecy too true, not only sorry but absolutely broken hearted; you little know how essential you are to my happiness, almost to my existence; how I crave another opportunity to be yours for life. Please grant it.

(New York Herald, Paris Edition, Sunday, December 11, 1904.)

PERSONAL.

JOHN.—Cable relieved anxiety; do you recall Sunday breakfast and afternoon? They will surely come again to remain for life; don't you think so? Probably sail January seventh: watch health, avoid stairs; wrote maid yesterday.

(The New York Herald, Paris, Sunday, December 18, 1904.)

PERSONAL.

JOHN.—Cables and four letters received. Sentiments made me much happier or rather less unhappy. Your illness alarms me. Please don't deceive me regarding your physical condition. If serious will go to you at once regardless of consequences. Can nurse you back to health. I know your doctors say don't exercise. Perhaps Thursday's Opera Paris recalled me all promises kept. Not too late unless you are contented with present surroundings, and that's impossible, isn't it? Shall I go to you? Cable immediately; our full moon to-night.

(The New York Herald, Paris, Thursday, December 22, 1904.)

PERSONAL.

JOHN.—Christmas; passed your house; what memories recalled; wish you there and thirsty of all sad words it might have been; one year from yesterday should be our anniversary; only postponed must occur soon; send long cable my initials, your house Christmas; London letter hugely enjoyed; mailed letter London twentieth; think trap rather imprudent; air good, wind, possibly dangerous, hope carriage enclosed; cable arrival, anxious.

(The New York Herald, Paris Edition, Thursday, December 29, 1904.)

PERSONAL.

JOHN.—Happy New Year, sweetheart. May it restore you to health and contentment. May past year's pleasures increase unaccompanied by sorrow. May the painful shackles which bind you be speedily unfettered. May your appreciated affection never grow faint. May you hereafter consider own happiness. May you never suffer as does your sweetheart. May we be speedily united forever. May God guide us rightly. Unfortunate error of month ago must be remedied at whatever humiliation. Cable received.

Treatment selfish, heartless, brutal; assert yourself. Don't travel that way. Promise return by rail. Acquire rest, health important; if needed, don't hesitate saying come. Will go immediately. Promises religiously kept. I long to see you. I adore you. Hope you enjoy cables.

(New York Herald, Paris Edition, Sunday, January 1st, 1905.)

PERSONAL.

JOHN.—At your home New Year's sad and lonely. Everything reminds me of the only absolutely happy days in my life. You were good to me. How I miss you. Vacant dining chair recalls past pleasures. House pets well, wonderful singer. Please send picture taken now. Our future happiness rests with you. May I hope? I dream you will be mine forever very soon; do you think so? Doctor says remain south until April; also don't wear low neck; dangerous. If you remain can sail seventh. Shall I cable? Reply immediately. Do you ever write? Latest letter received dated sixteenth. May your every wish be gratified. Time increases my sorrow. Your home Christmas. Genoa cable received.

(New York Herald, Paris Edition, Thursday, January 5, 1905.)

PERSONAL.

JOHN.—God bless you for yes to all I asked. I am content. Our happiness speedily assured. Shorten trip, return quickly. Enjoyed five letters, two postals. Not sailing. You in London fifteenth before I could arrive. Cable says sail February first. You mean arrive, return rail, automobile dangerous. Don't write long letters, too tiresome. Keeping all promises, sweetheart, cheer up. Health and happiness await you. Please send picture with my heart's love. Be prudent this awful weather.

(The New York Herald, Paris Edition, Sunday, January 8, 1905.)

PERSONAL.

JOHN.—Alps experience horrible. Delighted heartless trip has terminated. You have my heart's sympathy; your partner my envy and hatred. Please come home alone at once. You are equal to it. You must begin to prepare mind for event by saying you are not happy. Sorry it ever occurred. Don't falter. Doctor alarmed; says avoid exercise and excitement. Letters, postals, cables, received. Sweetheart, my thoughts and plans are all for you.

(The New York Herald, Paris Edition, Thursday, January 12, 1905.)

PERSONAL.

JOHN.—Delighted by six letters, two postals yesterday. What an experience! Awfully sorry of illness. Be prudent, no happiness without health. Must not prolong trip. Please arrive before first. Cable immediately sailing date, also condition health. Well, business splendid. With all my love.

(The New York Herald, Paris Edition, Sunday, January 15, 1905.)

PERSONAL.

JOHN.—Cannot comprehend determination to destroy health in gratifying one who positively cares nothing for you. Cables alarming. Why won't you return by first steamer. Your friends want opportunity to restore your health. Do come. Called on family in country Thursday. Quite comfortable. Mailed four letters. Mail former hotel London. Cable when received. Heart's love.

(The New York Herald, Paris Edition, Thursday, January 19, 1905.)

PERSONAL.

JOHN.—Object to prolonging trip. Cable condition health every second day; anxious: mailed maid five letters former hotel, London. Would love to hear you say: "It's daybreak." Last letter received written second. Why don't you come home? Promises kept; love.

(The New York Herald, Paris Edition, Sunday, January 22, 1905.)

PERSONAL.

JOHN.—Our moon brought glorious news; started homeward. Brightest ray of happiness, since departure. Mailed letter yesterday. Guard your health. All well home. Cable sailing date. Love.

(The New York Herald, Paris Edition, Thursday, January 26, 1905.)

PERSONAL.

JOHN.—All communications received. Would not exchange glorious cheer-up cable for the world; expect it speedily confirmed. You ask will I? Yes, yes, yes, immediately, forever, with you delighted. Dine and sleep your home to-night. Oh, memories that bless and burn. O, barren gain and bitter loss. Cruel prolonging trip. Have pity. This separation killing. Ever increasing love. Please don't wear low necks.

(The New York Herald, Paris Edition, Sunday, January, 29, 1905.)

PERSONAL.

JOHN.—Shall enjoy your home to-day and every Sunday until octopus returns, when that pleasure even will be denied. What memories of the blissful past. I fear the future offers nothing. All well. Do not allow entertainments to ruin health. My heart's affection.

MacCrellish & Quigley, Printers, Trenton, N. J.

NEW JERSEY

Court of Errors and Appeals

BETWEEN
JAMES B. DUKE,
Petitioner-Respondent,
and
LILLIAN DUKE,
Defendant-Appellant,

On Appeal of
Frank P. Huntoon.

Points for Respondent.

(1) An intervenor in a divorce case under the statute is limited in his rights to the defence of himself against the charges made against him in the complaint.

(2) Huntoon was also limited in his right of defence in this case to a refutation of the charges made against him by the order allowing him to intervene.

This was a discretionary order under the statute, and hence the Chancellor had power to limit the right to intervene in his discretion, and he did limit it to "defending himself against the charges of adultery made against him in said petition."

(3) If Huntoon had the right either under the statute or the Chancellor's order to defend generally by his answer, he limited himself to a denial of "each of the charges of adultery with the said Lillian N. Duke, defendant, made against him in the petition for divorce."

As remarked by the learned Vice-Chancellor, it would have been easy for him to have added to this very short answer a denial of jurisdiction had he chosen to do so. Had he done so, or had he filed a plea to the jurisdiction, the issue thus raised might have been consolidated with the issue raised by the plea of Mrs. Duke, and the question of jurisdiction have been determined once for all as against both defendants.

We submit that where the principal defendant in an action pleads to the jurisdiction, and another defendant, having but a slight or nominal interest, limits his answer to the merits, the finding on the question of jurisdiction on the plea of the principal defendant binds the other, and upon the final hearing on the merits such finding is conclusive for all purposes and against all defendants.

(4) The award of costs and counsel fees against Huntoon was proper. The costs were limited to those incurred on final hearing, and were really made in large part by Huntoon himself.

The Vice-Chancellor stated that the Chancellor had established the practice of allowing costs against the intervenor in such cases, and he therefore felt bound by the practice thus established, and, besides, it accords with his own judgment. We find that a similar practice prevails in New York. (See *Billings* v. *Billings, 73 App. Div. (N. Y.) 69.*

ALVAH A. CLARK,
R. V. LINDABURY.

In Chancery of New Jersey.

Between JAMES B. DUKE, *Petitioner,* and LILIAN N. DUKE, *Defendant.*	On Petition for Divorce. Petition of Frank T. Huntoon.

[Filed October 26, 1905.]

To the Honorable William J. Magie, Chancellor of the State of New Jersey.

Your petitioner, Frank T. Huntoon, residing in the City of New York and State of New York, respectfully shows:

1. That a petition has been filed by James B. Duke against his wife, Lilian N. Duke, in this Honorable Court, alleging that your petitioner has committed adultery with said Lilian N. Duke at various times and places set forth in said petition.

2. Your petitioner says that the said petition is wholly untrue, and that your petitioner has not committed adultery with the said Lilian N. Duke at the time or times mentioned in the said petition, or at any other time or times, and that your petitioner is desirous of becoming a party to the said suit and contesting the allegations of adultery mentioned in the said petition.

Your petitioner therefore prays that he may be admitted to intervene in the said suit for the purpose of defending himself against the charges so made.

And your petitioner will ever pray, &c.

ALAN H. & THEO. STRONG,
Solicitors for and of Counsel with
Frank T. Huntoon.

State of New Jersey,
County of Essex, ss.

Frank T. Huntoon, being duly sworn according to law on his oath says, that he is the petitioner named in the foregoing petition, and that the matters and things set forth in said petition are true to the best of his knowledge, information and belief.

FRANK T. HUNTOON.

Sworn and subscribed this 23d day of October, 1905, before me,

PERCY L. GALLAGHER,
(Seal.) Notary Public of N. J.

ORDER.

[Filed October 26, 1905.]

This matter being opened to the Court by Alan H. Strong, of counsel with Frank T. Huntoon, who, by the petition in this cause, is charged with committing adultery with the said Lilian N. Duke, defendant, it is on this twenty-fourth day of October, in the year nineteen hundred and five, ordered that the said Frank T. Huntoon have leave to intervene in this cause for the purpose of defending himself against the charges of adultery made against him in the said petition.

W. J. MAGIE, C.

In Chancery of New Jersey.

Between
JAMES B. DUKE,
Petitioner,
and
LILIAN N. DUKE,
Defendant.

On Petition for Divorce.

[Filed October 27, 1905.]

Frank T. Huntoon, of the City, County and State of New York, intervening in this cause by leave of the Court for that purpose obtained, appears and denies each of the charges of adultery with the said Lilian N. Duke, defendant, made against him in the petition for divorce.

Dated October 25, 1905.

FRANK T. HUNTOON.

Subscribed and sworn to before me this 25th day of October, 1905.

CHARLES PLATNER,
(Seal.) Notary Public No. 46,
New York County.

ALAN H. & THEO. STRONG,
Solicitors of Frank T. Huntoon.

NOTICE OF APPEAL.

[Filed May 11, 1906.]

Frank T. Huntoon (who intervened in this cause by leave of the Chancellor pursuant to the statute in such case made and provided, for the purpose of defending himself against the charges of adultery with the defendant, made in the petition for divorce in said cause), hereby appeals from so much of the final decree in said cause made on the fourth day of May, in the year nineteen hundred and six, as adjudges that said Lilian N. Duke is guilty of adultery with the said Frank T. Huntoon as charged in the petition, and from so much of said decree as requires the said Frank T. Huntoon to pay the costs of said petitioner, other than the costs upon the cross petition of said Lilian N. Duke and the costs upon her plea to the jurisdiction, together with a counsel fee of three thousand dollars to the said petitioner, as by reference to said decree may better appear, and also from the whole and every part of said decree, to the Court of Errors and Appeals in the last resort in all causes.

ALAN H. & THEO. STRONG,
Solicitors of Frank T. Huntoon.

I conceive that there is good cause for said appeal.

ALAN H. STRONG,
Of Counsel.

Service of a certified copy of this notice of appeal is hereby acknowledged this 15th day of May, 1906.

LINDABURY, DEPUE & FAULKS,
Solicitors of Petitioner.

New Jersey Court of Errors and Appeals.

Between JAMES B. DUKE, Petitioner, *Respondent,* and LILIAN N. DUKE, Defendant, Frank T. Huntoon, intervening, &c., *Appellant.*	On Appeal. Petition of Appeal.

[Filed June 1, 1906.]

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

The petition of Frank T. Huntoon, the appellant in the above entitled cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor William J. Magie, Chancellor of the State of New Jersey, bearing date the fourth day of May, in the year nineteen hundred and six, in a cause upon petition for divorce, wherein James B. Duke was petitioner and Lilian N. Duke was defendant, in which cause your petitioner intervened by leave of the Chancellor, pursuant to the statute in such case made and provided, for the purpose of defending himself against the charges of adultery with the said defendant made in the said petition for divorce, in this respect, that the said decree finds that the said Lilian N. Duke had committed adultery with your petitioner as charged in the said petition of James B. Duke, and adjudges that the said petitioner, James B. Duke, and the said defendant, Lilian N. Duke, be divorced from the bonds of matrimony because of said adultery, and also in this respect that said decree further adjudges that the said Lilian N. Duke and your

petitioner do pay to said James B. Duke his costs of said suit to be taxed, other than the costs upon the petition of the said Lilian N. Duke, and the costs upon her plea to the jurisdiction of said Court, and that they also pay to said James B. Duke, petitioner, a counsel fee of three thousand dollars.

And your petitioner humbly appeals from those parts of the said decree which find and decree as aforesaid, upon the ground that the same are erroneous, for that the said Court of Chancery had no jurisdiction to render any decree in favor of the said James B. Duke in said cause inasmuch as neither the said James B. Duke nor the said Lilian N. Duke was at the time of the alleged commission of adultery as aforesaid, nor at the time of the filing of the said petition for divorce, a resident of the State of New Jersey or domiciled therein, nor was the matrimonial domicile of said parties at any time in the State of New Jersey; and for that the said Court of Chancery had no jurisdiction to render any decree against your petitioner for the said costs, or for said counsel fee; and for that (if said Court had jurisdiction to make the same) such decree for costs and counsel fee under the circumstances of the case was contrary to equity; and for that said Lilian N. Duke had not committed adultery with your petitioner; and for that the evidence in said cause was not sufficient to justify any decree for divorce in said cause; and for that said petition for divorce should have been dismissed.

Your petitioner therefore prays that the said decree of the said Chancellor may, in the particulars aforesaid, be reversed, set aside and for nothing holden; and that your petitioner may have such relief in the premises as to this honoroable Court shall seem meet.

ALAN H. & THEO. STRONG,
Solicitors and of Counsel with Appellant Huntoon.

EXHIBIT D 8.

New Brunswick, N. J., October 27, 1905.

MESSRS. LINDABURY, DEPUE & FAULKS,

Gentlemen,—In the case of Duke v. Duke, on petition filed by you for divorce, we enclose copies of (1) petition of Frank T. Huntoon for leave to intervene and (2) order allowing him to intervene, and (3) appearance and denial by him of the charges of adultery, the originals of which have been filed by us in said cause as solicitors for Frank T. Huntoon.

Very truly yours,

A. H. & T. S.

EXHIBIT D 7.

Newark, N. J., October 28, 1905.

MESSRS. ALAN H. & THEODORE STRONG,

368 George Street, New Brunswick, N. J.

Gentlemen,—We are in receipt of your favor of yesterday with reference to the suit of Duke v. Duke, together with the enclosures referred to therein, and beg to thank you for the same.

Yours truly,

LINDABURY, DEPUE & FAULKS.

New Jersey Court of Errors and Appeals.

Between JAMES B. DUKE, Petitioner, *Respondent,* AND LILIAN N. DUKE, Defendant, FRANK T. HUNTOON, intervening, &c. *Appellant.*	On Petition. for Divorce. On Appeal from Chancery.

BRIEF FOR FRANK T. HUNTOON,

Appellant.

I.

JURISDICTION OF THE SUBJECT MATTER WAS NOT ESTABLISHED AGAINST HUNTOON.

The petition of James B. Duke for divorce (Case, p. 1) charges that the defendant, Lilian N. Duke, his wife, has committed adultery with Frank T. Huntoon.

Mr. Huntoon, on the twenty-fourth of October, 1905, applied to the Chancellor and obtained an order (p. 746) giving him "leave to intervene in this cause for the purpose of defending himself against the charges of adultery made against him in the said petition."

In pursuance of the leave so given a written appearance and denial of each of the charges of adultery was filed October 27, 1905 (page 747).

On the same day copies of the petition of Huntoon and of the said order and of said appearance and denial were sent by mail by the solicitors of Mr. Huntoon to

the solicitors of Mr. Duke, who by their letter of October 28th, acknowledged receipt of said papers. (Exhibits D 7 and D 8, page 751, pp. 605-606.)

This was all before the defendant's time for pleading had expired and before she had in fact pleaded to the petition.

Thereafter, on the second day of November, 1905, as appears by the recitals of the final decree (p. 9, l. 30, &c.), she filed a plea to the jurisdiction denying that she was at the time of her marriage to the petitioner or at any time thereafter, a citizen of New Jersey or domiciled there in, and denying that the petitioner was at the time of said marriage or at any time thereafter, a resident or citizen of or domiciled in the State of New Jersey, and alleging that the matrimonial domicile and residence of said parties was at the time of said marriage and down to the commencement of this suit, in the State of New York, and not in the State of New Jersey.

Issue was joined on this plea and brought to hearing and testimony taken before Vice Chancellor Pitney as between the petitioner, James B. Duke, and the defendant, Lilian N. Duke, as the result of which the Vice Chancellor found that at the time of alleged commission of the adultery charged and at the time of filing the petition for divorce, the petitioner, James B. Duke, was a resident of New Jersey and domiciled therein, and that the matrimonial domicile of the parties was at said times in this State (pg. 10, l. 9-25).

No notice of that hearing was given to Mr. Huntoon or his solicitors, and he was not present or represented thereat.

An order having been made overruling said plea the defendant answered upon the merits (p. 3) and thereupon the case was brought to final hearing upon said answer and upon the denial of Mr. Huntoon, notice of hearing being given to him as well as to Mrs. Duke.

The petitioner on the final hearing rested his case (p. 558, bottom) without having made or attempted to make any proof whatever of residence or domicile in

New Jersey as to either Mr. or Mrs. Duke at any time.

On the contrary, all through the case it appeared that the home of the parties from the time of their marriage until the filing of the petition for divorce was in the City of New York, where they had an established residence and lived upon the ordinary footing of husband and wife.

There was nothing in the evidence to even suggest a doubt that the joint residence of the parties and their matrimonial domicile was and always has been in the City of New York, which was also the place of commission of the alleged adultery.

Counsel for Mr. Huntoon thereupon objected to the jurisdiction of the court over the subject matter and moved to dismiss the petition, which motion was denied (pp. 559, 562, 566), the court holding that the statute under which he had been permitted to intervene (P. L. 1902, p. 506, Sec. 14) does not authorize one so intervening to raise the question of jurisdiction (p. 561. l. 21.)

The decree in the cause not only adjudges that Mrs. Duke is guilty of the adultery with Huntoon charged in the petition and decrees a divorce because thereof, but "it is further ordered, adjudged and decreed . . . . that the said defendants, Lilian N. Duke and Frank T. Huntoon, do pay to the petitioner his costs of this suit to be taxed other than the costs upon said cross petition and the costs upon the said plea to the jurisdiction of this court, and that they also pay to the said petitioner a counsel fee of three thousand dollars." (P. 11, l. 30, &c.)

The decree therefore places Huntoon upon the full footing of a defendant, even to the extent of imposing upon him a liability for $3,000 in addition to several hundred dollars of costs; and yet it is held that he cannot make the objection that this court is without jurisdiction of the subject matter.

The statute declares it lawful for the Chancellor to allow any person charged as was Mr. Huntoon "to intervene for the purpose of defending himself or herself

against the charge so made." The order of the Chancellor (p. 746) was in the same language.

The right of defence on the part of the intervenor is as broad as that of the principal defendant.

Any objection which the wife might urge against a decree is available to the intervenor. To defend himself against the charges is simply to prevent a decree based on said charges. If he can prevent such a decree being made, either because the Court is without jurisdiction to entertain the controversy, or for any other reason, he succeeds in his defence.

The suit is a suit for divorce, and jurisdiction to entertain it depends upon subdivision I of the 4th section of the act of 1902 (P. L. 1902, 503).

It is there enacted that the Court of Chancery shall have jurisdiction in all causes of divorce, &c. "where the adultery was committed without the State, and the parties complainant and defendant, or either of them, resided in this State at the time of the adultery and at the time of filing the bill or petition."

Unless, therefore, the original parties to the cause or one of them resided in New Jersey at the time of the adultery and at the time of filing the bill or petition the jurisdiction of the Court did not exist with respect to the subject matter.

No appearance, or waiver, or even express consent can supply the absence of facts essential to such jurisdiction. The jurisdiction of the Court of Chancery in matters of divorce is limited and statutory and must affirmatively appear in every instance.

vey v. Hervey.
1 Dick. 424. 426.

It is the duty of the Court itself to observe the limits of its jurisdiction, and decline to proceed even though all parties request it, where the necessary conditions of fact are not present.

So it is settled by a long line of cases in the Supreme Court of the United States that the jurisdiction of a Federal Court must affirmatively appear, and if it does not the Supreme Court on error will reverse the judgment of its own motion, or even on the motion of the party whose act caused the erroneous assumption of jurisdiction below.

Mansfield, &c. Ry. Co. v. Swan, 111 *U. S.* 379.
Minnesota v. Northern Securities Co. 194 *U. S.* 48, 62-3.
Thomas v. Ohio State University Trustees, 195 *U. S.* 207.

It is the familiar rule also in divorce cases in this State, that the facts showing jurisdiction of the subject matter must be proved at the hearing, even though no issue is raised thereon; and if not proved the petition will be dismissed.

It must not be overlooked that the order permitting Huntoon to intervene under the statute, and his appearance and denial were filed and served on the solicitors for petitioner before any plea to the jurisdiction was filed, and, of course, before any adjudication or hearing thereon.

Petitioner was bound to notice of it without not P.L. 1902 p. 537- Sec

He thereby became entitled to have the jurisdiction over the subject matter established as against him. That question was still open, and it could not be closed as to him without notice and an opportunity to be heard upon it. It was his right to be present at the hearing on the plea to the jurisdiction if the determination upon that hearing was to be of any effect against him.

The petitioner might have bound Huntoon by that adjudication by giving him notice and an opportunity to be heard on that occasion as was done upon the final hearing.

Failing as he did to give notice to Huntoon of the hearing on the plea to the jurisdiction, it remained incumbent on the petitioner, as in ordinary cases, to establish upon final hearing the jurisdiction of the Court over the cause—just as if no plea, or hearing, or adjudication thereon had taken place.

Having regard only to what was produced upon the final hearing (which was all that could affect Huntoon), the petition must have been dismissed for want of jurisdiction. *The petitioner had completely proved himself out of Court.*

There was not only an entire absence of proof that either Mr. or Mrs. Duke had ever resided in New Jer-

sey before or since their marriage, but all the evidence showed that their residence since their marriage, and their sole matrimonial domicile, had been in the city of New York.

There was therefore not merely absence of proof but positive disproof of the requisite domicile in New Jersey. It was proved that the Court had not jurisdiction of the action for divorce.

No decree could be made which should in any manner concern Huntoon. And no decree of divorce could be made against Mrs. Duke, since the establishment of the charges against her necessarily involved Huntoon, and was indeed the ultimate thing which he was interested in preventing, and which the statute intended that he should have an opportunity to prevent. This principle was in fact adopted by the Vice Chancellor in his final ruling against the foreign depositions, because notice of taking the same was not given to Huntoon (pp. 336-339).

But the decree did more than establish the charges. It actually condemned Huntoon to pay more that $3,000 in a cause where not only the jurisdiction did not appear, but was distinctly proved not to exist. This result was reached by denying to Huntoon, who is charged as a defendant, the right to urge the lack of jurisdiction (pp. 561, 565).

The Vice Chancellor in substance held that, having voluntarily appeared, Mr. Huntoon had nothing to do with the question of jurisdiction over the subject matter. But jurisdiction of the subject matter and jurisdiction of the person are two distinct things, and both are necessary.

Hervey v. Hervey, 11 *Dick.* 424. Appearance supplies only the latter, never the former.

To say that a defendant against whom a money decree may be made has not the right to insist upon a want of jurisdiction over the subject matter apparent from the complainant's own proofs, is a solecism for which no authority can be adduced.

A decree which rests upon such a basis is not due

process of law and is in violation of the Fourteenth Amendment to the Constitution of the United States.

And it is equally obnoxious to the Fourteenth Amendment to allow the jurisdiction to be established as against Huntoon by the previous hearing and adjudication on Mrs. Duke's plea, without his having had an opportunity to be heard thereon.

That adjudication was not even offered in evidence and it could not have been received if it had been offered.

It follows that the decree should be wholly reversed, —not only the portion which charges Huntoon with costs and counsel fee, but also the portion which decrees a divorce upon the ground of adultery committed with him,—because the Court had no jurisdiction of the subject matter.

II.

THE STATUTE DOES NOT AUTHORIZE ANY DECREE AGAINST A CORESPONDENT.

The entire provision on the subject is as follows:

"14. In actions for divorce because of adultery, it shall be lawful for the chancellor, in his discretion, at any time before final decree, to allow any person charged in the pleadings with committing adultery with either of the parties in the suit, to intervene for the purpose of defending himself or herself against the charge so made." (P. L. 1902, page 506.)

This section was entirely new in the act of 1902. Prior to that act a person so charged had no right to be heard. Great injustice might thus be done. A disgraceful charge placed upon the records of the Court might in the absence of the third person affected, and through the collusion or indifference or inefficiency of the party in the cause, be sustained, while if such person were heard the charge would often be refuted. It was moreover in the direction of sound policy that the fullest investigation should be had in all cases of divorce. At all events the reasonableness of

hearing the person thus accused was manifest, and this was what the statute intended to permit.

It did not, however, seek to alter or enlarge the essential nature of the proceeding, which remained as it always had been, simply an "action for divorce." No other decree than a decree for divorce is provided for. No decree of any kind against the intervenor is mentioned or implied. No pleading by the intervenor is prescribed. He is simply allowed, in the discretion of the Chancellor, to intervene for the purpose of defending himself against the charge. This requires that he or she should be permitted to take part in the hearing and raise any question which the defendant might raise. That he may have the opportunity to do so it is necessary that notice be given to one who has so intervened, of each proceeding in the cause. *But he is not a defendant.* The issue to be decided is just the same and the decree is just the same as if the corespondent had not intervened.

That is the view which Mr. Lindabury expressed (p. 322, l. 12) when the objection was made to the depositions (although he made the further claim that no notice to the intervenor is necessary).

If, however, there is any doubt that the true construction of this section does not make the intervenor a party, a reference to the title of the act must put it beyond dispute. Under the constitution of this State the title is not only the interpreter but the limitation of the enactment.

In *State v. Twining*, 64 *Atlantic*, 1073, this Court, after quoting Placitum 4, Sec. VII., Article IV. of the constitution, said:

"The meaning of this constitutional provision does not admit of the least doubt. It has been thoroughly settled by repeated decisions of our courts, including the court of last resort, that, to accord with this constitutional provision, *the title of every act must not only include, but must also express, its object.* While the title need not include nor express the means by which the legislation proposed is to effect that object,

it must plainly express that object. Rader v. Township of Union, 39 N. Law, 509; Stockton v. C. R. Co. 50 N. J. Eq. 70; Newark v. Mt. Pleasant Cemetery Co. 58 N. J. Law, 172; Payne v. Mahon, 44 N. J. Law, 213; Mortland v. Christian, 52 N. J. Law, 537; Johnson v. Asbury Park, 60 N. J. Law, 427; Amer. Surety Co. v. Great White Spirit Co. 58 N. J. Eq. 526."

The title here is, "An act providing for divorces and for decrees of nullity of marriage and for alimony and the maintenance of children."

"An act providing for divorces," is the only portion of the title which can possibly be claimed to cover the section in question. For present purposes it is as if this were the whole title.

Under this title—"*an act providing for divorces*"—can there be a valid provision whereby a third person may be made a party and a decree *of any sort* made against him?

Divorce is "the legal dissolution of the bond of marriage." *Century Dictionary.*

As there cannot in the nature of things be more than two parties to the marital relation, so there can never be more than two parties to the dissolution of it. A third person, even though connected with the cause of divorce, can never be a proper party to a suit, the sole object of which is a divorce; for such person can have no legal interest in the relief sought.

7 Ency. Pldg. & Prac. pg. 6
Clay v. Clay - 21 Hun. 60
Quigley v. Quigley - 45 Hun
Burke v. Burke, 5 N. Y. Mis
Parrell v. Parrell, 76 L. J. 1

"An act providing for divorces" therefore, by necessary implication determines and limits the parties to such a litigation.

Moreover, such title does not express the object of a decree against a person not a party to the marriage.

The force of this title is spent with the granting of a decree of divorce, with perhaps the incidental award of costs against the defeated party. A recovery of the expenses of such suit against an outsider can no more be brought within this title than a decree for damages could. That relief is in no sense incidental to the granting of the divorce but is wholly separate and distinct from it.

It can hardly be necessary to point out that the filing of the appearance and denial by Mr. Huntoon can have no effect upon the power of the Court to make a decree against him.

If the statute does not authorize the making of a decree against him as a defendant, no effort on his part to be made a defendant and no assumption by him of that character will give the jurisdiction which the statute has denied.

III.

THE DECREE AGAINST HUNTOON IS INEQUITABLE.

He has been adjudged to pay three thousand dollars counsel fee besides full costs of the suit (except costs on Mrs. Duke's plea and cross-petition), including expense of one copy of the testimony and one-half expense of the Court's copy (p. 729, l. 12, &c.).

This is an unreasonable exercise of discretion, assuming that the Court has power to make such a decree. It is the policy of the law to encourage intervention under this section in the interest of full investigation and not to make it unnecessarily burdensome.

The Court should not impose costs and counsel fee on the principle of vindictive damages or to mark its disapproval of the adulterous conduct.

It should not be the rule that intervention may be had only at the peril of being charged with ruinous expenses in the event of the failure of the attempted vindication. The expenses of the litigation should not be imposed upon a person in this situation unless his conduct in the suit has been such as unreasonably to increase the expense to the petitioner.

No evidence was offered by Mr. Huntoon other than was offered by Mrs. Duke, nor did he in any way increase the expense of the case to the petitioner. It would have cost the petitioner just as much if there had been no intervention.

The counsel fee of three thousand dollars is greatly

excessive. The Vice Chancellor seems to have adopted as the measure of the allowance the amount of a counsel fee which he had previously allowed to the wife (p. 128, l. 14); but that covered the hearing on the plea to the jurisdiction to which Huntoon was not a party, as well as the final hearing.

The fact that Mr. Duke is a man of enormous wealth and chooses to employ numerous and expensive counsel, cannot of course be allowed to increase the counsel fees to be paid by the other side, beyond what would be proper if the suit were between parties of ordinary means.

IV.

ANY OFFENCE PRIOR TO JULY 15, 1905, WAS CONDONED.

In the answer filed by Mr. Duke (and verified by his oath) to the petition for alimony, he makes the following statement:

"That petitioner and defendant were married on November 29, 1904, and sailed immediately for Europe; that upon their return in February, 1905, petitioner and defendant continued to live together as man and wife, without suspicion on the part of petitioner of the fidelity of defendant until early in July, 1905; that early in July, 1905, petitioner came accidentally to the knowledge of a telegram sent, as he believed by defendant, under the fictitious name "John" to a man, of whom petitioner, at that time, never to his recollection had heard, named Frank T. Huntoon, the corespondent in this suit; *that inquiry induced by said information as to said telegram,* which information had given to petitioner a suspicion, but only a suspicion, of his wife's fidelity, *brought petitioner to seriously doubt the fidelity of defendant, and he, on that account, on July 15th, 1905, left his home somewhat earlier than he had anticipated, but* on a necessary business trip to Europe; that so far from abandoning defendant at that time, he made ample financial arrangements for her, including the gift to her of funds necessary to pay the interest

on the mortgage on her house, 11 West 68th street, New York City, maturing August 1st, 1905; *that petitioner arranged before leaving for Europe for an investigation to be made in his absence into the relations and conduct of said defendant and the said Frank T. Huntoon, and while he was in Europe had daily postal and cable information* as to the conduct of defendant and the said Frank T. Huntoon that fully satisfied him of the infidelity of defendant." (Pp. 734-735.)

This answer was put in evidence on the part of Mrs. Duke as tending to show connivance and also condonation on and before July 15, 1905 (p. 705, l. 30).

Down to the time of his departure for Europe on July 15th Mr. Duke admittedly lived in the same house with his wife, and so far as appears upon terms of matrimonial cohabitation.

He was at home the night before and breakfasted at home on the day that he left. (Sands, pp. 516-517; Bonderson, p. 416.)

He makes no claim in his answer or elsewhere that he had broken off the usual relations with his wife. On the contrary, having formed the plan of going to Europe and having her watched during his absence, he must have avoided giving her any hint that he suspected her, and this would almost certainly require that there should have been no break in their previous relations.

His failure to deny the continuance of marital relations under the circumstances amounts to an admission that they continued.

Moreover, the general presumption is that husband and wife living in the same house are upon terms of matrimonial cohabitation. *Beebe v. Beebe*, 1 *Hag. Ec.* 789; *Marsh v. Marsh*, 2 *Beas.* 281; *Marsh v. Marsh*, 1 *McCar.* 315, 317; *Stevens v. Stevens*, 1 *McCar.* 374; *Graham v. Graham*, 5 *Dick.* 701.

And this presumption is not rebutted by the fact that they have separate sleeping rooms where there is no interruption of their ordinary relations.

Nor was it necessary for the defendant to show positive knowledge on the part of the husband. The ad-

missions of his sworn answer are such as to call for a clear, express and unequivocal denial by him of knowledge. *Stevens v. Stevens,* 1 *McCar.* 374.

His failure to go on the stand left all the presumptions in full force against him.

Condonation was not pleaded, but it need not be pleaded where it appears in the petitioner's own presentation of his case.

This exception is recognized also in cases of recrimination. *Jones v. Jones,* 3 *C. E. G.* 33, 34.

Nor was any objection because of failure to plead condonation made at the hearing, and a supplemental answer might be filed. *Seeburger v. Seeburger,* 12 *Dick.* 631, 632.

Nor is the condonation removed by later misconduct, since if any such occurred it was with the connivance of the petitioner.

Adultery at which the husband connives can no more remove the bar against a previously condoned offence, than it can afford ground of divorce in itself.

V.

ANY OFFENCE ON OR SUBSEQUENT TO JULY 15, 1905, WAS WITH THE CONNIVANCE OF THE PETITIONER.

From his answer to the petition for alimony (quoted under the last preceding point) it appears that early in July he came accidentally to the knowledge of a telegram which he believed had been sent by his wife in the fictitious name of John, to Mr. Huntoon. The suspicion thus aroused induced inquiry which brought petitioner to seriously doubt the fidelity of the defendant, and he on that account left his home earlier than he had anticipated for Europe, after having arranged to have her watched by detectives during his absence.

His condition of mind he says was one of serious doubt. He believed that she had corresponded in an assumed name with another man. He knew that she had been divorced by her first husband for unfaithfulness to her marriage vows, and he had himself lived with her for years before he was married to her.

He determined to have her watched, and at the same time, and (as he says) because of his doubt of his wife's fidelity he left the country.

What could have been his object, if not to afford her the fullest opportunity to commit adultery and to enable his detectives with the least difficulty to obtain evidence of it?

The language of this Court and of cases quoted by it in the recent case of *Delaney v. Delaney*, 65 *Atlantic*, 217, 220, is so satisfactory and so apposite that I cannot do better than appropriate it in its entirety:

"What did this petitioner leave undone to bring about "the result of which he now seeks to complain? What "more could he have done to bring it about than he "did. I can think of nothing. All that the wife did, "all that Lockett did, and all that the petitioner did "are rationally explicable only upon the inference that "the husband's normal attitude of dissent to the de- "bauching of his wife had, to the knowledge of all "parties, been negatived by the petitioner's own acts. "And in such a case the negation of dissent is the af- "firmation of consent, at least, so a court will regard it "when invoked by a husband to extend its aid to him, "upon the theory that such dissent upon his part, in "fact, existed, and had been normally manifested.

"This I understand to be the trend of many well- "considered cases. For definition and elements of 'Con- "nivance' see Cyc. vol. 14, p. 644, 'H. Connivance.' In "Trimmings v. Trimmings, 3 Hagg. Ec. 137, Lord "Stowell says: 'He (the husband) is perfectly at lib- "erty to let the licentiousness of the wife take its full "scope, but that he is to contrive the meeting, that he "is to invite the adulterer, then to take him and give "him the opportunity, I do think amounts to legal pros- "titution.' In Morrison v. Morrison, 3 Hagg. Ec. 105, "the same learned Judge says: 'It must have been seen "that he has practiced a train of conduct which led to "her guilt and which he foresaw and intended should "lead to it. Mere passive connivance is as much a bar "as active conspiracy.' In 2 Bishop on Marriage and "Divorce, Sec. 5, et seq. it is declared: 'It is a well "established principle that conduct on the part of the

"plaintiff amounting to a conniving at the act urged as "a ground for granting a divorce will be a good defence "to the action.' Parker, C. J., says: 'One instance of "adultery was proved, in Pierce v. Pierce, 3 Pick. "(Mass.) 299, 15 Am. Dec. 210, but there is reason "to think that the husband was the cause of its being "committed. It would be a dangerous principle to es- "tablish that a husband who has suspicions of the infi- "delity of his wife shall be allowed to lay a train which "may lead her to the commission of adultery, in order "that he may take advantage of it to obtain a divorce.' "In Cane v. Cane, 39 N. J. Eq., Van Fleet, V. C., "says: 'If a husband sees his wife in danger, if he sees "her in a position where she is likely to become subject "to the power of the blandishments of a man whose "character he knows to be bad and intentions evil, and "he does nothing to warn her to withhold her from his "hands, but allows her to be led to her ruin and his "dishonor, his conduct in law amounts to consent, and "the statute declares that no divorce for adultery shall "be decreed when it appears that the party applying "consented thereto.' And he quotes the language of "Chancellor Zabriskie in Hedden v. Hedden, 21 N. J. "Eq. 61, in which case it was held that if a husband "sees what a reasonable man could not see without "alarm, or if he knows that his wife has been guilty of "any weakness whereby he is put upon his guard re- "specting her weakness, he is called upon to exercise "peculiar vigilance and care over her, and if he sees "what a reasonable man could not permit, and makes "no effort to avert the danger, he must be supposed to "see and mean the result. This Court in Warn v. "Warn, 59 N. J. Eq. p. 642, 45 Atl. 916, approved of "the doctrine stated in the Hedden and Cane cases, but "held that there was nothing in that case 'that the com- "plainant did or that he failed to do which could rea- "sonably impute to him a desire or anticipation that his "conduct would prompt her to drift into lewdness'; "and said further, 'Unless this intention could under "the circumstances be imputed to him, it is irrelevant "to consider whether it was his duty to have acted "toward her differently than he did.' Thus clearly im-

"plying that if the facts and circumstances were such "as to impute to the petitioner or complainant ' a desire "or anticipation that his conduct would prompt her to "drift into lewdness' this, if established would amount to connivance or consent.

"On the principle of the cases just cited are the cases "of Morrison v. Morrison, 136 Mass. 310; Dennis v. "Dennis, 68 Conn. 186, 36 Atl. 34, 34 L. R. A. 449, 57 "Am. St. Rep. 95, note p. 101; Wilson v. Wilson, 154 "Mass. 194, 28 N. E. 167, 12 L. R. A. 524, 26 Am. St. "Rep. 237, note page 239; Cairns v. Cairns, 109 Mass. "408. See also note to Hawkins v. Hawkins, in 25 "Am. Law. Reg. (N. S.) 98. In Bourgeois v. Chauvin, "39 La. Ann. 216, 1 South, 679, the Court says: 'Where "the conduct of the husband indicates an intent to have "his wife transgress, or to let her do so undisturbed, "this constitutes a connivance, and will act as a bar to "his suit for divorce.' In Am. & Eng. Ency. of Law, "vol. 9, p. 829, title 'Connivance,' a general discussion "of the subject will be found and a citation of other "authorities.

"A careful consideration of the proof in this case, "conceding all that petitioner claims to have occurred, "leads us to the conclusion that if it did occur, it was "by his procurement and consent, and that he was con- "niving at the result, and that he sought to give his "wife liberty to commit the act for the purpose of ob- "taining the divorce which he has applied for; or, if "this is not so, that at least, in the language of Chan- "cellor Zabriskie, he saw what a reasonable man could "not see without alarm. A decree of divorce on the "ground of adultery will not be granted under such "circumstances."

By his own conduct therefore, Mr. Duke deprived himself of all right to complain of anything that may have occurred either before or after he went to Europe.

The decree for all the reasons above stated should be wholly reversed, with costs.

ALAN H. STRONG,
Of Counsel with Frank T. Huntoon, Appellant.

The Baker Printing Co., Law Case Printers, 251 Market St., Newark, N. J.

New Jersey Court of Errors and Appeals.

Between
JAMES B. DUKE,
Petitioner and Respondent,
vs.
LILLIAN N. DUKE,
Defendant and Appellant.

On Appeal from Interlocutory Decree.

BRIEF FOR APPELLANT.

The testimony of Duke respecting his intentions to make his domicile in the State of New Jersey, in view of the fact that the maintaining of his suit in the courts of this state depends upon his proving his domicile here, ought not have any probative value whatever, unless it is unequivocally corroborated by circumstances or testimony of a disinterested and independent character. It is to be observed that a majority of the acts relied upon by the petitioner as proof of his intention to make New Jersey his domicile, is founded upon motives which clearly indicate that the petitioner kept up an apparent residence in this state for the purpose of furthering certain questionable ends and which could not be accomplished otherwise.

1 Residence in the township of Hillsboro, Somerset County or for the purpose of evading taxation in New York City.

To escape taxation in New York City where the bulk of the petitioner's fortune was, and to pay a paltry tax levied in the township where he was assessed upon such personal property as was in view of the tax assessor, such as plows, horses, furniture, etc. It appears that the petitioner was assessed upon one hundred thousand dollars personal property in New York City, which the petitioner swore off, claiming that he was a resident of New Jersey. He did not deny that he was assessed too much, but that he was not subject to assessment in the city of New York. He did not claim or show that he paid an assessment upon the one hundred thousand dollars in New Jersey, assessed against him in New York City. When counsel for defendant attempted to inquire into the amount of taxes paid by petitioner upon personal property in New Jersey, in order to show that it was upon a paltry sum, the vice chancellor refused to permit the questions to be answered. See pages 163, 164 and 165.

On p. 126, it is clear from Duke's statement that he desired not to be known as a resident of New York City, simply for the purpose of evading the payment of a personal tax. In 1885, 1886, 1887, 1888 and 1889 he was assessed in New York and he says he declared himself a resident of North Carolina or New Jersey. When asked: "You did not declare yourself a resident of New Jersey in 1889 did you"? the learned vice chancellor said: "He said either he declared himself a resident of North Carolina or New Jersey." Duke did not become a resident of New Jersey until 1894, why therefore the use of either North Carolina or New Jersey, unless for purpose of mental reservation."

It is respectfully submitted that the learned vice chancellor thereby excluded the defendant from testing by legal rules of evidence, the *bona fides* of the petitioner's claim as to one of the chief essentials to establish his *bona fide* intention of making New Jersey his place of domicile. The petitioner having testified that he was worth more than ten millions of dollars, it was a most vital matter which assisted in determining the question whether Hillsboro, New Jersey or New York City was the choice of the petitioner as his domicile, especially, if it were shown that more than nine tenths of that sum was kept by him in New York City. The defendant was entitled to have all this testimony before this court. This attempted proof was suppressed by the ruling of the vice chancellor and thus the defendant was deprived of one of her legal and constitutional rights, to prove that the defendant was not domiciled in the State of New Jersey and that consequently the court was wholly without jurisdiction.

2. The exercise of political rights in New Jersey was only in a line to carry out the original plan of the petitioner, so that his claim to be a resident of New Jersey should have some support whenever it may be called into question. In the space of twelve years he exercised the right of suffrage three times, or once every four years. He was selected once as a delegate to the National Republican Convention for his district. I have no doubt if he had been selected for the same purpose in New York City, or at Durham, N. C., it would be of no evidential value as establishing his domicile.

3. The making of an affidavit in New York City to remove a case to the United States Court from a state court, served a double purpose. It delayed the trial of a cause and annoyed the plaintiff and then it was in pursuance to the original plan of the petitioner to keep up a residence in this state whenever it was for

his material benefit to do so. It would not have been wise for the petitioner after swearing off his taxes in New York City, to go about proclaiming that he was a resident of New York City.

4. It was necessary that one of the directors of the American Tobacco Company should be a resident of New Jersey, under the laws of this State. And it was really with this object in view and also to escape the taxation in New York City that the petitioner created a residence at Hillsboro, New Jersey. It can hardly be said that either one of these reasons is consistent with the legal requirement that domicile is a matter of choice and not of temporary shifts and legal jugglery.

5. The describing himself in deeds and other documents as of the State of New Jersey is also in harmony with the plan of keeping up an apparent residence in New Jersey for the two-fold purpose: 1st. To escape taxation in the City of New York. 2nd. To comply with the law requiring that at least one of the directors of a corporation organized under the laws of this state shall reside in this state. From Duke's testimony it is to be inferred that he himself did not, by describing himself as of such or such a place, intend to infer that the place referred to was his domicile or even his residence.

On page 12 at line 20, Mr. Lindabury asked the petitioner this question: "I show you a deed from Sophia Veghte to you dated July 25, 1893, is that the deed by which you acquired the property? A. Yes, sir." And then immediately following, commencing at line 29, he asked: "Q. You are described in that deed as a citizen—No, this is not the first deed, is it? Oh, yes, that is right—as a citizen of the City and State of New York. Was that your residence at that time?" Now, mark the answer of this wily witness: "A. I can't just recall whether I had moved my residence from North Carolina at that time or

not; I stayed most of my time in New York, but I don't remember whether I had actually transferred my residence then." And then again on page 13, line 11. "Now I show you a deed from Austin Woodward and wife to you dated August 19, 1893, less than a month after your original purchase? A. I had not moved to Somerville at that time." Then at line 20, same page, he was asked: "Now I show you a deed from Luther C. Voorhees and wife to you dated January 2, 1894," etc.

And at line 29 this inquiry is continued thus:

"Q. In this deed you are described as of the County of Somerset and State of New Jersey, and 'Somerset' and 'New Jersey' are erased and 'New York' written instead you had not then made New Jersey your residence—January, 1894? A. I had not at that time declared that to be my residence, because I do not recall whether I had really got possession."

And then on page 14, the petitioner, commencing at line 19 says, that he took possession in the summer of 1894; "I was there, I was sort of living in the house while they were reconstructing it, but it was not much living, doing the best I could." On page 35, top of page, Duke declares that he first formed the intention of making Somerset County, New Jersey his place of domicile or residence in the fall of 1893.

The vacillating, contradictory and evasive character of the testimony of the petitioner respecting his place of settlement weaken if they do not utterly destroy his pretension to a domicile in this state.

He seemed to fear to commit himself to the fact that he ever acquired a settlement in the city of New York. Why? Because he was conscious of the fact or was made aware of it, that a residence in New York City from 1884 to the present time, a period of more than twenty years, could hardly be made subordinate to a country residence in New Jersey acquired for occu-

pation in 1894 and to which he resorted for rest and recuperation once a week and that at the end of the business week. See p. 86, ll. 16-25.

It is not to be doubted that the petitioner intended to acquire a residence in New Jersey. Why he intended to do so has been pointed out above. The two main objects to be attained by it were: First. To escape taxation of New York City. Second. To comply with the laws of New Jersey requiring that at least one of the directors of a corporation organized under the laws of this state shall reside in New Jesery, and to meet the criticism in the bill of chancery.

Now all minor acts such as declarations of the petitioner, removal of causes to the United States Court, testimony given before the Lexow committee etc., would necessarily have to be in line with the object he had in view—that is, to be ostensibly a resident in New Jersey.

The petitioner's testimony has been characterized as vacillatng, contradictory and evasive and the charge has also been made that his testimony shows that he had a dread of even acknowledging that he was a resident of New York at any time.

We shall now undertake to substantiate the above charges.

First. On page 39, commencing at line six, the petitioner testified: "I can't recall whether I transferred my residence from North Carolina in 1884 or at any time before 1893 when I went to the farm." On page 35, the first question on cross examination, the petitioner was asked: "Q When did I understand you left North Carolina to come north and settle in New York. A. 1884 I think it was." On page 39, commencing at line 22, he testified: "I don't think I ever adopted New York at any time as my residence. *I won't be bound by that now,* but that is my present impression." What the witness meant by the expression "I won't be bound by that now" was evidently a reservation that if anything

turned up to prove that he had, he could fall back on that qualification. Such tactics may be legitimate in stock speculation, but I never knew that the law tolerated such modifications in sworn testimony to material inquiries in a cause. It must not be forgotten that the witness had sworn that he left North Carolina in 1884 to *settle* in New York.

On page 39, commencing at line 25, the witness was asked: "Q. Then as I understand you, your idea was not to adopt New York at all as your place of residence, but you believed your place of residence to be North Carolina until you chose a residence here in the state of New Jersey, is that what you say?" Here Mr. Lindabury came to the rescue of the witness:

"Mr. Lindabury. He hasn't said that.

"The Court. He hasn't said that exactly.

"A No; I say I don't have any recollection when I transferred my residence from North Carolina; I don't know whether I transferred it at all to New York or not; I don't think I did."

On page 40, commencing at line 10, the petitioner's attention was called to the articles of incorporation of the American Tobacco Company, in which he was described as James B. Duke, New York City, twenty shares. It appeared that the date of the articles of incorporation was the 20th of January, 1890.

At line 26 he was asked: "Q You read this didn't you?" The residences of the stockholders and the number of shares held by each are as follows: "All such shares being shares of general or common stock." Then follows your name, "James B. Duke, New York City, twenty shares." "A Well, I was located in New York City then." Then the learned vice chancellor took it upon himself to give a favorable interpretation to what the witness said. See commencing at line 32.

This was followed by the question: "Q It says the name and residence. I ask you, now, whether that is not because you claimed your residence was in the

city of New York?" "A I don't recall." A wonderful lapse of memory on the part of this astute witness.

Mr. Lindabury then broke in with the remark: "Residence is not used in the sense of domicile" Immediately the petitioner catching his counsel's drift and without any question put to him said: "I don't recall whether I claimed a residence in New York or not. I don't recall whether I did not continue it in North Carolina."

The learned vice chancellor immediately followed this answer with this remark: "The layman does not distinguish between residence and domicile, and, I am sorry to say, that courts and lawyers do not always distinguish."

The petitioner taking his cue and being inspired with courage by reason of the blindness of the courts and lawyers which did not enable them to distinguish between residence and domicile, and without any question being put to him, with great temerity testified: "A I spent most of my time in New York."

Which was immediately supplemented by the learned vice chancellor with this remark: "That was your place of business." See page 41, lines 1 to 40.

The petitioner did improve his Somerville property and laid out a park and undoubtedly had an exceedingly fine country residence. Though he may have spent a million dollars in about the premises it was in comparison with the great fortune which the petitioner possesses, no more extraordinary act on his part than has been performed by other millionaires residing in the city of New York who have built palatial residences in Newport, along the Jersey coast, and other places. His country home in New Jersey was not inconsistent with the domicile he had acquired in New York City.

On page 183, 184, the learned vice chancellor laid a great deal of stress on the money expended by the petitioner on this Somerville property and the decla-

rations made by Duke to the men who were in his employ and received benefits from him, that he Duke, intended to make it his home.

Such declarations, it is respectfully admitted are of no great evidential value. Let us give an illustration to what extent the retainers and beneficiaries of Duke were willing to aid him in establishing a domicile in New Jersey.

S. Manning Wykoff, on page 57, line 33, says, he was a challenger on the election board for Hillsboro from 1893-1895. On page 58, line 5, he said, that Duke was registered in 1894 and 1895. On same page commencing at line 13: "(By the court). Q But he was registered in 1894 and 1895?" "A He was registered, yes, sir." Now Duke, himself testified that he did not move to New Jersey until the summer of 1894. See page 14, line 20.

Under the laws of New Jersey a person to be eligible as a voter and to be registered as such must be a resident of the state for the space of one year.

If Duke was registered in 1894, he was registered, when by his own admission, he had resided here only since the summer of 1894. But Wyckoff was zealous in the cause of the petitioner and so was his brother who followed him as a witness. And it is remarkable that this man who has a reputation for sagacity should blurt out to the men at work and servants that he intended to make Somerville his home. Let us instance a sample of the kind of corroberative testimony the petitioner presented. David Smith, the superintendent of the farm, who represented the petitioner when the house was being remodeled says that in a conversation had with Duke, Duke said: "I don't care anything about the plan; I want this built to suit me. I want it built for its safety, because this is my home and I don't want the house to burn down." See page 92 line 35. It is to be hoped and presumed for the sake of humanity, that the petitioner was not so selfish and

barbarous in thought, that even if it was not to be his home, he would have been entirely indifferent to the fate of the building, as to whether it was safe or not or whether it would be likely to burn down or not.

And so here and there through the case will be found improvised conversations by the petitioner with his employees and servants and they are corroborative witnesses as to the petitioner's intention of establishing Somerville as his home.

And it will be found that none of these witnesses fail to put the word *home* in Mr. Duke's mouth when detailing the conversations had with him. If the Duke farm was regarded by Duke as his home, it is singular that he was unable to produce a single business associate, friend, or neighbor to confirm his claim. His brother, Benjamin Duke, whose house in New York became and was the petitioner's residence from the time he separated from his wife and during the divorce proceedings, might have been able to have shed some light upon the fact why the petitioner made alterations in the house to suit his, the petitioner's, tastes, paid the servants and ran the house as if he were the master of it.

It is true that Mr. Fuller was called by the defendant to prove a single fact in relation to certain chancery proceedings against the American Tobacco Company (see page 121), when counsel for petitioner availing himself of the opportunity, although not legally justified in doing so, and against the objection of counsel for defendant, cross examined the witness as to the petitioner's declaration to him, respecting the petitioner's place of residence.

Now Fuller was and is the general counsel of the American Tobacco Company, by the grace of Duke. He seems to have been Duke's proxy in corresponding with the defendant, before her marriage to Duke. He was in fact, Duke's harvspex. This is to be gath-

ered from the letter written by Duke, August 23rd, 1904, to the defendant. There is a postscript to this letter which reads: "I told Mr. Fuller not to write to you to day."

Against this unsatisfactory and puerile testimony, offered by the petitioner to establish his matrimonial domicile in the State of New Jersey, the following undisputed facts appeared. 1. That the petitioner always lived in New York and still lives there, from the time he left North Carolina in 1884. See page 11, line 34; top of page 12 to line 8. Although Duke says that he resided in New York until 1893, by a series of leading questions put to him on page 13, line 33, he was still residing in New York in 1894. See also page 14, line 20; page 41, line 11, line 40. He began to live with Mrs. McCready, who afterwards became his wife in 1892, and she lived with him as his mistress in New York City until they were married in November, 1904. Before and after marriage the petitioner and the defendant lived at No. 11 West 68th Street, New York City. See pages 40-49.

The words "live" "residence" "domicile" seemed to be veritable bug-bears to Duke. On page 44, he was questioned about his living at 11 West 68th Street, the house which was bought for and furnished for defendant with Duke's money. Commencing at line 38, he was asked: "Did you *live* there at any time?" "A. I used to *stop* there when I was in New York." On page 45, commencing at line 20, he admits that he had a key to the house, that he had a room in the house called his room; that some of the clothes that he had bought or had made were sent there; that he gave the defendant money to buy furniture for the house, etc.

On page 46, line 2, he was asked: "Q Now, didn't you look upon that as your home in New York?" "A I regarded it as a place I had a right to *stop* at; I did not regard it as my *home*." Then the witness was questioned at some length as to

whether he had not ever spoken of it as his home, and a letter being shown witness written by him to the defendant, August 23, 1904, the witness commencing at line 33, on page 46, read I would like you to arrange and come home at once. I want to talk to you, and if it is necessary for you to continue your stay in the mountains you can," and then answered: "I didn't say that I had any home in New York." Hereupon the learned vice chancellor said: "Never mind. The letter speaks for itself."

Then on top of page 47 he was asked: "Q Now, having seen this paper, do you recollect now whether you have ever spoken of New York as your home? Or of this place at 68th street as your home?" "A No, I didn't speak of it in that letter as *my* home. I told her to come home. I told her to come home." Instantly the learned vice chancellor broke in upon the examination and said: "Q Her home you were speaking of?" The apt and ready witness took the broad hint and answered: "A I was talking of *her home* and not *my home.*"

It is most respectfully submitted that the inquiry being directed to a most material and vital point of the case, we were in justice entitled to have the explanation of the witness and not that of the vice chancellor, as to whose home was referred to in the letter. The writer of the letter certainly knew the use of ordinary terms and the meaning he intended to express by them, and it needed no legal acumen or intrepretation to intervene or explain them. Furthermore by every principle of justice and equity, uncontrolled by bias or prejudice, the words "come home" written by a man to a woman who was his wife in fact, if not in law and with whom he inhabited the same dwelling in New York City, and to whom he was so devoted, as his letter to her manifests, and who was on the point of making her his lawful wife, could only have one meaning and that is that the writer alluded to "their home" which was both his and her home in New York City.

The fact that she, in response to the letter came to No. 11 West 68th street and that the petitioner went there also and that they lived there together from the latter part of August, 1904, until November 29, of the same year and then at the request of Mrs. McCready went to a relative's house in Camden, New Jersey to be married and immediately thereafter, returned to their home at No. 11 West 68th street, is strong corroborative proof that the petitioner regarded No. 11 West 68th street as his matrimonial domicile.

There is also a negative circumstance which indicates that the petitoner regarded the residence at No. 11 West 68th street as his matrimonial domicile.

As has been seen he had been living with the petitioner from 1892 to 1904. During this time he had according to his own testimony improved his country residence at Somerville. He and the defendant had made several visits to the place during these years. He had decided to make the defendant his wife in August 1904. Now if Duke had regarded the country residence at Somerville as his home, how was it that both she and he understood that the word "come home" alluded to No. 11 West 68th street. See page 50, line 20, line 32.

2. That the petitioner expected to buy the house in 82nd street which is in the name of his brother Benjamin Duke, before he married the defendant, and to establish a home there, is a cogent circumstance tending to prove that the petitioner's matrimonial domicile was in New York City.

The vice chancellor in his opinion, commencing at line 37 on page 188 to line 20, on page 189 makes it appear as if this expected purchase of the 82nd street property and the uses to which it was put took place after the filing of the petition in this case. In this the vice chancellor confuses the time when the understanding was had by Duke with his brother to purchase the house, and what took place after Duke returned from Europe in September 1905.

On p. 51, commencing at l. 33, Duke was asked: "Is there any agreement existing between you and your brother for the sale of that house to you?" "A. He will sell it to me if I want to buy it." Then at bottom line, same page, "Q. Was there any understanding that you were to buy it?" "A We have been talking about it *and I expect to buy it,* but I have not made any agreement to buy it." "Q And did not you intend to give that house to your wife on your wedding trip?" "A Never." "Q Never spoken to you about it?" "A She asked me for it and I told her no." "Q Then you had spoken about giving it to her?" "A She asked me if I would give it to her, and I told her no."

"Q When did she ask you that?" "A I don't recall; I think she asked me before I married her."

"Q But you are not sure about that?" "A I think she did one night my brother was up there." Here we have Duke's admission that he expected to buy the house and that the conversation had with his wife respecting it was before he married her. Assuming that he tells the truth that he did not agree to make his wife a wedding present of it the inquiry still remains unanswered as to what his intention was to make of it, if he did buy it.

Was it not his declared intention to make it his home? Mrs. Duke, commencing at bottom of p. 150, says, "I don't recall the exact conversation except that he said he would give it me, and get it for me so that we could occupy it this fall, and it was to be decorated this past summer."

And all this has come to pass, except that Duke did not present the house to his wife and she was not to occupy it. In the fall after his return from Europe he made alterations therein, supervised the work, etc. See page 51, line 27, line 30; page 52, lines 15-21.

Why Duke should make extensive alterations in a house which is not his own, man it by his servants, and paying them, for his brother who is not dependent upon him but has wealth of his own, is on a par with all the mysterious movements of the petitioner, and as to the intention of Duke making New York City his matrimonial domicile. See Test. of Mrs. Duke, on pages 145-146.

3. The list prepared for foreign and domestic friends, to each of whom a card was sent announcing the marriage of the petitioner and the defendant and that they would be *at home* to receive their friends or their excuses at No. 11 West 68th street is convincing proof that the residence at No. 11 West 68th street was the matrimonial domicile.

The vice chancellor in his opinion makes an effort to weaken the effect of this most convincing piece of testimony.

It must be borne in mind that the announcement read: Mr. and Mrs. James B. Duke will be at home after the first of February, at 11 West 68th street, New York.

It is to be observed that the time to be at home is unlimited. It announced to the world that any time after the first of February, the Dukes would be at their home, No. 11 West 68th street. The vice chancellor on page 86 in the very instance which he gives demolishes the foundation of his argument. Commencing at l. 18 he says, "It would have been quite as appropriate if it had been used to invite their friends to call on them at some hotel in San Francisco or London or Paris, where they found it convenient to be shortly after their marriage. For instance, it might have read: "Mr. and Mrs. James B. Duke, at home, at the hotel Cecil, London, from the first to the tenth of February," etc.

The instance differs widely from the case at hand. The time to call at the Cecil is limited to a definite period at once disclosing that it is simply a temporary at home, for ten days.

In the case at hand the "at home" is unlimited and for an indefinite time, one of the chief characteristics of a matrimonial domicile.

The other instances cited by the vice chancellor are also faulty, in that, in none of them, does the "at home" carry with it that indefiniteness of time as appears in the case at hand.

In the case at hand it must also be remembered that Duke and wife went to Europe in November, 1904, and the announcement was made in effect to their foreign friends and their domestic ones upon our return in February, 1905, we will be at our home No. 11 West Sixty-eighth street, New York. The burden of establishing a matrimonial domicile in this state was upon the petitioner, and it is most respectfully submitted that a careful weighing of the testimony in the cause will disclose that the petitioner falls far short of sustaining this burden and therefore we submit that the decree of the vice chancellor should be reversed.

Respectfully submitted,
CHAUNCEY G. PARKER,
SAMUEL KALISCH,
Of Counsel.

The Baker Printing Co., Law Case Printers, 251 Market St., Newark, N. J.

New Jersey Court of Errors and Appeals.

Between JAMES B. DUKE, *Petitioner-Respondent,* and LILLIAN N. DUKE, *Defendant-Appellant.*	*On Appeal from Order Overruling Plea to Jurisdiction of Court.*

POINTS OF R. V. LINDABURY FOR RESPONDENT.

I.

NO QUESTION ARISES ON THIS APPEAL UNDER THE CASE OF HADDOCK *vs.* HADDOCK, 201 U. S., 562.

First.—Because under the Divorce Act (Revision of 1902, P. L. 1902, 502) jurisdiction is given to the Court of Chancery to grant divorces in cases of adultery "where the adultery was committed without this state, and the parties complainant and defendant, or either of them, resided in this state at the time of the adultery and at the time of the filing of the bill or petition."

That a state may authorize a decree of divorce in favor of one of its own citizens against a defendant who resides without the state and who is not served with process to appear within the state which will be effective within such state, was expressly recognized in the Haddock case. That our statute does authorize this even where the matrimonial domicile was without the state was settled in this court in *Wallace* vs. *Wallace*, 65 N. J. Eq., 359.

Second.—The matrimonial domicile in this case and the domicile of the petitioner "at the time of the adultery and at the time of the filing of the petition" were identical.

If the domicile of the petitioner was in the state of New Jersey at the times mentioned the matrimonial domicile was there also since it is not pretended that the petitioner and his wife lived apart or had separate domiciles between the date of their marriage and the filing of the petition.

II.

THE DOMICILE OF THE PETITIONER AT THE TIME OF THE ADULTERY AND AT THE TIME OF THE FILING OF THE PETITION WAS IN THE TOWNSHIP OF HILLSBORO, IN THE COUNTY OF SOMERSET AND STATE OF NEW JERSEY.

(a) The petitioner's domicile was in the township of Hillsboro from the year 1894 to the time of his marriage in November, 1904.

This is shown by the following evidence:

1. Twenty-one deeds for property purchased by the petitioner in said county between July 25, 1893, and October 21, 1902. In the first three of these deeds petitioner is described as of the city of New York. In the succeeding eighteen deeds he is described as of the township of Hillsboro, in the county of Somer-

set (case pp. 12-19.) These deeds constitute the title deeds to a homestead property consisting in all of 1700 acres purchased by the petitioner in various parcels for the purpose, as he says, of establishing a home for himself thereon.

2. Petitioner was examined before the Lexow Investigating Committee of the state of New York in 1897 and then swore to his place of residence as Somerville, Somerset County, New Jersey (case p. 20, l. 38).

3. In the copy of the charter and by-laws of the American Tobacco Company, of which Mr. Duke was a director and president, published in 1901, his residence is given as in the state of New Jersey and this was repeated in a subsequent publication in 1902 (case p. 21, l. 20; p. 22, l. 28). It was repeated again in a publication of the charter and by-laws in 1904 (case p. 24, l. 24).

4. In 1901 Mr. Duke made proof of a mortgage executed by the Consolidated Tobacco Company, of which he was president, to the Morton Trust Company as trustee and in his affidavit deposed that he resided in Somerville, New Jersey (case p. 25, l. 20). And again in October, 1904, he made proof of a mortgage executed by the consolidated American Tobacco Company to the Morton Trust Company and in this also deposed that he resided in the city of Somerville, New Jersey (case p. 26, l. 32).

5. In May, 1903, he removed a suit brought against him by one Lorenzo Tarantito in the Supreme Court of the state of New York to the United States Circuit Court for that district and in his affidavit of removal deposed that he was a citizen and resident of the state of New Jersey (case p. 28, l. 12).

6. At the presidential elections held in the years 1896, 1900 and 1904 he voted in the township of Hillsboro, in the county of Somerset (case p. 28, l. 30) and says that he never voted anywhere except in the township of Hillsboro after he went to live there in the spring of 1894 (case p. 30, l. 24).

7. Mr. Duke has paid personal and poll tax in the Township of Hillsboro ever since he removed there in 1894 and has sworn off similar taxes attempted to be imposed on him in the City of New York (case p. 132, l. 12; p. 126, l. 22, p. 62, l. 22).

8 In 1904 Mr. Duke was a delegate from the district in New Jersey in which the Township of Hillsboro is situate to the Republican National Convention at Chicago (case p. 30, l. 31).

9. Mr. Duke has spent on an average from three to four nights a week on his farm in the Township of Hillsboro ever since he moved there in the spring of 1904 (case p. 31, l. 10). He says he never kept house in New York at all, but stopped at various places there more or less, keeping his house in the Township of Hillsboro open all the time and a house-keeping establishment always there (case p. 32, l. 8). He says that he spent about $60,000 in fitting up the house on his farm as a place of residence (case p. 32, l. 22) and that he entertained his friends there (case p. 33, l. 37). He says that he first formed the intention of making Somerset County his place of domicile in the fall of 1893; that he intended then to make it permanent and that this purpose has never changed (case p. 35 l. 2). On page 57 in answer to a question on cross examination Mr. Duke said of his Somerville place: "That is my place. I am laying out and making that a great place. That is where I expect to make my

home as long as I live. I have been working on that line for about twelve years, and I have done everything that anybody can to make Somerville my home except to go and sit there all the time."

Mr. Duke is corroborated by the following witnesses:

As to voting in the Township of Hillsboro by S. Manning Wyckoff (p. 57), Charles A. Wyckoff (p. 58), C. Nelson Van Dorn (p. 60), Newton Van Cleef (p. 60) and Peter N. Williamson (p. 61).

The assessor of the Township *John H. Saums,* says that as early as 1898, which was his first year in office, Mr. Duke gave himself up as a resident of the Township and as one subject to personal taxation therein and that from that time on he paid poll tax and other personal taxes in the Township (case p. 61).

Charles S. Hamilton, the tax collector of the Township of Hillsboro since the year 1900, testifies to the collection of taxes from Mr. Duke during the years he has been in office as follows: poll tax, dog tax, personal tax and real estate tax (p. 65).

Margaret Smith, the cashier of Mr. Duke's farm, testified that she has lived on the farm since 1895 and that Mr. Duke always spoke of it as his home and that she never heard him speak of any other home but his home there; that he always entertained his family, his father, brother, relatives and all his business associates there and spent from three to four nights on the average a week there during all the time she was employed (case p. 68, l. 30). On page 69 she says that he spent more than half his time there when he was in this country and not travelling in Europe. On page 70, l. 8, she says that the furnishing of the house cost a little over $60,000; that she paid the bills as cashier.

Mary Smith, a sister of Margaret Smith, testified that she was house-keeper at the farm and that she will have been such eleven years on the 6th day of January next. She says that she should judge that Mr. Duke has been there on the average from three to four nights a week during all that time. She says that the house was always kept in order for the entertainment of Mr. Duke and his friends and that he always spoke of it as his home (case p. 79, l. 20.)

David Smith, superintendent of Mr. Duke's farm, who has lived on the farm for the last six years, says that Mr. Duke always spoke to him about the place as being his home and how he wanted to make a nice place out of it and how he wanted changes made. He describes at length the modern conveniences in the house, such as furnace heating, electric lghts, telephones, fire places in every room, etc. (case p. 93). He says that it is not a summer home at all but is fitted up in the best manner as a winter home and that he should think that while in this country Mr. Duke would average up from fifty to sixty per cent. of his time, including nights, at the farm (case p. 94, l. 32.)

(b) Mr. Duke's domicile remained at the township of Hillsboro from the time of his marriage down to the filing of the petition in this cause.

Mr. Duke was married in Camden, in the state of New Jersey. After the marriage according to the testimony of Mrs. Duke they went to New York and spent the night at 11 West 68th street, a house owned by Mrs. Duke. On the day following they took steamer for Europe where they remained two months. On their return they spent one night at Mrs. Duke's house in New York and on the day following went to the home of Mr. Duke's father in Durham, North Carolina.

They stayed there about a week and then returned and spent one night at Somerville and then went to 11 West 68th street, where Mr. Duke was taken very ill and confined to the house for six or seven weeks. As soon as he had sufficiently recovered they went down to North Carolina again for a few days, spending Easter Sunday there. Upon their return they went to 11 West 68th street and from thence to Somerville, dividng their time between the two places until the 15th of July, when Mr. Duke went to Europe and remained until the institution of this suit. Mrs. Duke says that between the time they returned from North Carolina at the end of April and the 15th of July they lived in New York, going out to Somerville occasionally (case p. 138, l. 15.) Mr. Duke's ~~story does not in this respect differ from that of Mrs. Duke except as to the amount of time spent at Somerville after Mr. Duke's recovery from the six weeks' illness. He~~ says that ~~after he got so he could go out~~ he spent most of his time at the farm; that he should say he was there on an average four or five nights a week; that Mrs. Duke was with him part of the time and part of the time she claimed she had to go to town. He says that he was very much dissatisfied because she ran to the New York house so much and he told her that he wanted her to go to the farm and stay there; that that was the home and that they wanted to build up their home there, and that she rebelled at it and that he finally told her he wanted her to close up the New York house and she said that she wouldn't do it; that then he told her he wouldn't support the New York house and she said that she would do it herself and then he told her he would close his stable and she said she would go to a livery

which was the end of Ap

stable and hire a team and send him the bill and he said he wouldn't pay it. He says that this was along in May or June (case p. 167, l. 20.)

Not a word of this is contradicted by Mrs. Duke.

It further appeared that Mr. Duke had for three or four years been planning to build an expensive mansion on his Hillsboro property. He says that they didn't finally determine, however, what they would do about it until the spring of 1905, when they were living at the farm; that he had already selected a site for the mansion but that Mrs. Duke was very much opposed to the selection he had made and that he then changed it and moved down to a lower line of which she approved and that they then went to work at grading and laying out the place, employing several hundred men on the work. He made contracts at this time for this grading, amounting to $135,000. The house he planned was to cost a half a million of dollars (p. 172).

The testimony of Mrs. Duke with respect to this project of building a new house in the spring of 1905 is most suggestive (pp. 158-160). It is to be particularly noted in reading the testimony of Mrs. Duke that she does not claim that Mr. Duke ever agreed with her that their domicile was to be in New York after their marriage or that he in fact changed his place of domicile after the marriage from what it was before.

For a further discussion of the evidence I beg to refer to the admirable opinion of the learned Vice Chancellor in the court below. No attempt upon my part to review the evidence in the face of this opinion can appear otherwise than feeble or be at all necessary.

November Term, 1906. R. V. LINDABURY.

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Petition.

In Chancery of New Jersey.

To His Honor, William J. Magie, Chancellor of the State of New Jersey.

The petition of James B. Duke, of the Township of Hillsboro, in the County of Somerset and State of New Jersey, respectfully shows:

1. That on or about the twenty-ninth day of November, one thousand nine hundred and four, your petitioner was married to one Lilian N. McCready, now Lilian N. Duke, his present wife, at the City of Camden, in the County of Camden and State of New Jersey, and that from the time of the said marriage your petitioner and his said wife have been and now are inhabitants of and residents in this State.

2. That the said Lilian N. Duke since her said marriage with your petitioner has willfully disregarded the solemnity of her vows and the sanctity of the marriage state, and has at various times and in various places committed adultery as follows:

(*a*) On the first, second, eleventh, twelfth and thirteenth days of August in the year one thousand nine hundred and five, at the house located at No. 11 West Sixty-eighth street, in the City of New York, County of New York, and State of New York, with one Frank T. Huntoon, of the said City of New York.

(*b*) On different days unknown to your petitioner in each of the months of February, March, April, May, June, July and August, in the year one thousand nine hundred and five, at the house located at No. 11 West Sixty-eighth street, in the said City of New York, and at

other places in the said City of New York, and at places on Long Island and elsewhere in the said State of New York, which said places other than the house located at No. 11 West Sixty-eighth street in the said City of New York are unknown to your petitioner, with the said Frank T. Huntoon.

3. Your petitioner further shows that there has been no issue of his marriage with the said Lilian N. Duke.

4. Your petitioner further shows that he has not cohabited with his said wife since the discovery by him of her said acts of adultery.

5. Your petitioner therefore prays that he may be divorced from his said wife for the causes aforesaid according to the statute in such case made and provided, and that he may have such other and further relief as may be equitable and just.

And your petitioner will ever pray, etc.

LINDABURY, DEPUE & FAULKS,
Solicitors for and of counsel with Petitioner.

COUNTY OF NEW YORK, }
State of New York, } ss. :

JAMES B. DUKE, the petitioner in the foregoing petition named, of full age, being duly sworn, upon his oath says that his complaint in said petition is not made by any collusion between him and the defendant in said petition for the purpose of dissolving their marriage, but in truth in good faith for the causes set forth in said petition.

JAMES B. DUKE.

Sworn and subscribed before me this 31st day of August, A. D. 1905.

HALSEY M. BARRETT,
Mastery in Chancery of New Jersey.

IN CHANCERY OF NEW JERSEY.

Between
JAMES B. DUKE,
Petitioner,

AND

LILLIAN N. DUKE,
Defendant.

Plea.

The plea of Lillian N. Duke, the defendant appearing for the sole purpose of objecting to the jurisdiction over the subject matter of this suit and over this defendant in this action and for no other purpose respectfully shows that this defendant by protestation not confessing or acknowledging the matters and things in and by the petition of complaint of said James B. Duke set forth in such manner and form as the same thereby and therein set forth and alleged says, that this defendant was not at the time of the said marriage set forth in said petition or ever since that time a resident of or citizen of the State of New Jersey or domiciled therein but during all the time aforesaid was a resident of and a citizen of and domiciled in the State of New York.

And this defendant further says, that the said James B. Duke was not at the time of the said marriage and has not been ever since a resident of or a citizen of or domiciled in the State of New Jersey but was a resident of and a citizen of and domiciled in the State of New York.

And this defendant further says that the matrimonial domicile and residence of the said James B.

Duke and of this defendant was at the time of the said marriage and down to the commencement of this suit in the State of New York and not in the State of New Jersey, and it was always contemplated and intended by the said James B. Duke and the said defendant that the matrimonial domicile and home of the said James B. Duke and this defendant during the time last aforesaid should be and remain in the State of New York and not in the State of New Jersey, and the State of New York, and not the State of New Jersey was their only matrimonial domicile.

And this defendant further says that this defendant was not served with process in this case within the jurisdiction of this court and has not consented to the jurisdiction of this court in this case and that said proceedings are without due process of law, nor has she submitted herself to the jurisdiction of this court by reason whereof this defendant humbly submits that this Honorable Court has not now and never had or obtained jurisdiction of the person of this defendant or the subject matter of this suit either by the laws of the State of New Jersey or the law of the land, and that the dependency of this action will deprive this defendant of her constitutional right as a citizen of the United States and of the State of New York reserved to her by the 14th amendment of the United States Constitution which declares:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of its laws."

All of which matter and things this defendant doth aver to be true and prays that she may be hence dismissed with her costs and charges in this behalf sustained and that the court should not make any further order requiring other defense to this action.

CHAUNCEY G. PARKER,
Solicitor and of counsel with the defendant.

STATE OF NEW YORK, }
County of New York, } ss. :

LILIAN N. DUKE, of full age, being duly sworn according to law saith, that the foregoing plea is not interposed for delay but in good faith for the causes therein set forth.

LILIAN N. DUKE.

Sworn and subscribed before me, a Notary Public of the State of New York in and for the County of New York, duly commissioned and sworn as witness my hand and official seal this 2nd day of November, in the year 1905, before a notary public.

EDWARD N. PALMER,
Notary Public,
N. Y. County,
Commission expires 1907.

I certify that I have perused the petition of the said James B. Duke in the above stated cause and the foregoing plea and that the foregoing plea is well founded in point of law.

SAMUEL KALISCH,
Counsel for Lilian N. Duke, defendant.
CHAUNCEY G. PARKER,
of Counsel.

IN CHANCERY OF NEW JERSEY.

Between JAMES B. DUKE, Petitioner, AND LILIAN N. DUKE, Defendant.	On Petition for Divorce. Order.

This cause having been referred to Hon. Henry C. Pitney, one of the Vice-Chancellors, to hear the same for the Chancellor, and advise what order or decree should be made therein, and now coming on to be heard on the plea of defendant to the jurisdiction of this Court and the replication of the petitioner to said plea, and R. V. Lindabury, Esq., and Alvah A. Clark, Esq., appearing for the petitioner, and Chauncey G. Parker, Esq., and Samuel Kalisch, Esq., appearing for the defendant, and the testimony of the witnesses being taken in open court, and counsel having been heard, and it appearing that at the time of the alleged adultery in this case, and at the time of filing the petition the petitioner James B. Duke was a resident in this State and was domiciled therein;

It is now, on this twenty-first day of December, 1905, on motion of Lindabury, Depue & Faulks, solicitors for petitioner, ordered, adjudged and decreed that the said plea be overruled and for nothing holden, and that the defendant answer the said petition within thirty days, or that in default thereof the said petition be taken as confessed against the defendant. The filing

of said answer shall not be taken as a waiver of the right of the defendant to appeal from this order or as a bar thereto.

Respectfully advised,

H. C. PITNEY, V. C.

IN CHANCERY OF NEW JERSEY.

Between JAMES B. DUKE, Petitioner, AND LILIAN N. DUKE, Defendant.	On Petition for Divorce.

Notice of Appeal.

The defendant Lilian N. Duke appeals from the decree of the Court of Chancery made in the above cause on the twenty-first day of December, in the year 1905, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

CHAUNCEY G. PARKER,
Solicitor of Appellant, also of Counsel.

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

CHAUNCEY G. PARKER,
Of Counsel with Defendant.

Dated December 26, 1905.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

JAMES B. DUKE,
Respondent,

AND

LILIAN N. DUKE,
Appellant.

Petition of Appeal.

TO THE NEW JERSEY COURT OF ERRORS AND APPEALS:

The petition of Lilian N. Duke, the appellant in the above cause, respectfully shows:

That your petitioner finds herself aggrieved by a decree made in the Court of Chancery of New Jersey bearing date the twenty-first day of December, in the year one thousand nine hundred and five, in a cause wherein the said James B. Duke was complainant and the said Lilian N. Duke is defendant, in that the said decree adjudges that at the time of the adultery alleged in the petition of complaint in said cause and at the time of the filing of the petition therein the said James B. Duke was a resident in this State and was domiciled therein and the plea filed by this respondent in said cause was overruled and for nothing holden, and the said defendant was ordered to answer said petition within thirty days or that in default thereof the said petition be taken as confessed against said defendant and that the filing of said answer should not be taken as a waiver of the right of the defendant to appeal from said order or as a bar thereto and your petitioner humbly appeals from the whole and every part of the said order and decree upon the ground that the same is erroneous, and saith that the said Court

should have adjudged that the said James B. Duke at the time of the alleged adultery and also at the time of the filing of the said petition was not a resident of this State and was not domiciled therein, and the said plea should have been sustained and this defendant should not have been required to answer the said petition in any manner or form.

Your petitioner, therefore, prays that the said decree of the said Chancellor may be reversed, set aside and for nothing holden, and that your petitioner should have such relief in the premises as to this honorable Court shall seem meet.

CHAUNCEY G. PARKER,
Solicitor and of Counsel with Appellant.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

JAMES B. DUKE,

Respondent,

AND

LILLIAN N. DUKE,

Appellant.

} Answer to Petition of Appeal.

The answer of the above-named respondent to the petition of appeal of the above-named appellant.

This respondent not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that an order was, on the twenty-first day of December, nineteen hundred and five, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition as therein stated ; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced ; and this respondent is advised and believes that the said order is agreeable to equity, and he prays that the same may be affirmed.

LINDABURY, DEPUE & FAULKS,
Solicitors for and of Counsel
With Respondent.

DECEMBER 18, 1905.

Between
JAMES B. DUKE,
Petitioner,
AND
LILIAN N. DUKE,
Defendant.

Transcript of shorthand notes of testimony taken in the above-entitled cause, before Hon. HENRY C. PITNEY, Vice-Chancellor, at Chancery Chambers, Newark, N. J., on December 18, 1905, in the presence of R. V. LINDABURY and ALVA A. CLARK, solicitors for the petitioner, and CHAUNCY G. PARKER and SAMUEL KALISCH, solicitors for the defendant.

JAMES B. DUKE, sworn.

DIRECT EXAMINATION BY MR. LINDABURY:

Q. You are the petitioner in this action for divorce against Lilian N. Duke? A. Yes, sir.

Q. What is your age? A. I will be forty-nine the 23d of December.

Q. Where were you born? A. In North Carolina, Orange County at that time; it is now Dare County.

Q. When did you come north to live? A. In 1884.

Q. Did you come north at that time to engage in business? A. Yes, sir.

Q. What business? A. The manufacture of tobacco and cigarettes.

Q. At what place? A. No. 6 Rivington street, New York.

Q. Where did you live when you first came north—I don't mean at what house, but in what State? A. In New York.

(By the Court): Q. Were you a married man? A. No, sir.

Q. How long did you reside there? A. Well, at different places in New York until 1893.

Q. Where did you go to live then? A. Somerville, New Jersey, near Somerville, New Jersey.

Q. Did you acquire property there? A. Yes, sir.

Q. What property, how was it known? A. I bought the Veghte farm.

Q. The John Veghte farm? A. Yes, sir.

Q. How large, approximately? A. Upwards of 300 acres.

Q. Do you remember the time in the year you bought it? A. 1893, I think July, 1893.

Q. How did you make any changes or expenditures in the place to fit it as a place of residence for you? A. Commencing in 1894 I remodelled the old house; afterwards in 1898 and 1899 I practically rebuilt the whole place, enlarged it very much.

Q. And did you put up other buildings? A. Yes, sir; barns and stables, and improved the place generally, and am still at work on it.

Q. I show you a deed from Sophia Veghte to you dated July 25, 1893, is that the deed by which you acquired that property? A. Yes, sir.

Q. You are described in that deed as a citizen—No, this is not the first deed, is it? Oh, yes, that is right—as a citizen of the City and State of New York. Was that your residence at that time? A. I can't just recall whether I had removed my residence from North Carolina at that time or not; I stayed most of my time in New York, but I don't remember whether I had actually transferred my residence then.

Q. At any rate your residence was not in New Jersey at that time? A. No, sir.

Q. Have you bought other property in that township and county since that acquisition? A. Yes, sir;

several pieces of land now aggregating about 1,700 acres, I think.

Q. Lying adjacent to the original purchase? A. Yes, all adjoining.

Q. And making up now one tract? A. Yes, sir.

Q. About how many pieces in number, just approximately? I would say anywhere from ten to fifteen different tracts.

Q. And during what years did you make those various purchases? A. Well, I think most every year I bought an additional piece.

Q. Now, I show you a deed from Austin Woodward and wife to you dated August 19, 1893, less than a month after your original purchase. In that you are also described, I observe, as of the City of New York? A. I had not moved to Somerville at that time.

(By the Court): Q. Did Woodward own land down there? A. Yes, sir; forty or fifty acres, I think, adjoining my place.

Q. Now, I show you a deed from Luther C. Voorhees and wife to you, dated January 2, 1894. Do you remember what that covered? A. I don't remember the name, but I think the next piece of property I bought was about sixteen acres, eight acres of woods and eight acres adjoining that; I think it is, Mr. Voorhees.

Q. Adjoined the original? A. Yes, sir; laid right in between, back of the Woodward place.

Q. In this deed you were described as of the County of Somerset and State of New Jersey, and "Somerset" and "New Jersey" are erased and "New York" written instead. You had not then made New Jersey your residence —January, 1894? A. I had not at that time declared that to be my residence because I do not recall now whether I had really gotten possession; I moved my furniture out there before the 1st of January, but I think Mrs. Veghte had the house I bought.

(By the Court). Q. You did not get immediate possession when you purchased the place? A. No, sir.

Q. Do you remember how the alteration came to be made from Somerset County, New Jersey, as it originally was, to New York, whether it was by your direction or not ? A. I don't know anything about it.

Q. You do not recall ? A. No.

Q. The next deed is from Arietta Smith and husband to you dated April 24, 1895. Do you remember what this is for ? A. That is for another piece of land that laid right between mine.

Q. And adjoined the other ? A. Yes, sir.

Q. And makes part of what is now the 1,700 acre tract ? A. Yes, sir.

Q. In this you are described as of the township of Hillsboro, in the County of Somerset and State of New Jersey ? A. Yes, sir.

Q. Do you know how you came to be so described ? A. Well, I made that my home then, and finished remodeling, I think, the house the first time.

Q. When did you take possession of the house, I mean to live in it ? A. Well, I think some time in the summer of 1894; I was there, I was sort of living in the house while they were reconstructing it, but it was not much living, doing the best I could.

Q. (By the Court). Staying ? A. Yes, sir.

Q. You were a bachelor, I think ? A. Yes, sir.

Q. You were never married until your marriage to the present defendant, were you ? A. No, sir.

Q. The next deed I show you is from Jacob B. Cornell and David F. Cornell to you, dated November 19, 1896. Do you remember what that covered ? A. That was a piece of low ground along the Raritan Road.

Q. The deed I showed you last before seems to be in the handwriting of James J. Bergen, then a lawyer practicing in Somerville, and was acknowledged before him. Do you remember that ? A. Well, I don't really recall.

Q. This deed from Jacob B. Cornell and David seems to be in the handwriting of Alva A. Clark in so far as it is written with pen and ink, and was acknowl-

edged before him. In that also you are described as of the township of Hillsboro in the County of Somerset ? A. Yes, sir.

Q. Do you remember how it came ? A. That was my residence.

Q. The next deed is from the Raritan Water Power Company to you dated 16th of November, 1896. Do you remember what that is for ? A. That was another piece of land lying along the river adjoining the piece that I bought from Cornell, completing the plot out to the road.

Q. Sixteen or seventeen hundredths of an acre ? A. Yes, sir.

Q. Apparently the channel, the old channel of some brook or ditch that the Water Power Company had, was it not ? A. Yes, sir.

Q. In this also you are described as of the Township of Hillsboro and County of Somerset. This deed is in the handwriting, so far as it is written, of James J. Bergen ? A. Yes, sir.

Q. The next deed is from George Hough and wife to you, dated August 15, 1896. Do you remember what this was for ? A. I don't remember it by the name, Hough. Is that the small piece of ground on the hill, only a few acres ?

Q. I will give you the quantity. One acre and sixty-two one-hundredths ? A. I think that is the house that was on the hill.

Q. For which you seem to have paid $2,200 ? A. Yes, sir.

Q. Probably a house on it ? A. Yes, sir.

Q. In that also you are described as of the Township of Hillsboro in the County of Somerset and State of New Jersey ? A. Yes, sir.

Q. This appears to have been written by and acknowledged before James J. Bergen ? A. Yes, sir.

Q. Do you remember whether Mr. Bergen was your counsel at that time, and Mr. Clark ? A. Mr. Bergen did business for me at different times, Mr. Clark and others.

Q. The next deeds is from William Koehler and wife to you, and is dated November 12, 1896, consideration $16,267. Do you remember what that is ? A. I think there was very nearly a couple of hundred acres in that tract ; that laid also along the original place.

Q. This deed is in the handwriting of Mr. Clark, except the parts that are in typewriting and in it you are described also as of the Township of Hillsboro in the County of Somerset ? A. Yes, sir.

Q. The next one is from John Meyer and wife to you dated March 12, 1897 ? A. I think that is another piece of low ground, meadow.

Q. Adjoining the other tract ? A. Adjoining some of the land that I bought.

Q. This also is in the handwriting of Mr. Clark, except the parts that are in type, and was acknowledged before him. You are here described as of the Township of Hillsboro, in the County of Somerset and States of New Jersey. The next deed is from Meyer and wife to you dated October 3, 1897 ? A. I think that is also another piece of low ground.

Q. Adjoining the other tract ? A. Yes, sir.

Q. In it you are described as of the Township of Hillsboro in the County of Somerset. This also is in the handwriting of Mr. Clark and acknowledged before him ? A. That is correct.

Q. The next is from William Allen and wife to you dated May 27, 1898. Do you remember what that was for ? A. That is another piece adjoining the back part of the farm along the Woodward Road.

Q. In it you are also described as of the Township of Hillsboro in the County of Somerset, State of New Jersey ? A. Yes, sir.

Q. The next is from Henry M. Jameson and others to you, dated March 18, 1899. A. That is another tract adjoining my place across the railroad, south branch of the Central Railroad.

Q. Do you remember who prepared this deed ? A. I don't know, but I expect Mr. Clark did.

Q. I think I am safe to say it is not in Mr. Clark's

handwriting or in the handwriting of anyone I know It is in the handwriting of Hugh K. Gaston evidently? A. Jameson had it prepared, probably, and maybe Mr. Clark passed upon it; I don't really recall.

Q. Hugh K. Gaston witnessed it and much of it I recognize as in the handwriting of the one who witnessed it. Now, in this you are described as of the Township of Hillsboro in the County of Somerset and State of New Jersey? A. Yes, sir.

Q. The next is a deed from Spencer Van Cleef and wife to you dated September 1st, 1899, consideration $18,846. Do you remember what that was for? A. That was another piece adjoining the Koehler place.

Q. Another farm, I suppose? A. Yes, sir; adjoining the Koehler farm that I bought.

Q. This appears to be in the handwriting of Mr. Clark and was acknowledged before him. In it you are also described as of the Township of Hillsboro, Somerset County, New Jersey? A. Correct.

Q. Next is a deed from Abram VanCleef and wife to you, dated 15th of December, 1899, consideration, $10,778. Do you remember that? A. Yes, sir; that is on the back part of the farm, towards the Woodward Road. Is that a small piece or is that the whole piece?

Q. One hundred and nine and eighteen-one-hundreths acres, with the exception of a tract of one and four-tenths acres conveyed to the railroad, and also accepting winter grain? A. Well, that was the tract along the Woodward Road.

Q. In this you are also described as of the Township of Hillsboro, Somerset County, New Jersey? A. That is correct.

Q. The next deed is from Joseph A. Demaray to you, dated December 4, 1902; the consideration of this was $6,056? A. That adjoined me on the back, along the Woodward Road, another place I bought.

Q. This seems to have been prepared by Aaron C. Case. In this you are also described as of the Town-

ship of Hillsboro, in the County of Somerset and State of New Jersey? A. Yes, sir.

Q. The next deed is from Charles D. Dilts to you, dated 1st of October, 1902. The consideration for this is $5,000. Do you remember what it is for? A. It is another piece on the Brassfield Road, adjoining my other lands.

Q. In this, also, you are described as in the Township of Hillsboro and County of Somerset? A. Yes, sir.

Q. The next deed I show you is from Abraham Q. Disbrow and wife, dated December 17, 1902. The consideration for this is $8,100. Do you remember what that is for? A. It is another piece across the railroad, adjoining the Jameson place.

Q. In this you are also described as in the Township of Hillsboro and County of Somerset? A. That is right.

Q. The next deed is from John T. Hoffman and wife to you, dated 28th of April, 1902. The consideration for this is $1 and other good and valuable consideration. A. That is another piece I bought.

Q. One hundred and eighty-one acres? A. On the South Somerville Road, so as to get an entrance up there.

Q. It is a farm of one hundred and eighty-one acres, apparently? A. Yes, sir.

Q. In this you are also described as in the Township of Hillsboro, County of Somerset and State of New Jersey? A. Yes, sir.

Q. Did you know you were so described in all these deeds? A. Well, I don't know as I looked personally at each of these deeds, because it was understood; of course, Mr. Clark had learned to know that after writing so many of them.

Q. Did you observe it as to some of them, if not all? A. Yes, sir; the original first deeds that were made, of course, I was present. Some of these deeds were made afterwards, when I was not present.

Q. The next deed is from Mary Ann B. Hoffman and

husband to you, dated 28th of April, 1902; consideration, $3,000. What was that for? A. I can't explain that.

Q. Forty acres, it says—Voorhees farm Mr. Clark says. A. I don't remember.

MR. CLARK: Two tracts there.

A. Is that the one that I got from Hoffman? That was part of the Hoffmann purchase I bought from him, and, of course, he had the deeds made.

Q. Had the deeds made by his wife? A. Yes, sir.

Q. In that also you are described as in the Township of Hillsboro and County of Somerset? A. Yes, sir.

Q. The next deed is from David J. Smith and wife to you. This seeme to be for lands in the Township of Reddington, Hunterdon County? A. That was same land that was bought up there for stone privilege, to get stone.

Q. To make your roads? A. Yes, to make roads and build bridges with. No, not to make roads; it was building stone.

Q. In that you are also described as of the Township of Hillsboro, Somerset County, New Jersey. The date of this is October 21, 1902?

MR. LINDABURY: I offer all these in evidence.

THE COURT: Any objection to those deeds, gentlemen?

MR. PARKER: I don't see any.

THE COURT: They are admitted by order of the Court.

Q. Have you been examined as a witness in court since you took up your residence in Somerville? A. Yes, sir, quite a number of times.

Q. With respect to your place of residence? A. They always asked me when I went on the witness stand.

Q. Do you remember occasions when you have been

called upon to testify in court with regard to your place of business? A. Yes, sir.

Q. Where? A. Before the Lexow Committe.

Q. What was the Lexow committee? The Court knows, but the record don't. A. Inquiring into industrial companies.

Q. What year? A. I think it was 1897.

Q. Was your testimony printed, published in that case, do you remember? A. I don't know; I haven't seen it.

Q. Were you then required to testify as to your place of residence? A. Yes, sir.

Q. And what did you testify?

MR. KALISCH: I object.

THE COURT: On what ground.

MR. KALISCH: That it is not competent testimony, proceeding from the mouth of this witness himself; from those to whom the declaration had been made it might be material, but coming from the witness himself it is not competent.

THE COURT: I think it is competent, on two grounds. In the first place if there was a record of it the record is not in the State, but after all you can always prove under all circumstances by anybody who heard it what a witness swore to, as I understand the rule.

MR. LINDABURY: That is my understanding, by this witness or any other.

THE COURT: By this witness or any other, at any time, without regard to the record.

Q. What was your testimony on that subject?

THE COURT: According to your recollection now, of course.

A. I gave my residence as Somerville, Somerset County, either one of those or both; sometimes I would only mention Somerville.

(By the Court) : Q. What was the language you used? A. Somerville, or Somerset County; sometimes I would say Somerset County.

Q. What State? A. New Jersey.

Q. Now, do you remember any other occasion being called upon to testify? A. I don't remember being on the witness stand; I remember other documents that I signed, where I had to state my residence.

MR. LINDABURY: Now, we have a number of those and, believing that the other side would not require us to bring exemplified copies, we have simply printed copies, and thought we would wait until this morning at any rate to find out whether objection was taken to the fact.

MR. KALISH: We won't object.

A. In fact everything I have signed or done I have given my place of residence—I declared it in Somerville or Somerset County, or both, in New Jersey.

MR. LINDABURY: Now I will offer in evidence a printed copy of the charter, that is, of the articles of incorporation and by-laws of the American Tobacco Company published in 1901, containing on the first page a list of the directors of that company with their places of residence.

Q. Mr. Duke, are you familiar with this publication? A. Yes, sir; I know they issue by-laws occasionally?

Q. Charter and by-laws? A. Yes, sir.

Q. Were very many of these printed? A. I think there is one of these printed for each director; there may be some extra copies.

Q. Did you or not see this publication at or about the time when this was issued? A. Yes, there was one put on my desk.

Q. And observed the list of directors with the places of residence? A. Yes, sir.

Q. Do you know whether your residence was given there as Somerville, New Jersey, with your knowledge

and consent ? A. Yes, sir; always, because they understood that that was my residence. I was the Jersey director of the company.

(By the Court): Q. You were the New Jersey director of the company ? A. Yes, sir.

(By the Court): Q. Were you the president of the company ? A. Yes, sir.

(By the Court): Q. You knew something about the publication, then, of course ? A. Oh, yes.

Q. And I observe—I did not know it before—that there was then no other New Jersey director ?

THE COURT: I understood him.

Q. You were at that time the president of the company ? A. Yes, sir.

Q. When was the American Tobacco Company organized ? A. The original American Tobacco Company was organized in 1890.

(By the Court): Q. This is another one—Oh, amended ? A. Amended by-laws.

Q. 1901; that is the earliest date of these that we happen to have here now. When did you become its president ? A. On its organization, in 1890.

Q. And have you been the president ever since ? A. Yes, sir.

Q. Now, I show you another publication of the charter and by-laws of the American Tobacco Company, which bears date April, 1902. Are you familiar with that ? A. Yes, sir.

Q. That also contains a list of the directors on the flyleaf similar to the one of 1901 ? A. Yes, sir.

(By the Court): Q. How did your residence there come to be put there ? A. Because by direction of either myself or somebody when they were making it up.

Q. The residence of all the directors is given, is it not ? A. Yes, sir.

Q. And according to their true places of residence ? A. Yes, sir.

Q. And you knew of it at the time, did you ? A. Yes, sir.

MR. LINDABURY : I offer that in evidence. Have you any objection, gentlemen ?

MR. PARKER : This is on the same line, I suppose. The Court has already ruled upon it.

THE COURT : I ruled upon it, because you did not object, and because the witness recognized it as his act in effect, but independent of that it is no proof. We know all about how these things are got up ; you know a great many of them printed, he says one for each of the directors. I suppose there are a great many more than that printed, but it was bound in this handsome fashion and fixed up in this way for the directors, I suppose.

A. Yes, sir ; there are extra copies.

THE COURT : Very proper to admit them instead of the original.

MR. PARKER : We do not object on the question of form. Mr. Lindabury wanted to know if there was any objection. We supposed he meant as to competency. We have objected as to this line.

THE COURT : The effect of it is entirely different. So far as it appears to be making evidence for himself, it is subject to that, but the ground upon which I think it is evidence is this, if you want to know : A man's residence or domicile is a matter not only of actual fact, but of intention, and I think that the fact that a man had described himself and been described year in and year out as a resident of a certain particular place with his knowledge and consent, and by his direction, is pretty strong evidence that that was his residence at that time.

MR. PARKER: Subject to such qualifications as the facts may show.

THE COURT: Certainly, subject to such qualifications. It is not conclusive by any means.

Q. I show you a copy of the articles of incorporation and by-laws of the American Tobacco Company published or bearing date as being published in March, 1904. Do you remember that publication? A. Yes, sir.

Q. Were many of those printed? A. Each of the directors have some, and then different officers have copies; I mean each of the directors had a copy.

Q. This does not seem to be one of those vellum bindings. Do you remember whether more were published of the paper edition? A. I suppose we got down to using cheaper ones.

Q. That contains also a list of the directors? A. Yes, sir.

Q. Giving their places of residence? A. Yes, sir.

Q. As to earlier publications? A. Yes, sir.

Q. In this I see you have a New Jersey director besides yourself, Thomas J. Maloney? A. Yes, sir.

Q. Your residence is still given there as Somerville, New Jersey? A. Yes, sir.

THE COURT. They are admitted subject to any comment the counsel may make upon their weight and general competency, general competency of that kind of evidence.

Q. Mr. Duke, do you remember the organization of the Consolidated Tobacco Company? A. Yes, sir.

Q. About 1901, was it not? A. Yes, sir; summer of 1901.

Q. That company made a mortgage upon its property, or certain of its property, to the Morton Trust Company, as trustee, dated June 15, 1901, did it not? A. Yes, sir.

Q. I believe that was proven by your oath, was it not? A. Yes, sir.

Q. Before a notary public of the State of New Jersey? A. I don't know whether he was of the State of New York or Jersey.

Q. I show you a copy of that mortgage, which, by consent of counsel—

THE COURT: Any objection to that?

MR. PARKER: No.

Q. (Continuing:) which, by consent of counsel, I am allowed to use instead of the original. It bears date June 15, 1901, and on the 18th page is your affidavit of verification, in which you swear—well I better read that, which reads as follows: "State of New Jersey, County of New York, ss. On the 18th day of June, in the year 1901, before me personally came James B. Duke, to me known, who, being by me duly sworn, did depose and say that he resides in the City of" |"City of" scratched out, and in place of it written "Somerville, New Jersey;"] "That he was president of the Consolidated Tobacco Company, the corporation described in, and who executed the above instrument as party of the first part therein; that he knew the corporate seal of the said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation, and that he signed his name thereto by like order." Notarial seal. Signed "George M. Gales, Notary Public, No. 4, New York County." A. I executed that document.

MR. PARKER: The erasures, you know, I don't think we ought to be bound by them. I don't think we ought to be bound by any erasures that may appear on the printed copy Mr. Lindabury has read.

THE COURT: Maybe that has been compared with the original on file.

MR. PARKER: I don't know about that.

MR. LINDABURY: I will consent to strike that

out, because, without evidence, it is inconsequential.

MR. PARKER: We ought not to be bound by the declaration that there were any erasures in the original instrument.

MR. LINDABURY: I am agreeing with you about that. I want that to go out.

Q. The present American Tobacco Company was formed by the consolidation of certain other companies only a year ago, I think, was it not? A. About a year ago.

Q. What companies went into that? A. Continental Tobacco Company, American Tobacco Company and Consolidated Tobacco Company.

Q. That company made a mortgage the Morton Trust Company as trustee, dated October 20, 1904, did it not? A. Yes, sir.

Q. Was that mortgage proven by you as president? A. Yes, sir.

Q. Are you president of the present American Tobacco Company? A. Yes, sir.

Q. Were you president of the Consolidated? A. Yes, sir.

Q. And of the Continental? A. Yes, sir.

Q. On the 44th page of a printed copy of this mortgage which, by consent of counsel, I am allowed to use in place of the original, is an affidavit of verification by you dated October 20, 1904. I will read it: "State of New York, County of New York, ss. On the 20th day of October, in the year nineteen hundred and four, before me personally came James B. Duke, to me known, who, being by me duly sworn, did depose and say that he resided in the City of Somerville, New Jersey; that he was President of the American Tobacco Company, a corporation described in and which executed the above instrument as the party of the first part therein; that he knew the corporate seal of the said corporation; that the seal affixed to said instrument was

such corporate seal; that it was so affixed by order of the Board of Directors of said corporation,and that he signed his name thereto by like order. Seal. M. E. French, Notary Public, No. 24, New York County."

Mr. Duke, you made that affidavit?

A. I did.

Q. Now, do you remember a suit being brought against you personally by one Lorenzo Tarantito? A. I do.

Q. In the Supreme Court of the State of New York? A. Yes, sir.

Q. What was the year? A. I have really forgotten —1902 or 1903—suit for damages for being hurt on my place.

Q. On your place at Somerville? A. At Somerville; yes, sir.

Q. And he employed a New York lawyer? A. Yes, sir.

Q. Who brought suit in the Supreme Court of the State of New York? A. Yes, sir.

Q. Did you move that cause to the United States Court? A. I had the case moved to the United States Court on account of being a non-resident of New York.

Q. And it was so removed? A. Yes, sir.

Q. And tried there? A. Yes, sir.

Q. I hope you beat them? A. Yes, sir; I beat them—thrown out of court.

THE COURT: There is no objection to that mode of proving. That is easily proven by the record.

MR. KALISCH: If they say this is a copy we do not ask for anything else, so long as they say they will bring the proper papers.

Q. Did you make an affidavit in that case as to your residence? A. I did.

THE COURT: I will say here in the use of these copies, even when it is not mentioned, I think a right is reserved always to the other party to have the accuracy of the copies verified if they choose, afterwards have the privilege of verifying them, but nothing said here because there is no doubt about their being copies.

MR. LINDABURY: I will, by consent, read from a copy of the affidavit used in that case, or a copy of the sworn petition used in that case: "That your petitioner, James B. Duke, was at the time of the commencement of this suit, was and still is a citizen and resident of the State of New Jersey; that the plaintiff in this suit, Lorezo Tarantito was at the time of the commencement of this suit, and still is a resident of the State of New York, and was at the time of the commencement of this suit and still is a citizen of the State of New York, or an alien who is a subject of the King of Italy, and was not then and is not now a citizen or resident of the State of New Jersey." This is verified by this witness as of his own knowledge. The date of the affidavit is the 7th of May, 1903.

Q. Mr. Duke, have you voted at any elections for members of the Assembly or Congress since 1893? A. Yes, sir; in 1896 and 1900 and 1904 I voted out there; I think one other time, but I ain't positive about it.

(By the Court): Q. Voted in Somerville, in Somerset County? A. In Hillsboro Township.

Q. In 1896 was the first McKinley election, was it not? A. Yes, sir.

Q. You voted there then? A. Yes, sir.

Q. And you voted there in 1900? A. Yes, sir.

Q. Which was the second McKinley election?

MR. PARKER: He didn't say that. That was leading.

(By the Court) : Q. Where did you vote in 1900? A. In Millstone, Somerset County, Hillsboro Township.

Q. That is the polling place, I take it, of your portion of Hillsboro Township? A. Yes, sir.

Q. Perhaps the whole. Is there more than one voting place in Hillsboro Township? A. I don't know whether there is or not.

Q. And where did you vote in 1904? A. At the same place.

Q. At the same place? A. The same place in 1905.

THE COURT : The same place in 1905.

MR. PARKER : That is after the action was commenced. That is certainly incompetent.

THE COURT : All right. I am not so sure about that.

MR. LINDABURY : Strike it out.

THE COURT : The plea is that he was not at the time of the marriage or at any time afterwards, I think, a resident of the State of New Jersey, isn't it? I won't strike it out even though you consent.

MR. LINDABURY : Well, I think, I won't consent now. I will withdraw that.

THE COURT : I go not according, gentlemen, to what my original notion was, but what I have very marked reasons for knowing what the opinion of the Court of Errors and Appeals is in the very latest case on that subject. You might as well know now—I have been trying to think of the name of it. A man and his wife lived in Trenton ; they moved to New York ; he sent his furniture there and his wife lived there, and he followed her to New York and engaged in business there, and had no home whatever in the city of Trenton where he had lived with his wife. After a year, about a year, several months, he came back to Trenton and stayed four or five weeks and commenced a suit for

divorce against his wife and she was served in New York. She put in no defense and did not appear in an *ex parte* divorce suit and an *ex parte* decree of divorce was granted against her. She then filed a bill of review and her counsel attacked that decree on the ground that the State of New Jersey had no jurisdiction over her by service out of the State, because her husband was not a resident. I sustained that bill of review and set the decree aside. The Court of Appeals reversed on the ground that his residence continued until it was thoroughly settled somewhere else. I haven't seen the opinion.

Q. Mr. Duke, did I understand you to say that you had voted on some other than these three occasions since 1894? Did I understand you to say that you thought you had voted on some other than those occasions? A. I think so, but I cannot recall now.

(By the Court): Q. Have you ever voted in New York since that time? A. No, sir.

Q. Have you ever voted anywhere except in Hillsboro Township, Somerset County, New Jersey, since you went there to live in the spring of 1904? A. No, sir; I have not.

Q. Not anywhere? A. Nowhere at all.

Q. Have you taken any interest in politics? A. Well, I have always had my opinions.

Q. Have you ever represented your party in any national council? A. I was elected one of the delegates to the last Republican Convention at Chicago.

Q. Convention of 1904? A. Yes, sir.

(By the Court): Q. From what State? A. From New Jersey.

Q. From what county, or were you a district delegate, or delegate at large? A. District delegate.

Q. From your district then, I suppose? A. Yes.

Q. It is suggested you mean the National Republican Convention held at Chicago ?

THE COURT : That is what he said.

A. Yes, sir ; that is it.

Q. Now we have got it right—National Republican Convention. How much of the time have you spent on your farm at Somerville since you moved there in the spring of 1894 ? A. I should think that I have averaged three or four nights a week ; that is, when I was in this country, not traveling.

Q. What part of the year is it open ? A. All the year.

(By the Court) : Q. Do you go there more in the summer than winter ? A. I expect I am there a little more in summer because the days are longer and I have a little more time to go and come. It takes about four hours to go and come from my house to the office. It usually takes about two hours to get there.

Q. Where is your office ? A. Corner of Eighteenth street and Fifth avenue in New York. I could go quicker, but I always go so as not to miss my train, and I always start too far ahead of time, but I don't want to get left.

(By the Court) : Q. You had a home of some kind in New York all the while, I suppose—place to stay ?

A. I always have a place I stop at.

Q. Do you own any property in New York ? A. Own a stable, that is all.

Q. When did you acquire that ? A. I think in 1891 or 1892 ; probably somewhere along there.

(By the Court) : Q. During these years, we will call it ten years, did you maintain a housekeeping establishment in New York ? A. No, sir.

(By the Court) : Q. Flat, or board, or what ? How did you live ? A. Well I sometimes lived at the Hoffman house ; sometimes I was at the Murray Hill hotel.

(By the Court) : Q. Living at hotels then, generally ? A. Sometimes I used to stop with Mrs. McCready.

Q. Who afterwards became Mrs. Duke—she had a house in New York? A. Yes, sir.

Q. You never kept house there at all? A. No, sir.

Q. And your house was always open at Somerville? A. Yes, sir.

Q. And in charge of representatives of yours? A. Yes, sir.

(By the Court) : Q. You had a housekeeping establishment proper in Somerville? A. Yes, sir; open all the time.

Q. Well, what was your practice, say during the winter months, of going out there? What time in the week did you go out? Well, sometimes I went out Friday night and stayed until Monday morning; sometimes during the week I would go out and spend a day and two nights, and it varied from time to time. I had no set special rules.

Q. What was your habit, if you had one, with regard to spending your Sundays? A. I spent most of my Sundays there and holidays.

Q. Well, how large a house was this? A. It is a great big house.

(By the Court) : Q. The bill showed that, I suppose? A. Yes, sir. The building cost about $60,000.

Q. How many rooms about? A. I think there are eleven bedrooms.

Q. All furnished? A. Yes, sir.

Q. House furnished throughout? A. Yes, sir.

Q. Well, how many servants did you keep in the house? A. Three or four.

Q. Housekeepers, everybody? What did you say? A. Three or four, I think.

Q. The year around? A. Yes, sir.

Q. And did you have a stable there? A. A very large stable.

Q. How many men in that? A. Three, I believe, maybe sometimes four.

Q. The year around? A. Yes, sir.

(By the Court) : Q. That was for your horses? A. Yes, sir; that is outside of the farm horses.

Q. Horses for your private use? A. Yes, sir.

Q. And then you had a farming outfit besides? A. Yes, I think there are fifteen.

(By the Court): Q. That is where you spend your money, I suppose, farming outfit? A. Yes, sir.

Q. How many men did you have there? A. During the summer, the last three or four years, we have had two hundred and fifty to three hundred men to work there?

Q. How many through the winter? A. I have to guess at it; thirty or or forty or fifty, probably. I am having the place laid out into a sort of an estate; that is the reason I have got so many men employed there.

Q. You have kept some fine cattle too, haven't you?

A. I dispensed with those about five or six years ago.

A. A little too expensive? A. They got tuberculosis; I got sick of it.

Q. Had to let them all go? A. Yes, sir.

Q. And now Mr. Clarke suggests that I ask you some further questions about the house—character of help you have in there. Have you a housekeeper? A. Yes, sir.

Q. How long has she been there? A. Ten or eleven years.

Q. What is the help under her? A. They have got the cook, chambermaid, waitress, and, I believe, now they have got another girl.

Q. And those have been there all the year around, have they? A. Yes, sir.

Q. Subject to changes? A. And then there is a man about the place who looks after the furnace, washes windows, does rough work. He don't spend all of his time there; what time he isn't engaged at the house he is at the stable.

Q. Where do you entertain your friends? A. I entertain them at the farm at Somerville, near Somerville.

Q. Where did you entertain your friends during this period of ten years? A. In my home out there.

Q. Your father is now dead? A. Died last year yes.

Q. He lived and his home was in North Carolina, I suppose? A. Yes, sir.

Q. Did he come on, did you entertain him? A. Yes, sir.

Q. Where; out there? A. My brothers and relatives and friends, business associates.

Q. Was that your one place of entertainment? A. Yes, sir.

Q. How much of the time did your father spend in visiting you? A. When he came up I think he would stay two or three weeks.

Q. How often? A. I don't recall that. He was there more than four or five times. He was a very old man, and didn't like to travel.

Q. And your other relatives and friends, did they visit you frequently or infrequently? A. Very frequently.

Q. Was it an ordinary thing for you to take friends, guests, out with you on these Sunday, or over Sunday visits to the farm in the winter? A. Very nearly always had somebody over Sunday with me, sometimes during the week.

Q. How many horses do you keep there for your use in the entertainment of your guests? A. I think I had twelve or fifteen stabled there.

(By the Court): Q. You mean for carriage horses, driving? A. Yes, sir.

Q. That is your exclusive use, none of the help had them? A. Yes, they used them at the house.

Q. For what purpose? A. To go down to marketing and shopping.

Q. But aside from that so far as pleasure was concerned they were all for your own use, were they? A. Yes, with the exception some time in the summer they would get behind in the work and they would use some of the teams in the stable there for lawn mowing, to the lawnmowers.

Q. When did you first form the intention or purpose

of making Somerset County, New Jersey, your place of domicile or residence? A. In the fall of 1893.

Q. What was your intention then as to whether it was to be temporary or fixed and permanent? A. I expected to make it permanent.

Q. Has that purpose ever changed? A. It never has. One time my brother wanted to buy the place from me and I told him I wouldn't sell it to him, I wanted it myself.

Q. Have you ever since your purchase had any intention of changing your place of residence from there to any other place? A. I have not.

Q. Have you now any purpose or intention of changing your place of residence from there to any other place? A. I have not.

Q. Now, with regard to these seventeen hundred acres, what use do you make of them? Have you anything in park? A. I am laying out the best part of it in park.

Q. And laying it out in what way? A. Building roads, and planting shrubbery, trees.

By the Court:

Q. Spending money generally. A. Yes, sir. making lakes, digging hills, doing a good many things.

Q. Making lakes where there was low ground and hills where there there was level gnound. Why have you done this, for what purpose? A. I am going to live there, and want to make a nice place of it.

Q. As a home? A. Yes, sir.

Cross-examination by Mr. Kalisch:

Q. When did I understand you left North Carolina to come north and settle in New York? A. 1884, I think it was.

Q. And what place in North Carolina did you live? A. Durham, North Carolina.

Q. What property, if any, had you in North Carolina? A. I don't recall the ownership of any real

estate there, except my interest in the firm of W. Duke Sons & Company. I think my brother and myself maybe had a piece of land, maybe I did.

Q. You had a piece of la d there and you had a place where you used to go shooting, didn't you? A. No, I don't go shooting.

Q. Didn't go shooting? A. No, sir.

Q. When you came north did you still continue North Carolina as your home? A. As I said originally I can't recall whether I transferred my residence from North Carolina until the time I went to the farm in 1893.

(By the Court:) Q. You were engaged in business, though, in New York? A. I was engaged in business, yes.

Q. You started in business in Rivington street, New York City, didn't you? A. Yes, sir.

Q. And continued at that place for how long? A. I think it was until the spring of 1897. I can't be bound by these dates because I can't remember.

Q. Just as near as you can remember. A. That is what my recollection is now.

Q. Now, between 1893 and 1897 did you go back to North Carolina? A. Oh, very frequently.

Q. How often? A. Well, I can't recall just now; I went very often though. We had a large business in Durham, and also one here, and I was between the both places.

Q. And where did you stay when you went there? A. Stayed with my father.

Q. And he lived in New Durham, did he? A. He lived in Durham.

Q. In Durham? A. Yes, sir.

Q. And did he have a large farm there, large residence? A. No; he had a residence right adjoining our factory, large factory we had there.

Q. That property—you owned that property, didn't you? A. Not at that time.

Q. Do you now? A. He willed it to me.

Q. What other property do you own in North Caro-

lina besides the factory property? A. I don't own any interest in the factory property except as stockholder of the company.

Q. What as to the residencial property? A. I think there is one or two pieces there that I got through my father, either by will or gift.

Q. Don't you remember whether it was by will or gift? A. I can't recall whether the conservatory of music that he built there, whether he gave that to me before he died, or whether I got it through the will. The home place I got through the will.

Q. The homestead you got through the will? A. Yes, sir.

Q. And that homestead, where is it? A. Durham, North Carolina.

Q. How long has that homestead been in the family? A. I think he built the present house in the early nineties, 1891 or 1892; I don't recall just when.

Q. How was the establishment kept up? A. Kept up as a home for my father.

Q. Kept up now? A. My aunt lives there now.

Q. And you have servants there? A. No, I have nothing to do with keeping up the place now.

Q. Your aunt lives there? A. Yes, sir.

(By the Court): Q. But you haven't anything to do with it? A. No, sir; I own it, but let her use it.

Q. Have you visited there? A. No, sir; I haven't been there since my father's death.

Q. Have you been to North Carolina since his death at all? A. No, sir.

Q. And he died when? A. May 8th, was buried May 10th.

(By the Court): Q. What year, this year? A. This year.

Q. Last year how many times did you go down to North Carolina? A. I couldn't really remember; I usually went two or three times a year.

Q. Stay there for any length of time? A. About a week usually, I think. Sometimes a little shorter,

sometimes longer; it depended on my business engagements here in New York.

(By the Court): Q. You had some business there to look after? A. Well, we have large factories there.

(By the Court): Q. And also to visit your father? A. Yes, sir; I went there to visit my father.

Q. You have large factories there yet, haven't you? A. Yes, sir.

Q. And large interests there? A. Yes. Well, I don't have the factories; the companies have the factories.

Q. Well, the companies of which you are the president? A. Yes, sir; and have a large one in St. Louis, Louisville, Baltimore and Richmond, and all about, not only in Durham.

Q. Are you not interested in North Carolina in a large shooting box down there? A. I believe I am a stockholder in a place down there called Carteret Lodge, North Carolina, and I have been there, I think, twice in my life, but I didn't shoot and didn't fish; I simply talked to Mr. Miller most of the time; we rode about; he didn't want to shoot or fish and I didn't.

(By the Court): Q. You did the looking on? A. We did the sitting around and taking it easy.

Q. When you first organized you were described, were you not, as a resident of New Durham, North Carolina? A. I don't recall how that was. Not New Durham; it is Durham.

(By the Court): Q. No New about it? A. No, sir.

Q. I show you a copy—I suppose it will be admitted on the other side that this is a statement from some files of the court—it is dated 17th of October, 1889,—you made a contract with Allen & Ginter? A. Yes, sir; I d d.

Q. Were you not described in that contract as a resident of Durham, North Carolina? A. I don't recall, I can't recall.

Q. I will read it. "Second,—that the first directors or trustees of said corporation shall be as follows:

Lewis Ginter, of Richmond, Virginia; James B. Duke, of Durham, North Carolina; William H. Butler, of Brooklyn, New York; James T. Hart, of Rochester, New York; Charles G. Hadley, Brooklyn, New York, of whom Lewis Ginter shall be president until his successor is duly chosen?" A. I can't recall whether I transferred my residence from North Carolina in 1884 or any time before 1893 when I went to the farm.

THE COURT: He has already stated that.

Q. You mean to say you retained your residence in North Carolina until about 1893? A. No; I said I don't recall.

Q. What is your best recollection about it? A. I haven't any; I can't think because of this fact. My father never wanted me to leave North Carolina; he was an old gentleman and he wanted me to always come back home. He said he was going to give me the house there, like all old gentlemen, and for that reason I know for a long time I did not move my residence because he had an idea that I would come back to live there, and I don't think that I ever adopted New York at any time as my residence. I won't be bound by that now, but that is my present impression.

Q. Then, as I understand you, your idea was not to adopt New York at all as your place of residence, but you believed your place of residence to be North Carolina until you chose a residence here in the State of New Jersey, is that what you say?

MR. LINDABURY: He hasn't said that.

THE COURT: He hasn't said that exactly.

A. No; I say I don't have any recollection when I transferred my residence from North Carolina; I don't know whether I transferred it at all to New York or not; I don't think I did, but when I bought the farm—in July, I think, of 1893—I bought it for the purpose of establishing a home, and in October or November of

that year what furniture I had I moved from Mrs. McCready's house in Ninety-sixth street to the farm.

Q. That was a boarding house? A. No; I stopped there with her.

(By the Court): Q. It was a boarding house? A. I don't know whether you could consider it a boarding house or not. I believe the lease was held in her mother's name; the lease was held in Mrs. McCready's mother's name.

Q. The articles of incorporation of the American Tobacco Company, on page 9, I see you are described there as James B. Duke, New York City, twenty shares.

MR. LINDABURY: What is the date?

Q. The date of that is 20th of January, 1890? A. Yes, sir.

Q. How did they get that information? A. Well, I can't recall that.

Q. You knew it was there, didnt you? A. I suppose I did; yes, sir; I suppose I saw it there and didn't pay any attention to it; it seems to be a conflict; probably references to Durham there, too, isn't there?

Q. You read this, didn't you? The residences of the stockholders and the number of shares held by each are as follows: "All such shares being shares of general or common stock." Then follows your name, "James B. Duke, New York City, twenty shares." A. Well, I was located in New York City then.

THE COURT: His place of business was there. You understand the old-fashioned way, a subscriber's stock would be put down his place of business because he was subject to notice or calls; that was the old-fashioned way of doing it.

Q. It says the name and residence. I ask you, now, whether that is not because you claimed your residence was in the City of New York? A. I don't recall.

MR. LINDABURY: Residence is not used in the sense of domicile there.

A. I don't recall whether I claimed a residence in New York or not. I don't recall now whether I did not continue it in North Carolina.

THE COURT: The layman does not distinguish between residence and domicile, and, I am sorry to say, that courts and lawyers do not always distinguish.

A. I spent most of my time in New York.

(By the Court): Q. That was your place of business? A. Yes, sir; and I frequently went home to see my father and look after business there at that time, too.

Q. Now, in 1890, did you acquire any property in New York City, real estate? A. I forget when I bought the lot that I built my stable on in Sixty-sixth street, 1890, 1891, or 1892, somewheres along there.

Q. Did you acquire any other property beside the lot on Sixty-sixth street? A. I don't recall whether I did or not; I don't think so.

Q. Is that the only piece of property you have owned in New York since 1890? A. I think it is; I don't remember any at the present time.

Q. Is that the only property that you have controlled or rented since 1890 for living purposes? A. I have not rented any myself that I recall.

Q. Have caused any to be rented for you? A. No, not caused any to be rented for me.

Q. You never occupied any private house there for the purpose of residence? A. I have been to a private house there.

(By the Court): Q. You have what? A. I have stayed at a private house there when I was in New York.

Q. And lived there for how long? A. Well, I lived in Ninety-sixth street with Mrs. McCready and her mother for a year.

(By the Court): Q. With whom? A. Mrs. McCready and her mother and sister.

(By the Court): Q. For how long? A. For a year.

Q. What year was that? A. That was the year beginning in October, I think, and ending in October.

(By the Court): Q. Of what year? A. 1893.

(By the Court): Q. Beginning 1892 and ending 1893? A. November I moved my furniture out.

Q. Your furniture? A. Yes, sir.

Q. That you had in that house? A. Yes, sir.

Q. Then you had furnished the house? A. No; I moved my furniture that I had at my apartments in the hotel.

Q. Where did you move it to? A. Moved it to a house in Ninety-sixth street occupied by Mrs. McCready, Mrs. Fletcher and her sister and her daughter, rather.

Q. And you lived there for one year? A. Yes, sir; had my furniture there; had a second floor bedroom, and sitting-room.

Q. And then from that place where did you go to? A. I moved the furniture to Somerville, New Jersey, to the farm.

Q. And where did you personally remain? A. When I was in New York I stopped at the house in Ninety-sixth street.

Q. How long did you remain there after you removed your furniture? A. I stopped there as long as she stopped there.

Q. And that was up to what time? A. That is when I was in New York. I think she stayed there until 1896; I guess at that; I can't recall the dates.

Q. Where did you go then? A. She moved to the apartment at the Evelyn Hotel.

Q. Where did you go? A. I took apartments at the Hoffman House.

Q. And that continued for how long a period? A. She lived, I think, there at the Evelyn one year; after that she went to Eighty-sixth street.

Q. Whereabouts in Eighty-sixth street? A. 41, I believe, I can't exactly tell.

Q. Did you buy that house for her? A. I gave her the money to buy it.

Q. And whereabouts in Eighty-sixth street was it? A. Between Eighth and Ninth avenue.

Q. Did you furnish the house? A. I gave her money.

Q. And did you live there? A. I stopped there when I was in New York.

Q. Well, how long did you live there at that house in Eighty-sixth street? A. Well, I think that I used to stop there with her as long as she lived there.

Q. Well, how long was that? A. I believe it was 1901, or 1902.

MR. LINDABURY: Did the witness say when that house was bought?

THE COURT: He said he gave her the money to buy it with and also gave her money to furnish it.

MR. LINDABURY: I didn't get the date.

THE COURT: I think he said it was 1896 or 1897.

Q. Did you say it was 1896 or 1897?

THE COURT: He didn't fix the date?

A. I can't fix the date.

Q. It was about that time, was it? A. I can't be bound by the date, because I don't remember; it is only a guess.

Q. How many years did you live at the Eighty-sixth street house? A. I didn't live there any year; I used to stop there when I was in New York.

Q. Where did you stop? A. I say I stopped there when I was in New York.

Q. Well, how often were you in New York? A. I suppose about half of my time.

Q. Half your time you lived there, didn't you sleep there ? A. I stopped there and slept there.

Q. Stopped there and ate there ? A. Yes, sir; ate there, sometimes I went to a restaurant and ate.

Q. Did you have horses and carriages ? A. Yes, sir ; I had horses and carriages.

(By the Court) : Q. In the City of New York ? A. Yes, sir.

(By the Court) : Q. Kept them in this stable you owned ? A. Yes, sir; have always had them there since I had this stable.

Q. Did they call for you at the Eighty-sixth street house and take you to business ? A. Sometimes they did and sometimes they didn't.

Q. And weren't you driven from the office to the Eighty-sixth street house ? A. Very seldom.

Q. I asked you whether you were—don't tell me how seldom ? A. Very seldom ; I went in the car most of the time. I had horses and carriages in New York, but did not drive from the Eighty-sixth street house to the office sometimes

Q. But sometimes ? A. I suppose I did, but not very often ; I then went in the car more.

Q. How long did this residence or stay in the Eighty-sixth street house continue, up to what time ? A. I said I couldn't remember the date.

Q. I don't want the exact date. A. It was as long as Mrs. McCready stayed there I used to go there to see her.

Q. Do you remember about what year that was ? A. After the first time I went to Europe and back ; I don't remember ; I think it was in 1902.

Q. Then was there any other residence bought by Mrs. McCready that you know of ? A. Yes, sir ; one in Sixty-eighth street.

Q. Do you know the number of that ? A. 11 West Sixty-eighth street.

Q. Did you live there at any time ? A. Used to stop there when I was in New York.

Q. When did you go to stop there? A. When I stayed there in New York I stopped there.

Q. That was more than half the time, wasn't it? A. No, I don't think so; I think it was less than half the time when she went to the Sixty-eighth street house.

Q. Do you remember what year she went in the Sixty-eighth street house, whether that was 1902 or 1903?

THE COURT; He says he don't recollect. It was the year after he went to Europe and he don't know the year.

A. She stopped one period at the Collingwood apartments before she bought the Ninety-eighth street house, and before she went to Europe with me and come back.

THE COURT: Sixty-eighth street, you mean?

A. Yes, sir; Sixty-eighth street.

Q. You had a key to the house? A. Yes, sir.

Q. So you could get in and out? A. Yes, sir.

Q. You have that key yet, haven't you? A. No, I haven't; I don't know where it is.

Q. Lost it? A. Well, I haven't got the key.

Q. Did you have apartments there in the house, in the Sixty-eighth street house? A. I had a room I occupied there.

(By the Court): Q. Called your room? A. Yes, sir; called my room.

Q. Did you have your clothes that you bought or had made for you sent to that house? A. Some of them I had there; some of them I had in my place in the country.

Q. Did you buy any furniture for the house? A. I didn't buy any furniture; I gave her some money to buy some with.

Q. To furnish the house with? A. Yes, sir. No, I didn't give her the money then; she bought it herself; she sold some of her stock I had given her.

Q. You had given her some stock? A. Yes, sir.

Q. Now, didn't you look upon that and in fact regard that as your home in New York? A. I regarded it as a place I had a right to stop at; I did not regard it as my home.

Q. Haven't you ever spoken of it as your home? A. I don't think so.

Q. Haven't you always considered it your home? A. No; I have always considered my home Somerville, New Jersey.

Q. Haven't you told Mrs. McCready that that was your home? A. No.

Q. Haven't you written to her that it was your home? A. No.

Q. Never wrote to her any letter by which you re-regarded that as your home? A. No.

Q. You are sure about that? A. I think I am.

Q. Is this your handwriting (handing witness paper)?

THE COURT: You should have shown him that first. I want to say here I won't allow a witness to be contradicted that way. If you have a paper in the handwriting of the witness and you expect to contradict him by it, show him the paper first. That is my ruling. It may be wrong or right, but it is the only just rule.

Q. Is that your letter? A. Yes, sir; that is my letter.

Q. Now, I call your attention to what you say on—I don't know what page you might call this—well, you read it to us. A. "I would like you to arrange and come home at once. I want to talk to you, and if it is necessary for you to continue your stay in the mountains, you can." I didn't say that I had any home in New York.

THE COURT: Never mind. The letter speaks for itself.

Q. Now, having seen this paper, do you recollect now whether you have ever spoken of New York as your home? Or of this place at Sixty-eighth street as your home? A. No, I didn't speak of it in that letter as my home. I told her to come home. I told her to come home.

(By the Court): Q. Her home you were speaking of? A. I was talking of her home, not my home.

Q. What you meant in this letter was for her to come to your home? A. No, for her to come to her home in New York.

Q. Her home in New York. A. Yes, sir.

Letter marked "Exhibit D 1."

THE COURT: It is not received in evidence.

Q. You went to Europe while Mrs. McCready was living on 11 West Sixty-eighth street, did you? A. I went to Europe, yes, this past summer.

Q. Well, did you? A. And went there on our bridal tour, too.

(By the Court): Q. Oh, after you were married? A. Ye , sir.

Q. When were you married? A. November 29, I believe, last year.

Q. 1904? A. Yes, sir.

Q. And where were you married? A. Married at Camden, New Jersey, at her aunt's.

Q. And where did you go right after the marriage? A. We went to 11 West Sixty-eighth street and spent the night and took the steamer next morning.

Q. 11 West Sixty-eighth street, New York City? A. Yes, sir.

Q. And then took the steamer for Europe, did you? A. Yes, sir.

Q. And how long did you remain abroad? A. Until some time in February.

Q. And came home together? A. Yes, sir.

Q. And where did you go after you arrived in New York City? A. I think we went to 11 West Sixty-eighth street; arrived about nine o'clock that night.

(By the Court) : Q. 11 West Sixty-eighth street—what was that. A. That was her house.

(By the Court) : Q. Mrs. McCready's house? A. Yes, sir ; we spent the night there, because I was going to see my father the next day.

Q. Did you prepare or cause to be prepared a list of names to whom to be sent notices of the marriage? A Well, I didn't but Mrs. McCready and my brother did. I told them it was nonsense to be bothered with anything of that kind.

Q. I show you this list here and ask you whether you did not cause that list to be prepared? A. I did not.

Q. Of foreign persons? A. I did not. My brother did it. I told him I thought it was nonsense.

Q. Didn't you hand this list to Mrs. McCready? A don't recall whether my brother gave it to me to give to her, or whether he gave it to her himself. I only know I do remember I told him it was nonsense.

Q. But as to who gave her the list, you or your brother, you don't remember that? A. No ; I know he was up there and they were talking about different names.

(By the Court) : Q. Was this after you were married? A. No, before.

Q. Do you remember seeing the notices of marriage that was sent out? A. I think she showed them to me.

(By the Court) : Q. Who? A. Mrs. McCready.

Q. Can you identify this card? A. I think that is one like I saw. She ordered them, and it was all her own affair ; it wasn't mine.

Q. And this (handing witness paper). A. I think that is—I think I have seen them ; it wasn't any scheme of mine at all.

Q. I don't see that that is responsive to my question. There is no question there.

(By the Court) : Q. Oh your wife's name was McCready before you married her, eh? A. Yes, sir.

Q. Do you know how many of those you sent around? A. Haven't the least, remotest idea.

Q. Now, during that time, after you got home, how much time did you spend at the farm in Somerville? A. We went the next day, after arriving on the steamer from Europe we went immediately to see my father who had a bad fall and was in bed and bad off.

(By the Court): Q. Down in North Carolina? A. Down in North Carolina. We come back by the farm and stopped there Sunday and Sunday night, and came to New York on Monday; I stopped at the office, I think to see the boys, because I had been away a good while. I went up to the Sixty-eight street house on Monday night, spent the night there, and then is the time, I think, my foot swelled up and I had blood poisoning, and I was laid up there until about the 1st of April.

(By the Court): Q. Confined to the house with illness? A. Yes, sir; had an operation performed on my foot which laid me up, and I couldn't get downstairs for six weeks, I don't think. As soon as I was able to go I got an automobile and went to the farm, and I stayed there probably a couple of weeks.

Q. That was to recuperate? A. Just because I wanted to go there.

Q. The illness that you had had run you down somewhat, hadn't it? A. I wasn't run down physically, except sitting around, of course, you are slightly softer than when you are going about.

Q. Did you remain at Somerville continuously for two weeks, or did you go— A. No, I couldn't get downstairs first without I had help. As soon as I was able to come down I went to the office, and sometimes I stopped at the Sixty-eighth street house and sometimes I went to the farm.

Q. Well, you had who to take charge of your place there in Somerville; to take care of you? A. What do you mean, the house? Mary Smith was the housekeeper.

Q. You had a housekeeper there? A. Yes, sir.

Q. How long had you had that housekeeper? A. Ten or eleven years, I think.

Q. Anybody else besides Mary Smith in charge of the house ? A. Mrs. Duke, of course, was the head of the house.

(By the Court) : Q. Who ? A. Mrs. Duke, my wife, after I married her.

Q. I am not asking you that. I am asking you whether you had anybody else in charge of that house besides Mary Smith after the ten years ? A. Before Mary Smith come there there was somebody in charge.

Q. Did you get a sister of Mary Smith to come there ? A. She was in charge of the office.

Q. What office ? A. Office to the estate.

(By the Court) : Q. All the business transactions, paying out bills ? A. Paying out the money and checking up the contract. We had two or three hundred men to work there and, of course, we had to have an office and somebody to look after the money, spend and disburse the money.

Q. Up to what time did you go to the house at No. 11 West Sixty-eighth street ? A. I went from the time that she got it furnished and she went there ; I used to go there when I was in town.

Q. After your marriage up to what time ? A. What do you mean ? Up to what time we went there ?

Q. Up to what time did you go there after you came back from Europe ? A. Every night I was in town I stopped there.

Q. When was the last that you stopped there ? A. I think it was Friday night before I went to Europe on Saturday.

Q. That was when ? A. July 14th.

(By the Court) : Q. Went to Europe a second time, eh ? A. Yes, sir.

Q. When did you come home ? A. I come home September 30th, I reckon.

(By the Court) : Q. Of this year ? A. Yes, sir.

(By Mr. Parker) : Q. August 30, you mean ? A. August 30th.

Q. And where did you take up your residence when

you came home? A. Well, I think I stopped the first night that I got home in an apartment house where Mr. Parker lives; he had arranged for me to have rooms there.

Q. That was in New York City where Mr. Parker lived? A. Yes, sir.

Q. How long did you stop there? A. One night.

Q. Had you fixed up any rooms, apartments over the stable in New York, that you spoke of? A. About ten years ago I had a room, but that I occupied a few times, and after that the coachman took charge of it and he used it.

Q. You know a house in Eighty-third street that is in the name of your brother, Benjamin Duke? A. No; I know one in Eighty-second street.

Q. Eighty-second street. Did you go there? A. Yes, sir; I went there the second night I was in New York.

(By Mr. Lindabury): Q. After you returned from Europe, you mean? A. Yes, sir.

Q. You keep up that establishment, don't you? A. No, don't keep it up now.

Q. Don't you employ the servants there? A. No.

Q. Are not the servants that are employed there and have been employed there in your pay? A. No, they are in my brother's pay.

Q. And haven't you supervised the house in a great many respects, taken charge of fixing it? A. Yes.

Q. You have had alterations there? A. Yes, all for the account of my brother.

Q. All on account of your brother? A. For the account of him.

Q. Is there any agreement existing between you and your brother for the sale of that house to you? A. He will sell it to me if I want to buy it.

Q. I ask you if there is any agreement existing between you and your brother that he is to sell out to you? A. I am under no obligations to buy it and he is under none to sell it to me.

Q. Was there any understanding that you were to

buy it? A. We have been talking about it and I expect to buy it, but I have not made any agreement to buy it.

Q. And did not you intend to give that house to your wife on your wedding trip? A. Never.

Q. Never spoken to you about it? A. She asked me for it and I told her no.

Q. Then you had spoken about giving it to her? A. She asked me if I would give it to her, and I told her no.

Q. When did she ask you that? A. I don't recall; I think she asked me before I married her.

Q. But you are not sure about that? A. I think she did one night my brother was up there.

Q. Why do you take any interest in looking about the alterations? A. Because I expect to live there, whether I buy the house from my brother or whether he keeps it.

Q. You expect to live there? When do you expect to go there? A. Whenever I am in town.

Q. How about the servants there; are they your servants or his servants? A. They are his servants now; if I buy the house they will be mine, I suppose.

Q. So you have arranged when you buy the house they will be your servants, but now they are his servants? A. I have got no arrangement about it.

Q. Are not you paying the servants now; have been paying them. A. I think I have advanced some money out of my pocket.

Q. When did you begin to advance money? A. I didn't advance money; I gave the housekeeper some money; she said she hadn't money and my brother was away at the time, and I gave her some out of my pocket.

Q. When was that? A. I can't recall.

Q. Do you know a woman by the name of Nellie Sand? A. Yes.

Q. Isn't she a servant there? A. Yes, one of the girls there.

Q. Isn't she in your employ? A. She is in my brother's employ.

Q. Isn't she in your employ? A. No.

Q. Haven't you paid her? A. No.

Q. Never paid her any wages? A. No.

Q. Isn't it a fact that you induced her to leave Mrs. Duke's employ and go into your employ? A. No.

Q. Didn't you come after her? A. I come after her —yes, to find out what she knew about what Mrs. Duke had been guilty of.

Q. When did you do that? A. The first night I arrived in New York from Europe.

Q. Where did you meet her? A. Eighty-seventh street; she come to the carriage.

Q. Who was with her? A. Tillie Andrews.

Q. And is she in your employ? A. No.

Q. In whose employ is she? A. My brother's.

Q. Are they the servants now in the Eighty-third street house? A. They are in the service of my brother in the Eighty-second street house.

Q. Eighty-second street, I mean. And they went into the service immediately after you had an interview with them, isn't that so? A. Yes.

Q. Did you take two more servants away from Mrs. Duke under those circumstances? A. They came over to see me, too, and I told them my brother was going to open that house and I expected to stop there when I was in New York, and my brother would give them employment; they said they were glad of it, because they wanted to leave Sixty-eighth street.

Q. Why did you want to take a deed for your brother's house if you can stay at your brother's house without taking a deed? A. I haven't wanted to take a deed yet; if I did I could have done it.

Q. Why did you say you expected to take a deed from him? A. I didn't say I expected to; I said I expected to if I wanted to.

Q. Then it is a matter of your own volition whether you will take a deed for it or not? A. Yes, sir, it is a question yet whether I will by the house or not. I

have got a house in the country, a home in the country, and think my brother could probably run the one in town, and he could go in the country and stay with me and I could stay with him in town.

Q. (By the Court.) You wanted a place where you could go whenever you wanted to when you stay in town? A. Yes, sir; I have a large business to look after; frequently I am kept in the house late in the evening, and of course it makes it rather hard to go in the country where you have got to be on the road two hours, and I frequently stay in town over night. I am now stopping at my brother's house when I cannot go to the farm.

Q. Well it is your desire to be near your business, isn't it? A. Of course, when I have to have early and late hours I don't want to spend too much of the time on the road.

Q. You have built up a very extensive business, haven't you? A. Yes, sir; by the efforts of mine and my associates.

Q. And you take a great deal of pride in it, do you not? A. Yes, sir.

Q. And your business is a great deal to you, isn't it? A. Yes, sir.

Q. And you have been close to it, that is, always want to be so you can get to it? A. I never neglect the business for anything or anybody.

Q. That is it, you wouldn't neglect the business for anything or anybody, and that has been so for the last fifteen years, hasn't it? A. Yes, it has been lighter the last couple of years, though, because I have got a good organization built up there, and they can look after the business more without me; I have spent a good deal of time from the business the last year.

Q. You have made the expression the business is worth more to you than your life, haven't you? A. I don't recall it.

Q. You never made such a remark? A. No, I don't think so; it would be a very foolish remark to make; what good would business be to me if I had no life.

Q. Now, you did want a place in New York to live, didn't you? A. No, wanted a place to stop.

Q. Winter time especially? A. I spend nearly as much of my time in the country at my home in the winter as I do in the summer, very nearly. Of course, you take more days off in the summer than you do in the winter because the business is more usually around in the winter time.

(By the Court): Q. More attractions outdoors in the summer than there is in the winter? A. Yes, sir.

(By Mr. Lindabury): Q. More doing? A. Yes, sir; I have got more people at work out there, have to look after them.

Q. Now, you have entertained members of the family, haven't you, at 11 West Sixty-eighth street? A. Since we were married many of my friends have been there.

Q. Good many of them, haven't they? A. Yes, sir; quite a number; when I was sick there was a great many people called there to see me.

Q. Your nieces came there and stopped there for a while, didn't they? A. They stopped there for a few days. Not my nieces, my cousins.

Q. Anybody else of your family besides your cousins come there and stop? A. I think my aunt and nephew stopped there.

Q. For any length of time? A. I don't think my aunt stayed but one or two days. She went back to Somerville, my home there. Before I married her it was clearly understood that our home was in Somerville, New Jersey.

Q. You say it was clearly understood. You are making this remark without any question being asked you. A. Understood with her.

Q. Why didn't you go back to Somerville, New Jersey, as soon as you returned from Europe? A. Because I didn't want to go and spend the night; it would take me two or three hours to get there.

Q. I don't mean that night, but I mean a reasonable time after your arrival in New York with your wife?

A. Just as soon as we went to Durham to see my father who was sick, and we stopped at the farm on Sunday on our way back from North Carolina, we stopped Sunday night there. We come to New York, spent the day there and that night, then I was taken down with my foot; I couldn't have gone to the farm if I had wanted to unless they had put me on a stretcher and had taken me out, but that wasn't necessary because the doctor here operated on me and wanted me here to look after me.

Q. But you did five or six weeks after? A. Just as soon as the doctor gave his consent for me to go I went.

Q. How long were you on the farm? A. Two or three weeks.

Q. Then came back from the farm to New York to remain? A. No.

Q. Why didn't you take your wife down on the farm? A. I wanted her to go there but she didn't want to; she wanted to stay in New York.

Q. Didn't you say to her you intended to put up a residence on a large plot of land or ground out in North Carolina? A. I didn't say that. I said I was talking about buying a place in California, about seven or eight years ago when I went with her out there.

Q. Didn't you say that was your intention, that you intended to have a summer residence out in California for her, and would buy her or give to her another house in New York? A. No, I didn't. What do you suppose I wanted of a residence in California when it would take a week to go and come? What good do you suppose it would do me to have a residence there?

Q. I don't know. A. I said when I retired from business I was going to have me a winter home and was going to have me a mountain home. I say that now, when I have nothing else to do, if I am able, to keep me busy.

Q. You said you would have a town home. What

town did you expect to make your home in? A. Somerville, New Jersey.

Q. That was your town home and where was going to be the country home? A. I thought maybe I would have a place at Lenox; I thought of a good many places, but that is all nonsense talking of that.

Q. Then you supposed Somerville, New Jersey, was to be the town where you intended to reside? A. That is my place. I am laying out and making that a great place. That is where I expect to make my home as long as I live. I have been working on that line for about twelve years, and I have done everything that anybody can to make Somerville my home, except to go and sit there all the time.

S. Manning Wykoff sworn.

Direct Examination by Mr. Clark:

Q. You reside in Somerset County? A. I do, Borough of Millstone, Township of Hillsboro.

Q. And that is the place where people vote in that district? A. Where I live now Mr. Duke does not vote, but formerly I voted in the township. I vote now in the borough. That was set apart and I stopped voting in the township in 1899.

Q. And before that? A. Before that I voted in the township in the Second District of Hillsboro.

Q. And his voting place? A. Is in the Second District of Hillsboro.

Q. The same place? A. Yes, sir.

Q. Do you hold any official position? A. Not now. From 1893 to 1899 I did. From 1893 to 1895 I was on the election board of the Second District of the Township of Hillsboro. In 1896 I was challenger on the board; in 1897, 1898, and 1899 I was collector of the township.

Q. Were you collecting taxes then for 1897, 1898 and 1899? A. Yes, sir.

Q. Did you collect taxes from Mr. Duke? A. Yes, sir.

(By the Court): Q. What do you know about his voting there? A. In 1896 he voted there.

Q. Just tell what occurred? A. He was registered in 1894 and 1895. Mr. Disbrow, who owned the farm which afterwards Mr. Duke bought, and myself were on the election board to canvass the vote in that township. We went to Mr. Paterson, who was then the superintendent, and he gave us the names of all voters on the Duke ground; Mr. Duke's name was given. Mr. Duke, I don't think voted, until 1896.

(By the Court): Q. But he was registered in 1894 and 1895? A. He was registered, yes, sir; and in 1896 my attention was called to Mr. Duke by one of the men; he said Mr. Duke has arrived, and Mr. Paterson. I was challenger in the room. Mr. Duke came in, got his ticket, went in the booth, gave the name J. B. Duke. I was personally not acquainted with Mr. Duke, and knew him personally by having my attention called to him. Personally I didn't know him. I did all my business with Mr. Paterson. Afterward Paterson died, then with Mr. Smith.

Q. And is this the person who voted under the name James B. Duke at that time? A. It is.

(By the Court): Q. Do you know whether he voted at any time after 1896? A. Not of my own knowledge, no.

Q. You said you were collector of taxas? A. Yes, sir.

Q. What taxes did he pay? A. He paid poll tax, dog tax, real estate tax.

Q. What years? A. 1897, 1898 and 1899.

CHARLES A. WYKOFF, sworn.

DIRECT EXAMINATION BY MR. CLARK:

Q. You are a resident of Hillsboro Township? A. Yes, sir.

Q. And have you been for ten years last past? A. Yes, sir.

Q. And do you hold any office in the election board in the Township of Hillsboro? A. I do.

Q. Where? A. In the second election district of Hillsboro.

Q. And the voting place is where? A. It is now in the second election district; it used to be in what is now called the Borough.

Q. Near? A. Near Millstone.

Q. Near West Millstone? A. Yes, sir.

Q. It is not the same election district that Mr. Manning Wikoff votes in now? A. No, that is the Borough where he votes now.

Q. How long have you been a member of that board? A. Five years; this is my fifth year.

Q. What do you know of Mr. Duke voting there? A. Mr. Duke voted in 1904, 1900, and in 1896, in Millstone, which is now the Borough.

Q. How do you know that? A. I was a special officer in 1896 on the election board, that is officer to keep the peace, constable, I suppose you might call it. In 1896 I was a special officer of the election board, that is, to keep the peace; I suppose you might call it a constable. Mr. Duke voted that day.

(By the Court): Q. What do you know about his voting since? You say in 1900 and 1904? A. Yes, sir.

(By the Court): Q. Do you know of any other vote? A. Not only this fall.

(By the Court): Q. This fall he voted? A. Yes, sir.

Q. What occurred at the election of 1896 that you especially remember? A. 1896 Mr. Duke came in and I was standing at the door, and he ask me for instructions about voting, said it was his first vote, and I referred him to the election board, and Mr. Jackson was a member of the board, and he gave him the instruction that was necessary.

Q. Did you have other conversations with him at that time? A. No, sir.

(By the Court): Q. That was the first time he voted there? A. Yes, sir.

MR. PARKER: We want to make the same objection to the testimony after the suit was begun. We only want to register our objection. Your Honor has ruled on it.

THE COURT: The objection is noted.

No cross-examination.

C. NELSON VANDORN, sworn.

DIRECT EXAMINATION BY MR. CLARK:

Q. You reside in Hillsboro Township? A. Yes.

Q. How long have you resided there? A. Always.

Q. Do you hold any position on the election board there? A. I do.

Q. How long have you been a member of the election board? A. Three years.

Q. And what three years? A. 1900, 1903, 1904 and 1905.

Q. Do you know anything of Mr. Duke having voted? A. I do.

Q. When? A. In 1904 and 1905.

(By the Court): Q. Before that do you know anything about it? A. No, sir; nothing before that.

No cross-examination.

NEWTON VAN CLEEF, sworn.

DIRECT EXAMINATION BY MR. CLARK:

Q. You reside in Hillsboro Township? A. I do.

Q. Clerk of the Hillsboro Township Committee? A. Yes, sir.

Q. How long have you been serving as clerk? A. Ten years; on my tenth year.

Q. You have charge of the ballot book ? A. I do.

Q. What do you know of Mr. Duke having voted in Hillsboro Township ? A. Mr Duke voted in 1904.

Q. At the presidential election ? A. Yes, sir.

No cross-examination.

PETER N. WILLIAMSON, sworn.

DIRECT EXAMINATION BY MR. CLARK :

Q. You are clerk of the election board of Hillsboro Township ? A. I was clerk of the election board in 1904 ; I was judge of election in 1905.

Q. Were you present at the voting in 1904 ? A. Yes, sir.

Q. And did or not Mr. Duke vote at that election ? A. He did.

Q. His name was regularly recorded and he voted ? A. Yes, sir.

Q. And what do you know about his having voted there at any other time ? A. He voted there last fall, 1905.

(By the Court) : Q. Do you recollect of his voting before that, before 1894 ? A. No, I do not.

(By the Court) : Q. Don't recollect it ? A. No, I don't recollect ; I was not on the board.

No cross-examination.

JOHN H. SAUMS, sworn :

DIRECT EXAMINATION BY MR. CLARK :

Q. You reside in Hillsboro Township ? A. I do.

Q. How long have you lived there ? A. Always.

Q. Do you hold any position in the township ? A. I do.

Q. What is it ? A. Assessor of the township.

Q. How long have you been Assessor ? A. I was Assessor for three years, the year of 1898, 1899, 1900 and 1901.

Q. Did you make any assessments against the real and personal property of James B. Duke for that year? A. I did.

MR. PARKER: The assessment is objected to unless he brings his book.

THE COURT: Yes, the book ought to be here. The fact that he made the assessment, though, may be figured without, perhaps, the book. When you come to figures or anything of that kind, the books ought to be here.

MR. CLARK: I am not going into the figures at all, simply the fact.

Q. What do you know about poll tax?

Objected to.

THE COURT: I am not quite sure about that. Have you got the books yet? Didn't bring them with you?

A. No, sir.

(By the Court): Q. Do you know whether he gave himself up as a resident so you could tax him for poll tax? A. He did.

THE COURT: That is a matter that is easily amended if it is disputed. I don't think I am doing the defendants any harm by going to the verge of the thing at all because the books can be produced.

Q. Did you have any conversation with Mr. Duke in relation to that question? A. I did, sir.

Q. What did he say? A. Well, I just went over all the properties.

(By the Court): Q. But as to his place of residence, and being liable to a poll tax? A. Yes, I started that; that was the first question I asked him, about the poll tax.

(By the Court): Q. And what did he say? A. All

right. Then we went from that to the dog's and from that to the different properties.

(By the Court): Q. You took the most important first, dog's, of course? A. I started with different things as they were lined out in the books.

MR. PARKER: We do not think that is the right way to prove this matter. We do not want to obstruct the complainant.

THE COURT: He can submit that part of the case on the present evidence, or he can bring the books here if he chooses.

MR. PARKER: I submit whether it is not fair to the complainant in the case, the complainant puts on the stand officials of this sort, whether he should not bring the books; if he testifies to anything in the books isn't it fair that we should know about that, that that evidence should be qualified or extenuated in some way?

THE COURT: Just what has been passing through my mind, but how can I keep out the evidence that has been admitted without objection—I think that he did pay poll tax and the evidence of this witness is that Mr. Duke told him he was liable to poll tax.

MR. PARKER: You say it is without objection?

THE COURT: There was objection here, but there was not objection to the other.

MR. PARKER: We have objected all along to these conversations as being incompetent, but your Honor has ruled on it.

THE COURT: It is a very small matter, but I would suggest to you that it is just as much within your power to bring the poll books here as it is the petitioner. I think the petitioner ought to have instructed this witness to bring the poll book. They have not done it. However that may affect the evidence hereafter it is notfor me now to determine. I don't think I have

admitted any illegal evidence against you, but the weight of the evidence where there is a record that speaks for itself you may say is always affected by the fact that the record is not produced. I think you are entitled to that consideration probably hereafter, but it is not for me to determine now how much weight it has.

MR. LINDABURY: Your Honor will pardon me. You will see there is a question whether the book is competent evidence. The record does not prove anything except it was made by this direction, and that has been testified, what the direction was.

THE COURT: Undoubtedly. That also passed through my mind. The probability is that the poll book of itself is not a record. I spoke of having the record, being a record made at the time by the witness of what Mr. Duke told him.

MR. PARKER: We take issue with your Honor on that. We object to this testimony and ask it be stricken out, everything that has to do with the poll tax and to do with these conversations of Mr. Duke and has to do with the assessment of Mr. Duke for taxation as testified by this witness. We ask that that be stricken out.

THE COURT: I decline to strike it out. I think it is all competent.

No cross-examination.

HENRY S. VAN NUYS sworn.

DIRECT EXAMINATION BY MR. CLARK:

Q. You reside in Hillsboro Township and have for several years? A. I do.

Q. Hold any position there in the election board? A. Yes, sir.

Q. What position? A. I was inspector of the election board.

Q. And how many years have you been inspector? A. One.

Q. What was that? A. That was in 1904.

Q. Did or not Mr. Duke vote at that time? A. Yes, sir.

Q. What did you have to do with the voting? A. I handed the voters the tickets; they went in the booth and they were handed to the judge of the election.

Q. And you handed Mr. Duke a ticket and he voted? A. Yes, sir.

MR. LINDABURY: Is there any denial about Mr. Duke voting? If there is not we won't put on any more.

MR. KALISCH: I don't know as there is.

No cross-examination.

CHARLES S. HAMILTON sworn.

DIRECT EXAMINATION BY MR. CLARK:

Q. You reside in Hillsboro Township? A. I do, sir.

Q. And have for many years last past? A. I have.

Q. Do you hold any official position in the township? A. I am collector of taxes.

Q. And for how long have you been collector of taxes? A. Since 1900.

Q. And have you collected taxes of James B. Duke since that time? A. I have.

Q. And what taxes? A. Poll tax, dog tax, and personal tax and real estate.

Q. Now for every year or only one of those years? A. For every year.

Q. Do you know anything about his having voted in Hillsboro Township? A. I am not positive about that; I am not on the Board of Registry.

Q. Did you ever have any conversation with Mr. Duke in relation to his assessments, and this place as being his home? A. I did.

Q. When was that? A. That was in 1901.

Q. Just state what passed between you? A. I went

to Mr. Duke's residence in regard to a difference in road tax. He was not allowed his percentage for working on the road, and the committee summoned me there to have an interview with Mr. Duke, which I did, and at that time Mr. Duke said that he simply asked to be used neighborly, that he was a resident of Hillsboro Township, and that he would like to be used neighborly, and he claimed he should be allowed his share of the road tax.

(By the Court) : Q. For working on the roads ? A. For working on the roads ; yes, sir.

Mr. Parker : We make the same objection to this witness' testimony that was made to the one before the last, with reference to the incompetency of his testifying as to assessing for taxation, and conversations with Mr. Duke. We asked to have it stricken out. We do not want to interrupt the trial of this cause by making objections to every question, but we would like to have our objection noted.

The Court : I decline to strike it out for obvious reasons. This conversation was so long before any evidence here that he contemplated marrying or certainly contemplated ever suing for divorce, that it is a part of the very thing, the kind of evidence, according to my notion, recollection of the rules, which goes to show what a man's home and domicile is, his everyday actions, talk, declarations. However, I would not rule it out, Mr. Parker, under any circumstances, because the universal rule is that in these trials in order to save a reversal on the ground of the refusal to admit evidence, we let in everything that anybody can suppose that may competent, and the Court here and on appeal takes notice of such evidence as they think is competent, and do not notice that what they think is not competent—quite different from the great constitutional tribunal of a jury.

MARGARET SMITH sworn.

DIRECT EXAMINATION BY MR. CLARK:

Q. You reside where, Miss Maggie? A. Duke's farm, Somerville, New Jersey.

Q. And how long have you lived there? A. I have been in Mr. Duke's employ for 11 years.

Q. And what is the service that you are rendering now? A. Cashier of Mr. Duke's farm.

Q. How long have you been so engaged? A. In 1898.

Q. Since 1898? A. Oh, in 1895.

Q. Since 1895? A. Yes, sir.

Q. And your duties as cashier embrace what also? A. Pay all bills, pay all labor, check up all accounts, render Mr. Duke a monthly statement of all accounts that have been paid out during the month.

(By the Court): Q. You have to inspect the pay-rolls and all that? A. Yes, sir.

(By the Court): Q. All bills? A. Yes, sir.

THE COURT: Auditor and cashier.

Q. Where have you resided during that time? A. Mr. Duke's residence.

(By the Court): Q. In the big house? A. Yes, sir.

Q. And who has been with you, any member of your family? A. My sister.

Q. Mary? A. Mary Smith, yes, sir.

Q. And what room did you and she occupy? A. Bedroom on the second floor.

Q. Now, what is your sister's position? A. My sister is housekeeper.

Q. And how long has she been there? A. It will be 11 years in January, the coming January.

Q. Who went there first, you or your sister? A. I did.

Q. Now, before you were employed as cashier what were your duties? A. I went there as housekeeper, 1894.

Q. And how long did you remain as housekeeper? A. About two months.

Q. And then what followed? A. My sister took my place as housekeeper.

Q. What did you do? A. I went to the office for Mr. Paterson, assisted him in the office. Mr. Paterson was then engaged as manager of Mr. Duke's farm.

Q. How long did you continue with Mr. Paterson? A. Until 1898.

Q. What then occurred? A. Mr. Paterson took ill in July, 1898, and died in September, 1898, and I took charge then.

Q. And you have had charge ever since? A. Ever since, yes, sir.

Q. What did you do under Paterson? A. Assisted him, bookkeeper, stenographer and typewriter.

Q. What do you know about Mr. Duke making his farm his home from anything he has said to you at any time?

THE COURT: Anything you have seen and observed.

Q. Yes, anything you have seen. A. I have always thought that Mr. Duke—that that was his home, no other home but that.

THE COURT: Why?

Q. Go on and tell why you thought that. A. He spent from three to four nights on the average a week there since I have been employed there.

(By the Court): Q. What else? What was said? A. I never heard him say anything else but that was his home; I never heard him speak of any other home but his home there.

Q. What do you know of his entertaining his family friends there? A. He has always entertained his family, his father, brother, relatives, and all his business associates.

(By the Court): Q. Business associates? A. Yes, sir.

(By the Court): Q. Come out there and spend Sunday with him? A. Yes, sir.

Q. What have been Mr. Duke's habits with reference to spending time there since you have lived there? Nights, I am talking about especially.

THE COURT: She said from three to four nights a week.

A. From three to four nights a week on an average.

(By the Court): Q. That would be about half the time? A. Yes, sir; more than half; that is, when he was in this country, not traveling in Europe.

Q. And what have you to say about the equipment of the house as a home? A. Mr. Duke always took a great interest in his home, having everything very pleasant, furnished very nice.

THE COURT: His own rooms and others?

Q. I am talking about the arrangements for his own comfort, about baths, etc., what is there about his house for the purpose of giving him all the conveniences of coming to a nice and comfortable home? A. I don't understand that question.

Q. What improvements are there about his house? A. All the latest improvements in the house, all the conveniences in the house.

Q. How many bed chambers? A. Eleven bed chambers.

Q. How many bathrooms? A. Five bathrooms and two lavatories.

Q. Now, how was that house furnished? I mean, by way of pictures, etc.? A. The house is furnished—do you want—

THE COURT: Can't you give us an idea how fully it is furnished, and the kind of furniture, and whether there are pictures, and so forth?

A. Mr. Duke has very expensive furniture in the house, oil paintings, draperies, bric-a-brac, all sorts of music boxes, pianos.

(By Mr. Lindabury): Q. Carpets? A. Carpets, brussels carpets, silk rugs, draperies.

Q. Do you know what the furnishing of the house has cost? A. Yes, sir.

Q. What? A. $60,000, a little over $60,000.

(By the Court): Q. You had a little something to do with it in paying the bills? A. Yes, sir.

Q. The Court asks you if you had something to do in paying the bills; what did you have to do in paying the bills? A. Drew check.

Q. Pay all the bills? A. As bills for the furniture came in I went through the house and checked up everything, checked up every bill before I paid it to see whether the goods were received or not.

Q. How did you pay these bills? A. By check.

Q. And whose name to the check? A. Maggie Smith, as cashier.

Q. And all the bills were paid in that way? A. Yes, sir.

MR. PARKER: Duke's farm, Maggie Smith.

(By Mr. Lindabury): Q. How do you sign the checks? A. Maggie Smith.

MR. LINDABURY: Duke's farm?

A. Duke's farm is printed on the checks when it is made.

Q. The check is drawn payable to the order of A. B., so much money, Duke's farm, followed by Maggie Smith, cashier? A. Yes, sir.

Q. Now, how has this house been kept with reference to being ready to receive guests during all this period? A. First-class order.

(By the Court): Q. Has it been ready every moment? A. Yes, sir; ready.

Q. Has there ever been a time when it has been closed a moment? A. No, sir; been open as long as I have been there.

(By the Court): Q. And ready to receive Mr. Duke without previous notice? A. Yes, sir. Sometimes he would come unexpected, walk in on us, but we were always ready for anybody that came.

(By the Court): Q. Those were your orders, the orders were to have it ready? A. Yes, sir.

Q. Are you here under subpoena? A. Yes, sir; summons.

Q. Subpoena, yes. By whom?

A. By Chauncey G. Parker, solicitor, and Vice-Chancellor Pitney.

Q. Before Vice-Chancellor Pitney? A. Yes, sir.

Q. Then you were subpœnaed by the other side? A. Yes, sir.

Q. Is there a telephone in the house? A. Yes, sir.

Q. And were you telephoned to also? A. No, sir.

Q. What conveniences are there for the purpose of talking to and from the city or any other place—long distance telephone I am talking about? A. We have long distance telephone in the house.

Q. How long has there been long distance telephone there? A. It runs on the average six or seven or eight dollars a month.

(By the Court): Q. How long has it been there? A. The telephone has been in the house since 1898.

Q. Just as soon as the telephone service was established it was put in, was it not? A. Yes, sir.

Recess.

Cross-examination by Mr. Parker:

Q. You are a native of New Jersey, aren't you? A. I am at present.

(By the Court): Q. No—a native? A. I was born in Easton, Pennsylvania.

Q. But you came to New Jersey at an early age? A. Nineteen years ago.

Q. And how old are you now? A. I am over twenty-one years of age.

Q. Beg pardon? A. I am over twenty-one years of age.

Q. Did you go to school at Raritan? A. I went to night school.

Q. Who was your father? A. Maxmillian Smith.

Q. What was his business? A. He was a moulder by trade.

Q. And did he live in Raritan, too? A. Yes, sir; one year.

Q. Now, when you first made the acquaintance of Mr. Duke, how long ago was that? A. 1894.

Q. Did he engage you or somebody for him? A. Mr. Paterson.

Q. And what business were you to do for Mr. Duke? A. When I went there I was engaged as housekeeper, to look after his house.

Q. And who else lived in the house besides you? A. At the time I went there—

Q. Yes. A. Mr. Patterson.

Q. Anybody else? A. Mr. Duke.

Q. Anybody else? A. Not when I went there; no, sir.

Q. Was there any other domestic in the household except yourself? A. None, but the washwoman.

Q. Then when you say that you were housekeeper, you mean that you did general housework, don't you? A. Yes, looked after the house because Mr. Duke engaged another party and I looked after the house until the other party came and this party did not come.

Q. Now, weren't you engaged to do the ordinary duties of a maid servant when you first went there? A. No, sir.

Q. What were your duties? A. I looked after the house.

Q. Well, did you cook? A. Yes, I cooked.

Q. Did you look after the beds? A. Yes, sir.

Q. Did you do the sweeping and cleaning? A. No, sir.

Q. Who did that? A. The washwoman.

Q. Did you wait on the table? A. Yes, sir.

Q. How long did you do that before you became a sort of a secretary and business agent for Mr. Duke? A. About two months.

Q. Then your sister Mary came? A. Yes, sir.

Q. And she did your work? A. Yes, sir; she took charge of the housekeeping.

Q. And she had charge of the housekeeping ever since? A. Yes, sir.

Q. What was the place called? A. Duke's farm, the same as it is now.

Q. That name was adopted when you first went there, was it? A. Yes, sir; I believe so.

Q. And it has been called so ever since? A. Yes, sir.

Q. Mr. Duke is a great friend of yours, isn't he? A. I don't know as he is.

Q. Well, what is that? What do you know about it? A. He is my employer.

Q. (By the Court): Always treated you kindly? A. Yes, sir; always treated me kindly.

Q. (By the Court): And friendly? A. Yes, sir.

Q. (By the Court): So you think he is friendly to you? A. Yes, sir.

Q. And he has been good to you, too—he has given you handsome presents? A. I don't know in what way.

Q. Well, hasn't he given you a pin?. A. Christmas gifts, yes, sir.

A. Jewel pins? A. Gave me a pin for Christmas gift, yes.

Q. Hasn't he given you a jeweled ring? A. He gave me a ring as a Christmas gift.

Q. Hasn't he made you presents of other property? A. No, sir.

Q. Didn't give you any stock? A. Yes, sir; Mr. Duke made me a present of some stock.

Q. In the tobacco company? A. Yes, sir.

Q. Do you ever take meals with Mr. Duke? A. Yes, sir.

Q. How long since? A. I don't understand the question.

A. How long since has it been your habit to take meals with Mr. Duke at the farm? A. Since 1898, we have always taken our meals, dined with Mr. Duke at dinner

Q. Do you take other meals with Mr. Duke too? A. No, sir, not until Mr. Duke got married.

Q. After he has been married you took meals with Mr. Duke? A. At the request of Mrs. Duke.

Q. At the request of Mrs. Duke, you say? A. Yes, sir.

Q. That request was made before or after marriage? A. Before marriage and also after.

Q. Wasn't it Mr. Duke's directions to Mrs. Duke that you should be treated as one of the family? A. I don't know nothing about that.

Q. Wasn't that the fact? A. I don't know anything about that.

MR. LINDABURY: What, the fact?

Q. That you were treated as one of the family before and after the marriage? A. I don't know what request Mrs. Duke made to Mr. Duke.

(By the Court): Q. Wasn't it, in point of fact, that you were treated as one of the family? A. Yes, sir; after the marriage.

Q. And before he was married? A. No, sir.

Q. You took dinner with Mr. Duke? A. Yes, sir.

Q. When he was out there? A. Yes, sir.

Q. When he wasn't there where would you dine, what room? A. Dined in the kitchen with the rest of the girls.

Q. And when he came out there you dined with him, did you? Yes, sir.

(By the Court): Q. Where did Mr. Paterson dine? A. Mr. Paterson dined with Mr. Duke while he was

living, this was after Mr. Paterson's death that we dined with Mr. Duke.

Q. Did Mr. Duke have a habit of taking wine in the evening? A. Yes, sir.

Q. For how many years? A. Ever since I know him.

Q. Did you partake of that, of the wine with him?

MR. LINDABURY: I object to that. It seems to me that is going pretty far.

THE COURT: It is going a good ways. They want to test, I suppose, whether this lady is not particularly prejudiced to Mr. Duke in his favor by reason of her being treated so kindly and as a sister or daughter or something of that kind.

MR. LINDABURY: Perhaps so, but whether they had wine at the table, and whether, if they did, she drank of it or not is going too far.

THE COURT: It is like Mr. Weller said about a love letter, it verges on the poetical, but I let it in.

(By the Court): Q. You have been asked and you can say whether you took a sip of wine or a whole bottle if you choose? A. Yes, sir; at times.

Q. I want to know whether it was not your habit? A. No, sir.

Q. Taking wine with Mr. Duke in the evening? A. No, sir.

Q. Wasn't it your sister Mary's habit of taking wine with Mr. Duke in the evening? A. No, sir, we never drank wine with Mr. Duke unless he asked us.

Q. Don't he ask you frequently? A. If he had anyone there we didn't have it, and sometimes we did.

Q. Are you living in Somerville now? A. I am living at Duke's farm, Somerville, New Jersey.

Q. Do you ever go to New York? A. Yes, sir.

Q. When were you last there? A. I think it was in about a week ago to do some shopping.

Q. Do you ever go to the residence—to a residence

on the corner of Eighty-second street and Fifth avenue, New York. A. Yes, I have been there several times.

Q. This summer? A. Since the 1st of September.

Q. Of this year? A. Yes, sir.

Q. Did you see Mr. Duke there? A. Yes, sir.

Q. How many times have you been there since the 1st of September down to the present time? A. I think about three or four times.

Q. Oh, well, now, is that all? A. Yes, that is all I can recall.

THE COURT: All that she can recall.

Q. Was it in the evening or daytime? A. Daytime.

Q. Did you go there to pay the help? A. No, sir.

Q. Did you see the help? A. Yes, sir.

Q. Did you see Nellie Sand there? A. I did.

Q. Did you see Matilda Andrews? A. Yes, sir.

Q. Did you see two other girls there that used to work for Mr. Duke? A. Yes, sir.

Q. Was Mr. Duke there at the same time? A. Yes, sir.

Q. What other servants were there in the house besides those four? A. Hilda—I don't know her last name—another servant there; Hilda is her first name. I don't know her last name, sister to the two other girls, and also a colored man.

(By the Court): Q. Butler, I suppose. A. Yes, sir.

Q. Who did the cooking? A. Mrs. Andrews, I believe.

Q. And what did the other girls do; did they work in the house? A. Yes, sir.

Q. Mr. Duke have his clothes there? A. He had some there, I believe.

Q. Well, how much did he have there? A. I don't know; I don't know what he had.

Q. Do you know whether he had anything to do with the alterations of the house? A. No, sir.

Q. You do not? A. He had some suggestions to make, I believe; I haven't been there to know.

Q. Didn't he oversee the alterations, direct about them? A. I don't know.

Q. Your sister, Mary Sister, go there? A. Yes, sir.

Q. Wasn't she the housekeeper of that house? A. She went there to assist Mrs. B. N. Duke.

Q. Wasn't she the housekeeper of that house. A. She went there to assist Mrs. B. N. Duke.

Q. What did she do when she was assisting there? A. See after the servants, see after the work.

Q. Didn't she overlook the servants and work of that house? A. Yes, she did.

Q. And wasn't she in the employ of Mr. Duke? She went there from the farm? A. Yes, sir.

Q. Wasn't she in the employ of Mr. Duke all the time from the 1st of September down to the present time? A. I don't know.

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

Q. Why don't you know? A. Because I can't answer the question, because I don't know.

THE COURT: Of course, you know I take notice, Mr. Parker, that this is no cross-examination, and I see that the counsel do not feel like objecting, but I notice it.

MR. CLARK: We don't object.

THE COURT: I don't object.

Q. Don't you pay your sister, Mary Smith, out of the fund there in your hands at Duke's farm? A. I pay Mary Smith, yes, sir.

Q. And haven't you paid her down to the present time? A. Yes, sir.

MARY SMITH sworn.

DIRECT EXAMINATION BY MR. CLARK:

Q. You are living with Mr. J. B. Duke, at Duke's farm? A. Yes, sir.

New Jersey State Library

Q. Near Somerville ? A. Yes, sir ?

Q. And how long have you been living there, Miss Mary ? A. It will be eleven years the 6th of next January.

Q. And what are your duties ? A. Housekeeper.

Q. And how long have you been in charge of the house as housekeeper ? A. Ever since I came there; eleven years.

Q. Who was there in the employ of Mr. Duke when you first went there. I mean, who constituted his family ? A. Mr. Paterson, my sister, and we had a cook there, and myself, not when I first went there; my sister and I were there alone for about two months.

Q. Was that when the house had been completed or was it when it was being torn down and rearranged ? A. That was after the first alteration.

Q. And how long were the alterations going on there, Miss Mary ? A. They were completed when I first went there.

(By the Court) : Q. The first alterations ? A. The alterations were completed when I went there.

Q. Then, did they commence to build over again ? A. Yes, sir.

Q. Then, how long did those alterations go on ? A. They went on for about a year. That was after Mr. Paterson's death, in 1898.

Q. And up until the time of Mr. Paterson's death Mr. Duke and Mr. Paterson, you and your sister, and the cook, constituted the family ? A. Yes, sir.

(By the Court) : Q. You had somebody under you, some maids, didn't you, to work for you ? A. Not then—yes, we did.

(By the Court) : Q. Eh ? A. Yes, sir ; we had another maid there.

(By the Court) : Q. The washing ? A. Yes, sir ; we had a laundress ; a lady came to do the washing.

Q. How long was Maggie in the house while you were there—Miss Maggie Smith—that is, how long was

she engaged in any duties in the house ? A. While I was there.

Q. Yes. A. About two months.

Q. Then she took the position in the office ? A. In the office with Mr. Paterson.

Q. And has been in the office ever since ? A. Yes, sir.

Q. Now, what do you know about this place being Mr. Duke's home ? In the first place, how much time has he spent there in the way of being there nights during the time that you have been there ? A. Well, I should judge on the average he has been there from three to four nights a week.

Q. You do not, of course, include the times he has been traveling ? A. No.

Q. And when has he been there the most ? In the summer or winter ? A. He has been there most in the summer time.

Q. What do you know about his making this his home from anything he has said to you during this time, this whole period ? A. Yes, he has often made the remark that I should try and keep the house in good condition and keep everything in order, that this was his home, and he expects to entertain all his friends there.

Q. Now, what do you know about his entertaining his immediate family there—I mean his father and sister and brother and so on ? A. Well, he always brought his friends out there, entertained them there —his father especially, and his relatives, and also business associates ; he had them there and he entertained them there.

(By the Court) : Q. What was the condition of the house as to receiving company at any time without notice ? A. Well, we were always prepared. Mr. Duke would come unexpected sometimes ; we wouldn't get word ; sometimes he would send telephones, and more times, again, he wouldn't. Late years he has always let us know, but not until late in the afternoon, so I always was prepared.

(By the Court) : Q. The bedrooms were always manteled in order for use, were they? A. Yes, sir ; everything was in order for use ; no matter how many came, there were beds there for them.

Q. And how many persons has he brought there at times without any notice? A. He has brought as many as four and five and six. I remember one time he brought six gentlemen there ; he wouldn't come unexpected, but he would send me word about five o'clock.

(By the Court) : Q. Time enough for you to buy provisions? A. I would have them in the house.

(By the Court) : Q. Had enough provisions in the house so that you could furnish dinner, or breakfast for a large party? A. Yes, sir; almost always.

(By the Court) : Q. I was going to ask you whether the state of preparation included provisions, meats and all that sort of thing? A. Yes, sir; I generally have all those things on hand a day or so before.

Q. You have a refrigerator in the house? A. Yes, sir.

Q. Large refrigerator? A. Yes, sir; we have two.

Q. What has been the habit of Mr. Duke's friends coming there in his absence, and being entertained—I mean his business friends and associates? A. Many a time Mr. Duke's business friends would come there and my sister and I would entertain them. For instance, there has several came with children, and ladies came there, and we helped entertain them.

(By the Court): Q. In his absence? A. In his absence ; yes, sir.

Q. Persons whom you knew to be his business associates? A. Yes, sir; people we had met, and knew.

Q. And has the house ever been closed since you went there? A. Never; no, sir.

Q. And what has been its condition with reference to its preparation ever since you went there as to the entertainment of guests? A. Well, do you mean in the line of having provisions, and things of that sort?

Q. Yes. A. Well, we have our own chickens, and we always have plenty of eggs, have our own hams; not our own hams.

(By the Court): Q. Have a stock of hams? A. Stock of hams, then a stock of canned goods, and in the line of that. We have plenty of eggs; I generally have meats and things of that sort in the house.

(By the Court): Q. So you could not be taken by surprise so you would be ashamed to entertain anybody that came in, is that so? A. Yes, sir.

(By the Court): Q. How many maids or men servants under you have you been having there in these past years? A. We have had a cook, chambermaid and waitress and laundress, and woman to come in and do the washing and ironing and help clean house; in housecleaning time I would engage her.

(By the Court): Q. She didn't live in the house? A. She didn't live in the house.

(By the Court): Q. You had a waitress, cook and chambermaid living there steady? A. Yes, sir; and since Mr. Duke's marriage we had an extra girl—extra chambermaid.

(By the Court): Q. Since his marriage? A. Yes, sir.

MR. LINDABURY: Didn't mention cook.

THE COURT: Yes, cook, waitress and chambermaid and laundress to come in who did not live in the house.

Q. A man of all work outside to take care of the ground? A. Take care of the furnace, shake rugs and take care of and do all the heavy work outside.

(By the Court): Q. Shovel snow and so forth? A. Yes, sir.

Q. And how long a time has that been the condition of things, Miss Mary? A. Ever since I have been there, but we have not had all those maids; we have always had cook and chambermaid and waitress, but this extra maid not.

Q. Since the house has been reconstructed, what has been the condition with reference to help?

THE COURT: Since she went there, I understand, or shortly after, he installed these corps of maids?

MR. LINDABURY: Adding one after marriage?

THE COURT: Yes.

Q. How is the house furnished with reference to care required in its management and care? A. Well, the house is furnished very expensively, and heavy furniture, rugs and Wilton carpet and bric-a-brac and oil paintings, and requires a great deal of care.

(By the Court): Q. Gives you plenty to do? A. Yes, it just keeps us busy from morning until night.

(By the Court): Q. You can mention it again. I believe it has been mentioned—the number of bathrooms and waterclosets, lavatories. A. Well, we have bathrooms; we have six bathrooms and one lavatory—two lavatories, that including the one in the basement.

CROSS-EXAMINATION BY MR. PARKER:

Q. Have you gone to New York at all during the eleven years you have stopped at Somerville? A. Yes, sir.

Q. Have you ever been to No. 11 West Sixty-eighth street? A. Yes, sir.

Q. How long—how many times? A. Well, I can't recall the times, remember them, but I have been there several times.

Q. Have you been there since Mr. Duke married Mrs. McCready? A. Yes, sir.

Q. And have you been there before he married Mrs. McCready? A. Yes, sir.

Q. How many times? A. Well, I can't recall the times.

Q. Quite a number of times, haven't you? A. No, not a number of times; three or four different times, I think; I don't think any more.

Q. Well, what took you there? A. Why, on Mrs. Duke's invitation, Mrs. McCready.

Q. At Mrs. McCready's invitation? A. Invitation; yes, sir.

Q. How came that invitation to be given? Did Mr. Duke have anything to do with it? A. No, sir; he did not. Mrs. McCready used to visit the farm and she would invite my sister and myself to come and visit her.

(By the Court): Q. That was before she was married? A. Before she was married.

(By the Court): Q. How long before she was married did she visit the farm, how many times? A. Ever since I have been there.

(By the Court): Q. Ever since you have been there she has been a visitor? A. Yes, sir.

Q. She came out there with her mother, didn't she, a great many times? A. Yes, sir.

Q. And came out there with friends, too, didn't she? A. Yes, several times.

Q. Now, what are your wages? A. My wages are $40 a month.

Q. And have they always been so? A. No, sir.

Q. What were the first wages you got? A. $4 a week.

THE COURT: That is $18 a month.

Q. They gradually increased up to $40 a month to-day? A. Yes, sir.

Q. Has Mr. Duke given you any directions as to managing the servants at the house at the corner of Eighty-second street and Fifth avenue, New York? A. No, sir; he never did.

Q. Do you do that? A. I don't do it, no; I am there two or three days a week, and I am most of the time at the farm.

Q. You have only been two or three days a week at the farm? A. No, I have been in the city perhaps two or three days, and then the latter part of the week I would be at the farm.

Q. Then during the middle of the week since September last it has been your habit of being in town—in New York—during the week? A. Well, just half between, that is, between both places.

Q. And where would you stop when you were in New York? A. Corner of Eighty-second street.

(By the Court) : Q. When was it you went there to the corner of Eighty-second street and Fifth avenue? A. In September, I can't recall the day; I don't remember the date.

(By the Court) : Q. You said something about last September, a year ago last September? A. No, this last September.

(By the Court) : Q. This last September? A. Yes, sir.

(By the Court) : Q. You never went there before that? A. No, sir.

Q. Mr. Duke was in Europe all this summer, wasn't he? A. Yes, sir.

Q. Do you remember the date he sailed for Europe? A. No, sir; I do not.

Q. It was about the middle of July? A. I don't remember. You mean this last time? He sailed the 16th of July.

Q. And after he came you made it a habit of going to the house on the corner of Eighty-second street and Fifth avenue and looking after the servants there, didn't you? A. That was at Mr. Ben Duke's request.

Q. Who is Mr. Ben Duke—brother of Mr. J. B. Duke? A. Yes, sir.

Q. Mr. Ben Duke been there all the time? A. Yes, off and on all the time.

Q. And Mr. J. B. Duke been there all the time, too? A. Well, he is as much there as he is at the farm.

Q. Now, when you say that it was Mr. Duke's habit of going out to the farm three or four times a week on the average, do you mean that he spent Sundays, came out Saturday night, and spent Sunday and go back Monday? A. Yes.

Q. And possibly come out there once during the week? A. Yes, sir.

Q. That is what you mean by saying he was there three or four times a week? A. Yes, sir.

(By the Court) : Three or four days a week she said.

Q. That is what you mean by saying he was there three or four days in a week? A. Three or four nights a week.

THE COURT : She said nights.

Q. That is what I understood. And during the daytime he was almost invariably in New York, wasn't he? A. Yes, sir.

Q. Except on Sundays? A. On Sundays, Saturdays and Sundays.

Q. What time would he get out there on Saturdays? A. Why, he generally got out there on the 2:30, and more times again on the 4:58 on Saturday afternoon; more times again he would come on Friday, come on Friday evening and stay until Monday.

Q. Then he would almost invariably go back on Monday morning, wouldn't he? A. Yes, sir.

Q. Unless it was a holiday? A. Yes.

Q. You have been to his office in New York? A. Yes, I have been at his office.

Q. You have been at his office? A. Not in his office, no.

Q. Now, Mr. Duke has given you presents, hasn't he, from time to time? A. Yes, Christmas gifts.

Q. Well, they are very nice Christmas gifts, aren't they? A. Yes; the rest of the girls in the house got the same.

Q. Has he given you stock? A. Yes, sir.

Q. How much? A. I don't remember; I don't know, I can't recall.

Q. You got it, haven't you? A. Yes, I have got it.

(By the Court) : Q. How long ago is it he gave you that? A. He gave me some stock for a Christmas present.

(By the Court) : Q. When, how long ago ? A. That was when Mr. Paterson was alive.

(By the Court) : Q. Still when Mr. Paterson was alive ? A. Yes, sir.

(By the Court) : Q. Do you know at the same time he gave some to your sister ? A. He gave my sister some, and he gave the cook some, and gave the waitress.

THE COURT : Way back.

A. Way back he gave all four girls stock.

Q. Hasn't he given you some since then ? A. Yes; he has given me some since then.

Q. When did he give you the next piece of stock ? A. He gave me the next piece of stock, as a present, after he was married.

Q. You went to the wedding, didn't you ? A. Yes.

Q. And your sister went there, too ? A. Yes, sir.

(By the Court) : Q. Down to Camden ? A. Yes, sir.

(By the Court) : Q. Where was the wedding, in a church or in a house down there ? A. In a house.

(By the Court) : Q. Some friends' house ?

MR. LINDABURY : Mrs. McCready's aunt, Mr. Duke testified.

Q. You have done the cooking out there at Mr. Duke's farm, haven't you ? A. Yes, sir.

Q. How many years ? A. How many years I did the cooking.

Q. Yes. A. I just did the cooking when we were out of the cook, and I did the cooking for a month or two when I first came there.

Q. Did the waiting ? A. Yes, sir.

Q. How many years have you done the waiting ? A. I done the waiting about six months.

Q. When you were first there ? A. Yes, sir ; when I first came there.

Q. And since that time you have not taken part in anything except looking after the house generally ? A. Yes, sir.

THE COURT : Except when a cook was away.
MR. PARKER : She would do the cooking.
THE COURT : Yes.

Q. Eat with the family ? A. Sometimes.

Q. Was it not your habit to take dinner with Mr. Duke when he was there alone ? A. Yes, sir.

Q. And when guests were there too ? A. Yes, sir ; we weren't always invited ; if he had business associates there we didn't dine at the table.

Q. Unless he requested you not to do so it was understood you would do so, isn't that so ? A. Yes, sir.

Q. Then you joined him also in the glass of wine before going to bed ? A. Yes, sir.

Q. Nine o'clock ? A. Yes.

Q. That was a regular institution, wasn't it, in Mr. Duke's house ? A. No, it was a habit of Mr. Duke ; he not only invited me to have a glass of wine, he invited the rest of the girls to have wine with him.

Q. They all come in and drank wine with Mr. Duke in the evening ? A. Oh, no ; sometimes he would have friends there, and they would have their wine.

Q. When friends were not there was it his habit to have you and Miss Maggie Smith drink wine with him ? A. Yes, sir.

MR. LINDABURY : This was before going to bed at nine o'clock ?
MR. PARKER : At nine o'clock.

Q. You have been out in the automobile with Mr. Duke, too, haven't you ? A. Yes, sir.

Q. And your sister too ? A. Yes, sir.

Q. In other words he has treated you as one of the family, hasn't he ? A. Yes, sir.

Q. And your sister also? A. Yes.

Q. And that has been the case since Mr. Duke's marriage as well as before? A. Well, yes.

Q. Who has paid your wages since the 1st of September? A. My sister.

Q. With check on the Duke farm account? A. From the Duke's farm, my pay was from the farm.

Q. Do you know who pays the other servants there at the Eighty-second street house? A. From Mr. Ben, I understand, Mr. L. Ben Duke.

Q. Do you know? A. Yes, I know.

Q. How do you know? A. Because I know he pays them.

Q. How do you know? A. Because he has given me the money to pay for them, to pay them.

Q. Didn't pay you? A. No, he didn't pay me, because I didn't live there; that is not my home.

Q. And you stayed there three days in every week since September? A. Yes.

THE COURT: About three days, she says, already sworn to that, about half the time.

A. Sometimes I would stay longer. I have been there as much as a week at a time.

RE-DIRECT EXAMINATION BY MR. CLARK:

Q. Why did you go to Mr. Ben Duke's house—at whose request? A. Well, it was Mr. Ben. It was shortly after that I came to town at Mr. Duke's request—that is, my sister and I—and Mr. Ben come up, and Mr. Ben told me I had better stay there for a while.

Q. You have been asked whether you were at the wedding. You say you were at the wedding, you and your sister. How did you happen to go to the wedding? A. We had a special invitation from Mrs. McCready.

Q. And how was that invitation conveyed to you?

A. Why, she wrote my sister; she wrote—in fact, she wrote both of us a letter, and she invited us to come in and take lunch with her, and she also stated in this letter that she wanted us to be one of the family, and that we should come in and take lunch with her, which we did the following Friday, and then she explained matters to us—told us she wanted us to go to the wedding; she sent us the invitation to the wedding.

Q. When you went to Mrs. Duke's house to take lunch, did you lunch with her at her table? A. Yes, sir.

Q. And how often? A. Well, every time I went there I took my meals at the same table with her at luncheon.

Q. How much of the time has Mr. B. N. Duke's family been at this house in Eigty-second street since September first last? A. Well, I can't recall the day they came there, but Mr. Ben has been there all the time.

(By the Court): Q. That is the one he is asking you about—Mr. B. N. Duke? A. Yes, sir. I think the first two weeks he didn't come there because there was no accommodations for him.

(By the Court): Q. The house was not in order? A. No; the house was not in order.

Q. Did you go there to put the house in order? A. I helped the girls put the house in order.

(By the Court): Q. Is Mr. B. N. Duke married? A. Yes, sir; he has a family.

Q. State what his family consists of—Mr. B. N. Duke? A. He has a daughter, a young lady, and a son, a young gentleman.

Q. And wife? A. And a wife; yes, sir.

Q. Himself, wife, daughter and son? A. Yes, sir.

(By the Court): Q. This was a new entry into a house—they just started housekeeping here at this place? A. Yes, sir.

(By the Court): Q. And you went down to put it in order and start it? A. And Mrs. Ben. Duke come up and I went with her to help do the shopping for the house, buying silverware, linen, things of that kind.

(By the Court) : Q. Then you kept on going? A. Yes, sir.

THE COURT: That is this last September, two months ago.

Q. Now, you were asked whether Mr. Duke's habit was not to come out Saturday, stay Saturday and Sunday and go away Monday. In your examination in chief you say he spent three or four nights a week there. I wish you would just explain what you mean now by your answer. Tell us his habit as to the time he came, and how long did he stay?

THE COURT: How often did he come in the middle of the week?

A. Sometimes he would come out, if he went in on Monday sometimes he would come out the following Tuesday again, and stay one night in town; then he would come out, especially when the planting was going on, he would come out and stay two or three days at a time in the middle of the week. Then he would go in and stay in town perhaps a night or two and come out again. That is how I say on an average three or four nights a week.

(By the Court) : Q. Was it usual or unusual for him to go to New York Monday morning and not come back until the next Friday night? A. No; it was not unusual.

(By the Court) : Q. How often, what proportion of the time did he come out in the middle of the week? A. He generally come out about Wednesdays; always once during the week.

Q. After the marriage was there any change made in the house at Mrs. Duke's suggestion? A. Yes; there was a change made in the parlor at her suggestion.

Q. A change in the construction of the house conservatory? A. Yes; she planned to have conservatory

on the second floor made into a sewing-room, which was done.

Q. And was the change made? A. Yes; it was made.

Q. Are you subpœnaed here as a witness? A. Yes, sir.

Q. And by the defense? A. Yes, sir; Chauncey Parker.

Q. In the change which was made in this conservatory was there any arrangement made for clothing, ladies' clothing? A. Yes, sir; there were drawers, large drawers made to hold Mrs. Duke's clothing; her dresses.

DAVID SMITH sworn.

DIRECT EXAMINATION BY MR. CLARK:

Q. Mr. Smith, where are you engaged? A. Mr. Duke's farm, Somerville.

Q. And what is your business? A. Superintendent.

Q. And how long have you been engaged as superintendent? A. Two years last November.

Q. Before that time, were you engaged with Mr. Duke in any way? A. Yes, sir.

Q. In what way? A. In building construction.

Q. And what is your business proper, Mr. Smith. A. Mason and builder.

Q. And how long have you been a mason and builder? A. Well, I carried on business for about fifteen years myself.

Q. Now, how long have you been engaged with Mr. Duke before the business of superintendent? A. Well, the first work that I did for Mr. Duke was about eleven years ago.

Q. And how much have you been engaged by him since? A. Well, in the past six years I have been there most of the time.

Q. And what do you know about the building and changes which have been made in his house with refer-

ence to making it his home? Now, that question means not only what he has said to you, but what you have done for the purpose of conforming to his directions? A. Well, in the first place, he built a dining room to his house.

(By the Court): Q. Rooms over it, I suppose? A. Yes; and afterwards the whole house was re-renovated, and he spent, I suppose, probably from fifty to sixty thousand dollars in the whole thing, I should say that much.

(By the Court): Q. The old Veghte house was a good-sized house, was it, large house? A. Yes, sir; large house.

Q. Do you know about changes being made after the work was up? A. That is, you mean after the house was completed, or while it was under construction?

Q. Go on and did all the work, and then changed it. What do you know about that? A. Well, there was changes made. Kendall, Taylor & Stephens were the architects, and Mr. Duke directed some changes in the way of chimneys, &c., and so on.

THE COURT: You had no objection to those changes on the part of the mechanic, I suppose?

Q. That is what I want to get at. In relation to those changes, what passed between you and Mr. Duke? A. The work was done by the day, and at one particular time he came there and he looked at the hall chimney—there was only to be four inches of brick work between that and the studding, and he said he wanted to know if he was going to build that up in that style. I told him it was according to the plans. He said, "I don't care anything about the plan; I want this built to suit me. I want it built for its safety, because this is my home and I don't want the house to burn down. I want these fire places so I can use them." Well, I again said that I couldn't do this very well without seeing the architect. Of course, as

you already understand what we have to contend with between an architect and an owner and builder, and the mechanic has to keep all right with them too or he would soon get throwed out. So Mr. Duke said he cared nothing about the architect; he wanted it built to suit him, So he says, "You make the changes so it is all right." I did, enlarged the chimney. We made a stone back, made a wall about fourteen inches thick, and had it so constructed that it did not come in contact with any studds at all; and so I made changes in the other chimneys and built them in a safe—

MR. LINDABURY: Sane way.

A. Safe way.

Q. Any other occasions that Mr. Duke had any conversation with you about making this his home? A. He has never had any other conversation with me. He always spoke about its being his home and how he wanted to make a nice place out of it and changes he wanted made. He was always very much interested in it.

(By the Court): Q. Do you know the difference between what is called a building called a summer camp and a building for a permanent residence. I don't know as you know that? A. Yes; I think I do.

(By the Court): Q. Up in the Adirondacks in the mountains they put up what they call camps, pretty good buildings. A. Bungalow.

(By the Court): Q. What the gentleman wants, I suppose, is the character of this building in that respect? A. Well, it was built in the very best manner. Mr. Duke wanted it done in that way.

Q. How is the house equipped with reference to all the comforts and conveniences, fire, furnaces, &c. A. Every convenience.

(By the Court): Q. Furnace heating all through? A. Yes, sir.

Q. Electric lights? A. Yes, sir.

Q. How is the house heated? A. It is heated by hot water.

(By Mr. Lindabury): Q. Throughout? A. Yes, sir; and fireplaces, of course.

(By the Court): Q. Fireplaces in every room pretty near? A. No, there isn't a fireplace in every room, but there is one in the parlor, dining-room and library, and fireplace on the second floor.

(By the Court): Q. Rooms above? A. Yes, sir.

(By the Court): Q. Then it has hot water carried all through? A. Yes, sir.

(By the Court): Q. How is it lighted? A. Lighted by electricity.

(By the Court): Q. How long has it been lighted by electricity? A. Well, since—

(By the Court): Q. Since got electric light there, eh? A. Yes, sir.

(By Mr. Lindabury): Q. Four or five years? A. Yes, sir.

Q. I suppose the Vice-Chancellor wanted to know whether this was a substantial building or— A. Yes, substantial in every respect.

THE COURT: He said, I understood him, it was built in the very best manner.

A. In every way.

Q. It is not a summer home? A. Oh, no; no, sir, it is not; it is not classed as such.

MR. PARKER: That is cross-examination, also leading.

Q. What do you know about the length of time Mr. Duke has spent there since you have been there as superintendent? A. Well, I should think while he was here in this country it would average up from fifty to sixty per cent. of his time, that is, including nights.

Q. How long has he been in the habit of stopping there that way to your knowledge? A. Well, ever since I have known him.

(By the Court): Q. Ever since you have been working around there, eh? A. Yes, sir.

(By the Court): Q. Was he in the habit of coming out in the middle of the week as well as Saturday? A. Yes, sir; sometimes go in on Monday morning and come in on Monday evening when he had company there.

Q. How much of the time have you been spending there during the last five or six years? I mean during the day? A. Well, I have been there most of the time?

THE COURT: He said that a while ago.

Q. Are you related at all to Miss Maggie or Miss Mary Smith? A. Not at all; in no way.

(By the Court): Q. Well, what personal attention did Mr. Duke give to the various improvements that are being made there on the ground outside, as well as of the house? A. What personal attention?

(By the Court): Q. Yes. A. Well, he has a landscape architect employed and everything. Of course he consults the landscape architect, while he has suggestions of his own that they carry out in the way of beautifying the grounds, &c., and so on.

Q. What do you employ there as superintendent? A. Well, we have about three hundred and fifty men in the summer. Of course when it comes winter we have sometimes fifty men, sometimes seventy-five, it depends altogether on the weather and how our work is situated.

(By Mr. Lindabury): Q. I would like to know how many rhododendrons you have got planted there? A. I am not able to say; of course there is a great many; I should say there is as many on that place as there is in the State of New Jersey altogether.

(By Mr. Lindabury): Q. Can't you tell about how many? A. No, sir, I am not able; that does not come under my work.

Q. What do you know about Mr. Duke's voting in New Jersey, of your own knowledge? A. I went to election with him, I think it is three years now, and I see him there before that.

Q. Did you have anything to do with the changes in the conservatory? A. That is, the conservatory in the present house?

Q. Yes. A. Yes, sir; I had the work done.

Q. Do you know why it was done? A. Yes.

Q. Why? A. Mrs. Duke ordered it done?

Q. And was it not done in accordance with her direction? A. Yes, sir; it was done according to her direction.

CROSS-EXAMINATION BY MR. PARKER:

Q. You mean by that that Mrs. Duke told you herself that she wanted it done? A. She did.

Q. Do you remember when that was? A. When it was?

Q. Yes. A. I think it was about last April; I am not sure; she left word that she wanted me to call at the house next day at ten o'clock. I did so. She told me what she wanted.

Q. Where do you live, on the place? A. I don't live on the place; I own a farm adjoining Mr. Duke's.

Q. How far away from where Mr. Duke lives when he is out there? A. The nearest is about one mile; well, it is only about a half-mile; his land, his farm land and mine adjoins.

(By the Court): Q. He wants to know how far it is from his house to your house?

Q. It is about one mile.

Q. How long have you lived there? A. Seven years.

Q. Now, you have testified that Mr. Duke was out there from fifty to sixty per cent. of his time, including nights. I think that was your expression? A. Yes, sir.

Q. Do you mean to say that you know that of your own knowledge? Yes, sir, I do.

Q. You see him every time he comes out to the farm? A. No, sir; there has been times he has been out there when I haven't seen him because I would be engaged in my work, and he would come out sometimes in the evening when I would not see him, but I would hear of his being there.

Q. You would hear of his being there? A. Yes, sir.

Q. So you can't say you knew it of your own knowledge every time he was there? A. Well, that would be probably once in a while when I didn't happen to see him.

Q. Do you mean to say it was his habit to stop in and see you every time he came to the farm? A. No, sir, not every time.

Q. Well, how much of the time would he stop in and see you? A. He would stop and see me when he had business to transact with me.

Q. Any other time? A. Well, he would come around and want to know if there was anything wanting.

Q. Well, when he came out there and saw you did you know how long he would stay? A. Do I know how long he would stay on the farm, about the place?

Q. Yes; would you know of your own knowledge how long he would stay? A. Yes, I was there all the time; I would see him. Probably he would come out on Thursday evening; sometimes he would stay until Monday.

Q. Well, Maggie Smith was wrong, then?

THE COURT: You can't put that question. I won't permit that kind of a question. You can not call the attention of a witness to what another witness has said; I won't permit it. You may not be used to it, but that is my rule. That is the most offensive question. No Judge ought to ever permit it—say then such a wit-

ness has been lying or telling a different story. I don't approve it in anybody.

MR. PARKER: This is the Court of Chancery.

THE COURT: This branch of the Court of Chancery don't allow that sort of questions.

Q. Now, do you mean to say that every time that Mr. Duke came out there on a Saturday night he saw you before he left on Monday morning? A. Oh, no; I didn't say that at all, but I would have an opportunity to see him.

Q. I want to know whether you saw him; not whether or not you had an opportunity of seeing him. I want to know whether you are ready to testify here that every time when Mr. Duke came out there on Saturday afternoon to stay until Monday that you are sure you saw him so you knew he was out there. A. Well, I think there was very few times that I didn't see him; I would have every opportunity to see him when I was there on the place.

Q. What do you mean by saying he was out there fifty or sixty per cent. of the time? What do you mean by it? A. What do I mean by it?

Q. Yes. A. I mean that he would come out sometimes Thursday night, sometimes he would come out on Friday evening, and he would stay until Monday morning, and I was there on the place. I was there sometimes on Sunday and would see him; I was there at his house; would call at his house; he has called at my house.

Q. What you mean to say is that you have seen him almost any day of the week out there, isn't that so? A. I have seen him come out different days of the week; yes.

Q. Is there any one occasion that you can refer to where you are sure he came out on Thursday and stayed until Monday? A. Is there any one occasion?

(By the Court): Q. Can you pick out any one, more than one? A. Last summer a year ago he came out on Thursday evening, and on Friday we went up to

South Branch to look about a property there that he was talking of buying, and on Saturday we were around together.

Q. Sunday, too? A. Sunday? No, sir; I can't say that I saw him on Sunday, but I am not positive about that.

Q. Now, is there any other occasion that you can remember? A. Well, not just to say that I am sure he was there at that time; that is, that I was present with him. He might go away Sunday evening; I wasn't there to watch him just when he went away.

Q. All I want to be sure about, Mr. Smith, is as to whether you are testifying from your own personal recollection, or from what you understood was the situation. A. No; I am testifying from my own recollection.

Q. And you think that you can honestly and fairly say that Mr. Duke spent fifty to sixty per cent. of his time—

THE COURT: Counting nights.

Q. Counting nights, in Somerville? A. Yes, sir; I am safe in saying that.

Q. That is daytime as well as nights? A. Yes, sir.

Q. And that is your testimony? A. Yes, sir.

RE-DIRECT EXAMINATION BY MR. CLARK:

Q. What was Mr. Duke's habit when he came out about staying in the house, what would he do there? A. When he came out on the farm what would he do?

Q. Yes. A. First thing he did was to go around the farm. He would go around, first he would take a ride around the place.

Q. How long was he engaged riding around? A. He would go around the place that way, and then—always went around the place, and then after that right away he would come around and stop where we were to work.

Q. How many miles of drive has he on his place? A. Well, there is about I should say eighteen miles of drive on his own property.

Q. Macadam road? A. Macadam road; yes, sir.

Q. You frequently see him driving? A. Why, yes, out with him a great many times.

JOSEPH BARRAS sworn.

DIRECT EXAMINATION BY MR. CLARK:

Q. Where do you live? A. Somerville, New Jersey.

Q. What is your business? A. Contractor.

Q. And have you been ever in Mr. Duke's employ, or rather doing any work for him as carpenter and builder? A. I was at one time; yes, sir.

Q. And for how long a time have you been engaged in this service? A. I was there almost continuously from the fall of 1898 until January, 1903.

Q. When you say continuously you mean building for him every day? A. Building for him; yes, sir.

Q. Have you any recollection as to the amount of time Mr. Duke spent there, when you saw him? A. On the farm?

Q. Yes. During the time these buildings were being constructed that you had charge of? A. Well, as a rule he usually came out on a Friday evening and would stay over until Monday, and then perhaps he would be out once or twice through the week beside that.

Q. That was the habit? A. Yes, sir.

(By the Court): Q. Was he seeking interviews with you to see how the work was going on when he came out? A. Yes, sir.

(By the Court): Q. Did you wait there at night, or see him any time just at night or in the morning before he went away? A. Sometimes I would see him at night when he would come out, and other times I would see him in the morning, and at other times I would visit his home at night.

(By the Court): Q. Well, you understood, I suppose, during that time that when he did come out he wanted to see you about how things were getting on; is that it? A. No; I didn't have any such understanding.

Q. What care and attention did he give to the construction of the building while the work was going on? A. Well, he always knew exactly what was being done and how it was being done, and suggested changes, and give the work a great deal of attention from time to time.

Q. Did you ever hear him make any remark during that time about his home? A. I did.

Q. What did he say? A. He often told me that he did not want to spare any pains or expense, that he wished to make—all the work he did there he wanted done in a first class manner, because that the property he was beautifying and building, he wanted to make everything comfortable and good so he could occupy it as a home and enjoy it.

Q. Do you remember on any occasion when he gave any specific directions to anybody around the house, to anybody who was doing work in the house, call attention of Sloane's men? A. Yes; I recollect one time when Sloane's men were there putting down the carpet, I noticed when they fitted the carpet around the hearth they just fitted the carpet under, and I spoke to the man about it, and he said in the country they always did it that way; in the city they bind the carpets. Mr. Duke was out there, and I called his attention to it, and he went right away to the man, and he said "Here, I want you to bind this carpet," and he says "I did not think it was necessary to bind a carpet out here in the country, and didn't bring any girl along to do it." "Well," Mr. Duke says "we want this just as good out here as it would be as if it was done in the city." He said "You must understand this is my home, and I want the work done out here just as good as if I was having it done in the city, or any one else was having it done"; and the man says "I will bring

out a girl to-morrow and we will bind these carpets where they fit about the hearth," which he did.

Q. Now, did you have the charge of the building of this house? A. I did.

Q. What did you have to do with the construction of the stables—I mean his private stables? A. I superintended the construction of the stables, more particularly the electric work, plumbing and heating and carpenter work.

Q. What is the character of the building—that stable? A. Well, it is a stone building.

Q. As to expense? A. About fifty-five thousand—fifty-five or sixty thousand dollars.

(By the Court): Q. The stable alone? A. Yes, sir.

Q. How is it fitted with reference to heating arrangements and all other equipment? A. It is equipped with heat, steam or hot water heating plant that heats the offices, coachman's quarters and carriage rooms, and then the building is lighted with electricity throughout, the court, carriage room, stables, offices, coachman's quarters, store rooms, furnace rooms, basements and so on and so forth.

Q. Now, what about the house proper? A. The house?

Q. Yes? A. That is also heated and lighted with electricity, heated with hot water throughout and lighted with electricity. It also has a filtering plant in the house to filter all the water that comes in for drinking purposes, and everything done which you would find in a modern house.

(By the Court): Q. First-class? A. First-class in every respect.

Q. What about the furnishing? A. Furnishing is of elegant design and workmanship and quality, and so on and so forth.

Q. Now, how is the water supply furnished? A. From a reservoir on the farm.

Q. Covering how many acres? A. Well, I don't know about that; I don't know how many acres it does

cover; I imagine the reservoir would cover four or five acres.

Q. How many acres are there in artificial lakes? A. I don't know about that; I couldn't say.

(By Mr. Lindabury): Q. Approximately, five or a hundred? A. Well, I should say there were ten acres of ground, anyway, given up to artificial lakes; perhaps more.

Q. Do you remember anything about the change which occurred at the time Mr. Duke directed some change to be made about the chimney? What was said about that at that time? A. I do remember, yes.

THE COURT: Oh, you need not repeat that; there is no contradiction. I shall believe what the witness swore to. Do you know anything about the conservatory being built there?

A. I do.

(By the Court): Q. What do you know about it? Tell it quickly. A. That is the work that was done there lately?

(By the Court): Q. Yes; as to who directed it? A. The first I heard of the change was through Mr. Smith.

(By the Court): Q. Did you ever talk with Mrs. Duke about it? A. I did not; that is, about the change.

(By the Court): Q. Did you get any orders from her about it? A. Through Mary Smith I understood.

(By Mr. Parker): Q. You got your orders from Mary Smith then? A. I was first called there to do the work by J. W. Smith, and he told me Mary Smith knew all about how the work was to be done, and I should get my direction from her, which I did.

Q. Did you or not do the work in accordance with the directions you received? A. I did.

CROSS-EXAMINATION BY MR. PARKER:

Q. With the exception of that work all of your work was finished, as I understand you, in January, 1903?

A. Well, I was occasionally called there to make some little changes. Once I was there, I forget the date, we changed the gutters on the house.

Q. Those were ordinary repairs or some inconsequential thing, but the principal part of the work was finished previous to January, 1903, wasn't it ? A. Yes, sir.

Q. And the house had been furnished previous to that time ? A. Yes, sir. Well, I say furnished; I noted from time to time as I went into it there had been new things purchased and placed in the house.

Q. But this conversation you overheard Mr. Duke have with somebody that was laying carpets, Sloan's man, was that previous to January 1903 ? A. Yes; that was the time the house was finished and the house was being furnished, first furniture being brought in.

Q. Was that previous to January, 1903 ? A. Yes, sir.

Q. And the other conversation you related, the first one, was that previous to January, 1903 ? A. What conversation do you allude to ?

THE COURT: Conversations in which he spoke of, told that he wanted it done in the best manner for his home.

A. Oh; those conversations were quite frequent at times.

(By the Court) : Q. But all before January 1903 ? A. Yes; all previous to 1903.

MR. PARKER: There is one question we omitted to as Mr. Duke.

JAMES B. DUKE recalled.

FURTHER CROSS-EXAMINATION BY MR. PARKER :

Q. Mr. Duke, we do not want to go unreasonably into your private affairs on the question of financial ability, and all that sort of thing, but we would like to

have some general expression from you as to your financial responsibility and wealth. You are a—

MR. LINDABURY: Wait, wait.

A. I can pay all my debts.

Q. Are you a man of large wealth?

MR. LINDABURY: I object as irrelevant for this inquiry.

THE COURT: I am afraid I will have to admit that question for this reason, that you have proven that he has expended a great deal of money out there—first, seventeen hundred acres of land, which was a very large holding for New Jersey, in that part of it, and that he spent a great deal of money in making it into a park, artificial lakes, all this sort of thing; that he has spent a large amount in a house, sixty thousand dollars in furnishing it, fifty or sixty thousand dollars in an elaborate, modern up-to-date stables, and all that sort of thing, and it seems to me, while I dislike to have a question of that kind put, it seems to me that it is competent for them to show that that is no more than a flea bite, if you can use the expression, to Mr. Duke. He may be such a multi-millionaire equal to Carnegie for what I know. In that point of view you may answer the question.

A. What is the question, please?

Q. Are you a man of large wealth? A. Well, as compared with some people, yes; and as compared with some people, no.

Q. Are you worth over ten million dollars?

MR. LINDABURY: I object to that as irrelevant and improper.

A. I haven't really taken an inventory of my affairs for a good while.

(By the Court): Q. Good deal depends on what the value of tobacco stock is?

A. Sometimes it is more, sometimes it is less; I don't figure it up very often.

MR. PARKER: I don't wish to annoy the witness an this subject. I think it is legitimate in the point of view that your Honor has suggested.

THE COURT: You may make any further answer to that that you see fit. The question is whether you are worth as much as ten million dollars?

A. I expect I am.

THE COURT: I think that will do, Mr. Parker. I don't want to get into a thing of that kind.

Q. Do you recollect the campaign in 1892 between President Cleveland and Mr. Harrison when General Harrison ran the second time? A. I remember something about it.

MR. LINDABURY: You recollect the fact?

A. I remember there was such a race.

Q. Now, do you recollect also the fact that the question of the tariff was the issue that was principally discussed in that campaign? A. I don't remember. I know the tariff has been up quite a number of times. I don't know whether it was in that campaign.

Q. Do you remember when the McKinley bill was passed? A. No, I don't remember the year.

Q. Do you remember when the Wilson bill was passed? A. I think the Wilson bill was passed during Cleveland's last term.

Q. The McKinley bill was passed during the preceding term, wasn't it ? A. I don't recall.

Objected to.

MR. PARKER : I want to know if he voted in the campaign of 1892 ?

A. I don't believe I did.

Q. Are you quite sure you did not ? A. I am not sure I did or did not, but I don't think I did.

Q. Isn't it a fact that you voted that year in New York ? A. Never voted in New York to my recollection in my life.

Q. You never voted there in your life ?

THE COURT : To his recollection, he says.

Q. Not even in this campaign of 1892 ? A. I have answered the question.

PETITIONER RESTS.

MRS. EMMA SLEDGE, sworn.

DIRECT EXAMINATION BY MR. PARKER :

Q. Where do you live, Mrs. Sledge ? A. 44 West One Hundred and Ninth street, New York City.

Q. And have you been employed by Mrs. Duke ? A. Yes, sir.

Q. For how many years ? A. Three, little over.

Q. That was three years this last past continuously ? A. Yes, sir.

Q. And in what capacity have you been employed by her ? A. Washing.

Q. Where did she live during those three years ? A. No. 11 West Sixty-eighth street.

Q. New York City ? A. Yes, sir.

Q. You have been in the house, have you ? A. Yes, sir.

Q. What sort of a house is it ? A. Nice private house.

Q. Well, is that a nice locality there in West Sixty-eighth street ? A. Yes, sir.

Q. How far is it from the park ? A. I think three doors from the park, I think.

Q. And is it Eighth or Ninth avenue that runs along the park, Central Park ? A. Eighth.

Q. And do you recollect whether this house is on the north side or south side of the street ? A. It is on the north side.

Q. North side ? A. Yes, sir.

Q. How many stories are there to it ? A. Four and basement.

Q. Is it handsomely furnished ? A. Yes, sir.

Q. And has it been so during your recollection ? A. Yes, sir.

Q. And what has it been used for during all those three years ? A. Private house.

Q. Dwelling house ? A. Dwelling ; yes, sir.

Q. And who do you say had lived there ? A. Mrs. Duke.

Q. And who else lived there ? A. No one else.

Q. Did Mr. Duke live there ? Q. Oh, yes, he was there.

(By the Court) : Q. He hasn't been married. Who lived there before they were married ? A. Mrs. Duke.

Q. And did Mr. Duke live there, too ?

MR. LINDABURY : One moment, now. That is characterising, I suppose, Mr. Duke's visits there, which is not right.

(By the Court) : Q. Wasn't any other lady living there with Mrs. McCready ? A. No, sir.

Q. You did the wash, didn't you ? A. Yes, sir.

Q. Every week ? A. Every week.

Q. Did you do any of Mr. Duke's wash ? A. I did.

Q. For how many years past ? A. Three years.

Q. Continuously ? A. Yes, every blessed Monday.

Q. How if he was away ? A. Well, I didn't have it then.

Q. Did you do that separately or as part of the family wash ? A. Part of the family wash.

Q. Did you ever see Mr. Duke there ? A. Yes, sir.

Q. When ? A. I saw him one morning, he came down to see how the furnace, the heat of the furnace was.

Q. Was that before or after the marriage ? A. Before.

Q. How long before ? A. I couldn't tell you exactly how long ; it might have been a year or more, because when they put the new furnace in—

Q. Was it your habit to go up stairs and get the clothes ? A. No, sir.

Q. They were brought to you by whom ? A. By Nellie, the waitress, or the chambermaid would bring them down.

(By the Court) : Q. Then you didn't see Mr. Duke yourself only once ? A. That is all.

Q. Have you seen him since his marriage there ? A. No, sir.

Cross-examination by Mr. Lindabury :

Q. You did reside in the house, do I understand ? A. No, sir.

Q. Came there to do the washing ? A. Yes, sir.

Q. And how many times a week were you there ? A. Two.

Q. So you did it up in two days ? A. Yes, sir.

Q. Do you know who constituted Mrs. McCready's family ? A. No one but herself.

Q. What ? A. No one but herself when I was there.

Q. You mean you didn't wash for anybody but her ? A. And Mr. Duke, and Nellie, the waitress.

Q. Nellie was a waitress ? A. Yes, sir.

Q. Now, you only saw Mr. Duke once while you were there ? A. That is all.

Q. And then he came down to look at some new furnace? A. Yes, sir.

Q. That Mrs. McCready had put in? A. Yes, sir.

Q. And that was in the morning? A. Yes, sir.

Q. How many years ago was that? A. I think the new furnace has been put in about two years.

Q. Now, you sometimes washed men's clothing? A. I washed every week men's clothing.

(By the Court): Q. He asked you whether you washed men's clothing? A. Yes, sir.

Q. What kind of clothing? A. Underwear.

Q. How do you know it was Mr. Duke's? A. Well, they all said it was Mr. Duke's.

Q. You didn't ever see it on Mr. Duke, of course? A. Of course I didn't.

Q. Or see it come off? A. No.

Q. Some man's underclothing you washed; that is all you know, isn't it? A. It was Mr. Duke's underclothes.

THE COURT: Only what was told her.

Q. Except what somebody told you? A. Yes.

Q. Did Mrs. McCready tell you it was Mr. Duke's? A. No, sir.

Q. How long ago did you begin to wash some man's underclothing there? A. For three years.

Q. Are you doing it still? A. No, sir; I am not now.

Q. When did you cease doing that? A. Well, since they came back from Europe.

Q. All the time he was in Europe you did it, I suppose? A. No; of course not.

Q. I thought you said it ceased when they came back. You mean when Mr. and Mrs. Duke returned from their honeymoon? A. Then I did his wash, but when he went back a second time I did not.

Q. When he went back a second time was this summer? A. Yes, sir.

Q. You ceased when he returned you say? A. Yes;

when he returned; until he returned I didn't have his clothes.

Q. Until he returned you continued to wash these clothes.

RE-DIRECT EXAMINATION BY MR. PARKER:

Q. Is that what you mean, while Mr. Duke was away in Europe you washed men's clothes? A. No, sir; I did not.

Q. Did you notice whether the clothes were marked at all? A. No, sir.

Q. They were not marked?

THE COURT: Says she doesn't know whether they were marked or not.

A. No; there was nothing marked.

Q. Did you wash any shirts? A. No, sir.

(By the Court): Q. Only underclothes? A. Underclothes, that is all.

Q. Do you know what was done with the shirts? A. Returned to the laundry.

(By the Court): Q. Did you see them go, or only what you heard in the family? A. The boy came after them every Monday morning, three and four shirts.

CROSS-EXAMINATION BY MR. LINDABURY:

Q. Do you know what kind of night clothing a man wears? A. Yes, sir.

Q. Was this night clothing that Mr. Duke wore when he happened to be there? A. Yes, sir.

Q. In other words, pajamas. A. That is all.

JENNIE LINCOLN, Sworn:

DIRECT EXAMINATION BY MR. PARKER:

Q. Where do you reside? A. In New York, 245 West One Hundred and Fourth street.

Q. How long have you known Mrs. Duke ? A. I have known Mrs. Duke about five years.

Q. And what has been your occupation ? A. I was a dressmaker at one time for Mrs. Duke.

Q. Did you meet her first in connection with dress making ? A. Well, no, not exactly ; I met her in East Orange at a friend's house five years ago.

Q. Where was she living at that time ? A. In New York.

Q. Do you remember what her address was ? A. I think then it was an apartment house ; I think so ; I don't know.

Q. Do you remember her living in Eighty-sixth street ? A. Yes.

Q. Did you ever visit her there ? A. No.

Q. And do you remember her living at any time at No. 11 West Sixty-eighth street ? A. Yes ; that is where I did her dress making.

Q. And how long ago was it that you did the dress making there ? A. In 1903.

Q. In 1903 ? A. The spring and summer of 1903, up to August.

Q. How long were you at Mrs. Duke's house at that time ? A. I was there about four or five weeks right steady.

(By the Court) : Q. What time did you get there in the morning ? A. Eight o'clock.

(By the Court) : Q. What time did you leave in the afternoon ? A. At six.

Q. Wasn't there every day ? A. Yes.

Q. Did you ever see Mr. Duke there ? A Yes, sir.

Q. On that occasion ? A. Yes, sir.

Q. Just state the circumstances, please ? A. I met Mr. Duke twice when I was leaving the house when he let himself in by the door key ; I met him another time when I was approaching the house and he was leaving to go into his carriage.

Q. And that was during these five weeks ? A. Yes. At another time I met him, there was a fire in one of

the back streets and he and Mrs. Duke, who was then Mrs. McCready, came upstairs and passed through the rooms and just talked and commented about the fire.

Q. Do you know whether Mr. Duke had a room in the house? A. Yes, sir.

Q. Where was it? A. Situated on the third floor.

Q. What part of the house? A. Back.

Q. Bed room? A. Bed room, bath room, dressing room.

Q. Do you know whether he kept any clothes there? A. Yes; I have seen clothes taken from a closet that was said to be Mr. Duke's; his coachman came and took them to be pressed and cleansed; when they came back Nellie Sands placed them back into the closet.

Q. Do you know the name of the coachman? A. Richard it seems to me is the name; I don't know.

Q. Do you know his last name? A. No; I don't.

Q. Did you ever hear the name Richard O'Hara? A. Yes; I have heard that.

Q. Is he in court? Is that the man (indicating)? A. Well I wouldn't know; I really wouldn't know.

(By the Court): Q. He was in uniform when you saw him, I suppose? A. No, he wasn't.

Q. Is this the gentlemen (indicating)? A. Yes, he looks like the man; still I will not say positively that he was the man.

Q. Now, have you been at the house at any other time? A. Oh, yes, a great many times.

Q. During what period of time? A. Well, occasionally to go there and do some sewing for Mrs. Duke.

Q. For a day or two? A. Yes, sir.

Q. Well, can you tell about when that was, whether it was after the spring of 1903? A. During that summer when she broke her arm.

(By the Court): Q. Before she was married? A. Before she was married.

Q. And later on any time? A. Well, just recently; just recently.

Q. You mean during the last few months you have

been there? A. Just went there the other day to do something.

Q. Now, can you recollect any other occasion when you saw Mr. Duke there previous to Mrs. McCready's marriage than the one that you have related? A. Well, I can't say that I saw him, but the servants told me that he was in the house, knew that he was there.

THE COURT: I only suggest to you, gentlemen, that Mr. Duke admits that he stopped there about three days in a week, and he kept a pair of horses and carriage, and I don't know how many more in New York, and used them in the ordinary way.

MR. LINDABURY: I think his testimony shows that he was there more times than she seems to have seen him.

CROSS-EXAMINATION BY MR. LINDABURY:

Q. Did you talk with Mrs. McCready about Mr. Duke or his presence there? A. No, sir.

Q. Did you understand that it was her home? A. It was her home, but Mr. Duke had a home there also; that is what I understood.

Q. Who did you understand that from? A. From the maids in the house.

Q. Not from Mrs. McCready? A. Not from Mrs. McCready.

(By the Court): Q. Was there any other lady about the house at the time, her mother or aunt, or somebody there? A. No; she lived there alone with her servants.

NELLIE SANDS, sworn.

DIRECT-EXAMINATION BY MR. PARKER:

A. Miss Sands, what is your occupation now? A. Well, I am doing chamber work and sewing and embroidery.

Q. Whereabouts? A. On Eighty-second street and Fifth avenue.

Q. Corner Eighty-second street and Fifth avenue? A. Fifth avenue; yes, sir.

Q. How long have you been living there? A. Since August.

Q. What date in August?

THE COURT: This year?

A. This year; yes, sir. I don't recall the date; some time in August.

Q. Well, shortly before the first of September, 1905, of this year? A. Yes, sir; somewhere around there.

Q. And where had you lived before that? A. 11 West Sixty-eighth street.

Q. And who had you been employed by? A. Mrs. Duke.

Q. And how long had you been employed by her? A. About five years.

Q. What was your business in the house? A. Well, I did waiting and chamber work when I first went there.

Q. And where did Mrs. Duke reside during those five years? A. In New York.

Q. What part of New York? A. Eighty-sixth street and Sixty-eighth street.

(By the Court): Q. Eighty-sixth street first and then Sixty-eighth street? A. Yes, sir.

Q. Did she move directly from Eighty-sixth street to Sixty-eighth street? A. No, sir.

Q. Where did she go after she gave up the Eighty-sixth house? A. She went down to Collinwood Hotel.

Q. And where was that? A. I don't know what street.

Q. In New York? A. Yes.

Q. How long did she live there? A. Well, I don't know, because I went home.

(By the Court): Q. You were not there with her? A. No; I was not there by her.

Q. Now, since last September down to the present time, have you seen Mr. Duke? A. Yes, sir.

Q. How often? A. Well, I don't recall; two or three times a week I expect, something like that.

Q. Has he lived in the Eighty-second street house? A. Yes, sir.

Q. You have been working there, haven't you? A. Yes, sir.

Q. You were engaged to go there, weren't you, by Mr. Duke? A. No, sir; Mr. Ben.

Q. Well, now, one minute?

THE COURT: Who spoke to you first about going there to live?

A. Mr. J. B. asked me if I should like to go and stay at Mr. Ben. Duke's.

Q. You were living with Mr. Duke then, weren't you? A. Yes.

Q. And you were told that Mr. Duke wanted to see you? A. Yes, sir.

Q. And you went out and saw him? A. No, not Mr. Duke wanted to see me; no, somebody wished to see me.

Q. Somebody wished to see you, and you went out to see who it was? A. Yes, sir.

Q. And did you meet Mr. Duke and Mr. Parker here? A. No; only Mr. Duke.

Q. Wasn't Mr. Parker with him, too? A. No, sir.

Q. And where was he? A. I don't know where he was.

Q. Well, you saw him, you ought to know where he was? A. I didn't see him that day, only in the evening, I think it was at his apartment, that is all, but I didn't see him at that time.

Q. Didn't you see him that afternoon in the street? A. No; it was in the evening.

Q. In the evening you saw him at the apartment? A. Yes.

Q. What apartment? A. Well, I don't recall the name of the apartment; it was in 61st street.

Q. Oh, where Mr. Parker lived? A. Yes, sir.

Q. And then Mr. Duke told you he would like to have you work for Mr. Ben Duke?

MR. LINDABURY: This witness is having questions put to her—

THE COURT: (addressing Mr. Parker) She is your witness. You better not put such leading questions; it loses its effect. I don't know what value to put on evidence gotten out by leading questions.

MR. PARKER: It is not leading questions. She has already testified to it. She is simply repeating a statement that is already made.

Q. What did Mr. Duke say to you about going to work? A. Well, he only said that Mr. Ben Duke, that that was his house and he said he was going to fix up the house and Mr. Ben Duke was going to live there, and, of couse, he was going to live with him, and he asked if I would like to take a position, and I said "yes, certainly."

Q. Who was it that was going to fix it up?

THE COURT: She said they were fixing up a house, Mr. Ben Duke was going to live there, and he, Mr. J. B. Duke was going to live with Ben?

A. Yes, sir.

Q. Who did he say was fixing up the house? A. It was Mr. Ben's house and he was going to fix it up and decorate it and he was going to live with him.

Q. And he was going to live with J. B. Duke; is that right? A. No; he was going to live with Mr. Ben Duke.

Q. Mr. J. B. Duke was going to live with Ben Duke? A. Yes, sir.

Q. And accordingly did you go to work for Mr. Ben Duke? A. Yes; we started in to work right along.

Q. And after that how much of the time did you see Mr. J. B. Duke there at the house? A. I can't exactly—well, it was about three or four times a week; sometimes he was out to the farm about from Thursday until Sunday, or something like that; I can't exactly recall how many times, but about that.

Q. But he slept at the Eighty-second street house, didn't he? A. Yes, sir.

Q. Had his room there? A. Yes, sir.

Q. Had his clothes there? A. Yes, sir.

Q. Lived there to all intents and purposes, didn't he? A. Yes, sir.

THE COURT: Her answer to that will be of no use to me whatever. I will not accept it. You are just wasting your time to draw such answers out of a witness to me, I assure you. I don't care one snap for her opinion or her answer to that question. You might as well stop it. Just tell what she saw or did.

Q. Did I understand you to say you did the chamber work? A. Some of the chamber work and sewing.

Q. Now, who else lived in that house beside Mr. J. B. Duke? A. Mr. Ben Duke, and Mrs. Ben Duke and Miss Mollie Duke and Mr. Andrew Duke.

Q. Were they children of Mr. Ben Duke? A. Yes, sir.

Q. And do you know whether Mr. J. B. Duke slept there?

THE COURT: He says he did; he swore he did on the stand. He swears he did, and had the run of the house, and paid the bills, I guess; I think he admitted that.

MR. LINDABURY: No.

THE COURT: Not the bills of running the house.

MR. KALISCH: There is testimony that bills were paid with his money.

THE COURT: Yes.

Q. Now, Mary Smith, was she there any length of time, the time she says—

THE COURT: She says she was.

Q. I was asking this witness? A. Yes, she was there.

Q. And did she give you instructions as to your duties? A. Why, yes, sometimes she did, and, of course, Mrs. Ben. Duke; of course she was only assisting Mrs. Ben. Duke.

Q. Who paid the money to you for your wages? A. Miss Mary Smith gave us the money.

Q. She paid you and paid Tillie Andrews, Mrs. Andrews? A. Yes, I expect so. I never saw her give her the money.

Q. And the two other servants that were formerly with Mrs. Duke? A. I never saw her give them the money, but I suppose she paid them.

MR. PARKER: I want to offer in evidence this letter. It has been identified by Mr. Duke.

MR. LINDABURY: This has been offered in evidence. I submit this letter to the Vice-Chancellor to read upon the question of its utter irrelevancy. There can be no possible decent object in putting it in evidence.

MR. PARKER: I also offer in evidence the envelope in which it was directed. I think it is relevant.

HILDA SEGER sworn.

DIRECT EXAMINATION BY MR. PARKER:

Q. Are you employed by Mrs. Duke? A. Yes, sir.

Q. And how long have you been in that service? A. Since the 15th of May this year.

Q. Of this year? A. Yes, sir.

Q. Now, where has Mrs. Duke resided from that time? A. Eleven West Sixty-eighth street, New York.

Q. And what were your duties in the household? A. Cook.

Q. Cook? A. Yes, sir.

Q. What other servants were there there at that time? A. There was Nellie Sand, Mrs. Andrew and Anna Bunderson and Louise Bunderson.

Q. Now, did Mr. Duke live there, too. A. Yes.

Q. How long did he live there after the 15th of May, as you know? A. Until the time he went to Europe.

Q. And when was that? A. In July.

THE COURT: Sixteenth of July; it has been proven.

Q. And did the house continue open during all the time between the 15th of May and 16th of July? A. Yes, sir.

Q. The servants were all there? A. Yes, sir.

Q. The housekeeping went on? A. Yes, sir.

Q. And during the summer did it continue so? A. Yes, sir.

Q. Down to the first of September? A. Yes, sir.

CROSS-EXAMINATION BY MR. LINDABURY:

Q. Was Mrs. Duke there all the time? A. Yes, sir.

Q. All the time? A. Yes, sir.

Q. What? A. Well, occasionally she would go with Mr. Duke out to the country place.

Q. No, but while Mr. Duke was in Europe? A. Yes; she was there.

Q. All the time? A. Yes, sir.

Q. Every day? A. As far as I know.

Q. Wasn't she away with anybody during that time?

THE COURT: Oh, well, I guess we better leave that. We are not on that issue now.

MR. CLARK: Mr. Parker, is it understood the Somerville witnesses you subpœnaed are discharged?

MR. PARKER: Are discharged.

WILLIAMSON W. FULLER, sworn:

DIRECT EXAMINATION BY MR. PARKER:

Q. You are the general counsel for the American Tobacco Company? A. I am sir.

Q. And you have been so for how many years? A. I have been so since February, 1895.

Q. Were you connected with the company previous to 1895? A. Not in any regular official capacity, Mr. Parker, but occasionally had to do business for it very frequently. I was connected with its organization.

Q. All I wish to ask you about is as to whether the headquarter, the general headquarters for the handling of the business of the company—I mean the offices of the directors and the offices of the president of the company and your own office, and all that, Mr. Duke's office—was or were not in the City of New York? A. Yes, sir, the principal office for the transaction of business, though the official head office of the company was in New Jersey, at one time in Newark and now in Jersey City.

Q. But the place where the business was, the commercial part of the business was transacted was in New York City? A. Mainly in New York City; much of it in Jersey, however.

Q. Now, Mr. Duke, the president, has been very assiduous in the discharge of his duties, has he not? A. Always, sir.

Q. Always been very particular and regular about attending at his New York office? A. I have never known a man more attentive to his business, sir.

CROSS-EXAMINATION BY MR. LINDABURY:

Q. You knew Mr. Duke before you became counsel, did you not? A. Yes, sir.

Q. You were North Carolinians together? A. Yes, sir.

Q. You came on from there to become counsel for the American Tobacco Company? A. Yes, sir.

Q. And have you been close to Mr. Duke since you came on? A. Yes, sir.

Q. And had knowledge of his private affairs? A. I suppose so, in a greater degree than anybody else.

Q. Now, then, did you during this time that he was giving this attention to the American Tobacco Company's affairs in the City of New York know what he regarded and treated as his place of domicile?

Objected to as not cross-examination.

MR. LINDABURY: I think it is, your Honor.

THE COURT: Oh, yes; I think so. I overrule the objection.

A. I did.

Q. What do you understand from him to be his place of residence? A. Duke's Farm, near Somerville, in Somerset County, New Jersey.

Q. Were you ever there with him? A. Oh, frequently, and frequently there when he was not there.

Q. Did you ever hear him speak of any other place as his home? A. Never, in my recollection; I have never heard him speak of any other place as his home since he left North Carolina, but I certainly haven't since he acquired that land in New Jersey.

Q. And was it not his habit to speak of the Somerville place as his home? A. Yes, sir.

Q. It was his habit? A. Yes, sir.

Q. Was it the place that he took pride and pleasure in, a special pride, I mean, and pleasure? A. The very greatest pride, sir. I often tried to keep him from taking so much pride in it, but he spoke of it as the place where he took—

MR. PARKER: That is very unfair.

A. I suppose that remark is addressed to me. He took the very greatest pride in it, took pride in it regardless of expense.

MR. PARKER: I beg your pardon, Mr. Fuller. I did not mean—I did not think it would reach your ears.

RE-DIRECT EXAMINATION BY MR. PARKER:

Q. You knew that Mr. Duke had lodgings in New York, didn't you? A. I knew, Mr. Parker, after a while of his relations in New York; I did not at first know of them; I knew that he sometimes stayed in New York, and in a general way I knew his habits in regard to that.

Q. You received this invitation to the wedding with the notice that Mr. and Mrs. Duke would be at home at No. 11 West Sixty-eighth street, announcement of the wedding? A. I very distinctly remember receiving announcement of the wedding, and I do not doubt at all it is just the one you showed, but I have no positive recollection of what was stated on it. I do not doubt it was the one you showed, but I can't say it was.

Q. Were you concerned at all in the litigation between Mr. Stockton and the tobacco company? A. You mean that between the Attorney General of New Jersey?

Q. Yes. A. Yes, sir.

Q. You were concerned in it? A. Yes, sir.

Q. There was some question in that case, wasn't there, as to the *bona fides* of the residence over here of

the company? A. I do not recall any such question, sir. I can state what the question was if you wish it. I never heard of any such question as that, so far as my memory serves me. It may be we don't understand your question in the same way.

Q. I mean the *bona fides* of the residence of the company in this State. Wasn't that questioned in the suit? A. Not as I understand it, sir.

Adjourned until Thursday, December 21st, 1905, at 10 o'clock A. M., at Chancery Chambers, Prudential Building, Newark, N. J.

DECEMBER 21, 1905.

Between

JAMES B. DUKE,

Petitioner,

AND

LILLIAN N. DUKE,

Defendant.

Continuation of examination in the above-entitled cause on Thursday, December 21, 1905, at the place and in the presence of the parties as before.

THE COURT: At the rising of the Court this letter had been offered in evidence and objected to. I see no harm in it. It need not be read.

Marked "Exhibit D A."

JAMES B. DUKE called by the defendant.

DIRECT EXAMINATION BY MR. KALISCH:

Q. Mr. Duke, outside of your connection with the corporations connected with the American Tobacco Company, are you connected with any other corporation?

A. I think probably I am director in some of the other corporations.

Q. What corporations are you director in?

A. I don't believe I could give you the names of all of them.

Q. Will you give me the names of a few of them?

Objected to as irrelevant.

Objection noted and overruled.

A. I am director of the Morton Trust Company, National Bank of Commerce of New York, Virginia-Carolina Chemical Company. I don't remember whether I am director of some of the cotton mills of North Carolina that I am interested in or not.

Q. How long have you been a director of the Morton Trust Company?

A. Three or four years I think; I don't remember just the date.

Q. Are you the owner of any personal property situated in the City of New York?

THE COURT: What kind of personal property? You mean movable chattels?

MR. KALISCH: Movable chattels; yes.

THE COURT: He said he owned a pair of horses and carriages.

Q. Besides the horses and carriages? A. You mean stocks or bonds?

THE COURT: No; not stocks or bonds. Movable property such as you can handle.

A. I have got some clothes at my brother's house at Eighty-second street.

Q. Besides clothing?

THE COURT: Machinery, anything you can put your hand on; I mean your manual.

A. I don't recall anything, if I understand what you mean.

Q. Have you been assessed on personal property in the City of New York? A. Not for several years I don't think.

Q. Have you ever been assessed upon personal property in the City of New York? A. Yes; I think I have. I didn't pay on it because I was not a citizen; I didn't pay taxes on it because I was not a citizen.

Q. Don't tell me why. Just answer my question. When were you first assessed upon personal property in the City of New York? A. I can't remember.

Q. Were you assessed as early as 1885? A. I don't recall, but probably was; then I was a resident of North Carolina.

Q. Were you assessed during the years 1885, 1886, 1887, 1888 and 1889 upon personal property in the City of New York? A. I don't remember the years; I know that on several occasions I was assessed, but I didn't pay the tax, because I declared myself as either a resident of North Carolina or New Jersey.

Q. You did not declare yourself a resident of New Jersey in 1889, did you?

THE COURT: He said either he declared himself a resident of North Carolina or New Jersey.

Q. I understand his answer, sir. And were you assessed upon personal property in 1900, 1901 and 1902 in the City of New York? A. Well, I can't say; I would have to guess, guess about that. I know sevseveral times they did assess me since I have been in this part of the country, but I can't remember the years.

Q. Did you have cash on hand in the banks in the City of New York? A. I don't usually keep much cash in bank.

Q. Did you have a bank account? A. I have always kept a bank account; yes, sir.

Q. In what bank? A. Farmers' Loan and Trust Company.

Q. Did you have your securities, stocks, bonds, &c., deposited in a safe deposit company?

MR. LINDABURY: I object.

THE COURT: I will let the evidence go in.

A. I think sometimes I have had some there.

Q. To what extent?

MR. LINDABURY: I object.

A. Well, I cannot recall to what extent; it was sometimes more, sometimes less.

Q. I know, but up to what sum have you had deposited in the safe deposit company? A. I would have to guess at that. I can't give you that.

Q. Well, approximately?

MR. LINDABURY: I object to this. If the Court will pardon me a moment, if this bears fairly on the question of the witness' residence, that is another thing, but it seems to me that it does not.

THE COURT: It is known to the Court that a great many people living in New Jersey probably keep their securities in New York, and some live in New York and keep their securities in New Jersey.

MR. LINDABURY: Exactly so. Evidence of this kind is sometimes, however, considered very desirable by the New York taxing authorities, and I cannot see any object in getting the details of these matters, except to furnish it to them. That sort of vindictiveness ought not

to be encouraged, but discouraged, it seems to me. Let the consequences be what they may, if it bears on the issues here fairly and legitimately it should be received, but I cannot see that it does. I therefore object to it as irrelevant, and point out to the Court that it may be harmful in other ways.

THE COURT: I cannot see how I can rule it out. The effect is quite another thing. I do not see how I can rule out the fact that he kept his millions of stocks or what not, or, if he had any bonds, I suppose he wouldn't want to bother with certificates of stock; if he had any bonds, that he kept them on deposit in a safe deposit box in New York it is a circumstance having more or less weight. I am very sorry to subject Mr. Duke—

MR. KALISCH: I certainly do not do it for any purpose except what I believe to be proper in this case, subject to your Honor's ruling.

THE COURT: Well, if Mr. Duke kept his negotiable securities in a safe deposit vault in New York he can say so, and I will not permit you to ask him how much he keeps there.

A. At times I have had.

MR. LINDABURY: One moment. The question is not as to what amount you had.

THE COURT: No; simply whether you kept any at times, and generally kept negotiable securities. I suppose those are the only ones you would want to bother putting in a safe deposit vault.

A. I have had very few negotiable securities.

(By the Court): Q. Very few bonds? A. Yes, sir.

MR. KALISCH: I understand the Court rules out this question as to the amount, the extent?

THE COURT: Yes, I do. You can ask him

whether he kept them anywhere else. That will be better. Mr. Duke has confessed to ten millions, and you can ask him, if you choose, whether he kept any of those securities in New Jersey, any of the representative of that wealth in New Jersey.

A. Most of my securities have been in stocks ; I have a few bonds.

Q. Have you kept any of the ten millions, that you have admitted you possessed, in New Jersey,—any of the securities, or any stocks, or whatever it is ?

THE COURT : Do you think the mere locality of the certificates of stock is of any consequence ? Suppose they never have been taken away from the company ? I am perfectly willing now, if I was a betting man, to wager he never took them away.

A. My securities have been mainly kept in New York.

THE COURT : That ends it.

A safe deposit vault.

MR. KALISCH : Your Honor asks me a question. If you will allow me to answer it. I do it on the authority of the case in England, that I asked these questions. If the case is not good law—

THE COURT : The English are decidedly industrious and ingenious about getting property within the range of their taxing laws.

Q. In what deposit company did you—

THE COURT : You need not answer it. He says most of them were kept in New York. That is enough.

MR. KALISCH: Without stating the place?

THE COURT: Yes. I think Mr. Lindabury's objection covers that decidedly.

Q. When did you first begin to deposit your securities with the safe deposit company?

THE COURT: You need not answer that.

A. I can't remember.

THE COURT: He says he has been keeping them there; I suppose that covers the time.

Q. Has that been since 1884?

THE COURT: You need not answer it. He spoke of his habit of keeping most of the securities in New York. That covers all the time. I cannot see any reason at all.

Q. Mr. Duke, one of the directors of the American Tobacco Company was Francis S. Kinney, was it not? A. Yes, sir.

Q. Has he always continued to be a director? A. He has not.

Q. When did he cease to be a director? A. I don't recall.

THE COURT: I don't see the sense of it.

MR. KALISCH: Your Honor, I will make it material. If I do not your Honor can strike it out.

THE COURT: I don't want to load the record up. I can't see the least sense of inquiring why this man quit being a director. You must open it to me.

MR. KALISCH: I want to show that in 1892 or 1893 Mr. Kinney, who was a resident, or presumed to be a resident of Morris County, ceased to be a director of the American Tobacco Com-

pany; that there was a law passed by the Legislature—

THE COURT: We know that. You want to prove that Mr. Kinney left and he took his place. Go on and prove it. Make quick work of it.

MR. KALISCH: I can't do it without asking him the question.

A. I do not recall the time when Mr. Kinney gave up his directorate.

Q. Was it in 1892? A. I don't remember.

Q. Did you take his place as Jersey director? A. I don't remember taking his place as Jersey director. I know after I become a citizen of New Jersey they always counted me as the Jersey director.

Q. You have no recollection then whether he ceased in 1891 or 1892, or any other time? A. I know that he ceased, but the year that he ceased I don't recall.

Q. Can you tell approximately the value of the real estate that you own in the City of New York? A. I think it cost around forty thousand dollars, my best recollection.

(By the Court): Q. The stable? A. The stable.

Q. And you bought it how long ago? A. Bought the lot twelve or fourteen years ago and built the stable on it.

Q. Is it worth more now than it was at that time? A. I couldn't say; I haven't had any offers, amount fixed on it.

Q. You don't know what property is in that neighborhood, and that is all the real estate I understand you own in the City of New York? A. That is all I recall owning.

Q. How big a plot is this stable on? A. I think it is 25 feet front by a hundred feet deep, the regulation lot.

Q. And the stable is built of brick, I presume? A. Yes, sir.

Q. Do you have rooms above the stable? A. The rooms there for the coachman.

THE COURT: He has already sworn they were for his coachman. He slept himself there once or twice, or a few times. He says his coachman occupied it. I beg of counsel not to—it is very wearisome to the Court.

MR. KALISCH: We don't want to weary the Court.

CROSS-EXAMINATION BY MR. LINDABURY:

Q. How did you get rid of the assessment of personal taxes in New York that you referred to, during the last few years? A. I give them my correct residence as being New Jersey; was not liable for the taxes.

Q. Did you or not make affidavit showing your residence was not in New York; that it was in New Jersey? A. I think so; I did not go to the tax assessors; yes.

Q. Do you remember making an affidavit or not? A. I think I do; yes.

Q. Did you in fact pay the taxes in any case? A. I did not.

THE COURT: He has already said he did not.

MR. KALISCH: He said he never did.

Q. Are you still a director of the Virginia-Carolina Chemical Company? A. I think so; yes, sir.

Q. And how comes it that you are a director there? A. Because I am a resident of New Jersey.

Q. Why do you say it is because of that? A. Because they say they have to have a New Jersey director to comply with the law here.

Q. Is it a New Jersey corporation? A. Yes, sir.

Q. And how long have you been a director in it? A. It must be six or seven years; probably ever since it was organized.

Q. Now, why do you say it is because of that? Was there any question as to whether you would serve or not on your part. A. Not at first. In the last year I told them that I wanted to resign, because I held a very small interest in it, and they requested me not to, because they said they wanted me to remain as a New Jersey director.

Q. That is the occasion of your being there now? A. Yes, sir.

MR. PARKER: We want to offer in evidence the original bill in Chancery in the case of John P. Stockton, Attorney-General, against The American Tobacco Company, filed in November, 1893, I think, and the answer of the defendants, including Mr. Duke. We wish to call attention only to paragraphs—

THE COURT: Date of the answer filed?

MR. PARKER: March 12, 1894. Paragraph 4, I think, of the bill is the one that has the allegation about there being no reality to the incorporation of the company in this State.

THE COURT: Bill to wind up the company because they had not a director residing in the State?

MR. LINDABURY: No, your Honor, nothing of the kind.

MR. PARKER: Oh, no. It says: "That the parties to said agreement caused said paper writing to be recorded in the office of the Clerk of the County of Essex, in this State, and afterwards to be filed in the office of the Secretary of State of this State, and that after such recording and filing they gave out and pretended that they had thereby become incorporated under the laws of this State by the name of the American Tobacco Company, and that the place in New Jersey where the business was to be conducted was in Newark in this State. But the Attorney General and your orators respectfully

show unto your Honor that said attempted incorporation was nugatory. That the incorporators never intended to establish any factories or depots in this State, and have not in point of fact established any, nor has the so-called The American Tobacco Company established any. That neither they nor it have any office or place of business in this State, and that neither they nor it have ever had any. That they have not at any time since the attempted organization of said company conducted the business or any part of the business of the said The American Tobacco Company in Newark or elsewhere in this State, and that all that has been done by them or by the said The American Tobacco Company in this State, since said attempted incorporation, has been to make sales and consignments of their goods in the illegal manner hereinafter mentioned to jobbers and dealers in paper cigarettes who were citizens of this State, doing business herein, from their office in New York and from their said warehouses established at other points outside of this State, they having before said attempted incorporation competed with each other in selling their goods to many of the same jobbers and dealers; and that said attempted incorporation was not a *bona fide* incorporation for the purposes contemplated by the laws of New Jersey, but one that was illusory and in fraud of such laws."

MR. LINDABURY: Go on. It is charged also that Chauncey G. Parker was the pretended agent in the State of New Jersey, and that was a fake.

THE COURT: That is not pertinent to the question.

MR. PARKER: Those charges were all denied in the answer categorically, as stated in the bill.

THE COURT: Denied that you were agent, too, I suppose.

MR. LINDABURY: I said they are quite irrelevant.

THE COURT: I cannot see, unless you want to put in the answer of Mr. Duke, if it is his answer.

MR. PARKER: It is his answer.

THE COURT: And show some admission therein—I don't see what I have to do with it. Here is a charge, you say, made against the company, that they are not properly organized because there was no resident—

MR. LINDABURY: No; the point was, the theory of counsel, the Attorney-General and counsel with him was that the corporation could not be organized in the State of New Jersey for manufacturing purposes except they intended to manufacture here.

THE COURT: Oh, yes.

MR. LINDABURY: And the allegation was they did not intend to manufacture here, and was not in point of fact manufacturing here, and the answer denied it.

THE COURT: What point of view, if you are going up on appeal from me to the Supreme Court of the United States, as I hope you are—you don't want to load it up with that kind of thing, do you?

MR. PARKER: We think this is evidence of the intention that Mr. Duke had in coming to New Jersey. That is the only reason we offer it.

THE COURT: I cannot see from your statement, Mr. Parker, that it has anything to do with it. I will, however, reserve the question of its receipt, unless the petitioner objects to that, until the final hearing, for the purpose of preventing the case being loaded up with a mass of matter that it don't seem to me to be pertinent.

MR. LINDABURY: I would like to understand where we are. I understand the Court does not admit it now, but reserves the question as to whether it will admit it?

THE COURT: Unless you object to that, because it would not be fair to you for me to reserve anything if you wanted to answer it in any way. Is there anything in it that you want to answer at all?

MR. LINDABURY: Not at all. The case was made as to whether that company had a New Jersey director. That was not an issue.

THE COURT: I cannot see how it can be competent, but if it is offered it don't make any difference. If Mr. Parker wants to go up he gets it in. You could not get it in if you went up if I should decide against you, but if I should decide against Mr. Parker it would go in with the rest, so what difference does it make?

MR. LINDABURY: I think it does make a difference, and I think it ought not to be in.

THE COURT: My present view is that it is incompetent and immaterial. I understand the offer is so much of the bill as has been read and so much of the answer as is a contradiction of that. The parties are entitled to have the whole document, if any. Except by consent I could not distinguish. I believe that is the cardinal and just rule. I rule it out at present.

MRS. LILIAN N. DUKE, sworn.

DIRECT EXAMINATION BY MR. PARKER:

Q. You are the defendant in the case, Mrs. Duke? A. I am.

Q. Do you recollect the date when you were married to Mr. Duke? A. November 29, 1904.

Q. Where were you married? A. Camden, New Jersey.

Q. In whose house ? A. House of my aunt, Mrs. Lewis Seal.

Q. Do you recollect why it was that you were married in New Jersey at Mrs. Seal's house? A. Well, because she was my nearest relative, and I preferred to be married there.

Q. After you were married where did you go to live? A. Well, we returned to 11 West Sixty-eighth street, New York City, the following day took the steamer for Europe, remained there two months, came back to 11 West Sixty-eighth street, and then went south.

Q. Do you recollect what was the date when you got back from Europe ? A. We arrived on the 8th of February, 1905.

Q. Where did you go to on your arrival ? A. 11 West Sixty-eighth street.

Q. And how long did you stay there with your husband ? I understand your husband was with you all this time ? A. Yes, sir.

Q. How long did you stay there before you went south ? A. One night.

Q. And where did you go to when you went south ? A. To the home of Mr. Duke's father, Durham, North Carolina.

Q. Of course Mr. Duke went too ? A. Yes, sir.

Q. And how long did you remain there at North Carolina ? A. I think about a week.

Q. And then ? A. We returned and spent one night at Somerville, New Jersey, and then we went to 11 West Sixty-eighth street, New York City. We remained there about six or seven weeks ; Mr. Duke was very ill.

Q. Mr. Duke had some trouble with his foot, didn't he ? A. Yes, he had blood poisoning.

Q. About how many weeks was it he was ill in New York ? A. Six or seven, if I recollect.

Q. When was it that he got better ? Do you remember the date ? A. Well, he recovered sufficiently for us to go down to North Carolina again and spend

Easter Sunday at the end of April; we went down there for a few days.

Q. Was Mr. Duke's father still living? A. Yes, sir.

Q. And you returned when? A. Well, I don't recall the exact date; it was sometime after Easter; Easter was very late in April.

Q. And where did you go to on your return? A. We went to 11 West Sixty-eighth street.

Q. And how long did you live there after that? A. Well, we lived there most of the time; went out to Somerville occasionally.

Q. Until Mr. Duke went to Europe? A. Yes, sir.

Q. And when was that? A. 15th of July, or the 16th; I don't recall the exact date.

Q. And did you continue to reside at 11 West Sixty-eighth street after Mr. Duke had gone to Europe? A. I did; I went occasionally to the farm and spent the day, but it was so unpleasant for me out there that I did not care to remain.

Q. Why was that? A. Because I had no say out there; I was not mistress of the place.

Q. Who was? A, Mary Smith.

Q. And was that by anybody's direction? A. Yes, sir, Mr. Duke's.

MR. LINDABURY: I object. I think this is leading. My objection to it is that it is leading and characterising.

THE COURT: Yes, manifestly. If she heard Mr. Duke tell Mary Smith that she was to domineer over his wife, that is one thing, but from what she heard from Mary Smith or otherwise, I don't see how it affects the question here at all, and we don't want to make more a laundry of this place than we can possibly help. I don't see how it affects the quetion here.

MR. LINDABURY: I didn't quite catch what your Honor said.

THE COURT: Laundry of this Court; don't want to go into family difficulty if we can

help it. The question whether Mr. Duke directed, authorized his housekeeper to domineer, to dominate, act as mistress over his wife, is a question that I do not see we have anything to do do with here. If you can show me—and it is very disagreeable ; it takes up time, and can have no legitimate purpose as I can see.

MR. LINDABURY : If she stayed away from the farm for that reason it is against her rather than for her on this issue.

THE COURT : It don't matter ; I don't want to hear it. There is no proof of the fact that Miss Smith did do that in the view of this party : doesn't show that she was authorized so to do by Mr. Duke.

MR. PARKER : Mr. Vice-Chancellor, if your Honor please, if your Honor will recollect that Miss Mary Smith testified as to how Mrs. Duke was in charge of the farm, testified to that Mrs. Duke gave her a special invitation to come to the wedding ; testified also that certain changes were made out there in the house by her direction.

THE COURT : You can deny all that.

MR. LINDABURY : That was their evidence.

THE COURT : Yes, and you called her as your witness, and she volunteered a good many of those things, as I recollect ; you made her your witness.

MR. PARKER : I didn't ask her about that.

THE COURT : I understand she may be considered as a hostile witness and all that, but you are responsible for what came from her lips.

MR. PARKER : If it was not in response to questions ?

THE COURT : In the sense that it don't open the door too wide to allow you to go into matters irrelevant and disagreeable to be inquired into.

MR. PARKER: Your Honor will recollect exactly how that came out. It was thus: I asked Miss Mary Smith whether she had attended the wedding at Camden and she said yes, and it was because Mrs. Duke had sent her an invitation.

THE COURT: That does not give you the right when you put a witness on the stand, and she volunteers in that way, although she may be a hostile witness, it does not give you a right to open, to use that as an opening of a door to let in a great parcel of irrelevant, and I may add, disagreeable evidence.

MR. LINDABURY: If counsel didn't want that evidence, if he thought it was not responsive, his relief was to move to strike it out.

THE COURT: More than that, this witness can deny anything of that kind, and that ends it. I shall give you the privilege only for the reason that Miss Smith may have been properly considered a hostile witness, and I think parties ought to have particular favors, if you are a mind to use that word, shown to them when they do feel constrained to call hostile witnesses.

MR. PARKER: Now, if your Honor please, the effect and intention of this evidence is as to whether it was Mr. Duke's wish and intention that his family should reside in Somerville or New York, and I think it is most material and proper.

THE COURT: You must prove it by direct evidence against Mr. Duke, and I have told you you may do that, but the hearsay is a different thing.

MR. PARKER: Where is there any hearsay about it?

THE COURT: She says that Miss Smith did this by direction of Mr. Duke. How does she know it? It is perfectly palpable. If she heard Mr. Duke say so let her say so, but the fact that Miss Smith told her or acted as if it

was so is not evidence. Now, Mr. Parker, I hope you understand that ruling, simply every day justice of the peace ruling.

Q. I will ask the witness whether she remembers any conversation in which Mr. Duke took part over the question of what authority she herself should have at the farm. Was there any such conversation? A. Mr. Duke told me that he did not wish any changes made in his home at the farm when I married him, that Miss Smith had conducted the farm, suited him, and he wished her to go on just the same—that I was to be mistress of the New York home, that was the one I was to control, not the farm.

Q. When was that? A. That was about a week before we were married.

Q. Was there any other conversation in which this matter was discussed between yourself and Mr. Duke? A. Well, in what way?

Q. Well, in which this matter was referred to in any way as to Mary Smith's control of the farm? A. Oh, we had several discussions after we were married. I was not satisfied with the way things went, and Mr. Duke never interfered in any way, put me in my proper place.

Q. Well, now, what do you mean by that, you were not satisfied—Mr. Duke interfered. Just state what the facts were and what the talk was so that the Court can hear it.

Mr. Lindabury: One moment. She did not say, did she, that Mr. Duke interfered.

The Court: Counsel put a question jury fashion, with great respect, which did not, as I recollect it, was not a paraphase or was not what the lady said. She said he said certain things to her. Better not repeat what Mr. Duke said in your question, Mr. Parker, butjust put another question if you want to.

Q. (Question read.)

MR. PARKER : Your Honor will see that there was no intention on my part—

THE COURT : No ; it is a habit.

MR. PARKER : No, it is not even a habit.

THE COURT : We won't discuss it. Have it your own way. I may be wrong. If I am I am ready to admit it.

Q. (Question read.)

A. Well, there were a great many things that I did not like out there. Mr. Duke did not allow me any authority whatever. Mary Smith engaged all the servants and discharged them, ordered the meals; I wasn't even permitted to say what I would like to eat. I asked once I would like some flowers sent in from the green-house to the New York house ; she informed me she didn't have enough for themselves. I asked on another occasion for some vegetables, I was told they didn't have enough for themselves.

(By the Court) : Q. You wanted vegetables for the New York house ? A. Yes, sir. I asked the manager, Mr. Smith, and he gave me more than I could use. I wasn't allowed anything out there from her.

MR. LINDABURY : I ask now that that evidence be stricken out ; it was not in Mr. Duke's presence, and he was not connected with it.

THE COURT : I decline to strike it out. If Miss Smith is not here, and I suppose she is, or Mr. Duke was not here, another question would arise, but they are both here.

Q. Well, now, what other conversation did you have with Mr. Duke about how the farm should be utilized by yourself and family—yourself and Mr. Duke? A. Well, Mr. Duke had several plans for the farm. Some years ago he had an idea of turning it into a club-house for the members of the American Tobacco Com-

pany; last summer he said he thought he would make a scientific farming school out of it.

(By the Court): Q. Farming school? A. Yes, sir. I don't think he ever regarded it as his home.

Q. Do you recollect the period just preceding your marriage, between the time when the letter which had been introduced here was written and the marriage itself? A. Yes, sir.

Q. This letter reached you where? A. At the White Mountains, Prospect House.

Q. And how soon after that did you return to New York? A. Two days after.

Q. And where where you living then? A. 11 West Sixty-eighth street.

Q. And how long had you been living there previous to that time? A. Since March, 1903.

THE COURT: I understood the evidence that they were living in Eighty-sixth street; they lived there awhile and there was a hiatus. I am very glad to be corrected.

Q. This was at 11 West Sixty-eighth street?

THE COURT: I understand, but I thought they lived in Eighty-sixth street some time after Mr. Duke bought the Somerset property, and that the West Sixty-eighth street property was bought some years later.

A. That is true.

THE COURT: It don't make any difference. The lady is undoubtedly right. I am very glad to be corrected on the facts. Proceed.

Q. Previous to that house, what house had you occupied? A. No. 41 West Eighty-sixth street.

(By the Court): Q. Eighty-sixth? A. Yes, sir.

Q. Do you remember what years it was that you

occupied that house? A. Well, I sold that house four years ago this past summer.

Q. Four years ago? A. Yes, sir.

Q. That would be 1901? A. Yes.

Q. Well, now, how many years did you own that house? A. Four.

Q. So that that house was bought in, say, 1897? A. I think it was four years; I won't be positive—three or four. I think it was four.

(By the Court): Q. Was it before or after you had the Sixty-eighth street house? A. Before.

(By the Court): Q. You sold that before you bought the Sixty-eighth street house? A. Yes, sir.

Q. Then wasn't you mistaken in saying—haven't you misexpressed yourself in saying you bought the West Sixty-eighth street house in 1893—you meant 1903? A. I said 1903.

Q. How long was it after the sale of the West Eighty-sixth street house that you bought the West Sixty-eighth street house? A. Well, I bought it the following January. I sold the Eighty-sixth street house in the month of June—1st of June; at least I vacated it then, and I bought the Sixty-eighth street house the following January; that was in 1903.

Q. Well, I thought you said you sold the Sixty-eighth street house in 1901? A. Well, I guess I am mistaken about the date; perhaps it is 1902; it was 1902, I guess.

Q. At any rate, there was only a few months between the sale of one and the buying of the other? A. Yes, sir. I went to Europe that summer with my mother.

(By the Court): Q. Is your mother living? A. Yes, sir.

Q. Now, you lived in West Sixty-eighth street from 1902, January, down to the present time, I understand? A. Yes, sir.

Q. Now, I ask you again to go back to the time just previous to the marriage—your marriage with Mr. Duke—and tell what conversations, if any, you

had with Mr. Duke with reference to the use of that house, and your prospects by marriage, your intentions after marriage. A. You mean from the time I received the letter ?

Q. Yes. A. Well, I have never completed furnishing the house on account of having broken my arm, and so I completed the furnishing of the house, and Mr. Duke told me to be very particular what I bought —to get the best of everything—and large furniture, so that it could be used in the house on Fifth avenue and Eighty-second street, as he was going to purchase it for me and it was to be our home.

Q. And did he add anything to that about the Sixty-eigthth street house ? A. Well, he said that his brother might possibly want to occupy that house.

Q. I mean with reference to the occupation of the Sixty-eighth street house by yourself and him ? A. Why, it was our home.

Q. What did he say about it, that is what I want. A. What do you mean ?

(By the Court): Q. What sort of words did he use, language did he use in talking about that house, etc. ? A. Why he spoke of it as our home, our home ; we lived there ; we were going to live there until he purchased the other house.

Q. What did you purchase for the Sixty-eighth street house in pursuance of this conversation that you had? A. I purchased some large Davenports for the halls and some very costly draperies, and some rugs, and expensive hangings that could be used again.

Q. And who paid for those ? A. I paid for those.

Q. Well, now, about the furniture upstairs. A. Mr. Duke paid for a great deal of the furniture in that house, and for the alterations that were made when I first purchased it with a view to making it our home.

Q. Now, what alterations were made at that time ? A. Well, the four large closets down on the first floor, Mr. Duke wanted them taken out and a foyer made, mosaic floor laid, and place made for fountain, and he also wanted a furnace put in as the house was heated

from the apartment next door, and lit; the house was re-wired, the furnace was put in.

Q. This house was a part of an apartment house next door, wasn't it? A. No, it was a private house.

Q. I mean it was built in conjunction with the apartment house? A. Yes, sir; by the man who built it.

Q. Now, what was Mr. Duke's idea about it? Just repeat what you said there?

MR. LINDABURY: Why repeat?

Q. I want to make it perfectly clear on the record.

THE COURT: I didn't catch what she meant about —

A. About the alterations?

Q. Yes. A. Well, he didn't like the arrangement of the first floor, and he wanted the closets all knocked out and a large foyer made and mosaic floor laid, and connections made for a fountain. Last year when we were in Europe he purchased a fountain for it, ordered one, rather.

Q. Now, what was the idea about the heating arrangement and the lighting arrangement that you spoke about being changed? A. Well, the house was heated from the apartment next door.

THE COURT: Oh, that is it. You cut loose and had an independent heater?

A. Yes, sir.

Q. And that was the same with the lighting? A. Yes, sir.

Q. Won't you describe the general nature of this house, Sixty-eighth street house. A. It is a five-story American basement house.

(By the Court): Q. You know what it cost? A. Yes, sir.

(By the Court): Q. Expensive house? A. Well,

no, it didn't cost very much considering what a nice house it was; I got it at a bargain.

(By the Court): Q. And how wide was it? A. Twenty-one feet six inches.

Q. And a city lot? A. Yes, sir.

(By the Court): Q. Twenty-one feet? A. $42,500 it cost, or $700, I forget which.

Q. And that was regarded as, I think you said, cheap? A. Yes, sir.

THE COURT: I should have guessed $50,000 although I don't know anything about it—mere guess.

Q. Just state what rooms are on the first and second floor, how deep is the house itself? A. With the extension 100 feet.

Q. Covers the entire lot? A. No; there is a small yard.

Q. Small L or jog out of it? A. Yes, sir.

Q. But otherwise it goes straight through the back of the lot? A. Pretty near.

THE COURT: It is a large expensive modern house, I suppose.

MR. PARKER: That is about it.

THE COURT: Is it of any consequence?

MR. PARKER: No, not at all, except to show it was a suitable residence for Mr. and Mrs. Duke.

THE COURT: I suppose as you made Mr. Duke swear that he gave this lady money to buy it, I don't suppose he was niggardly about it and got a cheap house.

Q. Do you recollect this paper that I show you now? A. Yes, sir; list of announcement cards of my marriage.

Q. And who gave you that? A. Mr. Duke handed it to me; I believe Mr. Fuller got it up.

MR. LINDABURY: Does she mean to say it was Mr Fuller's handwriting ?

A. No.

THE COURT: Said Mr. Duke handed it to her, and she understood Mr. Fuller had the gathering together of the list.

MR. PARKER: I understood her to say it was handed to her by Mr. Duke.

THE COURT: I don't think, gentlemen, I can't stand it, such details as that. What is the use? Mr. Duke really supposed the same thing. He said it was got up among them ; I think he said Mr. Fuller had something to do with it.

MR. LINDABURY: No, brother Ben. He said Ben and the lady did that and he didn't approve of it. I would dislike to have Mr. Fuller down as having—

THE COURT: I was mistaken. Mr. Fuller stated himself to be a very particular friend of Mr. Duke; he was familiar with all his social connections.

MR. LINDABURY: No, but I know he isn't in that line.

Q. Do you identify this wedding announcement and this card that was sent out ?

THE COURT: Mr. Duke identified them.

A. Yes, sir.

Q. Were they sent out in connection with that list?

A. They were.

THE COURT: I have no doubt Mr. Duke payed folding and postage on them.

A. I beg pardon, I paid for them myself.

THE COURT: Did you, indeed ; not according to rule.

Q. Was any proof of this card submitted to Mr. Duke? A. Yes, sir; Tiffany sent me the proof and I submitted it to Mr. Duke, and he told me to go ahead with them.

Q. Previous to their sending out? A. Certainly.

THE COURT: There is only one thing that excites my curiosity. The lady says her mother was living, but those were sent out by her aunt.

A. My mother is paralyzed, in a sanitarium.

MR. PARKER: I wish to offer these in evidence; also wish to offer the list in evidence. I do not want it spread upon the minutes, but want to show that it is in.

THE COURT: I can't see the value of it in the least.

MR. LINDABURY: Typewritten list of their friends, I suppose. What possible relevancy has it?

THE COURT: I can't see any all.

MR. KALISCH: Declaration of intention.

MR. LINDABURY: What declaration of intention?

MR. PARKER: Notification to everybody their home is to be in New York, an advertisement to everybody.

THE COURT: Does it make any difference whether there were ten or a thousand?

MR. PARKER: No, I don't want them all printed. I offer the list.

THE COURT: I don't see its competency. The fact that it was sent to their friends is enough without the names or the number.

MR. PARKER: The wedding announcement and the card, I suppose, will be received in evidence.

THE COURT: Yes, subject to Mr. Lindabury's objections, if he has any.

Q. Now, do you recollect whether any of Mr. Duke's family were entertained at the house at 11 West Sixty-eighth street? A. Yes, sir.

Q. Who? A. His brother, his brother's wife.

Q. Just give their names, please. A. Mr. and Mrs. Ben Duke, and his aunt, Miss Roney, and his cousins, Miss Angea and Mrs. Angea and another cousin, Miss Lillie Duke.

Q. Anybody else? A. Well, not to remain over night, not any of his family to remain over night; that is all I recall at present.

Q. Were you present at any conversation between Mr. Duke and Mr. Ben Duke with reference to the Eighty-second street house? A. Yes; Mr. Ben Duke took dinner with us.

Q. Do you remember when that was? A. That was shortly after Mr. Duke recovered from his illness and was able to go down to the dining room.

Q. Was it at your house? A. At my house, 11 West Sixty-eighth street.

Q. And at what hour of the day did it take place? A. About half-past six in the evening.

Q. Well, now, just state what the conversation was. A. They were discussing the Eighty-second street house, and Mr. Duke said he was going to buy it if I liked it, but I had't been over to see it and he told his brother to consider it bought; that he was going to take it.

Q. I do not wish to repeat, but there is a material fact about this Eighty-second street house that I do not think the witness has yet brought out. Had any promise been made to you previous to that last conversation by Mr. Duke with reference to the Eighty-second street house? A. Yes; he said he was going to buy it for me, on several occasions, and give it to me.

Q. Well, give it to you at any particular time? A. I believe for a wedding anniversary gift.

Q. Well, just state what he said about it. A. I don't recall the exact conversation except that he said

he would give it to me, and get it for me so that we could occupy it this fall, and it was to be decorated this past summer.

Q. Did you correspond with your husband while he was in Europe the last time? A. Yes, I wrote him nearly every day.

Q. And what was the first notification of the suit? A. The first notification of what suit?

Q. Of this present suit. What was the first notice that you had about the suit? A. I was served with a paper.

THE COURT: I haven't got the dates of that yet when the petition was filed. The papers are not here, you know.

Q. Was any change made in the number of servants at your house at Sixty-eighth street after your marriage and return from Europe? A. Yes, sir.

Q. What was it? A. Well, my husband met Matilda Anderson, housekeeper; called her upstairs and asked her if she would like to have the position of housekeeper there, and she said she would take it.

(By the Court): Q. That was in your house? A. Yes, and she accepted it; and then we had another servant, another cook, to take her place. She had been cook, but he made her housekeeper.

Q. And how many servants did that make at the house? A. Four—five.

Q. Five women? A. Five women servants; yes, sir.

(By the Court): Q. That was after he got back from Europe, immediately, or before? A. No, sir; after I got back from Europe—after Mr. Duke recovered from his illness.

(By the Court): Q. Oh, you mean to say after your first visit to Europe? A. Yes, after I come home.

MR. LINDABURY: I will give your Honor that date. Filed September 2, 1905.

THE COURT: Plea filed when?

MR. LINDABURY: Third of November, I think.

Q. Was Mr. Duke's stable handy to the house? A. Two blocks away.

(By the Court): Q. From West Sixty-eighth street? A. Yes, sir.

Q. And on the same side of the city? A. Yes, sir.

Q. Were the horses there and carriages there at your service? A. Yes, sir.

Q. And did you use them? A. I did.

Q. How many men did Mr. Duke keep in the stable? A. Two that I know of.

Q. Who were they? A. James Farley and Richard O'Hara.

Q. When did you first know Mr. Duke; what was the year? A. I met him in the spring of 1892?

Q. And you have known him ever since? A. Yes, sir.

Q. Do you know where he has lived?

MR. LINDABURY: I object.

THE COURT: The question is general, of very little value. She can tell what she knows about his movements—where he slept and all that sort of thing—the facts. The question is competent, but its answer, in general, would be of very little value to me. Been making a home at nights in your house all the time, hasn't he?

A. Yes, sir; and sometimes in the daytime, also.

THE COURT: He said so; he swore to it as I understood him. He swore, as I recollect it—I only want to show you the state of my recollection—that at the time he bought the Somerville property he was living with Mrs. McCready and her mother and aunt, or somebody, and that he moved his furniture from that house down to Somerville sometime in 1904. That is right, isn't it?

MR. CLARK: That is about right.

THE COURT: That they immediately provided

him another room, furnished a room for him, and he still continued the occupancy of the New York house, and had a latch-key to it. That is right, isn't it, gentlemen?

MR. LINDABURY: I don't know about the latch-key.

THE COURT: Yes, he said he had a latch-key.

MR. LINDABURY: He said a good many years before his marriage he spent nights at her house when he was in New York, and he had a latch-key, but whether he had a latch-key later.

Q. How much of the time was he away from the house where you were living? A. Two or three nights a week.

Q. Did you ever talk with him about the farm in Somerville? A. In what respect?

(By the Court): Q. What he meant to do with it, and what his object was in buying it, and all that sort of thing? A. He told me when he purchased the property in Jersey that he had to buy property in Jersey on account of the corporation laws, taxes or business, something of the kind, and he often expressed a wish that he was not obliged to have that property; that he would like to have had property on the Hudson River.

Q. Well, do you know what the farm was used for? A. Yes; it has been used for a great many things.

THE COURT: Principally to spend money on.

Q. Do you know whether he ever had a race track out there? A. Yes, that was the first thing he had, a race track. Then he kept cows.

BY THE COURT:

Q. Fine, blooded stock? A. Yes, sir; and chickens, incubators.

Q. Ducks? A. Yes, he had a number of ducks.

Q. Now, did he ever tell you about any plans that

he had for the use of the farm? A. Yes, he named several plans; said he thought of turning it into a clubhouse.

Q. Clubhouse for what? A. For the members of the American Tobacco Company.

Q. When was that? A. Oh, that was some years ago, six or seven, possibly five or six, I don't recall exactly.

Q. Well, any other use he was going to put it to? A. Yes. He spoke of making it a big park, public park.

Q. What do you mean by public park?

MR. LINDABURY: What did he say?

Q. What did he say about it? A. I believe he intended giving it to the State, making them a present of it, something of the kind, giving it to the people at Somerville; I don't really recall what, but he wanted to make a park out of it at one time, and, as I told you before, he said he thought he would turn it into a school for farming.

Q. Scientific farming, I think you said? A. Yes, sir.

Q. Well, did Mr. Ben Duke use the farm at all? A. Yes, a great deal.

Q. Well, in what way? A. Oh, he took his friends down there, his lady friends and gentlemen friends.

Q. When was that?

MR. LINDABURY: I object. What relevancy has this?

THE COURT: I suppose the counsel will argue that it tends to show that it was a kind of a common family property, sort of a public affair for the benefit of the tobacco friends of Mr. Duke, at his expense always, however.

MR. LINDABURY: Mr. Duke was his brother.

THE COURT: It is a matter of argument.

MR. LINDABURY: I object to it as irrelevant.

THE COURT: I will overrule the objection. Proceed, Mr. Parker.

Q. (Question read.) A. All seasons of the year.

THE COURT: He means what years.

Q. How many years past? A. Well, as long as Mr. Duke has had the place.

MR. LINDABURY: I object. This witness at least cannot be testifying of her own knowledge.

THE COURT: She is not speaking of her own knowledge, but she may have heard her husband say so. The thing is of so little consequence to my view at present—you can bring out by cross-examination, if you choose, how she knows Mr. Ben Duke used it, and all that sort of thing.

Q. Did Mr. J. B. Duke say anything about whether or not he liked going out to the park? A. Well, he said he liked go there once in a while, but two days was all he could stand, he was glad to get away.

Q. How often has he said that? A. Oh, a great many times.

Q. Has he ever said anything to you about how strong his business was to him? A. Yes, sir; he told me he loved his business better than anything.

THE COURT: That is what he swears to here, that he never allowed anything to permit him to neglect his business, and Mr. Fuller, I think, swears to the same thing.

Q. Now, Miss Mary Smith has testified about how she says you—

THE COURT: Never mind.

Q. About this conservatory.

THE COURT: Yes, you can ask her whether she ever told Mary Smith anything about the conservatory, that is all right, but don't repeat what Mary Smith swore to, I can't permit that.

Q. I don't want to do it that way. Just tell about the incident of the conservatory? A. Well, there wasn't any closet in the bedroom out there, and there was a closet in the bathroom, and Mr. Duke occupied, used that closet, and I had to have some place to put some of my clothes so Mr. Duke said I could have a closet put in the conservatory and I preferred some drawers put in there, and so I saw Mr. Smith about it and told him about the drawers, but further than that I had no orders to give. Miss Smith gave the orders about the floor being taken up, and hardwood floor laid; I had no further orders to give; Mr. Smith simply wanted to see me about the size of the drawers.

Q. Do you remember whether or not Mary Smith and Maggie Smith were sent invitations to the wedding? A. Yes; a week before I was married Mr. Duke insisted upon my writing to them and inviting them in to see me. He told me to treat them kindly as he owed everything to them and he wanted me to invite them to my wedding which I did.

Q. Was anything said between you and your husband as to how they should be treated in the family? A. Yes; he said he wished them treated as one of the family.

Q. And when you went out there what was the fact? A. They ate at the table with us; they were always around wherever we were; I don't think I ever went out to drive with my husband but twice alone after I was married to him.

Q. Why? A. Because he always took the Smith girls.

Q. That was in New Jersey? A. Yes, sir.

Q. Did your husband say anything about having

places anywhere else, any residence elsewhere than in New Jersey? A. Yes, sir; he said he was going to purchase residences elsewhere; he said he would like to have a home in California, and he wanted also to have a mountain home, a home up in the mountains.

Q. And when was that? A. Well, that was before we were married and after we were married.

CROSS-EXAMINATION BY MR. LINDABURY:

Q. Mr. Duke had plans for building a new house at the farm, didn't he? A. Yes, he had a great many.

Q. Did you see any such plan, madam? A. Yes, sir.

Q. When, with respect to the date of your marriage? A. When did I see the plans?

(By the Court): Q. When, with respect to the date of your marriage? A. I saw them before the marriage, and after marriage.

Q. How long before marriage was it that you first saw them? A. I think about a year.

Q. And had they been prepared by an architect when you first saw them or were they rough sketches? A. No; I only saw Mr. Duke's own sketches on paper.

Q. Did he have them formulated by an architect at any time? A. Not that I know of.

Q. Neither before or after marriage? A. I think after marriage I saw some plans that the landscape gardener had drawn up, but I do not recall as to the architect.

Q. Plans for a very large house, weren't they? A. Yes.

Q. And it was in that connection, was it not, that he talked of using the present house for a club house? A. No; he spoke of using the present house for a club house years ago.

Q. How many years ago? A. Oh, five or six.

Q. When he only owned about half the land he now

owns? A. Well, I really don't know how much land he owned at that time.

Q. I suppose he discussed his private affairs in a more or less confidential and free way with you, did he not?

(The Court): Q. Before you were married? A. Occasionally; yes, sir.

Q. And he had different views. I think, at different times with regard to that property and his future places of residence, did he? A. Yes, sir.

Q. And when was it that he talked about the mountain home? A. About two years ago first.

Q. And often afterwards? A. Yes, sir.

Q. And what else—southern home, was it?

(The Court): Q. California? A. California.

Q. California home? A. Yes, sir.

Q. When did he talk of that? A. He has talked of that for several years.

Q. These, I suppose, had reference to contemplated retirement from business some time or another, did they not? A. He didn't say he expected to retire from business in connection with the homes.

Q. You understood he was during all these years, you knew he was closely devoted to business? A Yes, sir.

Q. Did you suppose he contemplated the California residence while he still attended to business? A. He said he did not always expect to be so closely confined to business.

(By the Court): Q. Hoped to be relieved somewhat from business in the future? A. Yes, sir.

Q. Didn't Mr. Duke have a place picked out where the reservoir on the farm now is for this house, and didn't you object to it, and desired some other place, I mean? A. I told him that I did not approve building a house on the land where the reservoir is, but he spoke of building the present house he now occupies on the same site.

Q. You have answered my question, madam. Now, after your objection to the location of the new house

that he had selected, he selected another, in accordance with your wishes, did he not? A. No, I had nothing to do with the place he selected.

Q. He did select another place, didn't he? A. He did, but not with my approval, because I was perfectly satisfied with the house he had.

Q. I know, but if he was to build a new house you desired that it should be not where the reservoir now is, not where it was afterward built, but in a new location where he did settle upon, is that right? A. I did not express a desire for any locality.

Q. Did'nt you want a house there? A. No.

Q. And he did; that was one of your differences, was it? A. Well, I don't know; he said he didn't expect to build a house for three or four years.

Q. Didn't he spend thousands of dollars in preparation for it during the short time you were living together there? A. I believe he had the land graded for a house if he ever wanted to build one.

Q. Spent a great many thousands of dollars in the preparation for this new house during the few months you lived there, didn't he? A. I don't know anything about the amount he spent.

THE COURT: What period do you refer to, after they were married?

MR. LINDABURY: Yes; after they were married.

THE COURT: While they were down there in the spring.

(By the Court): Q. Was this matter of a new house under consideration, or talked about by Mr. Duke, after he got well of his sore foot and went down to the farm at all? A. Yes; it was discussed; it has been discussed for several years.

(By the Court): Q. I know, but was it then? A. Yes, sir.

Q. This matter of objecting to the site he had selected was when you were out there, after his recovery from that illness, was it not? A. Yes.

Q. And he then changed the proposed location to the one referred to a while ago, at that time while you were there, did he not? A. Well, I think he had both places in his mind.

Q. But he gave up the reservoir site and selected the other one at some time or other, as you have said. Now, wasn't that while you were there during the weeks succeeding the recovering from his illness? A. I really am not positive about that.

Q. When was it, as near as you recollect, you made the objection and he abandoned the reservoir site. A. Oh, I think it was in the spring; I don't recall the exact time.

Q. How many times were you out there while he was in Europe, in the summer of 1905? A. Well, I cannot recall the exact number of times; I went out several times and spent the day, and I went out once and remained over night.

Q. Yes; they were at work then? A. Yes.

Q. With the steam shovel preparing the site for the new house, weren't they? A. No; for the lake.

Q. Well, weren't they in the same connection preparing the site for the new house, the grounds for the new house? A. I don't know.

Q. They dug out, they excavated for the lake, and used the dirt in the grading for making terraces for the new house, didn't they? A. I believe that was what the dirt was to be used for.

Q. They were using it; you wrote Mr. Duke about it. A. I wrote him about the terrible noise the shovel made in excavating.

Q. You wrote while he was in Europe that the work of preparing the new house, completing the lakes and terraces, was going on with two or three hundred men, wasn't it? A. I believe so.

CHARLES S. HAMILTON recalled.

DIRECT EXAMINATION BY MR. PARKER:

Q. Have you the books here showing the assessment of Mr. Duke for taxation in the township of Hillsboro for any years? A. I have.

Q. For what years? A. From 1900 until 1904.

Q. Now, will you turn to the book, these books, and state whether or not Mr. Duke was assessed for personal property for those years, and for how much?

MR. LINDABURY: I object to the question as to how much. It seems to me that he ought not.

THE COURT: I suppose the books were brought here simply to show the poll tax, that he was assessed for poll tax. The question is competent, but the quantity he was assessed for I think is unimportant.

MR. PARKER: We are going to show by the other witness that this assessment only comprised assessment for personal property on the farm and in the house. Wouldn't that make it competent?

THE COURT: You may prove that.

MR. LINDABURY: I would like to be heard about that.

THE COURT: We will hear about it when he gets to it. He is asked now to produce the books and say whether he is assessed. What I am interested in is whether he is assessed for his poll tax, but you may show he was assessed for personal property.

MR. PARKER: Don't you think the proper way to put this in would be to have the entry on the book read?

THE COURT: You put your question. Mr. Lindabury seems to be in an objecting mood, and I want to hear him.

MR. LINDABURY: I don't object to the part of

the question relating to whether he was taxed or not.

THE COURT: You object to the amount?

MR. LINDABURY: I object to the part of the question asking for the amount for which he was taxed.

Q. You have been the collector? A. I am the collector.

THE COURT: Counsel says he is going to prove that he was only assessed on his personal property, visible personal property in the township of Hillsboro. All you have to say is whether he was assessed for personal property or not, without stating the amount.

MR. PARKER: We think the amount is competent.

THE COURT: The assessor will fix that. I will hear that when the assessor comes on.

Q. Now, answer the question. Has he been assessed for personal property? A. He has; yes, sir.

Q. And paid the tax? A. Yes; paid the tax in full.

(By the Conrt): Q. Is he assessed a poll tax? A. Yes; he is assessed poll tax.

(By the Court): Q. You have a book showing it? A. I have a book showing it.

Q. Do the assessments differ at all during the years 1900 and 1904?

Objected to.

THE COURT: You may answer that question.

A. There is a slight difference; yes, sir.

(By the Court): Q. From year to year? A. Yes, sir; from year to year; I don't know just what years, but it has gradually increased.

(By the Court): Q. Is he assessed poll tax each one of those years on these books? A. Yes, sir; each one of those years.

(By Mr. Clark): Q. You have not the books of the previous years? A. No, sir.

(By the Court): Q. You don't have in your possession the books of the previous years? A. No, sir; I begin in 1900. They ought to be kept as a public record.

(By Mr. Clark): Q. Were you collector before this time, 1900, Mr. Hamilton? A. No, sir; I was not.

JOHN H. SAUMS, recalled.

DIRECT-EXAMINATION BY MR. PARKER:

Q. How many years have you been assessor of Hillsboro Township? A. Three.

Q. What years are they? A. 1899, 1900 and 1901.

Q. Now, Mr. Saums, I notice that an assessment for personal property made against Mr. Duke, Mr. James B. Duke of the Township of Hillsboro for the years 1900 and 1901 in these books—1899 is not here, I don't think— A. Yes, sir.

THE COURT: He can refresh his memory, but, no doubt, he will recollect for what he assessed, not the amount, but on what property.

Q. On what personal property did you assess him? A. Assessed his personal property there in the way of horses, cattle and machinery.

(By the Court): Q. The visible personal property that he had there on his farm? A. Yes, sir; and his bank stock.

(By the Court): Q. Bank stock? A. Bank stock.

Q. The National bank stock, you mean? A. National bank stock that he held there, at either the First or Second National; I can't say exactly which.

(By Mr. Lindabury): Q. Assessed on poll tax? A. Yes, sir.

MR. PARKER: Now, we want to show also as to the amount of those assessments.

MR. LINDABURY: I object.

THE COURT: I don't think it is competent. The evidence now is as it stands that he was assessed for property in the county of Somerset, bank stock in the county of Somerset, and visible chattels that he had there. That excludes anything else. The result as it stands, now is, with what explanation may be given, is that Mr. Duke was not assessed in the county of Somerset for any assessable property except that mentioned. If he had a million, or two or five million invested in bonds that were assessible, he was not assessed. We all know that stock, shares of stock in an incorporated company are usually, certainly in New Jersey, not assessible, because the property that they represent is assessed wherever it is. By swearing off his taxes in New York, as it now stands Mr. Duke avoided paying tax on personalty which he may have been liable for there, or may not; I don't know. He may not have had any property that he was assessible on in New Jersey. I don't know of any, except it would be bonds of some kind, assessible bonds. That is the situation now.

MR. PARKER: I think we have made the offer sufficiently full so as to have the benefit of it.

THE COURT: You have made the offer to prove the quantity. I have declined to go into how far these assessors of Somerset county favored Mr. Duke by depreciating or inflating the value of his personal property there.

Q. Now, I want to ask these two questions, which of course, will be objected to, and don't you answer them. What was the amount of the assessment upon the personal property of Mr. Duke?

THE COURT: I overrule it, as a mere reviewing by this Court of the action of the assessor of the township of Hillsboro.

Q. What was the amount paid by Mr. Duke as taxes upon his personal property so assessed?

THE COURT: That is already included in my ruling. He may have been assessed on his real estate for one quarter what it cost him, and then that might have been, his real estate, double for what he could have sold it for. He might have been assessed on his personal chattels there for one-quarter what he paid for them, and that might have been twice what he could have got for them at a sale. We cannot review the action of the assessor, sworn officer, in appraising the value of the property there, personal or real.

MR. PARKER: Mr. Lindabury referred to this pamphlet of the American Tobacco Company.

THE COURT: Certainly that is in evidence.

MR. PARKER: That is in evidence, the whole of it?

MR. LINDABURY: Yes.

THE COURT: There are several copies here.

MR. PARKER: The part that we require is Article 5 of the Articles of Incorporation, which was executed in 1890.

"5. The names and residences of the stockholders and number of shares held by each are as follows: All such shares being shares of general or common stock." Then follows a number of names. "James B. Duke, New York City, twenty shares."

THE COURT: That I think was shown to Mr. Duke.

MR. PARKER: Yes; executed in 1890.

MR. PARKER: We rest.

JAMES B. DUKE recal'ed.

DIRECT EXAMINATION BY MR. LINDABURY :

Q. Mr. Duke, I would like to ask you a few questions with regard to matters testified to by Mrs. Duke.

THE COURT : Don't repeat what she said.

MR. LINDABURY : I am not going to, your Honor. How could I in this presence ?

Q. Did you ever tell Mrs. Duke that she was not to be mistress at the farm, that one of the Smith girls was, and that she was only to be mistress at the New York house ? A. I did not.

Q. Do you remember having any conversation with bearing on that subject ? A. I told her she had absolute charge of the house ?

Q. What house ? A. The home at Somerville.

Q. Was there ever a discussion between you as to the position to be occupied after your marriage by the Smith girls ? A. I told her she had absolute charge and had a perfect right to employ or discharge who she pleased at the house, but at the office and farm I would take charge of that myself.

Q. By the farm do you mean to include the dwelling house on the farm ? A. No ; I mean the office, and outside of the house.

(By the Court) : Q. The office included one of the Smith girls ? A. Yes, sir ; she was in charge of the financial department at the office.

Q. Was Mrs. Duke ever treated with disrespect by the Smith girls in your presence.

THE COURT : Or to your knowledge ?

A. Never.

Q. Or to your knowledge ? A. No, sir ; she was not.

Q. Did she ever complain to you of the treatment that she received from the Smith girls while she was out there ? A. She did not.

Q. She says that—

THE COURT: Never mind.

MR. LINDABURY: I was only going to direct his attention—

THE COURT: No.

Q. Mr. Duke, did you and Mrs. Duke ever go driving while you were at Somerville? A. Very often.

THE COURT: That was after you were married?

A. Yes, sir.

Q. How long were you there in the spring of 1905?

Objected to.

THE COURT: Quite competent. I thought he had testified on that subject before or I should have asked him myself if Mr. Lindabury hadn't put the question.

A. Well, after I got so I could get out, after my foot was better, I spent most of the time there.

Q. What does that mean? A. Well, I should say I averaged four or five nights a week.

Q. Was Mrs. Duke with you? A. Part of the time she was, and part of the time she claimed she had to go to town.

Q. What discussion did you have while you were there with regard to the occupancy or non-occupancy of the New York house? A. Well, I was very much dissatisfied because she run to the New York house so much, and I told her that I wanted her to go to the farm and stay there—that was the home, and we wanted to build up our home there, and she rebelled at it, and I finally told her that I wanted her to close the New York house, and she said she wouldn't do it, and I told her I wouldn't support the New York house; she said she would do that herself. I told her then that I would also close my stable; she

said "I will go to a livery stable and hire a team and send you the bill." I said I wouldn't pay it.

Q. When was this? A. This was along in—I think it must have been May, May or June.

Q. Now, Mr. Duke, did you have any plans at any time or purposes with regard to the erection of a new house out there?

THE COURT: I will ask you a question. Did you ever direct your housekeeper, Miss Smith, the elder one, I believe it is, to domineer over, assert her authority over your wife?

A. I gave her no directions at all after I was married.

THE COURT: You desired, I suppose so, if you had an establishment all running there, to let it run as it was without being disturbed?

MR. PARKER: I object to that question as leading.

THE COURT: Yes, it is leading—intentionally so. Go on.

Q. Well, was there any objection on the part of Mrs. Duke to the retention of Mary Smith, the housekeeper there? A. No; there was not.

Q. Was that a matter of discussion between you and her? A. Not at all. She had absolute authority to do with Mary Smith whatever she chose; she could retain her or discharge her if she wanted to.

Q. Did she have authority to discharge Mary Smith if she chose? A. Yes; I told her so.

Q. You told her so? A. Yes, sir.

Q. How came Mary to be retained? I mean what part, if anything, did she have in that? A. Because she wanted her, I suppose; she didn't want to do the work herself and wanted—

Q. Did you have a talk on the subject? A. I did.

Q. What did you say to her or she to you on the

retention of Mary? A. I told her she could do as she chose.

Q. What did she say? A. She said she was going to keep her.

Q. Was there any talk about going away? A. I believe she did say at one time Mary was talking about leaving; she said she would be very sorry if she did.

Q. Did she invite Mary Smith and her sister to the wedding at your command? A. She did not. She told me she was going to invite them; she wanted to be very nice to those girls because she said they could be a great benefit to her in helping her to look after her home.

Q. Was the invitation to them to come to New York and dine with her before the announcement of her own suggestion or yours? A. Her own.

Q. Did you ask her to do it? A. I did not.

Q. Did you suggest that she do it? A. I did not. When she told me she was going to do it I told her I thought it would be a very good idea for her to do it.

Q. Did you take the Smith girls riding while you were at Somerville in the spring? A. Yes, sir.

Q. Ever without Mrs. Duke? A. On two occasions.

Q. I mean without Mrs. Duke? A. Yes; two occasions.

Q. Two occasions. How was that? A. When I first got the Pope machine out there I asked Mary Smith if she wanted to take a ride in it. Mrs. Duke was not there. We went up to the barn and got Walter, the chauffeur, and started out, and it commenced to rain and we went back to the house again.

Q. And one other time? A. Another time when we got another new machine, and Mrs. Duke didn't go out again, Mary and Maggie Smith, one evening we run to Plainfield and back again.

Q. How many automobiles did you get after your marriage? A. Three.

Q. Did you take the Smith girls riding with Mrs. Duke when she was along sometimes? A. When Mrs. Duke invited them; yes.

Q. Was it ever by your invitation as separate from that of Mrs. Duke? A. Well, for instance, let us go and take an automobile ride, and all hands would come and go. There was no special invitation. And I recall one other time at the table I suggested that we take an automobile ride after dinner; Mrs. Duke was there; I understood she was going. When the machine got there she didn't go, and the Smith girls didn't want to go, and I told them to come along, and they come, and we went to Plainfied and back again.

Q. Did Mrs. Duke refuse to go because the Smith girls were going? A. She said she was tired, didn't feel like going.

Q. Did she ever object to their going on occasions when they did go, or your inviting them when they were invited? A. No.

Q. Ever any trouble between you on that score? A. No.

Q. Did Mrs. Duke ever take them when you didn't go? A. Very frequently.

Q. Very frequently? A. When they went to town she usually went along with them.

Q. What is that? A. When the Smith girls went to town she usually went with them.

Q. What do you mean by town? A. Somerville.

Q. Didn't take the Smith girls in to the New York house with her, did she? A. Yes, sir.

Q. Always? A. No, not always; sometimes.

Q. You were going on to say something about her inviting them? A. Inviting them to go to town with her. On one occasion I remember she invited Mary and Maggie both, and Mary went on, she said she preferred to go on the cars because she had to stop down town.

Q. You mean Mrs. Duke went in on the automobile? A. Yes; I was along at that time.

(By the Court): Q. Clear to New York? A. Yes, sir.

Q. Now, about this new house. Had you fixed at any time before your marriage upon a location for the new house?

MR. PARKER: This is all principal case, isn't it? This is not rebuttal?

THE COURT: No. You can answer it again if you choose.

MR. PARKER: Mrs. Duke was asked as to it; she contradicted it.

THE COURT: It isn't strictly rebuttal, but that rule don't hold in my court, where there is no harm to be done by it. If you show me you are not prepared for this issue, that is another question. I think the evidence is clearly competent.

MR. LINDABURY: I think it does meet the testimony she brought out about the proposed use of this house as a clubhouse.

THE COURT: Can't shut it out.

Q. To go back a little, Mr. Duke. Did you at any time have in mind that your present house should be used some time or other as a club house? A. Well, I was considering building another house on the hill where the old reservoir was, and some people asked me what I would do with the house I got now. I said "if I build a new house I will use this as a club house for the boys at the office, whenever they want to come out and spend Sunday and spend a few days they can come there and stay."

Q. Did you ever have in mind to turn it into a club house and abandon the farm as your place of residence? A. Never; never thought of it.

Q. When did you form the idea of building your new house on the reservoir site? A. I have been considering that for four or five years. Finally—we didn't determine what we would do at all until last spring, when I was talking to Mrs. Duke about it, and she seemed to be very much opposed to it, and I then changed and moved down to the lower line where we are now grading and laying the place out for that purpose.

(By the Court): Q. Laid out a place for a new house? A. Yes, sir.

Q. How much money did you spend for laying out this place for a new house after she came out there and you changed the site to meet her views? Between then, I mean now, and the first cost? A. We were building the reservoir on the top of the hill. Do you want that included?

Q. I only wanted of course what was properly applicable to the preparation for the new house? A. The location and grading there I suppose would cost one hundred or one hundred and fifty thousand before I am through.

Q. How much did you spend between the time when you changed the site to meet her views and September first, when you returned from Europe? About, that is what I mean? A. I don't know how much of the contract had been completed; I think the contract called for $135,000, the work the contractors were going to do at that time.

Q. What did you go on to do during those months toward the preparation for the new house? A. Commenced to grade for the house.

Q. And build in terraces? A. Well, we got the main part of the grading done.

(By the Court): Q. I understand the word "grading" includes making terraces?

A. Making terraces would be finishing of the job.

Q. What kind of a house was this to be, how extensive a house I mean? A. I thought for half a million dollars I could build a house there.

Q. You would allow half a million and spend a million? A. I don't know about that.

THE COURT: That was in my mind.

Q. Now, did you have it in mind to build a public park there and give it to the State or the town of Somerville? A. Never considered it or heard of it until I heard that testified a minute ago. I have al-

ways allowed people to use my grounds, drive through it if they wanted to—never objected to.

(By the Court): Q. Pretty hard work to have a big private park; pretty difficult thing to maintain a private park? A. Yes, sir.

Q. What is the notice you have up at the entrance—I think I have seen some of those—rather unique? Public to all who observe the rules, isn't it? A. Yes; that has been changed. "People accompanied by dogs not permitted."

Q. It has absolutely been public to all who have observed the rules? A. Yes, sir; and it is that way now.

Q. Except that you now exclude dogs? A. Yes, sir.

Q. How long has it been public in that way? A. Ever since I had the place.

Q. How many people visit it on Sundays and holidays? A. A great number of them.

Q. Great many hundreds, don't they? A. Yes, sir.

THE COURT: I supppose that is part of the fun Mr. Duke gets out of it, seeing other people coming there and enjoying themselves.

Q. Now, then, have you ever intended or spoken of it as being intended for the public use in any other sense except that? A. No, sir.

Q. Have you ever contemplated devoting it to a public park independent or separate from your home or place of residence? A. No, sir.

Q. Did you ever have a scheme for scientific farming there? A. No, sir; never thought of it.

(By the Court): Q. Or school for farming? A. No, sir.

(By the Court): Q. No doubt you have kept quite a school for farming there? A. Yes, sir.

Q. You have educated yourself there in the business, haven't you, in farming? A. Well, I have learned something about it.

Q. You have done all kinds of farming there, haven't you? A. Well, yes; well, not all kinds.

Q. Stock raising, &c.? A. Yes, sir.

Q. Given them all up? A. Yes, sir.

Q. Your brother Ben, I think, has a wife and two children? A. Yes, sir.

THE COURT: Been sworn to.

Q. What is Ben Duke's business? A. Well, he is a director of the company, and he don't have any set business.

Q. American Tobacco Company? A. Yes, sir.

Q. And have you entertained him there? A. Very frequently; he comes whenever he gets ready, always has.

Q. Whether you are there or not? A. Yes, sir.

Q. Has he ever spent or his family spent any considerable length of time there in your absence? A. Oh, yes; quite a good deal.

(By the Court): Q. Make himself to home? A. Yes, sir.

Q. What do you mean by this—more than two or three weeks at a time? A. I don't know as they would go there and make a set stay of two or three weeks, but go in and out and spend such time as they were inclined to.

Q. Was this before your marriage, or after? A. That was before the marriage; they have not been out there much since the marriage until since I returned from abroad.

Q. I think you have said when you have occasion to stay in New York now you stay at his house? A. Yes, sir.

Q. Did you have a conversation with your brother Ben about a week before your marriage on the subject of the purchase of the Fifth avenue house? A. There was some mention made about it.

Q. Do you remember what the conversation was? A. I asked him something about the house, when he expected to open it; he said he didn't know whether

he would open it or sell it, and I told him that I might buy it some time, and the matter dropped at that.

(By the Court) : Q. That was before you went to Europe ? A. Yes, sir ; that was before I was married.

Q. Did you or not say to him then that he could consider it sold to you or bought by you ? A. No ; I told him I would go around to see it when I came back from Europe, and I was talking to him about it again when I was laid up with my foot, and I said as soon as my foot got so I could get around I would go around and look at it, but I thought I preferred to build a house if I was going to have a city house—he had a vacant lot—and it passed off with that. Mrs. Duke requested me several times to buy it, and I told her I didn't know whether I would or not—I didn't think it would be needed.

Q. Did you ever promise to buy it and give it to her ? A. I did not. If I had bought it I would not have given it to her.

(By the Court) : Q. How long has your brother owned that house ? A. He has owned it about four years.

Q. Was he using it himself or rented it out ? A. No ; it had never been decorated ; it was a new house ; it had never been decorated.

(By the Court) : Q. Never been put in shape ? A. No, sir ; when I returned from Europe I asked him if he wouldn't go and decorate and furnish the house, because I told him I would like to stay there when I stopped over in town. He said he would, and went to work at it, and told me to me to go ahead and do whatever I wanted to on it.

(By the Court) : Q. You spent the money on it ? A. No, he pays the bills, but I had the authority to order ; he gave me authority to order whatever I wanted.

(By the Court) : Q. Your brother paid the bills for fixing the house up, eh ? A. Yes, sir.

Q. Your brother is a man of wealth, isn't he ? A.

Independently wealthy, yes, sir ; and he stayed at the house all the time.

THE COURT : Yes, I understand he has been living there.

Q. Did you direct Mrs. Duke to buy furniture for the Sixty-eighth street house of a size and character befit to move to the Fifth avenue house ? A. I did not. Furniture she has bought for the house she has got in it, I think. I didn't say anything about her buying any additional furniture. She said something about wanting to buy some more.

Q. Did you have the Sixty-eighth street house fixed up, closets removed, mosaic floor put in, and place for a fountain ? A. Well, she had it done ; she of course advised with me and consulted with me about what I thought about it ; she always said she thought I had good taste about things of that kind.

Q. You took to the idea of a fountain, I presume ? A. Yes, I gave her my ideas always when she asked them.

Q. You have got a very large fountain at the farm haven't you ? A. Yes, sir.

Q. Where did you get that ? A. Bought it in Paris.

Q. Which one is that, for the farm ? A. The big fountain at the farm.

Q. How expensive a fountain is that, if you don't mind telling, the one for the farm ? A. I don't really remember.

Q. Well, it is a very large one, isn't it ? A. Yes; several thousands, though.

Q. Did you ever hear before that Mrs. Duke was refused flowers and vegetables by the Smith girls to go to the New York house ? A. No, I did not, except she wrote me while I was in England that she had gone to Mr. Smith about getting vegetables ; she said she couldn't get them when she asked for them, and I asked Miss Smith when I came back about it, and she

said she didn't have any, and he had gone over to some neighbors over there to South Somerville and got her some corn. It was dry weather; our garden was very poor, and we didn't have much in it.

MR. PARKER: This is all hearsay; this conversation was after he returned from Europe.

THE COURT: What he said was hearsay, and probably was not strictly right. He said she wrote to him in Europe complaining she could not get vegetables from the farm, and when he came home he inquired into it, and he gave the answers. No objections were made. Is Mr. Smith here?

A. No, I don't think he is.

Q. Did you put a furnace in the Sixty-eighth-street house? A. No, sir; I paid for it.

Q. Did you ever tell Mrs. Duke that you could only stand it two days at a time at the farm? A. I don't recall that, but I never spent my time anywhere days much, except holidays and Sundays, anywheres except at the office.

CROSS-EXAMINATION BY MR. KALISCH:

MR. KALISCH: We have no questions.

MR. LINDABURY: Everything that was examined about, whether marked or not, is considered in evidence, I believe. If I have not formally offered all the deeds, the copies of the by-laws and charter of the American Tobacco Company examined about, and the Morton Trust Company papers, I desire to formally offer them now. They have not been marked, and I want no question about their having been offered.

THE COURT: They are all offered and received in evidence, unless there is objection made immediately. Is there anything more?

MR. PARKER: I don't think there is any new evidence in regard to Mr. Duke's evidence that we want to contradict. That was all rebuttal to our testimony.

THE COURT: If you have any witness here that you want to add anything to your case I want to hear it all. I am not a stickler about that. I want to get the facts all out, rules of evidence or not.

MR. KALISCH: I think we are satisfied to leave the case as it is.

Mr. Parker asked the Court for a postponement of for a week or so, but the Court requested counsel to argue the case at once, and at the termination of the argument rendered his oral opinion in favor of the petitioner.

TESTIMONY CLOSED.

Opinion.

PITNEY, V. C. (after hearing counsel for the defendant). I do not care to hear you further on the part of the petitioner.

This is a suit for divorce by a husband against his wife, commenced by petition, charging her with adultery committed in various places in the City and State of New York. It avers that the marriage took place in the State of New Jersey on the 29th of November, 1904, and that from that time up to the filing of the petition the parties have been, and now are, inhabitants and residents in this State. The plea avers that the Court has neither jurisdiction of the subject-matter nor of the person of the defendant, and alleges that the petitioner was not at the time of the marriage, and has not been ever since, a resident of, or a citizen of, or domiciled in, the State of New Jersey, but was a resident of, and a citizen of, and domiciled in, the City of New York, and that the matrimonial domicile and residence of the parties was at the time of the marriage, and thence until the commencement of the suit, in the State of New York, and not in the State of New Jersey. The plea further sets up that the defendant was not served with process within the jurisdiction of this Court, and has not consented thereto, and that the proceedings are without due process of law. The plea then invokes the provision of the Constitution of the United States forbidding any State to deprive any person of life, liberty, or property without due process of law, etc.

The charge on the part of the defendant of lack of residence and domicile in New Jersey strikes at the jurisdiction of the subject-matter as well as of the person. This appears, when we consider that the subject of divorce is not within the general jurisdiction of a Court of Chancery. In this State it is wholly statutory, and in this case comes under the second part of paragraph 1 of Section 4 of the act concerning di-

vorces (P. L. 1902, p. 503), " where the adultery was committed without this state and the parties complainant and defendant or either of them resided in this state at the time of the adultery and at the time of filing the bill or petition." If, then, the party petitioner or defendant resided in this State during the period covered by the petition herein, this Court, by our statute, has jurisdiction of the subject-matter. But, in order to obtain jurisdiction of the person of the defendant by extra territorial service of process, it is possible that something more than a mere residence is necessary. I stop here to say that, in order to raise the question of jurisdiction of the subject-matter, it was not necessary for the defendant to plead as she has done. That defense may be, in my judgment, set up in her answer to the merits. It is the lack of jurisdiction of the person that can be raised only by plea, and the benefit of which is lost by general answer. According to all the authorities, in order to obtain jurisdiction of the person by extra territorial service, there must be what is called a " *res* " within the territorial jurisdiction. In fact there can be no decree strictly *in personam* based upon an extra territorial service of process. But the Court may deal with the rights of parties residing out of the territorial jurisdiction in matters such as land and personal chattels within its jurisdiction. The foreclosure of mortgages, where the owner of the equity of redemption is not within the reach of domestic process, is an example. So with the enforcement of debts by attachment against nonresidents levied on their property within the territorial jurisdiction.

In cases of matrimonial offenses the *res* or matter within the territorial jurisdiction, which it has been held by the Courts of all the States, except New York, and finally by the Supreme Court of the United States (reversing the Court of Appeals of New York), is sufficient to give the Courts of a State jurisdiction to proceed against a nonresident on service out of the State, is the married State. If the married state exists

within the territorial jurisdiction, the Court of that jurisdiction may proceed to deal with it by extra territorial service on the absent party. This arises out of the very necessity of the case, since, unless such jurisdiction could be exercised, the offending spouse who should be able to escape beyond the jurisdiction before service would thereby be able to deprive the other spouse of his or her just remedy. By our statute a mere "residence" in the State is sufficient, and it has never been here determined, as I am aware, whether that residence must be or have been a matrimonial domicile—that is, whether it is necessary that the spouses should have had their joint home in this State—or rather, I should say, that it has been held in this State that it was not necessary that there should be a matrimonial domicile here. But the Supreme Court of the United States has never, as I am aware, dealt with that precise question. In the Atherton Case, in which they held extra territorial service sufficient, there was a matrimonial domicile in Kentucky, and the service was in the State of New York. However, in the present case the petitioner, who assumed the burden of proof, very properly undertook to show a domicile as distinguished from a mere residence at the time of the marriage, and from thence until the separation. He alleges that the County of Somerset, in this State has been for several years before the marriage the chosen domicile of the petitioner, and that it continued to be such after the marriage, until the separation, which, by the evidence presently to be mentioned, occurred some time in July of the present year. And he argues that, in the absence of a separation, the domicile of the husband is the domicile of the wife, wherever they may have been actually sojourning. And he avers that it was the actual residence of the wife for a portion of the time between the marriage and the separation.

One other remark before coming to the facts: There may be a domicile without an actual present residence, and, *vice versa*, there may be a present residence with-

out a domicile, as in the case of our foreign ministers who reside abroad without losing their domicile in the United States, and our cabinet ministers and many of our members of Congress, who reside in Washington, but are domiciled in their respective States. Again, a man may have two or more residences, but only one domicile. He may have a country residence and a city residence, and each with all the paraphernalia of a home. Such instances are very common, and then it becomes a matter of choice. He chooses which one of the residences shall be his domicile and his choice is final, if made in good faith, although he may spend less time at his domicile than at his residence. Now, the marks of the domicile are numerous. They include the character of the place, and the acts and declarations of the party in connection therewith, provided, of course, the declarations are made in good faith, sincerely, and *ante litem motam.* In this country one of the most important indications of a domicile is the exercise of the electoral franchise.

Let us now look at the facts of this case, and that includes many years of the life of the petitioner. He was born and bred in Durham, N. C., where his father was engaged in dealing in and manufacturing tobacco. The petititioner was interested with his father as one of the firm of W. Duke's Sons & Co. Twenty-one years ago, when he was 28 years old, in the year 1884, he came to New York City, and established a tobacco business there. He was a bachelor from thence until his present marriage, and he lived in New York City from 1884 for 10 years. He never voted there. His domicile of origin was, of course, in the State of North Carolina, and so remained until he determined to change it, and he had a right to retain that domicile, although living in New York. He admits that he did, as he supposed, change it some time before the end of the 10 years; but he is unable to fix the date when he did change it to New York, if ever. At the same time he was described in official and other documents as of the City of New York as early as the year 1890. In

the year 1893 he purchased the old Veghte farm of 300 acres, lying just south of the Raritan River, near Somerville. On it was a large old-fashioned mansion house. In the conveyance, as originally prepared, he is described as of Somerset County, but that the description is erased, and the words "New York City" inserted, so that we may conclude that at that time he considered his residence in New York, and had not finally determined to make Somerset County his home. But in the year 1894 he moved the furniture of his suite of rooms in New York City to the old Veghte house and set up housekeeping there. From that time on he has been described in all official and semi-official papers as of the County of Somerset, N. J. He was the New Jersey director of the corporation or corporations in which he was interested. He commenced directly from 1893 on to purchase more land, and from time to time for the next six or seven years bought several tracts of varying sizes, nearly every one adjoining each other until he had acquired over 1,700 acres. He was shortly after (1894) enrolled by the official canvasser as a voter in the Township of Hillsboro, in the County of Somerset, and was thenceforward taxed yearly upon his poll. He actually voted there in the years 1896, 1900 and 1904, when he was sent by the Congressional District of which Somerset County is a part to the Republican convention in Chicago as a delegate. He always spoke of that place as his home. He first repaired the Veghte house, and set up a small home establishment. Later on he built a large and expensive addition to it, costing, as I recollect the evidence, some $50,000 or $60,000, erected in the most substantial manner, with all modern conveniences, with heating apparatus throughout, and with electric light. He furnished it throughout, at an expense of over $60,000, with the most substantial and expensive articles, and hung its walls with oil paintings. He established a corps of servants, with a regular housekeeper and several maids and a man of all work. He provided a larder, which was at all times supplied and

ready to entertain himself and his guests without warning. He built a stable at an expense of $55,000, and installed it with horses and carriages, and later on with automobiles. In short, the establishment had all the paraphernalia of a permanent home. In the meantime he was spending enormous sums of money in beautifying the grounds, which were sufficient in acreage to make a parallelogram one mile wide and nearly three miles in length. These grounds he laid out in a park with macadam drives, artificial lakes, waterworks to supply his house and buildings, and planted a great number of trees and shrubs, such as rhododendrons and other expensive plants. Now, he swears that he all the time intended to make this his home.

We have, then, first, the buying of this property, and the shaping it into a solid, substantial, elegant and expensive home, fitted for both summer and winter residence. We have it furnished at such, and provided with a housekeeper, corps of servants, and a larder, always ready for him and his friends, when they came, including heat in winter. We have him declaring over and over again to various individuals, when talking about the improvements he was making, that he was making a home for himself. We have him making that his place of voting and nowhere else, and we have him swearing that he always intended that as his home. We have, further. no evidence that he had any other home besides that of his birth, unless it be in the City of New York. The defendant alleges that all this time, and up to the time of commencing this suit, his real home and residence was in the City of New York. Let us look what the proof is as to that. Petitioner was an assiduous and attentive business man, and his business was mainly in the City of New York. It really extended all over the United States, and the company of which he was and is the head had large factories and places of business in many of the large cities of the United States. These were all managed, however, from the central office in the City of New York. In that office petitioner spent most of his business

hours when in the neighborhood of New York. He usually, however, went out to Somerville on Friday evening, and sometimes, but not frequently, on Thursday evening, and remained over until Monday morning. Sometimes he went out for a night in the middle of the week. The proof satisfies me that he spent as many nights in the course of a year in Somerville as he did in the City of New York. He gave as a reason for not spending all of his nights in Somerville that his business cares were so exacting that he could not afford to spend the time, about two hours in the morning and two at night, required to go from his place of business on Fifth avenue, New York, to his farm. So he had a residence in the City of New York, where he could always go and had a right to go. He kept there horses and carriages and a coachman. That residence was with the defendant, with whom he lived as his mistress. I should not speak so plainly, but it was openly stated by her counsel in his able and ingenious argument, and abundantly appeared by a letter, written by the petitioner to the defendant in August, 1904, and offered in evidence by the defendant, in which he asked her to marry him and set at rest certain disagreeable rumors or scandals. The connection with the defendant commenced in 1892. He furnished her the money to buy a handsome and commodious house in a fashionable part of New York City, and also the money wherewith to furnish it, and there he always had a room and a home, if it be proper to call a residence like that, unsanctioned by marriage, a home. Some two or three years before the marriage ceremony took place, the defendant sold the house previously occupied by her, and after a short vacation purchased another No. 11 West Sixty-eighth street, a fairly commodious house costing over $40,000, and continued her residence there, and the petitioner went with her. To each of these houses he carried a night latchkey, and came and went as he pleased. On the 29th of November, 1904, the parties were married at the house of the defendant's aunt in Camden, N. J., and immediately took steamer

for Europe on a wedding trip, from which they returned the latter part of January, 1905. Before their departure, however, wedding cards were sent out, in the name of the aunt, announcing the marriage of her niece, Mrs. Lillian Nannette McCready, to James Buchanan Duke. With that announcement card was sent a card in the following words: "Mr. and Mrs. James B. Duke will be at home after the first of February, at 11 West 68th St., New York."

Counsel for defendant laid great stress on the use of that phrase "at home." It is proper to say that Mr. Duke disclaims all responsibility for it. He says it was some of his wife's foolishness. But, charging him with full responsibility for it, what after all, does it mean? Why, simply that at that time and place they would be ready to see and receive visits from their friends. It would have been quite as appropriate if it had been used to invite their friends to call on them at some hotel in San Francisco or London or Paris, where they found it convenient to be shortly after their marriage. For instance, it might have read: "Mr. and Mrs. James B. Duke, at home at the Hotel Cecil, London, from the first to the tenth of February"—or it would have been equally appropriate, if the defendant had not owned or occupied a house in New York City, of they had made their home at the residence of Mr. Duke's brother, Benjamin N. Duke, which he then owned and shortly afterward occupied with his wife and two children in New York City. In short, it has the same significance, no more and no less, as the society phrase put in the mouth of the servant who opens the door to a casual visitor, and declares to that visitor that the lady of the house is not at home, and which is understood by everybody to mean simply, and no more, that she is not ready to receive visitors. It does not necessarily refer to a domicile.

Reliance was also placed by counsel on an expression found in the letter before referred to, written by petitioner to defendant in August, 1904, and addressed to her at a hotel in the White Mountains. He advises her

to come home. When confronted with that letter, he said he meant her home, and I think that is the proper construction to put upon it. Not being then married, his Somerville home was not her home. But let us look at the movements of the parties after their return in January, 1905, to the United States from their wedding trip. They went together, first, to the Somerville house, and then to North Carolina to visit his father. From there they went to Florida; then returned to the defendant's house in New York City. The petitioner was, at or before that returned, disabled with gangrene in his foot, and laid in bed under the doctor's care for six weeks, which brought them down to some time shortly after the 1st of May, when he took his wife out to his Somerville home, and they stayed there off and on until some time about the 1st of July, making their home there. The defendant was, indeed, restless and desirous to get away. The petitioner was insisting on her making her home there. She threatened to go back to New York. He told her he would sell off his stable belongings there, and cut her off from the use of the carriages. She said she would resort to livery. He said he would not pay the bills. Just when they ceased to cohabit was not shown, but they never did cohabit after he sailed for Europe on the 16th of July, 1905.

But in determining the value of the defendant's contention that, granting that petitioner's domicile was in Somerset County up to the time of the marriage, yet that it was then changed to New York City, another important and well-established, and, in fact, admitted, fact is here to be noticed. About the time of the marriage, and probably for some time before and after, the petitioner was entertaining the intention of building an elegant and costly mansion on the Somerville farm. He was devising and studying plans for it. He started on a $500,000 basis, and we all know what that means as to cost, and in all this his wife was consulted. And in the spring of 1905, when he was about to prepare the ground surrounding the site he had contemplated

for this mansion, she was also consulted about that, and at her suggestion he changed the proposed site, and immediately put on a large force of men, and I suppose machines, at work in grading and terracing for this new mansion. When, if ever, this work was stopped, did not appear, as far as I at this moment recollect. But, as before remarked, it is a well-established fact that while he was living with his wife on the farm—the place was called "Duke's Farm"—in the spring of 1905, he was actually engaged at great expense in preparing the ground for an elegant mansion for himself and his wife. Now, this I consider a very important and significant circumstance on the question of any change or intention on his his part as to his domicile.

But the defendant does not stop here. When the petitioner returned from Europe in the latter part of August, 1905, just before the filing of the petition herein, he did not return to his wife's house, or, so far as appears, see her at all, but promptly set about providing a comfortable place and residence for himself in the City of New York. His brother, Benjamin N. Duke, a wealthy gentleman, with a wife and two half-grown children, was the owner of a handsome house in a fashionable neighborhood, which he had not yet occupied, or at least which was not fully furnished. Petitioner immediately set about, having that house furnished. He brought in from Somerville, for the purpose of overseeing the placing of the furniture, his housekeeper, a very efficient woman. He managed to entice away from his wife all or nearly all of her housemaids and installed them in his brother's house. Asked why he did this, he said he wished to find out from them how his wife had been behaving herself during his absence, and his object in promoting the establishment in his brother's house was manifestly to keep within his reach and control those servants. Pressed on cross-examination, he frankly stated that there was no bargain between him and his brother on the subject, but he had no doubt that his brother would sell him the house and furniture and whole es-

tablishment at any time he might wish it, but that all the expense attending the setting up of the establishment was borne by his brother, except the regular salary of his Somerville housekeeper. This provision for a new rssidence in New York City was made after suit was brought, and the house, when furnished and prepared for habitation, was occupied by his brother Benjamin and his and two children, and petitioner had, as I understood the evidence, a comfortable resting place there, but he voted in Somerset County in the fall of this year. He must have known—and he was all the while provided with the most able counsel—that anything in the way of a change of residence might be fatal to the success of his suit already instituted in the State of New Jersey, and I cannot think that he at that time seriously contemplated for even a moment abandoning his thoroughly established domicile in New Jersey for New York, and I infer from the evidence that this work of preparing his brother's house was all done after the filing of the petition, which was on the 2d of September.

Now, with regard to the facts that have been recited, it is proper to say that they are substantially undisputed, except some altogether triffling and immaterial disagreements in the evidence of the parties as to the household establishment at Duke's farm. I recollect but two conflicts upon the real merits of the case. Defendant swore that petitioner never intended to make his farm his home, but that he intended, after spending enormous sums in turning the greater part of his immense holding of land into a beautiful private park, to make a present of it to the town of Somerville or the county of Somerset—I forget at the moment which. Now, the petitioner swears that he never heard of any such thing until he heard it from the defendant on the stand, and he denies her evidence in that respect in toto. Now, I believe him and not her. I think her story falls as proof of its own weight. Neither the town of Somerville nor the county of Somerset have either the authority to accept such a gift, or the power or financial

ability to keep the park in order and properly maintain it, if accepted. The whole idea approaches the absurd.

The other matter is this. The defendant swore that the petitioner, during all these years, did not enjoy his visit to the farm, and did not enjoy remaining there any length of time, and declared that he did not like to be absent from New York, even a few nights at a time. Now, it would have been ungallant, to say the least, in petitioner not to express a desire to enjoy defendant's society continually; and as soon as the postnuptial journings were over, and he had recovered from the long and serious disability which he suffered from his gangrene, he immediately transferred his wife to his Somerville home, and apparently tried to domesticate her there, where he could enjoy more of her society. He testified that he had been very much confined by the exactions of his business relations, but that for the last year or two he had made such business arrangements as to enjoy more liberty and to have more time at his command, and to be able to be more at his farm. This fits in with his determination to build there a modern palace for his home life with his wife.

Upon the whole I conclude that the petitioner's domicile was for all these years in the State of New Jersey, that all his declarations in that respect were made in good faith, that whatever of a home he had in New York was not inconsistent with his actual domicile in New Jersey; and, granting that he had a residence in New York, he deliberately chose his domicile in New Jersey, and that choice was made in good faith at a time when its importance and consequences were not of consequence to any then immediate interests. I am further of the opinion that that domicile became, on their marriage, the domicile of the wife as a presumption of law, and that it became such a domicile in fact when, in the spring of 1905, he took her out there to live with him as his wife, Thus we have here a matrimonial domicile actually existing up to at least a very short time before the commencement of the suit. Hence

I doubt if the question which I mentioned during the argument is raised by the circumstances of this case. That question is whether, when spouses have their home in one State and there live together, and then separate, and one migrates to another State and there establishes a residence and a *quasi domicile*, which is not matrimonial, such residence or domicile will be sufficient, in the view of the Supreme Court of the United States, to create such a matrimonial status in that State as will justify the spouse so establishing it, and the State, in taking jurisdiction of the other spouse, not a resident in that State, by extraterritorial service of process. That question, as far as I am at present informed, though thoroughly settled in this State, has never been dealt with by the Supreme Court of the United States. It was on the supposition that this case, as finally developed, might raise that question, that I expressed the hope that it might be carried to the Supreme Court of the United States. But while that question, if it had arisen, is one of great importance because of the numerous cases in this country where spouses are called upon to answer each other's complaints by suits in jurisdictions thousands of miles away, in this particular case it is of little importance. It seems to me that it makes little difference to the defendant whether she tries the merits of this case in New York or New Jersey. Indeed, I think the chance of actual justice are better in New Jersey than in New York, because there the issue must be tried before a jury all at one session, uninterrupted except by the hours of rest and holidays, and where either party is liable, especially in a case of this kind, to surprises in the matter of evidence, but which might be, but cannot be, successfully met for want of time, while here hearings may be put over, from day to day and time to time, till all the available evidence bearing on the issue has been produced. It may be said that the infidelity is charged to have taken place in New York City, and, hence, the witnesses are naturally to be found there, but, as the burden of proof is on the peti-

tioner, that seems to me to furnish no cause of objection by the defendant, and whatever witnesses she may have in New York may be examined there, if unwilling to come to New Jersey.

There is no hint of lack of financial means on the part of the defendant to properly defend herself in this cause. If such lack of means exists, counsel for the defendant know how to remedy it.

I will advise a decree overruling the plea, and directing the defendant to answer within 30 days; and proper verbiage must be added to preserve her right to prosecute her appeal, notwithstanding her answer.

The Baker Printing Co., Law Case Printers, 251 Market St., Newark, N. J.

New Jersey Court of Errors and Appeals.

Between JAMES B. DUKE, *Respondent,* *and* LILLIAN N. DUKE, *Appellant.*	*On Appeal from Final Decree.*

Brief for Lillian N Duke Appellant.

This appeal is taken from the final decree of the Chancellor made May 4th 1906.

JURISDICTION.

The question of the jurisdiction of the Court of Chancery was settled by the Court of Chancery by a decree made December 21, 1905, wherein it was decided that "at the time of the alleged adultery in this case, and at the time of filing the petition, the petitioner James B. Duke, was a resident in this state and was domiciled therein," and the plea of the defendant, setting up the non-service of process within this state and claiming the benefit of the 14th Amendment of the United States Constitution, requiring due process of law was overruled.

An examination of the final decree will show, that it adjudicates the above, and also "that the matrimonial domicile of the said James B. Duke, and the said Lillian N. Duke was at the time of the committing of the said alleged acts of adultery, and at the time of the filing of the said petition in the state of New Jersey" (p. 10, l. 20-25).

No such adjudication was made in the decree overruling the plea. Nor was there any evidence in this case which justified such adjudication. The question of jurisdiction was not considered on this record, and there was no warrant for the decree in this respect.

The appellant raises this question in her petition of appeal, (p. 16, l. 1-10), and also says "that the matrimonial domicile of the said parties at the time aforesaid was in the state of New York, and the said Lillian N. Duke was not served with process within the state of New Jersey, and appeared only by compulsion, and the said Court of Chancery had no jurisdiction whatever to render any decree in the said cause for the reasons set forth in appellant's plea to the jurisdiction" (p. 16, l. 19-27). This plea set up her right as a citizen of the United States under the 14th Amendment of the United States Constitution requiring that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the Unted States; nor shall any state deprive any person of life, liberty or property without due process of law." The appellant submits, that neither in the evidence taken in the plea to the jurisdiction, nor in the evidence taken on the trial on the merits, did it appear that the Court of Chancery had any jurisdiction of the defendant so that by the United States Constitution she was required to answer the said petition, or make defense to the petition on the merits, and the decree of divorce is without jurisdiction and void.

Furthermore she contends and submits, that even if the Court of Errors decides that the Court of Chancery had jurisdiction to grant a divorce in this case, notwithstanding the non-service of process within this state, yet no decree could be made on this record, other than such decree of divorce, and that the judgment for counsel fees and costs is a personal judgment, and cannot be sustained in this suit where

there has been no service of process nor voluntary appearance, and violates the same part of the United States Constitution as has been above quoted.

THE ISSUE.

The charges of adultery all relate to one person, Frank T. Huntoon.

Five days are specified, "the first, second, eleventh, twelfth and thirteenth days of August, 1905, at No. 11 West 68th street" (p. 1, l. 31).

Then there is a blanket charge on "different days unknown to your petitioner in the months from February to August, 1905, at No. 11 West 68th street, and at other places in the city of New York, and at places on Long Island and elsewhere in the state of New York" (p. 2, ll. 1-12).

The decree (p. 11, l. 8) adjudges "that the said Lillian N. Duke is guilty of the crime of adultery committed with the defendant Frank T. Huntoon as charged against her in the said petition of the said James B. Duke," without further specification, decrees an absolute divorce and that the defendant Lillian N. Duke, pay costs on the plea of jurisdiction, and all other costs and also a counsel fee of $3,000 (pp. 11 and 12).

The opinion of the Court of Chancery makes no further specification of the acts of adultery except to refer to three occasions when it was alleged that Huntoon was seen going away from 11 West 68th street, at an unseemly hour, and to refer to one occasion on August 31, 1905, which happened to be the day of the week when Mrs. Duke went to Bloomingdale, to see her invalid mother (Thursday) as a suspicious occasion.

The Court of Chancery, however, did not either in its opinion, or its decree, find that the alleged adultery was committed at any particular time or times; nor did it say which of the many charges made in the petition was proved.

Hence in approaching this case, it is apparent, that the plaintiff expects to succeed, not upon the proof of any particular act of adultery, but only on the claim that adultery must be inferred from the general acts and conduct of the parties.

THE EVIDENCE.

The evidence naturally divides itself into three classes—First, the testimony of the watchers; secondly, the testimony of the servants, and thirdly the alleged telegrams and newspaper personals.

The Testimony of the Watchers. Four detectives were sworn, Fred C. Mumford, V. G. Milch, C. L. Mumford and E. M. Cleary. These men relieved each other, and shadowed Mrs. Duke when she went out and watched her house when she returned. They all testified from "notes" and their testimony was largely reading from these notes. The Court of Chancery thought this was the only proper way for them to give their testimony (p. 28, ll. 15-30; p. 30; p. 49, l. 30; p. 58, l. 10; pp. 95, 96; pp. 143, 144; pp. 152, 154). None of them had any particular recollection independent of their notes. Of course cross examination was virtually impossible, except as to where they stood and made their observations.

Notice that they were "shadows" and would try not to be observed from the house.

There was a private watchman on this street, and they tried to keep out of his sight. So they sat on a wooden box near the park wall on Central Park west, some 300 feet from the house and watched the windows and porch of No. 11 West 68th street for they could not see the door, and two or three times during the night would walk down West 68th street and back (pp. 54-55) Yet they always saw Huntoon come out. As to their power of observation, and how much light was in the street see p .

Next was Caleb C. Dula, an intimate of the plaintiff and one Reuther, an elevator boy next door.

The watchers and Dula, were all under the guidance of one Wagenfuhr and the latter was not sworn. The reports of the watchers were kept in Wagenfuhr's charge from the time they were made until the time of the trial. It was Wagenfuhr who had all the conversations with Duke and who was his *alter ego*, in the entire affair, having been entrusted by Duke with the task of entrapping the defendant with Huntoon—Wagenfuhr was familiar with all the facts of the case from its inception to the end. The underlings of Wagenfuhr had no communication whatever with Duke except through Wagenfuhr. Hence when the watchers were examined an essential matter for examination was prevented—that is Duke's instructions and plans concerning the entrapping of his wife. His instructions and plans entrusted to his counsel were secure in their being confidential and priviledged. Duke himself was not sworn and was not compelled to testify. Wagenfuhr could not have pleaded any privilege. This most important, and essential witness was opportunely absent in Europe. On p. 461, counsel for petitioner announced that he would not produce Wagenfuhr, and further stated that he was in Europe. It is safe to infer that Wagenfuhr was sent by the petitioner purposely out of the way to prevent any investigation into the plans and plots entered into between him and Duke to enable the latter to get rid of his wife.

Their testimony showed the time when Huntoon called and when he left. To show that Huntoon was at the house every day that Mrs. Duke was home, would be of slight importance. Mrs. Duke was a woman of middle age, living in her own home, surrounded by servants, rich, and fond of amusement. Five women servants lived in the house, of whom four were in Duke's employ at the time of the trial, and

only two were sworn as witnesses; and Duke's second man had access to the house at all hours of the day or night.

But these witnesses could fix the time that Huntoon left, to suit themselves. They knew the impossibility of contradicting them as to the hour Huntoon left, and they made the most of it. Whenever Huntoon left in a cab or conveyance, he left at a reasonable hour,—when he left on foot the time was always unseemly.

Then the light in the third floor front room would show or be dim, to suit the purpose of the witnesses. It was an electric light, and of course was turned out and on without difficulty, and by a uniform practise.

The house was a five story, American basement. On the second floor, was a parlor, hall and library. On the third floor, a bed room in front, Mrs. Duke's; another in the rear, Mr. Duke's. One of the servants slept on the fourth floor and four others on the fifth.

It was built as part of an apartment house; and had a common porch with that apartment house. This was covered so that the door of No. 11 could not be seen; and the apartment house kept open all night long (Reuther). The photographs show the location perfectly.

The Testimony of the Servants. Only two of the four employed by Duke at the time of the trial, were sworn. It is a curious fact that all were induced to leave by one of them, the housekeeper, Mrs. Andrews, who slept just above Mrs. Duke. She was not sworn, though she is the one who was constantly in communication with Duke. This is a cogent circumstance confirming defendant's contention that there was a concentrated effort on the part of the petitioner to prevent any light being thrown upon Duke's conduct and upon the plans and plots, concocted with Wagenfuhr and Mrs. Andrews, against Mrs.

Duke. Nellie Sand, Mrs. Duke's maid, was the principal witness, and Louise, the waitress, testified to one incident which will be commented on later.

They all lived in the house from May 1, to Sept. 1st, 1905, and no improper act on the part of Mrs. Duke is related by them except by Louise, and that was fully disproved as will be hereafter shown. While Duke possessed ample means of showing all that took place in the house, by these four witnesses and the watchman, these are the only unusual things related.

The Alleged Telegrams & Personals.

None of this alleged evidence was properly proved, or was of any weight. As to the personals, these were shown to appear in printed copies of the Paris Herald, on different days from December 8, 1904 to January 29, 1905. There was no evidence that the newspapers shown were published on these days, for they were procured long afterward, in October, 1905. Nellie Sand recognized the newspapers as like the Paris Herald which she had seen while traveling abroad, but failed to identify a single personal, positively. Nor were one of these papers even in Mrs. Duke's possession. Nor was there any evidence that Huntoon wrote and caused a single personal to be published. What Nellie Sand said was that Mrs. Duke told her when they arrived in London, that Huntoon would communicate by personals in this newspaper. That Mrs. Duke asked for the newspaper, and they procured it regularly, and that she had seen a number of papers with a part cut out, where the personal usually appeared. This was not proof at all. No one saw Mrs. Duke cut out any personal, or any clipping in her possession. These personals were not brought home to Huntoon in any way. And it was just as probable that Duke cut them out himself, as that Mrs. Duke did so.

And assuming that she did, yet that would be no evidence against her unless they were sent by Huntoon. In order to touch up the story so as to possibly charge Mrs. Duke, Nellie Sand was led by counsel and showed evident signs of coaching. (pp. 233-248; also p. 251).

The Court of Chancery seemed to give more heed to this stuff than to any other part of the case.

Next the Telegrams. There were six of these sent from Durham, North Carolina, May 4-10, 1905.

Mrs. Duke had gone to Durham with Mr. Duke, on a summons to the bedside of Mr. Duke's father.

The originals of these telegrams were not produced. Certain alleged originals were produced before a master in chancery on a commission to take testimony *de bene esse, of* which no notice was given to Huntoon, nor were the originals offered in evidence.

The testimony taken on the commission was excluded by the Court of Chancery.

It fully appeared that the telegrams were capable of being produced on such a commission, both by the evidence of a lawyer of North Carolina and their alleged actual production. They were in existence, and yet the court admitted secondary evidence of their contents on mere proof that they were out of the State. (pp. 328-329).

Even if admitted, they are of little weight, considering the long friendship of Huntoon and Mrs. Duke, and the circumstances of her presence in Durham.

So much for the general features of this case. I will now speak of the incidents relied on chiefly by the plaintiff.

One Caleb C. Dula, Vice President of the American Tobacco Company, whose fortunes were created by Duke, watched on three occasions.

1st. Night of August 1 and morning of August 2 (p. 98). He sat with Mr. Boland, diagonally across the street. He saw a light in the window of Mrs.

Duke's room. He remained there from 12 M. until 1:25, when a man came out whom he says was Huntoon.

2nd. Night of August 11th and morning of August 12th (p. 101). Got there just after midnight and sat with Wagenfuhr. Sat at same place and watched. At 12:40 same man came out.

3rd. Morning of August 13th. Was called a little before one (p.105). Sat there about an hour when he was disturbed by a night watchman; and spent the "balance of the night walking around within a radius of a block of 68th Street, spending most of the time in view of house No. 11. At 5:15 Huntoon came out, and walked towards Columbus Avenue, and was recognized." Wagenfuhr again was with Dula.

We submit that this evidence is untrue. This witness was an able intelligent man, and not easy to cope with on cross examination. Yet he has sworn falsely in matter of detail.

First, he testified that he viewed the rear of Mrs. Duke's house, and ascertained that there were no lights there from the south side of 69th Street (p. 98, ll. 22-35; p. 116, l. 29; p. 117, l. 10). The fact was that Mrs. Duke's house was not observable from that point by reason of a nine foot fence.

Secondly. After committing intercourse with Huntoon, as the plaintiff charges, Mrs. Duke invariably appeared at the window and waved good-bye to her lover, and he waved in reply (p. 100, ll 9-22; p. 104, ll. 1-20; p. 106, ll. 30-35). This is a preposterous story.

Thirdly. Though he was walking from North to South, on Columbus Avenue, some 800 feet from the house, yet he observed Huntoon come out of the house, and the woman at the window (p. 128, ll. 11-35).

And this in spite of there being a curtain and a shade to the window (p. 135, ll. 1-5). And he made no note of other detectives being there.

A comparison of the testimony of the detectives shows that they observed this extraordinary waving on these nights, but they do not mention it on any other.

Their power of observation was limited. The Park wall was 200 feet East of the house. The street was not well lighted. Experiments taken show that people could not be seen going in or out of the house at night from the Park Wall. Next door was this apartment house which kept open all night. It is idle to claim that Huntoon could be recognised by such observation. Even that he walked through 68th Street that morning, would not show that he was in the house all night.

A watchman patrolled the street. The detectives were warned off, and Mrs. Duke notified, on July 26. (Reuther, pp. 211, 212; Anderson, p. 425). Yet this incident is not referred to by the detectives. The watchman (p. 674) discovered them about the same time and warned Mrs. Duke.

The detectives' testimony is really valueless and cannot be relied on. They simply waited outside and imagined what took place inside. They were paid to make reports, and they had to earn their pay.

But what took place inside? Mr. Duke ought to be able to tell us. He had all the servants but one.

Nellie Sand claims that Mrs. Duke sent her to bed with the other girls at 10:30. Yet she admits that she was Mrs. Duke's maid and helped her undress, and that she was directed to sit up for her. But she claims this was only after the detectives were discovered. When was this The Court of Chancery says it was about August 15th. But the proof is it was as early as July 18th (674).

Why were not the other two girls sworn? Nellie Sand admits that she always made Mrs. Duks's bed. Nothing unusual is related about the bed, except on

one occasion in April. And that is of the most worthless nature. She says the bed was stained, but she does not describe the stains.

Louise, the waitress, shows that Mrs. Duke and Huntoon behaved with entire propriety (pp. 368, 369). Louise relates one occasion when she claims to have seen Mrs. Duke and Huntoon come up stairs. She saw them "about the middle of the stairs" (p. 367). She saw the door of Mr. Duke's room close, and saw them go into that room (p. 367). She looked from a point in front of the bathroom on the fifth floor down the well, 10 feet long, 1 foot wide, to the stairs between the second and third floor (p. 384; p. 388). This was an impossibility (see 569-653). Yet the Court of Chancery decided that she could see.

Duke had access to the house by his own key, and also by his choreman Richard O'Hara (p. 687).

He had the right to enter this house by his servants.

How easy to have caught Huntoon inside? Yet no attempt was made.

Then Mrs. Andrews was not sworn. She was in communication with Duke. How easy for her to have aided the detectives? Yet no such effort was made.

Is it possible, that Huntoon should have been sleeping in Mrs. Duke's house, and committing adultery with her there, and these servants not know it? When the plaintiff had so many means of getting and giving proof will the Court allow suspicions to be substituted for proof?

Lastly comes the witness, Nellie Sand. If her testimony should be freed from the suggestions made to her in Court, and by previous drilling, it is not damaging to Mrs. Duke. She says that Mrs. Duke knew Huntoon before her marriage to Duke. Huntoon came to see her three times a week, and took her to restaurants and out in his automobile. Mrs. Duke was fond of him, and liked him. So much so, that when Mrs. Duke went to Camden to be married, they

both wept at the thought of the coming event. Nellie says she wept too. I can see no occasion for this on the theory that Mrs. Duke was Huntoon's mistress before marriage, for if she deceived Duke before marriage, it is probable that the marriage ceremony would not be in the way of future intercourse. The truth was that Huntoon was Mrs. Duke's suitor, and his hopes were disappointed by the marriage.

After Mr. and Mrs. Duke returned from Europe, Huntoon continued his visits. Nellie says they corresponded while in Europe, but her say so is the only proof. The letters are not produced, and we cannot say what they contained if they were written.

Now surely there was nothing wrong in this woman's continuing to receive Huntoon's visits or corresponding with him. Nor in her seeing him every day when her husband was in Europe. She had always been accustomed to society, and Duke was a recluse immersed in his business. Nor was there anything wrong in Mrs. Duke's going to Coney Island, even for the night, or to restaurants, or out in an automobile. Rich people enjoy themselves that way. And Duke's jealousy was a sufficient reason for the maid being told, if she was told, not to mention these matters to Duke. Mrs. Duke's prevarications in her letters, are not enough to condemn her with Huntoon.

But the chief part of Nellie Sand's testimony is exaggeration and insinuation, and all of this the Court of Chancery seized upon with avidity. This Court should read the record, and see if this comment is not true.

Nellie Sand was out for the plunder. She takes sides with Duke, and is trying to carry out her bargain.

Note her attempt to cover up her true position by the story told to Mrs. Lincoln, Mrs. Sledge and Hilda: that she had been kidnapped by Duke; and then

her tale that her attitude was due to disappointment in Mrs. Duke's actions. Apparently she would insinuate that she was an accomplice in Mrs. Duke's adultory with Huntoon before marriage; and in Mrs. Duke's secret correspondence with Huntoon on the honeymoon; and then thought Mrs. Duke did wrong in continuing relations with Huntoon after marriage when Duke got back from Europe. Then Duke's gift of one thousand dollars in stock to her just before he went away; his presents to her; his employing her and his promise of future kindness to her. All these made her a willing witness, and thus she appeared on the witness stand.

Compare her account of Mrs. Duke's habits with Huntoon (p. 271; p. 286) and Louise's account (pp. 368, 369).

Take her story that Mrs. Duke had Huntoon unhook Mrs. Duke's dress She relates the only occasion when the subject was mentioned (p. 277) and then said that she unhooked the dress herself.

"Q Now when was this?

A That was the latter part of August.

Q Did you go to bed then?

A No, sir, I never went to bed before she went to bed; I always undressed her."

Mr. Lindabury. No, but I mean—

The Court. She says this was during the last two weeks of August, and you asked her if she went to bed; she said she didn't go to bed; *during the last two weeks* she sat up."

Compare with this her admission that she always sat up and waited for Mrs. Duke before her marriage (p. 510).

Take the story of the night gowns, and the insinuation that Mrs. Duke wore them when Huntoon took her out; and it afterwards appeared that she liked to wear them in warm weather, because they were so thin.

Take her story of the mussed bed already discussed.

Take her story about the "Personals."

Take her abuse of Mrs. Duke for drink, in which she is contradicted by Louise who served the wine. Was not this prompted by Duke's having told her that Mrs. Duke had accused her of taking the wine herself? (pp. 508, 509).

Then her story lacks corroboration in every particular. None of the servants testified to the same facts.

Take her account of how she had already determined to leave Mrs. Duke before Mr. Duke returned (pp. 529, 530). This was right after Duke left (p. 530, l. 20). And though she knew the detectives were watching, she always denied it to Mrs. Duke (pp. 531, 532). Can it be that she was a spy of Duke's?

She went to Durham, North Carolina, two weeks before the trial of this case, in order to identify some alleged telegrams, so she was a very willing witness.

Considering how little evidence of any real importance is given by this confidential maid servant of Mrs. Duke, when her story is stripped of its exaggerations and suggestions of Duke's many counsel, and the opportunities for observation in her power are considered, it is astonishing that any weight is given it.

The interior of the house has already been referred to. It should be added that the house had no servants' stairway. There was only one main stairs, going up the middle of the house, and the parlor and library were open to view by any one going up or down this stairway. So there was no secrecy, no concealment, in Huntoon's visits, or in the conduct of Mrs. Duke and Huntoon in the house. They always sat in the library. All of the servants could have spied, and is it credible that Duke, when he went to such great expense with detectives and lawyers, did not also have a spy in the house? And was not Tilllie Andrews, who induced all the servants but one to leave the house, by Duke's direction, that spy and in touch with Duke all through the Summer? And why was she not called as a witness,

and why was not she sworn to testify as to the time when Duke first arranged for her to help him in this case?

If a plaintiff shows that he is possessed of material evidence on an issue, which he purposely withholds from the consideration of the court and jury, the court and jury will not be permitted to draw inferences therefrom favorable to his case, if the circumstances actually put in evidence are capable of two or more significations.

Bahr vs. *Lombard,* 24 Vroom, 234, 240.

If the circumstances in proof taken singly and together, admit of two interpretations, that which favors innocence should be adopted.

Hurtzig vs. *Hurtzig,* 17 Stew., 329; 18 Stew., 869.

Brown vs. *Brown,* 18 Dick. Ch., 349.

The plaintiff in this case has no right to trifle with this court. He cannot ask relief by proving suspicious circumstances and withholding from the court evidence which may explain the whole situation.

MRS. DUKE'S FAILURE TO BE A WITNESS.

The Court of Chancery remarks that this case was undefended. I presume allusion is made to the fact that Mrs. Duke did not appear as a witness. If she had appeared as a witness and confessed the charges, the court would have disregarded her testimony; that she did not testify at all can not be regarded as a ground for giving relief.

All the material facts proved were contradicted by Mrs. Duke's witnesses. And there was nothing for her to testify to in answer to the plaintiff's proofs, except to renew a denial of adultery that she had already made. There was no testimony that adultery was committed.

That Huntoon was not called can not affect Mrs. Duke. The plaintiff was at liberty to make his case by Huntoon's evidence if he so desired.

It would have been idle to have sworn Mrs. Duke as a witness; her denials would have been entirely disregarded, and the only facts she was called upon to deny was as to the hours when Huntoon left the house. There was nothing else in the case. (p. 21).

CONNIVANCE AND CONSENT.

If the court should find that Mrs. Duke was guilty of adultery with Huntoon at No. 11 West 68th Street, between July 15, 1905 and September 1st, 1905, then the proof shows that Duke consented to it, and such consent debars him from divorce (P. L. 1902, p. 509, No. 22).

It appeared that in 1892 Mrs. Duke was married to one McCrady, and while so married, and after she was divorced from McCrady for adultery with some other man than Duke, she lived with Duke as his mistress until November, 1904, when she married him. He was therefore conscious of her frailty (pp. 704-716, 733, par. 3).

A sworn affidavit made by Duke, was offered in evidence which contains the following:

> "That petitioner and defendant were married on November 29, 1904, and sailed immediately for Europe; that upon their return in February, 1905, petitioner and defendant continued to live together as man and wife, without suspicion on the part of petitioner of the fidelity of defendant until early in July, 1905; that early in July, 1905, petitioner came accidentally to the knowledge of a telegram sent, as he believed, by defendant, under the fictitious name 'John' to a man, of whom petitioner, at that time, never to his recollection had heard, named Frank T. Huntoon, the co-respondent in this suit; that inquiry induced by said information as to said telegram, which information had given to petitioner a suspicion, but only a suspicion, of his wife's fidelity, brought petitioner to seriously doubt the fidelity of defendant, and he, on that account, on July

15th, 1905, left his home somewhat earlier than he anticipated, but on a necessary business trip to Europe; that so far from abandoning defendant at that time, he made ample financial arrangements for her, including the gift to her of funds necessary to pay the interest on the mortgage on her house, 11 West 68th Street, New York City, maturing August 1st, 1905; that petitioner arranged before leaving for Europe for an investigation to be made in his absence into the relations and conduct of said defendant and the said Frank T. Huntoon, and while he was in Europe had daily postal and cable information as to the conduct of defendant and the said Frank T. Huntoon that fully satisfied him of the infidelity of defendant.

"That defendant, as petitioner verily believes, is not as is alleged in the petition, parting from any of the principal sum of funds given her by petitioner on the conditions aforesaid, but she is enabled to make said expenditures from the income of said funds, and from contributions received by her from the said Frank T. Huntoon; that the said Frank T. Huntoon is not a man of large invested wealth, but he is, as petitioner is informed, or has been, a professional gambler and a man-about-town, whose antecedents are of the worst possible kind, but who is now the general Eastern agent of a popular mineral water, and with an annual income of some $150,000; that petitioner has been informed and verily believes that the said Frank T. Huntoon makes numerous and liberal contributions to the said defendant and to the maintenance of this suit on the part of the defendant; that he has employed and paid not only his own counsel, but, whether with their knowledge or not, counsel, whose nominal appearance is only for defendant; that it is as petitioner is informed and verily believes, the purpose of said Frank T. Huntoon and defendant to marry each other at the end of this divorce proceeding."

This affidavit was made March 21, 1906.

On July 12, 1905, three days before Duke sailed for Europe, one Mumford went to work on the case for Duke (p. 191). Milch, another detective, was with

him, and Mrs. Duke was identified going into the American Tobacco Company offices (pp. 191, 192). Huntoon was identified the following day (p. 193) while Mumford was in company with Murphy, who knew Huntoon (p. 193). The Boland agency know him (194). Duke brought her from Somerville and detectives were waiting on New York side to identify her. Wagenfuhr directed these men, and it is apparent that he knew all about Huntoon, and what he knew Duke must have known. Duke says of Huntoon that he knew him to be "a professional gambler, and man about town whose antecedents are of the worst possible kind" (p. 736).

The testimony shows that during all the time that Duke was away, his house was surrounded by his agents, who took note of all that was done. And that at least one of the servants, if not more, were in touch with him. Caleb C. Dula shows that the alleged business matters which Duke refers to in his affidavit, were matters which Dula expected to attend to (p. 111) but that Duke used them as a pretext for his own absence. It is manifest, that Duke's absence was not for business but in order to make it easy for Mrs. Duke to see Huntoon.

The evidence makes it clear that so far from Duke's desiring that Mrs. Duke should not have further relations with Huntoon, that he wanted it was sure that if Mrs. Duke was left alone, only one thing would happen, and that was that Mrs. Duke and Huntoon would commit adultery in Duke's house, and notwithstanding this knowledge, Duke with ample opportunity to prevent it, gave his wife no warning and did no act, which showed a desire on his own part, that his wife should be true to him.

That he knew her frailty must be admitted; and that he knew her relations with Huntoon must be also admitted. He says he did, and the evidence of Nellie Sands and Louise shows the open and notorious character of Huntoon's visits to the house before

marriage, and after Mrs. Duke had been Duke's mistress for years. And he could not have been ignorant of her habit or disposition towards adultery. It may be remarked, how could Duke trust her fidelity, when he himself had utilized her infidelity to others?

In *Brown* vs. *Brown,* 18 Dick., 348, 368, this court said: "In the opinion below it is said in exoneration of the duty of a husband under the circumstances presented, that he was not 'under any obligation to warn his wife of his suspicions, and so put her on her guard.' * * it will not be necessary to decide whether or not the rule as to the husband's conduct above quoted commends itself to the judgment of the court."

In *Delaney* vs. *Delaney,* 65 Atl., 217, this court considered the whole question of consent and connivance. The court approved the case of *Cane* vs. *Cane,* 39 N. J. Eq., 148, where VanFleet, V. C. said: "If a husbands sees his wife in danger, if he sees her in a position where she is likely to become subject to the power of the blandishments of a man whose character he knows to be bad, and intentions evil, and does nothing to warn her, or withhold her from his hands, but allows her to be led to her ruin and his dishonor, his conduct amounts in law to consent," and also the case of *Hedden* vs. *Hedden,* 21 N. J. Eq., 61, where Zabriskie, C. held, "that if a husband sees what a reasonable man could not see without alarm, or if he knows that his wife had been guilty of weakness whereby he is put upon his guard respecting her weakness, he is called upon to exercise peculiar vigilance and care over her, and if he sees what a reasonable man could not prevent and makes no effort to avert the danger, he must be supposed to see and mean the result." This court further said, "where the conduct of the husband indicates an intent to have his wife transgress, or to let her do so undisturbed, this constitutes a connivance." That in the language of Chancellor Zabriskie, he saw what a reasonable man could not see without alarm. In the *Hedden* case,

the husband who was petitioner, had himself seduced the wife before marriage, and his knowledge of her relation with the paramour was only to be inferred from circumstantial evidence (21 N. J. Eq., p. 73). In the *Cane* case, (39 N. J. Ep., at p. 158) it was said "A husband who has seduced his wife before marriage, and thus makes himself acquainted with her weakness and what is more, responsible for the loss of that strength of character, which conscious purity always gives a woman, places himself in a position where the law in consequence of his wrong, requires him to shield his wife with peculiar vigilance, and to see to it that she is not exposed to temptations that he knows she cannot withstand."

The plaintiff, here, cannot hide himself behind the assertion that he never was present while this alleged adulterous intrigue was being carried on. He absented himself for no other reason than that she might gratify her alleged lustful disposition, a disposition with which he was perfectly acquainted. This is what the husband did in the *Cane* case. His wife's behavior was within his control. He could have prevented this intercourse at any time. He had actual knowledge of what was going on, and his agents were at hand. What reasons does he give for not taking his wife to Europe with him? None at all. And how does he explain his conduct? Mrs. Duke was in this spider's net, and he was the spider. He declines to be sworn, or to make oath in open court, that his complaint was made in truth and good faith. His counsel say (p. 457) "we have information to-day to the effect that there is not likely to be any evidence in defense of any of these allegations" (p. 458), "I did not get it from counsel in the cause" (p. 463). To Mr. Strong. "If you will call Mr. Huntoon, we will gladly rest now." Mr. Duke offered no explanation of any of these matters. What relations did Duke have with Huntoon ?

Can it be that Duke's suit is brought in good faith? Can it be that he did not consent to this adultery if it be proved?

This wealthy and powerful man has adulterous relations with this erring woman for years. He becomes satisfied that she is unfaithful to him with Huntoon. He wants a divorce. He is without the proof. He says; She was an adulteress with me. She has deceived me. This man Huntoon is perfectly unscrupulous and has the worst possible antecedents but let me absent myself and give Huntoon a chance and she will do it again. I will get detectives; I have one of the servants, I can get the others; it is only necessary for me to keep quiet, and I will get my divorce. So he keeps quiet, absents himself, gives her no warning, and now pretends that he was not bound to anticipate what happened.

In the Warn case, 14 Dick Ch. 642, the only ground for charging the husband with consent, was that he did not succeed in checking his wife's habits of drink. Plainly that is a different case.

COSTS AND COUNSEL FEES.

Jurisdiction in divorce matters was vested in the Court of Chancery in 1794 (Paterson, p. 143). And it was declared "that the like process and course of practice and procedure shall be had and pursued in causes of divorce as are usually had and pursued in other causes on the equity side of said court, except that the answer of defendants shall not be under oath." (Section 2.) This section remained the same until 1902 when the words "course of practice and" were stricken out, so that the act now reads "the like process and procedure."

No provision for the awarding of costs is contained in any of the acts concerning divorce from 1794 to the present time.

By the act of 1820 (revised laws 1821, p. 668), section ten, the Court of Chancery was given jurisdiction in a suit by the wife for maintenance, and in such suit she might be required to give security to pay costs to the defendant. This provision is still on the statute books.

At this time the law was "by the marriage contract the husband acquired complete control over all property owned by his wife, at the time of the marriage, or which she might acquire during coverture. In such a state of affairs, unless the court required the husband to support his wife, and to furnish her with the means of prosecuting her suit or defending his, she would be left during the litigation both destitute and defenceless. She was therefore in almost all cases regarded as a privileged suitor who had the right to call upon her adversary for both support and the means required to carry on the litigation on her part." Van Fleet, *V. C.,* in:

Westerfield vs. *Westerfield,* 9 Stew., 195, 197.

In *Decamp* vs. *Decamp,* 1 Gr. Ch., 294, (1840) a demurrer by the husband to his wife's bill was sustained with costs but "the chancellor under the peculiar circumstances of the case, modified the opinion and disallowed costs" (297). The statute (Chancery act, Section 19, act of 1799) which is in force to this day, (Rev. p. 109, sec. 32) made the allowance of costs mandatory in case of demurrer allowed or overruled. *Hicks* vs. *Campbell,* 4 C. E. Gr., 184. The only peculiar circumstance that could avail the petitioner in the Decamp case, must have been that the rules concerning the allowance of costs, did not concern either the process, practice or procedure of this court; and the chancery act as to costs did not apply.

It cannot now be contended that the Court of Chancery has any jurisdiction of any matter of divorce except it be given by statute; nor can it be contended that costs can be awarded in any case except by the authority of a statute.

It is submitted that the acts giving jurisdicion in matters of divorce previous to the married woman's act of 1852 gave no authority to the Court of Chancery to award costs against a married woman, for the reason that no express authority was given in that regard; and contemporary construction so decided, and any other construction would have been improper considering that the husband had his wife's property without liability to account.

After the passage of the act of 1852 relating to the property of married women, a married woman became vested with her property free from the control of her husband, except so far as to convey real property in fee. But no provision on the subject of awarding costs in a divorce action was made by the legislature. Certainly it cannot be seriously contended, that the meaning of section 11 of the act of 1794 above quoted was enlarged by the passage of the act of 1852.

But why were costs awarded against the husband? Because the wife was a privileged suitor prior to 1852. It was the duty of the husband to support her, and this duty did not at all depend on the wife's means. When she was brought into court by her husband charged with an offense, the husband was bound to pay her suit money and costs if she demanded it (*Westerfield case supra; Marker* vs. *Marker,* 3 Stock., 256). If the wife brought the suit, either for divorce, or maintenance, the allowance was within the discretion of the court, and after 1852, if she had separate property, she was compelled to pay her own suit money, but if she was unsuccessful, the court always ordered her husband to pay her costs and counsel fees and alimony, irrespective of her income, not because the statute authorized it, but because her right as a married woman required him to supply her with necessaries, including suit money and alimony; and she had vindicated her right(*Streetwolf* vs. *Streetwolf,* 13 Dick., 574).

If she failed in her suit, or if being brought into court by her husband, she was defeated, the Court of Chancery had no authority to subject her to costs.

And I have failed to find a single case in the reports where costs were awarded against the wife. *Per contra,* though her suit failed, costs have been awarded her.

When we come to the act of 1902 (P. L. 1902 p. 504, sec. 6) the words "process and procedure" are used. Neither of these can possibly include the award of costs. Section 17 refers to "allowed in the taxation of costs for the petition." Costs are taxed between solicitor and client and also against an adversary when awarded. This provision was in the act of 1820 and has been in the act ever since and cannot be a grant of power to award costs against a married woman. By section 19, the law as stated in the Westerfield case, is put in the statute and the only case where security for costs is demandable is under section 21, where the wife sues for support.

The only authority for the allowance of a counsel fee is the chancery act, section 91. This is a modification of an act first passed in 1873 (P. L. p. 116). Certainly the allowance of a counsel fee cannot possibly relate to "procedure."

The allowance of costs and counsel fee was really only an effort by the Court of Chancery to make Mrs. Duke pay back what the Court of Chancery had already ordered Duke to pay.

There was absolutely no authority for it whatever.

In *Clare* vs.*Clare,* 4 C. E. Gr., 37, the wife filed a petition which after hearing was dismissed, yet her husband, the defendant, was directed to pay her costs, and a reasonable counsel fee.

In the following cases where a wife was unsuccessful, costs were denied to the husband.

Richardson vs. *Richardson,* 30 Am. Dec., 538.
Phelan vs. *Phelan,* 12 Fla., 449.
Thatcher vs. *Thatcher,* 17 Ill., 66.
Nikink vs. *Nikink,* 60 Ky., 432.
Reavis vs. *Reavis,* 2 Ill., 242.
Carstairs vs. *Carstairs,* 3 Sw. & Tr., 538.

The decree of the Court of Chancery should be reversed and the petition dismissed, with costs and counsel fees in this court, and the court below.

SAMUEL KALISCH,
CHAUNCEY G. PARKER,
Of counsel with Lillian N. Duke,
Appellant.

The Baker Printing Co., Law Case Printers, 251 Market St., Newark, N. J.

In Chancery of New Jersey.

JAMES B. DUKE,

Petitioner,

vs.

LILLIAN N. DUKE,

Defendant,

and FRANK T. HUNTOON,

Co-respondent.

On petition for divorce on the ground of adultery, charged with Huntoon, who appeared under the statute and was made a defendant. Final hearing on bill, answer and proofs.

For previous proceedings in this case see Duke vs. Duke, 62 Atl. Rep. 466 and 471.

Mr. R. V. Lindabury, Mr. A. A. Clark, and Mr. Junius Parker and Mr. W. W. Fuller, both of the New York Bar, for the petitioner.

Mr. Samuel Kalisch and Mr. Chauncey G. Parker for Mrs. Duke.

Mr. Alan H. Strong for Mr. Huntoon.

Pitney, *V. C.*

This cause was heard on the 23rd, 26th and 27th of April and on the 2nd and 3rd of May 1906, and a judgment at once pronounced in favor of the petitioner and against the defendant and on the 4th of May a decree was advised accordingly.

An appeal having been taken I am asked to give my reasons for that decree, for use on the hearing of the appeal.

To this end I will give a short history of the cause itself.

The petition was verified by the petitioner on the 31st day of August 1905, and was filed on the 2nd day of September and a copy served on that day on the defendant at her residence in the City of New York.

Shortly afterward she moved to have the service set aside on the ground that the court could acquire no jurisdiction of her by extra territorial service because her husband was not a resident of the State of New Jersey.

That motion was disposed of against the petitioner, and on the 2nd of November, 1905, she filed a plea to the jurisdiction, which plea, after hearing, was overruled on December 22nd, as reported in 62 Atl. Rep. 466. A motion to stay proceedings pending an appeal from that order was also overruled, as reported in 62 Atl. Rep. 471, and that action by this court was sustained by the Court of Errors and Appeals.

On the 19th day of January, 1906, an answer was filed by Mrs. Duke denying the adultery charged in the petition, and combining therewith a cross petition against the petitioner charging him with adultery with certain persons named.

This cross petition was answered by Mr. Duke on the 26th day of January.

In the meantime Mr. Huntoon, the co-respondent named in the original petition, applied on the 26th day of October, 1905, and obtained an order to intervene as defendant under the 14th section of the Act concerning Divorces, P. L. 1902, page 502, at page 506.

In March, 1906, application was made by Mrs. Duke by petition for an order against her husband for a counsel fee; and to her petition inthat behalf the husband filed an elaborate verified answer; which was afterwards, at the final hearing, put in evidence against him by his wife and the co-respondent.

The cause was set down for hearing on the 23rd, 26th and 27th of April and the 2nd, 3rd and 4th of May, giving the defendants ample time to prepare their defense after the complainant's case was made.

On the 23rd of April all the parties appeared with their counsel, and the taking of testimony was proceeded with all that day and was then adjourned over to the 26th.

At the opening of the court on that day neither of the parties defendant appeared in person. No reason was ever offered why Mr. Huntoon did not appear, nor was any postponement asked by reason of his absence. Counsel for Mrs. Duke stated and offered to prove that she was confined to her house by illness, and asked for a postponement on that account. In my discretion I declined to postpone, and directed the taking of testimony to proceed on the part of the petitioner, but did not compel the defendant to cross examine in the absence of the defendants until they should have an opportunity to confer with her, or it should appear that she was able to appear in court.

By consent of all the counsel I instructed a competent physician to visit Mrs. Duke, ascertain her physical condition, and report it to the court. This was done, and the physician the next morning, April 27th, reported under oath that he found her somewhat indisposed but had no doubt that she was entirely able to attend court on that day. Neither she nor Mr. Huntoon, so far as I could observe, appeared further in person and neither were offered as witnesses.

The taking of testimony proceeded on the days named until the afternoon of May 3rd when, as before stated, I at once pronounced in favor of a decree for the petitioner and advised a decree against the defendant Huntoon for costs and counsel fees.

This latter was done in accordance with a practice which I understood to have the sanction of the Chancellor, and seems to me according to reason, and I

believe is according to the English practice. The defense was conducted jointly and in concert by both of the defendants, so that in proving a case against the female defendant the petitioner also proved it against the co-respondent. There was no allegation of a marital offense committed with any other person. (The cross petition was abandoned.)

The defendant Huntoon claimed at the hearing the benefit of the position of a full defendant, and on his objection certain depositions taken in North Carolina were, after full argument, excluded because he did not have notice of their taking. The order for costs against him carefully excluded the costs of the hearing on the plea to the jurisdiction.

Coming now to the merits of the case; the following historical facts appear. Mr. Duke became acquainted with Mrs. Duke, then a Mrs. McCready, in 1892, as appears, first, by a letter written to her in August, 1892, and another written by him to her in August, 1904, just twelve years later, both of which were put in evidence by the defendant.

The defendant further proved that she was divorced from Mr. McCready, her first husband, in 1893 on the ground of her own misconduct with another man, not Mr. Duke.

It is fairly to be inferred from the letter of August, 1904, that for the previous twelve years the parties had been living together without the ceremony of marriage. For some time prior to 1903 they lived in a house in 86th Street, New York City. That house was abandoned in 1902 or early in 1903 and Mrs. Duke made a visit to Europe, and then later, in 1903, she purchased and went to live in the house at No. 11 West 68th Street, on the north side of that street and about one hundred feet west of the street bounding Central Park on the west, which is an extension of Eighth Avenue but is called Central Park West.

Mr. Duke made his New York home there with her, she occupying the third floor front and he the third floor rear.

For four or five years before 1904 and subsequent thereto, up to two or three days before the filing of the petition herein Mrs. Duke had a personal maid, one Nellie Sands, a Norwegian, who had her confidence, and gave very important evidence in the cause.

Her evidence tends to show that Mrs. Duke met Huntoon at a sea-shore resort in the summer of 1903 and although he was a man of apparently about twenty years older than she, a strong attachment sprung up between them. He visited Mrs. Duke, then still Mrs. McCready, frequently and steadily, but always in the absence of Mr. Duke, so that so far as appears, Mr. Duke never saw the man to know him or heard of him up to the time of the commencement of this suit.

In August, 1904, Mrs. Duke spent nearly or quite a fortnight at a hotel in the White Mountains. Miss Sands swears that Mr. Huntoon stopped at the same hotel and was in constant attendance upon her except for about three days when Mr. Duke visited her, during which time Mr. Huntoon carefully absented himself, but returned to Mrs. McCready the moment Mr. Duke left.

The letter written by Mr. Duke to Mrs. McCready on the 23rd of August, 1904, in which he suggests marriage, and speaks of having conferred with his brother and his confidential counsel, Mr. Fuller, as to his decision to marry, contains this language: "Mr. Fuller says it will never do for us to take any notice of the gossip around the hotel as it would make matters ten times worse," and in the sentence in which he proposes immediate marriage he adds "thus put an end to any further talk on the part of anyone."

This letter, taken together with the evidence of Miss Sands indicates that the talk and gossip about the hotel was caused more by the attentions of Mr. Huntoon than those of Mr. Duke.

The parties were married on the 29th day of November, 1904, at the house of a relative of Mrs. Duke's in Camden, N. J.

Miss Sands swears that the close attention of Mr. Huntoon continued up to the very last. That he accompanied Mrs. McCready and Miss Sands to Philadelphia on the way to Camden the day before the wedding, and both were very much moved at the approaching separation which took place in the railroad station in Philadelphia. That they cried and kissed each other good-bye.

The bride and groom and Miss Sands returned to New York the day after the wedding and the next day, I think, November 30th, sailed for Europe, Miss Sands accompanying them.

This witness swears that on the voyage Mrs. Duke told her that she had arranged with Mr. Huntoon to correspond with each other during her stay in Europe by letters written by Huntoon to her but mailed to Miss Sands; and she swears that she received several of those letters during their journeying in Europe and handed them to Mrs. Duke and that she mailed many letters (four written during the voyage) from Mrs. Duke to Huntoon.

She further swears that on their arrival in London Mrs. Duke was eager to obtain copies of the Paris edition of the New York Herald, and told her that she had arranged with Huntoon that he was to cable to the Paris edition messages to her to be printed therein twice a week, Thursdays and Sundays, and she says that from the time of their arrival in London, December 9th, up to their sailing for home on the first day of February, Mrs. Duke obtained those numbers of the Paris Herald and cut clippings therefrom.

This is corroborated by the evidence of Mr. Duke's personal attendant and clerk, Mr. Ruppert. Copies of the Paris edition of the New York Herald covering that period were procured and offered in evidence by the petitioner. The edition covers a period anterior to the arrival of the bridal couple at London and subsequent to their departure for home and each number of the Thursday's and Sunday's edition during the time they were in Europe, and no other time, contain items addressed to "John." A careful examination of the contents of these items and a history of the party's itinerary, with dates and various references to admitted facts in the case found in these items, satisfy me that they were prepared and cabled by Huntoon. They are amatory in the extreme and show a great affection on the part of Huntoon to Mrs. Duke and of previous intimacy between them.

On the return of the bridal party to New York, about the eighth day of February, 1905, they went to North Carolina to visit Mr. Duke's father, who was in failing health, and between that and the first of May made other visits, three in all, to North Carolina.

On the last one, in May, Miss Sands accompanied them, and on that occasion the elder Mr. Duke died. While there awaiting his death Mrs. Duke was in constant communication with Mr. Huntoon at his hotel in New York City. She received letters from him and sent him a series of telegrams the originals of which remained in the telegraph office in Durham, North Carolina. They were taken to the telegraph office by Miss Sands. They were for the purpose of this suit, photographed. The originals were identified by Miss Sands and the handwriting proved by her and photographic copies received in evidence. These telegrams were also amatory in the extreme and showed a very affectionate intimacy between Mrs. Duke and Mr. Huntoon.

In the meantime and in March (mainly) of 1905, Mr. Duke was confined to his room in New York City by illness about five weeks. During that time Mr. Huntoon frequently visited Mrs. Duke, but his presence in the house was never known to Mr. Duke.

In the early part of July 1905, as appears by Mr. Duke's answer to Mrs. Duke's petition for alimony, which answer was put in evidence by Mrs. Duke, he accidentally and for the first time obtained the information which led him to suspect Mrs. Duke's intimacy with Huntoon. It was through a copy of a telegram signed "John" sent from his farm in Somerville to Huntoon.

Having a business errand in London he made his arrangements to leave and did leave on the 15th day of July. But before he left he also made arrangements to have Mrs. Duke's movements watched. She accompanied him from his farm in New Jersey, where they were then staying, to New York, a day or two before he sailed, and she remained there at her house during his absence, with the exception of a week that she spent in Saratoga.

Early in August she went to Saratoga and Mr. Huntoon accompanied her and remained at the same hotel during her whole stay.

In the meantime Mr. Huntoon visited her at her home, No. 11 West 68th street, almost daily. She went out riding with him in a carriage and sometimes in an automobile; went to the Casino in Central Park with him, and made excursions to the seashore in the neighborhood of Coney Island several times with him.

The result of the watchings showed all this and showed further that on one night he came to the house about bed time, discharged his automobile, and stayed in the house until one twenty-five A. M. On another occasion the same thing occurred and he stayed until three twenty five A. M., and on a third occasion he stayed until five fifteen A. M.

On two, if not three, of these occasions he was recognized when he came out of the house, not only by the regular detectives watching but by Mr. Dula, a highly respectable gentleman connected with Mr. Duke in the tobacco business.

The testimony of the watchers was that on these nights, or parts of nights, that Mr. Huntoon stopped in Mrs. Duke's house her bed room was lighted up occasionally for a few minutes and then darkened again, and that when Mr. Huntoon came out of the house at the hours mentioned he turned west towards Ninth avenue and when he had gone a few steps in that direction he turned and looked up at a bay window which projected from Mrs. Duke's room and that a woman appeared at that window and they waved hands at each other.

Now none of these facts were denied on the witness stand by either Mrs. Duke or Huntoon, and I remarked at the hearing that the case was practically undefended; since we have here the two important elements in these cases, first, the disposition, and second, the opportunity.

There are other matters of detail, some of which I think it worth while to mention.

On one occasion, while Mr. and Mrs. Duke were visiting in North Carolina, and Nellie Sands was left in the house in 68th street, New York, Mrs. Duke came on from North Carolina, ostensibly to visit her mother, who was an invalid in a retreat in Westchester County, and stayed over night in her house before returning to North Carolina. Nellie Sands swears that she went to bed at her usual hour—half past ten—and left Mr. Huntoon and Mrs. Duke in the library, and that in the morning when she came to arrange Mrs Duke's bed she found in it indubitable evidence of its having been occupied by two persons of different sexes.

Another maid, a Miss Bunderson, swears that one night in May or June, 1905, she went to bed at the usual hour leaving Mr. Huntoon and Mrs. Duke in the library, Mr. Duke being absent, and between twelve and one o'clock, having occasion to go to the bath room on the fifth floor, her attention was attracted to the light on the lower floor, and on looking down a well hole by the stairway she saw Mr. Huntoon and Mrs. Duke coming up the stairs from the second floor, on which was the parlor and library, to the third floor, on which were Mr. and Mrs. Duke's rooms, and turn and go in, together, to Mr. Duke's bedroom at the head of the stairs.

Mr. Duke returned from Europe the latter part of August, 1905, a little earlier than he had led his wife to expect him, and did not make his presence known to her for more than three or more days. One of the detectives swears that on the afternoon of the 31st day of August Mrs. Duke and Huntoon went together in an automobile across the river down to Coney Island and the last he saw of them—about six thirty P. M.—they were returning and were entering Prospect Park, Brooklyn. And Miss Bunderson, the maid, swears that Mr. Duke was away from the house the night of the 31st of August.

Now the petitioner offered in evidence a letter written by Mrs. Duke, September 2nd, 1905, to her aunt, who lived in Brooklyn, in which she says:

"The Grand Duke has not arrived yet. He may get in this evening. Now I want you to do me a favor. I was visiting down on Long Island. I did want to see you before I went but could not make the train; so you write me a letter tomorrow that I will receive Monday morning, telling me how you enjoyed my visit Thursday and how much you missed me when I left Friday morning. A letter that I can show. Now don't forget it. * * * Be sure and send the letter."

It is hardly necessary to enlarge upon the significance of this letter.

Another letter was put in evidence, dated July 31st 1905, written by Mrs. Duke to Mr. Duke's female clerk, Miss Smith, at his farm near Somerville, in which she says that she will be busy tomorrow getting ready to go away Wednesday. "I shall not go to the farm. I wrote Mr. Duke I was going to Saratoga with Mrs. Chapin, but not before the end of the week. I want him to think we are going from Friday to Monday; so when you receive this please mail me a half dozen sheets of paper, "Duke's Farm" on it, and envelopes. Perhaps some of the Duke paper has come from Altman's. If so send the thin paper. I may send you a letter to post for me at Somerville, but you know there is not an earthly thing for me to do if I go to the farm and it is so lonesome."

Another letter in her handwriting was produced which was mailed in New York and addressed to Miss Smith at Somerville as follows: "Dear Maggie: Please mail this tomorrow so that it will go on Friday's steamer. Excuse haste."

That enclosed letter was addressed to Mr. Duke, 86 Strand, London, England, and commences "My Darling Husband." It is dated August 3rd and is prepared and written as if written at the farm and tells about the farm precisely as if she were there present. The object of this letter was of course to deceive Mr. Duke.

The evidence shows that some time between the 15th day of July, the date of Mr. Duke's sailing for Europe, and his return on the first day of September, Mrs. Duke became aware that the house was being watched. Miss Sands says it was about the middle of August, a few days after their return from Saratoga. One of the witnesses called by the defendant

swears that the watching was discovered about the first of August. I place more reliance on Miss Sands than on the witnesses who assert the contrary. The three occasions when Huntoon stopped so late were before the 15th day of August. Nellie Sands swears that after Mrs. Duke discovered that she was being watched she made a change in her habits. She had previously been in the habit of sitting up with Mr. Huntoon after the servants had all gone to bed at the regulation hour, half past ten. After discovering that she was watched she required Nellie Sands to sit up until Mr. Huntoon went away, and the evidence of the watchers shows that he did go away during the last two weeks before midnight.

One other circumstance is worth mentioning. The trips to Long Island were always made in an automobile, the rapidity of which, in almost every instance, prevented the watchers from keeping in close touch with the party. But I believe there is no evidence that they stayed away over night but the single time of August 31st. On the previous occasions of their visits to Long Island they returned quite late to Mrs. Duke's house, and I believe on two of these occasions Huntoon stayed so late.

Now although neither of the defendants went on the stand as witnesses, their counsel did set up several defenses which I will notice.

One is the general unreliability of the evidence of watchers or detectives. Now so far as relates to the watchers in this case, they seem to have been employed by a respectable detective agency which was employed generally by the American Tobacco Company in its ordinary business affairs, and did not make a specialty of divorce cases. In the next place the detectives made a good impression upon me when on the stand. They testified largely from written memoranda which were open to and were in fact inspected by the defendants' counsel. In the next

place they were subjected to a rigid cross examination, so that I felt that their evidence was reasonably reliable, even if it had not been, as it was, corroborated by other persons.

The other defenses set up were directed against particular instances.

One was a series of experiments tending to show that the witnesses could not see Mrs Duke standing in her bay window and looking down the street, as testified to by Mr. Dula and other witnesses. But it turned out on cross examination that these experiments were tried with a light in Mrs. Duke's dressing room only, and the bedroom otherwise dark. In the next place Mrs. Duke stood behind a wire insect screen which covered half of the window, but which was capable of being shifted by sliding up or down, so that with the screen elevated there would be nothing to hide Mrs. Duke's form.

It was next proved that the coachman had a night key to the house and was in the habit of coming there at all hours and leaving the house at all hours. But when he was described he appeared to be a tall, thin man and closely shaven, which was in marked contrast to Huntoon, who was stout and burly and wore a very heavy beard. Besides, Mr. Huntoon was seen face to face by Mr. Dula under circumstances which rendered mistake impossible.

The next one was an attack made on Miss Bunderson, and elaborate measurements and drawings were made to show that Miss Bunderson could not have seen the persons coming to the head of the stairs and turning to go into Mr. Duke's bedroom. But I satisfied myself thoroughly to the contrary and that a person looking down one end of the well hole, which was ten feet long and one foot wide, on the fifth floor, could see the skirt of a woman and the feet and legs of a man at the head of the stairs as they turned to

go into the bedroom on the third floor, the door of which was within six inches of the edge of the floor which formed the last step of the flight. And the defendants' witnesses finally so testified.

Another attack was made on Miss Sands.

The basement family consisted of a Mrs. Tillie Andrews, housekeeper, Miss Sands, as personal maid of Mrs. Duke, two sisters Bunderson, one as waitress and the other as chambermaid, and Mrs. Segar, cook. Mrs. Andrews was not called as a witness, but I infer from the evidence that she was in Mr. Duke's confidence, or that of his lawyers, either before or immediately on his return from Europe, which I believe was on the 30th day of August.

On the afternoon of Wednesday or Thursday, the 30th or 31st of August (the precise date is not fixed) just before dark, Mrs. Andrews told Miss Sands that a person wished to see her down the street, and Miss Sands, without any hat or other dress, accompanied Mrs. Andrews to the corner of 67th street and there found Mr. Duke waiting for her in a carriage, which on his invitation she entered.

Now it is worth while to consider here for a moment the girl's situation. She knew of the relations between Huntoon and Mrs. Duke and Mrs. Duke's relations with Mr. Duke before the marriage. She swears that she hoped that Mrs. Duke would give up Mr. Huntoon after the marriage. She swears that she was very fond of both Mr. and Mrs. Duke. That both had been very kind to her, and that she was greatly disappointed when she found that Mrs. Duke was not giving up Mr. Huntoon, but was receiving his attentions, which she knew was wrong. In this state of mind Mr. Duke informed her that he had "caught his wife," and at that moment, or shortly after, told her that he was going to get a divorce from her. She swears that she begged him not to do so, but to forgive her, and assured him that Mrs. Duke

would be good in the future, but he declared that he would not forgive her. In the meantime she was taken by Mr. Duke to the house of Mr. Parker, his counsel, in New York, and remained there until bedtime. She says that she was crying and sobbing the whole time. She says that she was not restrained from going back to Mrs. Duke's house, but she says she could not go back to Mrs. Duke's because she knew Mrs. Duke would expect her to be "on her side," as she expressed it, in the divorce suit, and that she could not do so. Mr. Duke told her that her brother was about to commence housekeeping in a house which he owned, 1009 Fifth Avenue, and that he would give her employment and befriend her, and so she said she determined to be on the "the right side," and not go back to Mrs. Duke's. She was furnished with lodgings with two maiden sisters living together, for that night, and perhaps another, and after that she went to Mr. Benjamin N. Duke's house and assisted for a time in putting it in order, and has been employed there ever since. A day or two later the Bunderson sisters left Mrs. Duke's employ and also entered the employ of Mr. B. N. Duke, at his house. The petitioner has also made his New York home with his brother, Mr. B. N. Duke.

Now the attack on Miss Sands' evidence is, first, that she was kept under the influence of Mr. Duke ever since she left Mrs. Duke's house, and, second, that she told contradictory stories about what occurred on the evening that she left Mrs. Duke's employ, or rather that she has made statements inconsistent with her evidence on the stand. Witnesses were introduced who swore that she stated to them that she was kidnapped away from Mrs. Duke's house. She denies that she ever said that she was "kidnapped," but whether she did or did not use the word "kidnap" is of slight importance. Undoubtedly she was enticed away from Mrs. Duke's house by arti-

fice and carried to the house of Mr. Parker and kept there for two or three hours when her mind was in a most distracted and unsettled condition. But whatever of restraint was imposed upon her during that evening was entirely removed from that time on, and she became her own mistress. Now reading all the accounts given under oath by third persons which she gave of the experiences of that evening, I find nothing really inconsistent with her evidence given here on the stand. She was subjected to as severe a cross examination by two counsel as I ever witnessed, and they had the advantage of reading over her evidence, which was written up before the cross examination. I was a close observer, and the result of this ordeal on my mind was to lead me to the conclusion that she was perfectly honest and that her whole desire was to keep ever in mind and tell the simple truth, and that she did tell the truth so far and as accurately as her somewhat imperfect familiarity with the English language enabled her to do it.

The same may be said of Miss Bunderson.

But as I remarked at the hearing, the evidence of any one or two of these witnesses may be dispensed with and still there will be ample left to sustain the decree.

I come now to the last point or points made by the defendants, and that is that the petitioner is not entitled to relief because he connived at and encouraged the sexual commerce between the defendants, and besides that there was condonation for all that occurred before the night before he sailed for Europe, arising out of the presumption that he occupied the same bed with his wife on that occasion.

With regard to this last point it is only necessary to say that there is not the least evidence or reason to believe that Mr. Duke knew at that time or had any reasonable grounds to believe that any particular of-

fense had been committed between his wife and Mr. Huntoon, and that he could not condone that of which he had no knowledge.

In the next place there is not the least proof that he had sexual intercourse with his wife on the occasion referred to. The proof is that they had separate bed rooms which destroys the presumption of the sort which arises.

Now with regard to connivance and encouragement consisting, as argued, in his leaving a woman whom he knew to be frail where she would be subjected to temptation.

Now in the first place she had arrived at an age of discretion, and she was an experienced woman of the world, entirely able to care for herself, and in this respect was in marked contrast with a very young, passionate woman, unaccustomed to the ways of the world and liable to be led astray in a moment of passion. Moreover, she knew her duty to her husband and she had already been violating that duty in her husband's presence by cherishing and cultivating her passion for Huntoon and, as I believe, actually indulging that passion, of all of which her husband had but a mere suspicion.

Now, as I remarked at the hearing, a man who merely suspects his wife of infidelity and has no proof of it, is in a peculiar position. He has no right to lead her into temptation, but he is under no obligation to tie her up or put her in a condition of actual or virtual restraint, or in a way of living in any different mode or fashion from that in which, according to customs of society, she should ordinarily live. Especially is this true of a woman of mature years On the other hand Mr. Duke had the clear right to investigate and ascertain whether his suspicions were well founded or not, and I think the measures he took were proper measures. He did nothing to encourage Mrs. Duke to receive the attentions of Huntoon. He

evidently expected and desired her to stay at the farm during his absence. On the other hand he did nothing to encourage Huntoon to offer those attentions. I think the law of connivance and consent has never been carried so far as to hold that a man may not absent himself from home for six weeks without being charged with connivance and consent of the unlimited adulterous intercourse by his wife with a paramour during his absence. In fact I had difficulty in supposing that the argument was seriously made.

A variety of other facts and circumstances were testified to and appeared at the hearing, all tending in the same direction. I do not deem it worth while to especially refer to them.

One other matter which was disposed of by me at the beginning of the defendant's case may be mentioned here. I have stated that the defendant Huntoon applied for leave to intervene in October and prior to the filing of the plea to the jurisdiction of the Court. Mr. Huntoon had no notice of the trial of that issue, and before any production of evidence on the part of the defense on the final hearing on the merits his counsel, Mr. Strong, moved the Court on behalf of Mr. Huntoon to dismiss the petition on the ground "that the court has no jurisdiction to entertain it," because the complainant had offered no proof of the residence of either of the parties in the State of New Jersey, and there was no proof and the case did not show service of process within this State. And he argued that Huntoon had the right to set up in his defense that the Court had no jurisdiction of Mrs. Duke; and that he (Huntoon) was not bound by the finding of this court upon the issue raised by the plea of want of jurisdiction.

Now previous to the recent revised divorce act a party charged as a *particeps criminis* in a suit for divorce based on adultery had no means of defending himself or herself against the charge of adultery; and

a perfectly innocent man or woman might be wrongfully subjected to a quasi conviction of that offence without any opportunity to be heard. In fact, by perjured evidence, offered in an undefended case, such conviction might be and probably was often pronounced. The suit for divorce might have been collusive and the procuration of the divorce might in reality have been by consent. Now this state of things was liable to work, and in many instances did work, an injustice against innocent persons. Now the object of the statute was manifestly and notoriously to remedy that wrong. Hence the new section introduced into the statute as follows:

"In actions for divorce because of adultery it shall be lawful for the Chancellor in his discretion at any time before final decree to allow any person charged in the pleading with committing adultery with either of the parties in the suit to intervene *for the purpose of defending himself or herself against the charge so made.*"

Now here it is quite manifest that the purpose for which the defendant may intervene is limited to the defense against the charge. It seems to me quite clear that the intervenor has no right to challenge the jurisdiction of the Court over the person of the real defendant. Besides, by intervening generally, as the defendant did in this case, without any protest as to the jurisdiction, he appeared generally and submitted himself to the jurisdiction of the court. And that intervention was made before the plea of the jurisdiction was interposed. Although he did not have notice of the trial of that plea he is presumed to have kept a general watch on the progress of the cause, and if he had any desire or intention to question the jurisdiction of the Court he might have added to his extremely short pleading a plea of that kind. I was unable, after hearing the very ingenious argument of Mr. Strong, to see the least merit in it, and subsequent reflection has not changed my view.

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Direct 569
Cross 594
Redirect 599
Recalled, Direct 609
" Cross 614
" by the Court 629

William Thompson,
Direct 606
Cross 608

Herman H. Schnedeker,
Direct 616
Cross 622

Charles A. Machter,
Direct 632
Cross 637

Julius Harwitz,
Direct 645
Cross 653

Jennie Lincoln,
Direct 653
Cross 665

Thomas J. Gerrity,
Direct 673
Cross 676

Emma Sledge,
Direct 680
Cross 682

Charlotte D. Fletcher,
Direct 683
Cross 685

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Hilda Seger,
Direct 686
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Petitioner's Exhibits:

Telegrams 730

Defendant's Exhibits:

D-18—Letter J. B. Duke to Lillian McCready, Aug. 23, 1892 706
D-19—Envelope addressed Mrs. Lillian McCready, care Englewood Hotel, Englewood, N. J. 707
D-20—Letter J. B. Duke to Lillian N. McCready, Aug. 23, 1904 707
D-21—Envelope, addressed Mrs. Lillian N. McCready, Mount Washington Hotel, Bretton Woods, White Mountains, New Hampshire 708
Answer of petitioner James B. Duke to petition of Lillian N. Duke for Alimony pendente lite 737

DR. JOSEPH FEWSMITH, sworn:

Examined by the Court:

Q. Did you visit Mrs. Duke yesterday?

A. Yes, sir.

Q. And examined her?

A. Yes, sir.

Q. What did you find her physical condition?

A. She was in bed. Objectively there were practically no signs of illness, of fever. The history of the case was a history of an attack of diarrhœa which had lasted for two days, supposed to have been caused by feet wetting on Monday when she was here, and stated to have been very severe during Wednesday and during yesterday morning, but to be better yesterday afternoon.

Q. What time did you see her?

A. About five o'clock.

Q. Will you repeat the first sentence you used; you said there was apparently objective—

A. The objective symptoms were that there was no fever, no evidence of pain, no swelling of the abdomen and I stated that on Thursday, on yesterday, the diarrhœa was somewhat better. This was the history of the case.

Q. From the patient?

A. From the patient. No medical service had been obtained until yesterday when a doctor was called in who had prescribed, so far as I could judge from the bottle, it was an ordinary mixture for diarrhœal trouble.

Q. (By Mr. Lindabury.) Did you learn at what time the doctor was called in yesterday?

A. I think it was toward noon. The condition of the patient's heart seemed to be all right to me. Judging from the condition that she was in at five o'clock yesterday afternoon, I should think she might be able to appear in court to-day.

Q. (By Mr. Lindabury.) To-day?

A. Yes, sir.

The Court: Either party may cross-examine, do you want to put any questions, Mr. Lindabury? You may. Either party may cross-examine; you may put any questions.

Q. (By Mr. Lindabury.) Did you discover any symptoms of illness whatsoever except that which appeared by her mere statements?

A. No, sir.

The Court: Anything else now, gentlemen, for the defense?

Cross-examination—By Mr. Kalisch:

Q. You could not say, Doctor, that she didn't have diarrhœa?

A. No, sir, I couldn't say that.

Q. And her statement as to whether she had diarrhœa or not would depend upon her truthfulness, wouldn't it?

A. Yes, sir.

Q. Did you notice whether she had any cold, anything about her eyes?

A. She did not, sir.

Q. You didn't notice that?

A. I did notice it; she didn't have anything of that sort.

Q. (By the Court.) Had nothing of that kind?

A. No, sir.

The Court: Doctor, I have no further questions. If you will make out a bill for your services I will see that it is presented to the proper person.

Mr. Lindabury: Now, your Honor, please, I move that the counsel for the defendant be

required to cross-examine the witness Nellie Sands now or waive the right to do so.

The Court: Is the defendant in Court now? I don't see her.

Mr. Lindabury: Your Honor will remember that it was stated yesterday the woman was suffering from a cold, not that she was suffering from intestinal or any other trouble, but a cold, which the doctor says she did not have.

Mr. Parker: I had no direct communication with the defendant at all. I only talked—

The Court: There is no charge against you.

Mr. Parker: I didn't know what her precise ailment was.

The Court: Something was said about a servant here, a maid. I don't know that there was any judicial communication to the Court, that you had information through a maid; something made me think so.

Mr. Lindabury: Possibly I ought to offer eidence to the fact that this woman immediately telephoned Mrs. Duke and told her that that order was made to send a physician there.

The Court: You may do that. I will take this opportunity to say what I have to say about that question. I just read the act. There is nothing else in the act indicating what change in the practice if any takes place after the party, co-respondent has been made a defendant; nor has there been any ruling of the Court except in one instance that I know of. I myself had a case of Spitalney vs.

Spitalney, in which a young married man charged his wife with adultery with an old married man with a wife and ten children. The suit was brought and the wife put in no defense, but the co-respondent applied and was admitted as defendant and put in an answer, and the cause was referred to me and set down for hearing, but went off last June on account of the illness of the counsel of Mr. Spitalney until fall. In the meantime, the defendant, female, put in an answer. The cause came on for trial; the defense was conducted by the counsel of Mr. Spitalney. No question of this kind arose, but at the end of the trial in which Mr. Spitalney, who defended it to save his reputation—was a little disappointed with the result, and a decree for cost and counsel fees went against him, after consideration and consultation with the Chancellor and my other brethren. Now the object as stated in the statute is to permit him to defend himself or herself, that is the co-respondent. Now, necessarily, as was stated very properly by Mr. Strong yesterday, that involves a defense of the party charged. The object is to prevent a person who is charged with a crime against the married state from not properly defending himself or herself either through disinclination or disability; the disinclination may be a willingness to be divorced; we have that kind of thing to deal with all the time, collusion, consent or what may be either disability arising from either lack of pecuniary means or lack of brains.. Now, I think in order to defend himself or herself the party charged must have an opportunity, the co-respond-

ent, to take in a measure the position of the defendant in the cause, because, as Mr. Strong said, it is a joint act one cannot be guilty without the other. Now, I don't think that act was intended to limit the scope of the evidence against the spouse charged; any admission of the spouse charged would be perfectly competent although it might affect the co-respondent. Whether an admission by the co-respondent will affect the real defendant I am not and it is not necessary at this moment to determine, but it would be competent undoubtedly as against the co-respondent. But the real object was to prevent a person from having the disgrace of crimes of this sort put upon him by implication, he or her by implication. Now, I think that after taking that view of it the fact still remains that when the party is a defendant he is entitled to all the privileges of a defendant, the co-respondent, and to take any defense that the real defendant can take; but with regard to the practice it seems to me he is entitled to all the notices that the other defendant is entitled to, now I can see very well how counsel would naturally fall into the motion which I believe fell from counsel for the petitioner yesterday, that he thought he was a mere attendant, and they were not obliged to give him any notice at all.

Mr. Lindabury: Unless he files answer at least.

The Court: He did file an answer.

Mr. Strong: Yes, sir.

The Court: That probably you did not say; it was not served on you; there is a sort of an answer filed here.

Mr. Lindabury: Well, a sort of an answer.

The Court: He denies that he is guilty.

Mr. Lindabury: I don't think it is an answer, your Honor.

The Court: I take it for that.

Mr. Lindabury: I don't think so.

The Court: In thinking about it last night without any papers before me—

Mr. Strong: Of course it is an answer. What else is it?

The Court: This is the paper: "Frank T. Huntoon, of the City, County and State of New York, intervening in this case appears and denies each of the charges of adultery with the said Lillian N. Duke, defendant, made against him in the petition for divorce. Frank T. Huntoon," sworn, etc.

Mr. Lindabury: That has the appearance of a denial, but it is not an answer, it seems to me, your Honor.

The Court: I confess in thinking over this thing last night— I didn't have those papers before me—but he did intervene and he is not called upon to answer, but he appeared, and call it what you will, it is there. This is a new practice, and it is easy enough for any counsel, no matter how careful and learned, to drop into what somebody might think was an error. Now it seems to me that as at present advised I cannot give the deposition of the witness taken in North Carolina the force of evidence against Mrs. Duke without giving it the force of evidence against Mr. Huntoon, and it seems to me that if the counsel relies at all upon what was sworn to by the witness, who I believe was the telegraphic operator and the only one sworn, as

to the sending of the dispatches or their identity or anything of that kind, that it would be unsafe to rely on that evidence. Now that is a pure technicality and the Court never holds a party up in the construction of a new Statute like that, particularly with such a nondescript affair for an answer to which the counsel for the petitioner has called my attention at this moment. And if the counsel chooses to send —give notice of another deposition taken in North Carolina, why the Court will listen to a motion to keep the case open here until that deposition comes back. Of course it is the purest technicality and it don't affect any merit whatever. There is no reason to believe that it would have made a bit of difference if Mr. Huntoon had notice or not, so it is a bare question that don't excite the sympathy of the Court at all in any way and where it seems to me there is no kind of danger of any harm being done to anybody either way but which counsel for the petitioner must be advised on their own responsibility as to whether or not they will take advantage of the suggestion made by the Court. Maybe Mr. Huntoon's counsel when they come to consider it will say "We don't care about going down there to North Carolina to cross-examine that witness;" but that is for them, not for me. I will as at present advised, liable to change my mind again you know, as I always reserve that right, not consider that deposition, not receive it in evidence. But I will say now I will not consider it so far as it is a deposition in the cause, final hearing. I can't keep it out, because the Court of Appeals might differ with me, you

know, and I don't keep anything out in such away that the Court of Appeals cannot have the benefit of it when it gets up there.

Mr. Lindabury: We do not doubt that anybody who becomes a party to an issue in a litigation is entitled to notice of every step in the proceedings. My notion is that under this rather remarkable Statute a party may intervene by filing a mere appearance and denial, but if he does nothing beside that he must come in under the notice to the party who has made an issue by an answer, and if he would become a party joining in an actual issue, so as to entitle him to litigate that issue he must file a formal answer, a real answer.

The Court: That may be; I don't say it is so or not.

Mr. Lindabury: No. Now, your Honor, further—

The Court: I haven't asked Mr. Strong whether he has any proof that this little affair which is in the shape of a very simple answer was ever served on the other side?

Mr. Strong: I don't know that it was served. My impression was it was. Mr. Lindabury said yesterday he obtained a copy.

The Court: The order?

Mr. Strong: The order was served; no doubt about that.

The Court: He admits that?

Mr. Strong: Mr. Lindabury said yesterday that he—

Mr. Lindabury: Let me tell it now.

Mr. Strong: Let me recall what was said yesterday. Mr. Lindabury said yesterday he doubted my having sent them a copy of the answer or appearance, if you call it so,

but he said that not having received it from me, his office sent to the Clerk's office and obtained a copy from the Clerk and thereafter he gave notice of this hearing. That was what was said yesterday. Now, as to the order, a copy of the order was by me personally mailed to Lindabury, Depue & Faulks. I am not certain as to a copy of the answer.

The Court: Well, it seems to me, coming in as you did, if I had to decide that, make a new rule about it, which I have not, I should say you ought to have sent a copy of your answer to him, coming in as you did after the case had been running along for some time; but there has been no rule made by the Chancellor and none adopted, and we have got to act by common sense, and that is about the safest thing after all. It is up to the petitioner to take the risk of this thing or cure it entirely, under my suggestion, giving new notice as to depositions.

Mr. Lindabury: I will say at once to that that the deposition is of no value whatever except to prove the copies of the telegrams sent or which we have submitted here in Court abundant proof without.

The Court: I thought possibly it might contain a statement of the rule of the company that they would not let things go out of the State, out of their possession; that is, so well known, I don't know as it is necessary; you may take your own course about it. It is only the expense of going down there.

Mr. Lindabury: We don't care about further proof in regard to those telegrams than what we have already put in, and care nothing about the depositions, the telegrams are in.

The Court: The telegrams, I admit those.

Mr. Lindabury: I am now informed that the woman who went out yesterday went to Mr. Parker's office and telephoned instead of going to the public office, as I supposed. Did you not tell her to go and telephone?

Mr. Parker: I had no communication with her at all.

Mr. Lindabury: Did you not tell this woman to go and telephone to Mrs. Duke?

Mr. Parker: Mr. Lindabury, I think your question is insulting. I deny that. I think it is insulting.

Mr. Lindabury: Who has charge of your telephone in your office?

Mr. Parker: I have clerks in the office. Do you wish to have them produced here to show this lady telephoned to New York?

Mr. Lindabury: I do.

Mr. Parker: I have no objection whatever.

Mr. Lindabury: Will you tell me who it is?

Mr. Parker: Does your Honor think that this is—is your Honor going to permit this?

The Court: Well, I don't know what I think about it, if you want to know. Mr. Lindabury is a counsel of this Court, and you are, both. Mr. Lindabury seems to think it is important to prove to the Court that a telephone message was sent from here yesterday morning, after the decision or about the time of the decision of the Court, the action of the Court, to Mrs. Duke, and I suppose he wants to show that that was sent before the time that Dr. Fewsmith says that he understood there yesterday some physician was called in. He wants to make an argument before me that the physician was called in because Mrs. Duke knew what was

going to take place. Now, you are in that position. If you don't want to produce evidence on the subject of this lady, this maid having sent a telephone communication from your office to New York, I shall not force it.

Mr. Lindabury: No reflection is intended on counsel.

The Court: None at all.

Mr. Parker: I will ask your Honor whether your Honor thinks it is proper that Mr. Lindabury, on general principles, should be permitted to call clerks in my office to testify as to—

The Court: Not without your consent. He is appealing to you to permit it to be done.

Mr. Parker: Does your Honor think I ought to consent to it?

The Court: That I have nothing to say to. Nothing at all to say.

Mr. Parker: I have got to throw myself more or less on your Honor's indulgence in this. I don't want to appear here as secreting or concealing something I don't know anything about at all. But it is said this lady went to my office and called up a certain woman in New York and talked to somebody there.

The Court: There is no proof of that before me at all. Mr. Lindabury said, and I take it for granted he spoke in perfectly good faith, that the maid who came here and whom you said was in the court room ready to swear to Mrs. Duke's condition, did telephone to her. He had some information; I don't think he would state that to me unless he had some reason to believe it. Counsel who practice in my Court are not in the habit of

doing that sort of thing, counsel of your standing. But he sent down here just now in my presence to the public telephone office here and came back with the information, as I understand it, that there was none sent from the public telephone office, but that he had reason to believe that it was sent from your office. Now, I don't know what evidence he had of that and I am not going to inquire into it at all, nor am I going to express any opinion as to your duty.

Mr. Parker: Well, your Honor then thinks that I ought to—

The Court: I don't think you are under any obligation whatever. I don't think you are under an obligation to open the doors of your office and your clerks.

Mr. Lindabury: In view of the objection made by the gentleman I will not press the point, your Honor.

The Court: I only state to counsel that the peculiar circumstance is this: That between ten and eleven o'clock the excuse was made that this lady was not here and the case could not go on. Then it was suggested that a physician should be sent to examine her. Both parties acquiesced in that; the physician was chosen and came here, I think, about eleven o'clock; I don't recollect exactly now, but before twelve o'clock certainly, and had a commission, oral commission, from the Court to go and examine Mrs. Duke. He goes to see her at five o'clock and learns from her that about noon, as I recollect his evidence, she had first called in a physician. Now, Mr. Lindabury argues from that that the means of communication by

telephoning from here to Mrs. Duke's house in New York were so easy that the Court ought to suspect at least that she had got telephonic knowledge of what the Court had done. That is all there is in the case that I can see.

Mr. Parker: Now, allow me to say one word. I would like to express my own views.

The Court: Certainly.

Mr. Parker: Of course, we know Mr. Lindabury here has been in Court. He wasn't sitting outside the door of my office with his ears to the keyhole.

The Court: I don't say that Mr. Lindabury has stated the least reason why he thought that your office had been used, except his finding out that the public office had not been used; he thought the public office had been used.

Mr. Parker: That may be your Honor's explanation of it.

The Court: He seems to be satisfied some telephonic communication was made.

Mr. Lindabury: I had further information than that.

The Court: That is all you stated to me.

Mr. Lindabury: Now, your Honor, I renew my motion that they be required to cross-examine this witness now or waive the right. The situation is that Dr. Fewsmith examined this woman, says he found her suffering from no disease whatever that he could discover by any examination; that she claims, however, to have subjective symptoms of a disease or of a condition from which he could see no reason at all why she should not be sufficiently relieved to attend the Court to-day.

New Jersey State Library

The Court: From her own statement she would be able to come here to-day?

Mr. Lindabury: From her own statement, yes. She isn't here. She had a physician yesterday afternoon who is not here, and no information at all seems to be furnished us by way of excuse for her absence this morning. Consequently I submit that the case should proceed.

The Court: But, Mr. Lindabury, you have got to go a little further than that. You have got to show that she was wilfully absent yesterday and you can only do that by inferring from what Mr.—drawing inferences from what the doctor says; you may ask me if you will, to infer, whether I will or not I don't answer, infer that she might have been here yesterday because she could be here to-day. That isn't proof that she might have been here yesterday unless I can infer from the evidence of the doctor that she might have been here yesterday. Now one word further. The difficulty is not that she ought to be here to-day, but that the understanding when the evidence of this witness was taken, based on the idea that she could not be here, that she should have the privilege of reading the evidence over after it was written up before the witness was subjected to cross-examination. It is just there your case fails.

Mr. Lindabury: I am willing to go that far, because the testimony given by the doctor as to the condition of this woman yesterday, in the absence of any showing to the contrary or any explanation, and in view of the fact that she caused it to be reported here

yesterday, by a messenger who came from there that she had a disease which the doctor says she positively did not have and that she claimed to him when he went over there a totally different situation from that which she caused to be reported to the Court here yesterday, which of couse counsel represented according to the messenger who came out here from her household, it seems to me justifies the conclusion as I say, in the absence of any testimony here this morning to the contrary, that this woman was feigning yesterday.

The Court: I will tell you now, subject to what the counsel for the other side may say, I am not willing to exercise my mind on that subject at present. I will say this, however. It may be entered on the minutes, unless the counsel for the defendant object, that unless they cross-examine her now, if she should get sick or die, anything of that kind, the examination stands as evidence in the cause. She must come though, if she lives she must come to another session and be subjected to cross-examination after the evidence is written out; but I think there is enough in it to justify me in protecting the petitioner against losing her evidence by accident, death, or anything of that kind.

Mr. Kalisch: If she should die we would lose the benefit of a cross-examination.

The Court: You wouldn't the way the case stood yesterday; the way the case went on yesterday it is perfectly plain that if this witness should become permanently disabled or should run away and get out of the country, the petitioner would have lost her evi-

dence; but as it stands now I am unwilling, the facts are sufficient, in my judgment, to warrant me in saying that unless you take your privilege of cross-examination now, you and not the petitioner is to run the risk of the death, disability or absence of this witness at a future day after the evidence has been written out. Now I will hear you on that. That is my view.

Mr. Kalisch: I asked Mr. Salmon yesterday whether he could get out the testimony of Miss Nellie Sands last evening so that I could have it, and the object was not to delay this matter. So that we would show it to Mrs. Duke in case she could not be present, and Mr. Salmon told me that it could not be done, and I understood him at least, he could not get it out.

The Court: I don't think he could do it either and work to-day. I don't want a man to work for me here in Court who has worn himself out.

Mr. Kalisch: I merely state this fact.

The Court: But he can get it out before a day next week.

Mr. Kalisch: We are willing to comply with the order of the Court as it was made yesterday and as we understood it, and we think from what Dr. Fewsmith has said an inference can be drawn, and only an inference can be drawn that Mrs. Duke was not fit to be here yesterday. I think he says he thought she was fit to be here to-day. And under these circumstances I think that the order of the Court made yesterday ought to stand, as it was based upon the facts as they appeared before the Court on that day.

The Court: There wasn't any facts appeared before me at all.

Mr. Lindabury: The order was made on the assumption that she was ill.

Mr. Kalisch: But it was substantiated by Dr. Fewsmith. He doesn't say that Mrs. Duke could be here yesterday.

The Court: I have given you I think by the order just dictated to the stenographer, all I think you are entitled to, and sufficient to protect the petitioner. I think the petitioner ought to bring the woman here to be cross-examined. It is a distinct advantage to the defendant, as I remarked yesterday, to have seen this evidence all written out before putting the witness on for cross-examination. That advantage I am not going to take away from you but I am going to put upon the defendant the risk of the loss of the evidence of this witness by reason of sickness, disability, or absence beyond the control of the party.

Mr. Kalisch: But your Honor must understand this witness is under the control of the other side.

The Court: That I suppose I know, or assume at present she is, and it will be a very sorry day for the petitioners if they do not produce her here for cross-examination. They will have to show me her absence is not due to any fault of theirs very clearly.

Mr. Lindabury: There is no possible reason for any discussion of this kind.

The Court: No, none at all.

Mr. Kalisch: We object then to any change or variation of the order of the Court as made yesterday.

NELLIE SANDS recalled:

Direct-examination—By Mr. Lindabury:

Q. Mr. Ruppert said he left you at Paris, and I wanted to ask about your journey from Paris home when on the wedding trip; when did you leave Paris?

A. We left the latter part of January.

Q. (By the Court.) Don't recollect the day?

A. No, I don't recollect the day; about 20th, 22nd I believe it was.

Q. When did you arrive in London? Did you go direct?

A. No, we didn't; we stayed there for a week; I think it was about the 23rd or something like that, in London; in London, we stayed there for a week.

Q. And what day did you sail for home?

A. The first of February.

Q. When you arrived in London did you receive any mail?

A. Yes, sir; I did.

Q. What?

A. I received four letters.

Q. Where were they? Where did you get them?

A. I got them at the hotel, Carlton Hotel.

Q. To whom were they addressed?

A. They were addressed to me.

Q. In whose handwriting?

A. Mr. Huntoon's.

Q. What did you do with them?

A. I handed them over to Mrs. Duke.

Q. Did Mrs. Duke have any household pets when she left on the wedding trip?

A. Yes, sir; we had a dog and a bird.

Q. (By the Court.) Dog and a bird?

A. Yes, sir.

Q. What did she do with them?

A. She left them at home.

Q. We were speaking yesterday of the absence of Mrs. Duke from home while Mr. Duke was in Europe and you mentioned an absence at Saratoga as the only one you thought of then. Do you recall any other now?

A. Yes, sir. I recall one right after we come home from Saratoga on the 10th of August, she went out to the farm with an old friend of hers and stayed one night.

Q. The night of what day?

A. The 10th of August.

Q. Do you recall any other absence?

A. Well, I don't recall any others but the two days, the day after Mr. Duke sailed, the same day Mr. Duke sailed.

Q. Yes, you told us about that.

The Court: She spoke of two absences when she went away from home saying she was going to stay all night at Brooklyn at her aunt's.

Mr. Lindabury: Yes; only one of those was during Mr. Duke's trip, two nights and a day, but only one occasion; she mentioned a similar occasion earlier, before Mr. Duke went away.

Q. What kind of a bird was this pet?

A. Canary bird.

Q. Did it sing?

A. Yes, sir, it sang.

Q. I show you a letter bearing the sending address 11 West 68th Street, addressed, "Dear Maggie" and dated July 31, 1905. Can you tell me in whose handwriting it is?

A. It is Mrs. Duke's handwriting.

Mr. Lindabury: I will ask you to have it marked for identification.

Marked Exhibit P1, April 27.

The Court: All papers are marked for identification. It is not admitted in evidence —two sheets.

Q. I also show you an envelope postmarked August 12, address "Miss Maggie Smith, care Duke's Farm, Somerville, N. J."

The Court: 1905?

Mr. Lindabury: Well, I don't see. No, it isn't August 12; it is 12 M. I cannot see the date.

The Court: August 2, I should say, or 3.

Mr. Kalisch: What year?

The Court: 1905. Somerville, August 2, sent from New York, 12 m., and August 26/05, means 6 p. m. I suppose.

Q. Can you tell me in whose handwriting it is?

A. Mrs. Duke's.

Marked P2, April 27.

Q. I show you another envelope addressed in the same way, bearing the New York postmark of July 31, but no Somerville mark.

The Court: Let me see. July 31, 3 p. m., 1905, I think; I don't know what it is.

Marked Exhibit P3, April 27.

Mr. Lindabury: I also show you an envelope upon which are three two-cent United States postage stamps, uncanceled, addressed Mr. J. B. Duke, Care British American Tobacco Company, and some number Strand, London, England. Will you tell me in whose handwriting that is?

A. Mrs. Duke's.

Marked P4, April 27.

Q. I also show you a note on a single sheet of paper, addressed "Dear Maggie," and signed "L. M. D.," but without date. Can you tell me in whose handwriting that is?

A. Mrs. Duke's.

Marked P5, April 27.

Q. I also show you a letter on Duke's Farm paper, dated August 3, 1905, beginning, "My darling Husband," and ending with "All my love for the same. Lillian." Can you tell me in whose handwriting that is?

A. Mrs. Duke's.

Marked P6, April 27.

Q. Nellie, do you remember the hour at which you parted with Mr. Huntoon on the day of the marriage or the day before the marriage at the railroad station in Philadelphia?

A. It was around four o'clock, around half-past four, I think.

Q. Did you communicate with Mr. Huntoon after that and before the marriage?

A. Yes, sir, I sent a telegram in the evening.

Q. Of the same day?

A. Yes, sir.

Q. Where from?

A. Camden, N. J.

Q. Where did you get that telegram?

A. Mrs. Duke gave me the telegram to send.

Q. In whose handwriting was it?

A. Mrs. Duke's.

Q. Do you recall the contents of the telegram?

Mr. Strong: I object.

A. No, I cannot, sir.

Q. (By Mr. Kalisch.) What hour did you say that was?

A. Half-past four.

The Court: Now, gentlemen for the defense, the witness is here for your cross-examination. If you do not choose to cross-examine her you will run the risk which I stated awhile ago, namely, that if she cannot be produced in two or three days for any reason—

Mr. Lindabury: I think they should cross-examine her on the testimony this morning.

The Court: Yes, the testimony this morning, there is no kind of reason why not.

Mr. Lindabury: I mean the rule adopted yesterday don't apply this morning and any testimony brought out this morning should be cross-examined on.

The Court: I think you are right about that. There is no reason why Mrs. Duke should not be here this morning as appears to the Court affirmatively, as far as anything could appear affirmatively. I hope counsel on both sides understand I did not read but a very small portion of this Pennsylvania letter. The public print seem to have it.

Mr. Lindabury: I read it.

The Court: I supposed you had. I only read enough to see what the object and purpose of it was.

Mr. Lindabury: I didn't read it until last night and how it got in the papers I don't know. The writer apparently sent it to the newspapers as well as the court.

The Court: Do you want to ask any questions?

Mr. Parker: Not on this to-day.

Mr. Kalisch: We think that may be done when she returns.

The Court: The counsel says if you want to cross-examine on what evidence she has given this morning he claims the right for you to cross-examine now on the ground that Mrs. Duke might have been here.

Mr. Parker: We don't think that is sufficient.

Mr. Kalisch: I don't want to take up the time of the Court.

The Court: Do as you are a mind to. My opinion is you ought to cross-examine her on what she has given this morning, for I see no reason why Mrs. Duke ought not to be here.

Mr. Parker: Your Honor didn't hear what we said. We said we didn't want to cross-examine her on anything she was asked about here this morning.

Mr. Kalisch: Don't want to take up the time of the Court.

The Court: Alright, I didn't catch what you said.

Mr. Lindabury: I will now read the Durham telegrams admitted in evidence yesterday; it won't take but a moment.

Mr. Kalisch: Have you got your objection?

The Court: Yes.

Mr. Lindabury: "May 4th, 1905. F. T. Huntoon, The Walcott, 31st St. & 5th Ave. N. Y. Arrived safe. Party very ill. Have telegraphed Nellie to leave this afternoon. Send me message by her. L. D."

The next one is, "Durham, N. C. May 5th, 1905. F. T. Huntoon, The Wolcott, 31st St. & 5th Ave., New York. Nellie arrived. Uncertain about going home. Party very ill. Write here to Nellie. Love and best wishes. L."

Mr. Strong: If your Honor please, just a moment. I don't understand as to the position with regard to these telegrams. There has been no testimony yet of the receipt of any such telegrams by Huntoon?

The Court: No, no evidence of it. The ground on which I put it in my own mind was that it was an admission of this woman; she may never have sent them.

Mr. Strong: They might never have been sent and ought they to be received until proof of sending them?

The Court: If she wrote them it is evidence against her and her admission is evidence against your client; I rule that distinctly.

Mr. Strong: We desire the benefit of an objection.

The Court: Yes.

Mr. Lindabury: "Durham, N. C. May 6th 1905 F. T. Huntoon, The Wolcott, 31st St & 5th Ave., New York. Hope you are well. Party very ill. Everything uncertain. Don't forget all promises. Love and best wishes. L."

"May 8th 1095. Mr. F. T. Huntoon, The Wolcott, 31st St. & 5th Ave., New York City. Mr. Duke died at 2 P. M. Funeral Wed. at 11 A. M. Happy over two letters. Have written.

Thursday. Will wire tomorrow. Miserable. Love. L."

"5/9 1905 Mr. F. T. Huntoon, The Wolcott, 31st St. & 5th Ave., New York. Received third letter last evening. Always miss you. Sad, lonely and miserable. Hope you are well and keeping all promises. Have written. Love. L."

"May 10th, 1905. F. T. Huntoon The Wolcott, 31st St., & 5th Ave., New York. Will arrive in New York early tomorrow. Will telephone you at 9.30. Hope to see you. Love and best wishes. L."

LOUISE BONDERSON, sworn on behalf of the petitioner:

Direct-examination—By Mr. Lindabury.

Q. (By the Court.) Give your age?
A. Twenty-two.
Q. (By the Court.) Where do you live?
A. 100 Fifth Avenue.
Q. Were you ever engaged in the service of Mrs. Duke?
A. Yes, sir.
Q. When did you enter that service?
A. 3rd of April, 1905.
Q. How long did you remain there?
A. The 2nd of September.
Q. Of the same year?
A. Yes, sir, 1905.
Q. What were you employed to do?
A. Waitress.
Q. And was that the service you rendered?
A. Yes, sir.
Q. Did you see Mr. Huntoon while you were there?
A. Well, I can't exactly tell, I guess maybe I was there a week, less than that.
Q. (By the Court.) Did you see him while you were there?
A. Yes, sir, I did.
Q. Had you any previous acquaintance with him?

A. No, sir.

Q. Do you remember the occasion of your first seeing him?

A. Yes, sir.

Q. What was it?

A. Well, he called there about eight o'clock and he gave me his card to take up to Mrs. Duke.

Q. How long was that after you went there?

A. Well, it may have been a week or less than that, I can't exactly tell.

Q. Did you do it?

A. Yes, sir.

Q. Was Mr. Duke there?

A. No, sir, he was not there.

Q. Was Mr. Huntoon shown in?

A. Yes, sir.

Q. And how long did he remain?

A. I don't know, sir.

Q. How long do you know that he was there?

A. He was there half-past ten when I went upstairs.

Q. How came you to go upstairs then?

A. We have to be upstairs half-past ten.

Q. (By the Court.) You went up to your bedroom?

A. Yes, sir.

Q. (By the Court.) Those were your orders to go by half-past ten?

A. Yes, sir.

Q. Where were they?

A. They were in the library when we left them.

Q. Do you remember how soon you saw him there again?

A. No, I don't remember how soon I saw him again.

Q. Was Mrs. Duke there all the time between then and the 15th of July, when Mr. Duke went abroad?

A. No, sir, he was at the farm sometimes.

Q. Was there any particular day or night when Mrs. Duke came in?

The Court: From the farm?

A. She come in some Thursdays; I can't exactly remember how many.

Q. Did she go back the same day?

A. No, sir, she always remained over night.

Q. (By the Court.) That is some Thursdays while she was at the farm she came into the house to New York and stayed all night?

A. Yes, sir.

Q. Did you see anything of Mr. Huntoon on those occasions?

A. Yes, sir, he used to be there in the evenings.

Q. How late?

A. I don't know, sir.

Q. How late did you know him to be there?

A. He was there half-past ten; that is the last I saw of him.

Q. (By the Court.) You went to bed and left him?

A. Half-past ten, yes, sir.

Q. Do you know of Mr. Duke's going to Europe?

A. Not until he left.

Q. (By the Court.) You knew then?

A. Yes, sir.

Q. When was that?

A. 15th of June.

Q. (By the Court.) July, you mean?

A. Yes, sir, July, I mean.

Q. Was Mrs. Duke home that night?

A. No, sir, she was not.

Q. Did you see her leave?

A. I didn't see her leave but I opened the door for her when she came; she had been to see Mr. Duke off on the steamer.

Q. You don't know what time she left the house?

A. No, sir, I don't know what time she left the house.

Q. (By the Court.) You say she was not home that night?

A. No, sir, she wasn't.

Q. (By the Court.) When did you open the door for her?

A. I opened the door for her about half-past three or four in the afternoon.

Q. (By the Court.) Then did she go away again?

A. Yes, sir.

Q. (By the Court.) When did she get back?

A. On Monday morning.

Q. Did she say anything to you about where she was going or where she had been?

A. No, sir.

Q. (By the Court.) Been away two nights then?

A. Yes, sir.

Q. Now had she been away except to the farm before that—any nights that you know about before Mr. Duke went away?

A. I think I remember once when she was away over night.

Q. Do you remember what night in the week that was?

A. I think it was on Tuesday night.

Q. Do you remember any circumstance connected with it?

A. Yes, sir; she had a friend that died that day.

Q. Who told you she had a friend that died?

A. I heard it.

Q. Do you remember the name of the friend?

A. Yes, sir.

Q. Who was it?

A. Mrs. Hovery's son.

Q. What did she say about that?

A. She said she wanted to stay with her over night because she thought she wanted to help her.

Q. And you fix the time by that story of that day?

A. Yes, sir.

Q. Do you remember any other night she was away except at the farm?

The Court: You mean before he sailed for Europe?

Q. Before he sailed for Europe?

A. No, I can't remember any other night.

Q. Now do you remember her being away any night after Mr. Duke sailed and her return from this trip of three days?

A. I know she went to Saratoga once.

Q. Now except Saratoga?

A. Then she went to the farm one night and stayed over night.

Q. Do you remember her being away any other time?

A. And then I know she was away on Thursday, the 31st.

Q. 31st?

A. Of August.

Q. How long was she away then?

A. She was away over night.

Q. What day of the week was the 31st?

A. It was on Thursday night.

Q. Thursday night?

A. Yes, sir.

Q. Did she say anything to you about where she was going or had been?

A. No, sir.

Q. You only know she was away?

A. Yes, sir, that is all.

Q. Did you see her leave?

A. No, I didn't see her leave.

Q. Did you see her return?

A. Yes, I did.

Q. How do you know she wasn't at the house that night?

A. She had no dinner there, she had no breakfast in the morning.

Q. What time of day did she come in the next morning?

A. Well, I can't exactly tell; I guess it was between ten and twelve, sometime around there.

Q. Did Mr. Huntoon dine any at the house while Mr. Duke was in Europe?

A. Yes, sir.

Q. How often?

A. About every other night for the first two or three weeks.

Q. Did you wait on them?

A. Yes, sir.

Q. Do you know about any wine coming to the house after Mr. Duke left?

A. Yes, sir.

Q. How much?

A. I don't know, sir; I only saw that it was carried in; I don't know how many cases.

Q. (By the Court.) Did it come in baskets?

A. It come in cases.

Q. Do you know about how many?

A. No, sir.

Q. What kind of wine was it?

A. I don't know because I didn't unpack it.

Q. Any whiskey?

A. I believe it was, yes, sir.

Q. Now, did you ever serve wine to Mrs. Duke and Mr. Huntoon?

A. Yes, sir.

Q. How frequently?

A. Every night he was there for dinner.

Q. Every day?

A. Every night he dined there.

Q. And did they have it at any other times than at dinner?

A. Not wine; they had some whiskey upstairs in the afternoon some times.

Q. When?

A. If he called in the afternoon, they always had some whiskey upstairs.

Q. Did they ever have any nights after dinner?

A. Any whiskey?

Q. Whiskey or wine after dinner? Nights, in the evening?

A. Not that I know of.

Q. Not that you remember about?

A. No, sir.

Mr. Kalisch: Not that she knows of.

Q. Not that she knows of. Very well put it that way. Did you ever see either one of them under the influence of liquor?

A. No, sir, I did not.

Q. Either Mr. Huntoon or Mrs. Duke?

A. No, sir.

Q. Were you up any night during Mr. Duke's absence when Mr. Huntoon was there later than half past ten?

A. No, sir.

Q. Did you get up or were you called up at any night?

A. No, sir, I was never called up.

Q. (By the Court.) Or did you get up?

A. Yes, sir, I did.

Q. (By the Court.) In the night?

A. Yes, sir.

Q. (By the Court.) What time?

A. About twelve or a little after perhaps.

Q. How came you to get up?

A. I wanted to go into the bath-room to get a drink of water.

Q. Where was your room, on which floor?

A. On the fifth floor.

Q. And where was the bath-room?

A. It was in the hall.

Q. Did you have to go into the open hall to get to it?

A. Yes, sir.

Q. Now on that occasion—

The Court: Well, was the bath-room on the fifth floor?

A. Yes, sir.

Q. On that occasion did you see anything of Mrs. Duke?

A. Yes, sir; I saw lights burning on her floor and the library and I looked over the banister and I saw Mrs. Duke and Mr. Huntoon come upstairs.

Q. (By the Court.) Come up from where?

A. From the library floor.

The Court: Is the library—if you will let me interrupt you.

Mr. Lindabury: Certainly.

Q. (By the Court.) What rooms are on the first floor as you go in from the hall?

A. Reception-room and dining-room and foyer.

Q. (By the Court.) What is the next above that?

A. Library and parlor next.

Q. (By the Court.) Library and parlor on the second floor?

A. Yes, sir.

Q. (By the Court.) And where did you see them coming from?

A. Library.

Q. From the library?

A. Yes, sir.

Q. Where is Mrs. Duke's bed-room.

A. It is on the third floor front.

Q. That is on the floor above the library?

A. Above the library, yes, sir.

Q. Now what was it that attracted your attention?

A. I saw Mrs. Duke and Mr. Huntoon come upstairs.

Q. I know, but how came you to come to the place where you saw them?

The Court: She was thirsty.

A. I come out in the hall.

Q. What did you see?

A. When I come out in the hall I saw the lights burning.

Q. Yes. What did you do in consequence of that?

A. Well, I looked over the banister and I saw Mrs. Duke and Mr. Huntoon come upstairs.

Q. Was it the custom to leave the lights burning all night?

A. Well never, I would always leave it burning.

Mr. Strong: She never saw it after half-past ten; she don't know whether it was customary to leave them burning or not.

Q. Did you suppose or understand that the lights were ordinarily left burning all night?

Mr. Strong: I object.

A. No, sir.

The Court: What is your objection, Mr. Strong?

Mr. Strong: That her understanding or supposition cannot be material.

The Court: I don't think the counsel need have resorted to that sort of a question. A servant in a house, a maid in a house I think by common knowledge is presumed to know the habits of the house with regard to lights and all that sort of thing. If they go to bed half-past ten o'clock, they don't always go to bed half-past ten or they don't always sleep all night, and they must know what the course of business in the house was; so I take it for granted that this lady had means of knowing whether it was usual. If not, she can be asked, for the lights to burn all night or late at night after people have gone to bed. That is what you want to know?

Mr. Lindabury: Yes, your Honor.

Mr. Strong: Ought there not to be a question directed to the point whether she does know anything about it?

The Court: The question might have been put and if you take the objection.

Mr. Strong: I do.

The Court: Mr. Lindabury may if he sees fit, put a question. I will put it. Did you know what the habits were or rules of the house were about lights being kept burning all night or late in the night?

A. Yes, sir.

Q. (By the Court.) What were they?

A. If nobody was up, we always put out the lights, but if Mrs. Duke was not in bed and we went up to bed we always left the lights as they was.

Q. Now who was going upstairs first?

A. Mrs. Duke.

Q. Where was she on the stairs when you looked over the banister?

A. About the middle of the stairs.

Q. Where was Mr. Huntoon?

A. He was coming up after her.

Q. How long did you observe that?

A. I just looked into it, into Mr. Duke's room, they went into Mr. Duke's room first.

Q. (By the Court.) They went into Mr. Duke's room?

A. Yes, sir.

Q. Went into that room?

A. Yes, sir.

Q. Did you notice or hear whether the door was closed or not?

A. Yes, sir.

Q. What did you hear about that?

A. I saw the door closed and I heard the door close and heard her lock, the turning of a key.

Q. (By the Court.) How many went into the room?

A. Mrs. Duke and Mr. Huntoon.

Q. (By the Court.) Both went into Mr. Duke's room?

A. Yes, sir.

Q. (By the Court.) That is the back room?

A. Yes, sir.

Q. And then you heard the door close and the key turn?

A. Yes, sir.

Q. Now you spoke of Mr. Huntoon being there about every other night while Mr. Duke was in Europe?

A. Yes, sir.

Q. Being there to dinner?

A. Yes, sir.

Q. Do you know whether Mrs. Duke was home the alternate evenings or not?

A. No; she went out as a rule.

Q. Do you know whether she went out alone or not?

A. Sometimes she went out alone.

Q. And at other times?

A. A couple of times Mr. Huntoon called for her.

Q. When she went out to dinner either alone or with Mr. Huntoon did she ordinarily return before you retired?

A. She did a couple of times; yes, sir.

Q. Did a couple of times what?

A. Returned about ten o'clock, a little before ten.

Q. What about the other times?

A. The other times she wouldn't come until after we had retired.

Q. On those two occasions did Mr. Huntoon come back with her?

A. Yes, sir.

Q. How did he leave before you went to bed on those two nights or remain?

A. No; I think he was there when we went upstairs.

Q. (By the Court.) Think he was there when you went upstairs to bed?

A. Yes, sir.

Q. By what terms did these people address each other?

A. I never heard them address each other at all.

Q. Did she call him by any name or he, her?

A. No, sir; not in my presence.

Q. Do you know whether they had any pet names for each other?

A. No, sir.

Q. Did you ever see any familiarities between them?

A. No, sir.

Q. In the dining room?

A. No, sir.

Q. Or elsewhere?

A. No, sir.

Q. Was there any change in their habits during the last two weeks of August?

A. Yes, sir; Mr. Huntoon didn't dine there so often; they went out more, they went out more.

Q. (By the Court.) Mrs. Duke went out more?

A. No, sir.

Q. (By the Court.) He didn't come there so much?

A. Not in the evenings; he used to call in the afternoon.

Q. And were the girls sent to bed before Mr. Huntoon left?

A. Sometimes he left early, about ten o'clock.

Q. (By the Court.) Those last two weeks we are talking about.

A. Yes, sir; last two weeks.

Q. Did you hear anything from Mrs. Duke about any occasion for a different practice during that two weeks?

A. No, sir.

Q. Do you know whether Mrs. Duke contemplated a trip to Canada?

A. Yes, I heard of it.

Q. When was she going to Canada?

A. I can't exactly remember the date; it was sometime in August?

Q. Well, early or late in August?

A. No; I think it was early in August.

Q. Do you know whether the trip was given up or not?

A. Yes.

Q. Do you know why it was given up?

A. Yes, I heard why it was given up?

Q. From whom did you hear it?

A. I heard it from the watchman.

Mr. Kalisch: I object.

Q. Did you hear Mrs. Duke say anything about it?

A. Not to me.

Q. Well, did she say anything to anybody that you overheard?

A. No, she didn't say nothing that I heard.

Q. Nothing that you overheard?

A. No, sir.

Q. Now did Mrs. Duke ever say anything to you about announcing Mr. Huntoon, if Mr. Duke happended to be there?

The Court: Do you understand that question?

A. No, sir; she did not.

Q. Did Mr. Huntoon and Mr. Duke ever meet while you were there?

A. No, sir; not that I know of.

Q. Did Mr. Huntoon ever come there when Mr. Duke was at home while you were there?

A. No, sir.

Q. Did you ever hear Mr. Huntoon's name mentioned in Mr. Duke's presence?

A. No, sir.

Q. Did you have any instructions from Mrs. Duke with regard to mentioning Mr. Huntoon's name?

A. Yes, sir; once.

Q. What was it?

A. That was August 31st, no, September 1st she told me that if Mr. Duke should ask me how often Mr. Huntoon has called there I should not tell him.

Q. Did Mr. Huntoon have any talk with you about it?

A. Yes, sir.

Q. What did he say?

A. Oh, well, he said if I ever needed a friend he would always be a friend to me and if I was in need of anything I should just come to him.

Q. When did he tell you this?

A. August 1st.

Q. (By the Court.) August 1st?

A. Yes, sir.

Q. August 1st?

A. I mean September first.

Q. Where was he then?

A. He was in the dining room.

Q. Did he give you any money?

A. Yes, sir.

Q. How much?

A. Nine dollars, I think.

Q. Do you know when Mr. Duke was expected back about this time?

A. Yes, sir.

Q. When was he expected back?

A. That same evening.

Q. And what time in the day was this?

A. This was about half past seven, seven or a little after maybe it was.

Q. And where was Mr. Huntoon?

A. He was in the dining room.

Q. And did you have any talk with Mrs. Duke afterwards on the same subject?

A. Yes, sir.

Q. What was that talk?

A. She just asked me if Mr. Huntoon told me and I told her.

Q. What did she ask you?

A. She asked me what Mr. Huntoon said to me and I told her.

Q. What did she say?

A. She said Mr. Huntoon is a very nice man. And he was an old friend of her family's, and then if Mr. Duke should ever ask me how often Mr. Huntoon has been there I should not tell him.

Q. How long did Mrs. Duke remain in the house after this talk you had with her?

A. This was afterwards, about ten o'clock, she had this talk with me.

Q. (By the Court.) At night?

A. Yes, sir.

Q. Where had she been in the meantime between your talk with Mr. Huntoon and that hour?

A. Had been to meet Mr. Duke.

Q. Mr. Duke had not arrived?

A. No, sir.

Q. (By the Court.) In the evening Mr. Duke arrived?

A. Yes, sir.

Mr. Lindabury: He didn't come.

Q. (By the Court.) She went down to meet the ship but he did not come?

A. Yes, sir.

Q. Mr. Duke didn't come to the house?

A. No, sir.

Mr. Lindabury: He was expected that day; as a matter of fact he had arrived some days before and was in New York. His wife didn't know it.

Mr. Strong: That is interesting information.

Q. Do you remember Mr. Parker and another gentleman coming there?

Mr. Parker: Designate the Parker please.

Q. Mr. Junius Parker, who sits by the side of me,

coming there and leaving a paper with Mrs. Duke on Saturday the second?

A. Not in my presence.

Q. You had a sister there, didn't you?

A. Yes, sir.

Q. Did you hear of it at the time?

Mr. Kalisch: I object.

Mr. Lindabury: I will prove the fact.

The Court: One moment. You get a day by hearsay—perfectly competent; you get an hour by hearsay; a person doesn't see a thing but they hear of it at a certain time then they do something. That is proof that they did it after the occurrence.

Mr. Strong: This is not fixing any date.

Mr. Lindabury: It is fixing a date.

The Court: This is preliminary. The young lady was asked if Mr. Junius Parker called at the house one day. She said she didn't see him herself but she heard he was there. That is what she said. The day was not fixed I believe by the question.

Q. Now do you remember which day it was?

A. Yes, sir.

Q. What day?

A. It was on Saturday, on the second of September.

Q. Do you know whether Mr. Huntoon came that afternoon?

A. Yes, sir.

Q. Now did you see or hear Mrs. Duke at the telephone?

A. No, sir.

Q. How soon or when did Mr. Huntoon arrive?

A. I don't know when he arrived, but I saw him in the library about half past three or four o'clock I think it was.

Q. How long did he stay?
A. I don't know, sir.
Q. Was he there when you went to bed?
A. Yes, sir.
Q. You left that afternoon?
A. Yes, sir.
Q. When did you leave?
A. I left five o'clock.
Q. He was there then?
A. Yes, sir.
Q. (By the Court.) Did you go back to the house any more?
A. No, sir.
Q. That was the last of it?
A. Yes, sir.

Cross-examination—By Mr. Kalisch:

Q. Miss Bonderson, were you born in this country?
A. No, sir.
Q. Where did you come from?
A. Sweden.
Q. When did you leave Sweden for this country?
A. Seven years ago.
Q. What place in Sweden did you live?
A. Calmer.
Q. And when you came did you come directly to New York?
A. No, I went to Brooklyn.
Q. Did you go in service there?
A. Yes, sir.
Q. With whom?
A. With Mrs. Gibson.
Q. Where did she live?
A. She lived on Pacific Street that time.
Q. Do you know the number?
A. I can't remember the number.

Q. How long did you remain with her?
A. A year and a half.
Q. And where did you go to from that house?
A. Then I came to New York.
Q. New York City?
A. Yes.
Q. And did you go into anybody's employ there?
A. Yes, sir.
Q. Whose?
A. I went to a Mrs. Gilson first in Fifth Avenue.
Q. Where does she live?
A. 1006 Fifth Avenue.
Q. And in what capacity did you employ there?
A. As kitchen maid?
Q. Kitchen maid?
A. Yes, sir.
Q. And remained with her how long?
A. Six months.
Q. Then did you go elsewhere?
A. Yes, sir; then I went to Portchester.
Q. With a family?
A. Yes, sir.
Q. Name?
A. Harris.
Q. How long did you remain with them?
A. Seven months.
Q. Then?
A. New York.
Q. Back to New York?
A. Yes, sir.
Q. And did you go—what family?
A. Sherwood's.
Q. And where did they live?
A. Lexington Avenue and 35th Street.
Q. As what?
A. As laundress.
Q. How long did you remain there?
A. Five months.

Q. And then?

A. Then I went to a family by the name of McVickers.

Q. And where did they live?

A. They live in White Plains now, they lived in New York that time.

Q. In what capacity?

A. As chambermaid and waitress in the last six months.

Q. Chambermaid and waitress?

A. Waitress the last six months.

Q. Then?

A. I came to 57th Street to a Mrs. Elliott as chambermaid.

Q. As chambermaid, and remained with her how long?

A. Seven months?

Q. And then?

A. And then I came to Mrs. Duke.

Q. Do you remember just about what month it was you come to Mrs. Duke?

A. Yes, sir.

Q. What month was it?

A. Third of April, 1905.

Q. And that was at 11 West 68th Street?

A. Yes, sir.

Q. And you went there as what?

A. Waitress.

Q. As waitress?

A. Yes, sir.

Q. Did you perform any other duties besides waitress?

A. No, sir.

Q. (By the Court.) Did you take care of the reception room?

A. Reception room and the front hall.

Q. That is all?

A. Yes, sir.
Q. (By the Court.) And the dining room?
A. Dining room; yes, sir.
Q. Waited upon the table?
A. Yes, sir.

The Court: Oh, yes, but they generally have some—take care of the rooms.

Mr. Lindabury: Parlor maid, waitress?

A. Yes, sir.
Q. Were there any other servants in the house besides you at that time?
A. Yes, sir.
Q. How many?
A. Five, four besides me.
Q. Four besides you?
A. Yes, sir.
Q. Can you give me their names?
A. Yes, sir.
Q. Who was it?
A. Mrs. Andrews and Nellie Sands and then my sister, and then it was a cook there, Hilda Seger.
Q. Any other servants besides?
A. No, sir.
Q. Anybody to take care of the affairs of the fires, or make the fires?
A. Yes, sir.
Q. Who?
A. There was a coachman there.
Q. (By the Court.) Coachman came to do that, eh?
A. Yes, sir.
Q. Did he sleep in the house?
A. No, sir.
Q. What was his name, the coachman?
A. His name is Richard O'Hara.
Q. Do you know where he lives?

A. No, sir; I don't know where he lived.

Q. Do you know where he came from?

A. Who?

Q. Richard O'Hara?

A. No, I don't know where he came from.

Q. Do you know where he was working?

A. I don't know; he was working in the stable, I guess.

Q. You knew where the stables were, didn't you?

A. Yes, sir.

Q. Where were they?

A. 66th Street.

Q. You knew O'Hara worked there?

A. Yes, sir.

The Court: She supposed so. Were you ever at the stables?

A. I passed it; I never was in there.

Q. You saw O'Hara there?

A. No. Never seen him; he told me he worked there.

Q. All these servants slept on the fifth floor?

A. Yes, sir.

Q. Did you all have a separate room?

A. Mrs. Andrews didn't sleep on the fifth floor.

Q. (By the Court.) Who had separate rooms?

A. My sister and I had room together.

Q. And who slept in another room?

A. Well, we slept in back, my sister and I, and then there was two front rooms, that was Nellie Sands' and Hilda Seger's room?

Q. They occupied one room?

A. No, they had each a room.

Q. Each had a room?

A. Yes, sir.

Q. Then there was another servant; where did she sleep?

A. She slept downstairs on the fourth floor.
Q. Who was that?
A. Mrs. Andrews.
Q. Now, was there a hall light on your floor?
A. Yes, sir.
Q. Where was it?
A. On the fifth floor.
Q. Oh, no, but whereabouts, in the ceiling or--
A. No, it was on the side.
Q. On the side?
A. Yes, sir.
Q. (By the Court.) You mean in the hall?
A. In the hall, yes. sir.
Q. How near to the head of the stairs?
A. It was about the middle of the hall, the light was.
Q. When you came up the stairs, the last pair of stairs to your floor, were you nearer the front part of the house or the back part?
A. No, sir, nearer the back part of the house.
Q. (By the Court.) The head of the stairs?
A. Yes, sir, the head of the stairs.
Q. Were they straight up or were they a winding stair?
A. No, I think they were winding stair.
Q. (By the Court.) What do you say?
A. I don't think, I am not sure.
Q. (By the Court.) Not winding?
A. I think the fifth stairs was straight.
Q. Straight?
A. Yes, sir.
Q. Now, on the fourth floor was there a light on the fourth floor?
A. No, sir.
Q. In the hall?
A. No, sir.
Q. No light at all?

A. Sometimes.

Q. (By the Court.) No place for a light?

A. Yes, sir, place for a light, but it was very seldom lit.

Q. Now, whereabouts on that floor?

A. Just on the wall.

Q. On the wall?

A. Yes, sir.

Q. Was it electric light or gas light?

A. Gas light.

Q. Was it near the top of the wall or in the middle of the wall?

A. Middle of the wall.

Q. That wasn't lit as a rule, was it?

A. No, sir.

Q. Then on the third floor where was the light?

A. Just the same place in the middle of the hall.

Q. Just one gas jet was it or more?

A. One gas jet, but there is more than one light there.

Q. (By the Court). Double bracket?

A. Yes, sir.

Q. (By the Court.) Bracket with more than one light?

A. Yes, sir.

Q. And that one light was lit always, was it?

A. Yes, sir.

Q. There was only one light burning I understand as a rule?

A. Yes, sir.

Q. (By the Court.) When? On the third floor?

A. On the third floor.

Q. (By the Court.) On what occasion was it lit?

A. It was always lit when we went upstairs and sometimes there was nobody up to put it out.

Q. That was gas light, too, was it?

A. I think so, sir, I am not positive.

Q. Well, was it gas light all through the halls?

A. It was electric and gas both.

Q. Where was the electric light?

A. On the third floor was the electric.

Q. Was that light lit?

A. I am not positive if it was gas or electric.

Q. (By the Court.) You must when you ask a question of that kind refer to the time so that the witness won't fall into any mistake. If you ask her if it was lit you must tell when you mean, whether it was ordinarily lit, generally lit?

A. Yes, sir.

Q. I am now speaking of the third floor, whether there was electric light on that floor

A. There was electric light, I don't know whether it was lit.

Q. (By the Court.) Was there one there to be lighted?

A. Yes, sir.

Q. As a rule every evening was it lighted or not?

A. Yes, sir.

Q. It was lit every evening?

A. Yes, sir.

Q. Besides the gas light?

A. No, if the gas was lit we didn't light the electric light.

Q. Well, you could have lighted them both at once?

A. Yes, sir.

Q. (By the Court.) You were not in the habit of lighting them both at once.

A. No, sir.

Q. Was that electric light near the gas light or was that in another part of the hall?

A. No, same place.

Q. Was it a combination fixture, one of gas and electric together?

A. Yes, sir.

Q. Now, on the second floor was there any lights generally lit there on an evening?

A. Yes, sir, we always had light in there on the second floor.

Q. (By the Court.) That was the parlor floor—parlor and library, wasn't it?

A. Yes, sir.

Q. Gas and electric both or just an electric light?

A. Just electric light.

Q. Then there was another floor that went down into the hall?

A. Yes, sir.

Q. Now, what kind of a light was there in that hall? Was it lantern or what?

A. It was chandelier.

Q. Chandelier?

A. Yes, sir.

Q. And that was electric or gas?

A. Electric.

Q. Electric only?

A. Yes, sir.

Q. Was the chandelier in the hall of the parlor floor?

A. No, I think they were just little lights.

Q. (By the Court.) Little brackets?

A. Yes, sir, at the ceiling.

Q. (By the Court.) Brackets are those that come out from the wall?

A. Yes, sir, I understand, I think there was two brackets.

Q. (By the Court.) Do you recollect whether there was a chandelier, a drop light in the hall of the second floor, on the parlor floor?

A. No, there was no drop light.

Q. (By the Court.) Then the hall was lighted by brackets?

A. Yes, sir.

Q. (By the Court.) And they were electric lights?

A. They were electric lights; yes, sir.

Q. (By the Court.) Do you know whether there were also gas lights there?

A. I don't think so, sir.

Mr. Clark: Ceiling lights also she said, not chandeliers.

The Court: Well, ceiling lights, were the lights in the ceiling.

A. Yes, sir.

The Court: Ah, much obliged to you. In the second floor, the parlor floor, there were lights in the ceiling?

A. Yes, sir.

Q. (By the Court.) Not dropping down?

A. No, sir.

Q. I mean in the hall?

A. In the hall; yes, sir. In the hall.

Q. Speaking of the hall?

A. Yes, sir.

Q. You are speaking of the hall as I understand you?

A. Yes, sir.

Q. Was there a shade over that?

A. No, sir.

Q. No shade?

A. No, sir.

Q. Was it ground glass?

A. Just globes.

Q. Ground glass globes?

A. Yes, sir.

Q. Now these stairs that came from the hall as you entered the house and walked up a pair of stairs, those you would go around would you?

A. Yes, sir.

Q. Go up another pair of stairs, is that right?
A. No.

The Court: What do you mean by a pair of stairs?

Q. Well, stairway. Did you go up a flight of stairs?
A. Yes, sir.
Q. Then walk along a passage?
A. Yes, sir.
Q. And go up another flight of stairs?
A. Yes, sir.
Q. Was that the same course all through until you reached the fifth floor?
A. Yes, sir.
Q. The same way?
A. Yes, sir.
Q. (By the Court.) I thought from what you said a while ago that the last flight up, the fifth floor was a little different from those below?
A. I think the stairs was straight on the fourth and fifth floor.
Q. The stair from the hallway to the second floor, is that wide?
A. That is wide; yes, sir.
Q. That is straight too, isn't it?
A. Yes, sir; that is straight too.
Q. And is the stairway from the second to the third floor straight?
A. No, it is not straight in the beginning, it is kind of curved in the beginning.
Q. And the same way from the third to the fourth floor?
A. Yes, sir.
Q. And from the fourth to the fifth it is straight?
A. Yes, sir.
Q. Now do you remember the time you came to Mrs. Duke, did you see Mr. Duke?

A. Not when I came there first I didn't see him.

Q. How soon after you went into the employ of Mrs. Duke did you see Mr. Duke?

A. I guess I was there a week or perhaps a little more.

Q. How often did you see him?

A. I saw him every morning and every evening except when he was not at home.

Q. You waited on him at the table, didn't you?

A. Yes, sir.

Q. And every morning and every evening during what months did you see him?

The Court: When he was at home she said.

A. When he was at home.

Q. Well, during what months?

A. Well, April and May and the first part of June and July, first part of July I guess.

Q. Then he went to Europe?

A. Yes, sir.

Q. Do you remember waiting upon him—of course I am now speaking of the time that he was at home—as many times as three or four times a week?

A. Yes, sir.

Q. Morning and evening?

A. Yes, sir.

Q. He didn't come home at noon?

A. No, sir.

Q. What time did he generally come home in the evening?

A. About five or half past.

Q. And how long would he remain in the house?

A. Until next morning.

Q. He remained all night?

A. Yes, sir.

Q. And what time would he leave in the morning?

A. About eight o'clock, a little after eight.

Q. (By the Court.) I will ask you was Mr. and Mrs. Duke between April and July away down to the farm at any time?

A. Yes, sir; I think they were.

Q. Well, when?

A. Well, I can't exactly recall the time; I know they used to go there and spend Sunday's.

Q. Did she go down with Mr. Duke?

A. Sometimes; yes, sir.

Q. So when you say, when you say she was down to the farm you mean she went down with Mr. Duke to the farm?

A. Yes, sir.

Q. (By the Court.) You didn't go?

A. No, sir.

Q. Now on this evening in question, when you awoke and wanted to get a glass of water or something, I forget just what you said on that subject, you went out in the hall?

A. Yes, sir.

Q. And you saw the lights lighted?

A. Yes, sir.

Q. What lights did you see lit?

A. I saw the light in the third floor and on the second floor.

Q. What lights could you see?

A. I could see the light on Mrs. Duke's floor, the third floor, and I could see the light down—I couldn't see the globe but I could see the lights, the lights were lit.

Q. You could see the reflection of the light?

A. Yes, sir.

Q. You couldn't see the hall lights could you?

The Court: She said she couldn't see the globes but she saw the reflection of the light.

Mr. Kalisch: If your Honor will allow me, I may be a little thick.

The Court: You seem not to have heard her. I thought I would let you know just what she said.

Q. Did you see the reflection of the light from the library?

A. No, sir; I did not.

Q. Did you see the reflection of the light from Mr. Duke's room?

A. There was no light in Mr. Duke's room.

Q. Did you see the reflection of the light in Mrs. Duke's room?

A. There was no light in Mrs. Duke's room there.

Q. Did you see the reflection of the light from any of the rooms on the third floor?

A. There was only two rooms on the third floor.

Q. I mean from those two rooms on the third floor?

A. No, sir; I did not.

Q. Then the lights you are speaking of are the hall lights, are they?

A. Yes, sir.

Q. Now where were you the time when you looked down?

A. I was in the middle of the hall, just in front of the bathroom door.

Q. In the middle of the hall?

A. Yes, sir.

Q. Did you stop?

A. Yes, sir.

Q. And look over the banister?

A. Yes, sir.

Q. And you looked down and saw Mrs. Duke and Mr. Duke coming up which stairway?

A. Mr. Huntoon I saw.

Q. I mean Mr. Huntoon.

A. Which stairway? The third stairway.

Q. The third stairway going from the second to the third floor?

A. Yes, sir.

Q. You didn't stop there any length of time did you?

A. I just stopped long enough to see that they went in Mr. Duke's room, that was all.

Q. Did you wait until they got up the stairs?

A. Yes, sir.

Q. Did you wait until both of them got up the stairs?

A. Yes, sir.

Q. Why did you wait?

A. I saw Mr. Huntoon and Mrs. Duke and I watched to see where they go.

Q. You had seen Mrs. Duke and Mr. Huntoon there before hadn't you?

A. Not up on the third floor.

Q. You wanted to see where they were going to, is that it?

A. Yes, sir.

Q. Was it out of curiosity you stood there?

A. Yes, sir.

Q. And after you had seen Mr. Huntoon reach the top of the floor then you went away, did you?

A. When they got in Mr. Duke's room; yes, sir.

Q. You couldn't see the room?

A. I could see the top of the door.

Q. You heard the key turn in the door did you?

A. Yes, sir; I did.

Q. That is what I understand you to say?

A. Yes, sir.

Q. Made a loud noise did it?

A. Yes, sir; I could hear it.

Q. And they shut the door so you could hear with a loud noise, did they, so you could hear it?

A. Not so very loud, but loud enough so I could hear it.

Q. (By the Court.) What time in the night was that?

A. About twelve o'clock.

Q. (By the Court.) Did you go downstairs after that?

A. No, sir.

Q. Did you go to the bath room?

A. No, sir; I went back to bed.

Q. Well, you went there to get your drink of water didn't you?

A. I done that before.

Q. Done it before what?

A. Before I saw Mrs. Duke and Mr. Huntoon come upstairs.

Q. You had your drink?

A. Yes, sir.

Q. Then you were returning to your bed when you heard all this?

A. Yes, sir.

Q. And you heard no other noise; you heard nothing else?

A. No, sir.

Q. Now, Miss Bonderson, did you receive any presents from Mr. Duke?

A. Christmas present.

Q. From Mr. Duke?

A. Yes, sir.

Q. This last Christmas?

A. Yes, sir.

Q. What was it?

A. A watch.

Q. (By the Court.) When was that?
A. Christmas.
Q. (By the Court.) This last Christmas?
A. Yes, sir.
Q. Any money?
A. No, sir.
Q. No money at all?
A. No, sir.
Q. Any bonds?
A. No, sir.
Q. Any stock?
A. No, sir.
Q. What did Mr. Duke say to you when he gave you this gold watch this last Christmas?

Mr. Lindabury: Didn't say gold watch at all.

Q. Well, watch?
A. He simply wished me a merry Christmas, that is all.
Q. Is it a gold watch or a silver watch?
A. I have got it here.
Q. Let us look at it?
A. Certainly.
Q. You needn't take it off. Said no more than that—wished you a merry Christmas?
A. That is all.
Q. Where were you when he gave you that?
A. 82nd Street and Fifth Avenue—1009 Fifth Avenue.
Q. Are you in the employ of Mr. Duke there?
A. Yes, sir.
Q. Oh, you still—keeping house for him?
A. I am not keeping house for him; I am waitress there.
Q. Waitress where?
A. Up in 82nd Street—1009 Fifth Avenue.

Q. Does Mr. Duke live there?

A. I am not employed by Mr. Duke; I am employed by his brother, Mr. B. N. Duke.

Q. His brother lives there?

A. Yes, sir.

Q. How happened Mr. Duke to give you this watch?

A. Oh, I don't know.

Q. Didn't he talk to you about this case?

A. Which case?

Q. About his divorce suit?

A. Yes, he did.

Q. At that time?

A. No, it was the first of September.

Q. First of September. Where did you see Mr. Duke on the 1st of September?

A. 1009 Fifth Avenue.

Q. That is the same place?

A. Yes, sir.

Q. When did you leave Mrs. Duke?

A. Second of September.

Q. Well, you left Mrs. Duke on the 2nd of September?

A. Yes, sir.

The Court: Five o'clock in the afternoon, she says.

Q. And you saw Mr. Duke on what time?

A. First of September I saw Mr. Duke.

Q. Where?

A. 1009 Fifth Avenue.

Q. How did you happen to go up there?

A. He sent for me; wanted to see me.

Q. Who came after you?

A. Nobody came after me. He sent word by Mrs. Andrews.

Q. Did you tell Mrs. Duke where you were going?

A. No, sir.

Q. And who did you see when you got to the house?

A. I saw Mr. J. B. Duke.

Q. And who else?

A. Mr. Parker; I don't remember the other gentleman's name.

Q. Mr. Junius Parker?

A. Yes, sir.

Q. And anybody else?

A. I think there was one or two gentlemen more; I can't recall their names.

Q. Was it in the evening?

A. Yes, sir.

Q. What room of the house was it?

A. It was on the third floor in the back, back room there.

Q. Was there a desk there?

A. No, sir.

Q. Writing material there?

A. No, sir.

Q. Was there anybody there with you?

The Court: Any lady, any female?

A. No, sir.

Q. You were there alone?

A. Yes, sir.

Q. They put questions to you?

A. Yes, sir.

Q. Who began to question you?

A. Mr. Duke.

Q. Anybody else?

A. Yes, sir.

Q. Who else?

A. Mr. Parker.

Q. Anybody else?

A. Well, there was two gentlemen more, but I can't recall their names.

Q. Don't know who they were?

A. No.

Q. Were they said to be officers of the law?

A. I think, I don't know.

Q. Did you believe them to be? Were they persons who took down what you said in shorthand?

A. Nothing was taken down.

Q. Did you see any writing going on?

A. No, sir.

Q. No notes being taken?

A. No, sir.

Q. How long did you remain in that room with these men?

A. Maybe an hour.

Q. And they all questioned you?

A. No. Mr. Duke questioned me and Mr. Parker, I think that is all.

Q. And when you went away what arrangement, if any, did you make with Mr. Duke?

A. Well, I was going to leave Mrs. Duke the next day.

Q. Well, what had you said, what had Mr. Duke said to you about leaving Mrs. Duke?

A. He asked me what I was going to do; I said I was going to leave; he said his brother was going to open that house and would be very glad to have us, and I was very glad to get that.

Q. So you went right away in his brother's employ?

A. Yes, sir.

Q. Did you agree on wages?

A. The same wages I had before.

Q. And the very next day you left Mrs. Duke and went to Mr. Duke?

A. Yes, sir.

Q. I forget whether she said she was a waitress up there.

Mr. Parker: Parlor maid.

The Court: Waitress the last position she had.

Q. At this place?

A. Waitress.

Q. You are waitress there?

A. Yes, sir.

Q. Now, after you had been at this place, at Mr. Duke's house, did you ever have a talk with Mr. Parker again, Mr. Junius Parker, about the case?

A. I think I did, sir.

Q. Did he then have a typewritten statement?

A. Yes, sir.

The Court: If he didn't he is a bigger fool than I take him to be.

Mr. Kalisch: She said before what she said wasn't taken down.

The Court: I want to say once for all, the universal practice in England has been for hundreds of years to take down in writing the statement of every witness, what they will swear to, carefully, by the solicitor. That is handed to the counsel who examines the witness and that is called a brief, and that is the real brief, a statement of what every witness will swear to, and the counsel stands up there with it in his hand when he is examining, with a pencil and as the witness answers the question he runs the pencil through it; he has got through with that part of his work. And I don't think any solicitor or counsel does his duty to his client who does not preliminarily examine the witness and take a memorandum of what they will state.

Mr. Kalisch: I suppose my question is proper?

The Court: Perfectly proper, but you might as well have it understood what is in the Court's mind about it.

Q. You said that when you first went to Mr. Duke's house that what you stated was not taken down by anybody, didn't you?

A. Yes, sir, I said that.

Q. And now I ask you when you saw Mr. Parker, Mr. Junius Parker, whether he had a typewritten statement upon which he questioned you?

A. No, he questioned me, then I suppose they wrote that down afterwards, I mean the second time I saw Mr. Parker.

Q. Didn't he show you a typewritten statement and say to you—

The Court: When?

A. No, sir.

Q. At the time, the next time after you had this interview?

A. No, sir.

Q. At the Duke house? You haven't heard what I am going to ask you. Maybe you will agree. Didn't Mr. Parker show you a typewritten statement of what you had said or he claimed you had said when you were first examined at the Duke house?

A. No, sir, he did not.

Q. Did he have a typewritten statement of what you knew about the case?

A. Not the second time I saw him, no, sir.

Q. Well, when was that?

The Court: When was what?

Q. When was it that he had the typewritten statement?

Mr. Lindabury: She hasn't said he had at any time.

Mr. Kalisch: Yes, she said, I understand her so.

Q. Did he have a typewritten statement or not, at any time?

A. No, sir.

Q. At no time?

A. No, sir.

Q. Did Mr. Parker ever read to you from a typewritten statement at any time?

A. Mr. Parker didn't, but somebody else did later, but I don't know who.

Q. Who did?

A. I can't recall the name.

Q. Some lawyer?

A. I guess so, I don't know.

Q. Where?

A. In Mr. Duke's house.

Q. It wasn't Mr. Fuller?

A. No, sir.

Q. Well, how many times did you see Mr. Parker about the case?

A. Well, I can't exactly recall how many times, three or four times perhaps.

Q. And where did you always see him when you talked with him about the case?

A. Up at Mr. Duke's house.

Q. And who were present at the time you had the conversation with Mr. Parker about the case?

Mr. Lindabury: Which time?

Q. At any of the times?

Mr. Lindabury: I object.

Q. Well, at the first time?

The Court: She has already answered that question fully; she says one other gentleman.

Mr. Kalisch: Two.

The Court: Mr. Duke and Mr. Junius Parker and two or three other men she didn't know. Now take up the next.

Q. Second time then?

A. Mr. Duke was there and I can't recall the other gentleman's name.

Q. How many were there?

A. Maybe two or three, I can't exactly remember.

Q. Was Mr. Duke there every time you were examined and questioned about the case?

A. Yes, sir.

Q. Was Mr. Parker always there?

A. Yes, sir.

Q. Were there any other persons at each of the times that you were being asked?

A. Yes, sir.

Q. You don't remember who those persons were?

A. No, sir, I do not.

Q. Did they take anything down in your presence?

The Court: Did you see a stenographer there at work?

A. Yes, sir, somebody was writing down, yes.

Q. (By the Court.) One of these interviews?

A. Yes, sir.

Q. When was that, when was that done first?

Mr. Lindabury: Which one, first, second or third?

Q. I am asking her the first time, second time, third time or fourth time?

A. I think it was the second time, if I don't make a mistake.

Q. Didn't Mr. Duke tell you after you had come to the house on September first that he would take care of you?

A. Well, he didn't say that exactly. I am not employed by Mr. J. B.; I am employed by Mr. B. N. Duke.

Q. (By the Court.) He asked you the question whether Mr. James B. Duke, this gentleman sitting here, told you on that evening that you come there on the first of September, say anything to you like this, he would take care of you, be your friend, look after you hereafter?

A. Yes, sir, I think he did say that.

Q. He did say that?

A. Yes, sir.

Q. Didn't he use the term he would be a father to you?

A. I don't recall if he did; I am not positive if he did.

Q. You are not positive. Do you mean to say you don't remember whether he said that or not?

A. I don't remember, no, sir.

Q. Didn't promise you a trip to Europe?

A. He didn't promise that to me; he promised it to my sister; that was when I was in 68th Street.

Q. When was that?

A. When I was in 68th Street, some time during the summer; I don't exactly know when it was.

Q. Can't you remember what month it was?

The Court: It was her sister, she said.

Q. Were you present?

A. No, sir.

Mr. Lindabury: I would rather she be allowed to give the dates.

The Court: Before he went to Europe, I understand?

A. Yes, sir.

Q. It was some time in July, was it, or in June?

A. I think it must have been in June.

Q. You think it was in June?

A. Yes, sir.

Q. (By the Court.) Your sister older or younger than you?

A. Younger than me.

Q. Your sister employed in the same house?

A. Yes, sir.

Q. What was she?

A. She was chambermaid.

Q. And is she employed now at the Duke house up in—

A. Yes, sir.

Q. (By Mr. Strong.) That is, employed in the same house you are now?

A. Yes, sir.

Q. Mrs. Andrews, she is in the same place too?

A. Yes, sir.

Q. Didn't you say you slept with somebody else in the house there?

The Court: Her sister.

Q. Her sister, yes.

The Court: Didn't say she slept with her, slept in the same room with her.

Q. Slept in the same bed?

A. Yes, sir.

Q. (By the Court.) Have you any relatives or friends in this country?

A. Yes, sir.

Q. (By the Court.) Sisters, uncles, aunts, or who?

A. Uncles and aunts and brother here and my father is here.

Q. (By the Court.) Father and mother is here?

A. Not my mother; my father.

Q. Let me ask you, the arrangement for your leaving Mrs. Duke was that made by Tillie Andrews?

A. Yes, sir.

Q. She was the one that came after you?

A. Yes, sir.

Q. And made the arrangement?

A. Yes, sir.

Q. Did you have any conversation with Tillie Andrews before the first of September?

A. Yes, sir, the 31st of August.

Q. Did you know then that Mr. Duke had arrived home?

A. Yes, sir.

Q. Did you know that Mr. Duke had arrived home when Mrs. Duke had went down to the steamer to meet him?

A. Yes, sir.

Q. Did you tell Mrs. Duke that he was home?

A. No, sir.

Q. You knew that Mrs. Duke was going down to the steamer to meet Mr. Duke, didn't you?

A. I understood so.

Q. And you kept quiet about that?

A. Yes, sir.

The Court: Attended to her own business.

Mr. Kalisch: That may be.

Q. Were you told not to say anything to Mrs. Duke?

A. About Mr. Duke's being in the city?

A. Yes, sir.

Q. And who told you that?

A. Mr. Duke and Mr. Parker.

Q. You had seen Mr. Duke?

A. Yes, sir.

Q. And he told you not to say anything about it?

A. Yes, sir.

Q. (By the Court.) Had not seen Mr. Duke before the first of September, had you?

A. I saw him the first of September.

Q. Hadn't seen him before that?

A. Not before, no sir.

Cross-examination—By Mr. Strong:

Q. When did you first learn that Mr. Duke had returned from Europe?

A. I learned that on the 31st of August.

Q. And from whom?

A. Mrs. Andrews.

Q. And she told you then that you were not to tell Mrs. Duke of that?

A. Yes, sir.

Q. What date was it that Mrs. Duke went down to the steamer expecting to meet him?

A. It was the first of September.

Q. First day of September?

A. Yes, sir.

Q. And that was the very day you saw Mr. Duke was it?

A. No, sir. I saw Mr. Duke—I saw Mr. Duke the first of September, in the evening. No, I saw Mr. Duke the 31st of August, in the evening.

Q. Saw him the 31st of August?

A. Yes, sir.

Q. Did you see him before you had seen Mrs. Andrews or afterwards?

A. Afterwards.

Q. But on the same days?

A. Yes, sir.

Q. And what time in the day did you see Mrs. Andrews?

A. In the afternoon.

Q. Did Mrs. Andrews give you any message from Mr. Duke?

A. Yes, sir.

Q. State what it was?

A. She just said he wanted to see me, that is all.

Q. Wanted to see you when?

A. That same evening.

Q. That same evening?

A. Yes, sir.

Q. And that same evening you did see him?

A. Yes, sir.

Q. Where did you see him?

A. 1009 Fifth Avenue.

Q. 1009 Fifth Avenue?

A. Yes, sir.

Q. That is where you are at present employed?

A. Yes, sir.

Q. And when was it arranged that you were to meet Mr. Duke?

A. That same evening.

Q. At that time?

A. Yes, sir.

Q. Who suggested that you should leave Mrs. Duke?

A. Nobody suggested it. Mr. Duke asked me what I was going to do, if I was going to stay with Mrs. Duke, and I told him I couldn't stay with her.

Q. You said you couldn't?

The Court: Couldn't what?

A. I couldn't stay with Mrs. Duke.

Q. Had you before that determined that you were not going to stay with Mrs. Duke?

A. Yes, sir.

Q. When did you make up your mind to that?

A. I expected to leave Mrs. Duke in the fall, about October 1st, I thought.

Q. About October 1st?
A. Yes, sir.
Q. Had you told her so?
A. No, sir; never told her so.
Q. Never told her so?
A. No, sir.
Q. Were you employed there by the month?
A. Yes, sir.
Q. At what time did your month expire?
A. First.
Q. First of each month?
A. Yes, sir.
Q. So that you had given her no notice of your intention to leave?
A. No, sir.
Q. And in fact you were not intending to leave until the first of October, were you?
A. No, sir.
Q. What?
A. No, sir, I was not, not before, but after I heard about Mr. Duke coming back and about all this trouble I did not wish to stay there any longer.
Q. From whom did you hear what you say determined you to leave—from whom did you hear?
A. Well, Mrs. Duke's conduct was such that I—
Q. Wait; I didn't ask—

Mr. Strong: I move to strike that out.

The Court: No, you asked the witness her reason.

Mr. Strong: No, I have not; I asked her from whom she heard a certain thing, and that is all I asked her.

The Court: I won't strike anything out. I deny the motion.

Q. Was it in consequence of what you were told on August 31 that you made up your mind to leave Mrs. Duke?

A. Yes, sir.

Q. And in consequence of what you were told on that day by Mrs. Andrews?

A. Yes, sir.

Q. And what you were told on that date by Mr. Duke?

A. Yes, sir.

Q. Before you saw Mr. Duke that evening had you made up your mind already that you were going to leave?

A. I made up my mind I was going to leave around the first of October.

Q. You had made up your mind when you went to Mr. Duke's house—Mr. Benjamin Duke's house?

A. Yes, sir.

Q. The evening of August 31?

A. Yes, sir.

Q. Your intention then was to leave on the first of October, is that right?

A. Yes, sir.

Q. That is right is it?

A. Yes, sir.

Q. Then when Mr. Duke asked you what you were going to do, did you tell him that you were going to leave on the first of October?

A. Yes, sir, I told him I was going to leave as soon as possible.

Q. That you thought you were going to leave as soon as possible?

A. Yes, sir.

Q. And did you consider it necessary that Mrs. Duke should have notice of your intention?

A. No, I did not.

Q. Well, your month would expire on the following day, the first of September?

A. Yes, sir.

Q. And did you feel at liberty to leave your service on that day without previous notice to her?

A. Yes, I did.

Q. But nevertheless you had not determined to leave until the first of October?

The Court: She says so.

Q. First of October, that is right, isn't it?

A. Yes, sir.

Q. Now what was it that Mr. Duke said to you that induced you to leave in fact as you did leave on the first or second of September?

A. He told me that Mr. B. N. Duke was going to open his house on Fifth Avenue and he said he would be very glad to have us if we wanted to come up there?

Q. Have what?

A. Have my sister and I, if we wanted to come up there.

Q. And he made a bargain with you then and there did he?

A. Yes, sir.

Q. That you should go in the employment of his brother?

A. Yes, sir.

Q. You and your sister?

A. Yes, sir.

Q. To receive the same wages that you had previously received?

A. Yes, sir.

Q. And that that arrangement should take effect at once?

A. Yes, sir.

Q. Now, when did you say that you did in fact go there?

A. Beg pardon?

Q. When was it that you in fact went to Mr. Benjamin Duke's house?

A. To work there?

Q. Yes.

A. The 2d of September.

Q. And when was it you left Mrs. Duke's employ?

A. The same day, sir.

Q. The same day?

A. Yes, sir.

Q. Did you, previous to leaving Mrs. Duke on the second of September, give her any notice then that you were going?

A. No, sir.

The Court: She swore she did not; she swore already positively she did not.

Q. Then do I understand you that you simply walked out of Mrs. Duke's house on the second of September without her knowing that you were going?

A. Yes, sir.

Q. This house that you went to, was that occupied by the family of Mr. Benjamin Duke at that time?

A. No, sir.

Q. Who occupied it then?

A. There was a young man there by the name of Mr. Davis, he was living there.

Q. A caretaker?

A. Well, I don't know exactly a caretaker, I guess so.

Q. And how long did Mr. Davis continue to live there?

A. He is there yet.

Q. He is there yet?

A. Yes, sir.

Q. Well, when was it that the family of Mr. Benjamin Duke occupied the house?

A. Mr. B. M. Duke was there at the time.

Q. What?

A. Mr. B. M. Duke was there at the time.
Q. He was there?
A. Yes, sir.
Q. At the time that you went there?
A. Yes, sir.
Q. Was his family there?
A. No, sir, not at that time.
Q. When did his family come there?
A. I think they came about, I can't exactly tell how long afterwards, about maybe a month or so.
Q. Maybe a month afterwards?
A. Maybe more, I don't exactly remember.
Q. About the first of October that would be?
A. Well, I can't exactly recall how long after they came.
Q. Well, then, during the month of September and until the family of Mr. Benjamin Duke arrived who were there in that house aside from the servants?
A. Miss Smith used to be there sometimes.
Q. Miss Smith, who is she?

The Court: Miss Smith from the Duke's farm?

A. Yes, sir; she is the housekeeper on the Duke's farm.
Q. She was in the employ of Mr. Duke at Somerville as you understood it?
A. Yes, sir.
Q. She was there sometimes?
A. Yes, sir.
Q. How much of the time?
A. Well, I can't exactly say how much of the time; she would be there perhaps a few days and then go back to the farm and stay there a few days and then come back again.
Q. Which Miss Smith was that?
A. Miss Mary Smith.

Q. Well, now who else besides Miss Mary Smith?

A. Some of Mr. Duke's relatives used to come there and stay there sometimes.

Q. How much of the time were they there?

A. They was there maybe two or three weeks.

Q. Who stayed there two or three weeks, mention the names?

Mr. Lindabury: I object. It seems to me this is not cross-examination, and it is pursuing this matter an uncalled for length of time.

Mr. Strong: I think it is proper.

Mr. Lindabury: I submit it is not cross-examination.

The Court: It is not cross-examination. They are making her their witness, that is all.

Mr. Lindabury: I object to it.

The Court: I don't know what issue; yes, there is a cross-bill. I don't want to mix the case. There is a cross-bill by Mrs. Duke against her husband charging him with adultery with some woman, Mary Smith.

Mr. Lindabury: Yes, sir.

Mr. Strong: I am not examining with that in mind.

The Court: I don't see what else, unless you want to show that this woman was kept there in idleness for months or so as a sort of compensation to her for the month she lost at Mrs. Duke's.

Mr. Strong: Well, perhaps not fully.

The Court: I don't think you can make that an excuse for proving anything like an intimacy or showing any intimacy between Mr. Duke and Miss Mary Smith.

Mr. Strong: I am not seeking that.

The Court: It is like Mr. Miller's love letter, it verges on the poetical.

Mr. Lindabury: Mr. Huntoon is not interested in that.

The Court: No, Huntoon is not interested in that?

Mr. Strong: I disclaim that intention. What I had in mind is what your Honor has suggested. I want to know what reasonable ground there was for sending this young lady up there in that vacant—

The Court: You can ask her what work she had to do there that month. That is perfectly proper. That was all pretty much threshed out before me in the former case. I don't know whether the evidence in that case is in this case.

Mr. Strong: That is not in this case.

The Court: It was brought out very fully by the counsel for the defendant in the former case, all that occurred there, Miss Smith being there and all that sort of thing, but I don't know as the evidence was ever written up in that case.

Mr. Lindabury: I don't object to any inquiry to what this witness did during that month there, but what relatives were there, how long they stayed, what their names were, where they came from and all that sort of thing.

The Court: Yes, I think you had better confine your examination.

Q. What position did you say you took at that house?

A. Waitress.

Q. (By the Court.) Did you have work to do, table set morning, noon and night for somebody?

A. No, sir; I done the cleaning besides.

Q. (By the Court.) You did preliminary cleaning?

A. Yes, sir.

Q. (By the Court.) The house was not fit to live in?

A. No, sir.

Q. (By the Court.) You had beds there to sleep in, you and your sister?

A. Yes, sir.

Q. (By the Court.) But the work for the first month was in putting the house in order, getting in furniture?

A. Yes, sir.

Q. (By the Court.) And that was superintended by Miss Mary Smith?

A. Yes, sir.

Q. (By the Court.) And she came in from time to time and stayed there for a night and directed you how to do it?

A. Yes, sir.

Q. (By the Court.) And you and your sister and Miss Sands were at work with the men, I suppose the furniture men, getting things ready?

A. Yes, sir.

Q. (By the Court.) That is what the truth was before according to my recollection. I got it in my head somehow.

Mr. Clark: You have got it right.

Mr. Lindabury: That is about what the evidence was before.

Mr. Strong: Your Honor will recall that I was not here on the former occasion.

The Court: No.

Q. Well, then you went there the first month, not to act as waitress but to act as cleaner, was that it?

A. No, sir.

Q. You were hired as waitress, weren't you?

A. Yes, sir.

Q. Were you told that you would be expected to do cleaning and not waiting, not work as waitress?

A. No; I done work of waitress but I cleaned the place out at the same time.

Q. What is it?

A. It was understood I was to be waitress, but of course I helped do everything; we got the house in order.

Q. You didn't have to do the work of waitress during that time, did you?

A. Yes, sir.

Q. Well, what work did you do as waitress?

A. Waited upon the table.

Q. Every day? Three meals a day?

A. Yes, sir.

Q. For whom?

A. Well, Mr. Duke would be there at night.

Q. Which Mr. Duke?

A. Mr. B. N. and Mr. J. B. both.

Q. Both there?

A. Yes, sir.

Q. Every night?

A. Yes, sir.

Q. And you waited upon them?

A. Yes, sir.

Q. What other waiting did you do except that?

A. Breakfast.

Q. Breakfast?

A. Yes, sir.

Q. You waited upon whom?

A. Mr. Duke and Mr. B. N., and sometime some other people.

Q. Now your sister was there with you?

A. Yes.

Q. In what position was she?

A. Parlor maid.

Q. And what were her duties as parlor maid during that first month?

A. Well, she done the same as I done, helped to put the house in order.

Q. Her duties as parlor maid were not the same as yours as waitress were they?

A. Well, she assisted me in everything.

Q. Who else was there besides you and your sister of the servants that had been with Mrs. Duke?

A. Nellie Sands and Mrs. Andrews.

Q. Nellie Sands and Mrs. Andrews?

A. Yes, sir.

Q. So that there were four out of the five servants of Mrs. Duke?

A. Yes, sir.

Q. Did you all four of you leave on the second of September?

A. No, sir.

Q. When did the others leave?

A. Nellie Sands left two days before me.

Q. Two days before you?

A. Yes, sir.

Q. Did you know that she was going to leave?

The Court: He asked if you knew she was going to leave when she did?

A. No, sir; I wasn't home when she left.

Q. (By the Court.) Wasn't in the house?

A. No, sir.

Q. When did Mrs. Andrews leave?

A. The same day as I left.

Q. And when did your sister leave?

A. The same day as I left.

Q. And you all three of you marched out without informing Mrs. Duke that you were going did you?

A. I know I didn't inform her; I don't know if anybody else did.

Q. And you were especially told you were not to give her any notice, weren't you?

A. Yes, sir.

The Court: She has already sworn to that.

Mr. Lindabury: It seems to me we have had that over half a dozen times. I don't think we ought to have this repetition. The time is limited.

The Court: No. Several of these questions were put directly and answered to Mr. Kalisch, Mr. Strong. You have forgotten. I hope you won't repeat. She was asked that question distinctly, the last question I am quite sure.

Mr. Strong: Possibly sure, but your Honor knows that that will occur sometimes, whenever there are two counsels examining.

Mr. Strong: As well as Mr. Kalisch both of them have asked that same question and had an answer.

Mr. Strong: Think not.

Q. Now in the house at 68th Street, you have spoken of Mrs. Duke's room and Mr. Duke's room?

A. Yes, sir.

Q. Mrs. Duke's room was in the front of the house?

A. Yes, sir.

Q. And did it occupy the entire front?

A. Yes, sir.

Q. And where was Mr. Duke's room?

A. Third floor rear.

Q. Third floor in the rear?

A. Yes, sir.

Q. Did that occupy the entire rear?

A. Yes, sir.

Q. And was there any room between Mr. Duke's room and Mrs. Duke's room or did they open into each other adjoining?

A. Adjoining each other.

Q. (By the Court.) Closets between?

A. No, it was some washstand between.

Q. (By the Court.) Communicating doors?

A. Folding doors between.

Q. Folding doors between?

A. Yes, sir.

Q. Then was there a little space occupied by washstands?

A. Yes, sir.

Q. So that there was a door leading from Mr. Duke's room to the washstand was there?

A. No; there was one washstand, one in Mr. Duke's room and one in Mrs. Duke's room.

Q. But there was no separate space between the rooms that was formed into another room?

A. Well, it was like a broad passage that is all.

Q. Like a broad passage?

A. Yes, sir.

Q. And in that passage was that where the washstands were?

A. Yes, sir.

Q. And was there a door from Mrs. Duke's room into the passage?

A. No. There was no door from Mrs. Duke's room into the passage?

Q. Where was the door then?

A. It was between Mr. Duke's room and Mrs. Duke's room.

Q. I am trying to understand what you mean about this passage.

The Court: Well, if you haven't you won't, Mr. Strong, and I think you are wasting time, I really do. There is nothing in the case that indicates any importance whatever except the fact that the rooms were communicating with each other.

Mr. Strong: Very well, sir.

Q. And when Mr. Duke was at home did he sleep in the back room?

A. I don't know, sir; I had nothing to do with those rooms.

Q. You had nothing to do with the care of the rooms?

A. No, sir.

Q. Who had the care of the rooms?

A. Nellie Sands.

Q. When did you learn that Mr. Duke—when did you first learn that Mr. Duke had gone to Europe, in July, I mean?

A. I think it was the day before he sailed.

Q. The day before he sailed?

A. Yes, sir.

Q. You learned then that he was going?

A. Yes, sir.

Q. And from whom did you learn that?

A. Mrs. Andrews told me.

Q. Is that the only way you got your information?

A. Yes, sir.

Q. And when was the last time you saw Mr. Duke before he went to Europe?

A. Saw him on the same day he sailed.

Q. That is the 15th?

A. Yes, sir.

Q. Where was he then?

A. He was home.

Q. At 68th Street?

A. Yes, sir.

Q. And where did you see him?

A. I saw him in the dining room.

Q. Breakfasting?

A. Yes, sir.

Q. And had he been living there up to that time?

A. Yes, sir.

Q. Continuously?

A. Yes, sir.

Q. When was he absent from home last before the day be sailed for Europe?

A. He was at the farm, I believe, the night before he sailed for Europe, or two days before; I can't exactly recall.

Q. And how long was he at the farm?

A. Over night, I believe.

Q. And then was Mrs. Duke at the farm with him?

A. Yes, sir.

Q. She went out to the farm with him?

A. Yes, sir.

Q. The night before he sailed?

A. I can't recall whether it was the night before he sailed or two nights before he sailed; that is what I can't recall.

Q. But except for their going to the farm over night Mr. Duke had been there at home in 68th Street for some weeks, had he?

A. No; he had been to the farm some times to spend Sunday, Saturday and Sundays.

Q. And did Mrs. Duke go with him?

A. Sometimes she did.

Q. This time when you saw Mr. Huntoon and Mrs. Duke coming upstairs at midnight, did you fix that time, I am not sure?

A. Yes, sir; I looked at the clock when I come into my room because I wanted to know what time it was.

Q. You fixed the hour?

A. Yes, sir.

Q. And was it just at midnight?

A. Just about twelve or perhaps a little after.

Q. But what I meant to ask you was whether you were able to tell us the date?

A. No, sir, I can't tell you the date.

Q. And how near can you fix it?

A. Well, it may be the latter part of May or first part of June; I can't exactly recall that.

Q. Where was Mr. Duke at that time, do you know?

A. I believe he was at the farm.

Q. What makes you think he was at the farm?

A. Well, he used to go there and spend some parts of the week there sometimes.

Q. What day in the week was it that you saw this?

A. I can't exactly tell what day it was.

Q. You have no recollection of the day of the week?

A. I believe it was on Thursday; I am not positive.

Q. And do you know how long Mr. Duke had been away at that time?

A. No, sir; I don't remember that.

Q. Was he only away just for that one night, do you mean? Or had he been away some weeks or more or some time?

A. No, I don't think so; I can't exactly say how long he had been away.

Q. And what leads you to think that he was at the farm at that time? Why is that fixed in your mind?

A. I believe he was at the farm because he was not at the house.

Q. That is the only reason, simply because he was not at the house?

A. Yes, sir.

Q. (By the Court.) He was not home?

A. No, sir.

Q. Well, how do you know he was not home that night?

A. I know he didn't dine there that evening.

Q. That he didn't dine there?

A. No, sir.

Q. And that is the only reason? The only way you know he wasn't home?

A. I never saw Mr. Duke around all evening.

Q. You didn't see him that evening?

A. No, sir.

Q. (By the Court.) Or the next morning?

A. No, sir.

Q. You didn't see him at breakfast the next morning?

A. No, sir.

Q. From where you stood on the fifth floor do I understand you that you saw the door of Mr. Duke's room?

A. Yes, sir.

Q. You could see the door from that position?

A. Yes, sir, top of the door.

Q. And you saw these two persons enter that room?

A. Yes, sir.

Q. Was there any light in that room when they entered?

A. I don't think so, sir.

Q. There was a light in the hall, in that hall—that is the third floor?

A. Yes, sir.

Q. How near to the door of the room that you saw them enter was this light on the third floor?

A. Well, the door was right ahead of the stairs and the light was in the middle of the hall.

Q. Well, that would be a distance of about how far from the door of the room.

The Court: We can all guess; a few feet from what she told.

Mr. Strong: She can specify about the distance in this room. It is not uncommon for witnesses to do that.

The Court: I think it is a waste, that is all. If there is any question about that, and you gentlemen will pick out some respectable architect here I will send him down and let him examine; let him experiment whether he can see the door, just where the lights are, and all that; but a woman can't carry in her mind naturally a distance of that kind.

Mr. Strong: Does your Honor hold she may not estimate the distance?

The Court: She may estimate it, but it is of no value. That is the trouble; if you should contradict her it wouldn't amount to anything.

Mr. Strong: I may not want to contradict her. I am seeking information, your Honor.

The Court: The question is how far, whether she could stand there anywheres on those stairs and see persons enter that door; that is the question in the case. I confess that is a question that is open to question decidedly.

Mr. Strong: For that reason I thought it well to cross-examine on it.

The Court: She said she saw part of the door. I suppose she meant the lower part of the door.

Q. Whereabouts was the bathroom on the fifth floor?

A. Right in the middle of the hall.

Q. In the middle?

A. Yes, sir.

Q. And what part of the fifth floor was your room?

A. In the back.

Q. In the back?

A. Yes, sir.

Q. You had been from your room to the bathroom, and were returning from the bathroom to your room when your attention was directed—

A. I saw the light when I went into the bathroom.

Q. You saw the light when you went into the bathroom?

A. Yes, sir.

Q. But you didn't see any persons when you went in?

A. No, sir.

Q. And you went in the bathroom and performed your errand there; then you were going back to your own room?

A. Yes, sir.

Q. So you were between the bathroom door and the door of your own room, were you?

A. Yes, sir.

Q. Were you nearer to the bathroom door than you were to the door of your own room?

A. Yes, sir.

Q. Give us an idea as well as you can of the position that you occupied when you saw these persons coming upstairs?

A. Why, I stood right in front of the bathroom door and looked over the banister.

Q. Directly opposite the bathroom door?

A. Yes, sir.

Q. And against the banisters were you?

A. Yes, sir.

Q. And looked over?

A. Yes, sir.

Q. And down?

A. Yes, sir.

Q. Did you remain in that same position until the two persons had come upstairs and entered the room and closed the door?

A. Yes, sir.

Q. You didn't move from there?

A. No, sir.

Q. Until after the door had been closed?

A. No, sir.

Q. And, as you say, you heard the sound of the key, did you?

A. Yes, sir.

Q. Turning in the lock?

A. Yes, sir.

Q. Then you went at once to your own room?

A. Yes, sir.

Q. I suppose in the talk you had with Mr. Duke you told him all about that, did you?

A. Yes, sir.

Q. That is on the 31st of August?

A. Yes, sir.

Q. Had you mentioned it before that to anyone?

A. Yes, sir.

Q. You told it to Mrs. Andrews?

A. Yes, sir.

Q. On the 31st of August?

A. Yes, sir.

Q. (By the Court.) When did you mention it to Mrs. Andrews?

A. The 31st of August.

Q. (By the Court.) Before that?

A. No, sir, not before that.

Q. (By the Court.) Who was the first one you ever mentioned it to?

A. Mrs. Andrews and my sister, both.

Q. (By the Court.) And that was before you saw Mr. Duke?

A. Yes, sir.

Q. The interview that you had with Mrs. Andrews on the 31st of August, in that interview did she ask you what you had seen, whether you had seen anything between Mrs. Duke and Mr. Huntoon?

A. No, sir.

Q. How did you come to tell her that?

A. She told me that she had been to see Mr. Duke and that Mr. Duke wanted to see me, and, of course, I told her that I didn't wish to stay with Mrs. Duke then after that.

Q. After what?

A. After Mr. Duke wasn't coming back to the house, then I knew that that time.

Q. Who told you that?

A. Mrs. Andrews told me that.

Q. She told you that same time that Mr. Duke was not coming back any more?

A. Yes, sir.

Q. Did she tell you that Mr. Duke was going to try and get a divorce?

A. I think she did, sir.

Q. And did she ask you whether you could give any testimony in such a suit?

A. I don't think she did; I don't remember.

Q. How did you come to tell Mrs. Andrews about what you have been testifying here?

A. Yes, I told her about it.

Q. I say what was it that led you to do it?

A. Well, she asked me, of course, about Mrs. Duke and Mr. Huntoon and we talked it over.

Q. She did ask you that?

A. Yes, sir, and I told her.

Q. (By the Court.) She asked you whether you had seen anything occur between Mr. Huntoon and Mrs. Duke?

A. No, she didn't ask me if I had seen anything between them; she asked me about when I wait on the table, if I ever heard anything and so on, and I explained to her how it was.

Q. Then you told her what you had seen that midnight?

A. Yes, sir.

Q. (By the Court.) Did you hear at any time that the house was watched, Number 11 West 68th Street?

A. Yes, sir.

Q. (By the Court.) When did you hear that?

A. I heard that latter part of August, I guess.

Q. From whom did you hear that?

A. I heard it from the watchman.

Q. (By the Court.) Private watchman?

A. Yes, sir.

Q. And who is the watchman?

A. I don't know his name; he only spoke to us one evening.

Q. What?

A. I don't know his name.

Q. And was that you say the latter part of August?

A. Yes, sir.

Q. How do you fix the time when you heard it?

A. Well, I know it was shortly before Mr. Duke came back.

Q. Shortly before he came back?

A. Yes, sir.

Q. Well, just what did you hear, what information have you about the house being watched?

A. Well, he told me, he didn't tell me, but he told us all.

Q. Told what?

A. He told us all there was some men watching the house, he believed watching Mrs. Duke's house.

Q. He told all the servants?

A. Yes, sir.

Q. You mean you were all present and heard it at the same time?

A. I don't remember if we were all present, but I know I wasn't alone.

Q. Who were with you when he told you?

A. I believe Mrs. Andrews and my sister was there.

Q. (By the Court.) The servants all learned it?

A. Yes, sir.

Q. And what he said was that there were some men watching the house?

A. Yes, sir.

Q. Did he say whether they were watching it at night or in the daytime or what?

A. He said he saw men there all the time.

Q. All the time?

A. Yes, sir.

Q. Was that all that he said?

A. Yes, sir.

Q. Did he say how many men?

A. No, sir.

Q. Did he say where they were accustomed to be, in order to watch the house?

A. Yes, sir.

Q. Where?

A. On 68th Street, on the west side of the park.

Q. Did he say why they were watching the house?

A. No, sir.

Q. Now didn't you hear this from young Reuther whatever his name was, the bellboy, next door?

A. He spoke about it, too.

Q. He spoke about it, about the same time was it, or before or after?

A. I think it was just about the same time.

Q. You knew young Reuther, did you?

A. Yes, sir.

Q. Knew him well?

A. Well, I know him; he lived right next door to us.

Q. Was he paying attention to you?

A. No, sir.

Redirect-examination—By Mr. Clark:

Q. You said that you had intended to leave in October?

A. Yes, sir.

Q. When did you make up your mind to leave in October?

A. Well, I done that during the summer when I was—I could not stay on account of Mrs. Duke's conduct; I know I could never get any recommendation from her so I didn't want to lose my time there.

Q. Now what time was this in the summer that you speak of, when with reference to Mr. Duke's return?

Mr. Strong: What is the question?

Q. What time during the summer was it that you made up your mind you would not be able to get a recommendation on account of Mrs. Duke's conduct?

A. Well, it was after Mr. Duke went to Europe.

Q. And before he returned?

A. Yes, sir.

Recross-examination—By Mr. Strong:

Q. Didn't you say when I was examining you before that you made up your mind to leave on the first of October or the 31st of August, wasn't that what you told me before?

A. No, sir, I did not.

Q. Didn't you tell me that you had made up your mind in consequence of what Mrs. Andrews told you on the 31st of August?

The Court: No. You stopped her; she was going on to tell the reason why she was going, and you cut her right in two in the middle of the sentence. You can go back. It will take some time.

Mr. Clark: You misled her in reference to the conversation with Mr. Duke. That is the reason I asked this question.

Mr. Strong: Let us see about that.

Mr. Clark: Go on and answer the question. She is a competent witness, and intelligent. I am willing she shall answer the question again.

The Court: He is asking her if she did not say so and so.

Mr. Strong: I want to refer to what she did say.

Recess.

NELLIE SANDS recalled:

Direct-examination—By Mr. Lindabury:

Q. Nellie, I show you another letter dated September 2, 1905, addressed "Dear Aunt Em." Look at that and tell me, if you can, in whose handwriting it is?

A. Mrs. Duke's.

Mr. Lindabury: I offer this letter in evidence.

The Court: Any objections to it, let them see it on the other side.

Q. Do you know whether Mrs. Duke had an aunt that she called Em?
A. Yes, sir, Aunt Em; yes, Aunt Emma.
Q. Where did she live?
A. In Brooklyn.
Q. Had you ever been at her house?
A. No, never.
Q. How do you know she called her Aunt Em?
A. Because she used to call at Mrs. Duke's house.
Q. Oh, the aunt called at Mrs. Duke's house?
A. Yes, sir.

The Court: Do you want to cross-examine on it?

Mr. Kalisch: No, sir.

"11 West 68th Street, September 2, 1905.

Dear Aunt Em:

I received your letter, and had to laugh over the last part of it. I hardly think that will happen. I do hope you will find a nice place soon. I am sure you will, but of course it takes a little time. I shall be glad to see you settled. The 'Grand Duke' has not arrived yet; he may get in this evening. Now I want you to do me a favor. I was visiting Thursday down on Long Island. I did want to see you before I went but could not make the train; so you write me a letter to-morrow that I will receive Monday morning telling me how you enjoyed my visit Thursday and how much you missed me when I left Friday morning. A letter that I can SHOW. Now don't FORGET IT. I forgot to tell you about the

expressage on the hair was paid for. I wouldn't send you anything not paid. Will be over to see you next week. Be sure and send the letter. With much love.

Affectionately,

Lillie"

The Court: What is the date of it?

Mr. Lindabury: Written the second of September. The preceding Thursday is one of the times the detective followed her and Huntoon to Coney Island and lost them in the Park, and the last witness but this one says Mrs. Duke was away over night, reporting to her that she had been down to visit her aunt at Brooklyn. I am simply recalling to your Honor the testimony.

Letter marked Exhibit P-7, April 27.

Mr. Lindabury: I offer in evidence now a letter marked P-1, April 27, addressed "Dear Maggie" and identified by Nellie Sands as the handwriting of Mrs. Duke. It reads as follows:

"Dear Maggie:"

Mr. Strong: We have not had a chance to see them yet.

Mr. Lindabury: Do you want to see all these beforehand?

The Court: Yes, let them see them.

Mr. Lindabury: And also in the same connection the envelope marked P-3, being the one dated July 31.

The Court: Offered and received.

"Dear Maggie:

I shall be busy to-morrow getting ready to go away Wednesday. I shall not go to the farm. I wrote Mr. Duke that I was going to Saratoga with Mrs. Chapin, but not

before the end of the week. I want him to think we are going from Friday until Monday; so when you receive this please mail me a half dozen sheets of paper, Duke's farm on it, and envelope. Perhaps some of the Duke paper has come from Altman's. If so send the *thin* paper. I may send you a letter to post for me at Somerville, but you know there is not an earthly thing for me to do if I go to the farm, and it is so lonesome. If you mail the paper in the morning or early afternoon I will get it to-morrow night. I leave here at 9.45 Wednesday. Expect to return next Monday. Will write you from there, and if you want to write me send letter to Grand Union Hotel, Saratoga Springs, New York. Would love to hear from you anyway. Have been sick in bed for two days, *nature*; but I never had such a time; I think it must have been the long ride Friday; I got up last evening, and going out to dinner with the Hills to-night to Claremont and afterwards to a roof garden. Will tell you all about it when we meet. With love for you and Mary. Affectionately, L. N. Duke, July 31, 1905"

The Court: What is the endorsement on the envelope?

Mr. Lindabury: Somerville.

"P. S. The cable from J. B. was only to say that he had arrived. He had received my letters and was well. Not a word about coming home."

Mr. Lindabury: Now this is postmarked New York, July 31, but has no Somerville postmark; the top has been torn off.

We offer next a letter marked P-5, addressed "Dear Maggie" and not dated, and

the company envelope postmarked in New York, August, with the date of the month obscure, but on the back "Somerville, August 2nd, 6 L." This letter reads:

"Dear Maggie:

Please mail this to-morrow, Thursday, so it will go in Friday's steamer. Excuse haste.

L. N. D."

The envelope I read, being addressed to Miss Maggie Smith, care of Duke's farm, Somerville, N. J., postmarked August 2, New York, and again August 2, in Somerville.

Mr. Strong: What is the number of the envelope in the exhibit?

Mr. Lindabury: Accompanying that is a letter addressed "Mr. J. B. Duke, British American Tobacco Company, 86 Strand, London, England." Marked P-4. The envelope is marked P-4 and the letter is marked P-6.

It is the one beginning "My darling Husband," August 3. I won't stop to read it, because it is long; it tells him all about the farm, how things are prospering and growing.

The Court: They are all admitted.

GEORGE P. STACY, sworn on behalf of the petitioner:

Direct-examination—By Mr. Lindabury:

Mr. Parker: One moment, before this witness testifies. It appears that this letter which was last read marked P-6, envelope

P-4, was never mailed, no cancellation mark.

The Court: There is no cancellation on it, no. There is no proof offered about it at all except what the Court can see on its face.

Mr. Lindabury: The handwriting is proven.

The Court: And the handwriting. There is no proof about the other letter enclosed, how it came not to be mailed, or anything about it, no explanation.

Mr. Lindabury: It was sent in another envelope.

Q. You are a law clerk, I think, in the office of Mr. W. W. Fuller?

A. I am.

Q. Counsel for the American Tobacco Company?

A. Yes, sir.

Q. Have you made an examination of the New York Herald, Paris edition, in search for personals addressed to "John"?

A. I have.

Q. Between what dates?

The Court: Where did you get the papers?

A. I got the papers from Mr. Parker.

Q. Between what dates?

A. Between November 1st and February 28th inclusive.

Q. What years?

A. November 1st, 1904, to February 28, 1905.

Q. Have you the editions between those dates here?

A. I have, with the exception of those that have been offered in evidence.

Q. None have been offered in evidence?

A. Well, those there.

Q. You have with the exception of certain ones which are annexed to the Shea deposition?

A. I have.

Q. They are here now?

A. They are.

Q. When did you find the first personal? In what number did you find the first personal addressed to "John"?

A. An edition of December 8, 1904.

Q. What other personals addressed "John" did you find between the dates you mentioned?

A. Between the dates December 8, 1904, to and including January 29, 1905, on every Thursday and Sunday, with the exception of Thursday, December 15th, and Sunday, December 25.

Q. Were there any after the date you mentioned —January 29?

A. There were not. January 29 was the last one.

Q. They ended then?

A. Yes, sir.

Q. None prior to December 8th?

A. None prior to December 8th.

Cross-examination—By Mr. Strong:

Q. What were the dates you excepted? I didn't get them as you gave them.

A. From and including December 8th.

Q. I know, but there were two dates, you said there were none.

A. Thursday, December 15, and Sunday, December 25, 1904.

Q. Some files, you said. Where did you get the files, what file is it?

A. I searched the newspapers, and the newspapers were handed to me by Mr. Junius Parker.

Q. That is all you know about them.

A. That is all I know about them.

Q. (By Mr. Lindabury.) Those papers are here?
A. They are here.

Mr. Lindabury: And the other side may look at them if they choose.

JUNIUS PARKER, recalled:

Direct-examination—By Mr. Lindabury:

Q. Mr. Parker, what if any attempt, if any, have you made to procure the originals of the personals published in the New York Herald, Paris edition, between December 8th, 1904, and January 29th, 1905, on Thursdays and Sundays, and addressed to "John"?

A. When I first heard of the publication of these personals, which was from Nellie Sands in September, 1905, either soon thereafter or soon after the receipt of the papers themselves which was in December, 1905—

Q. (By the Court.) Where did you get the papers?

A. We got the papers by writing over to Paris for them. Soon after one or the other of those occasions I spoke to Mr. Ferns, who was at the head of the detective agency, and asked him if he could ascertain for me if the originals of those personals were in the office of the New York Herald. I did not, at that time, apply direct to the New York Herald, because I apprehended that if they ascertained that I desired the originals they would destroy them before any subpœna could be served.

Mr. Strong: I object to that.

The Court: He is asked what effort he made and he is commencing to tell the pre-

liminaries, how and why he did certain things. It is quite competent.

Mr. Strong: I submit that that is not within the question and it is not competent as to why he did or did not do certain things. What he did do may be competent. Why he did not do something else, I do not think is competent.

The Court: It is a mere matter of order of proof.

Mr. Strong: This undertaking to say that if the Herald knew?

The Court: He thought so. I think he was right in thinking so, because we all know that the moment you come to any telegrams or cablegrams that these newspaper people want to suppress them, don't want them to be got at.

Mr. Strong: It seems to me your Honor is carrying the idea of judicial notice much further—

The Court: I would have done it exactly myself that way when I was at the bar; that is all I have got to say, intuitively you may say.

Mr. Strong: I don't understand what it is your Honor had done.

The Court: I say I would have done it just as he did. I wouldn't have gone right in and said "Here, I want to see those personals;" that wouldn't have been the way to get them. He is telling how he went to work and he told the reason why, which was not necessary in my judgment.

Mr. Strong: That is why I thought and why I moved to strike it out.

The Court: Proceed with your evidence.

A. I was informed by the detective—

Mr. Strong: I object to that.

The Court: Objection overruled. Proceed.

A. I was informed by the detectives that there was no hope of getting the originals because there was an invariable rule in the office that originals of such personals were destroyed at the expiration of six months, and more than six months had expired. Yesterday afternoon I went to the Herald office and made inquiry at the advertising desk of the Herald for such originals. I was referred to a gentleman who told me when I gave him the date—

Mr. Strong: I object.

The Court: Objection overruled. Go on.

A. (Continuing)—of the personal that it was an invariable rule of the Herald office to destroy such at the expiration of six months and that they were not in existence.

Mr. Kalisch: That is hearsay.

Mr. Strong: It does not seem to be any part of this, competent evidence, and I decline to cross-examine.

The Court: The vice of the evidence is, if it is of any value at all, that that gentleman could be called as a witness.

Mr. Strong: I move to strike out that part of the testimony.

The Court: I will not strike it out. It accounts for the action of these gentlemen; they acted on information. The effect of it is another question entirely.

Q. (By the Court.) Did you make an attempt to get that gentleman to come over here and be sworn?

A. No, sir, I did not. I made an attempt to get the originals.

Q. (By the Court.) I know, but when you asked him yesterday, did you ask him if he would come over here and swear to that?

A. No, sir, I did not.

Mr. Lindabury: You did make an attempt to subpœna the man who was in charge of that particular office at the date when these telegrams, or personals, were filed?

The Court: What do you say, you did?

Mr. Lindabury: We did.

The Court: You can prove that.

Mr. Lindabury: Made attempt to subpœna him on two different occasions. He has not come. We finally left the subpœna last night with his son. He isn't here.

Mr. Strong: I suppose there should be proof of that.

The Court: No proof at all. It is merely explanatory. The course of business has not been proven of the present New York Herald, Paris edition, of the United States, that it goes through the Herald bureau; that has not been proven.

Mr. Lindabury: No, your Honor.

The Court: That is capable of proof, certainly is within your reach by issuing process in New York, get somebody to prove the course of business. And you can get somebody there by issuing sufficient subpœnas and lying around long enough to prove that these personals did go from New York, if they have got a record of it. Whether it is worth your while or not is another question.

Mr. Lindabury: We don't think it is, your Honor. We think these are competent

upon the present evidence and I propose to offer them.

The Court: That is another thing.

Mr. Lindabury: I offer in evidence the number of the New York Herald, Paris edition, of the dates December 8th, 11th, 18th, 22nd, 29th, 1904; January 1st, 5th, 8th, 12th, 15th, 19th, 22nd, 26th and 29th, 1905.

Mr. Strong: They are objected to as not sufficiently proved.

Mr. Kalisch: We make the same objection on behalf of Mrs. Duke, the defendant.

The Court: These papers were all shown to the witness, were they not? Were these papers all shown to Miss Sands?

Mr. Lindabury: Yes, sir.

The Court: I don't recollect how many of them were recognized by her as having been seen by her.

Mr. Lindabury: I think all of them.

Mr. Parker: That was not the testimony.

The Court: I think not. There were one or two not recognized by her.

Mr. Parker: I think the testimony was, as I recollect it, I may be mistaken, your Honor heard it; she said she saw none of the personals except one. She said she saw papers with personals cut out, I think that is the extent of her testimony.

The Court: She saw one or two.

Mr. Parker: On one occasion there were two papers left; one had the clipping and one did not; the one that didn't have the clipping was the one she read; that, I think, was the testimony.

The Court: Just open your theory on which the evidence is competent.

Mr. Lindabury: It appears by the testimony of Nellie that while they were on the boat approaching Liverpool Mrs. Duke told her that she expected Mr. Huntoon would communicate with her by personals to be published on Thursdays and Sundays.

The Court: I had forgotten that. Go on.

Mr. Lindabury: In the New York Herald, Paris edition; and she desired to have them procured for her. Nellie says that as soon as they arrived over there Mrs. Duke made some effort, I have forgotten what she says it was, to get and did succeed in getting the Paris edition of the New York Herald, and asked her to look for the personals in it, and that she did look, and saw nothing, but that Mrs. Duke told her a little while after that she had found in the paper the personal she was looking for and Nellie said she found that the paper they had had had a clipping cut out of it at the point where all of these personals are. They are all of them in one place in the lower corner; in each one of these editions they are all in that one place in all these numbers, and it was at that place where she said that there had been a clipping. Now it is true, as suggested to me, that when these are looked at there will not be found to be any other personal in any one of these papers.

The Court: Personal addressed to "John".

Mr. Lindabury: Personal addressed to "John" is the only personal in any one of these numbers. Now she says that in addition to that, wherever they went they got the Herald.

The Court: The evidence of the man servant that he was instructed to get it?

Mr. Lindabury: Yes; but Nellie also, I am speaking of her testimony; Nellie also says they did get them, that Mrs. Duke had them in her possession and that as she saw them there was this same clipping from every one of these. She says she looked over them, looked over them as they were bought there, and she identified all that were shown her, and my recollection was I showed all, if not I showed her substantially all of them, and she identified them from their reading matter which had not been clipped out of them, that is, identified them as copies of the edition that she saws in Mrs. Duke's possession. Further than that, she says that on one occasion in January by some means or other two copies of an edition had been procured, that there was only clipped from one of them the space where the personal appears to be, and that she read the personal in the other, and she identified it and it was read to the notes, as your Honor will remember. Now in addition to that is the testimony of the courier, that he was directed to procure them and he did always procure them, directed by Mrs. Duke to procure them, and he did always procure them wherever they went. Now in addition to that is the fact that these began to appear on the day of their arrival over there and ceased to appear just about the time, a day or two before the time, they sailed for home. Then these personals bear of course internal evidence of authenticity since they refer, almost every one of them, perhaps quite every one of them, to events in the lives of these two persons proven in evidence here by

which she certainly would recognize their authenticity.

The Court: Earmarks, you mean?

Mr. Lindabury: Earmarks. They show that, for instance assuming that they were intended for her, they show that the sender was acquainted with the itinerary, referring to their movements from place to place; the one sent the day they started on their automobile trip refers to the fact that they are going that way and deprecates and suggests that they come back by train. The one sent on the day, or the one published within a day or so after the opera, visit to the opera house in Paris, refers to that fact, that is, to their having been at the opera on Thursday, the only doubt being as to whether they were there on Thursday or Friday or got tickets on Thursday or Friday, which would be explained away by the fact that they first intended to go Thursday, if they did really go Friday; by not being able to get tickets had to take them for Friday. They acknowledge some of them cable and some of them letter communications; the last one, I think it is, refers to the fact that the sender had sent four letters to the hotel in London, and Nellie said she got four letters at that hotel for Mrs. Duke addressed to her when they arrived back there from Paris. Then there is a reference to Genoa. Then there is a statement in one of these that he proposes to meet her at Naples and Nellie says Mrs. Duke told her Mr. Huntoon was coming there on an excursion by the Deutschland or something or other that was running on excursions in the winter, as your Honor will recall the testi-

mony; and so all the way through. And there is a reference to the pets being well. And on the 29th of December the personal speaks of the horrible mistake made one month ago. It was a month before that Mr. and Mrs. Duke were married. And speaks of how they were treated, etc. And your Honor will recall probably—I have forgotten, they have not been read.

The Court: Some of them were read before me the other day. I have no recollection of them now.

Mr. Lindabury: Take the first one.

"Longing for cable announcing safe arrival." You see it shows that the person to whom the personal was addressed was on a journey and about to arrive. This was on the 8th.

Mr. Strong: A great many people are on a journey at that time of the year.

Mr. Lindabury: Maybe so. Probably all the circumstances wouldn't fit, however, any other one person. "Longing for cable announcing safe arrival; your prophecy too true, not only sorry, but absolutely broken-hearted; you little know how essential you are to my happiness, almost to my existence; how I crave another opportunity to be yours for life. Please grant it." That don't apply to everybody. He apparently had missed an opportunity to be hers for life.

Mr. Strong: Be whose for life—"John's" for life?

Mr. Lindabury: Now take the next one: "John—Cable relieved anxiety; do you recall Sunday breakfast and afternoon? They will surely come again to remain for life; don't

you think so? Probably sail January seventh; watch health; avoid stairs, wrote maid yesterday."

Nellie says he wrote her; she got letters and gave them to Mrs. Duke pursuant to Mrs. Duke's information. The next, December 18, "Cables and four letters received." Nellie says that four letters were mailed by her, written by Mrs. Duke on the steamer and mailed on the steamer.

"Sentiments made me much happier, or rather, less unhappy. Your illness alarms me. Please don't deceive me regarding your physical condition. If serious will go to you at once regardless of consequences. Can nurse you back to health. I know your doctors say don't exercise. Perhaps Thursday's opera, Paris, recalled me all promises kept."

Mr. Strong: They didn't go Thursday.

Mr. Lindabury: "All promises kept." How often that occurred in the Durham telegrams, the same expression, "All promises kept." I am wrong about that. She in the Durham telegrams told him to keep the promises.

"Not too late unless you are contented with present surroundings, and that's impossible, isn't it? Shall I go to you? Cable immediately; our full moon to-night." I don't know that that fits.

Mr. Kalisch: That will fit any romance.

Mr. Lindabury: Yes. Now next, December 22, "John—Christmas; passed your house; what memories recalled." I think we forgot to show he spent that Christmas at the house, if you don't admit that. Will you admit that, that he spent that Christmas at her house?

Mr. Parker: You have possession of all the information.

Mr. Lindabury: "Christmas; passed your house; what memories recalled; wish you there and thirsty; of all sad words it might have been; one year from yesterday should be our anniversary; only postponed, must occur soon."

Mr. Parker: What does that mean?

Mr. Lindabury: "Send long cable, my initials, your house, Christmas; London letter hugely enjoyed; mailed letter London 20th; think trap rather imprudent"; "trap," that probably means trip; "air good wind, possibly dangerous; hope carriage enclosed; cable, arrival, anxious."

The time they were starting on the automobile trip from Paris.

Next is December 29, "Happy New Year, sweetheart," is the name by which the maid says he called her.

Mr. Strong: Perfectly unique name; very unusual name in such cases.

Mr. Lindabury: But to be addressed by one man to another man's wife.

The Court: On the honeymoon trip.

Mr. Lindabury: When he is on the honeymoon trip. This "John" now.

Mr. Strong: Is "John" a woman or a man?

Mr. Lindabury: Man, I should think; it is a man's name. "May it restore you to health and contentment. May past years' pleasures increase unaccompanied by sorrow. May the painful shackles which bind you be speedily unfettered. May your appreciated affection never grow faint. May you

hereafter consider own happiness. May you never suffer as does your sweetheart. May we be speedily united forever. May God guide us rightly. Unfortunate error of month ago must be remedied at whatever humiliation. Cable received." This is the monthly anniversary. "Treatment selfish, heartless, brutal; assert yourself. Don't travel that way. Promise return by rail."

If your Honor remembers the affidavit she put in earlier in this case about being compelled against her will to travel brutally by automobile.

The Court: I don't remember about that at all.

Mr. Lindabury: "Acquire rest, health important; if needed, don't hesitate saying 'Come.' Will go immediately. Promises religiously kept. I long to see you. I adore you. Hope you enjoy cables."

Let us see the next one, January 1st. "John. At your home New Year's sad and lonely. Everything reminds me of the only absolutely happy days in my life. You were good to me. How I miss you. Vacant dining chair recalls past pleasures. House pets well, wonderful singer."

That is the canary. "Please send picture taken now. Our future happiness rests with you. May I hope? I dream you will be mine forever very soon; do you think so? Doctor says remain south until April; also don't wear low neck."

Mr. Lindabury: Oh, that is a man, that is "John."

"Also don't wear low neck; dangerous. If you remain, can sail seventh. Shall I

cable? Reply immediately. Do you ever write? Latest letter received dated 16th. May your every wish be gratified. Time increases my sorrow. Your home Christmas. Genoa cable received."

Got to Genoa on the 30th and this is January first.

The next is January 5. "John—God bless you for yes to all I asked. I am content. Our happiness speedily assured. Shorten trip, return quickly. Enjoyed five letters, two postals. Not sailing. You in London fifteenth before I could arrive. Cable says sail February first."

The day they did sail.

"You mean arrived, rail, automobile dangerous. Don't write long letters, too tiresome. Keeping all promises, sweetheart, cheer up. Health and happiness await you. Please send picture with my heart's love. Be prudent this awful weather."

January 8th, "John—Alps experience horrible."

Mr. Kalisch: We didn't hear anything about the Alps in the courier's book.

Mr. Lindabury: Yes, they crossed the Jura Alps. The man Henry said they stayed overnight at a place called St. Julien, in the Jura Alps, where they spent the night on the trip.

"Delighted heartless trip has terminated."

The Court: When did they end their trip?

Mr. Lindabury: Wednesday, January 4, they were in Venice. This is January 8th.

"You have my heart's sympathy; your partner my envy and hatred. Please come home alone at once. You are equal to it. You must begin to prepare mind for event by

saying you are not happy. Sorry it ever occurred. Don't falter. Dr. alarmed; says avoid exercise and excitement. Letters, postals, cables, received. Sweetheart, my thoughts and plans are all for you."

January 12. "John—Delighted by six letters, two postals yesterday. What an experience! Awfully sorry of illness. Be prudent, no happiness without health. Must not prolong trip. Please arrive before first. Cable immediately sailing date, also condition of health. Well, business splendid. With all my love."

Next is the 15th. "John—Cannot comprehend determination to destroy health in gratifying one who positively cares nothing for you. Cables alarming. Why won't you return by first steamer. Your friends want opportunity to restore your health. Do come. Called on family in country Thursday. Quite comfortable. Mailed four letters. Mailed former hotel London."

The suggestion is that that is an error.

"Cable when received. Heart's love."

She got the four letters.

January 19th, 1905. "Object to prolonging trip. Cable condition health every second day; anxious; mailed maid five letters former hotel, London. Would love to hear you say: 'It's daybreak.' Last letter received, written second. Why don't you come home? Promises kept; love."

January 22nd. "John—Our moon brought glorious news; started homeward. Brightest ray of happiness since departure. Mailed letter yesterday. Guard your health. All well home. Cable sailing date. Love."

This is the day after they started on the return trip home.

January 26th. "John—All communications received. Would not exchange glorious cheer-up cable for the world; expect it speedily confirmed. You ask will I? Yes, yes, yes, immediately, forever, with you delighted. Cough is better. Dine and sleep your home to-night. Oh! Memories that bless and burn. Oh, barren gain and bitter loss. Cruel prolonging trip. Have pity, this separation killing. Ever increasing love. Please don't wear low necks."

January 29th, this is the last.

"John—Shall enjoy your home to-day and every Sunday until octopus returns, when that pleasure even will be denied."

Mr. Strong: He hasn't shown us the relevancy of that.

Mr. Lindabury: Do you want me to prove who the octopus is?

Mr. Strong: We expect you to make that out.

Mr. Lindabury: "What memories of the blissful past. I fear the future offers nothing. All well. Do not allow entertainments to ruin health. My heart's affection."

I submit with the testimony of the maid as to what Mrs. Duke told her with regard to expecting personals in the Herald, testimony that no other personals were published in the Herald of any kind addressed to anybody during this period of their absence, so that unless these are the personals she referred to from Huntoon, she got none; the testimony that the papers were found, that she was told to hunt for one.

The Court I recollect all that.

Mr. Lindabury: I submit——

The Court: What have you got to say on the other side?

Mr. Kalisch: On behalf of the defendant, Mrs. Duke, I have got this to say, that this offer is premature. That the Court stated and so ordered that the counsel for the defendant should have the privilege of cross-examining Nellie Sands. This testimony in relation to these personals is a part of the testimony of Miss Nellie Sands, upon which she has not been cross-examined, and until she has been cross-examined it is not the proper time for counsel to offer these personals.

The Court: Suppose I disagree with you now, what else have you got to say?

Mr. Kalisch: Furthermore, the other objection is that the personals are immaterial and irrelevant; they cannot bind; there is no proof that they came from Mr. Huntoon.

Mr. Strong: In addition to those objections I make this objection further. With the exception of one of those personals, even Nellie Sands does not profess to have seen any of them. There is one I except because she said she did see one of them in the paper. All that she says about any of the rest of the personals or the papers is that she saw papers generally similar to these which had a clipping taken out of that portion of the paper. She never saw a single one of these personals. She does not identify any one of them as ever having come to the hand or knowledge of Mrs. Duke. Now, it is thought to show by introducing entire papers, papers

in which that clipping has been filled up, to show that those were the papers out of which the clipping had been removed before they were seen by Nellie Sands. I submit that that cannot be done. It is not an uncommon thing with papers of large circulation to issue more than one edition. I don't know how many editions of the Paris Herald there are issued. I know there are many editions of the New York papers, several of them every day, and those editions differ. There are some things in one edition which are not in another edition, and you cannot merely, because there was found to be a piece clipped out of a certain paper, you cannot supply that piece by introducing the entire paper where no one proves that personal. Now, it seems to me that that is a conclusive view against the admission of this testimony. Beyond that, though, there is no proof whatever of the publication of these papers. Surely that is to be obtained in some regular way. It is easy to prove the publication and issue of any of the great dailies of New York or of the Paris edition of the Herald. It is a simple thing to do. But these papers are to be admitted, sought to be admitted upon the testimony of this Swedish girl, that papers similar in appearance to those out of which when she saw them there had been something cut. Now, I submit, your Honor, that there has not been proof of the issue of these papers and there has been no identification of those persons, and that that cannot be inferred by the introduction of entire papers, that the piece which had been cut out of the papers which she saw was in each instance

the personal which is now offered. I submit that that is not proved, and that the papers are not competent testimony, ought not to be admitted at this time or at any time.

The Court: The question presented to the Court is whether from the evidence adduced up to this time, and the careful consideration hereafter of it by the Court, there is a possibility or probability that the Court will find that the evidence sufficiently establishes the propositions which are necessary in order that the Court should finally consider those papers. Any ruling that I make on it now may not be final. For instance, if I should rule they had and there should be an appeal, why the Court of Appeals would be perfectly competent to let them all in again. It is not like it is before a jury; and therefore the rule is to let in everything that a court may consider in the end is competent. If I make a mistake in letting it in now, and hereafter when I come to consider the cause find this material, I then consider carefully whether I ought to use it or not, because every particle, every documentary piece of evidence, must be shown to the judge who rules upon it. It is different with a jury. Probably if this had been before a jury the judge would have dismissed the jury and had all this discussion in their absence. He ought to do it; but here it is *ex necessitate rei*, the Court must determine whether he ought to consider the evidence. I have got to look at it first. Now, with that preliminary observation I come to the question whether I ought to take these papers to read them as a part of the case and consider whether they ought to be

admitted and whether they are sufficiently proven. Now, it is admitted that the evidence of Miss Nellie Sands is almost necessary in order to get those papers in. Now it is objected to, her evidence, that she has not yet been subjected to a cross-examination. Now, this is not a case where it is necessary there should be a cross-examination before the Court makes the preliminary ruling which I have tried to describe, the tentative ruling, because it may be that the cross-examination will strengthen her evidence in favor of that; it may diminish it. All that comes in. It may be that Nellie Sands never will be cross-examined. I am called on now to rule on the matter as it stands, and I think that the fact that she has not been cross-examined does not prevent me from relying on her evidence as already taken. Now we come to the evidence itself. Miss Sands was on confidential relations with Mrs. Duke. That is very plain. She was maid, according to her evidence, and up to this date I believe it. What the cross-examination may effect I don't know. And it is just like it is when the case is put on on the part of the complainant and a note is offered in evidence, the defendant afterwards proves it was a forgery. This is all subject to that. I believe it. She was on confidential terms with her mistress. Her mistress thought she could trust her, and she told her right away, "Now, you will receive letters from Mr. Huntoon; they will be addressed to you, but they will be meant for me," and Nellie Sands knew how she had been behaving herself with Mr. Huntoon before the marriage. It is

known to the Court that this lady kept house; she had two friends. She had Mr. Duke and she had Mr. Huntoon, according to Nellie Sands' evidence, and Mr. Duke did not know of the fact that he did not have her undivided affection; it was concealed from him, and Nellie Sands knew that, and Mrs. Duke was in her hands; she was in her power. Now, she says, "Nellie, I am going to get letters from Mr. Huntoon;" why, she was present at Philadelphia at the parting when they all cried, Nellie, I suppose, from sympathy, seeing this elderly gentleman and this fine loooking young woman about forty years old so affected at the parting, one to go into the arms of another husband immediately. Well, now, she was present then. She is told, "Now, you will get letters from Mr. Huntoon," and then she was told that Mr. Huntoon was going to communicate with her by personals in the New York Herald. Now, that is a very important fact if it be true. At present I assume that I may believe it in the end; that is all I assume. I assume now that I may believe what Nellie Sands swore to, in the end, when I come to consider the case. Then we have the fact that when they arrived in London immediately search is made for the New York Herald, Paris edition of the New York Herald. Then we have the fact that she tells Nellie Sands that the personals are to appear on Thursdays and Sundays, twice a week, and that these personals come. These Heralds come, and she is directed to look for the personals, and she didn't find them. Now, I won't go through all that evidence of

Nellie Sands, for it is perfectly palpable, if there is any truth in it, that Mrs. Duke was looking out for personals, and that they were from Mr. Huntoon. Now, it further appears that she was anxious to have the papers all the time, these papers, and the courier was getting them for her, leaving them in there, and it is perfectly certain that she was cutting out, or somebody, it couldn't have been her husband, it couldn't have been the courier, for he says he didn't do it; it couldn't have been Nellie; she says she didn't do it, but she found out these personals come in just one part of the paper, as they appear there now, and that they were cut out.

Mr. Strong: I don't think the courier said he didn't do it?

The Court: I think he did.

Mr. Strong: No, sir.

The Court: There is no presumption he did.

Mr. Strong: I am only correcting your Honor's assumption.

Mr. Lindabury: The courier said he never saw them.

The Court: Never saw them; if he never saw them he didn't cut them out, that is pretty certain. Then we have the internal evidence of the things themselves on the evidence already in in this case. All the circumstances already in, I think that a reasonable man of intelligence may find internal evidence in those personals that they were between Mr. Huntoon and Mrs. Duke. I won't go over the details; it has been stated very clearly, and I think fairly, by counsel

for the petitioner, Mr. Lindabury. And on all those circumstances it would never do in the world for me to rule those papers out, so I won't look at them. It would be quite contrary to the practice of this Court—the practice of this Court is when it is in doubt, even, to take the evidence and give it such weight as it thinks it is entitled to in the final consideration of the cause. I, therefore, so far as you may call it admitting, admit them now.

Mr. Strong: Subject, I understand—

The Court: Yes, to your objections. You object. You would be very derelict if you didn't.

Mr. Strong: Our objections are made, but subject, I understood your Honor to say, to a motion to strike them out after cross-examination.

The Court: Motion that I shall not consider them. You can argue that I must rely on them just as much as you are a mind to, when all the evidence is in, all evidence put in that way, especially in this Court.

One word I ought to have said further that I did not say. It is objected further that the identity of the papers are not properly proven. Now, that there is such a paper published as the New York edition of the Paris Herald is not denied. There is no dispute about it. They were there and published and collected from week to week, day to day, and everybody knows it; I won't say everybody in the United States, but I think it can be said to be common knowledge, just as much common knowledge that the New York Herald is published in New York, or the Tribune or the Times, and that it

takes the shape of these papers. Now, these papers I have not looked at, but I suppose they presume and appear on their face to be the New York Herald, Paris edition. Now, the witness swears he sent to Paris for them. Now, were they manufactured for the case here? Let us look at that. Did Mr. Duke go to the expense of having these papers all printed in exact imitation of the Paris edition of the New York Herald in order to use them in this case against his wife?

Mr. Strong: He is able to go to any expense.

The Court: Yes, he is able to, but did he do it? Am I to presume he did? Suppose a man comes in here to-morrow morning with a copy of the New York Tribune and calls my attention to it, and says here is something. Must I have proof and track that paper from the office of the New York Tribune before I look at it, treat it as a copy? I never heard that was so held.

Mr. Kalisch: If you brought a suit for libel you would have to prove it.

The Court: That is not a question of libel. It is a question whether Mr. Huntoon sent those personals to be printed in that paper so Mrs. Duke could see it. That is the question here.

Mr. Lindabury: And whether she received them knowing who they were from.

The Court: Yes, whether she received them knowing who they were from.

Mr. Lindabury: Of course there is a rule that when evidence of this kind is capable of easy refutation if untrue—

The Court: I don't think I will go into that If there is any dispute about it I suppose you

can go to the expense of bringing some man from the Herald here and proving the identity of these papers.

Mr. Strong: That is what he ought to do.

The Court: Do you want to make Mr. Duke spend his money and increase the cost for somebody to pay for the sake of merely covering a technicality of that kind? It is for him to take the risk. I don't think there is anything in it myself, but the Court of Appeals may think differently. If he chooses to rest on the evidence, it is satisfactory to me; whether it will be to the Court of Appeals or not I don't know.

Mr. Lindabury: I would like to have these marked by the stenographer:

Copy of the New York Herald, Paris edition, dated Thursday, December 8th, 1904, marked Exhibit P-8, April 27, 1906.

Copy of the New York Herald, Paris edition, dated Sunday, December 11, 1904, marked Exhibit P-9, April 27, 1906.

Copy of the New York Herald, Paris edition, dated Sunday, December 18th, 1904, marked Exhibit P-10, April 27, 1906.

Copy of the New York Herald, Paris edition, dated Thursday, December 22, 1904, marked Exhibit P-11.

Copy of the New York Herald, Paris edition, dated Thursday, December 29, 1904, marked Exhibit P-12.

Copy of the New York Herald, Paris edition, dated Sunday, January 1, 1905, maked Exhibit P-13, April 27, 1906.

Copy of the New York Herald, Paris edition, dated Thursday, January 5, 1905, marked Exhibit P-14.

Copy of the New York Herald, Paris edition, dated Sunday, January 8, 1905, marked Exhibit P-15.

Copy of the New York Herald, Paris edition, dated Thursday, January 12, 1905, marked Exhibit P-16.

Copy of the New York Herald, Paris edition, dated Sunday, January 15, 1905, marked Exhibit P-17.

Copy of the New York Herald, Paris edition, dated Thursday, January 19, 1905, marked Exhibit P-18.

Copy of the New York Herald, Paris edition, dated Sunday, January 22, 1905, marked Exhibit P-19.

Copy of the New York Herald, Paris edition, dated Thursday, January 26, 1905, marked Exhibit P-20.

Copy of the New York Herald, Paris edition, dated Sunday, January 29, 1905, marked Exhibit P-21.

Mr. Lindabury: This case has taken up so much time and the witnesses cross-examined at such great length that we have thought upon our side that perhaps some effort ought to be made to shorten the case. Now, we have three or four more of the girls who lived in the house who will testify to the same general course of conduct as has been testified to by those who have been called already. We have information to-day to the effect that there is not likely to be any evidence in defence of any of these allegations, and in view of that I want to suggest to the Court that we be allowed to rest without calling those witnesses, but with leave to call them afterward if there is any contradiction of that line of testimony.

The Court: What do you say to that, gentlemen, on the part of the defense?

Mr. Kalisch: We have given no such information. I don't know where counsel gets his information from; he did not get it from counsel.

Mr. Lindabury: I did not get it from counsel in the cause.

The Court: Are you willing to let the complainant rest with the privilege of calling witnesses, the other servants in the house, maids in the house, to give evidence of the same general character that the other maids gave?

Mr. Kalisch: No.

Mr. Parker: No.

Mr. Strong: No.

The Court: It is in the discretion of the Court.

Mr. Strong: Is it in the discretion of the Court? I don't think it is.

The Court: I have forgotten how we used to do before a jury.

Mr. Lindabury: Oh, yes. In my practice it has been not an uncommon thing that a court—

The Court: They are all swearing to one fact. Where three or four witnesses are brought to swear to one fact the Court says you need not bring any more witnesses on that unless that fact is disputed.

Mr. Lindabury: This evidence will be to the same facts testified to, perhaps not absolutely to the visits.

The Court: The advantages in this Court are if I should let you call more witnesses I can do it provided I give the other side a fair chance to meet that evidence. The

rules—permit me to give you my notion—the rules of trying a cause before a jury are this, that the case must go right on like the wheels of Juggernaut and be no stop, and that there is no chance for a party to meet something that is unexpected. Well, the rules are the same here, but we are like the fellows in favor of against selling liquor, but not in favor of enforcing it, the law, you know, Maine liquor law. The rule is the same here, but we can always, almost always, arrange sittings of the Court in such a way that if a party is surprised by any piece of evidence he can have an opportunity to answer it. Now, if you choose to take the risk of my being willing without any promise now or hereafter to allow you to give this evidence, if I see that you are really surprised by the evidence they hint at, that you have already given on that line, the conduct in the house is what you are talking about.

Mr. Lindabury: That isn't quite the idea, if the Court please. We have information to the effect and I am quite persuaded that none of this evidence with regard to the conduct in the house will be denied by either Mrs. Duke or Mr. Huntoon. If so, we do not care to accumulate it, but are satisfied with what we have already given in. Now, then, I only thought it was a pity to take another whole day or more.

The Court: Yes, I don't want to, I am sure

Mr. Lindabury: In piling up that evidence, and it seems to me it was within the discretion of the Court.

The Court: I think you will have to take your risk. I won't make any promises. I approve your judgment, if you want to know

that. At present I think you are quite justified in doing it, but I can't make any promises. I will only say I will take care of both sides.

Mr. Strong: It is understood no such assurance of that kind as Mr. Lindabury states has come from us.

Mr. Lindabury: No assurance or information from these gentlemen. Perhaps they will tell us whether they expect to call their clients; they may know that.

Mr. Parker: We think this is evidently an effort to put in by way of rebuttal testimony that belongs really to their main case.

The Court: No, they don't ask to put it in by way of rebuttal.

Mr. Strong: Practically so.

The Court: They proved something like this, that Mr. Huntoon came and stayed late in the evening; they have proved some facts of that kind. They say they have got more proof of the same kind and do not think it worth while now to offer it, but they think the Court ought to assure them—

Mr. Parker: We are assured that testimony of a material nature that has been put in on the main case will be denied by witnesses in this case. Now, certainly the testimony that Mr. Lindabury refers to is part of the same case.

The Court: I don't think I ought to make any promises; you must take your own course, Mr. Lindabury. My idea is to get all evidence, but I certainly think it would be very—on the part of the counsel for the complainant, I don't think they run much risk in the course they pursue, but I won't

guarantee anything. I don't suppose you have any witness that you expect to prove, for instance, the same thing that you did by the young Swedish lady.

Mr. Lindabury: Twelve o'clock?

The Court: Twelve o'clock business.

Mr. Lindabury: No.

Mr. Kalisch: I was going to ask the counsel whether they will produce Mr. Wagenfuhr or Mr. Boland?

Mr. Lindabury: Mr. Wagenfuhr is in Europe. No, we will not produce him.

Mr. Kalisch: We think it is important on the part of the defense that Mr. Wagenfuhr may be examined and he may be in Europe opportunely.

Mr. Lindabury: If there was anybody in China you would want to examine him.

Mr. Kalisch: No; you have brought him forward. He is captain of all these detectives, and I think it is absolutely necessary.

The Court: You have given notice to counsel now that you hold them under some kind of bond.

Mr. Kalisch: Mr. Boland and Mr. Wagenfuhr, but nobody in China.

Mr. Lindabury: Did you give me written notice? That reminds me, I gave you written notice to produce those personals clipped from the Herald.

Mr. Kalisch: We have got them.

Mr. Lindabury: Then produce them. I gave counsel written notice to produce those clippings. I now call for them, do you produce them?

Mr. Kalisch: The shears are lost.

The Court: This case when it is adjourned will be adjourned to Wednesday morning

next, second of May, at this place, ten minutes past ten, and continued on Thursday.

Mr. Parker: Where is the petitioner at? Have they rested?

Mr. Lindabury: No, no. We want to consider it.

Mr. Parker: We would like to know whether they rest?

Mr. Lindabury: You will know in due time.

Mr. Kalisch: I understood the Court to set down these two days for the purpose of complainant putting in his case.

The Court: These two; the complainant has substantially got his case in.

Mr. Kalisch: If he hasn't got his case in.

The Court: You come here next Wednesday ready to go on with your case. If the complainant wants to take any time putting in more evidence, why, he is entitled to it.

Mr. Lindabury: We will decide right now in a few minutes.

The Court: I don't think it is necessary to decide.

Mr. Lindabury: Under the circumstances, and in the belief that this testimony will not be contradicted, we propose to rest now, without any promises, as your Honor says, but with the understanding that if we are surprised—

The Court: Reserve the right, with leave to apply to the Court if you are so surprised hereafter to put in further evidence.

Mr. Lindabury: Yes; I want to say to the Court that we only do this because the whole time that the Court reserved for us to put in our case has now been exhausted and if we call these other witnesses it will probably

take another day from the few days left of the Court' assignment and unduly prolong this case, as we fear to the wearying of the Court.

Mr. Kalisch: We would like to give notice upon the record that we propose to contradict the testimony as given on the other side, and give notice to counsel now so that he may know that on all material points that have been charged against the defendant we propose to put in testimony contradicting.

Mr. Lindabury: Do you propose to call Mrs. Duke and Mr. Huntoon?

Mr. Kalisch: I cannot speak for Mr. Huntoon. From all information I have got now Mrs. Duke intends to be a witness.

Mr. Lindabury: Do you propose to call Mr. Huntoon?

Mr. Strong: I don't propose to give you any information whatever, but to give you notice that there will be no surprise about it, if you want to conclude your case now you do it at your risk.

Mr. Lindabury: If you will call Mr. Huntoon we will gladly rest now.

Mr. Strong: I don't want you to say ever hereafter that you are surprised by any testimony that we produce.

Mr. Lindabury: I will promise.

Mr. Parker: We ask that Nellie Sands be prouced for cross-examination.

The Court: Oh, yes; if she is alive and well she is to be produced for cross-examination.

Mr. Lindabury: She will be here, gentlemen.

Adjourned to Wednesday, May 2nd, 1906, at Chancery Chambers, Newark, N. J., at 10.15 a. m.

IN CHANCERY OF NEW JERSEY.

Between

JAMES B. DUKE,
Petitioner,

and

LILLIAN N. DUKE,
Defendant.

Continuation of examination pursuant to adjournment on Wednesday, May 2, 1906, at the place and in the presence of the parties as before.

The Court: Counsel all present?

Mr. Parker: No, sir. I have a letter from Mr. Kalisch, your Honor, which I will read. It is dated this morning.

"Honorable Henry C. Pitney, Vice-Chancellor. Dear Sir:—I am actually engaged in the trial of a cause in the Circuit Court of this County, which commenced on last Monday morning. I had every reason to expect from the nature of the case and the assurance of counsel for the defendant that the case would be finished yesterday afternoon. It is now evident that it will not be finished before one o'clock to-day. I am mostly concerned regarding the duty I owe my client in the cause pending before you, and it is that alone which prompts me to write to you, explaining the situation in which I find myself, through no fault of my own. My request is, that the further hear-

ing of the cause be postponed until two o'clock to-day, if it can be done consistently with the administration of justice. Yours very respectfully,

Samuel Kalisch."

Now I will state for myself in addition to what already appears by Mr. Kalisch's letter that Mr. Kalisch has undertaken the burden of the actual examination of the witnesses in the cause, and that he himself had prepared himself for that purpose and for the purpose of cross-examining Miss Sands this morning. I myself feel that it would be a hardship to the defendant in this case to have the case proceed without Mr. Kalisch being present, and I would, therefore, respectfully urge that if your Honor find it consistent with your Honor's idea of the due administration of justice in this Court, and also with the progress of this case in equity where your Honor has said so often that this is not a jury trial; this is a matter where the Court can take care of its surprises and remedy them; if your Honor can find it consistent with your duty, I would respectfully urge that your Honor should continue this case until two o'clock this afternoon.

The Court: What has the petitioner to say to that?

Mr. Lindabury: We are opposed to that, your Honor; we can see no necessity for it. Of course, Mr. Kalisch took those chances when he went into another trial; but besides he has a very able associate who has not done his full share of the work in this case up to this time, anyhow, and Mr. Huntoon is represented by his counsel, and we can

see no reason why the cause should not proceed in Mr. Kalisch's absence.

The Court: Anything further to say on the part of the defendant, Mr. Strong, or Mr. Parker?

Mr. Parker: Mr. Strong, of course, does not represent the defendant at all, does not represent Mrs. Duke at any rate, and I can only add that I have understood that the actual engagement of counsel, certainly the leading counsel where there were more than one in the trial of a cause in the same county, is valid ground for the suspension of the trial of a particular case until that matter is relieved. Now, it would be entirely unreasonable for this Court of Chancery to insist that the counsel who are busy in the actual trial of causes should give up all other trials when there is a postponement of one case that is on from Friday until the following Wednesday. There were two days. two trial days, and we counsel have to attend the law courts as well as the Chancery Court, and it seems to me that your Honor ought to, if possible, lay down a rule which is like the rules in other jurisdictions and like the rule I have always understood in this particular jurisdiction, in the absence of counsel actually in court in the trial of another case, certainly in the same county, and a court of equal jurisdiction to the Chancery Court should be a valid ground for a postponement of the cause. He was bound to go on Monday; Mr. Kalisch was bound to go on Monday, to this case that was actually in the call on Monday in the Circuit Court, and having once got into it he is

bound to stay into it until its conclusion. You see this case was not continued from day to day. This case was continued from Friday until Wednesday, leaving, as I say, these two days, and I respectfully urge your Honor to lay down the same rule that I believe applies before the other Vice-Chancellors, and also has applied for instance in the City of New York, where, as I understand it, counsel are constantly caught with a great many courts going on, where, I understand, it is a proper ground for a postponement that counsel is so usually engaged in the trial of a cause in the same county. I have had assurances from Mr. McBirney, who represents the defendant in this case of Mr. Kalisch's, as well as from Mr. Kalisch, that the case will be concluded at two o'clock to-day, and I, therefore, respectfully urge that your Honor should not insist that the case should go on in Mr. Kalisch's absence.

The Court: This situation is an illustration of the value of the English rule. An ordinary barrister, except he is on the list of those who are special, is not permitted to take retainers in different courts. He is confined to certain courts, and they never put off a case there for the absence of counsel, and if he gets into a case he must stick to it. Now, that is not the practice here. Counsel practice in the law courts and in the equity courts, jump from one to the other, and it places the equity court in a very disagreeable situation, because they say, "Oh, this a jury over here, and I have got to be there," must be there, and the Court of Chancery can accommodate itself. Now,

I think that the record of the Court of Chancery in that case is very good. It has accommodated itself at all times to the convenience of counsel, and there is a sort of rule, it is not a written rule, sort of a rule of convenience, that if a counsel is engaged in another cause which he had reason to expect would be finished, before the commencement of his other cause, it is a good ground, not a peremptory, by any means, but a good ground for the Court to relieve the situation.

Now without laying down any general rule the difficulty that presents itself to my mind here is two-fold. In the first place, this is a continuation of this cause, it is an interruption of this cause to stop now. In the next place I must consider the character of the cause. Here is one with a double team, I may say, of counsel on each side, and parties, witnesses from New York and counsel from New York, very properly here on one side. And on the other side we have two sets of distinct counsel. That is one who represents one defendant and two who represent another. They are all perfectly competent. It would be quite out of the question for the Court to suppose that the defendant will lose the least particle of what she is entitled to by the temporary absence of Mr. Kalisch. Here is Mr. Strong and Mr. Parker, both of them perfectly able to conduct this case. Mort than that, as I suppose from the appearance of what is on my table, the evidence has all been written up and handed to counsel on each side, and to interrupt the case and take a half a day out of it at this stage is exceedingly inconvenient, inconvenient for

several reasons. In the first place the time of the Court is extremely limited. The Court finds itself in very narrow quarters as to time, and a half day out here threatens an actual serious postponement of the case if any time is to be taken up in putting in the defense. Now I want to ask Mr. Parker and Mr. Strong, Mr. Chauncey Parker, whether they have any witness to go on the stand on their part? As I understand the situation of the case at this moment the complainants have rested, and they have produced here, I suppose, the one witness who was not cross-examined, Miss Sands. I suppose she is here ready for cross-examination.

Mr. Lindabury: She is here.

The Court: Now it may be that Mr. Parker has relied on Mr. Kalisch to cross-examine Miss Sands and that Mr. Kalisch prepared himself, and Mr. Parker has not, and under those circumstances if the cross-examination of this witness must necessarily go on at this moment I might feel some hesitation; but if the defendants have a case that they mean to make in defense, or if they intend to pursue their cross bill and make an affirmative case against Mr. Duke, the petitioner, I see no reason why they cannot commence and put their case in, and occupy the time of the Court, and let the cross-examination of Miss Sands go over. I think that the counsel for the defendant should try to adopt themselves to the circumstances, the particular circumstances, of this case. Now I have not placed any reliance on the point made by the counsel for the petitioner that Mr. Kalisch ought to have gauged his

time. I suppose he really thought he would get through in two days and therefore felt justified in entering on the trial of that cause yesterday morning.

Mr. Parker: He started Monday morning, had two days to finish, ordinary accident suit.

The Court: I can see no necessity for a complete arrest of the case at this point on account of the absence of Mr. Kalisch. I therefore call on the defendants to proceed with some part of their case, give them the privilege of cross-examining Miss Sands afterwards.

Mr. Parker: I will state to the Court that I learned of Mr. Kalisch's engagement last night at the close of the court and I therefore have made some preparation myself for the purpose of cross-examining Miss Sands, and while I do not think that I will be as well able to cross-examine this witness as Mr. Kalisch, even though Mr. Kalisch was taken from the midst of another case yet I think that is perhaps the orderly way in which this matter has proceeded in the past and I had better go on with it at present; and I will therefore attempt the cross-examination myself.

NELLIE SANDS, recalled:

Cross-examination—By Mr. Parker:

Q. Did you state your age?

A. Yes, sir, I did.

Q. (By the Court.) Repeat it. He has a right to ask you questions right over again that you have already answered?

A. Yes, sir; I said I was twenty-five, over twenty-five.

Q. And of course you are not married?

A. No, I am not married; no, sir.

Q. And how long have you known Mrs. Duke?

A. Five years.

Q. You were not born in this country?

A. No, sir, I am not.

Q. And of what country are you a native?

A. I am a Norwegian.

Q. From what town did you come?

A. From a place called Flkkfurt.

Q. Is that an inland or coast town?

A. Coast.

Q. Did you come to this country with some of your family or alone?

A. No, I did not; I come with some friends of mine.

Q. Some friends?

A. Yes, sir.

Q. What? Have you any relations here?

A. I only have a brother over here; had two brothers, but one went home.

Q. You have a brother over here?

A. Yes, sir.

Q. What is his name?

A. His name is Sigward Sands.

Q. And how long has he been in this country?

A. Five years.

Q. Then he came over with you?

A. No, he didn't; he come over after me.

Q. Was Mrs. Duke's employment the first place that you had when you were over here?

A. No, sir, it wasn't.

Q. Who did you work for before that?

A. I had a place over in Brooklyn for four months, that is when I came over; then I worked down on 48th Street for a year and a half; then

I went out to New Rochelle and was there for half a year; then I worked at 106th Street for half a year, then worked up in Nyack for four months and after that I took a place with Mrs. Duke.

Q. (By the Court.) Mrs. McCready she was then?

A. Yes, sir.

Q. How many years did you work for Mrs. McCready?

A. I was there five years with the exception of two months.

Q. And then how many years before that had you been working for other people?

A. Well, it was four years; I have been here nine years in this country.

Q. Oh, you have been nine years in this country?

A. Yes, sir.

Q. And Mrs. Duke's name was Mrs. McCready when you first knew her?

A. Yes, it was.

Q. And where was she living?

A. She lived in 86th Street, 41 West 86th.

Q. And how long did she live there?

A. We lived there, well, I was almost two years there with the exception of four months.

Q. And after that where did she go to live?

A. Well, she went to Europe; she broke up housekeeping that time and she went to Europe and I went to Europe, too; I went home.

Q. You went to Europe with her, didn't you?

A. No, I went by myself, because I went before she went; I went alone.

Q. And you made a visit home and then you came back to this country?

A. Yes, sir.

Q. By agreement with Mrs. Duke?

A. Yes, sir; I met her in London.

Q. You did?

A. Yes, sir.

Q. And how came you to meet her in London?

A. Well, I was intending to come back to this country the first of October, and she said she was going to start housekeeping again, and I was going to be over here the first of October, and when I was over here she wrote to me telling me her mother had been very ill and telling me to wait until she sent for me and she was going to pay me wages just the same, and it was just two days before I was going to sail and I stayed the time until she sent for me and I came from London.

Q. Then she had your address and sent for you, did she?

A. Yes, sir; I gave her the address before I left New York.

Q. You met her in London?

A. Yes, sir.

Q. Where was she in London?

A. She stopped at the Hyde Park Hotel.

Q. Was Mr. Duke in London at that time?

A. Yes, sir, I expect he was.

Q. Do you know or not?

A. Well, I saw him; yes, sir, he was there, yes.

Q. Living in the same hotel, wasn't he?

A. No, sir, he was not.

Q. Now you entered Mrs. Duke's employ again, Mrs. McCready's employ, again last summer?

A. Yes, sir; she kept me all the time; we came back to New York and she was living down at the Murray Hill Hotel and of course I told her I preferred to take a position, and she didn't want me to take any, and I was boarding outside, had nothing to do. I just called on her once a day and was free the rest of the day and she paid my board and wages and I was supported for four months.

Q. Then four months after that she took the 68th Street house?

A. Yes, sir.

Q. And then you went and lived there, did you?

A. Yes, sir, I went with her, yes, sir.

Q. And how long did you live there?

A. Well, I think it was the first of April or the last part of March we came there, and I stayed with her until, well, it was two years.

Q. Until the first of September last year?

A. Yes, sir.

Q. And since then where have you been living?

A. 1009 Fifth Avenue?

Q. (By Mr. Strong.) What year was it you came to live in the 68th Street house, the first of April?

A. It was either the first of April or the last part of March.

Q. (By Mr. Strong.) What year?

A. It think it was 1904, 1904—1903.

Q. You said something about Mrs. Duke's mother. Did she live with Mrs. Duke?

A. Yes, sir, she did.

Q. When?

A. She lived with her when they were living up in 86th Street, she lived with her all the time.

Q. And Mrs. Duke was then Mrs. McCready?

A. Yes, sir.

Q. And what was the name of Mrs. McCready's mother?

A. Mrs. Fletcher.

Q. Did Mr. Duke live in 86th Street, too?

A. Yes, sir, he came there occasionally, yes.

Q. He lived there, too, didn't he?

A. No, he didn't live, he used to come there once in a while to take dinner.

Q. Now what was the condition of Mrs. Fletcher's health?

A. She was in perfect health when they were living up there, perfect health.

Q. And later on did she get—lose her health?

A. Yes, sir, she went to London and she was struck one day on the street with paralysis.

Q. She had a stroke?

A. Yes, sir.

Q. After that what was her condition?

A. Very bad; she was out of her mind half the time.

Q. And where did she go to live after that?

A. She stopped with Mrs. Morrison for a while, Mrs. McCready's sister; I think they lived up in 116th Street; well, it was around in Harlem anyway, and then after that she was so bad she couldn't keep her, she was so much out of her mind that she sent her up to White Plains, Bloomingdale.

Q. Then she was in the Bloomingdale asylum?

A. Yes, sir.

Q. Do you remember when she went there?

A. No, I can't exactly recall, it was just before we left, before we started to live in the 68th Street house, the same winter.

Q. And did you mention the date when you went to live in the 68th Street house?

The Court: She said it was the first of April, 1904, and I understand her to say 1903. I don't know whether I caught her or not?

A. Yes, sir, that was it.

Q. Which was it, 1904 or 1903?

The Court: How many years ago was it this Spring?

A. Well, it is three years ago this spring.

The Court: Well, that is 1903.

Mr. Parker: Yes, sir.

Q. And Mrs. Fletcher went to Bloomingdale about that time?

A. Yes, sir, at the same time.

Q. And she remained at Bloomingdale how long, do you know?

A. She remained there until she died last—

Q. Last winter?

A. Yes, sir, she died last winter.

Q. Did you ever go out there?

A. No, sir, I was never out there.

Q. Do you know whether Mrs. Duke went out there?

A. Yes, sir, she went out there quite often, once in a while.

Q. Do you know what the visiting day was?

A. She says she used to go out there; she told us when she left home she was going out there every Thursday.

Q. How long have you known Mr. Huntoon?

A. I have known him since the summer of 1904.

Q. That is a year ago?

The Court: Two years ago now?

A. Yes, sir.

Q. You never met him before that?

A. Let us see; I think it was 1903, the summer of 1903.

Q. The summer of 1904 was the summer before Mrs. Duke was married?

A. Yes, sir.

Q. Was it the year before that?

A. Yes, sir.

Q. (By the Court.) The first year you went to live in 68th Street?

A. Yes, sir, the very same summer, in the end part of summer; I think it was the latter part of August she met him.

Q. Didn't you know him? Didn't you use to see him when you lived in 86th Street?

A. No, I never saw him.

Q. What were your duties in 86th Street?

A. 86th Street, I used to do waitering and chambermaid and then sewing.

Q. Who waited on the door?

A. I always waited on the door.

Q. And when you got to 68th Street you did the same thing, didn't you?

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

Q. Well, now, was Mr. Huntoon frequently at the house when you first knew him?

A. Yes, sir, he was; yes.

Q. How often would he come?

A. Well, he used to come there, well, I should say it was three times a week; something like that.

Q. (By the Court.) Whereabouts, 86th?

A. No, 68th Street.

Q. In the evening?

A. Yes, sir, he used to come in the evening, yes.

Q. And would his card be sent up?

A. Beg pardon?

Q. Would you admit him?

A. Yes, sir.

Q. He would send in his card?

A. Yes, sir, from the beginning, and then afterwards he only announced himself as Mr. Huntoon; of course, I know him very well, so he didn't need to leave any card.

Q. Sometimes he didn't bother leaving a card?

A. No, sir.

Q. Because he was well known?

A. Yes, sir.

Q. He came to see Mrs. Duke two or three times a week, did he?

A. Yes, sir, about that, or probably only once a week, probably sometimes twice, probably sometimes four times.

Q. From the summer of 1903 down to the time that Mrs. Duke was married?

The Court: From the time he commenced to come did he come steadily that way until Mrs. Duke was married?

A. Yes, sir, he did.

Q. And after the marriage also?

A. Yes.

Q. While Mrs. Duke was in New York?

A. Yes, sir.

Q. You recollect all that, do you?

A. Yes, sir, I do; yes.

Q. Mrs. Duke go out to dinner with him?

A. Yes, sir, she used to go out to dinner and he used to take dinner at her house.

Q. Before the marriage or after?

A. Yes, sir, before the marriage.

Q. Go out to hotels and restaurants around New York?

A. Yes, sir.

Q. Quite often?

A. Yes, sir, quite often; used to go to the operas together.

Q. Mrs. Duke was very fond of music, wasn't she?

A. Yes, sir, very fond of music.

Q. Do you know whether she was a performer; did she play on the piano or sing?

A. Yes, sir, she played and sang very nicely, yes.

Q. And she had a piano in her library?

A. Yes, sir.

Q. The library, I think, is on the second floor, isn't it?

A. Yes, sir, on the second floor, in the back.

Q. (By the Court.) Parlor and library are on the second floor, I understood the witness?

A. Yes, sir.

Q. And the piano is in this library, isn't it?

A. Yes, sir.

Q. And the library was the place where everybody sat in the evening?

A. Yes, sir.

Q. And was that the place where Mrs. Duke received her callers usually?

A. Yes, sir, in the library.

Q. That is in the rear of the second floor?

A. Yes, sir.

Q. Now, was Mrs. Duke fond of singing and playing for her friends?

A. Yes, sir, she used to play for them, yes.

Q. And sing for her friends?

A. Yes, she used to sing for Mr. Huntoon; I know that.

Q. Mr. Duke was not fond of music, was he?

A. No, I don't know; she very seldom did play for Mr. Duke, that I know.

Q. Don't you know that was because Mr. Duke was not fond of music?

A. Yes, sir, so she said, but I don't know; Mr. Duke has never said anything about it.

Q. Mr. Duke doesn't say very much about anything, does he?

A. No, he does not.

Q. Now, Miss Sands, you testified that you went to Saratoga with Mrs. Duke in the summer of 1905?

A. Yes, sir, I went with her.

Q. Do you recollect what day of the week it was you started?

A. It was on Wednesday, the second of August.

Q. You are quite sure of that, are you?

A. I am positive, yes, sir, because I looked at the calendar.

Q. D you remember what train you took?

A. We left the house at nine o'clock in the morning, I recall that, but I don't know exactly what train we took.

Q. Do you remember what time the trunks went?

A. Well, the trunks went the day before.

Q. (By the Court.) The trunks went the day before?

A. Day before, yes sir, in the afternoon at four o'clock; that was on Tuesday.

Q. Are you sure about that?

A. I am positive, yes, sir, four o'clock.

Q. (By the Court.) That is, they left the house at four o'clock?

A. Yes, sir, they left the house at four o'clock.

Q. You said Mr. Huntoon was in the same train in going to Saratoga?

A. Yes, sir.

Q. Was anybody else in the train that you knew?

A. Yes, sir, there was a lady friend with us.

Q. Who was that?

A. I don't know whether I can tell you the name. Do I have to tell the name, who was this?

Q. I think so.

A. Her name was Mrs. Chapin, a friend of Mrs. Duke's.

Q. Was her name Mrs. Charles E. Chapin?

A. I don't know her first name.

Q. Was she the wife of the editor of the New York World, evening edition?

A. I don't know what his business is, but her name was Mrs. Chapin.

Q. She was in the party, wasn't she?

A. Yes, sir, she was with us.

Q. She was with you all the time she was up there?

A. Yes, sir.

Q. Was her husband there?

A. No, he was not.

Q. Now, what hotel did you go to?

A. We went to the Grand Union Hotel.

Q. And you all stopped there?

A. Yes, sir.

Q. Mr. Huntoon and Mrs. Chapin and Mrs. Duke?

A. Yes, sir.

Q. Mrs. Chapin, Mrs. Duke and Mr. Huntoon were all there at the hotel?

A. Yes, sir.

Q. And they continued there for a week, wasn't it?

A. Yes, sir, we just stayed there for a week.

Q. You came back the following Wednesday?

A. Yes, sir, the 9th of August.

Q. You know Mrs. Hill?

A. Yes, sir, I know her by the name; I only know her by the name.

Q. Did you meet her at Saratoga?

A. No, sir, I did not.

Q. Did you see her up there?

A. No, I didn't see her.

Q. (By the Court.) Do you know her when you see her?

A. Well, I only have seen her calling at the house twice, that is all; I don't know if I can recall her or not if I see her, but I didn't see her at Saratoga.

Q. You don't know whether she was at the hotel at that time?

A. She was not in the Grand Union, but she stopped at the United States, Mrs. Duke told me.

Q. Mrs. Duke told you that?

A. Yes, sir.

Q. You didn't see her?

A. No.

Q. You don't know whether or not Mrs. Duke went to dinner with Mrs. Hill while you were up there?

A. No; she didn't go; she had an invitation, but she didn't accept the invitation.

Q. Did you see the invitation?

A. No; she got it, I knew, because the message boy was looking all around for Mrs. Duke and couldn't find her, and finally he came back, and she wrote a note saying she couldn't accept the invitation, and she didn't go to dinner.

Q. Do you remember what train you took? Coming down from Saratoga?

A. We went in the afternoon; I think it was three o'clock train; we arrived here in New York about half-past nine.

Q. Half-past nine at night?

A. Yes, sir.

Q. Then you went to the 68th Street house?

A. Yes, sir.

Q. And you remained there until?

A. The first of September.

Q. First of September?

A. Yes, sir; no, the thirtieth of August, or something like that, the last part of August.

Q. How many days before the papers were served?

A. Three days.

Q. So that would make the thirtieth of August?

A. 30th of August.

Q. Do you remember when Mr. Duke was sick?

A. Yes, sir, I remember that.

Q. I ask you when, do you remember when it was?

A. When it was? Well, it was——

The Court: Just state how long after he got back from Europe.

A. Well, it was about two weeks after he got back from Europe.

Q. Would that make it the last week in February, 1905?

A. Yes, sir, I expect so; about that, yes.

Q. You got back from Europe about the eighth or tenth of February?

A. Yes, sir, then he went south to Durham, North Carolina.

Q. (By the Court.) Went down to Florida?

A. No, sir, down to Durham; and they came back again, and he took sick after that, and it was about two weeks after we arrived, I should think.

Q. So that would be the last week of February or the first of March?

A. Well, the last week in February; yes, sir.

The Court: Those things are of very little value, because you are asking this woman to do a sum in arithmetic on the stand and fix dates without reference to other objects. I think it is a waste of time myself. We can do that sum in arithmetic. She doesn't recollect the date except in connection with the return from Europe.

Mr. Parker: I have another purpose. I am trying to fix the date.

The Court: You may do it just as well without taking up time to test this woman's arithmetic as with it. If you want to test her ability to add and subtract and all that, I have no objection.

Mr. Parker: I am not testing her ability. I want to get a positive fact out of her.

The Court: You won't get a positive fact as to that date, and if she should swear it was the tenth of March, and the circumstances showed it was the first of March, I should attribute it to a mistake on her part. Now, what is the use?

Mr. Parker: Your Honor rules out the question.

The Court: No, I don't. I ask you not to pursue it in that line, that is all.

Q. I would like to ask this question, if your Honor please, whether she won't attempt to fasten as nearly as possible the date?

The Court: She has fixed it to my satisfaction, and I think it is not right to press her after she says about two weeks after they got back from Europe they went down to North Carolina and got back before he was taken sick, or about the time he was taken sick, and it was about two weeks.

Mr. Parker: I would like to have her answer the question.

The Court: I decline to hear anything further on that subject. So far as fixing the date is concerned, the witness has fixed it. If you ask her she didn't think it was more than two weeks or less than two weeks, that is another matter.

Q. How long was he sick?

A. He stayed in the house, I think, six weeks; I think he was in the house about six weeks.

Q. Did he have any attendants?

A. Yes, sir, he had a trained nurse.

Q. (By the Court.) Trained nurse?

A. Yes, sir.

Q. And what was her name?

A. Her name was Miss Scors.

Q. How long was she there?

A. She was with Mr. Duke, I think it was four weeks, Mr. Parker, four or five weeks; I can't exactly recall; she didn't stay all the time; he got another one.

Q. While she was there did she sleep any part of the time in Mr. Duke's room?

A. She slept in the same room as Mr. Duke, yes, sir.

Q. All the time?

A. Yes, sir.

Q. (By the Court.) Had a cot, I suppose?

A. Yes, sir, had a cot.

Q. And what part of the room would she occupy —the one near the passageway between the room into Mrs. Duke's room?

A. No, she had, her bed was just at the door to the hall, corner of the hall.

Q. Right near the door to the hall?

A. Yes, sir, in the back of the door.

Q. Now, would you kindly state where Mr. Duke's bed was in the room?

A. Well, it was setting on that wall that comes out of the—on the west side of the room.

Q. On the west side of the room?

A. Yes, sir, that wall.

Q. In back of the room there was a door that led to the bathroom, didn't it?

A. Yes, sir.

Q. And then as you stood in the door and looked into the room there were windows on the right, weren't there, right in front of you, there was a window looking out on the back lot right in front of you as you stood in the door?

A. Yes, sir.

Q. Then Mr. Duke's bed was on the left facing the wall on the west side of the room, is that right?

A. Yes, sir, that is right.

Q. Now, where was Miss Scors' bed?

A. Miss Scors' was on the other side of the wall and next to the door that went into the hall.

Q. Now, wasn't there a table for medicines in the room?

A. Yes, sir, there was.

Q. Do you remember where that was?

A. It was next to Mr. Duke's bed.

Q. Wasn't there also a table for medicine in the corridor between the two rooms?

A. Yes, sir, there was.

Q. This corridor that leads from Mr. Duke's room to Mrs. Duke's room is quite a wide corridor, isn't it?

A. Yes, it is.

Q. Well, it is as wide as from where the Vice-Chancellor sits over to the wall, isn't it, about?

A. Well, from here.

The Court: I am very impatient at that kind of evidence because a plan of the room could have been brought here and at a very trifling expense that would have told me more in one minute than I can get out of this witness in half an hour. That is plain English. If there is anything in it, counsel should have prepared the plan of the room and brought it here. It is a remark I make always. Parties have no business to go into a trial where there are localities of any importance without having a plan made beforehand, outdoors or indoors.

Mr. Lindabury: There would seem to be nothing that would make this of any importance.

The Court: No, but I am not going to restrict them in that. The difficult task is

put on the Court to figure out in his mind a plan of the room. I am surprised that counsel should come into court, if there is any importance in this whatever, without having a plan already prepared.

Q. Do you remember whether the doctor slept in the house at any time while Mr. Duke was sick?

A. Yes, sir, he was there, I think; he was there three nights, yes, sir.

Q. All night?

A. Well, one doctor was there all night; one night two doctors were there, I think, and there was one night one of the doctors was there and then another night a doctor left at three o'clock in the morning.

Q. What night was that?

A. Well, I can't recall the date, but I called the doctor, I know that, the bell rung and I went down and called him; he said he had a special case and he had to go.

Q. Did any of Mr. Duke's friends call in the evening while Mr. Duke was sick?

A. Yes, sir, lots of people called.

Q. Mr. Duke's friends?

A. Yes, sir, Mr. Duke's friends called there all day long and evenings and all the time.

Q. All the time Mr. Duke was sick?

A. Yes, sir.

Q. (By the Court.) Friends of Mr. Duke or Mrs. Duke?

A. Mr. Duke, only Mr. Duke's friends.

Q. Both afternoon and evening?

A. Yes, sir.

Q. And would Mrs. Duke see them?

A. Yes, sir, if ladies was with them she saw them, yes.

Q. Both in the afternoon and evening?

A. Yes, sir.

Q. You know whether Mr. and Mrs. Hill came?

A. Yes, sir, they was there quite some, yes.

Q. Do you know whether Mr. Dula was there quite some?

A. Yes, sir, I remember I saw Mr. Dula a couple of times.

Q. Do you know whether Mr. Fuller and Mr. Parker were there quite some?

A. They were in—Mr. Fuller called there.

The Court: I don't see this—

Mr. Parker: It is charged that Mrs. Duke was in the habit of receiving Mr. Huntoon every evening during the time Mr. Duke was sick, downstairs; that is the object of this testimony. It has been charged, counsel out of court has charged Mrs. Duke was sleeping with Mr. Huntoon in the room under where Mr. Duke slept.

The Court: I don't remember any evidence of that kind.

Mr. Lindabury: No doubt about its being the fact, though.

Q. Now, Miss Nellie, did Mrs. Duke make any purchases of underclothing in Paris when she was on her wedding tour?

A. No, she did not; she did not buy anything, underclothing.

Q. Didn't buy anything at all?

A. Yes, sir, she bought quite some, but not any underwear, anything like that.

Q. Did she buy any nightgowns?

A. No, sir.

Q. And she bought no lingerie?

A. No, sir, she did not.

Q. Now, you knew about the duties of the other girls of the house, didn't you?

A. Yes, sir, I did.
Q. And Anna's duty?
A. Yes, sir.
Q. You remember Anna?
A. Yes, sir.
Q. She was chambermaid, was she?
A. Yes, sir.
Q. (By the Court.) Who is Anna? Has she been sworn here?
A. No, sir, she has not.
Q. And Mrs. Andrews was the housekeeper?
A. Yes, sir.
Q. Do you remember when Anna came?
A. Yes, sir, I remember; I remember that.
Q. When was that?
A. I think it was the 29th or the 30th of March.
Q. After Mrs. Duke came back from Europe?
A. Yes, sir.
Q. (By Mr. Strong.) 30th or 13th?
A. The 30th.
Q. And she remained with Mrs. Duke until the papers were served in this case?
A. Yes, sir, she did.
Q. And she was chambermaid all that time?
A. Yes, sir, she was.
Q. Well, how came it that you made up the beds in Mrs. Duke's room on the occasion that you spoke about?
A. Well, I always had her floor to take care of, and, of course, I helped on cleaning days and I always make beds, Mr. Duke's bed and Mrs. Duke's bed, I always made up the bed and cleaned out the rooms during the week.
Q. And you made the bed on Mrs. Duke's floor all the time that you were employed by her?
A. I all the time make the beds, yes, all the time.
Q. That continued down to the time you left?
A. Yes, sir.

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Q. Now, you didn't state who employed you now?

A. Well, Mr. Ben Duke.

Q. Mr. Ben Duke?

A. Yes, sir.

Q. When did you first talk to Mr. Ben Duke about being employed?

A. Well, Mr. Ben Duke asked me the second day, that was the—well, I think it was the 30th of August, sometime like that, and he said, "Well, I am going to open my house," and, of course, I had no position or anything, and he said if I liked to take a position with him "I should be very pleased to give you one;" Mr. Duke also said the same thing. "My brother is going to open a house and if you want a position there you can take it."

Q. (By the Court.) They both asked you to go?

A. Yes, sir; Mr. Ben Duke asked me first; Mr. Duke asked me afterwards.

Q. Where was that?

A. 1009 Fifth Avenue.

Q. You had already gone to the house, had you, then?

A. Yes, sir.

Q. Now, who was it that told you that Mr. Duke wanted to see you?

A. Nobody told me Mr. Duke wanted to see me; I was told somebody wanted to see me outside on the street, Tillie Andrews told me.

Q. (By the Court.) Mrs. Andrews told you somebody wanted to see you outside on the street?

A. Yes, sir.

Q. And did you go out then?

A. Yes, sir, I went out.

Q. And where did you go?

A. I went down to 67th Street.

Q. How was it that you went to 67th Street?

A. I don't know; she took me down there.

Q. Oh, Tillie went with you, did she?

A. Yes, sir.

Q. Did you have your hat on?

A. No, sir, I had no hat on, no, sir.

Q. And you and she went down to 67th Street, and what happened there?

A. When I come down there I met Mr. Duke.

Q. Anybody else?

A. No, sir, only Mr. Duke.

Q. Well did he have a cab there?

A. Yes, sir, there was a carriage there, yes.

Q. Now, what did he say to you?

A. He said, "How do you do, Nellie?" and I said, "How do you do, Mr. Duke?" I was mighty glad to see him, too; and then he said, "I caught her at last;" and I started in to cry, and asked if Mr. Duke could not forgive her and come back to her, and that she said she was going to be very good, and Mr. Duke said he could never forgive her, and I kept on crying all night.

Q. You did?

A. Yes, sir.

Q. You didn't know Mr. Duke was in the country, did you?

A. I did not, no, sir; I didn't know, I didn't know anything about it.

Q. And you were very much astonished, weren't you?

A. I was, yes, sir.

Q. Well, now, why was it that you did not go back to the house?

A. Why, when I know because when I heard of the fact and everything I knew I couldn't take Mrs. Duke's part and I made up my mind, I thought it was best not to go back again and I didn't go back again; I was sort of distressed and so upset crying that I thought I better not go back.

Q. Now, didn't Mr. Duke take you to Mr. Parker's rooms?

A. Yes, sir. We went down to Mr. Parker's house, yes.

Q. Then you had a talk with Mr. Duke?

A. Yes, sir; they started into talk to me, but I couldn't say much because I was crying all the time, so there wasn't much talk.

Q. How long did you stay at Mr. Parker's rooms?

A. We were there, I think it was about eleven o'clock when I left.

Q. (By the Court.) Was that in the morning?

A. No, at night, eleven o'clock in the evening.

Q. Then you went where?

A. Well, I knew I couldn't take a room in the hotel because I didn't have money enough to pay and I didn't know where to go, and Mr. Parker said he knew a friend of his and she come down and called for me, she was a lady friend, and I went up to her house and stayed there all night.

Q. A friend of Mr. Parker's?

A. Yes, sir, I suppose it was; I don't know who she was because I never knew the woman; I never asked who she was or anything; I saw she was all right and I went with her.

Q. How came you to do that?

A. Because I couldn't take a room in the hotel and I have to stay somewhere; I wasn't going to call up any of my friends.

Q. Why didn't you go back to Mrs. Duke's house?

A. No, I knew I couldn't take her part; I decided not to go back.

Q. Tillie went back?

A. I know she did.

Q. You know she did?

A. Yes, sir.

Q. You could have gone back if you wanted to?

A. I decided I couldn't take her part; I knew she

was wrong, and made up my mind I couldn't take her part and couldn't go back.

Q. Haven't you told people that you were kidnapped?

Mr. Lindabury: I object unless the name and place is mentioned.

The Court: You had better mention the name, Mr. Parker.

Mr. Parker: I would like to have your Honor rule on that question.

A. No, sir, I never mentioned any such thing.

Q. To anybody?

A. No, sir, I have not.

The Court: That renders it unnecessary for the purpose of contradiction.

Mr. Lindabury: The objection is withdrawn.

The Court: The question was put when I was about ruling on it, when the witness took the case out of my hands.

Q. Have you not stated in the fore part of December, 1905, to a Mrs. Lincoln that you went out of the house without any hat on your head, that on the corner where a cab stood in waiting Mr. Duke was also there, and that a man caught you and put you into a cab?

A. No, sir, I never said such a thing in my life.

Q. And drove to Mr. Parker's house on East 60th Street?

A. Yes, sir.

Q. You did drive to the house, I understand?

A. Yes, sir.

Q. And that you were there kept in close confinement, locked in a room and not even permitted to walk around the house or the apartments. Have you said that?

A. I never said such a thing, because it was not so, and I never said anything that was not so. I walked wherever I felt like it and we were down all around, we took lunch down to the Manhattan Hotel that very day, Miss Margaret Smith and I, and we were all about New York City, not closed up at all.

Q. (By the Court.) Do you mean the day that they come to see you in the evening or the next day?

A. The next day.

(The stenographer was requested to and read part of the testimony several pages back).

Mr. Lindabury: I was in doubt whether she repeated that statement, Mr. Duke to Mrs. Duke, whether she meant to say she repeated that to Mr. Duke or not.

The Court: You can ask on redirect-examination. I understood her to say that Mrs. Duke has said she was going to be very good, but the witness may not have used that particular word. She speaks very rapidly, and I am perfectly surprised. I want to compliment Mr. Salmon on getting it as good as he does.

Q. Are you acquainted with a Mrs. Sledge?

A. Yes, sir, I am.

Q. Did you ever visit at her house?

A. Yes, sir; I had six days' vacation and I stopped at her house, yes, sir.

Q. (By the Court.) You boarded there?

A. Yes, sir.

Q. When was that?

A. Well, that was some time in the last part of September, I think September, anyway.

Q. After you had left Mrs. Duke?

A. Mrs. Duke, yes, sir.

Q. Now, did you talk with her about this case?

A. Very little, because I very little saw of her.

Q. Did you not say to her on several occasions while you were on that visit that you had been kidnapped?

A. No, sir, I did not.

Q. And tell substantially the same story that was outlined in the question to you with reference to Mrs. Lincoln?

A. No, I did not, no sir, because we went just wherever we felt like it, just wherever we felt like it, we went wherever we felt like it.

Q. The fact was that you left Mrs. Duke willingly, I understand?

A. Not exactly willingly. When I heard what was going on, the divorce and all, I knew I couldn't go to the Court, and I knew what she had been doing, and I knew I couldn't take her part, and I knew that was the best thing not to go back to her; I felt I couldn't take her part, and I thought I had better stay where I was, and I felt very much upset, it was the greatest sorrow to me that anything like that should happen.

Q. You know a woman by the name of Hilda Seger?

A. Yes, I do.

Q. She is the cook for Mrs. Duke now, isn't she?

A. Yes, sir, she is; I expect she is.

Q. And she is the only one of the servants who remained in Mrs. Duke's house after Mr. Duke returned from Europe the last time?

A. Yes, sir, she was the only one.

Q. (By the Court.) You say you expect she is her cook now?

A. Yes, sir, I expect so; I haven't seen her in some time.

Q. Haven't you seen her at parties?

A. I met her out twice at the entertainment, yes, sir.

Q. Now, on that occasion didn't you talk with her about Mr. Duke, this case?

A. No, sir, I didn't; I never mentioned it.

Q. Did you not tell her that you had been kidnapped?

A. No, sir, I did not. I said, "How do you do?" to her, that is all I said to her.

Q. Did you get your wages from Mrs. Duke?

A. Not the last month, no, sir.

Q. What?

A. Not the last month, no.

Q. Did you get them from anybody else?

A. Why, Mr. Duke paid me, yes.

Q. And Mr. Duke paid the other wages, too?

A. Yes, sir, he pays me the same as Mrs. Duke paid me, yes.

Q. How much is that?

A. Twenty-five dollars a month.

Q. And you have been having wages ever since?

A. Yes, sir.

Q. And you have been doing what work at Mr. Duke's?

A. I am doing sewing and chamberwork besides.

Q. Did Maggie Smith pay you?

A. No, not Maggie.

Q. Mary?

A. Mary Smith.

Q. She pays you every month?

A. Yes, sir.

Q. And she is in the house three or four times a week, isn't she?

A. Yes, sir.

Q. And that has been so ever since the month of September, 1905?

A. Yes, sir.

Q. She sleeps there?

A. Yes, sir, she sleeps there when she is in the house, yes.

Q. Now, has Mr. Duke given you any presents?

A. Yes, sir, he gave me a Christmas present, yes.

Q. James B. Duke?

A. Yes, sir.

Q. Is that the watch you have on?

A. No, Mrs. Duke gave me that.

Q. What present did Mr. Duke give you Christmas?

A. He give me diamond ring; Mr. Duke give me a diamond ring; the year before in Paris that was stolen away from me in the house and he said, "I feel very sorry, very bad, because you lost your diamond ring;" he said, "I am going to replace it for you, I feel sorry;" so he gave me that as a Christmas present.

Q. Have you got it?

A. I get it out. Would you like to see it?

Q. I would like to see it.

(Mr. Chauncey Parker and the Court inspected the ring).

The Court: It is an emerald, surrounded with sapphires, surrounded by a cluster of very small diamonds.

Q. It is what is called a Marquise ring, isn't it?

A. I don't know what it is called.

Mr. Fuller: That is not a Marquise ring.

Q. Has he given you anything else?

A. No; well, he give me some stocks the day he was married, yes.

Q. (By the Court.) When was that?

A. Some stocks the day he was married.

Q. Did he give you some stocks in June, 1905?

The Court: At the time he was married he gave her some thing.

Mr. Lindabury: Stocks.

Q. (By the Court.) They pay you a dividend, I suppose?

A. Yes, sir.

Q. Didn't he give you something in June, 1905?

A. Yes, sir; he promised them to me on the wedding day, the day he was married, and he give it to me the first of June.

Q. (By the Court.) And he didn't forget it?

A. No, sir, he didn't.

Q. I see. He promised you the day that he was married, and that was in November, 1904?

A. Yes, sir, 28th or 29th.

Q. That he would give you some shares of stock in the following June?

A. No, he didn't say when he was going to give it to me but he promised it to me, said, "I am going to give you ten shares of the American." I guess, I don't know.

Q. (By the Court.) American Tobacco Company?

A. Yes, sir.

Q. American Tobacco Company or American Snuff Company? How much dividend do you get from it?

A. I get fifteen dollars every three months.

Q. They are hundred-dollar shares, aren't they?

A. Yes, sir.

Q. Now, didn't he give you those certificates just before he went to Europe?

A. He give it to me the first of June, yes, the first of June he give it to me.

Q. Now, wasn't it just before he went to Europe?

A. No; he went the fifteenth of July.

Q. Now, didn't he give you about the first, just before he went to Europe, on the 15th day of July?

A. No, sir, he didn't; he didn't give me anything; he give it to me the first of June, about the first of June he give it to me.

Q. You got the certificates, have you?

A. Yes, sir, I have.

Q. Not with you, of course?

A. No, sir, I didn't think to bring them with me.

Q. Has he given you any other presents?

A. No, sir, he has not.

Q. You were not employed to watch Mrs. Duke?

A. I was not, no, sir: I know nothing about it.

Q. You were not asked by Mr. Duke to watch Mrs. Duke while he was in Europe?

A. I was not; I know nothing about it before I met Mr. Duke, nothing, absolutely nothing.

Q. Mr. Duke didn't tell you in the conversation he had with you just before he went to Europe that he expected you to watch Mrs. Duke and tell him all about it?

A. No, sir, he didn't; he never mentioned anything, and I didn't know a thing about it.

Q. (By the Court.) Didn't know Mrs. Duke was being watched, you mean?

A. No, sir, I didn't know anything before the last two weeks, until she told me she was watched, and I didn't even believe it at that time; I told her it couldn't be so.

Q. Was it not your habit to sit in Mrs. Duke's room in the evening in the summer of 1905?

A. Well, what time, Mr. Parker?

Q. Any part of the evening?

A. Yes, sir, I sat there, yes.

Q. Well, wasn't it your habit to sit there every evening, or a part of the evening, during that summer, July and August of 1905?

A. No, I did not; I only sat there the two weeks in August, the latter part of August.

Q. Only the two weeks?

A. Yes, sir.

Q. Before that it was your habit to do so?

A. No, sir, I did not, because I never sat up and wait for Mrs. Duke; she told me she didn't wish me to, didn't have to.

Q. You were thoroughly acquainted with Mrs. Duke's bedroom, weren't you?

A. Yes, sir, I was.

Q. You worked there every day?

A. Yes, sir, every day.

Q. You did your sewing there, didn't you?

A. No, sir, I had my sewing room upstairs.

Q. But then you did the room over in the morning, and then you were in and out during the day, weren't you?

A. Yes, sir, I was.

Q. Well, now, were there any awnings to Mrs. Duke's windows in front?

A. Yes, sir, we always had the awnings up; we always put them up at night, every night we put the awnings up.

Q. There were awnings, were there?

A. Yes, sir.

Q. Do you remember whether there were any screens?

A. Yes, sir, screens, too.

Q. And they were on the window during the summer of 1905?

A. Yes, sir.

The Court: You mean night screens and day screens?

A. Yes, sir.

Q. They had two kinds of curtains, didn't they?

A. You mean shades?

Q. Yes, shades?

A. Yes; no, we always divide; took the white ones down, we only had the green ones.

Q. Always took the white ones down?

A. Yes, sir.

Q. So when you took the shades down, it must have been the green shades; is that right?

A. Yes, sir.

Q. (By the Court.) Were the windows those that rise and fall, or spring on a hinge, the front windows?

A. No, they rise up and down.

Q. (By the Court.) Those that were in the bay window?

A. Yes, sir, they spring up and down.

Q. (By Mr. Lindabury.) Double sash window, I suppose?

A. Yes, sir.

Q. Do you recollect whether there were any curtains in addition to the shades?

A. No, sir, there were no curtains in the summer time; no, sir.

Q. Not in the summer?

A. Not in the summer time.

Q. They were all taken down, but in the winter there were?

A. In the winter there were those curtains and other curtains; yes, sir.

Q. Now, where was the light in Mrs. Duke's bedroom that was kept burning?

A. Well, if she was in the room, she had a light in the centre of the ceiling, and, of course, she only had a side light over her bureau, and there was also one over the desk.

Q. (By the Court.) How many side lights were there?

A. Two side lights and one——

Q. (By the Court.) Drop light, chandelier?

A. Chandelier, yes, sir.

Q. Were they electric or gas lights?

A. Both electric and gas.

Q. Well, did you use always electric light; if somebody wasn't in the room would the light be lighted, burning?

A. No, sir; we always turned the light out on account of the bill.

Q. Snap it on and off?

A. Yes, sir.

Q. If you went in and looked for something you would snap it on and off, is that it?

A. Yes, sir.

Q. Did Mr. Duke ever say to you he would take care of you in that conversation in which you left Mrs. Duke?

A. No, sir; he said, "You can take a position with my brother and you will have a good home with him and he will look after you;" that is what he said.

Q. Didn't he tell you he would be a father to you?

A. No, sir; no.

Q. Didn't you say that to Mrs. Sledge when you were on your visit there?

A. No, sir, I did not.

Q. That Mr. Duke had told you he would be a father to you?

A. No, sir, I did not. I always thought I would like Mr. Duke very much; he was a perfect gentleman, an elegant man; that is what I said.

Q. You never went to Mrs. Duke's house after you left?

A. No, sir. I never did; I never was near the street even.

Q. You always told everybody you talked with you were very fond of Mrs. Duke?

A. I was; I was very fond of Mrs. Duke.

Q. Yet you never went to see her?

A. No, sir, because I felt I was so disappointed in her.

Q. When did you learn that disappointment?

A. When I heard, well, after she was married, when she was carrying on with Mr. Huntoon, I thought that was a disgusting thing?

Q. Did you learn of this disappointment before Mr. Duke saw you on the thirtieth of August or afterwards?

A. I saw Mr. Huntoon was there all the time Mr. Duke was in Europe, and I didn't think that was the right thing to do.

Q. (Question read.)

The Court: When did you first feel the disappointment as you say you did with Mrs. Duke? When did you first feel it?

Mr. Parker: I ask that the question be put.

Q. (Question read.)

The Court: The disappointment is not learned; if it is personal it is felt.

Mr. Parker: Now, isn't that——

The Court: No, sir; I think it is perfectly proper, a witness of this character. I put it. Just read it the way I have it there.

Q. (Court's question read.)

The Court: I put the word "feel" instead of "learned."

Mr. Parker: I want to fix it with reference——

The Court: I won't change it now or won't waste any more time on it.

Mr. Parker: Won't your Honor allow me to put something on the record?

The Court: No; you can't spend time on it.

Mr. Parker: I want that put down.

The Court: All right. He is taking down every word that is said. Repeat my question to her.

Q. (Court's question read again.)

A. I felt it when she first got married.

Q. Yet you say that was the reason why you did not go back to see Mrs. Duke after Mr. Duke met you and provided for you in his brother's home?

Mr. Lindabury: I object to that question. That is not what the witness said.

The Court: No; it assumes something she has not said, as I recollect the evidence.

Mr. Parker: Won't you read the question?

Q. (Question read.)

Mr. Parker: Now, she did say that.

The Court: No; she said other things in connection with it.

Mr. Lindabury: She said she could not take Mrs. Duke's part now the trouble had come.

Mr. Parker: She didn't say that. She gave as a reason for not going to see Mrs. Duke after she had gone with Mr. J. B. Duke the fact that she was disappointed with her on account of the attentions Mr. Huntoon had shown her. Now, I think my question does not misstate what the witness says and it is a perfectly proper question under the circumstances.

The Court: Read the question over.

Q. (Question read.)

The Court: She hadn't said that was the whole reason, and the question implied that she gave that as the reason.

Q. (Court's question read.)

The Court: She said it was the time they got married.

Mr. Parker: I will withdraw the question if it is objected to and put another.

The Court: That is right.

Q. Haven't you testified that the reason you did not go to see Mrs. Duke after you had left her house and gone to Mr. J. B. Duke's house in New York was that you were disappointed with Mrs. Duke on account of her seeing Mr. Huntoon so often? Haven't you so testified?

A. Yes, sir, I said that, because I knew I couldn't take her part when I heard Mr. Duke was going to have a divorce and I knew I was going to go to court.

Mr. Parker: Now there is a suggestion of what was the answer; of course, that is very apparent.

Mr. Lindabury: No; it is precisely what the witness said before.

The Court: Just exactly. Somewhere further on she said she felt disappointed in Mrs. Duke, but disappointment is not a sudden thing. I interpret the witness' evidence to be this, that she was surprised; she used the word "disappointment;" she doesn't speak perfect English any more than any of the rest of them, and when she, if I could follow the trend of her mind, I could see it

perfectly plain, and I think anybody else can, she learned that on the ship shortly after the marriage that, according to her story, Mrs. Duke was not going to give up her love for Mr. Huntoon, which she saw manifested when they separated at Philadelphia, but she was going to correspond with him clandestinely on her wedding trip, and going to have personals from him in the Paris edition of the Herald; then, when she came back, and after Mr. Duke got well of his illness, she found Mr. Huntoon coming there, and when Mr. Duke went to Europe in the summer she found Mr. Huntoon coming there more and more, and saw evidences herself, and then she found that she was being watched, and when Mr. Duke told her he had caught her, she felt it was a hopeless case, and she did not want to go back to be placed in a position acting as Mrs. Duke's friend. That is the way I interpret the operations of her mind.

Mr. Parker: Is your Honor deciding the case now?

The Court: No, sir.

Mr. Parker: Then I don't see why your Honor——

The Court: Because I choose to, and I will take no criticisms from you at this time or on either side, as to that.

Q. Now, then, you felt this disappointment over Mrs. Duke's conduct all the time that Mr. Duke was sick in the 68th Street house?

A. Yes, sir, I did.

Q. Did you ever express it to Mrs. Duke?

A. Yes, sir, I told her.

Q. You think you did?

A. I did, yes, sir; I spoke to her about it.

Q. Did you tell it to Mr. Duke?

A. I never mentioned anybody to him, nobody, no, sir.

Q. And this disappointment gradually grew upon you then until the 30th of August?

A. Yes, sir.

Q. And accordingly on the thirtieth of August, when Mr. Duke came to see you, the disappointment was so great that you then resolved to leave Mrs. Duke's employ?

A. Well, of course I learned what was going to happen; I knew what was going on, and I knew I couldn't take her part, and I knew Mr. Duke said he was going to have a divorce, and I knew I had to go on either side, and I took the side of right and went with Mr. Duke.

Q. Well, you didn't go on Mr. Duke's side then because Mr. Duke had the most money?

A. I did not, no, sir; I would rather have taken her part if I possibly could, but I couldn't.

Q. It was not in consequence of his having made a present of ten shares of American Tobacco stock to you?

A. No, sir. Nothing would make me do anything for money.

Q. Or in consequence of his having promised to be kind to you and good to you and give you a nice home?

A. No, sir, nothing.

Q. And it was not in consequence of his having made any other presents to you that you haven't spoken of?

A. No sir.

Q. Didn't he promise you a trip home?

A. No, sir, he never promised me anything.

Q. Didn't he give you a trip home some two years before Mrs. Duke was married?

A. No, sir, he gave me fifty dollars as a present and Mrs. Duke gave me the other fare, she paid my fare.

Q. (By the Court.) That was before they were married?

A. Yes, sir.

Q. Now, Miss Sands, wasn't it a fact that all through the summer of 1905, and in fact a rule of the household, that though the other girls went to bed that it was your business to sit in Mrs. Duke's room until she came upstairs? Wasn't that the rule of the household?

A. No, sir, it was not.

Q. Now, haven't you complained to Hilda Seger, the cook, about how late you were kept up by Mrs. Duke on account of having to unhook her dress?

A. No, sir, I did not.

Q. Did you not during the summer of 1905 and previous to that time and repeatedly complain to Hilda Seger, the cook, about feeling tired and out of sorts because you had to sit up so late for Mrs. Duke and unhook her dress?

A. No, sir, I never did, because I never stayed up.

Q. You never stayed up?

A. I stayed up the two last weeks in August, yes, sir.

Q. Now you stated that you had a conversation with Mr. Duke at the time that you left Mrs. Duke's house. In that conversation did Mr. Duke say anything to you about Mrs. Duke's having accused you of stealing and drinking her champagne?

A. Yes, sir, he told me; yes, sir.

Q. What did he say to you?

A. He said he was complaining about the wine bill was so large and of course Mrs. Duke had

given him that answer, that I used to take the wine and drink it, and of course then Mr. Duke said it was very funny that Nellie should take anything because she can't stand anything; then Mrs. Duke said she carried it downstairs to them other girls and drank it between them.

Q. That was in the conversation, first conversation that you had with Mr. Duke after his return home from Europe?

A. No, I can't recall, it wasn't the first thing, it was probably two or three days after he told me about it.

Q. You didn't give him a statement, as I understand it, the first night?

A. No, sir, it was two weeks after.

Q. It was two weeks after?

A. Yes, sir.

Q. (By the Court.) After you left Mrs. Duke?

A. Yes, sir.

Q. It was two weeks after you left Mrs. Duke that you were first induced to make a statement, wasn't it?

A. Yes, sir; well, it was the time it was written down, that was the time it was written down.

Q. Had you been to Mrs. Sledge's before that?

A. Yes, sir, I had; yes, sir, I believe I had, I was on my vacation before, yes, sir.

Q. So you had your week's vacation before you returned to Mr. Duke's and made this statement?

A. Yes, sir. I can't exactly recall, but that is what I believe; I think I was there.

Q. Your invariable custom was, as I understand it, to go to bed at half-past ten except during the last two weeks in August, 1905?

A. Yes, sir.

Q. (By the Court.) You mean to say you never sat up later than that on special occasions?

A. Oh, yes, before she was married I used to sit up, and I remember one time she went out with Mr. Duke I sat up for her; then it was about half-past eleven, I sat up and waited for her; it was when she was out with Mr. Duke, but I never sat up and waited for her when she was out with Mr. Huntoon, only the last two weeks in August.

Q. And when she was out with Mr. Duke you say you sat up for her?

A. No, she was out a couple of times to the theatre, I think, and I sat up and waited for her.

Q. Before she was married?

A. No, after she was married.

Q. You stated in your testimony that Mrs. Duke stayed in town in New York for Friday, Saturday and Sunday on an occasion on which you fixed the date at April 29?

A. Yes, sir.

Q. How do you know that?

A. Because I got an invitation for a wedding and that is how I know it. I got it just that Saturday.

Q. You remember the date of the wedding?

A. Yes, sir, I got an invitation.

Q. When was that?

A. Twenty-ninth of April.

Q. The date of the wedding?

A. No, the wedding was the 6th of May.

Q. And what day of the week was that?

A. That was on Saturday.

Q. Saturday, just a week after the 29th?

A. Yes, sir.

Q. And that is the way you fix it?

A. Yes, sir; I got an invitation the 29th, I stated that day.

Q. Where were you then?

A. I was in 68th Street, 11 West 68th Street.

Q. Did you go to the farm at all after Mr. Duke was married?

A. No, sir. I only was there for two hours.

Q. (By the Court.) Where, the farm?

A. Yes, sir.

Q. Did you wait on table at all during the time, during the summer of 1904 when Mr. Duke was away?

A. No, sir, I did not; I never waited on the table.

Q. Where did you spend the evening?

A. Well, I generally slept down stairs in our sitting-room.

Q. In her sitting-room?

A. No, in our sitting-room downstairs on the first floor.

Q. (By the Court.) Maid's sitting-room?

A. Yes, sir.

Q. Then you sat there until half-past ten when you went upstairs with the girls?

A. Yes, sir, I did.

Q. And that was customary every night?

A. Every night, yes, sir.

Q. During the last two weeks in August also?

A. No, I used to wait for her; I used to sit up in her room after they went upstairs, after the girls went upstairs I used to wait in her room.

Q. Then you habitually sat downstairs all through July and August, 1905, until half-past ten?

A. Yes, sir.

Q. Then you went upstairs at half-past ten and during the summer, up to the middle of August, you went to bed and after that you sat up for Mrs. Duke? That is your testimony, is it?

A. Yes, sir.

Cross-examination—By Mr. Strong:

The Court: Of course counsel understands that he must not examine over the same ground, and I will make this remark about

double cross-examination. My thought given to that subject has been this, that the defense is substantially one. The co-respondent defends for the respondent so to speak, and I don't know that a severe criticism would permit the cross-examination by the other counsel in such a case where it is apparent to the Court that there is no lack of vigor in the defense put in by the real defendant, and there is certainly manifested here the fact that the defense has been conducted with all the vigor that it is possible to be conducted with; but I shall not refuse Mr. Strong the privilege and right of cross-examination, but I must remind him that he must not go over the same ground, you know, Mr. Strong.

Q. Where was the maid's sitting room where you spent the evenings generally?

A. It was downstairs on the first floor, sir.

Q. First?

A. Yes, sir, very first floor.

Q. (By the Court.) Right on the same floor as the dining room?

A. No, sir, there was a floor below.

Q. (By the Court.) What has been called the basement?

A. Yes, sir, basement.

Q. (By the Court.) In front, I suppose?

A. Yes, sir.

Q. (By the Court.) Under the reception room?

A. Yes, sir.

Q. That was not on the same floor as the entrance to the house, was it, as the street door?

A. No, sir.

Q. Below what?

A. Below that, yes, sir.

Q. And was that used by the servants generally as a sitting room?

A. Yes, sir, it was always used.

Q. Then, except for the last two weeks in August it was your custom to spend your evenings in that room, was it?

A. Yes, sir, down there; if I had any sewing to do, I used to sit up in the sewing room, but it was very seldom.

Q. Where was the sewing room then?

A. On the fourth floor.

Q. Fourth?

A. Yes, sir.

Q. (By the Court.) Over Mrs. Duke's bedroom, I understood you to say a while ago?

A. Yes, sir.

Q. Was it the front of the fourth floor or the rear?

A. No, the front.

Q. Front?

A. Yes, sir.

Q. When did Mr. Duke first have a room in this house in 68th Street?

A. When he first had a room?

Q. (By the Court.) When did Mr. Duke first have a room in 68th Street, first have a sleeping room there?

A. When we first got there, I believe.

Q. From the very beginning?

A. Yes, sir.

Q. (By the Court.) That was before they were married?

A. Yes, sir.

Q. And he had the same room, that is the back room?

A. Yes, sir.

Q. He had that from the very first, had he?

A. Yes, sir.

Q. And continued to occupy that all the time down to the time he went to Europe?

A. Yes, sir.

Q. On July 15th. Did I understand you to say that he did not have a sleeping room in the 86th Street house?

A. Yes, sir, I believe he had; yes, he had a room there, too; yes, sir.

Q. He did have?

A. Yes, sir.

The Court: Mr. Strong, you were not here when the other cause was tried, the other issue?

Mr. Strong: No, sir. I have an impression or some idea what the testimony was, but that, of course, was not in this case.

The Court: Of course, I cannot import that here, but the evidence and admissions were very clear on that subject. You will find a little mention of it in my oral opinion in the issue there, but that is not here and not necessarily to be here in this issue unless the parties bring it here.

Mr. Strong: I do not want to go at length into that subject.

The Court: I don't object, but I think you ought to have all the swing you want in that.

Q. From the time that you and Mrs. Duke, or you went with Mrs. Duke, to live in the 68th Street house Mr. Duke was frequently there, was he?

A. Yes, sir; he was there, yes.

Q. I mean from the very first time?

A. Yes, sir.

Q. And how frequently was he there at first?

A. Well, I can't recall that now, it is such a long time ago.

Q. What?

A. I can't recall that, how often he used to come.

Q. Well, how often was he there to spend the night?

A. Well, I can't recall that either, it is such a long time ago; I don't think of those things, can't recall.

The Court: I will say that that was made a particular issue in the other issue, Mr. Strong, and an immense amount of evidence on the subject.

Mr. Lindabury: And it is not an issue in this case.

The Court: Not an issue here; it has been tried once between these parties, the very issue involving that question has been tried and is, I suppose, under appeal now in the Court of Appeals, and unless it in some way bears distinctly on the issue here, I think that counsel ought to understand that anyhow, that has been tried, and the number of nights he stayed there in New York, and the number of nights he stayed out at the farm was gone into very extensively. I don't say that my finding a fact in that case ought to be introduced here at all, but I did find the fact. You will find it all in my opinion. Mr. Duke admitted that he had a latch key to Mrs. McCready's house, went in and out as he chose, and stayed there full half the time.

Mr. Strong: I don't care to go into that at length.

The Court: That is the sum and substance of it. I suppose counsel, if they think it is necessary, will admit the same thing here.

Mr. Clark: That was practically the fact.

The Court: They admit he spent half the time, Mrs. Duke contended before he spent more than half the time there in her house, and that that state of things had gone on for several years.

Q. Did you know on the 15th of July that Mr. Duke was going to Europe?

A. Yes, sir; he told me that he was going to go to Europe.

Q. When did he tell you?

A. He told me the night before, on Friday, he was going to go.

Q. On Friday?

A. Yes, sir.

Q. That he was going the following day?

A. Yes, sir.

Q. How did he come to mention that to you?

A. Because I had to pack his clothes.

Q. And was that the first that you heard of his going to Europe?

A. Well, that was the first thing that I heard, that it was decided he was to go, but I heard Mrs. Duke speak about it, that he might go to Europe.

Q. That he might go to Europe?

A. Yes, sir.

Q. And when did you hear her speak about it in that way first?

A. He spoke about it, that he might go over this summer again.

Q. And that was all you heard about it until the fourteenth of July, when he told you to pack his things and that he was going on the 15th, is that right?

A. Yes, sir; that is the time; Mrs. Duke told me to pack his clothes before that, but he told me he was going to go to Europe that night.

Q. He told you that?

A. He told me that; yes, sir.

Q. He didn't have to tell you that in order to have you pack his clothes; Mrs. Duke told you to pack his clothes?

A. Mrs. Duke told me to pack his clothes.

Q. Then what need was there, what necessity was there for Mr. Duke to tell you he was going to Europe? How did he come to say it?

A. Well, because he asked me how many clothes I had packed and I gave him the list of how much I had packed, and of course he said, "I am going to go to Europe," and I said "Of course I hear you are, Mr. Duke"; that was all there was said.

Q. Did you have any more talk with him at that time at all?

A. No, sir; I did not. No, sir.

Q. And on the day when he went to Europe, the 15th, did Mrs. Duke accompany him to the steamer?

A. No, he went down in the morning, about nine o'clock he went down.

Q. He left the house about nine o'clock?

A. Yes, sir.

Q. Did she leave the house with him?

A. No, sir; she did not.

Q. Or did she go to the steamer with him?

A. Yes, she went down at half-past twelve?

Q. She went down at half past twelve?

A. Yes, sir.

Q. Did you go with her?

A. No, sir; I did not.

Q. And how did you know that she went to the steamer?

A. She told me that she was going to go and the carriage was outside the door waiting for her.

Q. She went alone, did she?

A. Yes, sir; she left the house alone, yes.

Q. And what time did she come back after that?

A. Well, she came back about three o'clock, I think, or half-past; yes, three o'clock.

Q. (By the Court.) Did Mr. Duke tell you what time the steamer was to leave, did you hear him say?

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

Q. Did Mr. and Mrs. Duke frequently go out in the evening after their marriage, to the opera and elsewhere?

A. No, sir; they never went hardly any place, only a couple of times I think they went to the theatre, that is all.

Q. Went where, to the theatre?

A. Yes, sir.

Q. How did they spend their evenings together when they were together?

A. Well, they, friends used to call upon them, and that is all; they used to sit and talk.

Q. Were there a good many people that came in during the evenings, friends to call upon them, as you say?

A. Well, when Mr. Duke was sick; yes, sir. There was quite some when he was sick.

Q. At other times, I mean when he was not sick?

A. Well, not so many, no, about two or three probably.

Q. Was Mr. Duke frequently out during the evenings or did he generally spend the evenings at home?

A. He always spent the evening at home as far as I can recall.

Q. As far as you can recall?

A. Yes, sir.

Q. And he generally got home before dinner, did he?

A. Yes, sir; he always got home around half-past five or five o'clock.

Q. And after that do you mean that he did not leave the house again until the next morning, did not go out in the evenings?

A. No, sir; I think he went out driving one night, that is all I can recall, in the automobile or a couple of times.

Q. But not usually? He didn't go out until next morning?

A. No, he didn't.

Q. And when he was at home where did he, what part of the house was he in in the evening?

A. In the library.

Q. With Mrs. Duke?

A. Yes, sir.

Q. Now do you mean to say that Mr. Huntoon never came there when Mr. Duke was in the house?

A. No; Mr. Huntoon and Mr. Duke never met.

Q. Well, answer my question.

The Court: Whether he ever came there when Mr. Duke was in the house?

A. Yes, he used to come when Mr. Duke was in the house; yes, sir.

Q. He did.

A. Yes, sir.

Q. Well, you mean during Mr. Duke's sickness?

A. Yes, sir.

Q. Well, do you mean that he never came there at any other time when Mr. Duke was in the house except when Mr. Duke was sick?

A. No, he did not.

Q. You are quite sure about that, are you?

A. I am positive; yes, sir.

Q. You are positive of that?

A. Yes, sir.

Q. What was the nature of Mr. Duke's sickness, what was it as you heard it spoken of in the house?

A. Well, he had an operation on his foot, I guess it was corn or something, it was corn that was taken out.

Q. It was something in the nature of a corn was it?

A. Yes, sir.

Q. That required an operation on his foot.

A. On his foot.

Q. Corn, that is what you said, that is right, is it?

A. Yes, sir.

Q. And did that require him to be in bed?

A. No, he didn't stay in bed; he sat up in a chair but he couldn't walk about.

Q. Was there any time during the time, the six weeks that he was in the house from that cause, was there any time when he was obliged to stay in bed?

A. No, I can't recall that he was ever in bed a whole day.

Q. But he was up and about his room every day as far as you can remember?

A. Yes, sir; he used to sit in Mrs. Duke's room in the chair there all day.

Q. How did he get from one room to the other?

A. He had a hand chair that he used to wheel.

Q. Wheeling chair?

A. Yes, sir; wheeling chair.

Q. (By the Court.) Couldn't walk?

A. No, sir.

Q. Did he use crutches at all?

A. Yes, sir; he used crutches to go to the chair with, and he could walk on crutches too, but he generally wheeled himself in that chair.

Q. He preferred the chair but he had crutches to use if he wanted to?

A. Yes, sir.

Q. And he was accustomed to spend a good deal of his time, you say, in sitting in Mrs. Duke's room?

A. Yes, sir.

Q. And where was Mrs. Duke at those times, did she sit there with him?

A. Sometimes; yes, sir.

Q. How long a time was it that he remained in that floor, did not go down?

A. Well, I think it was, I am positive it was four weeks.

Q. Four weeks?

A. Yes, sir; four or five, that was between that, four or five weeks.

Q. And then after that was there another period of time during which he went downstairs but did not go outdoors?

A. Yes, sir.

Q. How long was that?

A. Well, I think that was about a week and a half or so before he went out, probably two weeks.

Q. Did you ever see Mr. Huntoon write?

A. No, I never saw him write but I saw his handwriting.

Q. Where did you see his handwriting?

A. I saw it because Mrs. Duke used to receive letters from him.

Q. That was while she was in Europe?

A. Oh, before it.

Q. When did she receive letters from him—first, I mean?

A. Well, when she first met him.

Q. When she first met him, well that was in the summer of 1903?

A. Yes, sir.

Q. And how do you know that the letters were in his handwriting?

A. Because she told me she got invitations to go out from him and she told me they come from Huntoon.

Q. Did you ever read them yourself?

A. No, sir.

Q. You never read them?

A. No, sir; I never did.

Q. How did you know that the letters, any particular letters came from him and did not come from Mr. Duke or somebody else?

A. Because I know his handwriting.

Q. I see; I want to know—

The Court: He wants to know how you first learned his handwriting.

A. When Mrs. Duke first met him and when he sent her invitations they always were sent by messenger boy.

Q. They were always sent by messenger boy?

A. Yes, sir.

Q. And were they received by you?

A. Yes, sir; because I went to the door.

Q. You went to the door?

A. Yes, sir.

Q. And what I want to know is how you got the knowledge that these letters which were sent by messenger boy and which you received were Mr. Huntoon's letters, written by him.

A. Because Mrs. Duke told me.

Q. She told you so?

A. Yes, sir; and the boy was waiting downstairs and he always got an answer back and they was always addressed to Huntoon.

Q. Always addressed to Huntoon; that was the way you did know, did you?

A. Yes, sir.

Q. The boy always waited for an answer, did he?

A. Yes, sir; he did wait for an answer.

Q. And that was so from the beginning of their acquaintance?

A. Yes, sir.

Q. In 86th Street?

A. On 68th Street.

Q. Weren't you living at that time in 86th Street?

A. Mrs. Duke never knew Mr. Huntoon in 86th Street.

Q. Never did?

A. No, sir.

Q. (By the Court.) You went to live in 68th Street, I understand, about the first of April or May, 1903?

A. Yes, sir.

Q. (By the Court.) That is three years ago now?

A. Yes, sir.

Q. And it was some time that summer that she made the acquaintance of Mr. Huntoon?

A. Yes, sir, that was the first part of August that I first saw him.

Q. Where did you first see Mr. Huntoon?

A. Well, I first saw him, it was after we come home from Manhattan Beach and he called at the house; that was the first time I saw Mr. Huntoon.

Q. You and Mrs. Duke had been to Manhattan Beach?

A. Yes, sir.

Q. How long were you at Manhattan Beach at that time?

A. We stayed down there for seven weeks.

Q. Seven weeks?

A. Yes, sir.

Q. And you didn't see Huntoon down there?

A. No, sir, I did not.

Q. But you fixed the time when you first saw him as being soon after you came back from there?

A. Yes, sir.

Q. (By the Court.) Do you know where she first met him?

A. Yes, sir, she told me she had met a very old friend of hers; she used to tell me she knew him seventeen years ago; she told me so, she went donwstairs and she came upstairs and she said, "I met a very old friend of mine downstairs," and she didn't mention the name, say anything, but she said he was a good friend of theirs, hers, and that was all she said, and of course they kept up the friendship, and so.

Q. And then how soon after that was it that you began to see letters which you thought came from Huntoon, notes, and so on?

A. Well, it was after we arrived home.

Q. What?

A. After we got home from Manhattan.

Q. I see. Right away after that did you begin to see letters?

A. About a couple of weeks, yes, sir.

Q. I suppose Mrs. Duke received from time to time letters and notes of one kind and another from other people, didn't she?

A. Yes, sir; of course she did, yes.

Q. And sometimes by messenger boys too, didn't she?

A. Yes, sir.

Q. And sometimes the messenger boys waited for answers too, didn't they?

A. Yes, sir.

Q. Well, have you ever given any particular attention or study to the matter of handwriting?

A. Not specially, but I know generally the peo-

ple who write to her because, not especially, but I can very easily notice the handwritings.

Q. And you think you are able to tell one hand from another, are you?

A. Yes, sir, all the peoples there that write to Mrs. Duke, I know all the handwriting, all her friends' writing.

Q. Make it a point to know their handwriting, do you?

A. Not specially, but she told me she didn't want any of her letters to come before Mr. Duke, because Mr. Duke was a very jealous man, and on that account I always took care and did not hand them to Mrs. Duke in front of Mr. Duke.

Q. You didn't ever hand her any letters in the presence of Mr. Duke, is that what you say?

A. Very seldom, unless I know who they come from.

Q. When did she tell you that about Mr. Duke being a jealous man?

A. She told me when I very first came to her.

Q. Very first came to her?

A. Yes, sir.

Q. That was long before she was married, was it?

A. Yes, sir.

Q. And at that time she told you she did not care to have you give her any letters in the presence of Mr. Duke?

A. Yes, sir, that is what she told me.

Q. Now you began to feel some disappointment in Mrs. Duke, you said, from the time that she first went to Europe after her marriage?

A. Yes, I did.

Q. Had you begun to feel any disappointment before her marriage?

A. No, not especially.

Q. Well, had you, especially or otherwise?

The Court: In what respect, disappointment about what, Mr. Strong? I want to to be sure that the witness understands.

Mr. Strong: I think she understands; she is a very intelligent witness indeed and entirely self-possessed. I don't think she needs to be taken care of at all. If she says she doesn't understand.

The Court: I don't know what you mean by the disappointment.

Mr. Clark: How is it pertinent?

Mr. Strong: Well, it is pertinent.

The Court: Yes; I can't see.

Mr. Strong: As throwing some light on the character of this witness.

The Court: Go on. It is a very small matter anyhow.

Q. (Question read.)

A. Well, I don't know; I was very fond of Mrs. Duke, I won't say anything else; I was very fond of Mrs. Duke and I thought she was just everything.

Q. You what?

A. Of course she was very friendly with Mr. Huntoon before she married Mr. Duke, she was very friendly to him, and I didn't think exactly that was the right thing to do, to have two men and then go away and marry the other one, but anyway I would have excused her because she said she was going to give him up and that was the end of it, when they married.

Q. When did she say that to you?

A. When she said it to me?

Q. That she was going to give Huntoon up.

A. She told me that when she told me about the marriage she was going to give Huntoon up and she was going to marry Mr. Duke.

Q. How long before she married Mr. Duke did she tell you she was going to marry Mr. Duke?

A. It was about two months, three months it was.

Q. About two or three months before?

A. Yes, sir.

Q. And at the time that she said that she was going to marry Mr. Duke she told you she was going to give up Mr. Huntoon?

A. Yes, sir.

Q. During that two or three months after she told you that Mr. Huntoon continued to come, did he?

A. Yes, he did.

Q. And was there any difference as far as you could see from what had been going on before that?

A. No, just the same.

Q. Just the same down until the day of the marriage, you say, when you went with Mrs. Duke to Camden, did you?

A. Yes, sir.

Q. And Huntoon met her and you at Philadelphia?

Mr. Lindabury: No: that isn't what she said.

A. At the 23rd Street ferry on the New York side.

Q. On the New York side, and went on the same train?

A. Yes, sir.

Q. In what kind of a car did they travel?

A. They had a parlor car and I sat outside in the other car; I didn't have any parlor car.

Q. And then you saw them at Philadelphia, didn't you?

A. Yes, sir.

Q. And it was there that he parted from her?

A. Yes, sir.

Q. And you all three of you cried?

A. Yes, sir, I cried; yes, we all cried.

Q. Well, you thought that was the end of the thing between Mrs. Duke and Huntoon at that time?

A. Yes, sir, and she told me so, too.

Q. She told you so that night?

A. Yes, sir.

Q. (By the Court.) That was the end of it, eh?

A. Yes, this was the last of it and good-bye.

Q. Well, when did your feeling of disappointment revive again after that?

A. Well, after she started in to write to him and send him a couple of telegrams I told her it wasn't exactly—

Mr. Lindabury: Let her finish.

A. (Continuing.) Exactly the proper thing to do, after she had said she was not going to keep up with him any longer, and of course after she was married and everything I didn't think she ought to keep up with anybody she had cared for or had had as a lover.

Q. You felt that way?

A. Yes, sir.

Q. And I suppose you continued to feel that way from that time right along, didn't you?

A. Yes, sir, I felt bad; I felt very sad, because I thought when she was married she was going to be everything and I was very disappointed.

Q. And I suppose from that time on until the first of September or the 30th of August your feeling of disappointment continued, did not get any less, did it?

A. No; I felt sorry for her, yes.

Q. Felt sorry for her?

A. To think she was such a fool.

Q. (By Mr. Lindabury.) What?

A. To think she was such a foolish woman to throw herself away like that, I felt sorry for her.

Mr. Parker: I suppose the opinion of the witness is not competent, but I make no objection.

Q. However, you stayed with her, remained in her service until the 30th of August?

A. Yes, I did.

The Court: Quite apparent.

Q. Certainly it is. And your feeling of disappointment or whatever it was did not lead you to quit her service, did it?

A. Well, I was going to go the first of September anyway.

Q. You were going on the first of September?

A. Yes, sir; I didn't tell her so, but—

Q. You didn't tell her so?

A. No.

Q. But you say now that you had determined to go on the first of September?

A. Well, I didn't tell her so, but I had my own idea.

Q. What?

A. My own idea was that I was going to go.

Q. Your own idea?

A. Yes, sir.

Q. And you were going on the first of September without giving her any kind of warning or notice?

A. Oh, I was going to let her know I was going to go.

Q. When were you going to tell her?

A. I was going to tell her when I heard the detectives were on the lookout, of course I wasn't go-

ing to go just that time, but I thought she was, well I thought I wasn't going to leave her when I thought she was in any kind of trouble or anything, but of course when I heard the fact I didn't think there was any trouble.

Q. When you heard the detectives were watching the house then you thought you would leave her, is that it? Was that the time?

A. No, I wasn't going to leave her when I heard of the detectives, then I just stayed, but my intention was to tell her before, but when I heard of the detectives I didn't tell her.

Q. When was it that you made up your mind that you were going to leave her?

A. I made it up after Mr. Duke went to Europe and I saw she kept on with Mr. Huntoon.

Q. How soon after Mr. Duke went to Europe was it that you made up your mind you were going to leave her?

A. Well, I know it was right after Mr. Duke had gone.

Q. Right after?

A. Yes, sir; I thought when she kept on with Huntoon.

Q. Up to that time you had not thought that there was any reason for you to leave her, did you, until Mr. Duke went to Europe?

A. Well, nothing to speak of.

Q. No. But when you heard that the detectives were watching the house then you thought that you would stay by her, is that it?

A. Yes, sir.

Q. You thought there might be some trouble and you wanted to help her; was that the idea?

A. Well, I was going to stay; I didn't know what was going on at all, I thought probably, I didn't know who the detectives were or anything.

Q. Did she tell you?

A. She told me afterward.

The Court: She said she didn't believe it.

A. I didn't believe it.

Q. Didn't you believe they were there?

A. I saw they were there, but I always denied—said I didn't think it was so.

Q. Didn't think what was so—that Mr. Duke had detectives?

A. Yes, sir.

Q. So she told you not only the detectives were there but that Mr. Duke had sent them there, was that it?

A. Yes, sir.

Q. She told you so?

A. Yes, sir.

Q. But you said you didn't believe he had sent detectives there?

A. Yes, sir, that is what I said.

Q. At the same time you saw these men outside there, did you, at different times?

A. Yes, sir; I saw them quite often; I saw them every day.

Q. Every day, and sometimes nights, too?

A. I saw them nights; yes, sir.

Q. Did Mrs. Duke say that those were the men?

A. Yes, sir, after she knew it; yes.

Q. That those men that you saw were the ones that Mr. Duke had sent to watch her?

A. Yes, sir.

Q. That is what she said. And when did you first notice them?

A. Well, I saw some man sitting over there, but I didn't pay much attention to him.

Q. When did you first see them at all to notice them?

A. I think it was about 10th or 12th of August I saw them sitting there.

Q. You had not seen them there before that at all?

A. No, sir, never saw them there before at all.

Q. Never saw them before at all?

A. No.

Q. But you had seen them there before Mrs. Duke spoke about it, hadn't you?

A. Yes, sir, I had.

Q. And did you speak to her about their being there?

A. No, sir, I didn't say anything.

Q. And you didn't mention it to her?

A. No, I did not.

Q. And she spoke to you first about the men?

A. Yes, she did.

Q. Then at the time that, on the 30th of August, when you went out with Mrs. Andrews and went down to 67th Street, as you have told us already, at that time you were not intending to leave Mrs. Duke?

The Court: At that moment.

Q. At that time?

The Court: What do you mean—meant to leave her that night or she was not intending to leave her the first of September, or after it?

Mr. Strong: I mean at that time she had —I will change my question then to make it perhaps a little clearer. At that time had you given up the idea of leaving Mrs. Duke?

The Court: When you went out with Mrs. Andrews?

A. No, I was going to leave after Mr. Duke came home; I was going to leave after Mr. Duke came home just the same.

Q. After Mr. Duke came home?

A. Yes, sir.

Q. That was positive?

A. That was; yes, sir, that was positive. I was going to leave, but I was going to stay until Mr. Duke came home.

Q. Were you going to give her notice?

A. Yes, sir.

Q. How much notice?

A. One week I was going to give her.

Q. You are hired by the month?

A. Yes, sir.

Q. And is a week's notice the usual thing?

A. Yes, sir.

Q. So you were not intending to leave her service on the first of September, were you?

A. No, sir, I was not.

Q. You were going to give her at least a week's notice?

A. Yes, sir.

Q. And had you determined at what time you were to leave, you were going to leave; had you fixed any day in your mind when you were going to leave?

A. No, not especially, no date; but I was going to leave when Mr. Duke came home.

Q. That is, as soon as he came home you were going to give her a week's notice?

A. A week's notice, yes, sir.

Q. And you didn't know that he had got home until you saw him in 67th Street?

A. No, I did not.

Q. And then you did not after that go back to Mrs. Duke?

The Court: She has stated that three or four times.

Q. Yes, that is only preliminary. Because you saw that she was found out?

A. Yes, sir.

Q. That is the reason, was it?

A. Yes, sir, that was the reason.

Q. As long as she was not found out, why, you could afford to stay there; but when she was found out, then you thought it was time to leave, was that right?

A. Not exactly, no; but Mr. Duke told me that he was going to have a divorce, and I knew that I had to be one of the witnesses, and I took the side of right, and I took Mr. Duke's side because I couldn't take her part.

Q. You took the side of the right and the side where the money was, too, didn't you?

A. No, sir, I did not.

Q. You have said, I believe, that Mr. Duke didn't give you anything in presents of any kind?

A. He gave me a diamond ring for Christmas.

Q. Except that?

A. Yes, sir.

Q. And that was given the Christmas of 1905?

A. Yes, sir.

The Court: It couldn't be very well Christmas of 1906, for it hasn't arrived. That—putting such a question as that, taking up room on the paper.

Q. What did he say to you as to what he would or might do for you in the future?

A. He didn't say he was going to do anything for me. I was out of a place, and he knew I had to earn my living, and he said his brother was going to open his house, and if I wanted a position I could take a position with him.

Q. How did he become aware that you were out of a place?

A. Well, I told him I was going, not going back to Mrs. Duke.

Q. You told him that?

A. Yes, sir.

Q. When did you tell him that?

A. The first night.

Q. When you met him there in 67th Street?

A. No, sir; I didn't tell him anything at that time. Not then, afterwards.

Q. When?

A. The very same night, but not the minute I met him at 67th Street, I didn't say anything.

Q. When was it that night that you told him you were not going back to Mrs. Duke?

The Court: What part of the interview?

A. I don't exactly understand.

Q. Well, the interview; where was it that you had your talk with Mr. Duke; was it in the cab or somewhere else?

A. Well, no; it was up to Mr. Parker's house.

Q. Mr. Parker's house?

A. Yes, sir.

Q. Did you have any talk with Mr. Duke at all in the cab?

A. No, not anything; but I asked him if he wouldn't go back to Mrs. Duke, that is all, forgive her.

Q. I understood you to say—see if I am right—that after he had said, "How do you do?" to you, and you said, "How do you do?" to him, the next thing he said was that he had caught her at last. Was that right?

A. Yes, sir.

Q. And where did he say that?

A. Because——

Q. No, where was it; where were you and he when he said that?

A. In the carriage.

Q. That was after you had got in the carriage?

A. Yes, sir.

Q. What did he say to you before you entered the carriage?

A. He didn't say anything. He said, "You come along with me," that is all.

Q. Just those words, was it?

A. Yes, sir.

Q. "You come along with me?"

A. Yes, sir.

Q. And what did you say?

A. I didn't say anything, but I just went along, that is all, because I know I was perfectly safe to go with him, and I went along without saying anything.

Q. Who went along with you?

A. Nobody but Mr. Duke.

Q. He didn't say to Tillie Andrews, "You come along with me, too"?

A. No, sir, he did not.

Q. And in fact the carriage drove off and left Mrs. Andrews there?

A. I expect so, yes, sir.

Q. You didn't see her any more that night?

A. No, sir, I did not.

Q. What time of the day was it?

A. It was about half-past seven in the evening.

Q. Half-past seven in the evening?

A. Yes, sir.

Q. You went out without your hat, not expecting to meet anybody, not expecting to stay at any rate?

A. No, sir, I had no hat on.

Q. Had you any idea who you were to meet?

A. No, I had no idea who I was going to meet, no, sir.

Q. And then Mr. Duke simply said, "You come along with me," and you got in the cab and went with him?

A. Yes, sir.

Q. Did he say where he was going?

A. No, he did not. He didn't say where he was going.

Q. And you had no idea where you were going?

A. No, I did not.

Q. Well, where was Mr. Parker's house, as you call him?

The Court: Been all over this.

A. 40 East 60th Street.

Q. Was that a house or apartment?

A. Well, it is kind of an apartment hotel, I expect; I don't know what it is because I was never there since.

Q. Then when you got there what was said to you, I mean before you got out of the carriage what was said to you?

A. Nothing at all was said.

Q. Had you had any talk in the carriage beyond what you have just told us that he said he had caught her at last?

A. No, sir.

Q. And you said what? What did you say when he said, "I have caught her at last"?

A. I didn't say anything to that at all.

Q. Made no answer?

A. No, sir.

Q. Now what conversation did occur between Mr. Duke and yourself in the carriage?

A. The only thing I asked Mr. Duke, I said to Mr. Duke, "Don't you think you could forgive Mrs. Duke and go back to her? She said she was going to be a very good woman and was going to be all

right." He said, "No, I can never forgive her," and I started in crying and I kept on crying, and there was nothing more said.

Q. You have told us now all that was said in the carriage?

A. Yes, sir.

Q. You continued to cry?

A. Yes, sir.

Q. And there was no more conversation?

A. No, sir.

Q. Did you ask Mr. Duke where he was taking you?

A. No; I never asked anything.

Q. Did you ask him what he wanted of you?

A. No, sir, I never asked anything.

Q. Did you say that you wanted to get out and be allowed to go back or to go away?

A. No, sir, I did not.

Q. Did you make any objection to going, to being taken in this carriage by Mr. Duke to some place, you didn't know where?

A. No, sir, I never did.

Q. After Mr. Duke had told you he had caught your mistress at something, at any rate, you made no objection then to going on as you were going?

A. No, sir, I went on, that is all.

Q. When you got to the place in 60th Street the carriage stopped?

A. Yes, sir.

Q. What occurred there?

A. I went upstairs to Mr. Parker's apartments.

Q. How did you come to do that?

A. Went up in the elevator.

Q. Who asked you to go there, who asked you, how did you come to go in the elevator?

A. Went with Mr. Duke without being asked or anything, I just went.

Q. Not a word said between you?
A. No.
Q. Simply went with him?
A. Yes, sir.
Q. Did he put his hand on you?
A. No, sir, he did not; I went with him.
Q. You did not object to going?
A. No, sir, I did not.
Q. Had you ever been there before?
A. No, sir.
Q. Did you know what place it was?
A. No, sir, I did not.
Q. You didn't know it was Mrs. Parker's apartments you were going to?
A. No, sir, I did not.
Q. Then you went up to—what floor was it that you went?
A. I can't recall.

Mr. Lindabury: Is that important?
Mr. Strong: Well, perhaps not.

Q. When you got there who did you see?
A. Well, I saw Mr. Parker and Mr. Hull and Mr. Burroughs and Mr. Duke.
Q. Mr. Hull, Mr. Burroughs and Mr. Duke?
A. And Mr. Parker.
Q. And Mr. Parker?
A. Yes, sir.
Q. Well, is that the Mr. Hull you spoke of as sometimes visiting at the house?
A. Yes, sir, that is the same Mr. Hull.
Q. What is his first name, do you know?
A. I don't know his first name.
Q. And Mr. Burroughs, who is he?
A. Well, I don't know who he is, but I think he is a lawyer, that is all.
Q. Well you remained there in that apartment with these gentlemen how long?

A. Well, I think it was about eleven o'clock.

Q. Until eleven o'clock?

A. Yes, sir.

Q. There was no other lady there but yourself?

A. No, sir, I was the only one.

Q. And during that time how was the time spent?

A. Well, it was spent, I was crying half the time and they went out of the room and came back again and I was still crying, and they spoke to me and of course I answered what they asked me, but of course there was very little said and very little done because I cried most of the time.

Q. Yes, you were crying most of the time?

A. Yes, sir.

Q. And you say from time to time they went out of the room?

A. Yes, sir, Mr. Duke went out of the room.

Q. Who else went out of the room?

A. Mr. Parker.

Q. And who else?

A. That is all, Mr. Hull and Mr. Burroughs was sitting with me.

Q. Mr. Hull and Mr. Burroughs remained in the room the whole time, did they?

A. Yes, sir, I believe they did; I can't exactly recall but I think that is what they did.

Q. And Mr. Parker and Mr. Duke sometimes went out?

A. Yes, sir.

Q. Well, did any of these gentlemen, they did ask you questions?

A. They did, yes, sir.

Q. Who did?

A. Mr. Parker asked me.

Q. Any others?

A. No, sir.

Q. Mr. Hull or Mr. Burroughs?

A. No, sir.

Q. Did they simply remain silent?

A. Well, I don't know, they may have said something, I suppose they spoke, but they didn't ask me anything.

Q. And they did not attempt to get any statement or answers from you?

A. No, sir, they did not.

Q. Mr. Parker asked you questions?

A. Yes, sir, he did.

Q. And did Mr. Duke?

A. Not that I can recall. I don't know if he asked me anything. I can't recall that.

Q. Well, during that time up to eleven o'clock did you express any desire to be allowed to leave and go elsewhere?

A. Well, of course it was bedtime and of course—

Q. Bedtime?

A. Yes, sir.

Q. Your bedtime was half-past ten, wasn't it, at home?

A. Yes, sir.

Q. At Mrs. Duke's?

A. Yes, sir.

Q. I say did you during that time that you were there express to these gentlemen any desire to be allowed to go away?

A. Go away where?

Q. To leave, be allowed to go away?

A. Well, of course I felt very much upset, I said, and I suppose I could say good-bye to Mrs. Duke; in the beginning I said I was going to say good-bye and then leave her, and of course afterwards, after I heard all that was going on, I decided not to go back at all.

Q. What is it you wanted to say, good-bye to Mrs. Duke?

A. Yes, sir, I thought that was the proper thing.

Q. What did they say to that?

A. They didn't especially say anything because I had my free will; they told me I could do just as I pleased.

Q. Why didn't you go and say good-bye to Mrs. Duke then?

A. Because afterwards I found out just the way everything was and I decided not to go.

Q. How did you find out just the way everything was?

A. Because Mr. Parker told me.

Q. Mr. Parker told you?

A. Yes, sir.

Q. And in consequence of what Mr. Parker told you you did not go back to Mrs. Duke, that was it?

A. I decided upon myself, I had my own free will, they told I could do as I pleased and I decided not to go.

Q. Then you did not express any desire to leave them until eleven o'clock?

A. Well, it wasn't much time before because I felt from crying and just got my senses back that time I expect, I don't know.

Q. You didn't get your sense until eleven o'clock at night?

A. I don't think I did much.

Q. And you knew what was going on, didn't you?

A. Yes, sir.

Q. You were not unconscious?

A. No, I was not unconscious, no, sir.

Q. You understood what they were all saying to you, too, didn't you?

A. Yes, sir, most of the time, yes, I did.

Q. Well, did you answer their questions that night?

A. No, not from the beginning, I didn't say anything.

Q. You did not?

A. No, sir.

Q. Well, did you at any time before you left there at eleven o'clock, did you answer their questions?

A. I can only recall one thing they asked me, they asked me if I used to sit up and wait for Mrs. Duke in the evening when Mr. Duke went to Europe, and, of course, I object, I wasn't going to answer, but, of course, after finding out I said to them I didn't sit up until the last two weeks in August, I told them that.

Q. Now, do you think that is the only information you gave them that evening?

A. Yes, sir, that is the only thing I can recall.

Q. The only thing you can recall that evening is that?

The Court: It is quite unnecessary to repeat that, Mr. Strong, and the labor of the stenographer is sufficiently serious in this case.

Q. Well, when you left there that evening did you tell them, tell the gentlemen there, or any of them, whether or not you were going back to Mrs. Duke's house?

A. I told them I was not going back again.

Q. You told them you were not?

A. Yes, sir.

Q. And was it at that time that Mr. Duke spoke about your getting employment with his brother?

A. No, not that night, no, sir.

Q. Not that night?

A. No, sir.

Q. So when you left there that night there had been no arrangements made for your employment?

A. No, sir.

Q. Either at Mr. Benjamin Duke's or anywhere else?

A. No, sir.

Q. And you were out of employment?

A. Yes, sir, I had nothing.

Q. You had no friends in New York, no relatives I mean?

A. Yes, sir, I have one brother.

Q. You had a brother in New York?

A. Yes, sir.

Q. Was he in New York at that time?

A. Yes, sir.

Q. And where was he living?

A. He lives up in Harlem.

Q. (By the Court.) Married?

A. No, he isn't married, he is single.

Q. Not a married man, is he?

A. He is a young man.

Q. Did you communicate with him then?

A. No, sir, I never spoke to him about anything.

Q. Never spoke to him?

A. No.

Q. You were not on friendly terms with him, not friendly with your brother?

A. Yes, sir, we were friends; yes, friends.

Q. And yet you did not communicate with him at all about the change that had happened in your life?

A. No, sir, I did not.

Q. And did you ever let him know that you had left Mrs. Duke's?

A. Well, after about a week after I think I told him.

Q. You told him then?

A. Yes, sir.

Q. Met him accidentally?

A. I went up to see him.

Q. Did you then tell him what the trouble was?

A. Well, he saw it in the paper.

Q. He saw it in the paper?

A. Yes, sir.

Q. Well, when you left there that night, left Mr. Parker's apartments at eleven o'clock, did you make any engagement with Mr. Duke or with any of the gentlemen there to meet them another time?

A. Yes, sir; they told me to come down next day; yes, sir, Mr. Duke told me to come down.

Q. Come down where?

A. Mr. Parker's house.

Q. The same place?

A. Yes, sir.

Q. And you agreed to do so?

A. Yes, sir, I did.

Q. (By the Court.) Where did you sleep that night?

A. I slept with a friend, a lady that came down, I suppose she was Mr. Parker's friend, I don't know who she was; I went with her.

Q. Where did you meet this friend of Mr. Parker's?

A. I met her outside on the street.

Q. Out on the street?

A. Yes, sir, she hadn't time to come upstairs; they telephoned for her, I guess.

Q. You understand she was sent for to come and meet you?

A. I suppose so, not especially. I don't know where she come from or anything.

Q. What did you say to these gentlemen as to where you were going when you left the apartments of Mr. Parker; did you tell them at all where you were going or how you were going to spend the night?

A. Of course they knew where I went to, I am sure.

Q. What did you say to them about where you were going?

A. I told them I couldn't take any place in the hotel, I could not go and call on my friends that

late at night, and I suppose Mr. Parker telephoned for somebody.

Q. (By the Court.) You understood Mr. Parker found you a place to sleep?

A. Yes, sir.

Q. What did Mr. Parker say? That is what I want to know, in answer to your statement that you could not go to a hotel that time of night or call upon your friends, what did he say?

A. I don't know what he answered to it, that is all, I cannot recall that he ever said anything about it.

Q. How did you understand that there was any provision made for you for that night, that there was any arrangement made?

The Court: How did you hear you were going to sleep at another house?

A. I didn't hear until just a minute before I left the hotel, that is all.

Q. Well, then, who made it known to you?

A. Mr. Parker said, "I sent for"— I told him I didn't know where I was going to sleep that night, and he said afterward, "I have got a friend here, you can go up and sleep with her," that is all.

Q. And then you met the friend outside, did you?

A. Yes, sir, I met her outside.

Q. Did Mr. Parker introduce you to her?

A. I believe he did, yes, sir.

Q. You remember that he did, do you?

A. Yes, sir, I believe he did introduce me to her.

Q. Then he went out with you to the street and introduced you to this friend?

A. We went out of the hotel because it was very late.

Q. (By the Court.) It was a hotel where Mr. Parker was?

A. I don't know whether it was a hotel or whatever it was.

Q. (By the Court.) Something like that?

A. Yes, sir.

Q. What was the name of this lady? I don't know whether you gave it.

A. I don't know the name or anything because I never asked, I can't recall the name, because I never wanted—

Q. You didn't learn the name and never have since?

A. No, I never have.

Q. And where did you go with her to spend the night?

A. I went up to 118th Street, near Morningside Park.

Q. And passed the night there, did you?

A. Yes, sir.

Q. Was she a married woman?

A. No, sir, she was not a married woman; I don't know what she was; there was two sisters, they lived together.

Q. (By the Court.) Two sisters lived together?

A. Yes, sir.

Q. And you spent the night there and left there when?

A. In the morning, about eight o'clock.

Q. Where did you go then?

A. I went down to Mr. Parker's house.

Q. Who did you see there then?

A. I saw Mr. Duke and Mr. Parker, I think Mr. Ben Duke.

Q. And anybody else?

A. No, sir, that is all I saw.

Q. How long were you there that day?

A. I was only there for about an hour, an hour, that was all.

Q. And how was that time spent?

A. I was just sitting in the chair, that was all, nothing was said on anything.

Q. Crying still?

A. No, I was not crying at that time; no, sir, I was all right.

Q. Did they ask you any questions?

A. No, sir, they did not.

Mr. Lindabury: Is all this detail, or are you trying to waste time, Mr. Strong?

The Court: This has all been gone over by Mr. Chauncey Parker, as I recollect, but I feel disposed to give counsel every opportunity to test the accuracy of this witness, even though it is at an expense of time and space that I think is hardly warranted.

Mr. Strong: I think these matters are not unimportant, and I am trying not to take more time than is necessary.

The Court: Under the circumstances I am not disposed, Mr. Strong, to interfere with your examination except to remind you of the propriety of your not crossing the same ground.

Mr. Strong: I don't wish to.

Q. Then on this second day when you went there in the morning, as you have last said, there was no effort made by these gentlemen to obtain any statement from you, is that what you say?

A. No, sir, there was not.

Q. You were there with them in the same room for an hour?

A. Well, I can't— I guess it was about an hour, yes. Well, I sat down there waiting. I don't know; I sat down, I guess that was all.

Q. I want to understand you. Do you mean that

during that time—you say it was about an hour; of course you can't be accurate about that, and I don't mean to pin you down to it—but do you mean during all the time you were there that these gentlemen, the two Messrs. Duke and Mr. Parker, were in the same room with you?

A. Yes, sir; they were sitting, going out and in.

Q. And you simply sat there?

A. Yes, sir.

Q. Without having any special conversation with them?

A. Yes, sir; there was nothing said; no, sir.

Q. And after that you went away. Where did you go?

A. No; Mr. Ben Duke and Mr. J. B. Duke and I went up with another gentleman and up to his house, 1009 Fifth Avenue.

Q. (By the Court.) Went up to Mr. Ben Duke's house?

A. Yes, sir, 1009 Fifth Avenue.

Q. That is, the two Messrs. Duke went with you, did they?

A. Yes, sir, and then another gentleman. I don't know his name?

Q. And did Mr. Parker come up there?

A. No, sir, he did not.

Q. You left him at his apartments?

A. Yes, sir.

Q. Well, how did you come to go up to the house in Fifth Avenue?

A. Because Mr. Duke said he was going. Mr. Ben Duke said, "I am going to open my house," that is all.

Q. Did you make an arrangement with him to be employed by him?

A. No, sir, not that time; no, sir.

Q. Not that time?

A. No, sir.

Q. But what was your purpose then? How did you come to go to the house that morning?

A. Because I simply had nothing else to do, and I supposed I might just as well go with them and look at the house; I never saw the house.

Q. Did he ask you to go with him?

A. Yes, sir; he said, "Nellie, if you like to come along, come along," and I said, "Yes, I like to go along."

Q. That was just to look at the house?

A. Yes, sir, at that time.

Q. And up to that time nothing had been said about your being employed there?

A. No, sir.

Q. And you had no other object in going there but just curiosity to see the house; that is all?

A. That is all; yes, sir.

Q. How long did you remain there in that Fifth Avenue house, 1009 Fifth Avenue?

A. That very same day.

Q. How long did you remain there from that time?

A. Well, I remained till now. I am living there now.

Q. And you mean that has been your home from that day until now?

A. Yes, sir.

Q. When was it that it was first suggested to you that you should take employment there?

A. Well, it was the very—the same afternoon.

Q. And who suggested it?

A. Mr. Ben Duke said it.

Q. Mr. Ben Duke?

A. Yes, sir.

Q. The house was not then occupied, was it? At that day?

A. No, there was only a caretaker.

Q. Only a caretaker?

A. Yes, sir.

Q. And the family did not arrive to occupy the house for sometime, I understand?

A. No, they did not, no, sir.

Q. Did your employment begin that very day?

A. Yes, sir, the very day, yes.

Q. Employed you that day to take effect immediately?

A. Yes, sir.

Q. And what did you do from that time on?

Recess.

A. I am keeping on sewing and doing general work just the same. Some of the general work.

Q. Did you commence to do that work on the very day you went there?

A. No, I did not.

Q. When did you begin to do that work?

A. I do all sorts of things, we helped them to get along because there were very few girls and we helped along.

Q. You spoke of going to take lunch at the Manhattan Hotel and going elsewhere about New York with Maggie Smith; when was that?

A. Maggie Smith came in the same day, the day we went to 1009 Fifth Avenue.

Q. She appeared there the same day?

A. Yes, sir.

Q. And were you placed in her charge?

A. Not especially, no; no, I was not.

Q. Did she remain there with you?

A. Yes, sir, she did.

Q. How long?

A. I guess she stayed until next day and she went home to the farm.

Q. Was she only there over one day?

A. Yes, sir.

Q. (By the Court.) You mean at that time?

A. Yes, sir.

Q. She returned, however, later?

A. Yes, sir, she has been there since.

Q. When Mr. Duke went to Europe on the 15th of July did you hear Mrs. Duke ask him either that day or the day before to take her with him?

A. No, I did not, no, sir.

Q. Did you hear anything said about her going to Europe with him?

A. No, sir, I didn't hear anything, no, sir.

Q. When Mr. Duke was sick in the 68th Street house did you use to be up in his room in the evening?

A. Sometimes I was, yes, sir.

Q. Well, generally were you?

A. No, not generally, of course every evening; yes, I was up there every evening, yes, sir.

Q. Every evening?

A. Yes, sir, because I used to bring up the ice water and things like that that was wanted.

Q. (By the Court.) You mean you didn't stay there all the evening?

A. No, sir, I did not, but I was up there.

Q. You simply came up once to bring ice water?

A. Yes, sir.

Q. And what else?

A. And anything that was wanted I used to bring.

Q. If they needed you they sent for you?

A. Yes, sir.

Q. But you were not there unless you were sent for?

A. No, sir.

Q. And what time were you accustomed to bring up ice water?

A. Used to bring it up about half-past nine.

Q. And would Mrs. Duke be there at that time?

A. No, not that I can recall; sometimes I suppose she was there and sometimes not; I can't exactly recall whether she was there that time or not.

Q. I want to know what was the usual thing while he was sick; was she generally in his room in the evening?

A. No, not all the time; no, sir.

Q. You spoke about being there once, I think, when she bade him good-night for the night?

A. Yes, sir.

Q. Well, when was that?

A. That was when Mr. Duke was sick.

Q. Do you remember when it was particularly, what part of the sickness?

A. No, I can't recall the date or anything; no, sir.

Q. What part of the sickness, whether it was the first part or what part?

A. First part; yes, sir.

Q. First part of his sickness?

A. Yes, sir.

Q. Do you know what time of day, what time of night it was?

A. That was about quarter to eleven, something like that.

Q. Well, how did you happen to be up there at that time?

Q. Well, I carried up some water, something that the nurse had wanted, I guess it was some water and some buttermilk; Mr. Duke used to drink buttermilk and we never used to bring that up until the very last thing.

Q. The very last thing would be about what time?

A. By the time we were finished downstairs, and that would be about half-past ten.

Q. Do you mean every night you went up with buttermilk?

A. Half-past ten when we went upstairs, that was the last thing we always took up, the buttermilk; yes, sir.

Q. When you went up at half-past ten did you always take buttermilk in to Mr. Duke, is that what you say?

A. Yes, sir.

Q. Well, she bade Mr. Duke good-night then?

A. Yes, sir.

Q. In your presence?

A. Yes, sir.

Q. What did she say?

A. She says "Good-night," and she said she was going to go to bed, that is all.

Q. Did she kiss him?

A. I expect she did.

Q. I want to know what you saw?

A. Yes, sir; she kissed him good-night; yes, sir.

Q. Then where did she go, which way did she go out of his room?

A. She went out of the door between his room and her room.

Q. She went into her own room then?

A. Yes, sir.

Q. And closed the door, you said?

A. Yes, sir; she closed the door; yes.

Q. That was half-past ten o'clock at night?

A. Yes, sir.

Q. Where did you go then?

A. Well, I went upstairs in bed that night.

Q. And you went to bed, did you, directly?

A. Yes, sir; I went to bed directly; yes, sir.

Q. And you didn't see anything more of Mrs. Duke until the next day did you?

A. No, I did not; no, sir.

Q. Was there any other time that you saw her bid her husband good-night?

A. No, I can't recall, but that is the only time.

Q. That is only once?

A. Yes, sir; that is the only one I can recall.

Q. Are you able to read French?

A. No, sir; I am not.

Q. You were not interested in Paris Heralds, I suppose, themselves, were you?

A. I was, they were in English.

Q. They were in English?

A. Yes, sir.

Q. And did you always read them?

A. I always looked through them and see if there was any news from New York; yes, sir; I did.

Q. During the wedding trip, while they were traveling in Europe, did Mr. and Mrs. Duke appear to be fond of each other?

A. Not all the time, no.

Q. What do you mean by that?

A. They used to have quarrels once in a while, words.

Q. Well, were their quarrels frequent?

A. No, they didn't, no.

Q. What?

A. No, they didn't, they seemed to be fond of each other between times; yes, sir.

Q. What did they quarrel about? Give us an idea.

A. Well, I can't tell you that because I never heard it; I never, they never did it in my presence, because I heard it, because I was only in the room next to them.

Q. Was your room next to their sleeping room generally?

A. Yes, sir; most of the time, not generally, but most of the time I had a room next to them.

Q. Did you mean then that you heard them quarrel in their sleeping room?

A. Yes, sir; I did.

Q. But not in your presence?

A. No, sir.

Q. How did you judge that they were quarreling?

A. Because I heard they were talking loud, and she told me next morning they had had a quarrel.

Q. Did you hear any part of what was said between them?

A. No, I did not, sir; I heard them quarreling, but I never heard what was said or anything; I couldn't do that because on account of the rooms, I couldn't do it.

Q. And did these quarrels sometimes, times when you heard quarreling at night, occur pretty often?

A. Well, I can recall three nights.

Q. Three nights? Where were they?

A. That was in Venice one night, and that was in Genoa, that was two nights, that was on New Year's eve and in Venice, I don't know, it was some time in January, I think.

Q. Those were three nights, and were there other nights that you can recall particularly?

A. No, I can't, because that is the times I had rooms next to them especially.

Q. They traveled part of the time in an automobile, I think?

A. Yes, sir; they did.

Q. Will you state what part of the journey was made in an automobile, between what places?

A. Yes, sir.

The Court: I don't think this witness was asked anything about it. An itinerary was given by the secretary, who kept an account.

What is your object, merely to test this witness' recollection? I don't think she was asked about it at all.

Mr. Strong: Not entirely.

The Court: But it is taking up a great deal of time and I cannot see the point, you are not now of course with this witness attempting to make a case in support of your defense, if you have got one, as I suppose you have, which sets up something or other, and I dislike very much to have the cases mixed. I prefer you should put in your case, whatever you have, by itself. It confuses my mind, and I think it is very disagreeable.

Mr. Strong: For the moment I did not recall whether this witness—

The Court: She has not been asked on the subject, I believe, at all, except with regard to the Paris papers. Am I right about that?

Mr. Lindabury: That is all, your Honor.

The Court: She said generally wherever they went they had these Paris editions of the New York Herald.

Q. During the last two weeks of August that you said that you remained up until Mrs. Duke retired every night where did you remain?

A. In her room.

Q. (By the Court.) Her bedroom?

A. Yes, sir.

Q. In her bedroom?

A. Yes, sir.

Q. And remained there until she came up to go to bed?

A. Yes, sir.

Q. And did you assist her in disrobing for the night?

A. Yes, sir; I did.

Q. That you did every night after she told you that Mr. Duke had sent detectives to watch her?

A. Yes, sir; I did.

Q. Was there any other day in the week that Mrs. Duke went to visit her mother except Thursdays?

A. No, that was the day she generally went; I can't recall any other time that she went.

Q. You understood Thursdays was the visiting day?

A. Yes, sir; visiting days for her to go up there.

Q. You don't remember her ever going there any other day?

A. Not that I can recall; I can't recall any special days but Thursdays.

Q. You never went there with her?

A. No, sir, I never did.

Q. (By the Court.) Did she stay all night when she went to see her mother?

A. No, sir; she generally left at twelve o'clock in the morning and came back at half-past five in the afternoon.

Q. How did she go there?

A. She went down to the Grand Central Depot and took the train and went up to White Plains.

Q. White Plains, was it?

A. Yes, sir.

Q. And what time in the afternoon did you say she returned?

A. At half-past five.

Mr. Lindabury: Are you through, Mr. Strong?

Mr. Strong: I believe so, practically.

Mr. Lindabury: That is all; no further questions.

The Court: The complainant then rests, I understand?

Mr. Lindabury: Yes, your Honor.

The Court: And the last witness for the petitioner has been cross-examined.

Mr. Strong: If the Court please. On behalf of Mr. Huntoon I move that the petition be dismissed, for the reason that the Court has no jurisdiction to entertain it. There has been no effort to prove a residence of either the petitioner or the defendant in the State of New Jersey and this Court has jurisdiction in cases where the adultery, alleged adultery was committed without this State only in case the complainant or defendant, complainant and defendant or either of them, reside in this State at the time of the adultery and at the time of filing the bill or petition. Now the case, as it is made here on this hearing, is absolutely barren of any evidence whatever to suggest even a residence in the State of New Jersey by either of these parties at any time whatever. It has been said that there was a plea for jurisdiction by Mrs. Duke and a hearing upon that plea, but that procedure, to that proceeding Huntoon was not in any way made a party, nor was he notified of the hearing, although he had already intervened and was a party upon the record; he was not made a party to that hearing. As to Huntoon, whatever was said or done upon that plea to the jurisdiction is absolutely *inter alia acti*. I understand that the burden is upon the petitioner. The burden as I take it is upon the petitioner to prove his case both as to the jurisdiction and as to the merits against the co-respondent in the same way that he must prove it against the main defendant. That

being so, it seems to me that there is nothing here that calls upon Mr. Huntoon for any defense. Now, upon the face of their testimony as they have left it they have shown presumptively at least a residence in the State of New York by both of these parties throughout the whole time of the alleged adultery, and even down to the present time, so far as there is any proof.

The Court: I am trying to find the time when—the order overruling the plea was filed December 22. The case was set down for hearing on that plea on the 28th of November; the order of reference was November 21. Plea to the jurisdiction was filed on November 2, sworn to on the second of November. You are right, sir, in saying that your appearance had been entered.

Mr. Strong: Yes, sir, some time in the latter part of October, 26th or 27th, I think.

The Court: Yes, 27th of October, but there is no proof before me that there was any service of that notice of that appearance, and what I held or intimated the other day might be treated as a plea upon the solicitors of the petitioners, but the fact is that the plea was filed; it was referred for hearing and the case was tried thoroughly between Mr. Duke and Mrs. Duke, and the residence of both of them in New Jersey was proven to my satisfaction, domicile, a domicile in New Jersey was proven to my satisfaction, and I so held. Now you say that you should have had notice of that hearing and been permitted to appear. I do not so understand the statute. The statute says you shall be permitted to appear and defend yourself against the

charge of adultery against you. That is what I understand the statute. But you have appeared so far as you are concerned, and while I think that you are entitled to set up any defense that the defendants might set up, I do not think that it applies to the question of jurisdiction. This is the statute. I will repeat it again: "In action for divorce because of adultery it shall be lawful for the Chancellor in his discretion at any time before final decree to allow any person charged in the pleadings with committing adultery with either of the parties in the suit to intervene for the purpose of defending himself or herself against the charge so made." You appear simply for the purpose of defending yourself against the charge of adultery. I intimated some day last week, last Friday I think, that that allowed you to really defend her against the charge of adultery; don't go further than that. It don't authorize you to raise the question of jurisdiction. You have appeared. Jurisdiction as to you is beyond all peradventure. You voluntarily came in. She had the right to contest the question of jurisdiction. She did so, in proper form. The issue was tried. You made no application to appear. I am of the opinion you were not entitled to appear and take any part, any action in that part of the case at all, because the statute only allows you to intervene to defend yourself against the charge of adultery. That was not there involved. For those reasons I overrule your motion.

Mr. Strong: Will your Honor allow me just a suggestion?

The Court: Certainly.

Mr. Strong: I of course do not wish to express my views in opposition to your Honor's, but only to suggest that the issue on that plea to jurisdiction was not the issue of personal jurisdiction over the defendant, but the issue was of the jurisdiction in the cause. Now it seems to me that it must be open to the co-respondent to raise the question of the Court's jurisdiction in the cause, which depends, of course, upon the domicile of one or the other of the parties. It is in that view that the matter has presented itself to my mind, and I respectfully insist that the statute is broad enough to warrant the co-respondent in raising the question of jurisdiction as well as any other. For instance, if we are permitted to go into the trial of the cause and it appears on the face of the proofs, it appears affirmatively that these parties reside and always have resided outside the State, it can hardly be, I think, that we have not the right to say to the Court that the Court has no authority to pass a decree; and that is my position now; all that took place upon the plea to jurisdiction was absolutely not binding upon us; and so it strikes me there is no jurisdiction of the cause so far as Huntoon is concerned.

The Court: I disagree entirely with the counsel, and what he has just said has fortified me in my opinion. Now this is threshing old straw, but I want to state what my view is and always has been, and I am happy to say that it has, as I understand it, recently been concurred in by the Supreme Court of the United States. This Court has no power

to enter any judgment against a person as contra-distinguished from judgment against a thing, in the absence of inter-territorial service or appearance, cannot act on extra-territorial service with certain exceptions, and those are on the judgments *in personam*. The exceptions are the ordinary exception, which illustrates the whole thing, is where a man has a mortgage on land in New Jersey, and the only way any person interested who lives out of the State, there the property, the thing in question, is in the State, and it would be a denial of justice to say that that man should not foreclose his mortgage and cut off the equity of redemption unless he could catch the party in the State. Now the only ground on which this Court can assume jurisdiction of the question of divorce, where it does not have service within the territorial limits, is that there is a thing like the land in the foreclosure case within the State. That thing is held to include the married state, so held by Chancellor Zabriskie a great many years ago, and I have had occasion to repeat it a hundred times, and I believe I do in my opinion in this case. If there is the married state in this State, by one party leaving the State and getting away cannot deprive the Court of its jurisdiction to deal with that married state. Our Courts have held, as I think erroneously, with great deference to the Court of Appeals, has held that the residence in the State of one party to the marriage relation is sufficient to create the married state in this State, and we have granted a great many divorces—I am sorry to say I suppose I have advised a hundred

that are good for nothing beyond the limits of the State; but that is not the question here. It was in my mind, however, when I decided the other issue, as counsel who heard what I said will bear me out in saying. I there held that on the facts in the case before me there was a matrimonial domicile as well as actual domicile in the State of New Jersey, because Mr. Duke and his wife up to the time just before this petition was filed never did separate; they had one home. They had two homes, if you will, but Mr. Duke used to make his home in Somerville, and the proof was that his wife was out there with him shortly before he went to Europe, living there in his house, and complaining on the stand that the servants did not treat her rightly. Now, that being established, I held that the Court had jurisdiction on the ground of matrimonial domicile, the very ground on which the Supreme Court of the United States put it in the Atherton case, and which they have confirmed in the late case of Haddock; they held that there must be a matrimonial domicile before the Court could have jurisdiction to deal with the married state by an ex-territorial service. Now that is just as far as it is necessary for me to go in explaining the thing, the situation. I want counsel for the defendant to understand that I fully appreciate it. But our Court of Appeals has held that it is only necessary for one to have a residence, and I want to say here, which probably is not necessary for me to say, that I do not believe that the Legislature in the series of Acts which have built up our divorce law, and which I set out all *in extenso* in the opinion that went

to the Court of Appeals—I think it is in the Tracy case—ever had the least idea of granting a divorce that was not good everywhere. I do not believe they intended to adopt the policy of awarding a divorce which was good only in New Jersey and not everywhere. However, now let us see what this Act is. I have read it once. It is to enable a party who is not sued but is charged with adultery to come in and defend himself or herself against the charge of adultery. That is all. It is none of his or her business whether any divorce is granted, valid divorce or invalid divorce granted, or whether the Court has jurisdiction upon it. Mr. Duke, we will suppose, is an innocent young gentleman and is charged by some man with being too intimate with his wife. He says, "That will hurt my reputation, and I don't want that to go out, and I want a remedy," and there is no Act in the Legislature allowing him to do it, never was in New Jersey until this Act was passed a few years ago; and they say you may go in and defend yourself. And so a woman who may be charged with having committed adultery with a husband who is sued by his wife. Why, her reputation is involved. And the Legislature finally thought that was not right, that a woman or a man who was charged that way, and had his mouth closed, could not go in and fight and defend it and have a chance, and the whole object of the Act was simply to give that party that right. Now this don't extend to the question, in my judgment, of challenging the jurisdiction of the Court on these nice questions which have just been agitated in the Supreme Court of the United States,

which I have tried to explain. For those reasons, which are intensified in my mind by the argument which the learned counsel has made, the motion must be denied, to say nothing of the other point that there is no proof that counsel of petitioner was served with notice of his appearance, and they, I believe, denied it the other day, said they had no recollection of it or ever got the servants.

You may proceed with your defence. Of course, if I thought there was anything in it, if the petitioners are afraid of this question, why I should allow them under the circumstances to open their case and prove the residence here.

Mr. Lindabury: The petitioners are possessed of no such fear.

The Court: No, I suppose not; you did not act that way. I thought I would give you a chance.

Mr. Clark: We have a decree of this Court on that subject.

The Court: Well, he says he was not a party to that. I think he was not entitled to be a party to it. I suppose you take that view.

Mr. Strong: Your Honor, I think perhaps incidentally and without intending to lay stress on the mention in your remarks that there was no proof of any service upon the complainant, petitioner's counsel—

The Court: Of your answer, what you call an answer.

Mr. Strong: No, there was not.

The Court: It was said before me the other day so, and I think Mr. Lindabury admitted that he got a copy of the order of the Chancellor.

Mr. Strong: No, got copy of the answer.

The Court: I didn't understand him so.

Mr. Strong: Yes, sir. I am prepared to prove by my own oath that I mailed to the firm of Lindabury, Depue & Faulks a copy of the order, and it appears by the endorsement upon the answer, the original appearing on file that a copy of that was sent by the clerk to Mr. Lindabury.

The Court: Clerk of the Court, eh?

Mr. Strong: By the Clerk of the Court, which accords with Mr. Lindabury's admission the other day.

The Court: I didn't put my opinion on that. I merely said that because I thought Mr. Lindabury denied ever having received it, but it is all the same.

Mr. Strong: I only want the fact to appear as it is.

The Court: I can't make any fact appear that don't appear. I suppose there is a little memorandum on the back of the paper, "Copy to Lindabury, Depue & Falks," whether that is proof or not.

Mr. Strong: Oh, yes; and we have had Mr. Lindabury's own admission too, which is rather more forcible than that.

The Court: I may be mistaken about that.

Mr. Strong: To put the matter beyond controversy I will ask to be sworn.

ALAN H. STRONG, sworn:

On the 27th day of October, 1905, I mailed personally myself to the firm of Lindabury, Depue & Faulks a true, but uncertified copy of the order

made in this cause on the 24th day of October, 1905.

The Court: Admitting your client?

Mr. Strong: Giving leave to Frank T. Huntoon to intervene in this case for the purpose of defending himself against the charges of adultery made against him in said petition. I am able to swear to that date positively from a note which I made at the time on the back of another copy of the order which I retained and which I produce and offer in evidence.

The Court: There will be no dispute about that.

Mr. Lindabury: I do not deny, of course, what counsel says, but I do deny that my firm ever received the order that he speaks of.

The Court: This is the order admitting—

Mr. Lindabury: We never received it. I have sole charge of that case; no other member of my firm had anything to do with it; if a paper of that kind had come to the office it would have been given to me. No such paper was ever received.

Mr. Strong: Perhaps you ought to go on the stand, since I have.

Mr. Lindabury: I don't choose to.

Mr. Strong: Then I submit that that statement is improper.

Mr. Lindabury: You don't prove that I got it by swearing that you mailed it.

Mr. Strong: What I proved I have proved, and the Court shall take such notice of it as is proper. I ask that that paper be marked.

Paper marked Exhibit D-1.

FREDERICK REINERT, sworn on behalf of the defendant, Mrs. Duke:

Direct-examination—By Mr. Parker:

The Court: Here is a map of West 68th Street, between Columbus Avenue and Central Park West, with distances, numbers, vacant lot, and Number 11 West 68th Street, 22 feet front, and next to that is Number 9, 28 feet front, and next to that is one hundred. I see that; that is in my mind pretty well already.

Mr. Parker: Your Honor is merely reading from the map. I haven't made any proof with reference to the map. I thought if your Honor would look at that and then make up your mind whether it would be better to have it on the table or on the board. I would like to put it on the board.

The Court: I would rather have it here, Mr. Parker.

Mr. Parker: How can I see it.

The Court: You have seen it, haven't you?

Mr. Parker: I have only looked at it.

The Court: I have got to get up and look at it every time; I don't like to; there is no jury here.

Mr. Parker: There are other people in the case.

The Court: Nobody but these counsel and myself.

Mr. Parker: I would like to put it upon the board.

The Court: Not at present.

Mr. Lindabury: We will waive our right and privileges for the benefit of counsel and Court. The audience, I suppose, has no right.

The Court: No rights whatever, not one of them.

Q. What is your occupation?

A. Civil engineer and city surveyor.

Q. And have you any official position?

A. I am city surveyor of New York City.

Q. What is your age?

A. I am forty-two.

Q. And how long have you been city surveyor of New York City?

A. About fifteen years.

Q. Are you one of the city surveyors or do you hold the office of city surveyor by yourself?

A. I am one of the city surveyors, appointed by the city.

Q. And you have practiced your business of surveying for all the time that you have held the office you speak of?

A. And before.

Q. And before. Have you ever been to the house Number 11 West 68th Street in the City of New York?

A. Yes, sir.

Q. On what side of the street is it?

A. On the north side.

Q. Did you at the request of counsel for the defense in this case make some maps of 68th Street, I think one map is, and the other is a map of the front part of the house 11 West 68th Street, and the other is a map of the third floor of West 68th Street. Did you do those yourself?

A. Yes, sir.

Q. With whose assistance did you do them?

A. I got my assistants, my regular assistants and two other men.

Q. (By the Court.) Done in your presence or under your direction?

A. Yes, sir.

Q. And when?

A. April the 30th, I think we started, been at it ever since.

The Court: Dated April 30, 1906.

Q. Of this year?

A. Yes, sir.

Q. They were all made at the same time and by the same help?

A. Yes, sir.

Q. Now will you identify these papers, please?

The Court: Just handed them to me, didn't you

A. Yes, sir.

The Court: All right; go on Mr. Parker.

Q. (By Mr. Strong.) How many are there?

A. Three.

The Court: One is a map of West 68th Street, between Columbus Avenue and Central Park West. It shows every front, and the numbers on the north side, and Number 11 is marked in red. The spaces of each house is given; Number 11 is 22 feet front; next to that, towards Central Park, is Number 9, 28 feet front; next to that, towards Central Park East, is 100 feet; next, west of Number 11, is a vacant lot 50 feet front. That is all laid down by actual measurement, is it?

A. Actual measurements, yes, sir.

Marked Exhibit D-2.

Q. Are the maps all drawn to scale?

A. Yes, sir.

Q. The scale is mentioned on the map?
A. Yes, sir.

The Court: The next is the plan of the third floor of Number 11 West 68th Street, scale three feet to one inch, also dated April 30, with this gentleman's name on, Frederick Reinert, Civil Engineer. Was this made from actual measurement?

A. Yes, sir.
Q. Drawn to a scale?
A. Yes, sir.
Q. Scale marked upon the map?
A. Yes, sir.

The Court: All doors shown.

Marked Exhibit D-3.

The Court: The next is a map of the front part of Numbers 9 and 11, showing a part of the vacant lot, showing the sidewalk, and this is on a scale of two feet to the inch. It shows the portico that covers the two entrances to Numbers 9 and 11. The numbers of the steps are given, and the bay window is shown; then the steps leading down to the basement, together with an area wall. You make the same evidence as to that, eh?

A. Yes, sir.

Marked Exhibit D-4.

Q. The scales of all these three maps the same?
A. No, sir, different.

The Court: The last one is two feet to the inch; the other one is three feet to the inch, and the map of the street is twenty feet to the inch.

Mr. Parker: I would like now to have it put upon the frame, if I may.

The Court: Well, they will be very inconvenient for me, decidedly so. I can't see from here at all. You may have it so. It will only prolong it, Mr. Parker, and I want to hurry this thing along. If you persist in it you may. It is personally disagreeable to me.

Q. I call your attention to the map called Exhibit D-4.

The Court: Don't call it by exhibits. Say map of the front, or something of that kind. Don't number them by exhiibts. Don't question him by that.

Q. Well, this happens to be a map showing the front portico. Does the map also show the front portion of Number 9 West 68th Street?

The Court: It does; I have already stated it; it shows it plainly.

A. Yes, sir.

Q. And what is that?

A. Door, door and covered portico.

Q. I know; but I mean 9 West 68th Street—what is the character of that house?

A. It is the same kind of house as the one next door is from the outside appearance. I didn't go in.

Q. (By the Court.) You have been in it?

A. No, sir.

Q. Is the front part of it made of the same material as the front part of the house called Number 11 West 68th Street, so far as relates to the steps and the covered portico and the first floor?

A. Yes, sir.

Q. And what is it made of—what is it built of, that part of it?

A. The portico is first front area wall and have entrance steps going in for both houses; the same way for both houses; it is covered, it has columns.

Q. And of what material is it made?

A. Stone, white stone.

Q. (By the Court.) You mean to say there is one flight of steps for each house?

A. Yes, sir; no, not one flight of steps; there are two flights.

Q. (By the Court.) One for each house?

A. One for each house, but they are built the same.

Q. And are they flush with the property line of the street?

A. Well, they set out from the property line.

Q. (By the Court.) How much.

A. About five feet.

The Court: It shows on the map, Mr. Parker; I saw it.

Mr. Parker: I don't think the property line is shown here.

The Court: Yes, it is. That is sufficient for me to see that they project.

Q. How many steps do you go up?

The Court: They are all counted there.

Mr. Parker: I would like to ask a question.

The Court: Mr. Parker, I want to say this to you, as a counsellor of this court, do you want to prolong this examination for the sake of prolonging it? Everything that he can swear to is on that map, and I can read it with my own eyes there now. Everything he can swear to is there unless it is he has been in the house, and he hasn't been in. If you want to ask him everything that is on those maps——

Mr. Parker: I object to your commenting upon my conduct.

The Court: I mean to say it is useless, in my judgment. I have had a great deal of experience in this kind of thing, and those maps show everything there is there. If there is anything you want him to swear to that is not on the map, go on and examine him. It only prolongs, that is all. I shall take those maps as absolutely true, stating the truth, unless they are attacked by the other side.

Mr. Parker: I think I have got a right to make this record up in a way which can be understood.

The Court: Well, I dislike to exercise an authority against a respectable counsel, but I say to you, Mr. Parker, I have tried these cases for fifty years, I have dealt with maps, and I say to you that I have been a Judge for sixteen years, that nothing that that man can say in the way of adding to those maps can add one thing to his evidence, not a particle; in my judgment they are got up in admirable style; it is all there. Now go right on and take up the time of the Court, but it annoys me dreadfully. There is no objection by the other side but I object on the score of time, and it is a most troublesome thing for the stenographer to write up and he is liable to make mistakes in figures and all that sort of thing.

Mr. Strong: I don't observe in this map the number of steps stated.

The Court: Yes, I see them there, one, two, three, four, five, six; they are numbered.

A. No, the numbers are not on the steps.

The Court: Well, they show there, the steps show, and if you will explain to me what difference it makes in this case whether there are three or five steps I would be very glad to know it.

Q. Will you look at the right-hand side of this map, which is still the same one that we were discussing, the front of Numbers 11 and 9 West 68th Street, have you shown the steps leading up to the front door of Number 9 West 68th Street?

A. No, sir.

Q. Can you point out where they are?

A. They go—I was told not to point.

Q. Can you make a mark upon the map where they are?

A. Yes, sir, I can.

Q. Will you do so?

A. Yes, sir; they go right in here opposite the front door.

The Court: The pointing is lost. I forbid you to point.

Q. Will you please indicate on the map there, with the pencil or in ink, which ever you please?

The Court: Better do it to-night after we adjourn.

Mr. Parker: Well, the witness then may do it later.

The Court: I am only showing you how you prolong this thing unnecessarily in my view. If you wanted the steps there you ought to have had them put on before.

Mr. Parker: As I say, your Honor, I never saw this map myself until ten minutes before I came in the Court.

The Court: You should have seen it; you should have been prepared long ago. Go on, now, I am not going to interrupt you any more.

Q. You marked "Door" on the map; does that mean the front door?

A. Yes, sir.

Q. And is that the same way with the flat on the other side?

A. Yes, sir.

Q. And is there one step between the platform of the covered portico and the front door?

A. Yes, sir.

Q. In both the flat and also 11?

A. In Number 9 and Number 11, yes, sir.

Q. Now let me have the street map. Now for purposes of convenience I am going to ask this witness to give some measurements.

The Court: They are all on there, aren't they, every measurement?

A. Yes, sir.

Q. (By the Court.) And they are all correct?

A. Yes, sir.

The Court: I refuse to let you ask him any measurement whatever; they are all on the map and he says they are all correct. I must put my foot down somewhere.

Mr. Parker: I object.

The Court: Your objection is overruled.

Mr. Parker: I wish to offer the measurement between Number 11 West 68th Street, as shown upon the map marked Exhibit D-2, and the corner of Columbus Avenue and West 68th Street. I also wish to offer the measurement from the front door of Number

11 West 68th Street and the Park paling on Central Park.

The Court: It is all down there on the scale. Can you answer without scale?

A. I will have to add up the distances, yes, sir.

The Court: Well, I can do that as well as you.

Mr. Parker: I would like to have it appear upon the record and I would like to have this witness now make the measurement so it can be put on the record.

The Court: I decline to take the time.

Mr. Parker: I object.

The Court: No difficulty at all; I can do it in a minute. When you come to argue this case you can do it.

Q. I now call your attention to plan of the third floor of Number 11 West 68th Street, which is marked Exhibit D-3. I notice on the right-hand side of the plan in the neighborhood of what is called the bathroom and closets, a certain portion of the plan which is marked "closet," just above a line drawn in a diagonal direction, looks as if the wall space was broken there, what is that, is that a mistake?

Mr. Lindabury: I object. This witness says he has never been in the house.

The Court: Oh, no; he went to the house and made these measurements. It was the other house he had never been in.

Q. What I am calling your attention to is that part there (indicating); is that an error?

A. I couldn't get at that outside wall; that line represents the outside wall and I couldn't get around to make that measurement so I simply

showed it, where it starts, but it shows the interior; but this shows all the interior; that simply represents the outside wall and I couldn't get the absolute measurement, so I couldn't put it down.

The Court: Do you think, Mr. Parker, I ought to sit here and hear you put a question of that kind and take up the time of the Court? I do think it is unfair for counsel to do that thing. What difference is it in this case whether the outside line is shown right or not; it is shown by an unbroken line. Everybody knows what that means.

Mr. Parker: Will you show me what that is?

The Court: He says he couldn't get at it to measure it.

Mr. Parker: I know; you didn't know that before. This is an exhibit in the cause. This man may be blamed for not making an accurate map.

The Court: What difference does it make whether it is accurate or not?

Mr. Parker: Your Honor is very impatient with me.

The Court: Mr. Parker, I think it looks to me as if you were wasting time deliberately.

Mr. Parker: I cannot imagine anything more important than to prove the truth about this house and location of it and location of the halls, and all that sort of thing, which I propose to do.

The Court: I shall be very attentive when you begin to defend the case.

Mr. Parker: I think I am beginning now.

Q. Did you notice where the beds were?

A. Yes, sir.

The Court: Are they marked there?

Mr. Parker: They are not marked there, are they?

A. No, sir.

Q. Will you kindly make a note then and indicate on the plans.

Mr. Lindabury: I object.

The Court: There is no proof that the beds at that time were in the same place they are now.

Mr. Parker: I propose to supplement that; It is easily enough done.

The Court: It is quite irrelevant where the beds stood on the 30th of April; it may be relevant to show where they stood on some other date. I don't think I can take the witness' evidence as to where they stand now at all, simply because it is not worth while to spend the time of the Court, that is all.

Mr. Strong: Will your Honor allow me a moment? Counsel says it may be relevant at some other date. Now if we show where they are located now—

The Court: Bring your witnesses and show them that map, and let them point out where the beds were. Nobody knows better than you, and both of you.

Mr. Strong: I was only going to suggest—

The Court: I overrule the question. I won't hear any more argument on it. I want you gentlemen to get to business.

Q. Did you take some— Oh, by the way, I am going to take up another matter now. If you want to cross-examine on these maps now is the time to do it.

Mr. Lindabury. We don't want to break the examination. We will wait for any cross-examination on the maps until you have finished the witness.

The Court: If there is anything you want to add to those maps, this case is set down for to-morrow. To save time let this witness add anything he has omitted. If you will withdraw your witness and add to the maps on the ground that they were not finished in time I will excuse you. You ought to have had your maps made long ago, had plenty of time, but I won't let you make maps here on the table under these circumstances, so unimportant anyhow. If you want to introduce something else, bring them along; go on with your case. Let this man take the maps and make anything you want there, and then come here and swear to it.

Mr. Parker: You have no cross-examination with reference to the maps?

Mr. Lindabury: Not until you have finished the witness.

Mr. Parker: I have finished with reference to the maps now.

Mr. Lindabury: That wasn't what I said. When you have finished with the witness we will determine whether to cross-examine or not and will do it all at once.

The Court: That is the better way.

Q. Were you there yesterday, you say?

A. Yes, sir, yesterday and April 30.

Q. Now who else was there with you?

A. I had one assistant from my office and two outside men with me.

Q. What were the names of the outside men?

A. One is Mr. Herman Schnedeker, the other one is Mr. Charles A. Wachter.

Q. So there were four of you altogether?

A. Four altogether, yes, sir.

Q. Did you go inside the house to the fifth story?

A. Yes, sir.

The Court: He said he did.

Mr. Parker: He didn't say it was the fifth story.

Q. Did you locate the bath-room on the fifth story?

A. Not on the maps.

Q. (By the Court.) Did you see it?

A. Yes, sir.

Q. Now will you describe the stairs leading from the third story to the fifth story as to where they start, and whether they are straight and how they lead up, one over the other?

A. Well, there is a banister goes around all the way up on the third story to the fifth story in a winding way, forming a sort of a shaft you might say, which is about one foot in width.

Q. Are the stairs for the most part straight?

A. Yes, sir.

Q. And where do they turn in in any way?

A. They turn at both ends, just a slight corner; they are square on four ends, they are square, only the corners are kind of evened up.

Q. You mean they are twisted stairs?

A. No, the sides are straight looking down, the four sides are straight, but where the four sides join at the corners they are rounded off; the map shows it too.

Q. (By the Court.) They have winding stairs, three winding stairs at the end, that is what you mean?

A. Yes, sir, it shows there.

The Court: Yes, winding stairs; I see it here.

Q. Well, the stairs for the most part are straight are they?

A. Yes, sir.

Q. And are they one above the other?

A. Yes, sir.

Q. So that when you come in on the third floor you go in directly under where you go in on the fourth floor?

A. Yes, sir.

Q. And so when you come out on the stairs the same thing is true?

A. Yes, sir, the same way.

Q. On both third and fourth story?

A. Yes, sir.

Q. And also fifth story?

A. Yes, sir, all the way up.

Q. Now did you gentlemen notice—first of all there is a rail of course along the hall, isn't there?

A. Yes, sir, the same as on the stairs.

Q. That is on the third and fourth and fifth stories, isn't it?

A. Yes, sir.

Mr. Lindabury: It probably would be as well to ask him what he saw instead of telling him that.

Mr. Parker: I wanted to get ahead faster.

Mr. Lindabury: Oh, go on then, if that is the object, go right on.

Q. Now, then, you have stated that there was a sort of a shaft, you mean by that, what? How long is that shaft and how wide would it be considering the line of the shaft as you see it in imagination?

The Court: He has already said the width of it was a foot.

A. It is a foot wide, and I have the measurement on here.

The Court: Yes, it is ten feet long.

Q. Is it shown on this map called the map of the third floor?

A. Yes, sir, it is shown on the map there; that shows the shape of the shaft right on there.

Q. (By the Court.) Shows the length of it?

A. The length and the width.

Q. (By the Court.) About ten feet?

A. Not quite ten feet.

Q. Did you make any experiments for the purpose of seeing how far one could see when standing in front of the bath-room door on the fifth floor next to the rail and looking downstairs for the purpose of seeing what could be observed from the third floor?

A. Yes, sir.

Q. Well, now how were these experiments conducted.

A. Well, we simply stood in front of the bath-room door right against the railing and looked down.

Q. (By the Court.) Leaned over, did you?

A. Leaned over and looked down in all kinds of positions, looked over the railing and leaned down, that position (indicating). I looked down that shaft.

Q. And you were looking down what you would call the shaft?

A. Yes, sir.

Q. And you said, "We made an observation;" what do you mean by that?

A. Well, myself and my assistant and two other gentlemen.

Q. (By the Court.) The two gentlemen you have named?

A. Yes, sir.

Q. Well, what part of it did you take?

A. Well, we all took the same, we took it in succession of course.

The Court: One after the other.

Q. While one was looking what was the others doing?

A. Well, I didn't pay attention, while I was looking they were standing there, of course, waiting for their turn, I suppose.

Q. Did you notice whether or not anybody was moving up or down the staircase? From the second to the third floor?

A. Well, I think I sent my assistants one time down there to walk around the corner there; we repeated that twice, that experiment, and I think the first time he walked around the third floor while we were looking down.

Q. Now was anybody walking from the second floor to the third while you were making these observations on the stairway?

A. Yes, sir; I think I told him to step up about three or four steps below the third and go on up to the third floor.

Q. Now when you were standing as you say you did in front of the bath-room door on the fifth floor and looking over the rail, what part of the staircase leading from the second to the third floor and of the stair itself could be observed?

A. Well, you can see the railing itself and you can see about half, not quite half of the step that leads to the third floor, that is looking lengthways along the shaft, and looking laterally you cannot practically look any further than the shaft itself; it is practically one, as if it was a solid affair going down.

Q. (By the Court.) You did not say that the shaft is railed in on the two sides?

A. Railed in all the way down.

Q. (By the Court.) And not supported by balusters?

A. Well, little uprights, ordinary.

Q. (By the Court.) What is the uprights, for instance, in here under the word "railing"?

A. Yes, sir.

Q. (By the Court.) Shown on that shaft, what is immediately under that?

A. The uprights.

Q. (By the Court.) What are the uprights?

A. They are sticks, round turned sticks.

Q. (By the Court.) Balusters, architects call them, don't they?

A. Yes, sir.

Q. (By the Court.) Balusters on both sides?

A. Both sides all the way around, on all sides.

Q. (By the Court.) Then when you are on the stairs half way up and more and your head comes above the level of the floor above you can look right through those balusters, can't you?

A. When you are where, Judge?

Q. (By the Court.) On the stairs part way up or part of the way down, with your head, however, above the level of the floor above you you can look right through those balusters to a wall the other side of the hallway, can't you?

A. I didn't try it; I suppose you could; I wasn't requested to look that way.

Q. (By the Court.) But you can tell now if it was not boarded up solid, those balusters, round sticks?

A. Yes, sir; it depends where you stand; you might stand in such a position you can't see anything. Those balusters on one side take up the

space between the balusters and the other side, you know; you stand in a slanting way here and you can't see anything on the other side.

Q. (By the Court.) You looked through two sets of balusters?

A. Three or four, I suppose, sometimes.

Q. You see this is two floors down. Where this woman stood is two floors down. Did you try to observe whether or not one could see the door of Mr. Duke's room—no, I will change that—the door of the rear bedroom on the third floor?

A. You could not see any door at all from the fifth floor; looking to the third floor you can't see any door at all.

Q. Well, now as you move from the middle, the bathroom is about the middle of the balusters, isn't it?

A. A little more toward one end; practically the middle, yes, sir.

Q. Which end? The north end or south end?

A. A little more toward the rear, I think.

Q. That is the north end of the house?

A. North end of the house, yes, sir.

Q. Now as you moved southward along the rail what effect does that have about your view of the step, of the stairway between the second and third floors, which you said that you could observe partially from the middle?

A. Well, you can see the complete step; if you go to the extreme end you can see the complete step and you can see part of the wall.

Q. Well, looking from the extreme end is it possible to see any part of the door leading into the rear bedroom on the third floor?

A. No, sir.

Q. (By the Court.) Did you try the experiment of a person while you were looking over the railing,

person come up the stairs and turn and go into that door? Did you try that experiment?

A. I had my assistant to walk up.

Q. (By the Court.) Did he go up and turn and go in the bedroom?

A. Well, he turned the corner there and that is all I can say, I don't know whether he went in or not; I don't think he went in, I didn't tell him to go in, but I couldn't tell if he did go in, because you can't see the door.

Q. Can you see any part of the door?

A. No, sir, you can't see the door opening there.

Q. (By the Court.) The door opens inwards don't it?

A. The plan shows, I don't know on that floor.

Q. Can you see any part of the door or the doorway, you understand what the doorway is, can you see any part of the door or the doorway?

A. No, sir.

Q. Now did you make any observations with reference to seeing a person in the front room on the third floor from the street?

A. Yes, sir.

Q. Well, now, when did you make such observations?

A. Well, we made one in the evening and one yesterday afternoon.

Q. The same parties?

A. The same; well, we were four in the evening before that, and yesterday we were only three, one gentleman couldn't come.

Q. Which one couldn't come?

A. Mr. Schnedeker.

Q. Now in what condition were the windows at the time that you made the observations?

A. In the daytime or in the evening?

Q. Daytime, and then in the evening.

A. Well, yesterday, the daytime, the screen, the window screen was in the window and there was an awning in front of the window which was let down.

Q. Did you notice how much that awning was above the sill of the window, the lower part of the awning?

A. Well, it was practically, I didn't measure it, but it was practically a foot, either a foot or a foot and a half.

Q. And how high were the sills, the window sills?

A. I have that on the map two feet six; it is on the map, it is marked on the map.

Q. (By the Court.) What is it, two feet wide?

A. No, the sill from the floor, to the sill.

Mr. Lindabury: Two feet six and a half inches above the floor.

Q. You have it on the map?

A. That is right.

Q. Well, that screen you brought over didn't you, the window screen is here?

A. Well, I don't know.

Q. Well, now what were the conditions when you made the observations in the evening?

The Court: Where were you when you made these observations?

A. Down in the street.

The Court: Whereabouts?

Mr. Parker: He told me he made them at different places. Just wait a moment; we will get it in just a second if your Honor will bear with me.

Q. What was the condition of the windows when you made the observations in the evening?

A. Well, the windows, there was no awnings in front of the windows, and the rest was about the same as in the daytime, practically the same, but there was no awnings there.

Q. Was there a screen?

A. Yes, sir.

Q. You say window screens, they were the metal?

A. Those ordinary screens, green wires you know.

Q. Mosquito screens?

A. Mosquito screens; yes, sir.

Q. Made of what?

The Court: Wire, he says.

A. Wire netting, wooden frames.

Q. They were made of copper weren't they, copper wire?

The Court: What difference does it make, we know what mosquito screens are, and why spend the time asking whether they are copper or iron or what they are? It is very annoying to have you spending the time of the Court to put such a question as that. Now you are trying the cause; go on and try it.

Q. Were the shades up?

A. Yes, sir.

Q. On both occasions?

A. Yes, sir.

Q. And were there any curtains or otherwise when you made the observations?

A. Well, now, the side curtains—

The Court: You mean shades? You know the difference between a curtain and a shade?

A. There was no shades; the shades wasn't down; it was those side curtains, you know.

Q. You mean on the sides of the windows, not in front of the windows?

A. On the sides, not in front of the windows; no, sir.

Q. Now did anybody stand in the window for the purpose of being observed from the outside?

A. Yes, sir.

Q. How was she dressed?

A. Well, the—

Q. The color?

A. Well, black, the top part of the dress, Mrs. Duke was there, was white, the white part, I don't know what you call it.

Q. The general effect of the dress was white or black?

A. It was white; yes, sir.

Mr. Lindabury: I thought this witness couldn't see.

Mr. Parker: They were in the house.

A. She was there when I left the house to go down and see her, but if she was there afterward I don't know.

Mr. Lindabury: That is what I supposed.

Q. Well, now, just tell how you made your observations in the street?

A. We went down the street about three-quarters of a block and then walked back.

Q. (By the Court.) Which side of the street?

A. On the opposite from Number 11 West 68th Street, and we looked up towards the window where we left Mrs. Duke and we couldn't observe anything, either shade or nothing at all, until we came practically right close under the window, and when

you were practically within maybe ten feet of the window, looking right straight up you might see a white form, shadow or something, but you couldn't tell what it is.

Q. This was in the daytime?

A. Yes, sir; that was in the daytime.

Q. (By the Court.) What intervened? The wire screen, the mosquito screen?

A. We were told to go downstairs.

Q. (By the Court.) I asked you what intervened and prevented you from seeing, the wire screen?

A. Yes, sir; the wire screen and whatever—I don't know what was all that was there, I didn't see it.

Q. Now what was your observation at night?

Mr. Lindabury: Did he say what hour this other was?

Q. What time of day, do you remember?

A. That was about between, well, practically three o'clock in the afternoon.

Q. Was it a bright day?

A. The sun shone right straight at the house; that was on the north side of the street.

Q. Were the windows up?

A. I think the windows were up; I couldn't swear to that.

Q. Will you look at this screen and say whether or not that is like the screen that was in the window?

A. Yes, sir.

Q. You didn't take it out, I suppose, yourself?

A. No, sir.

The Court: It is a sliding screen?

Mr. Parker: Yes; goes up and down like a window.

The Court: I understand, spring here to keep it, although it is not near so opaque as I thought it was; you didn't make anything by bringing that in; it is not as opaque as I thought it would be.

Q. Now did you make your observations at night?

A. Yes, sir.

Q. What could be observed then?

A. We couldn't see anything.

Q. (By the Court.) Was there a light in the room?

Q. Do you know whether there was a light in the room?

A. It was when we left.

Q. (By the Court.) When you were looking at it.

A. I just told you I couldn't see anything, so I couldn't see anything there.

Q. (By the Court.) Was there a light?

A. A light was in the room when we were told to go downstairs and find out whether we could see anything; now whether that stayed there or not I don't know.

Q. (By the Court.) You didn't see any glimmering light at all?

A. No, sir; not a thing, not a trace.

(Mr. Lindabury held the screen up at the Court's direction for the Court to look through.)

The Court: It isn't so opaque as I thought it was; it don't obscure the light hardly at all.

A. Those were different circumstances, your Honor.

The Court: Never mind.

Cross-examination—By Mr. Lindabury:

Q. Mr. Reinert, you say that the shades were up?

A. Yes, sir.

Q. They were on this window?

A. Yes, sir.

Q. (By the Court.) You mean the linen shades?

A. Yes, sir.

Q. The linen shades were up?

A. Yes, sir.

Q. And there were no curtains hanging in front of the window to obscure a view into the room?

A. No, sir.

Q. And there was no outside awning?

A. Yes, sir.

Q. (By the Court.) No, but that night, you were talking about night, at night?

A. Yes, sir.

Q. Was the outside awning lifted?

A. There was none there.

Q. None there. Now then your diagram here shows that that window is six feet two inches high?

A. Yes, sir.

Q. That is right? And is two sash, I take it?

A. Yes, sir.

Q. And this screen only covers way down the lower sash?

A. Yes, sir.

Q. So that when you went out into the street and looked up at that window with the bright light that you left in the room when you went down, it was stiil dark, even through the pane of glass that was above this sceen, was it?

A. Well, I didn't say there was a bright light in the room.

Q. Wasn't there a bright light in the room? When you went down?

A. There was a light in the room; I didn't say bright light.

Q. Well, all right, there was a light in the room?

A. Light when we went down.

Q. When you went down?

A. Yes, sir.

Q. But when you looked up you saw no more light through the clear pane of glass above this screen than you saw through the screen, did you?

A. Well, the upper portion, you know, is more or less covered by slanting curtains that run up; I didn't pay attention to that, but whatever was there or wasn't there, I didn't see any light.

Q. You saw no light?

A. No, sir.

Q. (By the Court.) No glimmering?

A. No, sir, no glimmering.

Q. And no light of any kind?

The Court: He has sworn to that pretty strong.

Q. Did you take any photographs in the hall while you were there?

A. No, sir, that is not my business.

Q. Did you run any straight line, tape or anything else from any point on the fifth floor to the bottom of the door that went into Mr. Duke's room, rear bedroom?

A. Straight line from where?

Q. Draw a tape line from any point on the fifth floor around the well-hole to the bottom of the door going into what is said to be Mr. Duke's rear room on the third floor?

A. You couldn't do it.

Q. Did you try it?

A. There was no sense trying it because the straight line is the line of vision, because the view don't go, you can't put any tape line on it.

Q. You are a surveyor?

A. Yes, sir.

Q. Accustomed to taking measurements?

A. Yes, sir.

Q. Did you make a survey of the fifth floor?

A. No, I did not.

Q. Have you got the heighth of the ceiling from the third to the fourth floor?

A. No, I have not.

Q. Now, you have answered the question. Have you got the heighth of the ceiling from the fourth to the fifth floor?

A. No, sir.

Q. Have you got the distances from the well-holes on either of these floors to the side walls?

A. Yes, sir, shows you on the map there.

Q. The other floors?

A. They are the same on that floor.

Q. Did you measure them?

A. No, I didn't measure them, but you can look down to see them.

Q. Did you measure them?

A. I did not measure them.

Q. Are the stairs the same width all the way up?

A. Yes, sir.

Q. The well-hole the same width all the way up?

A. Yes, sir.

Q. How do you know, on the fifth floor?

A. I looked down.

Q. Just looking. If you had given us the heighth of each of those two ceilings and given us the distances from the well-hole to each wall we could tell by mathematical demonstration whether the line of vision would prevent you from looking into Duke's room, wouldn't it?

A. I have taken that heighth.

Q. You have taken it?

A. Yes, sir.

Q. Did you give it to counsel on the other side?

A. No, sir.

Q. Who employed you to go there and make measurements?

A. John B. Stanchfield.

Q. When?

A. April 29.

Q. When you stood at some points on the fifth floor around the well-hole you could see the whole of the stairs on the third floor, could you?

A. No, sir.

Q. I understood you to say so.

A. No, sir, I said step on the stairs.

Q. Well, the whole of the steps, what do you mean, steps?

A. You said could you see the whole of the stairs.

Q. Well, the whole of the steps, I mean the whole length of the steps coming up to the third floor from the second?

A. No, you could only see one step.

Q. One step, which was that?

A. I could only see one step.

Q. Top or bottom?

A. Well, it wasn't the hallway, it must have been the step right below the hallway, the next step which leads from the platform of the hallway to the floor below, the first step.

Q. And when you looked down you said from the point you first mentioned on the fifth floor you could see, I understood you to say, about a foot of the tread of the stairs?

A. Yes, sir, that is standing in front of the bath-room.

Q. And when you moved back to the end of the well-hole another point you could see much more of it, I suppose?

A. Yes, sir.

Q. That is what I understood.

The Court: Well, there was nothing to prevent you from seeing all the stairs if you put your head over, clear over the well-hole, was there?

A. No, sir.

Q. (By the Court.) Didn't try it?

A. I tried it, but you couldn't see it.

Q. (By the Court.) Around one stairs from the other?

A. One goes with the other, it forms practically —one covers the other and you can't see.

Q. One floor to the other?

A. From one floor to the other you could.

Q. (By the Court.) One moment. If you lean over the well-hole on the fifth floor, clear over and look out the stairs immediately beneath, if you lean over far enough that would change the line of vision to the door of the third floor below, wouldn't it?

A. We tried it in all positions; there is only one way, the thing is only one foot wide, so you can only lean over this way (indicating), that is all; you wouldn't, of course, you might put your head down and stand—you can't do that; but we tried it in every position which you could take in it. There is the railing there (indicating), here is the other railing (indicating), that is all you could do.

The Court: I understand it thoroughly.

A. Well, you can't see anything else, you can't see anything because one part meets the other, all these uprights, balusters.

Q. Your claim is that persons might be seen coming up the stairway if they walked on one side of the stairs, but they could not be seen going in the door, is that what you say?

A. Yes, sir, that is about right; could see part of the person, might see a hand move along if they would have their hand on the baluster, you could see their hand and part of the arm.

Q. You could see a foot, you could see more than the hand, you could see the body if it was along the rail?

A. Yes, sir, if you moved back far enough towards the other end.

Redirect-examination—By Mr. Parker:

Q. When you spoke about seeing the hand of the person you meant while the person was coming up the stairs, before the person had turned to go into the hall, that was what you meant?

A. Yes, sir.

Q. And could you see anything else but the hand while they were coming up the stairs, while they were on the stairs proper, before they turned to cross this step which you had a partial view of?

A. I don't quite understand the question.

Q. Suppose a person was coming from the second to the third story on the stairs and was coming up these stairs which run from the front of the hall to the rear of the hall, now could you see anything of that person if he did not have his hands upon the rail, his or her hand upon the rail?

Mr. Lindabury: He has answered that.

A. You could not from the position where I was when I had my assistants down there, but if you backed away in the rear end and looked over I suppose you could see the lower parts of the legs because you could see almost the entire step, but you couldn't see the whole body.

The Court: I understand there was winding stairs right at that end at the door lead-

ing into the back bedroom. I understand this witness to swear that if you were at the other end of the hole, I forget what you call it, and looked diagonally across the space, you could see the upper stair, see the person's legs.

Mr. Lindabury: He said the well-hole was ten feet. If the ceiling is ten feet you would have an exact right angle, you see, couldn't help it.

The Court: You have got two ceilings to deal with, from the fifth to the third floor; you have got two depths, got ten feet in length, and when you look down at the end you catch the point where the person turns out by this winding stair here.

Mr. Lindabury: Your Honor didn't understand me. I am right. I am allowing for two floors, and if the ceiling is ten feet and the well-hole ten feet you can get an exact right angle vision.

The Court: No, because you have got to see twenty feet.

Mr. Lindabury: Exactly, but you must remember the ceiling is ten feet high each, twenty feet, and ten foot well-hole, which would give you standing at the top and looking down two floors, an exact right angle vision.

The Court: How do you make it so? Not when I went to school. There is your ten feet and here is your twenty feet, and you look from here down there (indicating) and it is not a right angle.

Mr. Strong: Even if it were only ten you don't get a right angle.

The Court: Don't get a right angle anyway. I don't know what Mr. Lindabury

means; but what he does mean was this, that he would look from this point to this (indicating) and would not come against anything but—

A. Balusters in between.

The Court: The wall there, three feet six inches, a little more, the stairway comes in here three feet and six inches, or rather here (indicating), and you would have to add that three feet and six inches to those ten in looking down there, and I understand the witness to swear that you would see the feet of a person coming up those winding stairs.

A. Yes, sir.

The Court: That is what the witness said. He says so now. It is very plain, you can see it. It is a great deal better to go on the ground and make experiments.

Mr. Parker: Claim you can see what, sir? I didn't gather what your Honor thought you could see.

The Court: Just what the witness said. I will give you the illustration again. Here are two flights of stairs. Here is the ten feet (indicating); there is the ten-foot well-hole; here are the two flights of stairs ten feet each, but here comes the stairway up there (indicating) and here is the winding stairs right there, and when the person ascending got to those winding stairs, then looking down here he would see his feet; that is what I understood him to say, and he says so now.

A. You could see part of the arm and some of the feet. That is if the foot was right next to the staircase.

Mr. Lindabury: He didn't say that.

The Court: He can see clear across there (indicating). I will venture I can go up there and see the other side.

Mr. Lindabury: He did say that.

The Court: And I will venture to say, Mr. Parker—

Mr. Parker: I have been there myself and I know how much you can see.

The Court: You had better go on the stand then. I am reasoning from my experience as a mechanic. I say you can take a straight line from up here you see and you pass that corner there and your eye would strike, I think it would strike that wall there (indicating), and I don't know anything in the way; if there is, of course the motion goes for nothing. The only way to do that is to draw a vertical scale, draw a vertical picture. Now, this witness has not done that. Draw a vertical picture of these well-holes and these stairs coming up and then draw a line down and see what you strike in the way. The thing that would obstruct you would be the size of the well-hole at the top of the passageway from the head of the stairs on the third floor, would be the floor over that, that would be in your way and Mr. Lindabury's idea was that you would go across there, right across from the hypothesis of a right angle, rectangular triangle, that is what you thought, and then you would pass the floor of the fourth floor you see and would have the whole width of the stairway, three feet and six inches under that in order to see the other side.

Q. Didn't I understand you to testify on your direct-examination that when you stood in front

of the bathroom door and looked down, looking over the balustrade as far as you could, that you could see nothing of the staircase leading from the second to the third floor except the balustrade? Didn't you say that?

Mr. Lindabury: I object.

The Court: No, he is very clear in what he said. The stenographer has got it. I don't think you ought to lead him.

A. I didn't quite understand the question.

The Court: I won't let that question be put.

Mr. Parker: He did say that, if your Honor please.

The Court: Ask him what he said on that subject.

Mr. Parker: Haven't I got a right to call the witness' attention to testimony that he has given on his direct-examination and then ask him to explain it, if I state the testimony correctly, is not that the rule?

The Court: You may say to him, and I don't want to be harsh about this, you may say to him, I understood you to swear so and so, is that so or not, but before he answers, the counsel has a right to have the minutes examined to see whether it is so or not; that is the trouble with it, and I suppose they will avail themselves of it. I shall not object to it.

Q. I understood you to testify on your direct-examination that standing and leaning over the balustrade in front of the bathroom door on the fifth floor and looking down this well that you could not see any part of the staircase from the second to the third floor except the balustrade?

The Court: He testified to that, yes.

Mr. Lindabury: No, your Honor, I beg your pardon.

The Court: I understood him to.

Mr. Lindabury: Only from one certain point.

The Court: Right opposite the bathroom door.

Q. Did you say so?

A. Yes, sir, practically, and a small part of that first step.

Q. And you mean by the first step the last step on the staircase as you go up from the second to the third floor?

A. Yes, sir.

Q. Now, did you make any measurement of the rear fence on the lot where Mrs. Duke's house stands, and also in the lot in the rear of that?

A. I took measurements of the fence on the south side of 69th Street in the rear of Mrs. Duke's house.

Q. You have no sketch of that?

A. No.

Q. Could you tell by looking at the fence whether it was a new one or old one?

A. It appeared to be an old fence.

Q. And how high was the fence?

A. With two parts to it, one is nine feet and the other one eleven feet.

Q. Which part was nine feet?

A. The nine-foot part is toward the west and the higher part is toward the east.

Q. I show you these views, views now produced for the first time, and this one is the one that shows a fence with a large five cents marked on it.

Marked Exhibit D-5.

Q. (By the Court.) It is accurately taken, is it?

A. Yes, sir.

Q. Do you recognize those fences and the house there in the background?

A. Yes, sir.

Q. And which is the nine-foot fence that you speak of?

A. This one (indicating).

Q. The one that has Margaret Anglin?

A. I don't remember that it has that sign on, but the lower fence, it is the same as that one, the lower fence is nine feet and the higher one is eleven.

Q. (By Mr. Lindabury.) The five cent one is eleven?

A. Yes, sir.

Q. Do you recognize Mrs. Duke's house as being shown in the photograph?

A. Yes, sir.

Q. Will you mark in pencil on that Number 11 where Mrs. Duke's house is?

A. (Witness marked on the map.) That is the extension.

Marked Exhibit D-6.

ALAN H. STRONG resumed the stand:

When I was on the stand before I had overlooked a letter which I now produce from Messrs Lindabury, Depue & Faulks, dated October 28th, 1905, which was in answer to a letter which I wrote to that firm October 27th, 1905, of which I have here a copy and in which letter was enclosed a copy of the petition of Frank T. Huntoon for leave to intervene, a copy of the order allowing him to intervene, and, thirdly, a copy of the appearance and

denial by him of the charges of adultery. I offer these letters.

The Court: No objections to the letters?

Mr. Lindabury: No.

Letters from Lindabury, Depue & Faulks, dated October 28, 1905, marked Exhibit D-7.

Copy of the letter to Lindabury, Depue & Faulks, dated October 27, 1905, marked Exhibit D-8.

WILLIAM THOMPSON, sworn on behalf of the defendant, Mrs. Duke:

Direct-examination—By Mr. Parker:

Q. Are you a photographer?

A. I am.

Q. And did you make some photographic views of the premises Number 11 West 68th Street?

A. I did.

Q. When did you do it?

A. On the 27th of April last.

Q. That is four or five days ago?

A. Last Friday.

Q. Now, these photographs—

The Court: Did you make all these?

A. I made all those, sir.

Q. Eight photographs?

Mr. Parker: The one referred to by the last witness will be Exhibit 9.

Q. This Exhibit D-9, where was that taken from?

A. Exhibit 9-D was taken from the north side of 69th Street.

The Court: Perfectly useless. Put it in; waste of time. Already admitted. I want to hear evidence. I can tell by my eye that it was taken from the rear and not from the front. I say I think you are wasting time unnecessarily and not what a counsellor ought to do.

Q. This photograph marked Exhibit D-10 is taken from what window?

A. It is taken from the second story rear window.

Q. Of the house 11 West 68th Street?

A. 11 West 68th.

Q. This photograph marked D-12 is taken from what point?

A. Is taken from the third story front to the west, looking to the west, 11 West 68th Street.

The Court: What use it is I don't know, Mr. Parker.

Q. And this one marked Exhibit D-13 is taken from where?

A. Taken from the third story front, looking to the right toward Central Park.

Q. This photograph D-14 is taken from where?

A. The photograph marked D-14 is taken from the corner of Columbus Avenue on the downtown side looking towards the residence of 11 West 68th Street.

Q. This Exhibit D-15 was taken from where?

A. Exhibit D-15 is taken from about the middle of the block on the downtown side of 68th Street, looking towards the residence, Number 11 West 68th.

Q. And this Exhibit D-16 is taken from where?

A. D-16 is taken from Eighth Avenue looking towards the house across the angle of 68th Street

and Eighth Avenue, looking towards 11 West 68th.

Q. D-17 is from where?

A. D-17 is taken from the first floor rear, looking towards the rear of the extension.

Cross-examination—By Mr. Lindabury:

Q. Are these all the photographs you took?

A. Yes, sir.

Q. Did you ever take flashlight pictures?

A. Yes, sir.

Q. Did you take a photograph of the upper back room, third floor, from any point on the fifth floor?

A. Not in the house, sir.

The Court: I give you notice I will sit right through Friday and Saturday for this case.

Mr. Lindabury: That is very satisfactory to us.

The Court: If necessary.

Adjourned until to-morrow.

May 3rd, 1906.

Between

JAMES B. DUKE,
Petitioner,

and

LILIAN N. DUKE,
Defendant.

Continuation of examination pursuant to adjournment at the place and in the presence of the parties as before on May 3rd, 1906.

FREDERICK REINERT, recalled:

Further direct-examination—By Mr. Parker:

The Court: I want to say to you, Mr. Parker, that I think you were entirely right in insisting on having the evidence of the witness point out the place where those photographs were taken, and if there was anything in my language or manner which could be properly construed as expressing impatience or disapproval of your conduct in that respect, I am very sorry, because you are right and I had no right to express any such dissatisfaction.

Mr. Parker: I want to state to your Honor that I feel very much affected at the handsome manner in which your Honor has ex-

pressed yourself, and I trust that our friendship, which has always been very warm, will be as warm in the future as it has been in the past. I myself will endeavor to avoid any further manner which may in any way affect the orderly progress of this cause.

The Court: Nothing necessary on your part, Mr. Parker, at all.

Mr. Lindabury: We were about to agree to mark the photographs so as to indicate the house, and shall not we do that first?

The Court: Yes, I want you to do so. What should be pasted on these is the point from which they are taken, it seems to me, in writing.

Mr. Parker: I think the point is indicated with reference to every photograph except the one that was taken from the rear of the house on 69th Street.

The Court: If you just put on a piece of writing, taken from such a place, and paste it right on.

Mr. Clark: Then the photographs would show the whole thing.

Mr. Lindabury: I think Mr. Parker showed it yesterday.

The Court: He showed it in every case, from where they were taken from. Just put it right down here, taken from such a point, paste it on, and you will oblige me very much.

Mr. Lindabury: Then at the same time you can put a mark on the house.

The Court: Yes, if you choose.

Mr. Lindabury: In some of those it may be of account, not all of them.

Mr. Parker: I think the house ought to be designated, and I think we can agree on that.

The Court: I want to see when I take up the photograph, I can see at once from what point it is taken.

Q. Now, after leaving the court last night, did you go to No. 11 W. 68th Street and make certain measurements there?

A. Yes, sir.

Q. And did you take the heighth from floor to floor between the third and the fourth and fifth floors in that house.

A. Yes, sir.

Q. Will you kindly give us the distances, please?

A. The distance from the third floor to the fourth floor is 11 feet and 2 inches.

Q. Does that include the ceiling or not?

A. Yes, it goes from the floor to the floor, third floor to the fourth floor.

Q. Now, from the fourth floor, that is the floor itself, the top of the boards of the fourth floor to the top of the boards of the fifth floor is what distance?

A. 10 feet 8 inches.

Q. Now, what is the heighth of the balustrade on the fifth floor?

A. 3 feet.

Q. And did you measure the heighth of the balustrade all the way down the stairway?

A. Yes, sir; they are practically the same; on the steps they are 2 feet 8 and on the hallway they are 3 feet.

Q. 2 feet 8 inches?

A. Yes, sir.

Q. On the steps. Now, did you make any observations to see whether or not, standing in front of the bathroom door on the fifth floor and looking down the so-called well, you could see anybody coming up the stairs from the second to the third floor while on the stairway?

A. Yes, sir.

Q. And who made the observations with you?

A. Mr. Schnedeker and Mr. Wachter.

Mr. Lindabury: Are you referring to observations made last night?

Mr. Parker: Yes.

Q. Did you make renewed observations?

A. Yes, sir, we tested again.

Q. And who looked down and who was on the stairs, if you know?

A. Well, we took, we changed off; first, two of us stood down and let one man walk up, and then that man was called up and the other party went down, so that we all three saw the party going up.

Q. Then two of you stood together at the top?

A. Yes, sir.

Q. And looked down?

A. Yes, sir.

Q. And then one of them was walking on the stairs?

A. Yes, sir.

Q. Now, will you state whether or not you can see that person who was walking from the second to the third story?

A. You cannot see anybody walking from the second to the third story until they come to the step nearest to the third floor, and then you can only see the hand, in case they have the hand on the railing; just see about that much of the hand (indicating); if they haven't got either hand on the railing you can't see them at all.

Q. (By the Court.) You mean you can't see them when they turn up the winding stair and step onto the floor above?

A. No, sir, unless they have their hand on the railing.

Q. What part of the stairway would they be walking in when that happened?

A. The last step coming up from the second to the third floor.

Q. You don't understand. Do you presume that the persons walking up the stairs would be in the middle of the staircase; that is, an equal distance between the wall and the rail of the balustrade, or where?

A. Well, I let them come up, and he had his hand on the railing coming up, and I couldn't see him at all, except his hand, when he turned this, the short part, you know, the end.

Q. (By the Court.) You mean the winding stairs?

A. The winding part, the 12-inch part, the end of the two long pieces.

Q. You mean the tread, the last tread before you put your foot upon the third story?

A. On the third floor, yes.

Q. (By the Court.) You say the observer was in the middle of the——

A. I don't know where he was because I couldn't see him.

Q. (By the Court.) Where were you?

A. I was looking down.

Q. (By the Court.) Where were you, in the middle?

A. I was standing in front of the bathroom door looking over the railing.

Q. (By the Court.) You didn't try it a little further to the end?

Mr. Parker: Did you? Did you go to the further end and look, too?

A. We did afterwards.

Q. And in that case how much could you see?

A. When we got to the extreme end, then you can see the whole step and see the person passing; that is, at the extreme north end.

Q. South end?

A. The front end of the house.

Mr. Fuller: That is the south end.

Q. Now, I omitted to ask you yesterday whether you made any observations from the outside: standing on the Park paling to see whether you can recognize people that were coming out of the house of No. 11?

A. Standing where?

Q. Over by the paling or fence on the Park, Central Park West, out in the street. Don't you understand?

A. Yes, I understand the question.

Q. Did you make any observations from there?

A. But we didn't make any observations from that.

Cross-examination—By Mr. Lindabury:

Q. How far, when you stood by the bathroom door and looked down the stairway, how far did you lean over?

A. As far as I could; I got so as to see as much as possibly could be seen, the best position.

Q. You mean to say that if you put your head way over to the opposite side of the well-hole that you could not see the rail of the stairway two floors below?

A. No, sir.

Q. Not the rail at all?

A. No; it is covered by the other rails; they go down slanting, you know.

The Court: The difficulty with that is, Mr. Lindabury, that the vision would be like that (indicating).

A. That is it.

The Court: The line of vision would be almost lengthwise of the balustrades.

A. The thing is slanting.

The Court: From my engineering diagnosis, if I may express that of the situation, I shall be surprised if you can see anything except looking through the well-hole.

Mr. Lindabury: Except what?

The Court: Looking down the well-hole.

Mr. Lindabury: That is what I meant.

The Court: You asked him if he looked clear over the well down on the stairway.

Mr. Lindabury: I mean still looking down the well-hole.

The Court: That is quite right. At first I was thinking yesterday that the balustrade would not present any obstruction, but there is a point now, Mr. Parker, there is a point where the balustrade does not interfere; there is a point in looking down you would look over the balustrade, but you would still in your line of vision strike the balustrade of the floor below.

A. Two floors; the one balustrade seems to be on top of the other one.

The Court: I am speaking now, and if you will not interfere and take warning by what I said yesterday I will be obliged to you.

Now, I will say further to the gentlemen: Let me have that map; I want counsel on both sides to understand what is in my mind about this, if it is of any importance at all. I understand the witness now; he swears

that looking from that front, taking that angle down, you see the lower part of the body of the person coming up those winding stairs. That is exactly what I supposed was the fact yesterday. That's all I have got to say.

Mr. Parker: Your Honor is right in this, that you can see, as the witness says you can see, half of the person as they come up.

The Court: Right there.

Mr. Parker: Yes, sir. When you get over here (indicating) you can see the whole.

The Court: I shall be surprised if you cannot see, by putting your eye over at this corner, the jamb of the door, the lower part of it.

Mr. Parker: The witness has already testified you cannot, and I say the same thing.

The Court: I shall be surprised if by drawing a cord from that point you can get to the jamb of the door without touching anything; strain a cord right down.

HERMAN H. SCHNEDEKER, sworn on behalf of the defense:

Direct-examination—By Mr. Parker:

Q. What is your business?

A. Grocer.

Q. And what is your age and residence?

A. 46; Corona, Long Island.

Q. Did you make certain observations at the house of No. 11 W. 68th Street which you have heard spoken about by the last witness?

A. Yes, sir.

Q. You helped make them?

A. Yes, sir.

Q. You were with Mr. Reinert on those occasions, were you?

A. Yes, sir.

Q. How many times did you go there?

A. Once; no, twice; April 30th and May 2nd.

Q. In the afternoon or evening?

A. April 30th I was there in the afternoon and evening and May 2nd in the evening.

Q. And was Mr. Wachter with you?

A. Yes, sir.

Q. Well, how came you to go there?

A. Mr. Reinert asked me to go.

Q. Are you acquainted with Mrs. Duke?

A. No, sir.

Q. Had any personal relations with her at all in the way of business or otherwise?

A. Never.

Q. Well, now, did you make any observations to see what you could observe while standing in front of the bathroom door on the fifth floor of No. 11 West 68th Street and looking down the well, as to the staircase and other parts of the third floor?

A. Yes.

Q. Now, you were present at the observation last evening?

A. Yes.

Q. Now, just state whether, when standing in the position that I have indicated, how much of the staircase on the third floor, running from the second to the third floor could be observed?

A. Well, you can see about a foot of the last step.

Q. You mean by that the last tread before you get to the third floor?

A. The last step before you get on the landing of the third floor.

Q. Can you see any part of the stairs which lead up north? You know the direction of the compass, don't you?

A. Yes, sir.

Q. North and south?

A. You can't see anything.

Q. Now, if a person is moving up those stairs; did you make an experiment in which such a thing happened?

A. Why, you couldn't tell where they were on the stairs.

Q. And when they got to the last tread, when standing in front of the bathroom door, how much of them could you see?

A. Couldn't see anything; about, well, let me see, about the bottom of their feet; that is about all.

Q. Now, could you from that position see any part of the doorway or door leading into the room in the back of the house on the third floor?

A. No, sir.

Q. Did you make any observation at other parts of the fifth floor to see whether, by looking over the balustrade, you could see any part of that room or any larger part of the staircase that comes up?

A. Well, I went down to the extreme end, that is the south part of the balustrade, and couldn't see anything.

Q. Of what?

A. Of the door.

Q. Or the doorway?

A. No, sir.

Q. And what effort did you make to see whether you could see the doorway?

A. Couldn't make much efforts, because you couldn't see anything, look over.

Q. What did you do?

A. Went way back to the south end of the railing; wouldn't do any good, look this way or that way; have to look right straight down in order to see anything or reach over.

Q. Did you lean over the balustrade?

A. Yes, sir.

Q. How far?

A. Well, about the ordinary way, like that (indicating).

Q. Did you lean any further than that?

A. No; might lose my balance if I went down too far.

Q. Well, did you try to see?

A. I tried to see all I could.

Q. Now, when you got into that position could you see any more of this last tread?

A. Yes, sir, see the whole of it, whole of the step.

Q. Of the last tread before you got to the third floor you could see the whole of it when you were down at the other end?

A. Yes, sir, down at the other end.

Q. South end?

The Court: Of the well-hole, south end of the well-hole?

Mr. Parker: Yes.

Q. So that you could observe a person walking across that?

A. Yes, sir.

Q. Tread. Now, did you make any observations from the outside?

A. Yes, sir. We went as far as the wall, Central Park wall there; we couldn't see anything.

Q. You stood at the Central Park wall, and what did you observe at?

A. Well, looked down toward the house, but we couldn't see the house; this was in the evening.

Q. Last night?

A. Last night and the night before, Monday night.

Q. Why couldn't you see the house?

A. Because it was dark.

Q. Now, did you make any observations from the side towards Columbus Avenue?

A. Yes.

Q. What?

A. Well, we got down to the corner of Columbus Avenue and we looked up.

Q. Daytime or night?

A. Daytime.

The Court: Is that screen here that was here yesterday?

Q. Had you made any arrangement that anybody should stand in the window of the third story front?

A. No, I did not.

Q. What did you look to observe at that occasion?

A. Well, we made arrangements for one of us to go in and out the door; that is, both doors, No. 9 and No. 11, so that we could see which door he came out of, but we couldn't tell.

Q. Was it possible to observe which door the man came out of?

A. No, not in my estimation, it was not.

Q. Why not?

A. Because you couldn't; the doors were too much alike.

Q. Well, could you state whether or not there was sufficient light underneath the covered portico in front of the front door to see a person coming out upon the portico?

A. No.

Q. There was not?

A. No light; this was in the daytime we observed this.

Q. Yes, I mean that.

A. Yes, sir.

Q. Well, was there sufficient light, was it possible to see a person sanding in the portico?

A. No, you can't see anybody stand there.

Q. From this point where you observed?

A. From Columbus Avenue.

Q. Now, did you make any other observation?

A. That is about all, I guess.

Q. Didn't you try to observe whether you could see a woman standing in the third floor front through this screen, this netting screen, when the screen was down?

A. In the daytime?

Q. Yes.

A. No, sir, I wasn't there then.

Q. You weren't there?

A. I was not there.

Q. Did you do it at night?

A. Nighttime we tried; we could see a light, but we couldn't see any; that is, from Central Park wall; we went over to the wall to see if we could see a light in that room; we could not.

Q. Do you know who was present at the time that you made that observation in the house?

A. Who was in the house?

Q. Yes. Who was it turned on the light?

A. Well, Mr. Stanchfield was there, and Mrs. Duke, I believe.

Q. Mrs. Lincoln there?

A. I don't know.

Q. Was there a lady there with red hair?

A. Yes.

Q. And the servants in the house were there, too?

A. There was one tall servant there?

Q. Is that servant here in court to-day?

A. I don't know, unless I stand up and look.

Q. The lady in green?

A. No, that is not the one. Beg pardon, one minute, that is a mistake.

The Court: Didn't have her hat on, I suppose, when you saw her. Go down and look at her and see if that is the one, then you will know.

A. That is the one.

Q. Your sight is pretty good.

A. Well it is; certainly it is good.

Q. It is good?

A. Yes, sir.

Cross-examination—By Mr. Lindabury:

Q. Are you a surveyor?

A. No, sir.

Q. Simply an observer?

A. An observer.

Q. Well, did you examine to see whether or not there was any spot on the third floor from which, looking through the well-hole, fifth floor from which, looking through the well-hole, you could see the door going into the back room on the third floor?

A. Couldn't see any door.

Q. No, no; answer my question (question read).

A. Well, I couldn't see any door.

Q. Did you try to see whether there was any place up there, any point, from which you could see the door?

A. Yes.

Q. Did you look through the balustrade?

A. Yes.

Q. How wide are the rungs of the balustrade?

A. Do you mean the rungs, the uprights?

Q. Yes.

A. They might be about 6 inches; I didn't measure them.

Q. 6 inches apart; so that there was no trouble in looking through them if you looked below the rail?

A. You mean between the rails? That is about a foot.

Q. No, between the rungs, the uprights; there was no trouble in seeing between them if you tried to, was there?

A. I didn't try that.

Q. Oh, you only looked——

A. I looked through the railing.

Q. You only looked over the top of the rail.

A. Over the top; yes, sir.

Q. Now you could, however, if you had tried, bring your line of vision to the floor under the rail between the uprights, couldn't you?

A. No.

Q. Why not?

A. How could you get down there? You couldn't get your head between the rails.

Q. No, but without putting your head there you can stand behind them and look through the rails, couldn't you?

A. You could look through, yes.

Q. Now, look at this little drawing I have made here; the map here shows that that well-hole is ten feet long, and so the ceiling is ten feet high, and that is about it. Now, if you stood on the extreme end of the well-hole and looked, not over the rail, but under the rail, your line of vision would, of course, come to the well-hole in the floor below, as I have drawn it here?

A. Yes, sir.

Mr. Clark: Indicate what you mean by that as you have drawn it there.

The Court: It is the other end of the picture of the well-hole further down, working out my triangle theory of yesterday.

Mr. Parker: With all respect, I think this is only going to be confusing.

Mr. Lindabury: I will try and get it on the record later.

Mr. Strong: This witness is not a surveyor and he is not used to diagrams, and especially free-hand diagrams drawn by counsel are not calculated——

The Court: Probably the evidence is of very little value, but I can hardly prevent counsel from cross-examination. The evidence may be of very little value, and this witness's confusion about it may not affect his evidence about what he saw.

Mr. Strong: On the other hand, it may.

Q. Now, the door is only about 3 feet and a half back from the well-hole, isn't it?

A. I didn't measure it.

Q. Don't know how far it is? Have you no idea how far it is from the well-hole to the partition in which these back bedroom doors are?

Mr. Parker: I object.

The Court: The distance is three feet and a half besides the thickness of the partition.

Q. Yes. Assuming this map to be correct, and assuming that this well-hole is ten feet long, and assuming that the distance from the well-hole on the third floor back to the door is three feet six inches, can you explain how it is possible that, looking from the fifth floor through between the uprights between the balustrade, you could not see the bottom of that door that goes into the bedroom on the third floor?

Mr. Kalisch: I object.

Mr. Strong: I object. He is not an expert.

Q. What was there in the way of your line of vision, had you looked through the rungs of the balustrade on the third floor, what was there in the way of your line of vision to that back bedroom door?

A. Don't seem to be anything in the way, but you look right straight down, that is about all you can see, the first step, last step going up.

Q. You wouldn't look straight down for the purpose of seeing the door at the other end of the hall. Suppose you look toward the door that you are talking about that goes into the back bedroom on the third floor, that wouldn't be straight down, but diagonally; what was there in the way of your seeing the bottom of that door?

A. The wall, I suppose, the upper floor.

Q. You mean the floor between?

A. Yes, sir.

Q. Well, that was ten feet away.

A. Well, even so, no matter where you go, this side or that side, you can't see the door; there is always either the balustrade upright in the way or the wall of the ceiling.

Q. Well, you know that that ceiling of the floor below was 10 feet away from a perpendicular line of vision, don't you?

A. No, I don't know; I didn't measure it.

Q. Well, was that in the way; is that what you say, the floor was in the way?

A. The floor was in the way; you couldn't see the door.

Q. (By the Court.) What did you see, anyway, when you put your eye there and looked; what did you see?

A. Top step of the third floor; that is all I could see, the whole top step; I couldn't see anything else.

Q. The top step of the third floor was directly under, wasn't it?

The Court: No; way over diagonally from where?

A. Then I stood at the extreme end of the balustrade.

Mr. Lindabury: That is right, that was that end.

The Court: Then there was nothing in the way except there is the top step. Now the top step, he said he saw the whole of it, as I understand, was about 6 inches from the door.

Q. Do you mean to say you could see nothing beyond the top step?

A. No, that was all.

Q. No farther back than the top step?

A. No.

Q. (By the Court.) You mean by the top step the edge of the floor, don't you?

A. The last step going up from the third floor?

Q. (By the Court.) Now, my dear sir, we have got in the terminology some people would call—the floor of the hall, that's what you mean, isn't it?

A. That is what I mean, the last step before you get to the landing.

Mr. Parker: If your Honor will employ the technical expression "tread."

The Court: They count the floor of the room that is reached by a step the step.

Mr. Strong: There was no confusion in the testimony as given because he said the last step before you got on the third floor.

The Court: Did he say that?

Mr. Strong: Yes; he said that in his direct-examination.

The Court: That is what he means, that is immediately at the end of the well-hole, the step above that floor would be in line of vision if he put his eye over to the other corner, further corner of the well-hole, perfectly apparent; nothing to stop it unless it is the railing, what do you call it, the balustrade at the end. It is plain as a pikestaff; you can come here and look. I don't think the witness is helping me any at all, or hurting me.

Mr. Strong: You are taking a sight on the same plane.

The Court: No, sir, I am taking it—there is nothing in the way between that end of the fifth floor and the third floor, there is nothing in the way except the balustrades at the end of the well-hole down on that floor, and you can see for yourself there where it comes.

Mr. Strong: But suppose you raised this end up in the air?

The Court: You have got the diagonal measurement just as I showed you.

Mr. Strong: It is not fair to take it all on the same plane that way, it makes a great deal of difference.

The Court: There is no wall around this at all; there is nothing to obstruct the view.

Mr. Strong: There is a fourth floor that comes in here.

The Court: There is no floor around the well-hole at all, nothing but balustrades. If when he gets passed the floor of the fourth floor and he cuts under that you see he cuts under the floor.

Mr. Strong: That is the very question I understand, whether it does.

The Court: If he saw that step there, that last winding step, then the floor did not prevent him, and if you take a line from here (indicating) that step, if you take a line from there you see you strike the floor above. I worked it all out in my mind yesterday and this witness has only corroborated the view I had; absolutely nothing there except the floor of the third and fourth floors, and they are out of the line of vision, else he could not have seen what he did.

Q. Now, then, in looking down at persons coming up from the second to the third floor you say you saw them when you stood back at the end of the well-hole, turning the corner to come on the third floor?

The Court: Saw their feet or legs.

Q. Saw their feet and legs?

A. Yes, sir.

Q. And of course you saw their feet and legs when they turned the lower corner to come up the stairs from the second floor, didn't you?

The Court: No, he wouldn't, not standing there.

A. No.

The Court: If he had looked at the other end he could have seen them, of course, the further down the better the view.

Q. You didn't go to the other end?

A. No.

The Court: If you had an architectural draftsman here to draw the vertical, draw the whole thing vertically, you will get it so clear there can't be any mistake about it.

FREDERICK REINERT, recalled:

Examined by the Court:

Q. I measured the length of the screen here that has been produced that went into the front window of Mrs. Duke's bedroom and find it 3 feet and 3 inches long.

A. Yes, sir.

Q. That, I suppose, corresponds with the depth of the sliding window casement?

A. Yes, sir.

Q. I see here on your map, see memorandum which I understood you to swear to, and therefore, I think you ought to explain. The window, you say the sill is 2 feet 6 inches above the floor; the window is 2 feet 6 inches by 6 feet 2, that is 2 feet 6 inches by 6 feet 2. Now you add that 2 feet 6 to 2 feet 6½ and you get the—you add the 6 feet 2 to the 2 feet 6 and you get 8 feet 8½. The whole ceiling is more than that, of course.

A. Yes, sir.

Q. The window don't go clear to the top?

A. No, sir.

Q. Then you have here marked screen 5 foot 9?

A. Above the two dots, 5 foot 9 above floor; I said sill 2 feet 6½ above floor, screen 5 foot 9, that is top of the screen 5 foot 9 above floor.

Q. Oh, the top of the screen.

A. Yes, sir; first the height of the sill, then the height of the screen above the floor.

Q. Height of the top of the screen above the floor?

A. Yes, sir.

The Court: I think you better put the word "top of" before the word "screen."

Mr. Parker: Yes; that is not clear. Obliged to your Honor. Put "top of screen" (witness marked the diagram as directed).

Q. Now did you take the screen out yourself of its place to bring it here?

A. No, sir.

Q. How did you identify it?

A. I didn't identify it; it was a screen like that, whether it is absolutely the same I don't know.

Q. The screen rises and falls, slides up and down.

A. Slides up and down, yes, sir.

Q. For instance, when the window is open, that is when the window, the lower window is raised, and you want to keep the mosquitoes out, you slide the screen down, do you?

A. Yes, sir.

Q. For instance, if you wanted the upper window down and wanted to keep out the mosquitoes you would slide the screen up to cover it, is that right?

A. I don't know whether you can slide it up.

Q. How can you get it out?

A. You can slide it up, but whether there is something to slide it on the upper part and hold in the upper part I don't know.

Q. It appears to be capable of being taken out because you swear this is the same or similar screen. Just hold that up here. This is provided with grooves.

Mr. Strong: He says it slides, but he don't know whether there is anything to hold it up.

Q. Yes, I understand that, and grooves and springs to hold it in its place, is there not?

A. Yes, sir.

Q. And then the screen you saw there is capable of being slid up and down, it was undoubtedly?

A. Oh, yes, you could slide it up and down; whether when it was up you could hold it up I don't know.

Q. Those springs will hold it up themselves, won't it, those springs are made for the purpose of holding it up in its place, isn't it?

A. I don't know.

Mr. Strong: This witness don't know anything about that.

The Court: He ought to know what they are made of. If those springs stick out far enough they will hold, but if those springs set back from the outside of course they won't hold.

Q. They are intended for that, aren't they?

A. Very likely.

Q. Don't you know?

A. I didn't make the screens; that isn't part of my business.

Mr. Clark: It is apparent anyway that is the usual way.

Mr. Parker: That is common knowledge.

Q. (By the Court.) I understood you to say yesterday this screen was the screen you saw in the window. You mean to say now it looks like it?

A. I don't know that it is the same screen but it looks exactly like it, like the other one.

CHARLES A. WACHTER, sworn on behalf of the defense:

Direct-examination—By Mr. Parker:

Mr. Parker: This is accumulative.

Q. Are you in any business?
A. Not at present.
Q. Where do you live?
A. 508 Van Buren Street.

The Court: Is that photographer here?
Mr. Parker: He is not here.
The Court: I would like to have these labels put on here, for when I look at it I want to look at it intelligently.
Mr. Parker: We can agree upon that now, if your Honor wishes.
The Court: Never mind. Go on with your evidence.

Q. What was formerly your business?
A. Butcher and real estate.
Q. And what is your age?
A. 43.
Q. Did you make any observations at No. 11 West 68th Street, in the City of New York?
A. Yes, sir.
Q. With whom?
A. Mr. Reinert and Mr. Schnedeker.
Q. And at whose request?
A. Why, Mr. Reinert's request.
Q. Are you acquainted with Mrs. Duke?
A. No, sir.
Q. Ever done any business for her?
A. No, sir.
Q. Are you interested in her in any way?
A. No, sir.

Q. Now did you make an observation from a point in front of the bathroom door on the fifth floor looking over the balustrade and down what has been called the well?

A. Yes, sir.

Q. To see what you could observe on the third floor and on the staircase between the second and third floor?

A. Yes, sir.

Q. Now, won't you state the results of your observation?

A. Well, by looking down you couldn't see anything, just simply about one foot of the top step coming up from the second to the third floor.

Q. You mean by that the tread just before you reach the third floor?

A. Yes, sir, just before you come to the platform.

Q. And when you say you could see about a foot of the top step what part of that step do you mean by the foot?

A. That is the southerly part, that is facing the front.

Q. Then you could see the whole width of the top step?

A. Yes, sir, the whole width.

Q. And about a foot of it?

A. About a foot.

Q. Southerly half, on the southerly side?

A. Yes, sir.

Q. Now, could you see, was any experiment made for the purpose of seeing whether you could observe a person coming up the staircase from that position?

A. Yes, sir.

Q. The staircase from the second to the third floor?

A. Yes, sir.

Q. Now what was the result of that observation?

A. Well, walking up, have your hand on the bannisters, all you could see was the hand until they struck the top, just see part of the hand and part of the arm and bottom part of their feet.

Q. Could you from that position see any part of the door or the doorway of the rear room on the third floor, that is, the north room?

A. I understand.

Q. Yes.

A. No, sir, you could not.

Q. Now did you try to see whether you could observe any part of the door or doorway on the third story of the rear room, on the third story from any other point on the fifth floor?

A. Yes, sir; we went to the extreme end, that is the front or southerly side of the bannister.

Q. End of what, the well?

A. End of the hall, the well, and look down, you couldn't; all you can see would be the top step.

Q. Did you make every effort while you were upon that floor to see whether you could see the door or the doorway of that room on the third floor?

A. Yes, we did; I did.

Q. And did anybody else, was anybody else there who did it with you?

A. Yes, sir.

Q. Who?

A. Mr. Schnedeker and Mr. Reinert; we tried it in turns.

Q. And you all made every effort to see whether you could see that door?

A. We did.

Q. Now did you make any observation from outside the house?

A. Yes, sir.

Q. Where?

A. Well, from the Park walls.

Q. And was it day or night?

A. Daytime and evening, I believe; yes, I think it was both.

Q. Were you there at night?

A. I was, yes, sir.

Q. Were you at the Park wall at night?

A. Yes, sir.

Q. And what observation did you make from there?

A. Well, we went over there.

Q. Who was with you?

A. Mr. Reinert and Mr. Schnedeker and his assistant, and tried to see a light and couldn't, couldn't see a light, couldn't hardly tell where the house was.

Q. Tried to see a light where?

A. On the third floor.

Q. Of what building?

A. Of No. 11 West 68th Street.

Q. Well, who was in the house in that room when you left the house?

A. Mr. Stanchfield, Mrs. Duke and two other ladies.

Q. Are they in court here?

A. I believe they are.

Q. Mrs. Lincoln, the lady with red hair?

A. Yes, sir; the maid, I believe.

Q. The maid Hilda?

A. Yes, sir, that is right.

Q. Now, did you observe from that point to see whether you could see any one come out of the front door of the house No. 11?

A. From the Park?

Q. Yes.

A. No, sir.

Q. And could you see anybody come out of the front door?

A. Well, we were not looking, I was not looking for the front door, was looking to see if we could see a light upstairs.

Q. I misunderstood. Now, did you make any observation from Columbus Avenue to see whether you could see anybody coming out from the front door or down the steps of No. 11 West 68th Street?

A. Yes, sir.

Q. Was that day or night?

A. That was in the afternoon.

Q. Daytime?

A. Daytime, yes, sir.

Q. What time?

A. Well, I should judge about half-past three, something around there.

Q. And how did you make your observation?

A. Well, Mr. Reinert's assistant went up there and walked in and out through one door and the other; we couldn't distinguish which door he went in or came out.

Q. You got good sight?

A. Don't need any glasses.

Q. That means that you have?

A. I have good sight; yes, sir.

Q. Did you look from there to see whether or not you could see anybody in the window, standing in the window of the third floor front?

A. Yes, sir.

Q. And what was the result?

A. Couldn't tell if anybody was there or not.

Q. You were then standing where?

A. Columbus Avenue and 68th Street.

Q. Did you try from any other point to see them?

A. Yes, sir.

Q. What did you do?

A. Went up about half a block, I should judge, opposite 49, or thereabouts, and you could not tell from there.

Q. How much nearer did you go?

A. Well, walked along, could see a shadow, the closer you got of course you could see a shadow at the window, but you couldn't tell who it was.

Q. Now you said about three o'clock, didn't you?

A. About between three and half-past three, I should judge, something like that, probably might be four o'clock.

Q. And what day was it?

A. On April 30th.

Q. Did you notice whether there was a screen in the window, a mosquito screen?

A. I think there was.

Q. And were the shades up?

A. The shades were up; yes, sir.

Cross-examination—By Mr. Lindabury:

Q. Were the awnings up or down?

A. There was no awning there that day.

Q. How came you to be there?

A. Through Mr. Reinert.

Q. Do you work for him?

A. No, sir, I do not.

Q. What is your business?

A. Retired.

Q. What is your age?

A. 43.

Q. When did you retire?

A. About a year ago.

Q. What was your business before that?

A. Real estate.

Q. Anything else?

A. Well, previous to that I was a butcher.

Q. How long were you in real estate?

A. About ten years.

Q. Where do you live?

A. 508 Van Buren Street, Brooklyn.

Q. Lived there long?

A. Five years, very near.

Q. Have any previous acquaintance with Mr. Reinert?

A. Yes, sir.

Q. How long?

A. About 19 years, something like that.

Q. In business with him?

A. No, sir.

Q. Related to him?

A. Yes.

Q. Never have had any business with him before?

A. No, sir.

Q. Do you say you are related to him?

A. Yes.

Q. What is the relationship?

A. My wife and his wife are sisters.

Q. How did he send for you to come over there?

A. Well, we generally meet on Mondays, every Monday I generally go over to his place and we generally meet and in the evening go down to his house.

Q. Do you mean socially or on business?

A. Socially, that is all.

Q. And you went socially on the occasion of his asking you to go there?

A. Yes, sir; this was, of course, that was through meeting that day there he asked me to go up there.

Q. And was Mr. Huntoon there?

A. I don't know the gentleman; I didn't see any gentleman there except Mr. Stanchfield, I believe, and another gentleman.

Q. Didn't recognize Mr. Huntoon among the people?

A. No, sir, I don't know; I never saw him.

Q. The question you were trying to settle was whether or not a person who came out of No. 9 or No. 11 could be identified as coming out of the one or the other? That was one of the questions you were wrestling with, was it?

A. Yes, sir.

Q. And you couldn't tell whether it was No. 9 or No. 11?

A. Not from Columbus Avenue.

Q. And you all of you agreed I suppose that was something that could not be very well told from that distance?

A. Well, we stood there and looked and couldn't tell; a young man went in No. 9 and No. 11.

Q. You could see a man coming out from one or the other, see him come from one or the other?

A. You could tell he walked out but not which house he come from.

Q. No difficulty in telling that he didn't come from the opposite side of the street?

A. He come from, was coming out from the door.

Q. No difficulty in telling that he came from either 9 or 11?

A. That of course was impossible for me to tell; I couldn't tell.

Q. You could see it was one or the other?

A. Certainly.

Q. That you could plainly see from that distance?

A. You could see they come out of one of the houses, you couldn't tell which one.

Q. And how far away was it that you could see somebody up in the window, some shadow, something to indicate that there was something moving—

A. As I say, about opposite 49, that is on the south side of 68th Street?

Q. Did Mrs. Duke get in the window?

A. Yes, sir.

Q. How do you know?

A. When we came back she told us, that's all; I don't know otherwise; I couldn't distinguish only her shadow.

Q. She said she was there and you didn't recognize her?

A. That is right.

Q. And what hour in the afternoon was this?

A. Probably half-past three, something like that; I didn't take down the time exactly.

Q. Was the screen then in?

A. I believe it was.

Q. Now, did you try it at night?

A. Try it at night?

Q. Yes.

A. Only observation from the Park?

Q. Was there a light in the room?

A. Light in the room, yes, sir.

Q. How do you know?

A. Because it was lit when we went down.

Q. Did you see any light when you looked up from the outside, any light at all in the window?

A. No, sir, couldn't see any light.

Q. Neither sash?

A. Couldn't see any light.

Q. Which side of the street were you on, north or south?

A. On the northwest, and then went across to the south side and from there went over to the Park wall.

Q. And couldn't see it from either?

A. No, sir.

Q. And from any point couldn't see at all, and of course if there was no light of course you couldn't see any person?

A. Hardly.

Q. Now when you were in the house taking your observation from the fifth story was Mr. Stanchfield there?

A. I believe he was.

Q. Yes. Did he place the persons who made the observations?

A. Well, that I won't say; I don't know; I went upstairs on the fifth floor; I couldn't say that.

Q. Who did?

A. I couldn't tell because you can't see downstairs, how could you tell?

Q. Well, who placed you?

A. I went up myself, nobody placed me, just simply told me to go upstairs and stand on the landing.

Q. Did you look below the rail on the fifth floor?

A. Looked over the railing.

Q. Below it.

A. Looked between the rails, yes, sir.

Q. Did you look between the balustrade?

A. Yes, sir.

Q. Between the rounds?

A. Yes, sir, that is on the extreme southerly side.

Q. (By the Court.) Did you put your face down to the floor?

A. Not exactly the floor.

Q. (By the Court.) Did you put your face below the balustrade?

A. I put my face below the balustrade like this (indicating), but no farther down.

Q. So your face came down to the floor?

A. I can't—very near.

Q. So your line of vision would come down to that?

A. So I could get it as low as I thought I could see.

Q. Now, then, did you look in that way toward the door of the third floor back room?

A. Yes, sir.

Q. What hindered you from seeing it?

A. The other floor beneath.

Q. That was ten feet away, wasn't it?

A. Probably something like that, between ten and eleven.

Q. Ten feet below and ten feet further away?

A. That is right.

Q. Do you know how near the door was to the well-hole from the floor below on the other floor?

A. I couldn't see it, not from up there.

Q. You saw it when you went downstairs?

A. Certainly; I knew that it was when I went downstairs.

Q. Three feet six inches according to the map.

A. Yes, sir.

Q. Can you explain to us how the intermediate floor then could possibly get in the way of your line of vision from where you say you stood at that door?

A. Well, I just, I said the floor below, the ceiling.

Q. How could it?

A. Well, you can see, as I said, the top step coming up from the second floor to the third.

Q. The top step was directly under—

A. That is right; by the well-hole.

Q. Listen to me. That top step was directly under the other end of the well-hole, wasn't it?

A. Yes, sir, on the third floor.

The Court: No, not under the well-hole.

A. In the same line with it.

The Court: It was further away than the well-hole, not under the well-hole, at the end of the well-hole.

Mr. Parker: I think I omitted to prove what I supposed, that these stairs are superimposed.

The Court: Oh, prove that. As I understand him, you put a plumb anywhere around that well-hole, anywhere in ten feet length or one foot width, it will drop right to the main floor below, that is the idea, and there is no post, nothing to support those balustrades except the balusters.

Mr. Parker: The rungs.

The Court: I call them balusters; I don't know that that is right, balusters and balustrade, the balustrade is what is supported on the balusters, the rung on top.

Mr. Lindabury: Balustrade, I think, is the name given to the whole thing, includes the rail and the baluster.

The Court: That may be; I am quite innocent of learning on that subject, but I have used it in that way in this case.

Q. Why was it that you couldn't see anything but the top step on the third floor?

A. Well, I tried in every shape; I couldn't see anything else; I don't know why it was.

Q. Was it the floor above that interfered?

A. The floor above, yes, sir.

Q. Did they have any lights down there?

A. Yes, sir, the lights in the hall.

Q. What do you say?

A. Lights in the hall.

Q. Did they have any light on the floor where you were?

A. Had light in the hall, in the fifth floor do you mean?

Q. Yes.

A. Yes, sir, had light in the hall.

Q. Any light in the hall below?

A. Lights in the hall, yes, sir.

Q. Do you mean on all the floors?

A. Yes, that is what I mean.

Q. Well, do I understand you that you could not see on the third floor beyond the balusters?

A. And the step as I stated.

Q. And the step?

A. Yes, sir.

Q. Couldn't see back in the hall beyond the balusters at all?

A. Yes, sir, no further than the step there.

Q. Just as far as the step?

A. The end of the step.

Q. And the reason of that you say was this floor above it?

A. The floor above, the fourth floor.

Q. Was anybody there with you when you looked from the fifth floor?

A. Yes, sir.

Q. Who?

A. I think it was Mr. Schnedeker or Mr. Reinert; we all took turns, as I stated before.

Q. Did anybody beside you look below the rail through the baluster?

A. Only us three.

Q. Did the other gentlemen?

A. His assistant, I believe, yes.

Q. He said he didn't this morning.

A. The assistant, he wasn't on the stand yet, I believe.

Q. I thought you meant Mr. Schnedeker?

A. No; Mr. Reinert's assistant.

Q. Did you stand erect when you looked through the balusters or leaned over?

A. I leaned over as far as I could.

Q. Lean over the rail?

A. Over the rail.

Q. Not standing behind it and getting behind it and getting down, but leaning over?

A. Leaning over it at the bathroom.

Q. And not standing erect?

A. No, sir, leaned over.

Mr. Parker: We have got another witness on this same line.

The Court: Call him.

JULIUS HARWITZ, sworn on behalf of the defense:

Direct-examination—By Mr. Parker:

Q. How old are you?

A. 17 years and 6 months.

Q. What is your business?

A. Assistant to Mr. Reinert.

Q. One of the city surveyors of New York who testified here in the trial?

A. Yes, sir.

Q. Did you aid him in making the surveys for those maps that you see there on the Vice-Chancellor's table?

A. Yes, sir, except the one on the third floor.

Q. Did you go there also and make certain observations?

A. Yes, sir.

Q. Who else was with you, Mr. Reinert, Mr. Schnedeker and Mr. Wachter? And do you remember when that was?

A. Well, I believe April 30th and May 1st; I didn't go there yesterday.

Q. Did you make an observation from the fifth floor of the house No. 11 West 68th Street?

A. Yes, sir.

Q. Looking over the balustrade to see what could be seen on the third floor and on the staircase leading from the second to the third?

A. Yes, sir.

Q. Did you make an observation first from a point in front of the bathroom door on the fifth floor?

A. In front of the bathroom, yes, sir.

Q. What did you do?

A. Leaned over as far as I could, taking the most advantageous position and looking down I saw one-half of the top step, that is the last step leading from the second story to the third, say about one-half of that, and I saw the balustrade, that is where it curves around.

Q. Now when a person—did you make any experiment to see whether you could observe a person going up the stairs from the second to the third story?

A. No, sir, I did not.

Q. You were not present when that was done?

A. I was standing downstairs and Mr. Reinert took the observation when I walked two steps up and down.

Q. You didn't do that?

A. I did take, I was standing there, Mr. Reinert took the observation, so did the other gentleman.

Q. Mr. Reinert came up the stairs, did he?

A. I came up the stairs, just two or three stairs, the stairs curve around.

Q. What part of the staircase did you walk?

A. I walked the middle, about three steps middle part of the landing, step beneath and the other step.

Q. And where was your hand?

A. I had my hand on the rod.

Q. On the rail of the balustrade?

A. No, sir; I was standing about the middle of the step, holding the rod in my hand so as to take the measurement from the rail to the rod, about 14 inches or so.

Q. Then when Mr. Reinert was upstairs looking down you stood on that step?

A. Yes, sir.

Q. Of which a part you say you could see, and measure the distance that he said he could see, is that right?

A. Yes, sir, from the balustrade to the rod.

Q. He told you to take a measurement at a particular point?

A. Yes, sir.

Q. And that point was where?

A. From the balustrade to about 14 inches from it.

Q. Well, now did you make any other observations from the fifth floor?

A. Well, yes.

Q. Did you make any effort to see whether you could see the hall, the doorway or door of the rear room on the third floor from any point on the fifth floor?

A. Yes, sir.

Q. Did you try your best to do so?

A. I tried my best.

Q. And what was the result?

A. I could see nothing of the door; I saw the whole step, that is the step that I saw from the bathroom; I saw the whole step and a part of the wall, that is about 2½ or 3 feet.

Q. From what point?

A. Taking the most advantageous position at the end of the balustrade.

Q. (By the Court.) You could see how much of the wall?

A. About two feet, two and a half feet, I didn't measure it.

The Court: Excuse me for interrupting you. What was this ceiling on the fourth floor, between the fourth and fifth, 10 feet or 11 feet or what, was it all the same?

Mr. Kalisch: One is 10 feet 8 and the other 11 feet 2.

Q. When you say you can see about 2½ feet of the wall what wall do you mean?

A. The wall, that would be right by the wall where the door is, that is the wall that is toward the back of the house.

Q. You mean two feet and a half high from the step, don't you?

A. Yes, sir.

Q. Now, did you make any observations from the outside?

A. Yes, sir.

Q. What?

A. Took an observation from the Central Park wall, and looking from there I looked up to the third floor and nighttime I could see nothing.

Q. I just want to go back a moment. You said a moment ago that you could see 2½ feet of the wall when you got in the most advantageous position on the fifth floor, and I want you to say exactly what you mean by that.

A. Well, I could see nothing of the door, but towards the east side of the Park where the door would be I saw about 2½ feet from the top step.

The Court: Just about; that is right.

Q. You mean the trim, the trim of the door or what?

The Court: The wall.

A. The wall; I didn't see the door at all.
Q. You mean perpendicularly, up?
A. Perpendicularly, up.

The Court: I have got it marked here, makes it 17 feet between the wall at the head of the stairs and the wall at the foot of the stairs, vertical wall, wall of the bedrooms out of which the doors opens. Then call the first floor 11 feet and the next 10, if you will; that is all by guess, put it down here, and I have tried to put on the well-hole. Now, if you strike a line from the side of it, of the well-hole on the fifth floor, look through the well-hole on the fourth floor down there, you will see that the only thing to obstruct you is the end of the well-hole on the fourth floor, and this is a rough, of course, entirely scaled by the eye, but there I have drawn a line and without going to the end of that well hole on the fourth floor I have struck above the floor on the third floor, strike the wall above the floor.

Mr. Parker: That is what the witness says.

The Court: That is what the witness says now, 2 feet, and the other side says that is what they make it; they have got one drawn to the scales.

Mr. Lindabury: No; I didn't do mine by scale.

The Court: What I said yesterday, an architectural draftsman could tell you to a dot, taking these figures given by Mr. Rei-

nert, and an architectural draftsman could tell you exactly what you could see.

Mr. Lindabury: I can do it; anybody can do it.

The Court: Absolutely nothing in the way; there is no wall there. Whether you could see the actual wood of the door depends on how much variation you have got in the one foot width; that I wouldn't want to predict, but I should expect that you could draw a line, take a plumber's line that he stretches, make a chalk mark and fasten it up in the one you can draw down and reach the door with the other without touching anything, but I am not sure about that.

Mr. Parker: I again say your Honor please—

The Court: The witness has told the whole story.

Mr. Parker: Of course I am not a witness; I have been there and tried to do it, but I have been there and tried to do it and I cannot, I don't want your Honor to become too fixed with this idea.

The Court: I shall assume at present that it will not, Mr. Parker.

Q. You said you stood on the Central Park wall and looked toward the house at night. What time of night was it?

A. That was about 8 o'clock, I am not positive about the time, of course, I didn't have a watch.

Q. It was evening, of course, was it dark?

A. Dark.

Q. And did you look to see whether you could see any light in the third story front window?

A. I looked, yes, sir.

Q. No. 11?

A. Yes, sir.

Q. And was it possible?

A. No, sir.

The Court: Is it your position here if that room is lighted up you can't see it as far as the Park.

Mr. Parker: I think the reason is the lights are back. We are going to prove where the lights are.

Q. Did you observe from there whether or not you could tell whether a person was coming out of No. 11, out of the place?

A. I didn't look from Central Park; I just looked to the third floor and I could see nothing.

Q. Could you see the house?

A. I saw the house, yes, sir.

Q. How clearly?

A. Pretty clearly.

Q. Now what other observation did you make from outside?

A. Looking from—

Q. Daytime?

A. Took one daytime and again in the evening, about half a block down in the evening looked up to the third floor and then again I couldn't see anything. In the daytime the best light on the house I could see nothing from Columbus Avenue, that is Ninth Avenue, at all; that is I couldn't discern what house, if anybody passed from No. 9 to No. 11 I couldn't discern which house he passed from, and I walked half way up the block, that would be about opposite 49 or thereabouts, I couldn't discern the doorstep either, but walking up I could.

Q. Did you make any observation to see whether you could detect anybody in the third story front room at the window?

A. In the daytime I did.

Q. Do you remember what time of day that was?

A. About three or half-past three.

Q. And who was with you that day?

A. Mr. Reinert and Mr. Wachter I believe it was.

Q. And do you remember whether these witnesses that have been indicated, Mrs. Lincoln and this woman, Hilda, were there in the house when you left?

A. Yes, sir.

Q. Mrs. Duke there, too?

A. Yes, sir, Mrs. Duke was there.

Q. And Mr. Stanchfield? Well, now, were you able, when was it you were able to discern anybody in the third floor front room as you walked from Columbus Avenue toward the house No. 11?

A. Well, when I was directly, not directly, about 10 feet towards Columbus Avenue and right under the awning, I could discern a shadow there or a shape, but I couldn't tell who it was, it may be a statue or something.

The Court: Was the window open?

Q. Was the awning up or down?

A. The awning was down and there was a screen on it.

The Court: Oh, screen up.

Q. That was the day that you looked outside?

A. Yes, in the afternoon.

Q. Now, the screen, by that you mean the window screen?

A. Yes, sir, that screen there (indicating).

Q. The shades, were they up?

A. The shades were up.

Q. (By the Court.) Was the window open?

A. Yes, sir.

Cross-examination—By Mr. Lindabury:

Q. When you looked from the fifth story through the well-hole and saw the wall did you stand directly at the end of the well-hole?

A. Let me understand you clearly?

Q. (By the Court.) Whereabouts on the well-hole did you stand?

A. I took two observations; I took one from the bathroom.

Q. (By the Court.) He is asking you where you stood at the time you saw the wall on the third floor, what part of the well-hole were you looking from?

A. Well, the end of the balustrade from the house.

Q. You stood right at the end?

A. Yes, sir.

Q. And was a wall in front of you?

A. Yes, sir, from the third floor.

Q. Wall on the third floor?

A. Yes, sir.

Q. Did you try to see the door from any other point up there except the one opposite the bathroom door?

A. Well, the one I just mentioned I did.

Q. Those two were the only ones, were they?

A. Yes, sir, those were the only two.

JENNIE LINCOLN, sworn in behalf of the defense:

Direct-examination—By Mr. Parker:

Q. Where are you living now?

A. In New York City, at Mrs. Duke's.

Q. At Mrs. Duke's house?

New Jersey State Library

A. Yes, sir.

Q. Now were you present on, I think it was the 30th of April and the following day, when Mr. Reinert, Mr. Schnedeker, Mr. Wachter and Mr. Harwitz were there and made some observations?

A. I was there the first time in the evening when they were there.

Q. (By the Court.) Last Sunday evening, 30th of April?

A. Monday.

Q. Were you there in the daytime?

A. No, not daytime.

Q. Now, when you were there in the evening what room were you in?

A. Mrs. Duke's front room.

Q. At the front room on the third story?

A. Front room on the third story.

Q. And do you recollect the time when the men were making the observations?

A. Yes, sir.

Q. How do you know that?

A. It was after dinner.

Q. I know, but how did you know they were making the observations?

A. Because I was told so; Mr. Fletcher was there, and of course we knew that the observations were being made.

Q. And you knew when the men went out of the house, didn't you, to make the observations?

A. Yes, sir; Mr. Fletcher went with them.

Q. Did they come back to the house?

A. Yes, sir.

Q. While they were outside where were you sitting?

A. In Mrs. Duke's room.

Q. And what was the condition of the lights in that room?

A. There were no lights in the sleeping room at all; there was a light in her dressing-room, there is a light that is kept lighted all the time, gas light, and occasionally when she wants more light she turns on the electric light.

Q. Was that light on?

A. No, that light was not on.

Q. (By the Court.) Will you tell us right where Mrs. Duke's dressing-room is?

Mr. Lindabury: It appears on the drawing.

Q. There was no light then in the front room at all?

A. None at all.

Q. And the light was in the dressing-room?

A. Yes, sir; in the dressing-room.

Q. You had been informed that was the habitual way in which the lights had been kept?

Mr. Lindabury: I object.

The Court: Never mind what she has been informed.

Q. (By the Court.) There is a door between the bedroom and dressing-room, is there?

A. Yes, sir; passageway.

Q. (By the Court.) Who is this gentleman you said was with you, Mr. Fletcher?

A. Yes, sir.

Q. (By the Court.) That is Mrs. Duke's brother?

A. Mrs. Duke's brother.

Q. That condition was kept up all the time?

A. All the evening while they were taking this observation.

Q. And was anybody in the window during the observation?

A. Mrs. Duke stood in the window.

Q. And how was she dressed?

A. She had on a dark gown, trimmed with light trimmings, all light up here (indicating).

Q. Around the neck all white?

A. Yes, sir, all white on the waist.

Q. And where did she stand if you can indicate it upon this chart?

A. How near to the window?

The Court: Was she in the bay window?

A. She stood right close up into the bay-window this way, in that round part, that round window.

Q. Which bay-window was she in?

A. In the west looking toward Columbus Avenue.

Q. I know, but there were three windows, in the bay-window. Now, which one of those windows did she stand in front of?

A. She stood in the one facing Columbus Avenue and afterwards she stood in the one facing Central Park West.

Q. And close to the window, was she?

A. Close to the window, right up in the window.

Q. She was there all the time?

A. All the time, Mr. Stanchfield was present, too.

Q. (By the Court.) You say Mr. Stanchfield was there?

A. Yes, sir; Mr. Stanchfield was there.

Q. Do you remember whether there were screens on the windows?

A. The one that was used for demonstrating, for the observation.

Q. Which window was that?

A. The window facing Columbus Avenue.

Q. (By the Court.) Had screens on?

A. The screen was put in for that purpose.

Q. Do you know whether those screens—

A. That is the screen, because I carried it downstairs to give to Mr. Gerity that brought it over here.

Q. Did you come over with Mr. Gerity yesterday?

A. No, Mr. Gerity came with two of the other maids.

Mr. Parker: The witness identifies the screen.

The Court: Yes; no dispute about that, I suppose?

Mr. Lindabury: No; I don't think there is any reason to question it at present.

Q. (By the Court.) You slide that screen up and down?

A. Yes, sir.

Q. (By the Court.) And you can slide it up far enough to take it out, I suppose?

A. That I can't say; that screen, I believe, is put in from the outside of the window; we had a colored man there to put it in, and I think he put it in from the outside.

Q. (By the Court.) It slides up and down undoubtedly? Have you lived there in the summer time?

A. I have been there in the summer time, but of course, I am not employed in the house; I am not a maid of the house at all.

The Court: Oh, I beg your pardon.

Mr. Parker: I am going to another matter, if you would like to cross-examine on this point.

Cross-examination—By Mr. Lindabury:

Q. They have to lift them up to operate the outside awnings, do they not?

A. I assume they do.

Q. You have not seen it done?

A. No.

Mr. Lindabury: You better finish, Mr. Parker.

Q. This light in the dressing-room was a single gas jet, was it?

A. Yes, sir.

Further direct-examination—By Mr. Parker:

Q. And how much was it turned on?

A. Full.

Q. Doors open between the dressing-room and bedroom?

A. They are no doors, Mr. Parker; it is a large passageway draped with portieres. I don't know that there are any sliding doors, I don't know, I haven't noticed.

Q. Were there any portieres there at all?

A. Yes, sir.

Q. Were they closed or open?

A. No, they were pushed or open.

Q. And the door was open into the—

A. Yes, sir; very wide space, yes.

Q. Could you indicate on this plan—I am referring now to the third floor plan of No. 11 West Sixty-eighth Street—about where in the dressing-room the gas jet is?

A. Right in the very centre, very centre of the room.

Q. In the ceiling?

A. Right in the ceiling, right up in the very centre.

Q. And how far does it hang down?

A. Just within reach.

Q. Within reach?

A. No, I will correct that; we have to press an electric bulb.

Q. (By the Court.) It isn't gas light, it is electric light?

A. It is electric light and gas light.

Q. (By Mr. Lindabury.) Gas light lighted by electricity?

A. There is both gas light and electric light; in order to throw on the electric light we press a bulb.

Q. (By the Court.) Whereabouts, on the side of the room?

A. No, it hangs down on the gas, and I have never lighted the gas light, so I couldn't tell you whether you have to stand on a stool.

Q. I only want to know how far they come down from the ceiling?

A. Within reach.

Q. Your reach?

A. Yes, sir.

The Court: She says not.

A. I can't say that is within my reach; I am a short person, but Mrs. Duke, I presume.

Q. Reach of a person of ordinary height?

A. Yes, sir.

Q. (By the Court.) Do you mean to say that a person of ordinary height can put their hand on the actual light?

A. I don't believe I can, your Honor; I don't believe I could light that gas.

Q. (By the Court.) It isn't a question of lighting, whether you could reach it with your hand. You are measuring distance from the light to the door, one way is how a person could reach by hand; what I want to know is whether you think you could reach the light and burn your finger?

A. No, sir; I could not.

Q. (By the Court.) From the floor?

A. No, sir; I could not.

Q. Are you acquainted with Nellie Sands?

A. Yes, sir.

Q. Did you pay any visit to her in the fore part of December, in the year 1905?

A. Yes, sir.

Q. Where was she living then?

A. On Fifth Avenue, 1009 Fifth Avenue.

Q. And did you have any conversation with her there?

A. Yes, sir.

Q. What time of day was it?

A. In the afternoon, about two o'clock.

Q. (By the Court.) What place?

A. 1009 Fifth Avenue.

Q. (By the Court.) That is the place where Mr. Ben Duke lives?

A. Yes, sir.

Q. Did she talk about the Duke case?

A. Yes, sir; she did.

Q. Did she say anything about how she came to leave Mrs. Duke?

A. Yes, sir; she told me all about it.

Q. What did she say?

Mr. Lindabury: I object. You should ask her the questions you asked of the witness. He asked Nellie Sands whether she didn't make certain statements to this lady. He should directly ask that, I think.

The Court: I am not disposed, Mr. Lindabury, to hold that rule here so strictly as that. Nellie Sands, I suppose, is in the court room. If she was not here—

Mr. Lindabury: She is here.

The Court: Then the rule—

Mr. Lindabury: I will withdraw the objection.

The Court: I am not inclined to hold that because Miss Sands, if she is where she can hear the evidence, why, that is one thing; she ought to be where she can hear the evidence so as not to have it written out for her to read. She is entitled to be called again, if she is asked any questions that is not strictly within the question asked of her before.

Mr. Lindabury: On that I have no objection, but it is a rule of convenience, and it may be very inconvenient because very few persons can hear what the witness says, I presume, unless they are very near by. I don't know as I see Miss Sands within reach.

Mr. Lindabury: I think she can be allowed to be brought up here.

Mr. Parker: I withdraw that question, if your Honor please, and prefer to ask it in a different way.

Q. Did Miss Sands state to you on that occasion that she went away from Mrs. Duke's house without any hat or coat, and that on the corner there was a cab standing in waiting, that Mr. Duke was there, and another man, and that this man caught her and put her in a cab and drove to Mr. Junius Parker's house on East Sixtieth Street or Sixty-first Street, and that she was kept there in close confinement, locked in a room and not even permitted to walk around the house and apartment, and that she had been kidnapped? Did she say that to you, that she had been kidnapped?

Mr. Lindabury: What is the question, did she say she was kidnapped? I object to that. That is not the question propounded to Nellie

Sands. Nellie Sands was not asked whether she had told this lady that some man had grabbed her up and put her in a carriage.

The Court: The point of the question as I understand was whether when she reached the carriage a man caught her and pushed her in the carriage, and that she was kidnapped.

Mr. Clark: Miss Sands was not asked whether she told this woman she was kidnapped; she was asked whether she told Mrs. Sledge that.

Mr. Lindabury: Suppose we let it go and then we can recall Nellie.

The Court: The better way is to give the examination free scope, which is more satisfactory to the Court. Go on and ask her anything you are a mind to with regard to what Miss Sands said to her.

Q. Will you answer the question?

A. I haven't answered it, and I am waiting to have the opportunity to answer it. She did, she told me that.

The Court: It is a leading question, and not a repetition of the question put to Miss Sands. That objection was not taken; but it destroys the value of the evidence to me.

Mr. Lindabury: That was the objection I made; but the gentleman tried to persuade me my recollection was at fault.

The Court: Leading question, it is very badly leading.

Mr. Kalisch: For the purpose of contradiction, I understand, you can put those questions.

The Court: Exactly the same question you put to the others. The question is to

ask her what she said to her in the line of the examination I have now opened, is to ask the witness what Nellie Sands said to her, that is the right way; but you can leave that open for Nellie Sands to go on the stand again, and if they ask it I shall permit her because the questions put to her were of the most meagre character, as I recollect it, simply whether she was not kidnapped; that is my recollection of it, but it was confined to that idea. She was not asked as to whether she did not say so and so in so many words and asked the detail of the conversation, and at any rate I think that simple justice requires, in all cases, that a witness whose evidence is attacked in that way should have the privilege after hearing the evidence of going on the stand and telling the story. In old times, as I recollect it, when we tried causes before courts and juries, juries in the most unsatisfactory manner, according to my notion always, a witness must be asked whether he or she did not say just exactly so and so, and then the contradictory witness would go on the stand, and asked whether she told her so and so, and that was the end of it, no further elucidation by cross-examination of anything of the circumstances. But that is not my practice, and I don't think it tends to promote justice. As at present advised I expect, if asked to give Miss Sands an opportunity to be heard again on the stand, if she asks it, or her counsel. So you may examine freely. That is my idea of giving you an opportunity to examine freely all contradictory evidence, but I suggest you ask the witness now on the stand

what Miss Sands said to her without putting the words in her mouth.

Q. Well, state what Miss Sands told you in that conversation.

The Court: That is it.

A. Why, I called there and at their solicitation; I had met them before that, the Sunday before, that is, I met Nellie Sands and Mrs. Andrews; they both said, "Oh, do come up and see me, we will tell you all about it." As I had not up to that time known anything about it, the trouble, only what I read in the papers, so I called at the house the following Thursday.

Q. You talked with Miss Sands then?

A. Yes, sir.

Q. Now state your conversation with Miss Sands.

A. The first person that I met was Nellie Sands.

Q. (By the Court.) That is in Duke's house?

A. In Mr. Benjamin Duke's house; so she said to me, "Oh," she says, "Mrs. Lincoln," she says, I first asked her, "How did you come to leave Mrs. Duke, how did this all happen?" She says, "Why," she says, "I didn't want to go up," she says, "I was actually kidnapped out of the house; I was taken out of the house," she says, "without a hat on my head; they told me that somebody was on the corner wanted to see me; I went to the corner, and," she said, "there was a cab there, and Mr. Duke and another man; I was hustled into the cab," using her term "driven to Mr. Junius Parker's home, and I was kept there, I was confined there, not allowed to go about the house or have any freedom; I cried and made myself sick and begged to be taken back to Mrs. Duke; they wouldn't allow me to do it; they commenced to tell me then things that Mrs. Duke had said that I said about her,"

and then that was the time that she made up her mind that she would be on Mr. Duke's side, if Mrs. Duke had said such things about drinking her champagne, and so forth, she, of course, was going to be on her side. Then she also added, you know, that "Mr. Duke made me a present of a thousand dollars in stock, and of course, I am on his side; I can't go against Mr. Duke; I am with him."

Q. Did she state anything else?

A. Yes, sir; I asked her whose home this was; she said that apparently it was Mr. Ben Duke's home, but in reality it was Mr. J. B. Duke's home, as he paid them their wages, he employed them and paid them their wages.

Mr. Lindabury: I ask that that be stricken out; that was not asked of Nellie.

The Court: Well, it is contradiction on an immaterial question; that is the only trouble about it; it is not material in this. She said she was paid by Mr. Benjamin Duke. It contradicts her by getting her to say that she was paid by J. B. Duke, the petitioner here. I consider that immaterial in this case at present.

Cross-examination—By Mr. Lindabury:

Q. You were here the other day, the day that Mrs. Duke was reported ill, were you not?

A. Yes, sir.

Q. Brought the message over?

A. I did; I left Mrs. Duke ill in bed.

The Court: You were not asked that at all.

Q. Went out and telephoned to her from the court room, did you, while you were in Newark?

The Court: Did you telephone to her?

Mr. Parker: I don't think this is proper; I think it is irrelevant, entirely. The fact is that the telephone from my office came out in the matter the other day, and I have inquired about it.

Mr. Lindabury: Do you object to this or don't you?

Mr. Parker: Yes, I object to it.

Mr. Lindabury: I insist I have a right to ask it; it shows her friendship and relation.

Mr. Parker: Let her say if she telephoned to her and what she said.

Q. Did you telephone to Mrs. Duke from Newark?

A. I did.

Q. How soon after the court opened?

A. At noontime.

Q. After adjournment or before?

A. Yes, sir.

Q. When did you leave the court room that morning?

A. I don't know that I left the court room that morning.

Q. Didn't you leave the court room within a few minutes after it was announced that a physician would be sent over there?

A. I don't remember that I did.

Q. Didn't you leave the court room within ten minutes after it was announced?

A. I don't remember.

Q. And didn't you go at once to Mr. Parker's office and telephone at Mr. Parker's office to Mrs. Duke?

A. I didn't go at once to Mr. Parker's.

Q. Well, did you go when you left the court room?

A. When I left the court room was noontime.

Q. When you left the court room the first time that morning, whether it was noontime or what.

A. I don't remember that I left the court room.

Q. (By the Court.) Whenever it was, where did you go the first time you left?

A. I went in the neighborhood, I used a booth in the neighborhood.

Q. You mean a telephone booth?

A. A telephone booth.

Q. Where in the neighborhood?

A. At the Simon Riegel Cigar Store Company.

Q. Telephoning from there?

A. Yes, sir.

Q. Did you go there and telephone at once when you left the court room, within an hour, say?

A. Ask me that again.

Q. (By the Court.) Did you go directly there from the court room?

A. Why, I guess I did.

Q. Did you telephone from Mr. Parker's office?

A. I did not telephone from Mr. Parker's office.

Q. Not at all?

A. I didn't telephone from Mr. Parker's office.

Q. Did you send by anybody else to telephone?

Mr. Parker: I object.

Mr. Lindabury: Whether she did it herself or another?

Mr. Parker: I object; it is in my office, at any rate it would be a confidential communication and counsel cannot—

The Court: Mr. Lindabury, I think I ought to hear you whether the Court ought to go as far as that.

Mr. Lindabury: I won't press it, your Honor, it isn't worth enough to take any time; if you will permit me, therefore, to abandon that.

Q. How long have you been living with Mrs. Duke?

A. I have been living with Mrs. Duke more or less all winter.

Q. What do you mean by that, beginning what month?

A. I was with Mrs. Duke during November; December I went away for a while, and returned.

Q. How long were you away?

A. Two weeks.

Q. On a visit?

A. On a visit.

Q. That is your home now, is it not?

A. Yes, sir; that is my home at present.

Q. And you expect it to be for an indefinite time in the future, do you not?

A. I suppose so.

Q. You are a dressmaker, are you not?

A. I was a dressmaker; I am not now.

Q. When did you abandon dressmaking; when you went to live with Mrs. Duke?

A. No; years ago I withdrew from the business that I was partnership with the present dressmaker that makes Mrs. Duke's gowns.

Q. Then you haven't been in the business of dressmaking recently?

A. No, I have not.

Q. When was it that you gave that up?

A. Three or four years ago, three years ago.

Q. In what capacity are you with Mrs. Duke, as a friend?

A. As a friend, companion.

Q. Friend and companion?

A. Yes, sir.

Q. Now, did you consult with Mrs. Duke about going to see Nellie Sands?

A. No, sir; I hadn't seen Mrs. Duke yet when I went to call on Nellie Sands.

Q. When was it that you went to see Nellie?

A. It was the latter part—there has been a mistake about that date; I just learned the other day from my husband that it was in November.

Q. Have you a husband?

A. I have a husband; yes, sir.

Q. Does he live there, too?

A. He lives in Burlington, Vermont, where his business is.

Q. He is not living with Mrs. Duke?

A. I should hope not.

Q. What do you say?

A. No, my husband's business is Burlington, Vermont.

Q. Did you ever live in Burlington, Vermont?

A. Yes, sir.

Q. That is Mr. Huntoon's old home?

A. I don't know, sir.

Q. Did you never meet him up there?

A. No, sir; never.

Q. Don't his sisters live there?

A. No, sir.

Q. Do you say no or don't you know?

A. That is a mistake.

Q. They don't live there?

A. No, they don't live there, never lived there.

Q. How do you know?

A. Because we would know through friends.

Q. Where do they live?

A. They live in Rutland, Vermont, 'way in the southern part of the State; that is not Burlington; Burlington is 'way up in the north.

Q. They don't live, then, in Burlington?

A. No, sir.

Q. Isn't Burlington Mr. Huntoon's old home?

A. I don't know—that is, I don't know anything about Mr. Huntoon.

Q. When did you live at Burlington, Vermont?

A. Last year.

Q. How many years did you live there?

A. Well, I didn't live there, really, Mr. Lindabury, the years, I stay there just a few months and back here again.

Q. And what does your husband do between times, live alone, there?

A. Yes, sir; my husband is a travelling man; he is manager for the State of Vermont for the National Cash Register Company.

Q. His home is in Burlington, that is his stopping place?

A. Yes, sir; headquarters for that business for the State of Vermont.

Q. And he travels a good deal, and therefore is not there a great deal?

A. He travels constantly, going Monday morning and not returning until Saturday.

Q. Is he home once a week, then, up there?

A. Once a week.

Q. How did you find out Huntoon's sisters lived in Rutland?

A. Why, I believe my husband told me one time during his travels he met somebody that knew the Huntoon family.

Q. When have you seen your husband?

A. Three weeks ago, four weeks ago.

Q. Now, when was it that you say you went to see Nellie Sands?

A. It was in November.

Q. What part of November?

A. 16th.

Q. What time in November?

A. 16th of November, according to my letter.

Q. When was it that you went to live with Mrs. Duke?

A. I returned the 8th of February—oh, the 8th of April, excuse me.

Q. Then I misunderstood you. I asked you what time in November you went there?

A. Oh, I was there every day.

Q. Throughout November?

A. Yes, sir; from the 16th on.

Q. What do you say?

A. After that period, after I had seen Nellie Sands I was there a great deal.

Q. But you didn't see Nellie Sands until the 16th of November?

A. Yes.

Q. Hadn't you been to Mrs. Duke's before that time?

A. No, sir; I had not.

Q. How soon after that did you go to see Mrs. Duke, go to live with Mrs. Duke?

A. I didn't live there, I didn't live practically there, was there every day.

Q. When did you take up your residence there?

A. Not until I returned this last time.

Q. Then I misunderstood you. Where did you live during November?

A. At 104th Street.

Q. Boarding there, were you?

A. Yes, sir; had a room there.

Q. With friends or strangers?

A. Strangers.

Q. But going to see Mrs. Duke every day?

A. Yes, sir.

Q. Through November and through December?

A. Yes, sir.

Q. Dressmaking or visiting?

A. Dressmaking,- just remodelling, just anything.

Q. So you were working for her during those two months, were you, now a mere companion with her?

A. Yes, sir, done shopping and her companion, just with her off and on like that.

Q. Did you receive wages from her?

A. No.

Q. (By the Court.) You say you don't receive any wages from Mrs. Duke at all?

A. Oh, no, I didn't receive anything from her.

Q. Are you being paid anything now?

A. No, sir.

Q. You began to go to Mrs. Duke every day the 1st of November, did you; am I right?

A. The 1st of November?

Q. Yes.

A. No, sir; I hadn't seen Mrs. Duke the 1st of November, I never saw Mrs. Duke until along about the 20th.

Q. Never had seen her at all?

The Court: Had no acquaintance with her at all, eh?

A. Why, certainly, I have known Mrs. Duke for five years.

Q. What do you mean by saying you hadn't seen her, hadn't seen her before a date, since a certain date?

A. No, I didn't see her.

Q. When had you seen her last before the 16th of November?

A. I met her once in the dressmaker's, my partner's, while her trousseau was being made.

Q. You didn't see her between the time of her marriage and the 16th of November?

A. Until about the 20th of November.

Q. About the 20th, anwyhere?

A. Yes, sir.

Q. How came you to go and see her on the 20th?

A. Because I wished to.

Q. Well, is that the only reason you can give?

A. I think that is a good reason; I wanted to see her; I had been acquainted with Mrs. Duke a great many years.

Q. And did you then tell her of your interview with Nellie Sands?

A. I certainly did.

Q. On that day?

A. I did.

Q. Then after that time you went every day; is that right?

A. I can't say every day .

Q. Well, substantially every day?

A. Yes, sir.

THOMAS J. GERRITY, sworn in behalf of the defence.

Direct-examination—By Mr. Kalisch.

Q. Mr. Gerrity, where do you live?

A. I live 474 Lenox Avenue.

Q. New York City?

A. Yes, sir.

Q. What is your occupation, what do you do?

A. I watch private properties; I am a private watchman.

Q. Along what block?

A. Sixty-eighth Sreet, West Sixty-eighth.

Q. And were you a private watchman along that block during the year of 1905?

A. Yes, sir.

Q. Do you know Mrs. Duke?

A. Yes, sir, I know Mrs. Duke; yes, I worked for Mrs. Duke.

Q. Do you work for her now?

A. Yes, sir.

Q. What kind of work?

A. Watch her property.

Q. Oh, you watch for the private persons, private residences?

A. Yes, sir.

The Court: Watch for all of them.

Q. Yes. Did you ever tell Mrs. Duke, give her any notice about any persons being around on West Sixty-eighth Street, watching the house?

A. Yes, sir.

Q. When did you do that?

A. It was something around the 18th of July, I think.

Q. What year? Last year, was it?

A. Last year; yes, sir.

Q. Do you know the boy that has charge of the hall next door, No. 9 West Sixty-eighth Street, Harold Reuter?

A. Yes, sir.

Q. Harold Reuter was asked whether he did not——

The Court: Never mind.

Q. Did Harold Reuter say to you in a conversation had with you that about ten days ago, about two weeks ago, in a conversation had with you, that Mr. Duke wanted him to come over here and testify in a divorce case, and that he was out for the dough?

Mr. Lindabury: I object.

A. Yes, sir.

Mr. Lindabury: That was not the question asked of the boy.

The Court: Is the boy here?

Mr. Lindabury: We can get him. I object to that question because it is not the question put to the boy.

Mr. Kalisch: I will withdraw the question.

Q. Did Reuter say to you in that conversation that he was going to be a witness for Mr. Duke; that he didn't know anything about the case, and that he was out for the dough?

A. Yes, sir.

Q. Did he say that Mr. Duke had promised him money in that conversation?

A. That Mr. Duke promised him money?

Q. Yes.

A. If he will come on the stand with him.

Q. How did you know about these persons being there in West Sixty-eighth Street watching Mrs. Duke's house?

A. Well, I took notice of them there; they would get on—I gets on at eight o'clock and gets off at five o'clock in the morning—and I took notice of three men over there at the Park wall, and they kept me worried for a few nights until I found out what they were.

Q. And now, did you do anything or go anywhere or make a complaint aynwhere about it at that time?

A. I did, sir. I went to the station house and found out that they were detectives.

Q. And was it before or after that that you told Mrs. Duke about the house being watched by detectives?

A. Yes, sir.

Q. Well, was it before or after you went to the police station?

A. After.

Q. How long after?

A. About the same night, or some, the same night I think, when I found out they were detectives, and I saw that they had more desire on No. 11 than they had on any other house.

Cross-examination—By Mr. Lindabury:

Q. When was it that you reached the conclusion that they had more desire on No. 11 than anywhere else?

A. Well, because I took particular notice of them, that they didn't have no desire on any other house as they were going along, and they wouldn't go beyond the lamp-post right across from No. 11, and they would cast their eye right over, and then I notified Mrs. Duke.

Q. And how long did you see them doing that before you made up your mind their desire was on No. 11?

A. Well, a few nights.

Q. How many were there?

A. How many?

Q. Yes.

A. There was three.

Q. Three of these men?

A. Three of those men.

Q. What were your hours there?

A. My hours is from eight o'clock in the evening until five in the morning.

Q. Do you remember when Mrs. Duke went away to Saratoga?

A. No, sir.

Q. Do you remember a time during that period when she was away for about ten days?

A. No, sir.

Q. Didn't you know she was away at all?

A. No, sir; I did not.

Q. Thought she was there all the time?

A. I didn't know whether she was there or where; I didn't make any inquiries.

Q. Did you tell Mr. Huntoon about these men?

Mr. Parker: I object.

A. Did what?

Q. All right. I will ask the question; let me finish. Did you tell Mr. Huntoon—don't answer this question until you are instructed to do it—did you tell Mr. Huntoon about these men being there, and having desires on No. 11?

Mr. Parker: I object.

The Court: Don't answer until I tell you to. Please state your objection.

Mr. Parker: I object to it as not competent or material, and not cross-examination.

The Court: Counsel has a right to test the witness' accuracy as to certain part of the evidence, and I think it is somewhat important, and I think that he is in the right direction. Go on. Answer that question, sir.

A. Did you ask me if I told these——

Q. (Question read.)

A. I don't know Mr. Huntoon for to tell him.

Q. And you were on duty all these nights?

A. Yes, sir.

Q. During all that period?

A. Yes, sir.

Q. You never saw Mr. Huntoon in your life, I suppose?

A. I don't know the gentleman at all.

Q. You wouldn't recognize him if you should meet him now?

A. I never was introduced to him, and never had anybody to say it was Mr. Huntoon, the man Mr. Duke is jealous of.

Q. Are you still night watchman there?

A. Yes, sir.

Q. Have you been there every night during the last two months?

A. Yes, sir.

Q. And, of course, you have heard about this case during that time?

A. Sure, I heard about it.

Q. And still, you haven't seen Huntoon?

A. I haven't seen him; I never saw him to recognize him only one time that I saw Mr. Duke and himself pictured in the paper, and Mrs. Duke; the three heads, and if I saw him close I would know him.

Q. I see; and you have never seen him there between eight o'clock at night and five next morning in military clothes?

A. No, sir, I don't know the gentleman at all; I don't pass no remarks on one man more than another that I pass on the sidewalk.

Q. I don't suppose there are so many going there between those times that you would be confused in that way?

A. Certainly, if I know them——

Q. I say there are not so many going to that house between the hours that you are on duty that you would be confused on that account, are there?

A. No, sir; that house is closed the same as any other house; when the time comes to sleep that house is closed up, and there is no more in or out in the morning until I leaves there; of course, I don't stand there any more than any other house.

Q. You don't walk the other way when Huntoon comes out, do you?

A. I told you before I don't know Huntoon.

Q. When did you last talk with Mrs. Duke about the case?

A. When did I?

Q. When did you see Mrs. Duke last and talk to her; yesterday?

A. No, sir.

Q. Well, the day before?

A. No, sir.

Q. Well, how long ago?

A. About a week ago.

Q. About a week ago; and Mr. Stanchfield, did you see him?

A. No, sir.

Q. You don't know him, do you?

A. No, sir; I didn't know Mr. Duke until I was shown him yesterday on the car.

Q. What does Mrs. Duke pay you?

A. She pays me $2 a month for taking care of her house.

Q. Does she pay you anything for anything else?

A. No, sir.

Q. Only the $2 a month?

A. Only the $2 a month.

Q. Now, how long after your talk with Harold Reuter was it that you went in and saw Mrs. Duke?

A. That I went in and saw Mrs. Duke?

Q. The talk with Harold Reuter that you spoke of a while ago; how long after that did you go in and see Mrs. Duke?

A. That is, Harold Reuter. Well, I told her the next night that this young man was going to protest against her.

Q. Now, you didn't go and tell Mrs. Duke that same night that you had the talk with Harry?

A. No, sir; I told her the next night.

Q. I want to know from you for certain whether or not you did not tell Mrs. Duke the same night that you had the talk with Harry Reuter?

A. I think it was the next night I told him.

Q. You are sure it was not the same night, right away after you had the talk with Harry?

A. Now, I am not sure whether it was the same night or the night after.

Q. Didn't you go and tell her within fifteen minutes after you had the talk with Harry?

A. Now, I am not sure.

Q. You went and hunted up Harry, didn't you?

A. Sir?

Q. You went and saw Harry, didn't you; you went to see him?

A. Yes, sir; I walked along with Harry from Columbus Avenue; up as far as Columbus Avenue from No. 9.

Q. You tried to persuade him not to come out to Newark, didn't you?

A. I did; that is what I did.

Q. He told you he was going out to testify for Mr. Duke, didn't he?

A. Yes, sir.

EMMA SLEDGE, sworn in behalf of defence.

Direct-examination—By Mr. Parker:

Q. Where do you live?

A. 144 West 109th Street.

Q. Do you know Miss Nellie Sands?

A. Yes, sir.

Q. Did she pay a visit to you in the month of September, 1905?

A. Yes, sir.

Q. And how long was she there with you?

A. One week.

Q. Did she tell you the circumstances under which she left Mrs. Duke?

A. Yes, sir.

Q. Did she talk with you more than once on that occasion about the circumstances under which she left Mrs. Duke?

A. Talked with me once; yes, sir.

Q. What did she say to you in that conversation?

Mr. Lindabury: Just let her tell.

The Court: You had better ask her; more satisfactory to the Court to ask her just what she did tell her.

Q. Just tell what Nellie Sands told you about the circumstances under which she left Mrs. Duke?

A. Well, she said that Hilda came and told her; Hilda Andrews came and told her that her brother was around the corner waiting for her, around 67th Street, her brother was around the corner waiting for her, and when she got there it was Mr. Duke, and he hustled her in the carriage and they drove off to Mr. Parker's house, and when she got there they closed her in a room and asked her questions, and she said she didn't know nothing about Mrs. Duke or anything; she couldn't say anything about Mrs. Duke, she didn't know anything.

The Court: Go on and tell the rest she told you.

A. Oh, she said she really was kidnapped from the house.

Q. Did she state how long she was confined?

A. No, sir; she did not say how long she was confined; she said they wouldn't let her out; that she cried and went on and begged to go back to Mrs. Duke's, but they wouldn't let her out, the lawyers and Mr. Duke wouldn't let her out.

Q. And did she say anything else?

A. She said Mr. Duke said if she stood by him he would be a father to her.

Q. Did she say anything else about what Mr. Duke would do?

A. No, sir; I don't think she did; no.

Q. Any talk about stock?

A. Oh, yes; she did say Mr. Duke had given her a thousand dollars in stock, but she didn't intend to tell that.

Q. (By the Coutr.) Eh? Didn't what?

A. She said she didn't intend to tell that.

Q. Didn't intend to tell that generally, eh?

A. No.

Q. Did she say anything further?

A. No, sir. I don't think she did.

The Court: You can remind her of any subject; very satisfactory way of getting evidence; but I don't mean to restrict you; reminding her from any particular point that you understood the witness has omitted in her answer.

Cross-examination—By Mr. Lindabury:

Q. You were the laundress, I think, for Mrs. Duke?

A. Yes, sir.

Q. Are still?

A. Yes, sir.

Q. You do the work at her house?

A. I do, sir.

Q. How many days in a week do you spend there?

A. Two days, Monday and Tuesday.

Q. And you live at this place where you were visited by Nellie?

A. Yes, sir; 144.

Q. I have forgotten the number; where is it?
A. 144 West 109th Street.
Q. Nellie was there; came there to see you?
A. Yes, sir.
Q. (By the Court.) Stayed a week, I understood, with her?
Q. How long did she stay?
A. A week.
Q. Did she board there with you?
A. Yes, sir.
Q. Pay you board?
A. Yes, sir.

CHARLOTTE D. FLETCHER, sworn in behalf of defence.

Direct-examination—By Mr. Parker:

Q. Are you the wife of John A. Fletcher?
A. Yes, sir.
Q. And he is a brother of Mrs. Duke?
A. Yes, sir.
Q. Do you live in Rutherford, New Jersey?
A. Yes, sir.
Q. Now, Mrs. Fletcher, were you present, I think it was last week, when Mr. Reinert and those two other gentlemen, Mr. Schnedeker and Mr. Wachter, made an observation?
A. Yes, sir.
Q. Were you present in Mrs. Duke's room on the third floor front of No. 11 West 68th Street?
A. Yes, sir.
Q. Was it daytime or evening?
A. Afternoon, about three o'clock.
Q. And did you have knowledge and notice when these gentlemen went out to make the observation?

A. Yes, sir; I looked at the window to see if any detectives were out watching us, and saw they went down the street.

Q. You mean the detectives?

A. No, the men; the architects, engineers.

Q. And did you notice when they came out, too?

A. Yes, sir.

Q. Came back?

A. Yes, sir.

Q. Now, while they were outside making that observation, was anybody standing in the window?

A. Yes, sir.

Q. Do you recollect what was the conditions of the screens?

A. The screens were in the window.

Q. Do you mean the window screens?

A. Yes, sir.

The Court: You mean the screens?

Q. Wire window screens that have been shown here in court?

A. Yes, sir.

Q. And were the windows up?

A. Yes, sir.

Q. And were the shades up?

A. Yes, sir.

Q. Do you know whether there was any awning or not?

A. Yes, sir.

Q. Was the awning up or down?

A. The awning was down.

Q. Now, who stood in the window?

A. Mrs. Duke stood in the window.

Q. All the time?

A. Yes, sir.

Q. And how was she dressed?

A. She had her dressing sack on, white dressing sack.

Q. And how near to the window did she stand?

A. Right close to the window.

Q. Were you there at night at all?

A. No; I wasn't there in the evening, not that evening.

Cross-examination—By Mr. Lindabury

Q. I think you were here the other morning when Mrs. Duke was reported as ill, were you not?

A. Yes, sir.

Q. Did you go out and telephone to Mrs. Duke?

A. I did not, no, sir.

Q. You did not telephone?

A. No, sir; I telephoned, but not to Mrs. Duke, not to Mrs. Duke's house at all.

Q. Telephoned to anybody for her?

A. I telephoned to my husband, but not to Mrs. Duke, in connection with her sickness

Q. Did you telephone to your husband in connection with Mrs. Duke's sickness?

A. I told him to go and see Mrs. Duke, but he hadn't been up there until after the doctor arrived.

Q. Mrs. Duke had a telephone, I suppose?

A. Yes, sir.

Q. And your husband has?

A. No; I telephoned to a business place where he was expected to be at that hour.

Q. Did you telephone to him to send word that the physician was coming over?

A. No, I said Lillie, his sister, was ill and was not able to appear in court because I went down and expected to meet her in the court, and I thought it advisable for him to go up and see what condition she was in.

Q. You didn't leave word that a physician was coming over to examine her?

A. No, sir, I did not.

Q. Now, there was only one screen in the bay-windows up there, wasn't there?

A. That was all in the bay-window, west side.

Q. And the men took their observation from that side?

A. From that side.

Q. And not on the other side?

A. No, sir.

Q. No outside observations were taken from the east bay-window?

A. Oh, no, sir.

Q. Only the west?

A. Not when I was there.

The Court: The object was to see whether they could see her through that screen, I suppose?

A. Yes, sir.

Q. I understood this was afternoon?

A. Three o'clock in the afternoon.

HILDA SEGER, sworn on behalf of the defense.

Direct-examination—By Mr. Parker:

Q. Hilda, you are working for Mrs. Duke?

A. Yes, sir.

Q. And you are her cook, aren't you?

A. Yes, sir.

Q. And how long have you been cook for her?

A. Since the 15th of May, 1905.

Q. You are not a native of this country?

A. No, sir.

Q. Of what country are you?

A. Swedish.

Q. And when was it that you came over here?

A. Ten years ago; it will be ten years the 8th of May.

Q. And have you been in service ever since?

A. Yes, sir.

Q. You are single?

A. Yes, sir.

Q. And have you been continuously in Mrs. Duke's house from the 15th day of May down to the present time?

A. Yes, sir.

Q. Do you know a man by the name of Richard O'Hara?

A. Yes.

A. A man they call Richard?

A. Yes, sir.

Q. Did he work for Mr. Duke?

A. Yes, sir, he was there at that time.

Q. And did he have any work about the house, Mrs. Duke's house?

A. Yes, sir; he used to come in there and see to the yard, and carrying coal and wood, and do such things around the house, shake carpets.

Q. Did he have a key to the house?

A. Yes, sir.

Q. Whereabouts?

A. For the gate for the basement.

Q. Do you know whether he had that key during the summer of 1905?

A. He had.

Q. And was it possible for him to get in the house at all hours of day and night by means of that key?

A. Yes, sir; he could.

Q. And if he got into the house could he go upstairs?

A. Yes, sir.

Q. Do you know Nellie Sands?

A. Yes, sir.

Q. Do you recollect when it was that Nellie left Mrs. Duke's employ?

A. Yes, I do.

Q. How soon was it before the papers were served in the divorce case?

A. It was the Wednesday before.

Q. Do you recollect the actual time when she left?

The Court: Hour, you mean?

Q. Yes. Did you see her go out of the house?

A. I did.

Q. And did she come back?

A. She did not.

Q. Was any message sent about where she was or what she was doing?

Mr. Lindabury: I object.

Q. Any message?

Mr. Lindabury: By whom, or what?

The Court: If it is simply to fix a date, something of that kind, an hour or moment; but the objection I suppose is to the fact that it doesn't show who the message came from.

Mr. Parker: I want to prove that she left the house, and that nothing was known of her or heard of her from that time until after the papers—

The Court: There is no pretence on the part of the petitioner that there was anything.

Mr. Lindabury: She said she left; no.

The Court: There was no question asked on the part of the petitioner even if she ever got her clothes away, and so far as the case stands, why, she never got her clothes away and never sent for them.

Mr. Lindabury: This woman is not the housekeeper, anyhow.

The Court: No matter; I am only stating the proofs.

Q. Do you know whether she left in consequence of something that was said to her by Tillie Andrews?

Mr. Lindabury: I object.

The Court: That appears already, as I understand. My recollection of the case is this. That this girl said she was called out by Tillie Andrews, and went away with her, and then Tillie Andrews turned her over to the tender mercies of the male species and left her alone in their hands. Now, that is her story, and if you want to contradict it that is one thing, but it don't need any corroboration.

Mr. Parker: Miss Nellie also added that she had a chaperon.

The Court: Went out without a hat, and I ought not to recollect, I suppose, what Mr. Duke swore to on the subject, but he swore that he was instrumental in getting her out, said he wanted to see her and get an interview with her on the street, as I recollect it, and that is the theory of the case. It is now, for the petitioners have not made it any different. I don't see what is the use of spending any time on it, Mr. Parker.

Mr. Clark: We don't deny it.

The Court: They don't deny it, certainly. A very sudden and summary mode of leaving. I suppose that it might be said that Mr. Duke did not want to subject her to the fascinating influence of Mrs. Duke, did not want her to go back there, certainly did not

encourage her to go back, as far as I can see, but discouraged her.

Mr. Strong: Perhaps he wanted to exercise some of his own fascination, who knows?

The Court: Very well; you have that before you.

Mr. Parker: Something that is tangible, not intangible.

The Court: I don't think it is worth while taking down on the notes and wearing the stenographer out with it.

Mr. Parker: I want to show the fact that all of the servants left within two days afterward, except this Hila.

The Court: That is proven, I think.

Mr. Parker: I don't think there is any harm in this witness saying so.

The Court: You can ask if all the other servants left about the same time. I don't know where it is in the case, but it is in my mind that they did, all but this faithful cook.

Q. How many servants were there in the house at the time Nellie left?

A. Mrs. Andrews and Anna Bonderson and Louise Bonderson.

Q. And yourself?

A. Yes, sir.

Q. (By the Court.) There were two sisters and Mrs. Andrews and Miss Sands, whose name I can never recollect, four besides yourself?

A. Yes, sir.

Q. (By the Court.) And they all left besides?

A. Yes, sir.

Q. (By the Court.) About one time?

A. Nellie left first.

Q. Do you recollect that her leaving was about —how many days after Nellie left did the other girls go?

A. Nellie left on Wednesday and they left on Saturday.

Q. Now, have you seen Nellie since she left?

A. Yes, sir; I have.

Q. Do you recollect seeing her at a ball or party in the evening?

A. Yes, I have.

Q. Do you remember when that was?

A. Yes, 14th of October, last year, I met her at the ball.

Q. 1905?

A. Yes, sir.

Q. Well, where was it?

A. Lexington Opera House.

Q. And did Nellie talk with you about the circumstances under which she left Mrs. Duke's employ?

A. Well, she says that she is very sorry to leave Mrs. Duke, and that she wanted to go back, but that they kept her there, that she wouldn't be let back.

Q. Who kept her?

A. Mr. Duke and the lawyers.

Q. (By Mr. Lindabury.) Did she say so?

The Court: Who did she say kept her?

A. Mr. Duke and the lawyers.

Q. Did she say anything further?

A. That is about all she said.

Q. Did she say anything about being kidnapped?

A. Well, she says she was actually kidnapped.

Q. Now, what room do you occupy in Mrs. Duke's house?

A. The next room to Nellie's on the fifth floor, hall room.

Q. Was that in front or back?

A. Front.

Q. When you go to the fifth floor you have to pass, don't you, in front of the door leading into Mrs. Duke's bedroom on the third floor?

A. Yes, sir.

Q. (By the Court.) What is that, when you go where?

A. When you go up to the fifth floor you have to pass Mrs. Duke's bedroom.

Q. (By the Court.) Have to pass both front and rear bedrooms, of course?

A. Yes, sir.

Q. The door?

The Court: Yes.

Q. Now, what were the rules of the house with reference to retiring?

A. Well, the house had to be closed up and lights out by half-past ten downstairs.

Q. And what about the girls, where must they be; what was the rule about the girls?

A. They could go to bed anytime they want to as long as they were upstairs.

Q. (By the Court.) They were expected to be upstairs by half-past ten?

A. Yes, sir.

Q. Now, what was Nellie's duty in the evening?

A. Well, it was to attend to Mrs. Duke's bedroom, and undress her and hook her dresses, as far as I know.

Mr. Lindabury: This witness could hardly know that.

Q. I think she will. Now, when you went up to bed in the evening what—did Nellie have any habit of sitting anywhere?

A. When Mrs. Duke was out she generally sat in Mrs. Duke's room after half-past ten.

Q. What was the rule or practice in the household with reference to Nellie's sitting up for Mrs. Duke?

A. For to unhook her dresses.

Q. What was the rule? Just state what it was?

The Court: To sit up to unhook Mrs. Duke's dresses, she said.

Q. And how long was the rule in force?

Mr. Lindabury: I object to that. She might or might not know about a practice. She could not know about a rule of that kind, I imagine.

The Court: It amounts to very little, Mr. Lindabury. I don't see that it has added anything at all to Miss Sands' evidence; I don't see what he is driving at or why he wants to have it repeated, because Miss Sands swore to that herself, as I understand it.

Mr. Kalisch: Only for the last two weeks, she swore.

The Court: No; I understood Miss Sands to say by implication it was part of her duty to unhook Mrs. Duke's dresses. Of course, if Mrs. Duke was out to a party later than half-past ten she had to sit up to do it, or be called up, but I may be mistaken.

Q. Was that the rule?

A. As far as I know.

Q. Well, didn't you ever speak to her when you went up to bed?

A. Yes, sir, I used to.

Q. Did she ever make any—

Mr. Lindabury: Your Honor is under a misapprehension. Nellie swore that she did

not sit up to undress Mrs. Duke when she was out with Mr. Huntoon until the last two weeks.

The Court: I didn't say anything about Huntoon; that wasn't what I said. If she went to the opera with her husband, anything of that kind, was up until half-past ten, I understood that Nellie, that if Mrs. Duke wanted her she was to unhook her dresses.

Mr. Lindabury: All times except when Huntoon was there.

The Court: Exactly; she excepted that distinctly; she was requested not to sit up.

Mr. Lindabury: Your Honor has it right; I was afraid you hadn't.

The Court: She was requested not to sit up to unhook her dresses, and Mr. Huntoon said it would be a pleasure for him to do it himself.

Mr. Parker: I understand Miss Sands testified positively that she never sat up beyond half-past ten o'clock for any purpose, except during the last two weeks before she left the employ.

The Court: You may go on and prove it, but I understood distinctly, ordinarily she did sit up to unhook Mrs. Duke's dresses, was her dressing maid. The dresses open behind; it was her duty to do it. She might be unhooked, her dresses unhooked, a long time before she went to bed herself, you know, and if she had company and been out to the theatre with her husband or anybody else, unless she was told that she might go to bed without regard, at her usual hour, it was her duty to sit up; but that may be a wrong inference from the evidence, and

you may prove it if you want to. Counsel for the petitioner are not bound by my impression, because the evidence may not bear me out. I understand that they do not dispute that now, that what they say is that Mrs. Duke gave her a dispensation until the last two weeks of August.

A. Well, now, Miss Seger, what was the rule of the house in reference to Miss Sands sitting up for Mrs. Duke during the time that you were there, from the time when you came until later on, so as act as her maid?

A. I don't quite understand your question.

Q. What rule was there in the house? What was Nellie's duty in the house?

The Court: Objection has been made, and it seems to me just at this moment that the objection is well taken, that there is no proof that this witness knows the rule.

Mr. Parker: Your Honor ruled on that.

The Court: I stated my impression, and I thought you could stop the examination, but if you are going on you better find out what this witness knew about it.

Mr. Parker: Your Honor was asked; this practice was proved with reference to the witness Louise, I think her name was, and your Honor then ruled when Louise was on the stand, she was the girl who was parlor maid and waitress, that she, living in the house, would be presumed to know the rules of the house that would apply to herself as well as Miss Sands.

The Court: Would that apply to kitchen maid, cooking maid? We are wasting time for nothing.

Mr. Parker: I think it would; that is the ruling your Honor made.

The Court: Go on.

Q. Won't you state what was Nellie's duty?

The Court: What you understood to be the rule.

A. That Nellie should take care of Mr. and Mrs. Duke's room and take care of her clothes and sewing, and be Mrs. Duke's maid.

Q. Well, what about sitting up for her?

A. And sitting up and waiting until she came home to undress her.

Q. (By the Court.) That would be a part of her duties, any way, wouldn't it, naturally?

Q. And I understand you to say that was the rule all the time you were there?

A. Yes, sir.

Q. Now, did Nellie ever talk to you about having to sit up late for Mrs. Duke?

A. Well, sometimes she was very cross in the morning because she had been kept up late at night.

Q. And did she talk to you about, did she complain about it?

A. She complained to all of us at the breakfast table.

Q. And during what period, during what time did she complain?

A. In the summer.

Q. And what other time, before that, too?

A. I can't exactly—it was summer.

Q. It was the summer when you came there?

A. Yes, sir.

Q. Now, when you got up to bed did you notice whether or not Nellie was usually in bed when you got there?

A. She was hardly ever in bed when I came upstairs.

Q. And what time would you go up there?

A. 10.30.

Q. And as you passed Mrs. Duke's room do you remember whether it was the practice for the room door to be open or not?

A. It was open when Mrs. Duke wasn't there.

Q. And if it was open was anybody in the room?

A. Well, Nellie generally sat there in the evening.

Q. And where was the light?

A. In the dressing-room was the gas light burning.

Q. Do you know whether any other lights were usually kept burning in that room?

A. Not when Mrs. Duke wasn't there, unless they were working around.

Q. Would you speak to Nellie when you went past the room?

A. Yes, sir.

Q. And go upstairs yourself?

A. Yes, sir.

Q. Now, if Mrs. Duke was downstairs at half-past ten, and you went up, where would Nellie be?

A. In Mrs. Duke's room.

Q. If she was out it would be the same thing?

A. Yes, sir.

Q. Now, did you notice whether there were any screens in the windows of Mrs. Duke's bedroom?

A. Yes, sir.

Q. During the summer that you were there?

A. Yes, sir.

Q. And will you look at this copper screen and state whether you recognize that as one of the screens?

A. Yes, sir.

Q. You know it is one out of the window?

A. I know, yes, sir.

Q. Which window?

A. Mrs. Duke's bay-window, looking towards Columbus Avenue.

Q. Did you see it taken out?

A. No, I did not.

Q. You know it is out, though, do you?

A. I know it is out; yes, sir.

Q. And it is the only one that is out?

A. Yes, sir.

Q. Well, was it the only one put in?

Mr. Lindabury: She says it is the only one taken out.

Q. And it was the only one put in, too?

A. For the present, yes, sir.

Q. In the summertime were there any awnings in front of the windows?

A. All of the front windows, except the top floor.

Q. Was that so all of July and August of last year?

A. Yes, sir.

Q. And do you know what the rule was about pulling up awnings and pulling them down?

A. I do.

Mr. Lindabury: I object.

The Court: It was a matter entirely within the control of the person in the room. How could there be any rule about it? I understood the person would raise this awning, or let it down at their pleasure. You can raise those screens or let them down, or shades, and let them down, if you choose. How could there be any rule about it? Undoubtedly in the summertime, as we farmers call fly time, the screens would be naturally in place, wherever the window was

open the screen would be placed there to keep the flies and mosquitoes from coming in, and that would be the natural condition.

Recess.

The Court: I am shown a bill from Dr. Fewsmith for his attendance, and he makes it out to the Court of Chancery. What is the feeling of counsel about having that paid? What was the understanding at the time? I told Dr. Fewsmith he must not know what party paid him. I don't know that I had in my own mind—

Mr. Lindabury Which party was to pay him?

The Court: Yes; which was to pay him.

Mr. Parker: My recollection was that Mr. Lindabury asked the privilege of sending the witness.

Mr. Lindabury: We have no objections to paying the bill, but wouldn't like to do it except by order of the Court, in view of what was said at the time.

The Court: Exactly; then I say you better pay it. I believe you had not finished your direct-examination.

Mr. Parker: I have one or two more questions.

Q. Hilda, do you remember when Mrs. Duke went to Saratoga in the summer of 1905?

A. Yes, sir.

Q. Do you remember what day of the week it was?

A. It was on Wednesday, I remember.

Q. Wednesday morning or afternoon?

A. Wednesday morning.

Q. Do you know what was done in the house the night before?

A. Well, I know there was some packing going on.

Q. (By the Court.) Some what?

A. Packing trunks in the afternoon and evening.

Q. Packing what trunks?

A. Mrs. Duke's, Nellie did.

Q. Do you know what time the family retired that night?

A. About the usual time, I remember.

Q. And you remember what time the trunks went?

A. I don't know exactly what time they went; they went in the evening, I remember.

Q. And when was it that they had breakfast the next day, what hour?

A. I know they left the house at eight o'clock, so they had breakfast around half-past seven, quarter-past seven they had breakfast.

Q. Did you see Mrs. Chapin?

A. No, sir.

Q. Do you know whether or not Mrs. Duke was in the house attending to the packing that evening?

A. Yes, sir, I know she was in the house.

Cross-examination—By Mr. Lindabury:

Q. How do you know she was in the house?

A. Because I got dinner for her.

Q. You mean you cooked a dinner that night?

A. Yes, sir.

Q. You cooked a dinner, I suppose, for the rest of the family whether Mrs. Duke was home or not, didn't you?

A. Well, there was no other family at the time but the help.

Q. Did you cook for the help if Mrs. Duke did not dine at home?

A. Certainly.

Q. The kitchen was on what floor?

A. Ground floor, basement.

Q. In the basement?

A. Basement.

Q. And your work was confined to the kitchen, I suppose?

A. Yes, sir.

Q. And your only reason for saying that Mrs. Duke was at home that night was that you have just given?

A. Yes, sir; I know that she was home.

Q. Do you know it by any other circumstance?

A. Only what the girls told me, that she was there.

Q. Yes. And as to the packing that night, how did you know that?

A. Because Nellie talked about the packing, and so on.

Q. You heard Nellie talking about packing?

A. Yes, sir.

Q. Well, didn't you say the trunks had already gone that night?

A. They went in the evening.

Q. What time?

A. I don't know, sir, exactly the time.

Q. How do you know that they went in the evening?

A. Because I heard them talking about it.

Q. Heard them talking about that?

A. Yes, sir.

Q. That is all you know of that, is it?

A. That is all.

Q. Yes. Now, you say Nellie sometimes complained, rather was cross the next day because she had to sit up so late the night before?

A. Yes, sir.

Q. Did you ever hear her complain of having to sit up late on account of Huntoon being there?

A. Never heard that.

Q. She never complained that she was compelled to sit up for Huntoon, did she?

A. No; she sat up for Mrs. Duke.

Q. Well, I mean because Huntoon was there?

A. I don't know that.

Q. Did you ever hear her complain that she had to sit up because Huntoon was out with Mrs. Duke, saying he was out with Mrs. Duke when Mrs. Duke was out. Did you ever hear her complain that she had to sit up late because Mrs. Duke was out with Huntoon?

A. Well, Nellie used to say that she was cross because that Mrs. Duke was out so late.

Q. (By the Court.) Let me ask you whether she mentioned the name of the person Mrs. Duke was out with?

A. She never mentioned Mr. Huntoon's name.

Q. I suppose you were not up in the dining-room nights when Mrs. Duke was dining?

A. No, sir; that is not my place.

Q. Did you know Huntoon?

A. No, sir.

Q. (By the Court.) Did you ever see him to know him?

A. No, sir, don't know him.

Q. How old a man is O'Hara?

A. I couldn't tell you how old he is.

Q. Have you no idea how old he is?

A. No, sir.
Q. Well, about how old?
A. I don't know.
Q. Is he a man as old as twenty?
A. Of course he is.
Q. Well, as old as thirty?
A. I don't know; I suppose he is over thirty.
Q. Is he as old as forty?
A. I don't know.
Q. Is he a straight man, or bent over man?
A. Straight.
Q. Straight man; is he large or small?
A. He is very tall.
Q. Very tall?
A. Yes, sir.
Q. Thick or thin, stout or thin?
A. Thin.
Q. Thin man; have whiskers, or not?
A. He had no whiskers.
Q. (By the Court.) He is a coachman, wasn't he?
A. He is a coachman.
Q. And didn't allow coachman to wear beards or mustache?
A. I don't know.
Q. Has he a smooth face?
A. Certainly he has.
Q. No whiskers at all on him?

The Court: No beard?

Q. No beard?
A. No, sir.
Q. Has no mustache?
A. I answered your question.

The Court: She has answered it; he wore no hair on his face.

Q. I didn't hear that.

The Court Oh, yes; I understood her to say so directly. If I am mistaken—you understood he wore no hair on his face?

A. Yes, sir.
Q. (By the Court.) Shaved close all over?
A. Yes, sir; he had a smooth face.
Q. Man with a military bearing?

The Court: Look like a soldier.

Q. Do you know what that is?
A. No, sir.
Q. Don't know what that is?
A. No, sir.

Mr. Parker: We offer in evidence the plans that are here, and the photographs which have been marked.

The Court: They are all in; no objection to them.

Mr. Parker: Also offer in evidence the screen which is here, and identified. Now we would like to have the original affidavit that Mr. Duke filed on the petition for alimony.

The Court: Yes; filed March 21, 1906. Is that the document?

Mr. Clark: There was no petition for alimony; counsel fee.

Mr. Parker: Answer of petition James B. Duke to petition of Lilian N. Duke for alimony *pendente lite*, but the petition was in fact changed to counsel fee.

Mr. Kalisch: We offer in evidence the answer.

Mr. Lindabury: I object to it as irrelevant. We ought to know upon what ground?

The Court: Yes, you better.

Mr. Kalisch: I will make these offers. Then I have other papers to offer.

The Court: Just state what you want that offered for. It is competent if it is relevant.

Mr. Kalisch: I offer the answer of the petitioner, James B. Duke, to Lilian N. Duke for alimony.

The Court: It is an affidavit in form, isn't it?

Mr. Kalisch: An affidavit.

The Court: Call it that. Just let me look at it. I want to see what it is. It is an answer in form—I was mistaken—with an affidavit annexed to it.

Mr. Lindabury: Answer to the petition.

The Court: Answer to a petition.

Mr. Kalisch: And the matter set forth in the answer verified.

The Court: It is verified by separate affidavit. I thought it was a mere affidavit.

Mr. Kalisch: Now does your Honor want me to state the ground upon which I offer it?

The Court: They ask you to; they want to know what use you are going to make of it. They say it is irrelevant.

Mr. Kalisch: I offer that as tending to prove consent, connivance and procurement on the part of the petitioner to the acts charged against Mrs. Duke, and also on the ground that it is proof tending to show condonation on and before July 15, 1905.

The Court: Well, got anything to say to that, gentlemen?

Mr. Lindabury: I think they ought to point out how they think it shows either.

The Court: I don't think they ought to do that. You are familiar with the answer, you are presumed to know what is in it. They tell you the use they want to make of it. I don't think they have to argue that now. They can show you in the argument. You must take your risk now.

Mr. Kalisch: I have here a letter dated New York, August 23, 1892. I will ask the other side whether they admit that is his handwriting; also the envelope in which the letter is. I want to know if you admit that?

Mr. Lindabury: We admit that both the address on the envelope and the letter itself are Mr. Duke's writing.

Letter marked Exhibit D-18.

Envelope marked Exhibit D-19.

"New York, August 23rd, 1892.

"Dearest: Your kind letter of the 22nd inst. has just been received. I regret exceedingly to learn of your illness and fear that you are allowing your troubles to worry you too much. I know that a great wrong has been done you, but I feel confident that you will come out O. K., so compose yourself and take all the comfort you can. My greatest pleasure is to be with you, but if you are unwell don't take any chances by coming to town to-morrow, your health must be the first consideration. I will wait for you until half-past eleven, as you direct, and will feel no inconvenience if you do not come, but will much regret your being sick, as I know it will be the only thing that will keep you. I much regret that the circumstances of your trouble is such that I

am powerless to be of any assistance to you. I was tempted strongly to go out to see you last evening, but finally concluded that it would be more prudent not to.

If you don't feel well enough to meet me to-morrow and you feel that it will be safe for me to go out write me early to-morrow morning and put on a special delivery stamp and I will get it before leaving the office and will go out to-morrow evening and arrive there about eight o'clock. If my going out will make your position any more embarrassing I am willing to forego the pleasure of seeing you until some other time, so don't hesitate to adopt the most prudent course in directing me whether to go or stay. With all my love and highest esteem, I beg to remain, very truly, J. B. Duke."

Envelope marked Exhibit D-19:

"Mrs. Lilian McCready, Care Englewood Hotel, Englewood, N. J." Special delivery stamp and regular two-cent stamp. Postmarked "New York, August 23, 11:30 a. m." Postmarked on the back "Englewood, August 23, 1892; New York, 8-23-92 11:30 a. m.

Mr. Kalisch: Do you make the same admission to this letter, dated August 23, 1904?

Mr. Fuller: We admit he wrote the letter and addressed the envelope.

Letter marked Exhibit D-20.

Envelope marked Exhibit D-21.

"111 Fifth Avenue, New York, August 23, 1904.

"My Darling Girl: I have decided that if it is agreeable to you that it is best for us

to get married at an early date and thus put an end to any further talk on the part of any one. We have been devoted to each other for 12 years and there is no reason why we should not spend our lives together in peace and happiness. I have told my brother and Mr. Fuller of this decision and they are both delighted with the idea. I would rather you would not speak of this until we can meet and talk the matter over. Mr. Fuller says it will never do for us to take any notice of the gossip around the hotel as it would make matters ten times worse. The best thing to do is to not let any one know that we have ever heard anything about it. I would like you to arrange and come home at once. I want to talk to you. If it is necessary for you to continue your stay in the mountains you can go to Saratoga or some other place. It is one half-past eleven and I have not received your yesterday's letter. I hope your neuralgia is improved and that you are happier than when I left you Sunday night. Telegraph me what train you decide to take. With enduring love, I am faithfully yours.

J. B. Duke.

"I have told Mr. Fuller not to write you to-day."

Envelope containing last letter addressed: "Mrs. Lilian N. McCready, Mount Washington, Hotel Bretton Woods, White Mountains, New Hampshire." Postmarked on the address side "New York, N. Y., Aug. 23, p. m. 04." Postmarked on the other side "Bretton Woods, New Hampshire, Aug 24, 9 a. m. Recd."

Mr. Kalisch: I offer those two letters in evidence, which are admitted to be in the handwriting of Mr. Duke, and the envelopes, one letter being of 1892 and the other letter being of the year 1904.

The Court: Do you make any objection to them?

Mr. Lindabury: We have not read either one of them. We admit the handwriting. We object to the letter of August 23, 1892, on the ground that it is totally irrelevant.

The Court: Let me see it; I will have to judge of it, I suppose. This is 1892, and this letter was addressed to Englewood. You better state what use you intend to make of it. I don't want to burden the case. I don't want to have you offer a letter unless it has some effect here.

Mr. Kalisch: Knowledge on the part of Mr. Duke of the frailty of Mrs. Duke, that he had intercourse with a married woman, and we expect and we insist that it is material upon the branch of the case when it comes to the question as to how far the acts on the part of Mrs. Duke were procured through Mr. Duke's connivance or by his consent or by his absence.

The Court: You say this letter of 1892 refers to her frailities?

Mr. Kalisch: It refers to knowledge.

The Court: Unless you are going to follow it up by some evidence, which you better give first. It only speaks of her being in trouble, and he can't help her.

Mr. Kalisch: I wish further to offer in evidence exemplified decree of the State of New York.

The Court: You better offer that first. I don't see at present what this has to do with it.

Mr. Kalisch: Exemplified copy of decree of absolute divorce from Lillian N. McCready in favor of William E. McCready at a Special Term of the Court of Common Pleas for the City and County of New York, held at the County Court House in the City of New York, the 8th day of February, 1893. A year after that letter was written by Mr. Duke to Mrs. McCready.

Mr. Strong: About six months after.

The Court: You offer the decree by itself?

Mr. Kalisch: I offer the decree.

Mr. Lindabury: We object to the decree, because it is unaccompanied by the record that supports it.

The Court It is mere copy of the decree. The complaint is not there.

Mr. Lindabury: No, sir.

The Court: It is incompetent then; I don't think I can act upon that without showing jurisdiction of the Court; that is my impression. I will hear you, though I don't want to decide it offhand. I will look at it, but my impression is against you.

Mr. Kalisch: It is certainly competent in proving that Mr. and Mrs. McCready were married and that the Court in the State of New York divorced them on the ground set out in the decree. That is the record.

The Court: That is just what is bothering me now at this moment.

Mr. Kalisch: And that he obtained a divorce against her.

The Court: That is, it is competent for her to put it in as an admission on her part that she has been divorced; is that it?

Mr. Kalisch: I put it in on the ground that it shows that the Court of New York has divorced Mr. McCready from Mrs. McCready on the ground stated in that decree, and that Mr. Duke had knowledge of that fact.

Mr. Strong: On behalf of Mr. Huntoon I join in the same offers, and I only want to say that while, whatever the ruling might be, if the decree were offered as a matter of *res judicata* I take it that it is competent in the present form for the purpose of proving a fact that such an order was made at such a date by such a Court. It is for that purpose only that it is now offered, as I understand it.

The Court: It is offered as an assertion, admission. I cannot at present see anything further than that, an admission that Mrs. Duke, that she was divorced from her husband McCready, for her fault, on a day in New York.

Mr. Strong: I offer it in that light.

The Court: In New York on a certain day. The usual rule is, I think, that there must be an enrollment of proceedings, and this is offered against Mr. Duke. Now, there is no evidence given yet that Mr. Duke knew anything about it, and you state that you are going to infer that from this letter; but it don't—I don't want to connect the same now. If you say you are going to follow this up by proof that Mr. Duke knew about it. affirmative proof on your side, perhaps a

different question would arise. But, then, that don't show when the suit was commenced at all, Mr. Kalisch.

Mr. Kalisch: Vice-Chancellor, you will permit me. The letter is addressed to Mrs. Lillian McCready, and it is in Mr. Duke's handwriting.

The Court: Yes.

Mr. Kalisch: And it is August 23, 1892. You observe that the decree there is about six months after this letter was written. You have read the contents of this letter, and you will evidently see that it refers to, must refer, the necessary inference is, to troubles that are existing between her and her husband.

The Court: I haven't yet seen it, but I don't say you cannot argue it. I want your best on this, because I am entirely at sea about it.

Mr. Kalisch: We are not ready here with authorities to convince your Honor.

The Court: I don't think it needs any authority to show you cannot prove a judgment without the whole roll. You couldn't do it in this State. It is usual, I believe, for lawyers when they get a divorce from a woman or man to get a certified copy of the decree, but it isn't good for anything. What they want to hand their client to show that they have got a judgment is the whole judgment roll, the enrolled decree, including the bill, the petition, and if there is an answer, and all the proceedings. I think I am not mistaken about that. I am afraid I am not, on your account. I don't want to be sure; if you can satisfy me.

Mr. Kalisch: We offer it so far as Mrs. Duke is concerned as a fact as to exemplification of a decree.

The Court: The other side may admit it; they may think it benefits them, but that is not the question. They don't seem to think it that way.

Mr. Kalisch: If there is any doubt about that we will get the entire proceedings, as far as that is concerned.

The Court: Well, I have to rule on it. I will hear you gentlemen for the petitioner; see what you have got to say about it.

Mr. Lindabury: We object to it on the ground that it is not complete, and upon the ground that it quite irrelevant.

The Court: What do you require; what do you say is necessary to complete it?

Mr. Lindabury: The whole judgment roll, whatever it be; of course, it will include the pleadings.

The Court: That don't include the testimony?

Mr. Lindabury: Whatever constitutes the judgment roll.

The Court: It includes the complaint, the charge of her intimacy with certain men, with persons unknown, or certain persons, naming them, and then her answer, and then it appears by the decree there, there was a cross bill, and that she was defeated. Will the counsel offer it, supplement that? I suppose they can do it in a very short time.

Mr. Kalisch: Yes; we can do it by tomorrow, I presume.

The Court: Suppose that is supplemented; what do you say is in that complaint? What

do you offer to prove is in that complaint of her husband against her?

Mr. Kalisch: We offer to prove charges of adultery.

The Court: Well, with whom?

Mr. Kalisch: With the person mentioned in the decree.

The Court: There isn't any person mentioned in the decree, if I read it right.

Mr. Kalisch: We don't know; it was on the ground of adultery; we know that.

The Court: Well, there were some persons mentioned.

Mr. Kalisch: We don't know who they are.

The Court: Then you haven't seen the original?

Mr. Kalisch: We haven't seen the enrollment; no.

Mr. Lindabury: Probably your client could inform you.

The Court: If you can open to me who is charged with the adultery; if it happens—if you say to me as counselor that it is Mr. Duke.

Mr. Kalisch: No; Mr. Duke is not charged; I will say that now. He is not charged. But I mean to say that from these facts, we may infer from these papers, from this letter, from the fact that he addressed Mrs. Lillian McCready, from the fact that there is a decree against Lillian McCready, that Mr. Duke knew she was a married woman, and that this letter was addressed to her as Mrs. McCready, and that thereby we have a right to infer from those circumstances that he had knowledge of these facts.

Of course, it will be a matter of argument. As far as what effect that testimony will have is another thing, but we have a right to produce circumstances from which the Court afterwards can say as to whether or not the circumstances do show that Mr. Duke had knowledge of the frailty of Mrs. Duke, knew that she was charged with these offences, and was in correspondence with her and was in friendly relations with her before marriage.

The Court: Ought I to rule this out on the principle on which I have acted heretofore? I don't say whether I ought to rule it out. Counsel says that they understand Mr. Duke was not charged as a *particep criminis* or co-respondent in that case. That they said, and they want to perfect it *per forma* by producing the proceedings, whole judgment roll.

Mr. Lindabury: In view of that statement we will withdraw our objections. We want —they make the admission now that he was not——

Mr. Parker: Never intimated that he was.

Mr. Lindabury: You caused the suspicions right off. It would be a very ingenious argument from that letter to charge Mr. Duke with all her woes. We withdraw our objection on the ground of the imperfection of the record, and insist upon our objection as to irrelevancy.

The Court: I can't rule it out as irrelevant, according to my mode of doing business. You then offer the letter?

Mr. Kalisch: Yes, sir.

Mr. Lindabury: We object to that on the ground of irrelevancy.

The Court: As I read it I guess it won't do harm to admit it.

Mr. Lindabury: It does harm to admit anything—that was the reason of our objection.

The Court: I admit it. It is admitted.

Mr. Lindabury: We ought to have it when the action was begun.

The Court: I think you better require them to put in the whole pleadings; if you want that they better do it. They offer to do it. All you care for is to know when the suit is brought?

Mr. Lindabury: Yes, sir; the cross bill was filed, the litigation was pending before that letter was written.

Mr. Strong: It was undoubtedly.

Mr. Parker: We admit that.

Mr. Lindabury: The original and cross litigation had been instituted at a date before that letter was written.

Mr. Kalisch: We will admit that. Now, the letter of August 23, 1904.

The Court: You need not read that. I have read it. The same one?

Mr. Lindabury: Yes, and it seems to us to be irrelevant, and we object to it.

The Court: It is admitted, with the same remark I made before. I don't see what use I am to make of it.

Mr. Kalisch: That will be our defence to the charges.

The Court: Has the petitioner anything to say in reply in the way of evidence?

Mr. Lindabury: Should we do that before they go on with their cross bill?

The Court: Have you got any proof on your cross bill?

Mr. Kalisch: We can't go on to-day with the cross bill. We propose to ask this Court to give us time, and say that we are not ready. We have one witness especially who is our most important witness; her name is Vera Abrams, and we have made an endeavor to find her, and have been so far unable to locate her. Her testimony is material, and unless we can procure her we won't be able to sustain our charges, and it is absolutely necessary that we should have her in order to sustain the charges we have made in the cross bill.

The Court: I suppose counsel for the defence will require you to give some better proof about it and state what you expect to——

Mr. Parker: I will state this; that she was a maid employed by a prominent broker in New York, known, I have no doubt, to counsel; it isn't necessary to mention his name here; that she was interviewed some time, I think, about the month of February, and made certain statements which were highly material and relevant to this case; that she then left with this lady whose maid she was for the winter in Florida; we supposed that she was still in the employ of this person, and we immediately, upon the case being set down, or rather a few days before the case came on for trial, we made inquiries about her whereabouts, and we had great difficulty in getting in touch with this broker, who was a very busy man and denied himself. We finally, however, about—I think it was just after the first day of trial in this case—found out that this gentleman

would answer questions, and he gave us reply that the woman was no longer in the employ of his wife, and she didn't know where she went or where she was.

The Court: You haven't stated any, given any substance of the evidence she is going to give. I suppose the other side will require some proof that she knows something.

Mr. Parker: She will prove the intimacy between the complainant and the lady mentioned in the cross answer in Somerville during the months of April and May and June, 1905. We have other evidence that leads up to that, but without her it is impossible—

The Court: I think you will have to go on with what evidence you have.

Mr. Parker: I don't see the advantage of putting in a lot of other testimony without her.

The Court: That is the rule of this Court, practice of this Court. Here we are.

Mr. Lindabury: This woman did not go to the Duke house, never was there until the 17th day of June. Will you let us see the statement you have from her?

Mr. Parker: A written statement?

Mr. Lindabury: Yes.

Mr. Parker: I have no written statement.

Mr. Lindabury: I submit there is no basis at all.

The Court: The rule is that the case can only be postponed—of course it is a rule that we break all the time—can only be postponed by—I think rather a harder rule than is laid down at law. I am trying to find where it is. Here it is, Rule 96: "At the

time for which notice is given or designated for hearing"—I don't know that the defendant has given notice of hearing at all.

Mr. Lindabury: She doesn't need to under the practice.

The Court: I suppose not.

"Both parties shall attend with their witnesses and other evidence, and the cause shall proceed as at a trial at law before a jury, by the oral examination of witnesses on both sides until the evidence has been produced and closed, the party holding the affirmative first producing all his evidence, and, after resting, he shall be permitted to produce evidence in rebuttal only; but the Vice-Chancellor may, in his discretion, reserve to either party the right to produce one or more witnesses, who shall be named, to be examined orally or by deposition at a future day. But such right shall not be granted, unless the Vice-Chancellor be satisfied that due diligence has been used to procure the attendance or deposition of such witness before the trial, nor unless it be fairly disclosed what is expected to be proved by such witness, and such evidence shall appear to be material, and shall not be admitted by the other party or parties."

The Court: I didn't make the rule, but there it is. Of course we don't always follow it; but here is a case that has been on trial now five days, I believe, with an immense number of witnesses. The defendant has prepared himself, as I presume, here to meet this counter charge, and at the moment that the defendant is ready to proceed with her case against the complainant she for the

first time, as I understand it, intimates to the Court that she cannot go on on account of the absence of witness. The defendant now asks to know what this witness is going to swear to, what they expect her to swear to, and that is right within the rule as I read the rule.

Mr. Parker: I can call a witness and show who interviewed her.

The Court: Have you got anything to say.

Mr. Strong: I was going to say, if your Honor please, I had not understoood that the cross bill was down for this time.

Mr. Lindabury: I don't understand Mr. Strong is entitled to be heard on this cross bill.

The Court: Unless he avows himself counsel for Mrs. Duke.

Mr. Lindabury: Very well. Then you have, do you say.

The Court: Let him talk. I want to hear everything on this. This is a position I have never been placed in before. I want all the aid Mr. Strong can give me as counsel or as *amicus curiae.*

Mr. Strong: I was only going to say that I had not understood this cross bill was under investigation at this time. I have received no notice of it.

The Court: I should think not.

Mr. Strong: Is it amusing to counsel on the other side?

Mr. Lindabury: It is, very.

Mr. Strong: I am glad you enjoy it. It seems to me I am in a position where I am entitled to notice. If your Honor rules not, it must go so. I think that your Honor will hesitate to rule so.

The Court: That is going a little too far. I cannot even see that the point is arguable.

Mr. Strong: Well, I wish the objection to appear on the record. Of course the stenographer has it.

Mr. Lindabury: I object to it appearing on the record. If there is any fault in not giving Mr. Strong notice it is the fault of Mrs. Duke. Mr. Strong has not given any notice under the cross bill. Mr. Huntoon is in no position to complain of anything Mrs. Duke has done.

The Court: You say you come here prepared to try the suit on the cross bill?

Mr. Lindabury: We are.

The Court: You insist to go on?

Mr. Lindabury: Yes, sir.

The Court: I think, unless the parties abandon their cross bill they must produce what evidence they have at once. Then I will determine in regard to giving you a chance to hear the other part of the case; but at any rate I should certainly go on and deal with the issue, unless counsel can induce me to think I am quite wrong in that; that is my impression, that I should go right on and hear counsel on the main issue between Mr. Duke and his wife, the charge against her, ready to hear them argue at once, or the counsel may produce what evidence they have.

Mr. Lindabury: I hear what your Honor says. Let us consult as to whether or not we want to put in any evidence in rebuttal.

The Court: As to whether you want to put in evidence in rebuttal on the main issue. I say my disposition now is to say to these gentlemen—when I called on you for re-

butting evidence on the main issue I had forgotten the other little trifling matter, and you said you wanted them to finish their case on the cross bill first.

Mr. Lindabury: Yes, your Honor.

The Court: I called on them for that and they gave reasons for not going on. Now I am inclined, if they do not go on, to proceed with the hearing on the main issue. Now, if you want to put in rebuttal on that you may. Do you want to consult?

Mr. Lindabury: Do I understand your Honor to rule that they must elect whether they must go on or not?

The Court: No; I haven't quite ruled that. If they have got any evidence here they must put it in to-day.

Mr. Clark: The question counsel asks relates to the cross bill.

The Court: On the cross bill they have rested, no defence. You say that you want them to put in their evidence on the cross bill?

Mr. Lindabury: Before we put in our rebuttal.

The Court: I don't think that is exactly the thing, Mr. Lindabury; there was no objection to it; I think if you have got any rebuttal to anything you better do it now. You can have a conference about it.

Mr. Lindabury: Let us have a conference about it as to whether we will do it or not. We have a large number of witnesses here in rebuttal, your Honor, but we have concluded, in order to get to the end of this case that we will not call them or offer any evidence in rebuttal.

The Court: Now, gentlemen, it is up to you to say what you will do.

Mr. Parker: We have already stated.

The Court: I think you must go on with what witnesses you have here, with all witnesses except the one you mentioned, and swear them. I will then consider whether I will postpone or not. The reason why I do this is because—are you going to call any witnesses?

Mr. Kalisch: Just one moment.

Mr. Parker: Your Honor will remember at the very outset the manner in which Mrs. Duke appeared in this case, and we have had that in mind.

The Court: Which?

Mr. Parker: The manner of Mrs. Duke's appearance in this case, the manner, the fact that she appeared here under compulsion.

The Court: Oh, you mean the original suit. Yes, you are here under compulsion in that sense.

Mr. Parker: We have that in mind, and we have also discussed the matter with our associates in New York, and they are of the view that we ought not to proceed with those cross charges, and we therefore will not proceed.

The Court: Counsel may sum up immediately.

Mr. Lindabury: We have no argument to present.

Mr. Kalisch: We simply state our ground, that is all we can do, state that we claim that the testimony on the part of the petitioner is insufficient upon which this Court can find a decree against the defendant; that the tes-

timony consists of the testimony of detectives and household servants, with the exception of Mr. Dula, and Mr. Dula being interested in the Tobacco Company, and holding the position that he does there, and his intimacy with Mr. Duke, according to the fact that he has shown such great interest in the case itself, puts him on the plane of an interested witness. Outside of that there has been no testimony offered on the part of the petitioner upon which the Court ought to found a decree against the defendant. We furthermore say that it appears by the petitioner's case that he procured, consented and connived at these acts of adultery which he charges against Mrs. Duke, and that therefore he is not entitled to a decree. He does not come into this Court, in other words, with clean hands, and has no right to ask this Court for its decree. The further ground upon which we object to the making of a decree in this case is that there is no testimony in this Court that there was no collusion or agreement or consent on the part of the petitioner in order to obtain the decree of this Court. We furthermore say that it also appears by the testimony on the part of the petitioner that on the 15th day of July or 14th day of July, Mr. Duke went to his home or place of residence in West 68th Street, 11 West 68th Street; he slept there that night, the night before he sailed for Europe. The presumption of law is that he cohabited with his wife; there is no proof that he did not, and we claim that that was an act of condonation, and that all acts which are charged against Mrs. Duke prior to the 14th day of July or 13th day of July cannot be considered by this Court.

The Court: Do you want to be heard, Mr. Strong?

Mr. Strong: Not at any length, but to state my position. I stand upon the position which I took before your Honor the other day, that there is no evidence establishing the jurisdiction of this Court over the cause as affecting Huntoon. Not to elaborate that, I wish to restate that position. But, passing that, upon the merits I rely upon the same ground stated by Mr. Kalisch; and, further, upon the ground that appears by the case clearly, that the conduct of Mr. Duke on or about the 15th day of July amounted to a clear condonation of all that had happened before that, and a connivance and consent to all that happened after.

The Court (orally): The oral opinion withdrawn by the Court for further revision.

Mr. Lindabury: Now, if your Honor please, we ask for judgment for costs against the co-respondent Huntoon.

The Court: I have already had occasion to examine that question, and by the advice of the Chancellor, after submitting the matter to him, I gave judgment in a case similar to this for costs and counsel fee against the co-respondent; hence you are entitled to that judgment. It will not include, however, the cost of the proceedings to test the jurisdiction of this Court. You will have costs against the co-respondent from the time he intervened, but not the costs of that issue of jurisdiction.

Mr. Lindabury: No, your Honor, preparation on this case, trial of this case, which he did make by voluntarily coming into it.

The Court: In the case in mind a man came in afterward and I gave the whole costs against him.

Mr. Strong: Does your Honor care to hear from Mr. Huntoon's counsel.

The Court: I only tell you what I did after consultation with the Chancellor. I will give you that case now if you wish it.

Mr. Lindabury: I can see no reason why Mr. Huntoon should not pay all the costs made in the preparation of and trial of this issue. As one of my associates says, it is a saying in the South that "two dance in company, but one must pay the fiddler alone"; and it would seem highly proper that Mr. Huntoon should occupy that situation. He is a man of very large income, great wealth, I am told, and he has put us—

The Court: That don't make any difference.

Mr. Lindabury: No; but he has helped to put us to great expense. We have been required, as your Honor will remember, to pay the defendant, his co-partner in this defence and the circumstances that led to it, Three thousand dollars.

The Court: I don't consider anything of that kind. I don't take that into consideration here, except as measuring the importance of the cause.

Mr. Lindabury: You are making an allowance to the petitioner in this case on account of the costs and on account of the counsel fees which he has incurred, and it strikes me that it is a matter that may be taken into account that the petitioner has been compelled to disburse that sum as one of the items of the prosecution of the cause,

and one for which the defendant Huntoon is responsible. I ask that your Honor allow us judgment against Huntoon for the taxable costs of the cause, and for a counsel fee commensurate with the importance of the case.

The Court: Will you please mention the amount of counsel fee you think you ought to have.

Mr. Strong: Your Honor understands me, of course, as insisting that no order should be made against Mr. Huntoon.

Mr. Lindabury: We think the allowance of counsel fee should not be less than Five thousand dollars.

Mr. Strong: It seems to me that the figure suggested is absurd, in the first place; but I started to say before, there is no authority in the Court, by statute or otherwise, that I know of, to make any order whatever for the expenses of the suit, counsel fees or otherwise, against Mr. Huntoon, if it were a matter of discretion, nor has Mr. Huntoon in any way enhanced the costs of this suit. I desire to direct your Honor's attention to that point. He has not appeared here and offered independently testimony such as to increase the burden of the complainant's case. The proof which the petitioner has made in this case he was obliged to make if Mr. Huntoon had not appeared, and under such circumstances, where the appearance of the co-respondent has not aggravated the expense to the complainant, there seems to be no reason for the exercise of a discretion, if the Court had a discretion, to impose upon the co-respondent any of the expenses which

he would otherwise have incurred, would otherwise have incurred necessarily.

The Court: I think that when a man makes himself a defendant, under the statute he becomes liable for the petitioner's costs, and also for counsel fees. I think I will take into consideration the fact that the defendants did not go very far with their defence, Mr. Lindabury, not far enough to trouble you much.

Mr. Lindabury: They made us believe they were going to, and we prepared to meet it.

Mr. Strong: Gave you an awful scare, didn't we?

The Court: Well, I don't see how I can give less than I did to the other side, but I think that is enough, Mr. Lindabury, Three thousand dollars; I will advise a counsel fee of Three thousand dollars, and the costs of the issue. If you waive the costs of the issue on the jurisdiction, if you omit it entirely the whole thing will go against both defendants, but if you put those costs in they can only go against the female defendant. However, you can frame your decree to suit yourself on that hereafter.

Decree in the New York case marked Exhibit D-22.

Mr. Lindabury: I ask that the costs of supplying copies of the testimony to both parties in the cause be included in the taxed costs.

The Court: The rule as I recollect about that is this: You see the stenographer looks out for his pay from the parties who employs him, except as to one copy for the Court, and you are entitled to recover one copy supplied to your side, costs of one copy,

and if you pay the whole of the Court's copy, why then you are entitled to recover for two copies, and the bill may be made out to you, Mr. Lindabury, just made out to Lindabury, Depue and Faulks, cost of one copy for counsel and cost of another copy for the Court. Then all I do is to write across it tax it in.

Mr. Lindabury: We have gotten three copies, and one has been furnished to the other side.

The Court: They must pay that. I have nothing to do with that. The stenographer looks to them for that and looks to you for what he has furnished to you, but the Court is entitled to one copy, and the rule is that each party must pay one-half of the copy furnished to the Court, but if that one-half each in point of fact is not paid, and the successful party chooses to pay the whole of the Court's copy, he may include that in his costs; you are not obliged to pay but one-half of that, and the stenographer may call on the counsel for the defendant to pay the half, but I suppose they would prefer that it be taxed in the petitioner's costs, but you are not obliged to do that. If you choose to do that, Mr. Lindabury, you can have both copies taxed in the costs of the complainant, but you are not obliged to do it; you are obliged to pay one-half, and you are entitled to have that one-half put in the bill of cost. If you think you cannot recover it, you don't want to take that plan. Perhaps you better take the half and let the counsel for the defendant pay their half.

Final Adjournment.

Petitioner's Exhibit—Telegrams.

"May 4, 1905.

F. T. Huntoon,
The Wolcott,
31st St. & 5th Ave., N. Y.

Arrived safe, party very ill. Have telegraphed Nelly to (this word is indistinct, I guess it is 'leave') leave this afternoon. Send me message by her.

L. D."

"Durham, N. C., May 5, 1905.

F. T. Huntoon,
T. The Wolcott, 31st St. & 5th Ave.,
New York.

Nellie arrived. Uncertain about going home. Party very ill. Write here to Nellie. Love and best wishes.

L."

"Durham, N. C., May 6, 1905.

F. T. Huntoon,
The Wolcott, 31st St. & 5th Ave.,
New York.

Hope you are well. Party very ill. Everything uncertain. Don't forget all promises. Love and best wishes.

L."

"Durham, N. C., May 8, 1905.

Mr. F. T. Huntoon,
The Wolcott, 31st St. & 5th Ave.,
New York City.

Mr. Duke died at 2 p. m. Funeral Wed. at 11 a. m. Happy over two letters. Have written. Expect to start for home Wed. or Thursday. Will wire to-morrow. Miserable. Love.

L."

"5/9, 1905.

Mr. F. T. Huntoon,
The Wolcott, 31st St. & 5th Ave.,
New York.

Received third letter last evening. Always miss you. Sad, lonely and miserable. Hope you are well and Keep all promises. Have written. Love.

L."

"May 10th, 1905.

F. T. Huntoon,
The Wolcott, 31st St. & 5th Ave.,
New York.

Will arrive in New York early to-morrow. Will telephone you at 9.30. Hope to see you. Love and best wishes.

L."

IN CHANCERY OF NEW JERSEY.

Between

JAMES B. DUKE,
Petitioner,

and

LILLIAN N. DUKE,
Defendant.

Answer of Petitioner, James B. Duke, to Petition of Lillian N. Duke for Almony *pendente lite*, etc.

The petitioner, James B. Duke, answering the petition for alimony *pendente lite*, etc., filed by the defendant Lillian N. Duke in this cause, says:

1. It is true that the said Lillian N. Duke is the wife of petitioner, and that petitioner has instituted this suit against her for divorce on the ground of adultery, and that she, the said Lillian N. Duke, has filed her answer to petitioner's petition denying the charges of adultery contained therein; it is true that said petition was filed about September 1st, 1905, and that notice thereof and an order to answer said charges was at once served on the defendant; it is true that since the filing of said petition and the institution of this suit petitioner has refused to live with the defendant, and has not contributed any funds or property in any way to or for the benefit of the defendant for her support or maintenance.

2. It is not true as alleged in the petition that petitioner abandoned the defendant on July 15, 1905; it is not true that he has had an army of detectives dogging defendant's footsteps and seeking

witnesses in other ways, since July 14, 1905; it is not true that petitioner has enticed away defendant's servant's; it is not true that petitioner has made any effort to overwhelm defendant through the use of wealth, resources or power; it is true that petitioner is a man of considerable wealth and is worth more than ten million dollars, but it is not true that he is worth more than fifty million dollars; it is not true that defendant necessarily expends in taxes, interest, insurance, living expenses and doctor's bills the whole of her income as alleged in the petition.

3. Further answering the petition of the said defendant herein, petitioner avers that the acquaintanceship and friendship of petitioner and defendant, then Mrs. Lillian N. McCready, began in the year 1892; that after the beginning of said acquaintanceship petitioner made to said defendant gifts from time to time, and from time to time with the knowledge of defendant changed the investments made by defendant from said gifts, until, at their marriage, defendant had a house at 11 West 68th Street, fully decorated and furnished and worth in that condition at least $75,000, on which there was a four per cent. mortgage for $24,000 or $25,000, and stocks in various corporations, which stocks were listed on the New York Stock Exchange and were of an aggregate market value of at least $175,000; in addition to this defendant had numerous and valuable jewels, the gifts of petitioner; that all of these gifts—except jewels—were made to defendant by petitioner with and under the express agreement and condition that they should be for the establishment and maintenance of a New York home for defendant, at which petitioner might stay when detained in New York, and the condition thereof has, in fact, been

breached by the infidelity of defendant, hereafter recited, but so far as petitioner has caused or has knowledge defendant's present possession and enjoyment of all thereof has in no way been disturbed or diminished; that so far as petitioner knows he has given to defendant all that she now has and possesses, excepting what has been given to her by the co-respondent in this suit, as hereinafter alleged.

That petitioner and defendant were married on November 29, 1904, and sailed immediately for Europe; that upon their return in February, 1905, petitioner and defendant continued to live together as man and wife, without suspicion on the part of petitioner of the fidelity of defendant until early in July, 1905; that early in July, 1905, petitioner came accidentally to the knowledge of a telegram sent, as he believed by defendant, under the fictitious name "John" to a man, of whom petitioner, at that time, never to his recollection had heard, named Frank T. Huntoon, the co-respondent in this suit; that inquiry induced by said information as to said telegram, which information had given to petitioner a suspicion, but only a suspicion, of his wife's fidelity, brought petitioner to seriously doubt the fidelity of defendant, and he, on that account, on July 15th, 1905, left his home somewhat earlier than he had anticipated, but on a necessary business trip to Europe; that so far from abandoning defendant at that time, he made ample financial arrangements for her, including the gift to her of funds necessary to pay the interest on the mortgage on her house, 11 West 68th Street, New York City, maturing August 1st, 1905; that petitioner arranged before leaving for Europe for an investigation to be made in his absence into the relations and conduct of said defendant and the said Frank T. Huntoon, and while he was in Europe had daily

postal and cable information as to the conduct of defendant and the said Frank T. Huntoon that fully satisfied him of the infidelity of defendant; that petitioner desired to consult his friends, including his usual legal advisers, before he met defendant, and, on that account, purposely induced defendant to think he would arrive on a later boat than the one on which he actually did arrive; that upon his arrival he found out the result of investigations conducted while he was upon the ocean, which served to confirm his belief in defendant's unfaithfulness and adultery; that petitioner naturally desired to confer with some of the servants who had been at defendant's New York home during his absence and before, and so he sought the said servants and conferred with them; that said servants further confirmed the belief of petitioner in the guilt of defendant, and without solicitation or enticement of petitioner sought the aid of petitioner in securing employment at the residence of petitioner's brother, which employment petitioner secured for them; that said servants were as expensive as such servants usually are, and came into the employment of petitioner's brother at the same wages which they had theretofore received; certainly the hiring of them at the instance of petitioner by petitioner's brother did not involve defendant in any pecuniary loss.

That since the institution of this suit petitioner has made inquiry and conducted investigation, using in a legitimate way private detectives; but he has not at any time sought to annoy defendant, and he has not induced nor attempted to induce any statement by any servant or other person, by the offer of any money or thing of value. That defendant, on the other hand, besides the legitimate inquiry and investigation conducted by or under the direction of lawyers employed by her, has at-

tempted and is attempting to bribe and coerce discharged servants of, and servants who have voluntarily left, petitioner; and has falsely and maliciously charged petitioner with intimacy with one Mary Smith, a woman of excellent character, who has for many years been employed by petitioner as housekeeper at his home near Somerville, New Jersey, when defendant well knew such charge to be false; that among the servants so formerly in the employ of petitioner, and so attempted to be bribed and coerced by defendant, are one Ingred Andersen, one Vera Abramson, and one Mary Fahey; that the said defendant is securing the insertion of false and misleading articles in various publications with reference to this suit, and is sending or procuring the sending of such papers to petitioner and his business associates.

That defendant, as petitioner verily believes, is not as is alleged in the petition, parting from any of the principal sum of funds given her by petitioner on the conditions aforesaid, but she is enabled to make said expenditures from the income of said funds, and from contributions received by her from the said Frank T. Huntoon; that the said Frank T. Huntoon is not a man of large invested wealth, but he is, as petitioner is informed, or has been, a professional gambler and man-about-town, whose antecedents are of the worst possible kind, but who is now the general Eastern agent of a popular mineral water, and with an annual income of some $150,000; that petitioner has been informed and verily believes that the said Frank T. Huntoon makes numerous and liberal contributions to the said defendant and to the maintenance of this suit on the part of defendant; that he has employed and paid not only his own counsel, but, whether with their knowledge or not, counsel whose nominal appearance is only for defendant; that it is as

petitioner is informed and verily believes, the purpose of said Frank T. Huntoon and defendant to marry each other at the end of this divorce proceeding, and as a reason for this belief, besides the fact of the frequent adultery of the said defendant and the said Frank T. Huntoon and the furnishing of funds to the defendant by the said Frank T. Huntoon, as herein alleged, petitioner would respectfully show unto the court. Petitioner and defendant were married on November 29, 1904, at the home of a Mrs. Seal, an aunt of the defendant, in Camden, New Jersey; petitioner and defendant on the afternoon and evening of November 29th, 1904, went to New York and spent the night at the house of defendant, No. 11 West 68th Street. On November 30th, 1904, they sailed for Europe on the steamer "Baltic," which petitioner supposed would arrive at Liverpool on December 8th, 1904; the said steamer did not arrive in Liverpool until the morning of December 9th, 1904, and petitioner and defendant went from Liverpool to London, stopping at the Hotel Carlton; they spent the balance of the 9th of December and the other days until and including the 13th of December in London, and left for Paris on the 14th, where they were until the 21st of December; on the 20th of December, petitioner having bought an automobile for subsequent delivery, hired or borrowed an automobile for a trip through Switzerland and the Alps; on the 21st, petitioner and defendant left Paris for Geneva, and were, from that time, traveling through France, Switzerland and Italy until the 6th of January, 1905; that petitioner and defendant were in Nice on December 27th; they arrived at Genoa in the morning of December 30th, and were in Genoa that day and the 31st; were traveling to Milan on January 1st, and were in Milan on January 2nd; were traveling to Venice on January 3rd,

and arrived at Venice on the morning of the 4th of January; were in Venice on January 4th, 5th and 6th, and on January 5th shipped the automobile, in which they had made said trip from Paris, back to Paris; they left Venice on January 7th, going to Florence, and from thence to Rome, arriving on January 11th in the afternoon; and from thence to Naples, arriving in Naples on January 13th in the evening; went back to Rome, arriving on January 17th, and thence to Turin and to Paris and to London and Liverpool, from whence they sailed for New York on the "Oceanic" on February 1st; that all during said trip petitioner and defendant were accompanied by one Nellie Sand, who was a maid of defendant, and one Henry Ruppert, who was familiar with the German and French languages, and traveled as secretary of petitioner; that all during said trip, as petitioner is informed and believes, the said Nellie Sand, the said maid, sent numerous cables and letters to the said Frank T. Huntoon, for defendant; that the said Huntoon sent numerous letters to defendant at London, Paris and other points, addressing them to the said Nellie Sand; that the said defendant received communications from the said Frank T. Huntoon through publications contained in the Paris edition of the New York Herald, and to that end secured all of the Paris editions of the said New York Herald, requiring in that behalf and securing the efforts of the said Henry Ruppert and the said Nellie Sand; and through the said Paris edition of the New York Herald the said Frank T. Huntoon communicated with defendant as follows:

On December 8th, 1904: "Longing for cable announcing safe arrival; your prophecy too true, not only sorry but absolutely broken-hearted; you little know how essential you are to my happiness, al-

most to my existence; how I crave another opportunity to be yours for life. Please grant it."

On December 11th, 1904: "Cable relieved anxiety; do you recall Sunday breakfast and afternoon? They will surely come again to remain for life; don't you think so? Probably sail January seventh; watch health, avoid stairs; wrote maid yesterday."

On December 18th, 1904: "Cables and four letters received. Sentiments made me much happier or rather less unhappy. Your illness alarms me. Please don't deceive me regarding your physical condition. If serious will go to you at once regardless of consequences. Can nurse you back to health. I know your doctors say don't exercise. Perhaps Thursday's Opera Paris recalled me all promises kept. Not too late unless you are contented with present surroundings, and that's impossible, isn't it: Shall I go to you? Cable immediately; our full moon to-night."

On December 22nd, 1904: "Christmas; passed your house; what memories recalled; wish you there and thirsty of all sad words it might have been; one year from yesterday should be our anniversary; only postponed must occur soon; send long cable my initials, your house Christmas; London letter hugely enjoyed; mailed letter London twentieth; think trap rather imprudent; air good wind, possibly dangerous, hope carriage enclosed; cable arrival, anxious."

On December 29th, 1904: "Happy New Year, sweetheart. May it restore you to health and contentment. May past year's pleasures increase unaccompanied by sorrow. May the painful shackles which bind you be speedily unfettered. May your appreciated affection never grow faint. May you hereafter consider own happiness. May you never

suffer as does your sweetheart. May we be speedily united forever. May God guide us rightly. Unfortunate error of month ago must be remedied at whatever humiliation. Cable received. Treatment selfish, heartless, brutal; assert yourself. Don't travel that way. Promise return by rail. Acquire rest, health important; if needed, don't hesitate saying Come. Will go immediately. Promises religiously kept. I long to see you. I adore you. Hope you enjoy cables."

On January 1st, 1905: "At your home New Year's sad and lonely. Everything reminds me of the only absolutely happy days in my life. You were good to me. How I miss you. Vacant dining chair recalls past pleasures. House pets well, wonderful singer. Please send picture taken now. Our future happiness rests with you. May I hope? I dream you will be mine for ever very soon; do you think so? Doctor says remain south until April; also don't wear low necks; dangerous. If you remain can sail seventh. Shall I cable? Reply immediately. Do you ever write? Latest letter received dated Sixteenth. May your every wish be gratified. Time increases my sorrow. Your home Christmas. Genoa cable received."

On January 5th, 1905: "God bless you for yes to all I asked. I am content. Our happiness speedily assured. Shorten trip, return quickly. Enjoyed five letters, two postals. Not sailing. You in London fifteenth before I could arrive. Cable says sail February first. You mean arrive, return rail, automobile dangerous. Don't write long letters, too tiresome. Keeping all promises, sweetheart, cheer up. Health and happiness await you. Please send picture with my heart's love. Be prudent this awful weather."

On January 8th, 1905: "Alps experience horrible. Delighted heartless trip has terminated. You have my heart's sympathy; your partner my envy and hatred. Please come home alone at once. You are equal to it. You must begin to prepare mind for event by saying you are not happy. Sorry it ever occurred. Don't falter. Doctor alarmed; says avoid exercise and excitement. Letters, postals, cables, received. Sweetheart, my thoughts and plans are all for you."

On January 12th, 1905: "Delighted by six letters, two postals yesterday. What an experience. Awfully sorry of illness. Be prudent, no happiness without health. Must not prolong trip. Please arrive before first. Cable immediately sailing date, also condition health. Well, business splendid. With all my love."

On January 15th, 1905: "Cannot comprehend determination to destroy health in gratifying one who positively cares nothing for you. Cables alarming. Why don't you return by first steamer. Your friends want opportunity to restore your health. Do come. Called on family in country Thursday. Quite comfortable. Mailed four letters. Mail former hotel London. Cable when received. Heart's love."

On January 19th, 1905: "Object to prolonging trip. Cable condition health every second day; anxious; mailed maid five letters former hotel, London. Would love to hear you say: 'It's daybreak.' Last letter received written second. Why don't you come home? Promises kept; love."

On January 22nd, 1905: "Our moon brought glorious news; started homeward. Brightest ray of happiness, since departure. Mailed letter yesterday. Guard your health. All well home. Cable sailing date. Love."

On January 26th, 1905: "All communications received. Would not exchange glorious cheer-up cable for the world; expect it speedily confirmed. You ask will I? Yes, yes, yes, immediately, forever, with you delighted. Dine and sleep your home to-night. Oh, memories that bless and burn, O, barren gain and bitter loss. Cruel prolonging trip. Have pity. This separation killing. Ever increasing love. Please don't wear low necks."

On January 29th, 1905: "Shall enjoy your home to-day and every Sunday until octopus returns, when that pleasure even will be denied. What memories of the blissful past. I fear the future offers nothing. All well. Do not allow entertainments to ruin health. My heart's affection."

That petitioner fully believes that said messages were sent by the said Frank T. Huntoon to defendant, and received by the said defendant from the said Frank T. Huntooon, because, in the first place, petitioner is informed that the said Frank T. Huntoon delivered them at the office of the New York Herald in New York City; secondly, he is informed that defendant told the said Nellie Sand that she would and did receive communications from the said Frank T. Huntoon in this way; that said Nellie Sand informed petitioner of this fact in September, 1905, and told petitioner that defendant had said to her that such communications were in the editions of Thursday and Sunday of the said New York Herald, Paris edition; petitioner on account of the said information secured the issues of the Paris edition of the New York Herald from about November 1st, 1904, to about March 1st, 1905, and he is informed that the said "Personals" are in the Thursday editions and Sunday editions, and no other, and that they began on

December 8th, 1904, just before petitioner and defendant landed in Europe and ended on January 29th, 1905, just before petitioner and defendant sailed from Europe on their return to America; thirdly, that there is abundant internal evidence of the source and destination of said telegrams found in the coincidences between them and the facts as to the time of the marriage of petitioner and defendant, the time they landed in Europe, the time that they started automobiling, the time that they were in Genoa, the time that they sailed from New York, the fact that petitioner and defendant did have tickets to the opera in Paris; that besides these coincidences, petitioner is informed and verily believes that the said Frank T. Huntoon did spend Christmas day and New Year's day at the house of said defendant; that there was a canary or other songbird at the house of defendant, as well as a dog; that defendant expected the said Frank T. Huntoon to join petitioner and defendant at Naples, at which point the said Frank T. Huntoon could have landed so as to join petitioner and defendant if he had left New York about January 7th; that petitioner and defendant intended coming home earlier than they did to be in London about January 15th, and to be in New York on or before February 1st; that there are numerous other circumstances which induce the positive conviction and assurance in petitioner that the said Frank T. Huntoon and the said defendant were communicating with each other as aforesaid during the whole of the European trip of petitioner and defendant.

That as petitioner verily believes, this application is not made in good faith, nor for the purpose of securing funds for a *bona fide* defense to this suit; that the defendant has no purpose nor desire

to prevail in this suit, but is contesting it solely to induce a financial settlement by petitioner, to the end that the condition of the defendant and the said Huntoon, in their relation as husband and wife after the termination of this suit, shall be improved from a financial standpoint, and that the only purpose of this application is to require petitioner to contribute to the living expenses of the said defendant and the said Frank T. Huntoon.

JAMES B. DUKE,
Petitioner.

LINDABURY, DEPUE & FAULKS,
J. PARKER,
Solicitors for and of Counsel with Petitioner.

State of New York, }
County of New York, } ss.:

James B. Duke, being duly sworn according to law, on his oath says that he is the petitioner named in the foregoing answer, and that the matters and things set forth in said answer are true to the best of his knowledge, information and belief.

JAMES B. DUKE.

Subscribed and sworn to before me this 21st day of March, 1906.

C. K. FAUCETTE,
Notary Public,
For New York County.
My commission expires March 31st, 1905.