

New Jersey Court of Errors and Appeals

Between	} On Appeal from the Court of Chancery Granting Pe- tion for Divorce.	10
CHARLES E. DRAKE, Petitioner and Respondent,		
and		
ELIZABETH DRAKE, Defendant and Appellant.		

BRIEF OF DEFENDANT AND APPELLANT.

20

GEORGE W. V. MOY of Plainfield, Counsel for Defendant and Appellant.

This is an appeal from a Decree of the Court of Chancery granting a decree of divorce to the respondent and dismissing the cross-petition of the appellant.

The petition charges adultery of the wife with one Joseph Bellot, during the months of August, September and October, 1915. 30

The evidence shows that the parties had been married eighteen years, the result of the union being three children, and that the parties had lived together until September 22nd, 1914, when the husband left his home and went to live elsewhere (page 41) allowing his wife eight dollars per week with which to support herself, three children and

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her husband's father, which being insufficient, compelled the wife to add to her income, which she did by taking boarders, among them being Bellot. The reason for the husband's desertion does not appear, although evidence on that point was offered by the appellant and objected to by the respondent (pages 41-42).

- 10 There is no direct evidence to support the charge of the respondent. Acts of familiarity are testified to by the two boys and by the father-in-law, as occurring between Mrs. Drake and Bellot on several occasions. She is said to have kissed him frequently (pages 5-14)—and he to have kissed her—to have sat on her lap (pages 5, 18) and to have slept on the lounge in the dining-room with her on two occasions (page 18) both during the day time (Bellot worked nights and slept during the day, page 16); on the first occasion, the father-in-law says (page 18) that his daughter-in-law was asleep on the lounge and this boarder was with her—and he warned the boy to “be still, your mother is asleep in there,” and on another occasion he says (page 20) that he telephoned his son and as a result the son “came right down there” with a man named Fritts, an employee of the respondent, and looked in the dining room window.

- 30 On this occasion the father-in-law was about the place, the hour was between ten thirty and eleven o'clock in the forenoon (page 24), he “was in the kitchen” he says, “and was going to the barn”—the dining room had a bay-window and a back window—the bay window had a curtain down—except about eight inches—there was also a view to be had through the kitchen window (page 25). Fritts, the employee of the husband, had been told that they were going to try and get evidence (page 32); he fixes the time as ten thirty to eleven A. M. of a
40 bright day (page 31)—the room as having four

windows and presenting no difficulty of vision from the outside—he says they “just sneaked up and looked in and went away” (page 32); that Drake “saw his wife in the arms of another man and walked away without saying a word” and went to his lawyers. The parties were both dressed (page 31).

Both Mrs. Drake and Bellot deny the crime charged (pages 56, 64) and the porch incident (pages 46-61); also of sleeping on the couch (pages 46-59). Mrs. Drake admits kissing Bellot “on a dare” and explains the circumstances (page 47). The case of the respondent sifts down to one occasion—that of September 28th. He offers no testimony on his own behalf in support of his petition and offers no explanation of his desertion and furthermore refuses to permit his wife to offer her testimony as to why he went away. 10

His witnesses to the incident of Sept. 28th are his father and Fritts, his employee, both interested in his behalf—his father encourages acts of familiarity between the daughter-in-law and Bellot (page 19), saying to her, “you’re young; go ahead” and then reports to his son (page 23) “several times” that “they were getting pretty loving” and finally, telephones him that the time is here, and then the husband, this model husband and father, who left his wife to shift for herself, appears with his carefully prepared witness and of course this witness sees almost as much as he was expected to see, and all this on the morning of a bright day, in a room open to full view, with the father-in-law right there all the time. 20

THE TESTIMONY OF THESE TWO WITNESSES IS UNBELIEVABLE. 30

IT IS DENIED BY BOTH THE PARTIES CHARGED. 40

If we accept the testimony as true, it must then be held that the respondent created the situation, had full knowledge of all that he says was going on, and failing to DO HIS DUTY TOWARD HIS WIFE must accept the consequences of his failure to act.

10 Had he performed his duty as a husband she would have been protected from the perils to which she was exposed.

Hedden vs. Hedden, 21 Equity, 61.

Indiscretion is not criminality.

McKenna vs. McKenna, 96 Atl., 329.

Cooper vs. Cooper, 82 Equity, 581.

20 If the circumstances admit of two constructions, that which favors innocence should be adopted.

Hurtig vs. Hurtig, 44 Equity, 329.

Osborn vs. Osborn, 44 Equity, 261 (Text).

The very clearest and strongest proof should be required before the wife is adjudged guilty, when deserted and neglected by the husband.

30 Derby vs. Derby, 21 Equity, 86.

Kretz vs. Kretz, 73 Equity, 246.

The Court will not adjudge the wife guilty if her innocence might be inferred, or in other words if the testimony left the issue in reasonable doubt.

Paterson vs. Paterson, 20 Atl., 347.

40 "The complainant for more than a year before the injury complained of, had in effect,

deserted his wife, and neglected or omitted the main duties and obligations of the contract of marriage, of the breach of which he now complains, he indeed supported her and visited her (not so in case at bar), but he separated himself from her society and the enjoyment of a common home. * * * His leisure and amusements were shared with others, and he denied the marital rights, which by every principle of law or duty, he was bound to yield. There is no reason for his conduct shown, and it was his duty, in presenting himself before the court for relief, to have shown, if practicable that his conduct in this respect was not without excuse * * * such a complainant cannot expect any favorable leanings of the court, but must present a case free from reasonable doubt." 10 20

Derby vs. Derby, 21 Equity, 36.

Berkmans vs. Berkmans, 16 Equity, 130
(Text).

A husband who consents to the adultery of his wife is not entitled to a divorce.

Woodward vs. Woodward, 41 Equity, 224.

CROSS PETITION.

The appellant alleges adultery of the respondent with one Mary Canary, or some other woman, on a Hudson River steamboat during the summer of 1914. 30

The petitioner was fond of other women. Van Nuis and his wife saw him on Broadway, N. Y., accompanied by a woman (page 89), concerning which incident, the petitioner, upon meeting the witness in Plainfield, some time later, says, "for 40

God's sake don't tell my wife or I'll get killed," and later, he remarks to the witness that he "was going to see his girl, the one he had in New York" (92). On one occasion he is observed at the home of the prizefighter, Fitzsimmons, in Dunellen, in company with strange women, one of whom is introduced as his wife (page 95).

10 The boat incident is testified to by John McGinley, a special officer on the steamer Morse, whose business it was to look after the welfare of passengers (page 80) who knew both Mr. and Mrs. Drake, and seeing Drake on the boat in company with a strange woman, and observing that they occupied the same state room No. 405, on the way from Albany to New York, one night in June, 1914, spoke of the matter to his daughter who resides in Plainfield, asking, "If Mr. Drake was a widower
20 and had married again," saying, "I saw him on the boat last night with a woman." He observed that they registered as "Charles Drake" (page 83) and describes the woman as between 25 and 30, five feet three or four in height. He states that he had been informed of the destruction of the company records by fire.

McGinley fixes the time as *June* and reiterates his statement (pages 83-4). In reply to this testimony the petitioner takes the stand and his counsel puts the following question (page 100):
30

"Q. Now, Mr. McGinley says that in *May*, 1914, he saw you on the Charles W. Morse coming from Albany to New York and that you occupied stateroom No. 405 with a woman—is that so? A. That is not so."

This is manifestly an evasion and not a denial of the testimony of McGinley. The petitioner admits under cross examination, of having made a
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trip to Albany in July, 1914, for the purpose of "VISITING A PAINTER" who had formerly worked for him (page 100).

Drake says (page 100) that he has had no quarrel with McGinley; that there is no ill-feeling between them—knows of no reason for any—and knows of no reason why Mr. McGinley should tell the story he has told except that it be true. 10

McGinley's testimony stands unimpeached.

The testimony of a single witness, consistent in detail, probable under the circumstances, is sufficient to sustain a decree of divorce, though denied by the defendant under oath.

Brown vs. Brown, 63 Equity, 350 (Text).

Derby vs. Derby, 21 Equity, 36.

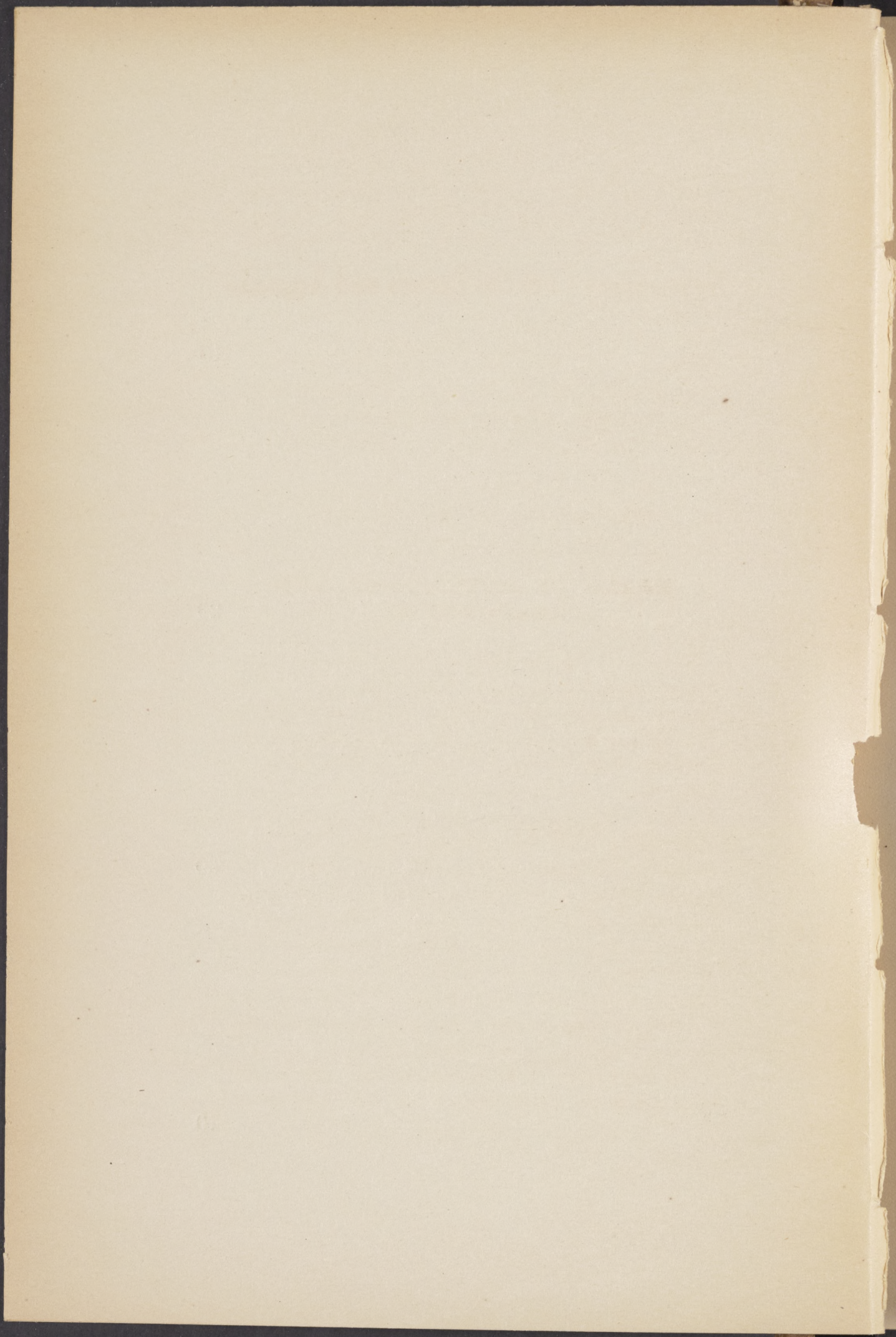
IF BOTH PARTIES BE DEEMED GUILTY. 20

"If it appears that both parties have been guilty of adultery, not condoned, then no divorce shall be decreed."

Divorce Act, Comp. Stat., page 2040, Sec. 28.

Respectfully submitted,

GEORGE W. V. MOY, 30
Counsel for Appellant.



New Jersey Court of Errors and Appeals

Between	} On Appeal from the Court of Chancery. Granting Petition for Divorce.	10
CHARLES E. DRAKE, Petitioner and Respondent,		
and		
ELIZABETH DRAKE, Defendant and Appellant.		

BRIEF OF PETITIONER AND RESPONDENT.

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This is an appeal from a decree of an absolute divorce awarded to the petitioner-respondent, and against the defendant-appellant. The petition for divorce charges the defendant with committing adultery with Joseph A. Bellott, at Plainfield, in this State. The defendant-appellant filed an answer denying the charge and filed a cross-petition alleging that "on the 15th day of June, 1914, and on other days of said month, and during the months of July and August, 1914, committed adultery with *Mary Canary, or some other woman*" (Case, page 105). The petitioner-respondent filed an answer, denying the allegations of the cross-petition. Conclusions were filed, advising a decree for the petitioner-respondent and dismissing the cross-petition of the defendant-appellant.

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At the outset, it is important that this Court should have its attention directed to the petition of

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appeal (Case, page 114), for the reason that the only ground of appeal therein set forth is "for that the said Chancellor should have recited and adjudged, that the respondent was guilty of adultery, as charged in the petitioner's cross-petition and should have dismissed the petition of the respondent." With the pleadings in this form, it seems

10 hardly necessary to say anything concerning the finding of the court below, regarding the guilt of the defendant-appellant, because that finding, in view of the record, is not open to attack, however, that phase of the case will now be touched upon briefly by the respondent.

Edward Drake, the seventeen year old son, saw his mother and the co-respondent kissing each other on several occasions. Saw Bellott, the co-respondent, sitting on his mother's lap on the front porch,

20 at twelve o'clock at night (Case, page 5). Russel Harper, his boy friend, corroborated him in the important details (Case, page 37). Clarence Drake, twelve year old son, saw co-respondent and his mother kiss each other on numerous occasions, and saw co-respondent with his mother asleep on the lounge (Case, page 14). Arthur Fritts saw defendant and co-respondent on the lounge together, and found defendant's sickness cloth in the co-respondent's bed (Case, page 30). Judge De Meza; defend-

30 ant and co-respondent admitted kissing each other, sitting on each other's laps and being on terms of intimacy (Case, page 27). Charles M. Drake, the father-in-law, saw the defendant and co-respondent kissing each other on numerous occasions, and lying on the lounge together in a compromising position (Case, page 18). Admission of guilt made by defendant and co-respondent to Lieut. Higgins (Case, page 28), and to Under-Sheriff Carey (Case, page 33). Admission of the defendant and the co-

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respondent that they kissed each other (Case, page 47). That they occupied the same bedroom (Case, page 52). That they were alone in the house for hours at a time (Case, page 53). That after the institution of this suit, they were frequently together (Case, page 51). All of which occurred in September, 1915, and petition was filed October 8, 1915.

10

The foregoing proof of desire, inclination and opportunity of the co-respondent and the defendant to commit adultery, together with their admissions and their conduct on the witness stand, proves the petitioner's case. Black—30 E., 228.

Answering Cross-Petition.

As to the cross-petition, the only legal testimony offered in support thereof is that of John McGinley, a witness produced by the defendant, who testified that he was a special officer on the "Charles W. Morse" and who testified as follows (Case, page 80):

20

"Q. Do you know Mr. Drake, the petitioner in this suit? A. I just know when I see him that that's Mr. Drake.

Q. And do you know Mrs. Drake? A. In the same way.

30

Q. How long have you known Mr. Drake? A. Since he built my daughter's house, at Netherwood.

Q. But you knew him in 1914? A. I knew when I saw him that it was Mr. Drake; I never had any acquaintance with the gentleman.

Q. Now, in the months of June, July or August, were you stationed on one of the boats of the Hudson Navigation Company? A. Yes, sir.

40

Q. Did you see Mr. Drake on her at that time? A. Yes, sir.

Q. And was he accompanied by any one?

A. Not when I see him, when I see him he was alone.

Q. And where did you first see him? A. At the purser's window.

10 Q. And later on the trip from Albany to New York did you observe him? A. Yes, sir.

Q. Was he alone at that time? A. No, sir.

Q. Whom did he have with him? A. He had a woman with him.

Q. *What sort of a looking woman?* A. *Can't just describe her now; I know it wasn't his wife.*

Q. You know it wasn't his wife? A. Yes, that's why I took notice.

20 Q. Did you observe whether this woman and Mr. Drake occupied the same stateroom? A. Yes.

Q. That night—coming down on the boat? A. Yes.

Q. *Was it in June, July or August that this occurred?* A. *I can't tell you."*

30 From the foregoing it will be observed that the witness was unable to state with accuracy, the month when this alleged occurrence took place, to say nothing of the day. In fact, on cross examination, he wouldn't fix the time any more definitely than between May and August. He utterly failed to reasonably describe the petitioner's alleged companion, and he admitted that he could have produced the records of the company, verifying his statement as to the date, when he says he saw Drake on the boat (Case, page 88).

40 The petitioner admitted that some time in the summer of 1914, he went to Albany, but was not

accompanied by a woman, and made the trip alone, for the purpose of seeing a fellow workman (Case, pages 99-101).

He did what, under the circumstances, it only seems possible for him to do, namely, deny the charge, and it is well to keep in mind, that at the time of the filing of the cross-petition, this charge was *twenty months old*.

10

In this connection, it is important to keep in mind the relations that existed between the parties for some months past. They had separated on September 22, 1914, the husband paying the wife eight dollars a week, toward her support and allowed her to live in his house in Plainfield. This, the wife says, was unsatisfactory. Does it seem reasonable that she, being in possession of information, that her husband had committed adultery and being unsatisfied in her marital state, would wait such unreasonable time before proceeding on such evidence, and then not until she herself had been discovered living in adultery with the co-respondent?

20

The co-respondent, Mary Canary, named in the cross-petition was in court, anxious to take the witness stand and deny her guilt as the charge made against her was untrue, dastardly and low. In view of the fact that the Court struck out all the testimony concerning her, it was impossible for me to call her to the witness stand as there was nothing for her to deny. I was guided in this particular by the decision of the Vice-Chancellor Garrison in Lee, 77 E., 19, where he decided that "Where, in a suit by the husband for divorce for adultery of the wife, the evidence of the husband does not identify the co-respondent, there was no burden on the wife to produce any testimony from the alleged co-respondent."

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As I reflect upon the testimony of McGinley, I wonder what prompted him to leave his work in New York and come voluntarily to Elizabeth to testify in this case. He admits that he is an ex-detective, but asserts that in this case he was acting as neither friend nor detective, and absolutely failed to give any reason for leaving his work and wasting a day to come into court as a voluntary witness. He admits that he knew he could not be compelled to come into New Jersey to testify (Case, page 83).

Why did he come? This inquiry becomes highly important because this testimony is so indefinite and incomplete that it is absolutely impossible to fix anything in connection with his testimony with legal certainty.

At best, this evidence is only circumstantial. McGinley does not say that he saw Drake show any affection toward this supposed woman, nor the supposed woman toward Drake. He does not say that Drake registered this woman as his wife, but on the contrary, he says that Drake registered alone, which would be impossible, as all persons on a boat must be registered. In fact, he merely states that he saw an indescribable woman in Drake's stateroom, the number of which, 409, is the only thing he can remember with certainty, which to my mind is most surprising. He does not say that this supposed woman stayed with him all night, or that he investigated during the night, to see whether she was there or not. Why should he remember the number of a stateroom when he does not remember the date within four months, or what the supposed woman looked like?

"The evidence of a single witness, uncorroborated and unsupported, and improbable

in its details, is not sufficient to establish a charge of adultery."

Scheffling vs. Scheffling, 44 Equity, 438.

The supreme rule of circumstantial proof is that enunciated by Lord Stowell and adopted by Chancellor Green, in Beckman's case above referred to, that "the circumstances to sustain the charge must be such as to lead the guarded discretion of a reasonable and just man to the conclusion that the crime has been committed." As between two interpretations equally consistent with probability, that inference is drawn which favors innocence. Or, expressed negatively, the judgment must not be rash and intemperate, moving upon appearances which are equally capable of two interpretations. The burden which rests on the petitioner must be clearly sustained and proof must be "*clear, full and decisive.*"

Replying to Appellant's Brief.

1. The reasons for the respondent leaving the appellant are not material to the issue. This matter was disposed of at the hearing by Chancellor Magie and consented to by the appellant (Case, page 43).

2. "A husband may properly watch his wife, whom he suspects of that offense (adultery), in order to obtain proof of the fact." Chief Justice Gummere in Inderlied vs. Bullen, 77 Atlantic, 469.

3. The denial of the respondent was broad and explicit, as the circumstances of the case required, owing to the uncertainty of the testimony of the witness McGinley, heretofore quoted in this brief.

In conclusion, it seems quite sufficient to state, that this case was heard and decided by the Hon. William J. Magie, who after hearing the proofs, having an opportunity of observing the conduct of the witnesses on the witness stand, and having the whole case freshly before him, advised a decree for the petitioner-respondent and dismissed the cross-petition of the defendant-appellant (Case, page 110).

It is respectfully submitted that the decree appealed from should be affirmed.

ROBERT NEWTON CRANE,
Counsel for Respondent.

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INDEX

	Page
Master's Certificate that testimony be taken by stenographer	1
Stenographer's Affidavit.	2
Testimony	2
Master's Certificate as to Accuracy of Evi- dence	101
Petition for Divorce	102
Answer and Cross-Petition	104
Answer to Cross-Petition	107
Order of Reference	108
Designation	109
Memorandum	110
Decree Nisi	111
Notice of Appeal	113
Petition of Appeal	114
Answer to Petition of Appeal	115

TESTIMONY

Petitioner's:

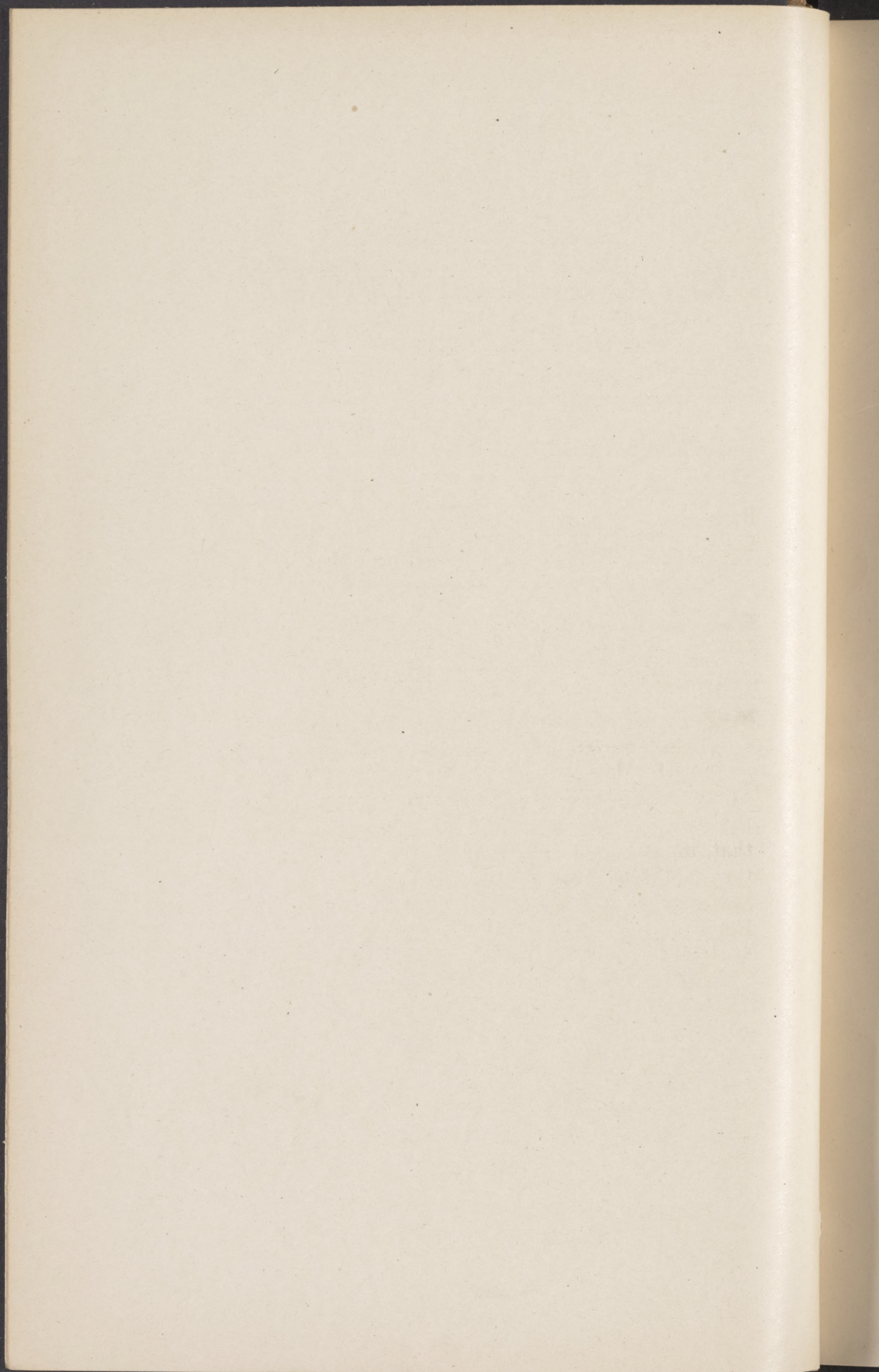
Edward Drake,	
Direct	3
Cross	6
Re-direct	11
Clarence Drake,	
Direct	13
Cross	15
Re-direct	17
Charles M. Drake,	
Direct	18
Cross	21

	Page
William G. DeMeza, Direct	26
Morris Higgins, Direct	28
Cross	29
Arthur A. Fritz, Direct	29
Cross	30
Thomas Carey, Direct	33
Cross	34
William Waldron, Direct	35
Anna L. Schmidt, Direct	36
Cross	36
Russell Hopley, Direct	37
Cross	37
Re-direct	38
Re-cross	39
Annie Simmons, Direct	39
 <i>Defendants:</i>	
Elizabeth Drake, Direct	40
Cross	48
Re-direct	54
Re-cross	56
Joseph A. Ballott, Direct	57
Cross	65
Re-direct	78
Re-cross	78

	Page
John McGinley,	
Direct	79
Cross	81
Re-direct	88
Frances Van Nius,	
Direct	89
Cross	90
Re-direct	90
Re-cross	90
Alfred Van Nius,	
Direct	91
Cross	92
Rosalie Fitzsimmons,	
Direct	93
Cross	95
Alice Gudgeon,	
Direct	97
<i>Rebuttal:</i>	
Charles E. Drake,	
Direct	99
Cross	100

EXHIBITS

<i>Petitioner's:</i>		Offered Page
Exhibit P-1—Letter dated September		
28, 1915, from Edward Drake to his		
father	12	



New Jersey Court of Errors and Appeals

IN CHANCERY OF NEW JERSEY

BETWEEN :		} On Petition for Divorce. 20
CHARLES E. DRAKE,	Petitioner,	
and		
ELIZABETH DRAKE,	Defendant.	

Master's Certificate That Testimony be Taken by Stenographer

I, William J. Magie, Advisory Master, to whom the above matter has been referred, do certify that, in my judgment, the testimony in this matter should be taken by a stenographer, and I 30 have selected as such stenographer, Frank J. Burns.

W. J. MAGIE,
Adv. Master.

Stenographer's Affidavit

New Jersey, }
 Union County. } ss:

I, Frank J. Burns, do solemnly swear that I
 will faithfully and truly take stenographically
 10 and reproduce in writing or typewriting if re-
 quired the testimony to be given in this case.

FRANK J. BURNS.

Sworn to and subscribed before me
 this 20th day of January, 1916.

Testimony

IN CHANCERY OF NEW JERSEY

20

BETWEEN:

CHARLES E. DRAKE,

Petitioner,

and

ELIZABETH DRAKE,

Defendant.

On Petition for
 Divorce.

30

Transcript of stenographer's notes of testi-
 mony taken at a hearing held in the above en-
 titled matter, before Hon. William J. Magie, Ad-
 visory Master, at the Court House, Elizabeth,
 N. J., on Thursday, the twentieth day of Janu-
 ary, 1916, at the hour of 10 o'clock in the fore-
 noon.

Appearances:

Robert Newton Crane, for petitioner.

40

George W. V. Moy, for defendant.

Edward Drake—Direct

EDWARD DRAKE, having been first duly sworn, according to law on his oath, deposes and says:

Direct-examination by Mr. Crane:

Q. Edward, you are the son of Charles E. Drake and Elizabeth Drake? A. Yes, sir. 10

Q. And how old are you? A. Sixteen.

Q. In the summer of 1915—that's last summer—where did you live? A. 914 West Fourth Street, Plainfield.

Q. And who lived with you? A. My mother and brother and sister and grandfather.

Q. Where was your father? A. My father was living with Mr. Giles, in West Fifth Street, Plainfield, N. J.

Q. How long had your father been away from your mother, if you remember? A. I should say about a year and one or two months. 20

Q. Do you remember whether or not your father contributed anything toward your support and your mother's support? A. Yes, sir.

Q. What was he contributing? A. Eight dollars a week and the house.

Q. He owned the house, did he? A. Yes, sir.

Q. Now, how old is your sister, Lilly? A. Thirteen. 30

Q. Now, how old is your brother Clarence? A. Twelve.

Q. Now, then, in the summer of 1915 did a boarder come to the house? A. Yes, sir.

Q. What was the boarder's name? A. Joe Bellott.

Q. Now, about when did he come to the house? A. I should say in about July. 40

Edward Drake—Direct

Q. When he first came to the house, how did he act toward you and your sister and mother and brother? A. When the boarder first came to the house, why, he was all right—acted all right to the family.

10 Q. And then later how did he act? A. Well, he kind of tried to boss, I should say.

Q. Now then, where did this boarder work? A. Worked up in the Saurer Motor Company.

Q. In the day time or at night? A. At night time.

Q. And were you working at that time? A. Yes, sir.

Q. Where did you work? A. Bosch Magneto Company.

20 Q. When? Day time or night time? A. Day time.

Q. What was the arrangement of the upstairs part of that house? A. There was three bedrooms and a little bit of a den I used for a library.

30 Q. When Joe Bellott the boarder first came to the house who occupied the various sleeping rooms upstairs? A. My brother and I occupied the front bedroom, grandfather the back bedroom over the kitchen, and the boarder the bedroom over the dining room.

Q. Where did your mother and sister sleep? A. My mother and sister slept in the den.

Q. Now, then, after the boarder had been there some time did your mother and sister change their sleeping quarters? A. Yes, sir.

Q. Where did they go to sleep? A. They slept in the room the boarder used.

40 Q. And was there any reason why they should have done that as far as you could see?

Edward Drake—Direct

Mr. Moy: One minute. They did it. Is there any question as to the reason. They simply changed their room.

The Master: Suppose it was a mere temporary change, caused by a break in the window or something like that.

(Question repeated by stenographer.)

10

A. No, sir.

Q. What time did you go to work? A. I left the house usually about half-past six.

Q. What time did Joe, the boarder, come home from work? A. I should say twenty minutes after, or half-past six—somewhere around there.

Q. Did you ever see your mother kiss this boarder? A. Yes, sir.

Q. More than once? A. No, sir.

20

Q. Not more than once? A. Certainly, more than once; yes, sir.

Q. Did you ever see Joe, the boarder, kiss your mother? A. Yes, sir.

Q. Do you remember one night that you and a boy by the name of Harper came home about 12 o'clock? A. Yes, sir.

Q. Who did you see on the porch that night? A. I—(interrupted.)

Mr. Moy: That is certainly leading your witness.

30

The Master: Don't lead unless you can't help it.

(Question repeated.)

A. I seen my mother and the boarder.

Q. Joe? A. Joe Bellott.

Q. In what position? A. My mother was sitting in the chair on the porch and the boarder on her lap.

40

Edward Drake—Cross

Q. Do you remember one night in the late summer—strike that out. Do you remember one night in August or in the early part of September when the boarder came home in a taxicab? A. No, sir; I wasn't at home at the time.

10 Q. Did you come home later? A. Yes, sir.

Q. And did you talk with your mother? A. Yes, sir.

Q. What did your mother tell you? A. My mother told me Joe had come home drunk and she had to help him upstairs.

Q. Did she say whether or not she had done anything for him? A. She said she put a pillow under his head and a quilt over him.

20 Q. After the arrival of Joe, the boarder, were there any intoxicating liquors brought into the house? A. Yes, sir.

Q. By whom? A. By the boarder.

Q. What sort of liquor was it? A. Beer.

Q. And who drank the beer? A. The boarder, my sister, mother and brother and grandfather.

Q. Did you report this matter to any one? A. Yes; I made a "kick" like to my mother.

30 Q. What did she say? A. She said to mind my own business; wanted to know who was running the house.

CROSS-EXAMINATION by Mr. Moy:

Q. Edward, you say you saw your mother kiss Bellott at some time? A. Yes, sir.

Q. Once? A. More than once.

Q. Well, now, when was that? A. Very frequently; I couldn't give the exact day or date or anything.

40 Q. Well, can you tell nearly when it was? A. No, I couldn't.

Edward Drake—Cross

Q. Can you tell when it was that you say you came home and saw your mother sitting on the porch and the boarder in her lap—is that it? A. Yes.

Q. When was that? A. On a Saturday night; my friend Harper and I were downtown and came home. 10

Q. Some Saturday night or other? A. Yes, sir.

Q. And what time in the evening was that? A. Well, between half-past twelve and 1 o'clock?

Q. Between half-past twelve and one? A. Yes, sir.

Q. And you were downtown until that time, eh? A. Yes, sir.

Q. Who was with you? A. My friend, Hopler.

Q. Who else was there? Was this on the front porch you say? A. Yes, sir. 20

Q. Who else was there? A. The boarder and my mother.

Q. Besides the boarder and your mother—anybody else? A. Only Hopler and myself.

Q. What kind of a chair were they sitting in? A. Some chair with arms on it; that's all I seen.

Q. Regular porch chairs? A. Yes, sir.

Q. How many porch chairs were there, do you know that? A. Three. 30

Q. And you say Hopler (is that his name?) was with you? A. Yes, sir.

Q. And where had you been? A. To Proctor's, and just around town; that's all.

Q. Just around town? A. Yes, sir.

Q. And did you come downtown on a car and go home on a car? A. No; I walked home.

Q. You walked home? A. Yes, sir.

Q. And you walked right up on the front steps as you— (interrupted). A. Yes, sir. 40

Edward Drake—Cross

Q. Was there any particular noise around there—anything to disturb—(interrupted). A. Not that I could see.

Q. And did you make any effort to be very quiet as you came down the street? A. No, sir; just walked naturally; that's all.

10 Q. "Walked naturally." Talking too, I expect? A. Yes, sir.

Q. And is there a fence in front of your house? A. No, sir; just a little bit of wire about a foot high to keep you off the grass, that's all.

Q. And, if you know, how many steps are there to the front porch? A. I should say about four or five.

Q. Four or five? A. Yes, sir.

20 Q. Now, just where were you at the time you discovered your mother and Ballott? A. Up on the porch?

Q. You were up on the porch? A. Yes, sir.

Q. I see. And you had continued your conversation right up to that time, hadn't you? A. Yes, sir.

Q. Yes. And is there any light in front of your house, down there? A. No, sir.

30 Q. What sort of a night was it? A. It wasn't very dark.

Q. So you could see quite well? A. Yes, sir.

Q. And so you walked down the street naturally, making noise, talking, and you didn't make any particular attempt to be quiet, going right up on the porch; and there wasn't any reason why they shouldn't have heard you, was there, Edward? A. Not that I could see.

40 Q. Not any. And then, when you got up there, there sat your mother and Ballott—he in her or

Edward Drake—Cross

she in his lap, which was it? A. He was on her lap.

Q. And what did you say? A. Didn't say anything.

Q. What did Holper say? A. I don't remember what he said; don't know that he said anything. 10

Q. And what did you do after that, Edward?
A. Why, I sat down there and talked a little and then the rest went home and then I went in the house to bed.

Q. Now, you say that Ballott came home drunk at one time? A. Yes, sir.

Q. When was that? A. I couldn't give the day or the date?

Q. How do you know he was drunk? A. My mother told me. 20

Q. And what was done with him? A. Said she brought him upstairs and put a pillow under his head and put a quilt over him.

Q. That's all she did, then? A. Yes, sir.

Q. And you say that Ballott brought beer into the house? A. Yes, sir.

Q. Well, I don't suppose you mean by that he brought it in himself? A. No; he had one of Linke's wagons stop and leave it.

Q. Stop and leave the beer? A. Yes, sir. 30

Q. And who drank the beer, did you say? A. My mother and sister and brother and grandfather and the boarder.

Q. Well, was that the first time that beer had been brought to your house, Edward? A. In the house, yes.

Q. To your knowledge? A. To my knowledge it hadn't been brought in the house at all until the boarder brought it in. 40

Edward Drake—Cross

Q. I mean before that time, prior to that time, you hadn't ever seen it in the house? A. No, sir; not in the house.

Q. Why do you distinguish then "not in the house?" A. No beer brought in the house.

10 Q. Was there any beer brought there to the place? A. Yes, sir.

Q. Did your father ever bring it there or order it there? A. Yes; when he had parties out in the barn.

Q. Used to have it in the barn. What do you mean by "parties"? A. Just family and neighbors gatherings; that's all.

20 Q. And you used to have beer at that time, and the family was all there drinking the beer, is that it? A. Yes, sir.

Q. Anybody that wanted to have beer, drank it? A. Not the children.

Q. I assume the children didn't want it—but anybody that did want it? A. Yes, sir.

Q. It was an ordinary thing I take it for your father to furnish beer on occasions like that? A. Yes, sir.

30 Q. Now, Edward, your father wasn't living at home, was he? You said he wasn't home at the time of the occurrence with Bellott that you are telling of? A. No, sir; he wasn't.

Q. Of course. How long had he been gone? A. I should say about a year and a month or two.

Q. Does that bring you down to the day when this happened? You can't be positive about this, can you? A. No, sir.

40 Q. Now, did you go and tell your father about Bellott and your mother? A. No, I didn't tell my father about Bellott and my mother; no.

Edward Drake—Re-direct

Q. Never told him about it? A. No, sir.

Q. Never said anything to your father about Bellott and your mother? A. No, sir.

Q. You never made any complaint about this to your father at all? A. No, sir.

The Master: He said that twice.

Mr. Moy: I thought it would be desirable to make it clear. 10

The Master: If you had a jury here it might be desirable. I think I can remember anything here that is said once.

Mr. Moy: I think perhaps I was over particular about it.

Mr. Crane: With your Honor's permission; I failed to ask a question on direct-examination which I should have asked and I would like to ask it now. 20

RE-DIRECT-EXAMINATION by Mr. Crane:

Q. Edward, do you remember when Joe had a birthday? A. Yes, sir.

Q. And about when was that—the summer or fall? A. I couldn't say; I should think it must have been about the summer, late—near the fall.

Q. Do you remember whether or not your mother gave Joe anything for his birthday? A. Yes, sir. 30

Q. What did she give him? A. Gave him a comb and brush and a silver thing like that for in his bedroom.

Q. Now, in reply to Mr. Moy's question, you said you never told your father anything about your mother. Did you write your father a letter about anything concerning what was going on down there at the house? A. Yes, sir. 40

Edward Drake—Re-direct

Q. And what did you tell him in that letter?

Mr. Moy: Well, now, about the letter. Is that here?

The Master: The assumption is it is in your possession.

10 Mr. Crane: It is here in the papers.

Mr. Moy: We would like to have that letter.

Mr. Crane: Well, I will dismiss that for a minute so as not to take up any more time.

Mr. Crane (resuming): Q. I show you a letter, dated September 28, 1915, and ask you if that is in your handwriting? A. It is, yes, sir.

20 Q. And that is your signature, where it says "Edward"? A. Yes, sir.

Q. And that (indicating) is the envelope you addressed to your father? A. Yes, sir.

Mr. Crane: I will read that letter in.

30 (Reading) "Plainfield, N. J., September 28, 1915: Papa: I want you to know the way Lily is going on with Joe. Lilly can't sit in a chair without Joe is to sit on the arm of it. Joe can't sit on a chair without Lilly is to sit on the arm of it. He can't go to work without Lilly goes with him. I have made a kick to mamma more than once and she sticks up for him. I think he is too free for a boarder. Don't raise a row but have your lawyer send mamma a note. From your son Edward. P. S. Don't let anyone know that I sent you this letter. "E." Again I say, don't raise a row, but send a letter. If you do, I will not let you know any more. Edward."

Letter marked Exhibit P-1.

40 Mr. Crane: Q. Why didn't you want your father

Clarence Drake—Direct

to raise a "row"? A. Well, because I don't like trouble; that's all.

CLARENCE DRAKE, having been first duly sworn, according to law on his oath, deposes and says: 10

Direct-examination by Mr. Crane:

Q. Now, Clarence, speak up. You are the son of Mr. and Mrs. Drake? A. Yes, sir.

Q. And in the summer of 1915—that's last summer—where did you live? A. I lived 914 West Fourth Street, Plainfield.

Q. And who lived with you? A. My grandfather, brother and sister. 20

Q. Now then, in the summer, later in the summer, did Joe Bellott come to the house? A. Yes.

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

Q. How did he act when he first came? A. Well, first-off he was all right; and then finally he started fooling around.

Q. What do you mean by "fooling around"? A. Why he started in bossing.

Q. Bossing whom? A. Everybody. 30

Q. Now, just tell the Court what the sleeping arrangements were upstairs; that is, where did you sleep, and all the rest of the family, in the summer? A. I slept in the front room when the boarder came.

Q. Before the boarder came—strike that out—when he first came? A. When the boarder first came my mother slept in the den and my brother in the front room and my grandfather in the back 40

Clarence Drake—Direct

room over the kitchen—and the boarder he slept over the dining room—back room.

Q. Later, did your mother change her bedroom?

A. Yes, sir.

10 Q. And where did she go to sleep? A. She slept in the room where the boarder slept.

Q. Now, you and your sister go to school, don't you? A. Yes, sir.

Q. And do you remember when school started in—that is, last year? A. September 12th.

Q. And who was at home in the daytime from September 12th up until the first of October? A. Why, most all the time my mother and grandfather and the boarder.

20 Q. Do you recall one day after you started school, coming into the house and seeing your mother asleep? A. Yes, sir.

Q. Where was she sleeping? A. On the lounge.

Q. And who, if any one, was on the lounge with her? A. The boarder.

Q. Have you seen your mother kiss Joe the boarder? A. Yes; when he went to Newark.

Q. And when would he go to Newark? A. Either Friday or Saturday, I couldn't say.

30 Q. And have you seen the boarder kiss her? A. Yes, sir.

Q. Ever see the boarder sit on your mother's lap? A. Yes, sir.

Q. And he on her lap? A. Yes; I seen that twice.

Q. Did you have anything to drink down there at the house? A. Yes, sir.

Q. What did you have to drink? A. Beer.

40 Q. Who gave it to you? A. Joe Ballott.

Clarence Drake—Cross

CROSS-EXAMINATION by Mr. Moy:

Q. What do you mean when you say your mother slept in the room where the boarder slept? A. Why, they was both laying down there together and sleeping.

Q. No, no; when they changed their sleeping arrangements, you say your mother slept in the room when the boarder slept? A. Yes, sir. 10

Q. Well, the boarder wasn't there at night-time? A. No, sir; he worked night-time; and when he came home he went down-stairs on the lounge and slept there.

Q. So really the boarder slept down-stairs on the lounge, didn't he? A. Yes, sir.

Q. Now, you say you came in at one time and saw the boarder—which boarder do you mean by the way? A. Joe Bellott. 20

Q. Was he the only boarder there was there? A. No, sir.

Q. Was he the first boarder that came? A. No, sir.

Q. Several boarders there, were there? A. There were three boarders there all the time; we only had three.

Q. Well, now you say you saw a boarder asleep on the lounge—you mean by that, Bellott, do you? A. Yes, sir. 30

Q. And you say your mother was there on the lounge, sleeping with him? A. Yes, sir.

Q. Which room is the lounge in there—the dining room? A. Yes, sir.

Q. And what time in the day was this? A. Around half-past three or a quarter to four.

Q. And that's the time you ordinarily get home from school? A. Yes, sir. 40

Clarence Drake—Cross

Q. And your grandfather was around the house there, wasn't he? A. Yes, sir.

Q. About all the time? A. No, sir.

Q. A good part of the time? A. No, sir; he was only home a little while.

10 Q. Well, did he work for a living? A. No, sir.

Q. He lived there, didn't he? A. He did a little work around the house.

Q. He helped around the house? A. Yes, sir.

Q. And spent his time around the house? A. Yes; sometimes he went down to my father's.

Q. Do you know whether he was around the house this day you speak of? A. No, sir; he just came home about a little while before; he just came home from my father's.

20 Q. What kind of a lounge is this, Clarence? Can you describe it? A. Why, it's quite a long lounge and its just about room for two. That's all I can describe it.

Q. And do you know what time Bellott would come home from work? A. Yes, sir.

Q. What time? A. He used to—(interrupted).

Q. He would quit work about six and get home about half-past six in the morning? A. Yes, sir.

30 Q. You say you have seen your mother sit on Ballott's lap? A. Yes, sir.

Q. Can you tell me any time, Clarence, when that happened? A. What?

(Question repeated by stenographer.)

A. No, sir; I didn't look at the time; I couldn't tell you the day either.

Q. Couldn't tell the day? A. No, sir.

Q. Did you go tell your father about this? A. No, sir.

40 Q. Didn't tell anything about it? A. Nobody.

Clarence Drake—Re-direct

Q. Tell your grandfather anything about it? A. No, sir.

Q. Tell your brother anything about it? A. No, sir.

Q. Never said a word about it, is that it? A. No, sir.

Q. To nobody? A. No, sir only when my father had Joe Bellott arrested; that's the only time.

Q. You didn't say anything about it until then? A. No, sir.

Q. Did you write your father any letters? A. No, sir.

Q. Did you go to see your father? A. Yes, sir.

Q. At about or shortly after the time when these things happened that you are telling of, did you go to see your father at about the time or near the time when you had observed these things? A. Yes, only when Joe Bellott was arrested; and my sister—when she was missing from school, then I came down to the station later on, around down-town, and then my father—(interrupted)

Q. That's the time, you mean, you told your father? A. No, sir.

Q. I am asking you whether you told your father? I want to sum this up, now: I am asking you whether you told your father at any time about the family? A. What do you mean by that?

Q. Did you tell your father your mother was kissing Bellott? A. Only—when—up in Mr. Crane's office.

RE-DIRECT-EXAMINATION by Mr. Crane:

Q. You didn't need to tell your brother and grandfather about it; they knew it, didn't they? A. No, sir; they knew it.

Charles M. Drake—Direct

CHARLES M. DRAKE, having been first duly sworn according to law on his oath, deposes and says:

Direct-examination by Mr. Crane:

10 Q. Mr. Drake, where did you live in the summer of 1915? A. Nine hundred fourteen West Fourth Street.

Q. New York? A. Plainfield.

Q. And with whom did you live? A. Lived with my daughter-in-law, two grandsons and my granddaughter.

Q. Now, later in the summer did Joe Bellott come to the house as a boarder? A. Yes, sir.

20 Q. When he first came there, how did he act? A. Well, he acted all right as far as I could see for a while, and then he got quite—made himself free, as though he was home.

Q. What do you mean by that? A. Well, for a stranger, yes; he went around in the kitchen, and put on an apron and so on.

Q. Do you remember one day when Clarence came home from school in the afternoon and your daughter-in-law was on the lounge asleep? A. Yes, sir.

30 Q. Who was on the lounge with her? A. This boarder.

Q. Did you say anything to Clarence? A. I told him to be still, I said "Your mother is asleep in there."

Q. At any other time did you ever see Bellott sit on your daughter-in-law's lap, or your daughter-in-law sit on Bellott's lap? A. Yes, sir.

40 Q. Do you remember having said anything to your daughter-in-law on one occasion? A. I was

Charles M. Drake—Direct

going out and they were sitting in the parlor in a big chair, something like a Morris chair it is, and he had her on his lap, and she had her arm around his neck, and she said, "Daddy, is this the way you used to do it when you were young?" I said, "I'm old; I forget; you're young; go ahead." 10

Q. Now, from the time school started in November who was in the house in the day time, beside your daughter-in-law? A. Well, I was there some of the time, often times I would go down to see my brother or my son over in Mountain Avenue; other times I'd take a walk down-town; I was there generally at meal times.

Q. But there were times (interrupted)? A. I took a walk mostly every day. 20

Q. And then who remained home? A. Nobody, but Lizzy and this Joseph.

Q. Do you remember one time in the late summer or early fall when Bellott came home drunk? A. Yes, sir.

Q. Just tell us about that? A. Well, I came home and I went up-stairs in my bed room, and I had to go right past the toilet to the room and he lay there on the floor with a pillow under his head and a quilt over him and he said that he had been drinking a little too much and he had told her that he had drunk three glasses of milk punch and it was too much for him. 30

Q. Well, what did Lizzie do for Joe? A. Well, she got him in her room—not his own room—after he came to a little.

Q. Well, now then, I show you this ring and ask you if you recognize it? A. Yes, sir; if it ain't 40

Charles M. Drake—Direct

the same one it's very much like it; I guess that's the ring.

10 Q. What do you recognize that as being? A. Why, that's her engagement ring what Charlie gave her when she was engaged; and she pulled it off one day.

Q. Wait a minute; wait a minute. Did she take it off in the latter part of the summer and say something with reference to this ring? A. Yes, sir.

20 Q. What did she say? A. She said she was not going to wear it any longer—no more; and she pulled it off and said, "I am going to send it back in an envelope," and she didn't do it right away. I guess she hung it up and forgot it—I don't know; but when we cleaned the house my son happened to find it hanging up on a nail.

Q. In September did you call your son up on the telephone? A. Yes, sir.

Q. And as a result of what you told him what happened? A. It was on Tuesday the 28th; September 28th, and why I saw—(interrupted).

Q. No, just a minute; answer the question; you say you telephoned your son in September? A. Yes, sir.

30 Q. I say, now, as a result of that telephone conversation what happened down in 914 West 4th Street? A. Nine hundred fourteen?

Q. Or whatever the number is down where you live? Strike that out. A. It was Tuesday the 28th.

Q. Never mind. Strike that out. As a result of your telephone conversation with your son some one else came down to the house? A. Yes; came right down there.

40 Q. Who came down with him? A. Man by the

Charles M. Drake—Cross

name of Fritz, works for him; washes his car now and then.

Q. And did you direct him to go some place? A. I said, "Go and look in that window."

Q. Which window? A. Window nearest the barn I was in the barn; the window was down, but the curtain was up about eight inches. 10

Q. Did you look in at that time? A. I looked in before that and that's the reason I telephoned.

Q. What did you see when you looked in? A. Well, Joe lay there on the lounge and he had her there and his arm under her head that way (indicating) and he had one leg between her two.

The Master: Did you give the date of that occurrence? A. Yes, sir.

The Master: Q. What was the date? A. Twenty- 20
eighth of September, Tuesday.

Q. Did you observe whether your son and Fritz did look in the window? A. Yes, sir.

CROSS-EXAMINATION by Mr. Moy:

Q. This, you say, happened on the 28th of September, Mr. Drake? A. Yes, sir; on Tuesday.

Q. Your son hadn't lived home for some time, had he? A. No, sir.

Q. And just what position did you occupy in 30
the house? A. Did I?

Q. Yes? A. Well, I helped to wash the dishes, and around; did that mostly.

Q. And you were there most of the time, were you? A. I was there—well, not all the time, because I would go down-town; take a walk around; didn't want to stop in the house all the time; I was generally home at meal times, and washed the dishes up, and like that. 40

Charles M. Drake—Cross

Q. When did you first observe any familiarity between Bellott and Mrs. Drake? A. Well, after he had been there two or three—a couple of weeks, there—about two or three.

Q. When he had been there about three weeks?

10 A. Yes, sir.

Q. Do you remember the date he came there?

A. No, sir; I know it was on a Monday.

Q. You know it was on a Monday he came but what Monday you don't know? A. No, sir; two of them came together.

Q. You say you at one time saw Mrs. Drake asleep on the lounge with Bellott? A. Yes, sir.

Q. When was that? A. That was the 28th of September, on Tuesday.

20 Q. That was the date you were speaking of, was it? A. Yes, sir.

Q. That you telephoned Mr. Drake? A. Yes, sir.

Q. And who else was about the house at that time? A. Nobody.

Q. Nobody else about the house? A. No, sir; the children were at school.

Q. Well, now then, that was the one time that you saw them asleep on that lounge and the only time, is that it? A. No, no, sir.

30 Q. That was not the only time? A. No; there was another time when Clarence came home from school.

Q. The other time was when you told Clarence to be still and not to wake them up? A. Yes, sir.

Q. Did you observe anything wrong at that time aside from the fact that they were lying on the lounge? A. I didn't see anything; no.

40 Q. They had been more or less familiar for some time? A. Yes, sir.

Charles M. Drake—Cross

Q. Didn't you speak to Mr. Drake about it? A. I had told my son several times before that—before I telephoned.

Q. And you had informed your son about the time you first observed the familiarity between his wife and Bellott? A. Well, it was; I couldn't tell you how long it was; that I couldn't tell you. 10

Q. Well, you thought it was your duty, didn't you, to tell Mr. Drake that things were going wrong at his house? A. I told him they were getting pretty "loving."

Q. Yes; well, did he come there? A. He came there after I telephoned.

Q. That was on the 28th of September. I am asking you the question whether you told him when Bellott first came there to board? He came in July or August? A. I don't know; I know he came with another fellow, and the other fellow stayed two weeks and went away. 20

Q. But on the 28th of September you speak of having—you and Mr. Drake and the other party—looked in the window of the house. What happened then? A. I don't know what; they went out and went home; I was in the barn cleaning up the barn floor.

Q. You say you saw Mr. Drake look in the window? A. Both of them looked in the window. 30

Q. Mr. Drake didn't do anything? Didn't go in the house? A. No, sir; he went right back; went home, over to Mr. Giles on 5th Street—117 5th Street.

Q. What did you say the name of the other man was? I didn't quite get that? A. Fritz.

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

Q. What did he say or do after he looked in the 40

Charles M. Drake—Cross

window? A. I was in the barn and they went and looked in the window and went right out.

Q. When did you go in the barn? A. I was in the barn, there where the floor is all macadamized.

10 Q. When did you first look in the window? A. When I went out in the barn; they were cutting-up and laughing together.

Q. What time in the day was that? A. Between ten and eleven in the forenoon.

Q. Daylight? A. Yes, sir.

Q. What room was this you looked into? A. It was the dining room.

Q. You say you had been cutting up? A. Laughing and joking; that's what I said.

20 Q. How many windows are there in this room? A. Well, a back window and a bay window there; the bay window had a curtain down, excepting about eight inches.

Q. Where were you when you first saw that they were cutting up? A. I was in the kitchen and went out of the kitchen and was going to the barn.

30 Q. The kitchen is back of the dining-room? A. The kitchen is right off that way; there's the kitchen (indicating) and here's the dining room (indicating).

The Master: You haven't got a diagram of the house?

Mr. Moy: Not yet.

40 Q. Now, when you went out—strike that out, please. Before you went out of the kitchen to the barn, Mr. Drake, were the curtains up? A. No, sir.

Charles M. Drake—Cross

Q. They were down when you went in there? A. Yes; I wasn't in the dining room.

Q. But you were in the kitchen? A. Yes, sir.

Q. Is it possible to look in the dining room from the yard by looking through the window in the kitchen and into the dining room? A. Yes, sir. 10

Q. Is it possible? A. Yes, sir.

Q. Was that the window you looked in? A. Yes, sir.

Q. Was that the window Mr. Drake and Mr. Fritz looked in? A. Yes, sir.

Q. Did they at any time look through any other window? A. No, sir, not that day they didn't; excepting some other day when I was out.

Q. I am speaking of the time; this occurrence? A. No, sir; that's all. I was in the barn, cleaning 20 up.

Q. Is there anything to interfere when they looked through that kitchen window with the view that they would have of the dining room? A. They would have a full view of the dining room.

Q. They would have a full view from the outside, of the dining room? A. When I—this curtain was up eight inches that they looked through.

Q. Is that in the dining room or the kitchen that you looked through? A. In the dining room. 30

Q. Well, I misunderstand. I thought they looked through the kitchen in to the dining room? A. No, sir.

Q. Were they asleep at that time, you say? A. Asleep?

Q. Yes. A. No, sir.

Q. Not asleep? A. No, sir; they wouldn't have drawn my attention if they had been. 40

William G. DeMeza—Direct

Q. After you left the house to go to the barn, did you first go around to the dining room and look into the window? A. No; not go around. I went right down the step there; here is the kitchen there (indicating), and here is the window right there in the dining room (indicating); and I looked right in, and then I went over to the 'phone and called him up.

Q. Where was the 'phone? A. Down at the drug store.

Q. How far away? A. I don't know; it ain't very far.

20 WILLIAM G. DEMEZA, having been first duly sworn according to law on his oath deposes and says:

Direct-examination by Mr. Crane:

Q. Judge, do you recall a proceeding having been before you in the city Court of the city of Plainfield, where you're the presiding judge—in September or October of 1915—where the Charity Organization was complainant and Lizzie Drake was the defendant? A. I do.

Q. Do you recall whether or not Lizzie Drake took the stand in that proceeding? A. She did; yes, sir.

Q. I meant to ask you what was the nature of that proceeding? A. I believe it was to take—if I remember correctly—I think it was—proceedings were instituted to take the children away from the mother; I think that was the case; there

William G. DeMeza—Direct

were two cases; one against the mother, and one against a man by the name of Bellott.

Q. Now, then, when Mrs. Drake was on the stand in that proceeding did she make a statement to you that she was familiar with this man Bellott?

Mr. Moy: Well, one minute now; I apprehend that this testimony must be confined within rather narrow grounds, and I must ask counsel to state the particular words that were used there; we ought to have the record. 10

Mr. Crane: You know there's no record kept in the City Court.

Mr. Moy: If he can give us the exact words—(interrupted). 20

The Master: I will permit the question, though it is rather leading.

Mr. Crane: Well, strike it out; I will withdraw the question.

Mr. Crane, (resuming): Q. You have already testified that Mrs. Drake in that proceeding concerning the children, took the witness stand? A. She did.

Q. What did she say, if anything, concerning Joe Bellott? A. Well, she admitted kissing him when he would go to work, and admitting kissing him when he came back from work, and, if I remember correctly, also admitted that she sat on his lap. 30

Q. Anything said about drinking beer? A. Yes, the evidence brought out was that she drank beer with Bellott, and I believe the daughter—she was thirteen years of age—also drank beer too; that was the testimony. 40

Morris Higgins—Direct

Q. What, if anything, did Mrs. Drake say with reference to Bellott taking Drake's place? A. Well, she said that Bellott was the boarder there in the house and that Drake wasn't there and that he took his place.

10 Q. What disposition did you make of the case before you? A. I think the children were taken away from her.

No cross-examination.

MORRIS HIGGINS, having been first duly sworn according to law on his oath deposes and
20 says:

Direct-examination by Mr. Crane:

Q. Mr. Higgins, you are a police officer in the city of Plainfield? A. Yes, sir.

Q. And rank as a what? A. Lieutenant.

Q. Do you recall having been present at a conversation in the police station in the early part of October, 1915, where Bellott and myself and you were present? A. I was.

30 Q. As nearly as you can remember that conversation, will you state it to the Court? A. Why, you were questioning this man Bellott in regard to Mrs. Drake and you asked him if he had been familiar with her, and about kissing her, and one thing or another, and he replied with an answer that what would we do if they threw themselves on you; that he was human. That's about all the
40 conversation.

Arthur A. Fritz—Direct

CROSS-EXAMINATION by Mr. Moy:

Q. Who did you say was present? A. Mr. Crane and myself.

Q. Just you three? A. And Bellott; the three of us.

Q. Just one question, please, Lieutenant, what was the reason for Bellott being there at the station house at that time? A. Well, he was under arrest. 10

Q. He was under arrest? A. I had brought him in, and Mr. Crane came in.

Q. Under charge of what? A. Well, now, I can't just recall the charge now; there was a charge against him.

Q. Carnal abuse, or rape, or something of that kind? A. No, it wasn't carnal abuse; he was arrested later for carnal abuse. Let me see; I think I have that here. (After referring to paper): I arrested him on October 7th and the trial was set down for October 12th. 20

Q. Well, do you remember what charge he was arrested on? A. No, I can't recall. I know he was re-arrested on a carnal abuse charge.

Q. And was found not guilty? A. Yes, sir.

30

ARTHUR A. FRITZ, having been first duly sworn, according to law on his oath deposes and says:

Direct-examination by Mr. Crane:

Q. Mr. Fritz, where do you live? A. I live in North Plainfield, New Jersey.

Q. And you know Mr. Drake—Charles E. Drake? A. Yes, sir. 40

Arthur A. Fritz—Cross

Q. And where were you working in the week of September—starting September 27th? A. I had been working for Mr. Drake off and on, for quite some time.

Q. Where were you on the 28th of September?

10 A. The 28th of September, I happened to be washing his car at 416 Madison Avenue, Plainfield, N. J.

Q. And at his direction did you go down to the house where his wife was living? A. Yes, sir.

Q. What did you see when you got there? A. We sneaked up to the window and saw Mrs. Drake and Joe laying on the couch; he had his leg in between hers and his hand in her bosom.

20 Q. Now then, along later in October, did you go down to the house and assist Mr. Drake in cleaning up the house?

The Master: That is, this house?

Mr. Crane: Yes, sir.

Q. Were you engaged by Mr. Drake to clean up the house, help him to pack up things? A. Yes, sir.

30 Q. What, if anything, did you find in the bed, in the bedroom over the dining room? A. When I tore the bed down, between the bed and the mattress I found a woman's sick rag.

CROSS-EXAMINATION by Mr. Moy:

Q. You say you sneaked up to the window? A. Yes, sir.

Q. You worked for Mr. Drake—working for him? A. Yes, sir.

Q. And it was by his direction that you went down there? A. Yes, sir.

40 Q. And you had been told what you were expect-

Arthur A. Fritz—Cross

ed to find? On the way going down there Mr. Drake had told you this? A. Yes, sir.

Q. And Mr. Drake was with you? A. Yes, sir.

Q. And did you see him after when you got down there? A. Yes; he stood in the front door.

Q. What did he say? A. He said to go and look in the window. 10

Q. Which window? A. In the back, dining room window.

Q. What time of the day was this? A. It was around half-past ten or a quarter of eleven-something like that.

Q. In the morning? A. Yes, sir.

Q. Bright day? A. Yes, sir.

Q. How many windows in that room? A. There's a big bay window in that room. 20

Q. That all? A. I should judge in that room four windows.

Q. How were the curtains—up or down? A. Curtains in the bay window down, and in the window facing the barn was up about eight or ten inches—something like that.

Q. You say all the windows were down? A. Yes.

Q. Excepting one? A. Yes.

Q. And that was up about eight or ten inches? A. Yes. 30

Q. Any difficulty in seeing into the room, under the circumstances? A. No. I didn't see anything out of the way, outside he had his leg in between hers.

Q. They were dressed? A. Yes, sir.

Q. Asleep, or awake? A. I don't know; I think awake.

Q. You looked closely enough to observe that? A. No. 40

Arthur A. Fritz—Cross

Q. How long did you look in that window? A. Just sneaked up and looked in and went away.

Q. That's all you saw, that's what you want to say? A. Yes, sir.

10 Q. What did Mr. Drake say or do? A. When Mr. Drake left he said he was going right to his lawyer's.

Q. Didn't he attempt to go into the house? A. No, sir.

Q. And upbraid his wife? A. No, sir.

Q. Didn't say anything to the man on the couch? A. No, sir; not a word.

Q. He just walked up there, saw his wife in another man's arms, and walked away, without saying a word, is that it? A. Yes, sir.

20 Q. He told you that that was what you were to go down there to see? A. Yes, sir.

Q. Did he say he was going to get a divorce from his wife? A. No, sir.

Q. Did he say before he went down there that he was going to get evidence? A. Going down in the automobile said he was going to try to get evidence.

30 Q. Prior to that had he said anything to you about going to get a divorce from his wife? A. No, sir.

Q. Well, did he go to his lawyer from there? A. When we came up in the car, yes.

Q. Who was his lawyer? A. Mr. Crane.

Q. Well, what was done then? A. I don't know what they done.

Q. You weren't there? A. No, sir.

Thomas Carey—Direct

THOMAS CAREY, having been first duly sworn according to law on his oath deposes and says:

Direct-examination by Mr. Crane:

Q. You are a constable of this county, serving in the sheriff's office, Mr. Carey, are you? A. I am. 10

Q. And at the sheriff's direction did you serve the citation and petition in this case on Lizzie Drake? A. I did.

Q. Where did you serve it? A. Plainfield.

Q. When you served it upon her, did you say anything to her? A. I did.

Q. What did you say? A. I said to her, "Mrs. Drake, here is a petition for divorce by Mr. Drake, charging you with committing adultery with one Joe Ballott." 20

Q. What did she say? A. She said, "Good, good; just what I wanted."

Mr. Crane: Now, with the consent of counsel I'm going to ask one more question.

Mr. Moy: All right.

Q. Later, after serving that citation, did you bring Joe Ballott to Elizabeth, under arrest? A. I did. 30

Mr. Crane: I will supplement that question with, "under arrest charged with an offence against Lily Drake, a daughter of the defendant here."

A. Yes.

Q. Did you have a conversation with him on the train? A. Yes, sir.

Q. And what conversation did you have with him? What was it? A. Why, as we got in the 40

Thomas Carey—Cross

10 train we went to the baggage "room" and the train was crowded, and I said to Joe, I said, "Joe, you seem to be in very bad in this charge," I said, "You not only had improper relations with Mrs. Drake, but you tried it on the daughter." "Well," he said, that to me, "if you were in my position and they were hugging and kissing you, what would you do?" "Why," I said, "If I was in your position, I would take my hat and coat and leave a home like that," and we had some more words, and then he would talk no more on the train on the way down.

CROSS-EXAMINATION by Mr. Moy:

20 Q. That was on the train coming from Plainfield to Elizabeth, you say? A. Yes, sir.

Q. Who was present at that time besides Ballott and yourself? A. Why, me and Ballott; I had him handcuffed to me.

Q. He was handcuffed to you? A. Yes, sir.

Q. And that's just exactly the conversation that took place? A. Yes; the conversation between me and him on the train.

30 Q. You said that Mrs. Drake said, "Good, good; just what I want" when you served the papers? A. She said, "Good, good; just what I wanted."

Q. Where was she at this time? A. Standing outside the police station in Plainfield; some one else with her; I don't know whom; I presume it was her mother.

Q. Some one else with her, wasn't there? A. Yes, sir.

William Waldron—Direct

WILLIAM WALDRON having been first duly sworn according to law on his oath deposes and says:

Direct-examination by Mr. Crane:

Q. Mr. Waldron, do you know Charles E. Drake? 10

A. Yes, sir.

Q. Do you know Lizzie Drake, his wife? A. Yes, sir.

Q. Do you remember that there was some trouble between you there at Drake's house this year, in October? A. Yes, sir.

Q. Do you know where Mrs. Drake went to live after she gave up her residence on Fourth Street?

A. Yes, sir.

Q. Where did she go? A. With her mother. 20

Q. And what is her mother's name? A. Why, Mrs. John Waldron.

Q. And where does she live? A. Well, I just forget the street. I am not so well acquainted with Plainfield.

Q. In the west end of Plainfield? A. Yes, sir.

Q. Now, in November, were you down to Mrs. Waldron's house? A. One evening; yes.

Q. And whom did you see down there? A. I seen the "misses" ("Mrs.") and Lizzie and Ballott. 30

Q. By "Lizzie" you mean the defendant, Mrs. Drake? A. Yes, sir.

Q. And by "Ballott" you mean Joe Ballott, the corespondent? A. Yes, sir.

No cross-examination.

Anna L. Schmidt—Cross

ANNA L. SCHMIDT, having been first duly sworn according to law on her oath deposes and says:

Direct-examination by Mr. Crane:

10 Q. Mrs. Schmidt, where do you reside? A. 932 West Third Street, with my husband and two children.

Q. Do you know Lizzie Drake? A. Yes, sir.

Q. Do you know Joe Ballott? A. Yes, sir.

Q. When did you first meet Ballott? A. Mr. Ballott came to my house around about the 27th of August for board, and as I had other boarders I took Mr. Ballott into my house to board.

20 Q. And where did Mrs. Drake meet him, do you know? A. At my house.

Q. And what was her conduct toward Ballott in your house? A. I couldn't see anything out of the way in my house.

Q. Did you visit her after Ballott went to board with her? A. I did.

Q. And have you any knowledge of her relations with Ballott? A. I have not.

CROSS-EXAMINATION by Mr. Moy:

30 Q. You have never seen anything out of the way? A. I couldn't very well see; I never went there.

Mr. Crane: Q. Never went to the house at all?
A. No, sir; I did not.

Russell Hopler—Cross

RUSSELL HOPLER, having been first duly sworn according to law on his oath deposes, and says:

Direct-examination by Mr. Crane:

Q. Hopler, you live in Plainfield? A. Yes, sir. 10

Q. And do you know Edward Drake? A. Yes, sir.

Q. And do you know his mother, Lizzie Drake? A. Yes, sir.

Q. Do you know Joe Ballott? A. Yes, sir.

Q. Do you remember one night last summer when you and Edward came down Fourth Street together, late at night? A. Yes, sir.

Q. And do you remember having seen anyone on Drake's porch? A. Mrs. Drake and Mr. Ballott were out there. 20

Q. And what were they doing? A. Mr. Ballott was on Mrs. Drake's lap.

Q. Did they see you? A. Couldn't help it.

CROSS-EXAMINATION by Mr. Moy:

Q. What is your name? A. Russell Hopler.

Q. You were a boarder at Mrs. Drake's at that time? A. No, sir.

Q. You went in the house? A. I had been in the house several times. 30

Q. And this particular evening, Mr. Hopler, had you or not? A. No—sat on the porch that evening.

Q. What time was it when you came? A. Couldn't say exactly; it was between twelve and one; I couldn't say exactly.

Q. Some time between twelve and one? A. Yes, sir.

Q. You walked down Fourth Street, did you? A. Yes, sir.

Russell Hopler—Re-direct

Q. And made no effort to soften your footsteps?

A. No, sir; walked naturally.

Q. No effort to soften your footsteps going up the porch? A. No, sir; walked just the same as I always walk.

10 Q. And you say that when you got up on that porch you saw Mrs. Drake sitting in Ballott's lap?

A. I didn't say it that way.

Q. Well, just how do you mean? I don't mean to put it wrong. A. I mean to say that Mrs. Drake was on the chair and Mr. Ballott on her lap.

Q. Just the reverse then? A. Yes.

Q. Ballott on Mrs. Drake's lap? A. Yes, sir.

Q. And nothing was said? A. No, sir.

Q. Ballott said nothing? A. No, sir.

20 Q. Ballott said nothing and Mrs. Drake said nothing? A. Just said, "Hello." I forget what was said when I went up—yes; they said "Hello"—that's all.

Q. You saw nothing out of the way but that? A. That was all.

Mr. Crane: "Nothing but that" is good.

RE-DIRECT-EXAMINATION by Mr. Crane:

30 Q. Were you a visitor at the Drake's house occasionally? A. Yes, sir.

Q. And were you a friend of the boy's? A. Yes, sir.

40 Q. Well, at any other time did you ever see Mrs. Drake and Ballott in each other's embrace? A. There was one time Mrs. Drake was on the couch and he was sitting opposite her with his head down on her dress; but I don't know when that was—whether day or evening; I was working at the time.

Annie Simmons—Direct

RE-CROSS-EXAMINATION by Mr Moy:

Q. Can you tell the date, Mr. Hopler? A. I don't know.

Q. Can you approximate the date? A. I know it was in September; don't know when.

Q. Who have you talked this matter over with? 10
A. Nobody.

Q. Not with anybody? A. When Mr. Drake asked me if I saw anything I told him; that's all.

Q. When was that he asked you? A. I think it was Sunday evening.

Q. I would like to have the date, if you please?
A. Last Sunday evening.

Q. That's the first you talked about it? A. Often spoke about it at home; but not out in public.

By Mr. Crane: Q. You never talked to me about 20
it? A. No, sir; I never saw you before.

ANNIE SIMMONS having been first duly sworn according to law on her oath deposes and says:

Direct-examination by Mr. Crane:

Q. Mrs. Simmons, where do you live? A. I live 30
at 910 West Fourth Street, Plainfield.

Q. And did you live there in the summer of 1915? A. Yes, sir.

Q. And that's directly next door to the Drake house? A. Yes; and very close.

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

Q. And do you know Joe Ballott, the boarder?
A. Yes, sir.

Q. Did you ever see any—did you ever see Mrs. 40

Elizabeth Drake—Direct

Drake in Ballott's company? A. Why, I have seen them, go out together, and on the front porch together, sitting.

Q. Did you ever see them in each other's embrace? A. No, because I never went in their house after he was there.

10 Q. After he was there you never went in? A. No.

Q. And why didn't you go in?

Mr. Moy: I object.

The Master: I will permit the question.

(Question repeated by stenographer.)

A. I am never no hand to run in my neighbors without any object.

20 Q. You say "not after Joe came"? A. Well, not more than once or twice all the time I lived there; but she used to come in to my house.

Q. Did she come in to you after Joe came there to board? A. Very seldom.

Q. How often would you say Ballott was out with her? A. Quite a few times.

Q. They were very friendly? A. When he went to work sometimes she would walk down with him.

No cross-examination.

30 Petitioner rests.

ELIZABETH DRAKE, having been first duly sworn according to law on her oath deposes and says:

Direct-examination by Mr. Moy:

Elizabeth Drake—Direct

Q. Mrs. Drake, where are you living now? A. 318 Macdougall Street, Plainfield.

Q. With whom? A. My mother.

Q. And how long have you been living there? A. Since October.

The Master: Q. Since when? A. October.

10

Q. Last October? A. Yes, sir.

Mr. Moy, resuming: Q. And where did you live prior to that time? A. 914 West Fourth Street.

Q. And that house belongs to your husband? A. Yes, sir.

Q. Now state the circumstances of your leaving that house? A. Why, the reason I left it, I came from the trial, and I was forbidden to go in, and told if I went in—stepped my foot on that ground—I would be arrested. I was to come back next day to get my clothes.

20

Q. So then you went to live with your mother? A. Yes, sir.

Q. Was your husband living with you at the time you left the house? A. No, sir; he was not.

Q. And how long before that time was it that your husband lived with you—if he did live with you? A. A year the 22d of September he was gone, and that was in October.

Q. How long have you been married? A. Eighteen years.

30

Q. Living with him all of that time up until what date? A. The 22d day of September.

Q. What year. A. Nineteen hundred and fourteen.

Q. Had you had any difficulty with him? A. Well, he was always hard to please.

Mr. Crane: I object to that.

Q. I mean just prior to his leaving, or near that time? A. Why, yes.

40

Elizabeth Drake—Direct

10 The Master: Now, I suppose you better settle along what line your examination is to go. Is it to be simply on the issue presented on the petition, or do you open the cross-petition and intend to introduce her testimony on that? It's always difficult to know how to fix that.

Mr. Moy: Well, for the moment the testimony will probably intermingle, but I mean to separate it absolutely a little later. This, I think, would apply in either case. I simply want to place it before your Honor.

20 The Master: That is possibly true; quite literally true; but it tends to aid us a little if you would confine it as far as possible to the issue presented by the petition, and then enlarge it by the evidence tending to support your cross-petition.

Mr. Moy: Well, the testimony I am about to bring out is in explanation of the situation that existed there at the time he left his wife.

The Master: I am not saying that is improper. I only make the suggestion.

30 Mr. Moy: I would like to keep the two issues distinct, if your Honor please; but this seems proper at this time, if you will permit me.

The Master: Well—go on.

Mr. Moy, resuming: Q. Well, if you know, what was the reason of his leaving?

40 Mr. Crane: I object to that; it isn't material to the issue, either under the theory of meeting the petitioner's case, or under the cross petition.

Elizabeth Drake—Direct

The Master: How will it help at all?

Mr. Moy: Well, in a matter of this kind, your Honor, it seems to me that in view of the fact particularly that they have shown that the husband was not living with the wife, that we should be permitted to show why he was not living with defendant at the time, and why, perhaps, she had to take up these proceedings, and some explanation of what happened there between the boarders and this woman by reason of the fact that the husband wasn't there. 10

Mr. Crane: Would that be any defence?

Mr. Moy: That's not defence strictly speaking, but it would lead up naturally to the real defence. 20

The Master: What is the real defence?

Mr. Moy: The real defence is a real denial of the things charged in the petition, and a real and absolute denial of the charges brought out here by the evidence.

The Master: Well, now, what would the circumstance of his leaving his wife a year before have to do with it? Would that throw any light on it?

Mr. Moy: Well, I don't care to introduce it, if your Honor doesn't care to have it. 30

The Master: Well, we don't want anything in if it's not right; suppose you answer my question: in what way will it throw any light on it?

Mr. Moy: Well, perhaps not at this time. I will withdraw the question.

The Master: It is a fact that he did go away and stay away. 40

Elizabeth Drake—Direct

Mr. Moy: I will withdraw the question and (to the witness) ask you:

Q. When did Ballott come there to board with you at 914 West Fourth Street? A. In the middle of August.

10 Q. Of what year? A. Ninteen hundred and fifteen.

Q. Why did you have him come to board? A. Well, because Mr. Drake's support was eight dollars a week to support the family and myself, three children and his father.

Mr. Crane: Well, now, just a minute; I didn't happen to hear the question. I object to that. I don't care if he didn't give her a penny and if she had to take all the people in Plainfield; that's not defence. No necessity would make such conduct necessary.

20

The Master: The evidence is in, and I won't strike it out.

Q. How long did Ballott continue to board with you? A. Until October—this October.

Q. Until October of last year? A. Yes, sir.

Q. The members of your family consisted of whom at the time he was with you? A. His father and my three children and myself—and Joe at the last; in the first part I had two other boarders; George—I don't know his last name, and Mr. William Waldron. Benoire, I think.

30

The Master: Q. How long did they remain with you? A. Well, Mr. Waldron remained there about three weeks, and Benoire staid there about two or two and a half or three.

Q. And when did they leave? A. They left long before Joe Ballott went away; Mr. Waldron he

40

Elizabeth Drake—Direct

paid board, and I told him he had to go because I couldn't afford to keep boarders with no board.

Q. Now, where did you sleep, Mrs. Drake? A. I slept in the front room, in the little den, off my son's room.

Q. And who slept with you, if any one? A. Lily, 10
my daughter.

Q. And what were Ballott's hours of labor? A. He went to work about a quarter to six at night and came home about ten minutes to six—quarter to six—in the morning.

Q. Where did he sleep? A. Well, at first when those were there he used to sleep up-stairs, but mostly he slept on the lounge down-stairs; and then after when there was no man there I thought there was no use of me lying on the floor in this 20
little den and the two beds empty, and I went in the bed that Mr. Ballott occupied at night. I don't know who slept in it at all in the daytime when I did at night.

Q. It was his custom to sleep on the lounge in the dining room at the time? A. Yes, sir.

Q. Did you at any time go out with Mr. Ballott? A. No, sir; not unless I might walk from my house down to my mother's with my daughter; but never went out with Mr. Ballott alone. 30

Q. Did your daughter go out with him sometimes? A. Walked down as far as Macdougall Street and would go to my mother's.

Q. Did you give a birthday present or any other present? A. No, I hadn't received any present.

Q. No. Did you give him any present? A. No; my daughter gave it to him.

Q. Did you ever give him any presents of any kind? A. No, sir. 40

Elizabeth Drake—Direct

Q. It has been testified here that your son and Mr. Hopley came home one evening—the date is not stated—and found you and Mr. Ballott on the front porch, between twelve and one o'clock in the morning, and you were occupying the same chair—
 10 he sitting on your lap or you on his lap. Is that so? A. No, sir.

The Master: Might I suggest Mr. Moy that you are not stating correctly the testimony.

Mr. Moy: In what way?

The Master: The testimony is that he was sitting on her lap, and you have asked her a question that includes another and different thing.

20 Mr. Moy: I put it in the alternative.

The Master: But there is no alternative; it is all one way.

Q. Well, the evidence here is that you on some evening between twelve and one o'clock were sitting with Mr. Ballott on the front porch with Mr. Ballott on your lap? A. No, sir.

Q. The testimony here is that on the 28th of September, 1915, you were observed lying on a lounge in the dining room with Mr. Ballott and that his
 30 leg was between your legs and his hand in your bosom? A. I deny it; it is not so.

Q. The testimony is that you frequently kissed Ballott and that he frequently kissed you. Is that so? A. No, sir; it is not. I have kissed Mr. Ballott once or twice the most, and that was in a joke, at a "dare."

Mr. Crane: On a dare? On a bet I suppose?

40 Q. What do you mean by "dare" Mrs. Drake?

Elizabeth Drake—Direct

A. Why, it was merely that he was going out and they kissed all around; they kissed there; it was "Ain't you going to give me one?" My cousins and all was there, and he said, "Ain't you going to give me one?"

Q. And that's how that happened, eh? A. Yes, 10
sir.

Q. What have you to say about Ballott coming home drunk at one time and you taking care of him? A. Mr. Ballott came home one night; he had been down town; he came home in a taxi-cab; he went in straight as anything and he got sick as anything and he walked upstairs and lay in the bath room, and his head in the hall, and I did put a pillow under his head; but his head was in the hall up-stairs. 20

Q. What have you to say in regard to Ballott bringing any beer at the house? A. Well, he did; we did have beer.

Q. And who drank the beer? A. His father, myself; we took a glass; and himself.

Q. Who do you mean when you say "his"? A. Mr. Drake's father and myself, we took a glass, and Joe would take some; that's the way we would pass it.

Q. Was it a new thing for beer to be brought 30
into your house? A. No, Charlie had had it there when he was home, different times.

Q. What have you to say in regard to Mr. Ballott bossing things around the house? A. He was no boss.

Q. Did he ever attempt to boss you around the house? A. No, he didn't.

Q. Ever attempt to boss the children around the house? A. No, sir. 40

Elizabeth Drake—Cross

CROSS-EXAMINATION by Mr. Crane:

Q. When Ballott came home drunk why didn't you fire him out of the house? A. Could I prove he was drunk?

10 Q. I say why didn't you put him out of the house when he came home drunk? A. Because it wasn't necessary.

Q. Of course, not. Now, you were very familiar with Ballott? A. No.

Q. How long had you called him Mr. Ballott? A. How long have I called him mister?

Q. Now please don't repeat my questions; they're plain and simple, just answer. A. Well, I called him Joe from the start.

20 Q. When did you start to call him Mr. Ballott? A. Don't know as I have—might call him Mr. Ballott here.

Q. Yes, that's the point. This is the only place where you called him Mr. Ballott? A. Yes, sir.

Q. Surely. And what was your idea in changing your attitude and changing from Joe to Mr. Ballott because you are in Court here? A. (No answer.)

30 Q. Very well. You apparently haven't any answer for that. You say you weren't very familiar with Joe. You were familiar enough with him to talk about your thirteen year old daughter's sickness, weren't you? A. I did pass a remark; yes.

Q. You weren't familiar with him, but you did take up with him the question of your thirteen year old daughter's sickness?

Mr. Moy: I object to that.

A. I did tell him.

40 Q. Why did you do that, Mrs. Drake? A. Because, she came home from school sick, and I

Elizabeth Drake—Cross

merely said that she had had a period—had a sick period.

Q. Now, you remember when Mr. Ballott, ordinarily called Joe, was arrested, charged with the carnal abuse of your daughter, don't you? A. Yes, sir.

Q. And do you remember that you took the witness stand in his defence and testified that you told Joe that she hadn't been sick as yet? A. I didn't say so.

Q. What did you testify to? A. What did I testify? Why she was sick when she was arrested; the day she was arrested.

Q. I am asking you what you testified to across the hall here last November? That's only two months back; you ought to remember? A. Why, that she had been sick.

Q. You told Joe this? A. In the Court, across the hall, as you said.

Q. And talking on such questions with a boarder didn't occur to you as being familiar with him? A. Why, I wasn't familiar; I wasn't familiar.

Q. That wasn't your idea of being familiar with a boarder? A. No.

Q. It wasn't your idea of being familiar—(interrupted). A. No—

Q. Now, I haven't finished my question: you allowed your daughter to go to Newark, with Joe, didn't you? A. Yes, I did.

Q. And you did sit on his lap, didn't you? A. No, sir.

Q. You did kiss him, did you? A. Yes, sir.

Q. And you did lie on the couch with him? A. No, sir.

Q. Then, when you told Judge DeMeze, in the

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Elizabeth Drake—Cross

Police Court, that you did kiss him, that you did sit on his lap, and that you did lie on the couch, you lied, didn't you? A. I didn't tell him that.

Q. Then Judge DeMeza didn't tell the truth? A. He's got mixed up somewhere.

10 Q. You say once or twice you did kiss Ballott?
A. Yes, sir.

Q. When? What time? Both on the one occasion or different times? A. Different times; I didn't write it down.

Q. You kissed him on a "dare"? A. When they were going away; yes.

Q. Who made the dare? A. They were all around there.

20 Q. Who was there? A. I think my sons were there; I think Lily was there.

Q. Who else? A. My cousins.

Q. Who was that? A. From Newark—Mrs. Waldron.

Q. And who else? A. And Joe.

Q. And who did Joe kiss? Did he kiss all around? Did he kiss all hands good bye? A. He kissed my daughter, yes; and he kissed Mary—my cousin.

Q. Kissed them all? A. Yes, sir.

30 Q. Now, when all of these various witnesses say that they saw Joe Ballott on the couch in the dining room in the day time, are they right or wrong? A. They are wrong if they say it.

Q. Are they wrong if they saw Joe there? A. They were wrong if they saw him there with me.

Q. I didn't say that. They are wrong if they saw him on the couch? A. No.

40 Q. That's where he slept in the day time? A. Yes, sir.

Elizabeth Drake—Cross

Q So far as you say Joe was there, that right?

A. Yes.

Q. Now, your children started to school in September? A. Yes.

Q. September 12th, to be exact? A. Yes, sir.

Q. And that left you and Joe and old Mr. Drake home together? A. Yes. 10

Q. But Mr. Drake wasn't there all the time? A. Not all the time; and I wasn't there all the time myself, because I went out to work, too.

Q. I understand; but Mr. Drake wasn't there all the time? A. Pretty much all the time.

Q. Have you seen Ballott since the time the children were taken away from you in Plainfield?

A. Since the children were taken away? Yes, I have. 20

Q. And where have you seen him? Come now, speak up and turn around so the Chancellor can see you? A. Why, he took his meals at my mother's house.

Q. Until when? A. Why, something about a month ago.

Q. Why did he stop taking his meals there? A. Well, because he stopped taking his meals there and went to Newark where his position is.

Q. He doesn't work in Plainfield any more? A. No, sir. 30

Q. But since he was in Plainfield he took his meals at your mother's? A. Yes, sir.

Q. And where did he have his rooms? A. In Newark; went back and forth.

Q. I see. He took his meals in Plainfield? A. Yes, sir.

Q. Which meals? A. Breakfast and supper.

Q. Came over to your mother's for breakfast? A. Yes, sir. 40

Elizabeth Drake—Cross

Q. Up to the extreme end of Plainfield, and then he would take the train to Newark? A. Yes.

Q. And then take the train and go up to the extreme end of Plainfield and get his meal and go to work? A. Yes.

10 Q. And what was it was so attractive about your mother's boarding house that made him come there? A. Well, he was a stranger and not acquainted; we might turn him away.

Q. He was acquainted with you? A. No; he wouldn't see me there every day; I was working up in Dunellen.

Q. He went to all this trouble to take his meals up in your mother's, and your only explanation of that is, because he was a stranger? A. Yes, sir.

20 Q. Now when Ballott, the boarder, first came there to live, did you sleep in the front room? A. First on the floor.

Q. Wasn't the room big enough to put a bed in? A. No, sir.

Q. And why did you move into the room over the dining room? A. Because Joe didn't go there in the day time to sleep and the two beds were standing there empty in the night and we used to sleep on the floor.

30 Q. Don't you remember testifying in Police Court that you went in there because it was commencing to get cold and was cold in the front room?

Mr. Moy: There isn't any evidence of that in this case, Mr. Crane.

Mr. Crane: I didn't say so.

The Master: He is asking the witness whether she didn't say so.

40 A. Perhaps I did.

Elizabeth Drake—Cross

Q. Well, assuming that you did, that was the real reason, was it, because you wanted to sleep in the bed, or was it because it was getting cold?

A. Because it was getting cold and I wanted to sleep in the bed.

Q. Yes. You never went out with Joe? A. To walk as I said. For me to go out with Joe? No, I did not. 10

Q. Never went to the moving pictures with him? A. No, not alone; no, sir.

Q. Didn't ask you that. Did you ever go with him? A. No, sir.

Q. Never did? A. Not with him; no, sir.

Q. Who did you go with? A. I go to moving pictures quite often.

Q. Didn't you go with Joe at all? Didn't you go to a dance with him to the school? A. He might have been in the company; but I didn't go with him. 20

Q. Did you dance with him? A. No, I don't think I did.

Q. Do you know whether you did or not, Mrs. Drake? A. I don't think I did.

Q. Would you have known it if you had danced with him? A. I suppose I would.

Q. How old is your daughter? A. Thirteen. 30

Q. And you took up with Joe some time in the early fall that she was going to be sick—going to menstruate? A. No, sir; I didn't take up that she was going to be.

Q. Well, that she was, or something? A. Yes.

Q. And you say you didn't give Joe a present of a comb and brush, did you? A. No.

Q. Who did? A. My daughter.

Q. Then you want the Court to understand, as 40

Elizabeth Drake—Re-direct

I get your testimony, that Joe Ballott was your daughter's gentleman friend, and not yours? A. No, sir; he was not; no "gentleman friend" about it.

Q. No? A. No.

10 Q. You say you allowed your daughter to go to Newark with this man? A. Yes, sir.

Q. How old is Joe? A. Joe is twenty-six, I think.

Q. When is his birthday? A. In September.

Q. Who bought this present? A. Who bought it?

Q. Now please don't repeat my question. Answer it. A. My daughter went down to get it with some tags.

Q. Yes? A. Some tags I had saved.

20 Q. Were you with her? A. No, sir; I wasn't.

Q. And who gave it to Joe? A. Lillian.

Q. Didn't you let Joe give your daughter beer to drink? A. He didn't just give it to her.

Q. What did he "just" do? A. I brought it out myself and he took it.

Q. How about this little fellow Clarence? A. He has taken a swallow of it.

Q. Do you recognize this (indicating)? A. Yes; that's my wedding ring.

30 Q. And when did you take it off your finger? A. Why, one time there at the house.

Q. Do you remember what you said when you took it off? A. Not just the words. I took it off.

Q. What was the sum and substance of what you said? A. I don't just recollect what I did say.

RE-DIRECT-EXAMINATION by Mr. Moy:

Q. Why did you take the ring off, Mrs. Drake?

A. I just got tired of wearing it, I suppose, and
40 just took it off.

Elizabeth Drake—Re-direct

Q. Well, did you have any reason? Did you express any reason at any time? A. No.

Q. Simply took it off, is that it? A. Yes, sir.

Q. When did you take it off, do you know that?
A. I don't know.

Q. About this drinking beer with the children. Did Lillian or either of the other children drink a glass of beer? A. Not a whole glass; no, sir. 10

Q. How much would they drink? A. Maybe they would take two or three swallows of it and put it down again.

Q. Is that the first time they did that? A. No, sir.

Q. When did they get it? A. They always have.

Q. When the father was home, too? A. Yes, sir.

Q. Now, in regard to the presents to Ballott by Lillian and the trip to Newark; tell the Court how that trip came to be taken and why? A. Well, Lillian needed a pair of shoes and her birthday was on October 9th and being as Lillian got the birthday present from Joe—Joe had given Lillian a birthday present—Joe thought it would be nice to give her a pair—(interrupted). 20

Q. Just tell what happened as far as you know?
A. As far as I know, he was going to get a pair of shoes for her, and she needed them. 30

Q. She needed shoes? A. She needed shoes and he bought them.

Q. Did you have money to buy shoes? A. No, sir.

Q. Did your husband give her money to buy shoes? A. He had bought her one pair of ties during the year.

Q. One pair? A. One pair he gave the money to buy. 40

Elizabeth Drake—Re-cross

Q. One question. In regard to Carey: When he served the subpoena and petition in the divorce case, did you say "Good, good; just what I wanted"? A. Perhaps I said "that's good," but he said "Here's a piece of paper; take this in and hand it to your lawyer."

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Q. That's what you said? A. Yes, sir.

Q. What else did he say? A. And he said "I suppose it's a divorce paper."

Q. That's the first you knew it was a divorce paper? A. Yes; and then I brought it right in and handed it to you.

Q. Did you on the 28th of September or at any other time commit adultery with Joseph Ballott?

A. No sir.

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RE-CROSS-EXAMINATION by Mr. Crane:

Q. Do you want me to understand that Mr. Carey came up to you and said, "Here, I think that's your divorce paper"? A. He said "Here is your paper and you better hand it to your lawyer."

Q. What did he say? He thought it was a divorce paper? A. He thought it was a divorce paper.

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Q. Oh, I see. You know, Mrs. Drake, early in October the charges that your daughter made against Ballott? A. The charges she made?

Q. In Plainfield? A. I don't know whether she made it or whether it was made by somebody else.

Q. Well, you know that your daughter took the witness stand across the hall and said that Ballott outraged her, don't you? A. Yes.

Q. And in the face of that, you have still been on terms of—friendship at any rate—with Bal-

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Joseph A. Ballott—Direct

lott? A. Yes, I have, because it couldn't be proved that he was guilty.

Q. You require the strictest proof in such matters before—(interrupted). A. Because she has told it right herself; it was a denial.

Mr. Moy: Q. What do you mean by that? A. 10
She has said herself it was not so.

JOSEPH A. BALLOTT, having been first duly sworn according to law, on his oath deposes and says:

Direct-examination by Mr. Moy:

Q. Where do you live? A. Twenty-two Rutherford Place. 20

Q. What is your business? A. Machinist.

Q. How long have you lived there? A. Since last October.

Q. Where did you live prior to that time? A. Down in Plainfield. 914 West Fourth Street.

Q. You boarded there with Mrs. Drake? A. Yes, sir.

Q. How long did you board there? A. From August to the time I was arrested—October 7, 30
1915.

Q. The family consisted of whom? A. Sir?

Q. Of whom did the family consist? A. Mrs. Drake, her father-in-law, two sons, and her daughter.

Q. What time did you go to work? A. I went to work at a quarter of six and quit at half-past five to come home at a quarter of six or ten minutes of six. 40

Joseph A. Ballott—Direct

Q. You mean to say that you worked during the nights, is that it? A. Yes, sir.

Q. What time would you get home in the morning, from the factory to Mrs. Drake's home? A. About fifteen minutes—about quarter of six.

10 Q. Where were your sleeping quarters? A. Well, when I first went there my sleeping quarters were over the dining room in the second floor, in the back, and then after a while a spell of hot days came along and I decided it would be much more convenient for me to sleep downstairs, which was much cooler, and I decided to lay down on a lounge in the dining room.

Q. In the dining room? A. Yes, sir.

20 Q. What kind of a lounge was that? A. It was one of these buffet black lounges—hold one person; just room for one person—not any more.

Q. About how wide would you say it was? A. About two feet and some inches.

Q. How many windows in the dining room? A. About four windows.

30 Q. What relation—let's see. Was there a bay window in that room? A. Yes, there's a bay window facing that side of the house (indicating); there's an alley there; room enough for an automobile to go through.

Q. What relation to the bay window—what was the position of the lounge? A. The lounge was on the opposite side of the bay window right up against the wall and near the kitchen door—a blank wall there and the foot of the lounge came near to the kitchen door.

40 Q. Did you on the 28th of September sleep on that lounge? September '15 I am speaking of—1915. A. 1915?

Joseph A. Ballott—Direct

Q. September 28, 1915? A. I don't know what day that fell on—the 28th.

Q. Did you on the 28th of September, 1915, or on any other date occupy that lounge in company with Mrs. Drake? A. Absolutely not.

Q. Did you on that date or on any other date recline on that lounge having your leg between Mrs. Drake's legs and your hand in her bosom? A. No, sir. 10

Q. What were the relations existing between Mrs. Drake and yourself—either friendly or otherwise? A. It was no more than in a friendly way as to her, or conditions that I found her in at the time I went there.

Q. Well, what do you mean by that? A. Well, her environments; she was quite embarrassed financially. 20

Mr. Crane: Well, now, if your Honor please, I object to the answer—it is not responsive.

The Master: I will take the evidence. Go on.

A. (Continued) It was through the financial distress that she happened to be in that interested me in her case—not only in herself, but as well the whole family; I showed my friendship towards boys first before anybody else of the family. 30

Q. Well? How? A. By giving them money.

Q. Well, did you show my friendship toward the daughter? A. No, sir; she was the last to be considered of the family.

Q. Well, did you show any friendship toward the daughter? A. Well, I showed it to her by giving a pair of shoes and the hat for the girl the time she started to school. 40

Joseph A. Ballott—Direct

Q. Where did you get those shoes? A. In Newark; in McDonal's shoe store on Broad Street.

Q. Why did you buy those shoes? A. Because she really needed a pair of shoes.

10 Q. You observed that? A. Yes; I thought that was the best way I could put my money to use.

Q. Were you unduly familiar with Mrs. Drake? A. No, sir.

20 Q. Did you kiss her at some time? A. It was on one occasion—I mean to say I kissed her on one occasion. Two cousins from Newark, me and Mrs. Drake and the two sons and her daughter were there, and the two cousins from Newark going to leave—they were all kissing each other, and on that occasion Mrs. Drake was the only one that didn't kiss and she says. "Well, I'm the only one in the place that didn't kiss." and she just, more for deviltry than anything else, kissed me.

Q. Was it your habit to kiss Mrs. Drake or for her to kiss you? A. No, sir.

Q. Did you take her out at any time? A. I can't say I asked her out; I went with them there to the dance at the school—with the whole family; her mother; her daughter and her big son were there, and her brother.

30 Q. Was the father there? A. No, sir.

Q. Did you ever see the father there at any time? A. Never seen him until the day I was arrested, and then I didn't know him or he didn't know me.

Q. Did you see the father there at the house or at the dances? A. The father, Charles Drake?

Q. Yes? A. No, sir; never in the house or at the dances—never.

40 Q. Did you at any time in the night between

Joseph A. Ballott—Direct

twelve and one sit on Mrs. Drake's lap? A. No, sir.

Q. Either on the front porch or elsewhere? A. No, sir; never on any occasion.

Q. Did you receive or give—strike that out. Did you receive any presents at any time from Lillian Drake, the daughter? A. Yes, on my birthday, 30th of September, 1915. 10

Q. That was before or after you had given the shoes? A. That was before I had given her the shoes.

Q. Were there other boarders around while you were there, Ballott? A. Yes, a young fellow by the name of George Moryor and Mrs. Drake's cousin—his last name is Waldron; I don't know his first name. 20

Q. Any other party around there? A. At the time?

Q. During the time you boarded there? A. Well,—the father-in-law, the whole family, everybody was there.

Q. Any other strangers there? A. During my period of boarding there?

Q. Yes? A. Yes; Mr. Casterline.

Q. When did he come there? A. Just after my birthday; I believe he came down on a Friday night, September 30, and didn't occupy the place until Saturday morning. 30

Q. Did you know who he was? A. I thought I did.

Q. What did you think? A. I thought he was a "spotter."

Q. What do you mean by that? A. A man who comes to seek information.

Q. How long did he stay? A. He stayed there 40

Joseph A. Ballott—Direct

just one week, and the very day I got arrested when I went out with him, that was the last time I saw him—Thursday morning, October 7th.

Q. And you thought he was a spotter, you say?

A. Yes, sir.

10 Q. When you were arrested you were taken to—the testimony is that you were taken to police headquarters, is that right? A. No, it wasn't like that.

Q. How was it? A. I came down town; I had made a purchase of some articles and I walked down Fourth Street towards Mrs. Drake's house and then two blocks off I met Charles Drake's father, and he said, "Where have you been"? I said "Up town, making some purchases" and I
20 was going home; that was about 10 o'clock.

Q. When was that? A. That was October 7th; and when I reached within one block of the house I met this lieutenant detective.

Q. The man that testified here this morning? A. Yes, sir; and he said, "Hello, Joe," and he said, "Do you know me"? and I said, "No, sir; I don't."

Q. Just tell what was done. A. He said would I walk down to the station house, and didn't say
30 I was under arrest or anything else.

Q. My question is, did you go to the station house or were you taken there? A. I was taken there by Charles Drake's automobile.

Q. Did you have a conversation in the—strike that out please. Did you undergo an examination— A. I was—

Q. I hadn't finished. Wait until I ask the question or you won't know what I'm going to say.
40 Did you undergo an examination in the station

Joseph A. Ballott—Direct

house in the presence of Mr. Crane and Lieutenant Higgins? A. Yes, sir.

Q. Did you in reply to a question or statement made there say, "What would you do if they were throwing their arms around your neck and hugging you and kissing you"? A. No, sir.

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Q. Do you remember being brought to Elizabeth on the train? A. Yes, sir.

Q. By the officer who was in Court this morning—Carey? A. Yes, sir.

Q. Was there a conversation between you and him on the train? A. Yes, there was a conversation between the two of us.

Q. What was the conversation? A. Well, he started the conversation; he had me handcuffed to his right hand—my left hand up against his right, and while we were waiting for the train, he started the conversation by saying, "Well, I hear you're in a very bad fix, according to what I hear down in the Court there; you not only had something to do with the mother but just as well had something to do with the daughter, too." I said, "You seem to know a little about this case; you seem to be interested;" he said, "Oh, no; not interested at all; but that's the case." So when we got on the train there was Mr. Casterline also right in front of us; we faced that way (indicating), in the baggage car, and Casterline in back of us; and he finally concluded by saying that he was willing to sacrifice the price of a new hat if I won that case; if I got out of it; those were his very words; didn't say any more.

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Q. Did he pay for a new hat? A. He said that if I won the case he was prepared to buy me a new hat; but he's failed so far to do so.

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Joseph A. Ballott—Direct

Mr. Crane: I move to strike that last part out.

The Master: Strike it out.

Mr. Moy: Yes; that's not part of the case.

10 Q. Did you at any time commit adultery with Mrs. Drake? A. Absolutely not.

Q. You were—it is testified that you came home drunk at one time and that Mrs. Drake attended to you. Will you detail that circumstance? A. I deny that. I wasn't drunk at all. I went down town that morning and deposited some money in the bank, and I had Mrs. Drake's brother with me; but I had a few milk punches—about two or three I believe—and it kind of affected me, made me sick, and so I decided to go home; and I left
20 Mrs. Drake's brother down town, and I telephoned for a taxi-cab; that brought me down to 914 West Fourth Street and when I got out I went in without any assistance from anybody. Mrs. Drake asked me to have something to eat and I said, "No." I felt sick as though my stomach can't receive anything; and so I laid down, and then I decided to go up to the bath room, not to give Mrs. Drake any trouble to clean up my dirt.

30 Q. Then what was done? A. I went upstairs to the bath room to vomit.

Q. Are you a drinking man? A. No, sir.

Q. What about bringing beer into the house? Did you do that sometimes? A. I did that on two occasions; one was on my birthday and another time was previous to that. But the most beer I had in the house there was about twenty-four bottles, all told.

40 Q. All told? A. Yes; during my stay there.

Joseph A. Ballott—Cross

CROSS-EXAMINATION by Mr. Crane:

Q. How old are you, Ballott? A. I will be twenty-seven next September.

Q. Then, last September you were twenty-six?
A. Yes, sir.

Q. And you are an Americanized Italian?? A. I am an American born Italian—Italian descent. 10

Q. Yes; your people were born on the other side? A. Yes.

Q. You are a machinist by trade? A. Yes, sir.

Q. And when you were working at Saurer's how much did you make? A. About twenty-five dollars a week.

Q. Every week you made twenty-five dollars?
A. Right up to my arrest; yes, sir.

Q. Now, then, when you first came to Plainfield you went to board with Mrs. Schmidt, didn't you? 20
A. Yes, sir.

Q. Why did you leave there? A. Because it was overcrowded.

Q. And you had gotten acquainted with Mrs. Drake at Mrs. Schmidt's? A. During my stay there, yes.

Q. And did you ask Mrs. Drake if you would go over there, or did she ask you to go over? A. No, sir; didn't ask me.

Q. Did you ask her to let you come over? A. No, sir. 30

Q. Did she ask you to come over? A. No, sir.

Q. How did you get over there? A. We decided—(interrupted).

Q. I don't care what you decided. Did you ask, or not? A. I said no, I didn't ask, and she didn't ask.

Q. Tell us how you got there? A. You stopped me. 40

Joseph A. Ballott—Cross

Mr. Moy: Just tell how you came to get there?
 A. I happened to get there through Mrs. Schmidt. Mrs. Drake came over there and said to Mrs. Schmidt that she would like to start boarding instead of going out washing—would like to have boarders; and she instructed Mrs. Schmidt to notify us about it, so that if any boarders wanted to know a place to board to suggest to go to Mrs. Drake's; she could take a few; but Mrs. Schmidt didn't say that; so one day, Mrs. Drake was down and happened to bring the subject up in the morning and I heard about it and I said, "Mrs. Schmidt didn't tell us anything about it, or I could have sent you a boarder over last week." So we decided, Moryer and I next week to go and we went over to Mrs. Drake's to see if she could accommodate us.

Q. Well, you went over. Why didn't you tell us that a few days ago? You're suffering from a lucubration of words.

Mr. Moy: I don't know what that is, but it must be something awful.

Q. Anyhow, you went over there? A. Yes.

Q. And you started to sleep in the room over the dining room? A. Yes.

30 Q. And that was in what month? A. In the month of August.

Q. And then you say the weather got hot? A. Yes.

Q. And you decided to come downstairs and sleep in the dining room? A. Yes.

Q. Did you hear Mrs. Drake's testimony on that point? Mrs. Drake said she went into your room because it got cold. A. That was after that;
 40 it was not in August.

Joseph A. Ballott—Cross

Q. Did you start to sleep in the dining room in August? A. No, sir.

Q. I am talking about the time Mrs. Drake started to occupy your room because it was cold.

A. (No answer.)

Q. You say you went into— (interrupted) A. I am speaking of the time in August. 10

Q. Didn't you change at the same time Mrs. Drake did? A. No, sir.

Q. When did you go downstairs? A. When it was hot.

Q. What day? What date? A. I don't know the time; don't recall the date either.

Q. Was it the same time that Mrs. Drake started to occupy the room over the dining room?

A. Yes. 20

Q. Then you had gone down to the dining room before she started to occupy your room? A. Yes.

Q. Then when Mrs. Drake said she went into your room because it was cold, she was mistaken?

A. No, sir.

Q. Where did you keep your clothes? A. Where did I keep my clothes?

The Master: Your business is to answer the questions.

Mr. Moy: Just answer the questions and don't repeat them; that's all. 30

Q. Where did you keep your clothes? A. In the closet.

Q. Where? A. Upstairs.

Q. What room? A. In the back room.

Q. Mrs. Drake's room? A. No, sir.

Q. Whose room? A. In the room I occupied.

Q. And the room Mrs. Drake occupied? A. She didn't occupy it while I occupied it. 40

Joseph A. Ballott—Cross

Q. Now you are quibbling. The room you occupied and where you kept your clothes was Mrs. Drake's bedroom? A. That's after she made the changes.

Q. And you changed your clothes in that room?

10 A. I didn't have any changes to make.

Q. What do you mean by that? A. Only once a week.

Q. Where did you change your clothes? A. In the toilet—in the bathroom.

Q. Where did you get your clothes from? A. From the closet.

Q. And took them into the bathroom? A. Yes, sir.

Q. It wasn't cold in last August? A. A few
20 days.

Q. Can you give us some of the days? A. Well, I can't tell.

Q. Do you want the Court to believe that no part of October was hot? A. I only continued there seven days.

Q. And you decided to go down there after it was cold? A. I decided to go down and Mrs. Drake didn't want me to go down at all, but I did because she was sleeping then on the floor.

30 Q. And you were friendly enough with her to make suggestions of that kind to her? A. No, sir; no suggestion.

Q. Now, you say you made twenty-five dollars a week? A. Yes, sir.

Q. And you could have gone anywhere else if you wanted to? A. That was position.

Q. I didn't ask you that; you did it, didn't you? A. I did it to satisfy myself.

40 Q. Yes; I guess you got your satisfaction. Now then, did you ever kiss Mrs. Drake? A. No, sir.

Joseph A. Ballott—Cross

Q. Did you hear her testimony? A. She kissed me, but I didn't kiss her.

Q. I see. You draw a distinction there? A. Yes, sir.

Q. Now, then, when was it that you came home sick, as you say? A. In September.

Q. Were you sleeping in the dining room in September? A. Yes. 10

Q. What were you doing upstairs? A. When I came home sick?

Q. Yes? A. I was in the bathroom, didn't want to vomit down there.

Q. You mean that's where you fell down? A. No, I didn't fall down; I had sense enough to go up there to the bathroom.

Q. And you had sense enough to lay down and vomit all over yourself? A. No, I had sense enough to lay down and puke on the floor instead of on me. 20

Q. I see. You showed a remarkable degree of intelligence. Now, then, you say you weren't familiar with Mrs. Drake? A. No, sir, I wasn't familiar with her, outside of in a friendly way.

Q. And that "friendly way" that you speak of made it possible for you and Mrs. Drake to talk over between yourselves as to when her daughter was going to menstruate? A. No, sir. 30

Q. She didn't say anything about that? A. Just happened to be by chance.

Q. I understand; but you were well enough acquainted so that if that chance did arise she could talk to you about her daughter's most personal matters? A. Couldn't swear to that.

Q. But she did tell you that? A. Couldn't say as to that. She said different things; her 40

Joseph A. Ballott—Cross

daughter was sick, and such and such a thing was happening, and when her daughter came home from school sick she happened to say it, and that was all.

10 Q. But why did she tell you that? A. Just happened to bring it up.

Q. Well, now, when all these people testified they saw you sleeping in the dining room, they were wrong? A. As far as sleeping in the dining room they were right.

Q. As far as saying you were there? A. That might be told them later on.

Q. I didn't ask you that. A. I am saying I slept on the lounge.

20 Q. Where would Mrs. Drake be while you were in bed? A. I can't tell you where she was when I was asleep.

Q. When you started to go to sleep? A. In the kitchen when I got through breakfast.

Q. And then you'd go to sleep? A. Yes.

Q. Children come in at noon to have their dinner? A. I wouldn't hear them if they came in; I would be asleep; sometimes they would awaken me for dinner.

30 Q. Now, you say that you didn't say to Lieutenant Higgins and myself any words to this effect, "What would you do if they threw themselves at you?" You deny that? A. I don't remember saying that. I deny it.

Q. What did you say? A. I know you were interrogating me concerning the case of Lillian Drake and I told you instead of wasting a lot of time get her and have her examined.

40 Q. What else did you say? A. That's just what I said; what I am saying now.

Joseph A. Ballott—Cross

Q. What you say now is true? A. Sure.

Q. Then Officer Higgins told an untruth? A. Don't know whether he did or not.

Q. Did you hear Judge DeMeza testify? A. He was right about the case. Not about that.

Q. Then he is wrong? A. He may have got 10
confused in his statements.

Q. You say this family appealed to you because they were destitute, is that right? A. Yes, sir.

Q. Then why did you accept a present of a comb and a hair brush from this destitute little girl?

A. Because it was no money out of her pocket to present me with that.

Q. How did you know that? A. I knew it.

Q. How much was it worth? A. I have no idea. 20
Maybe fifty or seventy-five cents.

Q. And this little girl to whom you were attracted because she was destitute—you accepted a present from her? A. She made me a present; I didn't have anything to do with it.

Q. Yes. Now, when you took this little girl to Newark, did the mother know about it? A. Yes; with her consent.

Q. How old is she? A. Fourteen.

Q. Now? A. Yes.

Q. How long were you in Newark? A. A few 30
hours.

Q. What time did you leave Plainfield? A. Half-past two.

Q. What time did you come back? A. Half-past ten.

Q. And that's a few hours, in your estimation? A. Yes.

Q. And during that time in Newark you were 40

Joseph A. Ballott—Cross

buying a pair of shoes? A. It took two hours to get to Newark; that's half-past four, and then the time to buy the shoes, and then I went up to a friend's house—which you are aware of—(interrupted).

10 Mr. Crane: I move to strike that out.
The Master: Strike it out.

A. (Continued) I went up to 29 Sherman Avenue; that's the president of the Vitagraph Company in New Jersey; he was there with his wife; Mr. and Mrs. Smith and Mrs. Lowden; stayed there two hours and had supper and at 8 o'clock we started for home.

Q. You say you only got beer on two occasions?

A. Yes, sir.

20 Q. Who bought that beer? A. I did.

Q. Personally? A. I gave orders to buy it, to Mrs. Drake to buy it.

Q. You know little Clarence? A. Yes, sir.

Q. On more than one occasion didn't you go down to order beer? A. I bought it when the man came around with it.

Q. You went there in August and staid there until you were locked up for carnal abuse in October? A. Yes.

30 Q. And in all that time you didn't have more than twenty-four bottles of beer in the house? A. Yes.

Q. Did you kiss Lillian Drake? A. I object to answering that.

Mr. Moy: That's not necessary.

The Master: Needn't press that; let it stand as it is.

40 Q. Now then, coming down in the train when you were locked up, charged with carnal abuse on

Joseph A. Ballott—Cross

Lillian, you say Carey wanted to buy a new hat for you if you got off? A. Yes.

Q. That all the conversation you had? A. That's all; he was accusing me of wrongdoing with Mrs. Drake as well as Lillian, and he said that I was in such a bad fix that I would get it anyhow. He can't deny that either. 10

Q. On one occasion you kissed Mrs. Drake or she kissed you? Was it one occasion? A. Yes. I didn't kiss her.

Q. You didn't want to? A. No.

Q. When did you kiss her? A. She kissed me.

Q. What occasion? A. When this party was there.

Q. From Newark? A. Yes.

Q. Did she kiss you then? A. Yes, she kissed me. 20

Q. You remember the children started to school in September, don't you? A. Yes.

Q. Who was home in the daytime after the children started to school? A. Why, her father-in-law; and sometimes Mrs. Drake was there and sometimes she wasn't.

Q. But you were always there from the time you got home until you went back to work? A. Always, when I came from work.

Q. But Mr. Drake was in there most of the time or near all the time. A. On a Saturday he called that his day and went around visiting. 30

Q. You want me to understand that Mr. Drake was there with Mrs. Drake all the time? A. Yes, sir.

Q. Now, then, you remember the trial over in the Police Court in Plainfield, in September? A. Yes, sir. 40

Joseph A. Ballott—Cross

Q. And do you remember that Mrs. Drake couldn't go back to her house, that there was somebody in possession of it? A. I don't know about that.

Q. But you know you never went back there after Mr. Drake got the custody of the children?
10 A. No, sir. Not 914 West Fourth Street.

Q. Where did you go? A. To work.

Q. After you got through work, where did you go? A. I went home.

Q. Over to Newark? A. Yes, sir.

Q. And since the time that Mrs. Drake stopped being your boarding mistress have you seen her?
A. Have I seen her?

Q. Don't repeat my questions. A. Yes, I have.

Q. And where did you see her? A. Up in her
20 mother's house—McDougall Street.

Q. Why did you go over there? A. I didn't go over there to see her; I went there to eat.

Q. That isn't very near Saurer's plant, where you work, is it? A. Yes; much nearer than where I was before.

Q. I mean so far as a place for eating is concerned? A. There's a place right across the street; but I didn't want to go there.

Q. You continued to work in Saurer's, and then
30 you went over to McDougall Street to get your breakfast and then you went to Newark to sleep?
A. Yes.

Q. And then when you awoke you got the train from Newark, came up to McDougall Street again and got your lunch? A. I will tell you why; I will explain it to the Court.

Q. Go ahead. A. I couldn't fix my supper and
40 lunch; I had night work to do; I had to catch the

Joseph A. Ballott—Cross

3:33 train from Newark to Plainfield, and that got me up there at Plainfield at half-past five, at Clinton Avenue, and I have nobody but myself, and where I was I had to pay board and I was away out; and so I went back to Mrs. Waldron as she had befriended me after I was put out and she said she would take me in, and I arranged to go there and get breakfast and supper or lunch; that's why. 10

Q. What time did you get through your work in the morning? A. Half-past five.

Q. What time would you go over to Waldron's where Mrs. Drake was, and get your breakfast? A. About a quarter to six.

Q. Just what time would you get your breakfast? A. After six.

Q. What time after six? A. Quarter, or twenty, after six. 20

Q. What time would you get the train? A. Seven o'clock to Newark.

Q. What time? Going to Newark? A. That's the first train.

Q. What time would you get to Newark? A. Eight o'clock.

Q. What time would you get home? A. Quarter after eight.

Q. You live right near the station? A. Fifteen minutes walk. 30

Q. And what time did you have to get up to go back to Drake's for your supper? A. Had to get up at 3 o'clock.

Q. When did you stop taking your meals up there? A. When my work stopped.

Q. And have you been up there since? A. Christmas Eve. 40

Joseph A. Ballott—Cross

Q. Any personal reason as to why it was necessary for you to go up there on Christmas Eve? A. That's the time my work stopped.

Q. You worked Christmas Eve? A. Yes, sir.

Q. Do you know Steve Martin? A. What?

10 Q. Did you hear me? A. No, sir.

Mr. Crane: Read it.

(Question repeated by stenographer as above recorded: Do you know Steve Martin?)

A. (No answer.)

Mr. Crane (To one of the spectators): Stand up.

Q. Did you ever see him before (indicating)?

A. Yes, I have.

20 Q. When did you see him? A. At his house.

Q. When? A. Oh, some time ago.

Q. When did you see him? Last month? Last year? Twenty years ago? A. Can't remember.

Q. Well, was it last week? A. No.

Q. The week before? A. No.

Q. Was it since the first of the year? A. I can't remember.

Q. Was it since you stopped working in Plainfield? A. I don't remember whether it was just after or just before I stopped.

30 Q. What did you see this man about? A. Who?

Q. Steve Martin—the man who just stood up.

A. I didn't see him anything about particular myself.

Q. Well, if you didn't see him "anything about particular" why did you go there? A. Just happened to be there.

Q. Who was with you? A. Mrs. Drake.

40 Q. What were you doing there? A. Just went over there for Mrs. Drake's sake.

Joseph A. Ballott—Cross

Q. And by "for her sake" you mean what? A. That I accompanied her to this man's house.

Q. You are the most successful riddle talker of any man I ever met. Why did you go over to see Martin? Why did you go over with Mrs. Drake?

A. I was requested to accompany her there. 10

Q. They are not her boarders? A. No, sir.

Q. What are they to her? A. Only a friend.

Q. But you did go up there? A. Yes, sir.

Q. What was said? A. I don't remember.

Q. What did you go there to see him about? A. I didn't go there to see him.

Q. What did Mrs. Drake see him about? A. I don't remember.

Mr. Crane: I ask the Court to instruct the witness to answer the questions. 20

The Master: If you know.

A. Lots of things that took place since then; this was last October.

Q. Now, did I understand you to say that you bought the shoes that Lillian got, to go to school?

A. I bought the shoes; she happened to need them.

Q. Do I understand that you bought the shoes for Lillian so she could go to school? A. I didn't say that; I said, because she needed them. 30

Q. You know Russell Hopler? A. Yes, sir.

Q. Did you ever see him around Drake's house? A. Yes, sir.

Q. You never sat on Mrs. Drake's lap? A. No, sir.

Q. Never did? A. No, sir.

Q. And all these people that say you did these things are wrong? A. Absolutely—to my estimation. 40

Joseph A. Ballott—Re-cross

RE-DIRECT-EXAMINATION by Mr. Moy:

Q. You say this was in October when you went over to Martin's with Mrs. Drake? A. I am not sure, Mayor, whether it was or not; I couldn't swear to it.

10 Q. Was it on any business of yours you went over there? A. My business? No. It didn't concern me at all.

RE-CROSS-EXAMINATION by Mr. Crane:

Q. When you were indicted, charged with carnal abuse on the thirteen year old daughter of Mrs. Drake, Mrs. Drake took the witness stand in your defense, didn't she? A. Yes, sir.

20 Q. Did Mrs. Drake take the witness stand in your defense? A. Yes, sir.

Q. And at that time Mrs. Drake testified that she had told you that her daughter was sick, was that right? A. She had told me that her daughter had come home sick, yes; I admitted that.

Q. Well, when you told me that you never went out with Mrs. Drake, did you mean that? A. You asked me whether I went out with Mrs. Drake. I never went out with her alone; she never went out with me.

30 Q. Who went over to Martin's? A. Her—Mrs. Drake; an Italian woman, Mrs. Williams, and her husband; and me.

Q. They were all there? A. Yes; he's the one brought us there.

Q. This Williams lives next door to Martin, doesn't he? A. Right next door.

Q. Right in the neighborhood? A. Around the neighborhood.

40 Q. How did you get up there? Did Williams come over? A. No.

John McGinley—Direct

Q. How did you get over to Williams? A. Because I happened to know him by chance.

Q. What did you want Martin to do? A. Nothing.

Q. What did Mrs. Drake want Martin to do? A. That's not my business, and I don't know. 10

Q. Don't you know that she wanted Mr. Martin to come down and commit perjury here? A. No, sir.

Q. Didn't you ask him to come down and perjure himself? A. No, sir; absolutely not.

Mr. Moy: That question implies a very serious charge, your Honor. I think counsel should be more specific.

Mr. Crane: I am through with the witness. 20

Mr. Moy: I rest as to the denial of the allegations contained in the petition, and we will now take up the next step; that is, the proof of the cross petition.

Defendant rests.

The following testimony produced by defendant in support of her cross-petition: 30

JOHN MCGINLEY, having been first duly sworn according to law on his oath deposes and says:

Direct-examination by Mr. Moy:

Q. Mr. McGinley, where do you live? A. Three hundred thirty-six East Eighty-third Street, New York City. 40

John McGinley—Direct

Q. What is your business? A. Special officer.

Q. And by whom are you employed? A. I am now with the White Star Line.

Q. By whom were you employed in the year 1914? A. Hudson Navigation Company.

10 Q. And what is their business? A. The Hudson Navigation Company is the Albany Night Line; they run their boats between New York and Albany.

Q. And were you employed on one of their boats in the year 1914? A. Yes, sir.

Q. Do you know Mr. Drake, the petitioner in this suit? A. I just know when I see him that that's Mr. Drake.

Q. And you know Mrs. Drake? A. In the same
20 way.

Q. How long have you known Mr. Drake? A. Since he built my daughter's house, at Netherwood.

Q. But you knew him in 1914? A. I knew when I saw him that it was Mr. Drake; I never had any acquaintance with the gentleman.

Q. Now, what did your duties consist of for the Hudson Navigation Company? A. Simply police duty.

30 Q. On land, or on the boat? A. On the boat only.

Q. On the boat only? A. On the boat only.

Q. And what did your duty—strike that out. Yes. What was the nature of your duty on the boat? A. Simply to look after the welfare of the passengers, prevent disorder—just a policeman's duty.

40 Q. Now, in the months of June, July or August, were you stationed on one of the boats of the Hudson Navigation Company? A. Yes, sir.

John McGinley—Cross

Q. Which boat? A. The "Charles W. Morse."

Q. Running from where? A. From Albany to New York.

Q. And on one occasion, during those months, did you see Mr. Drake on the "Morse"? A. Yes, sir.

Q. Which way was she going? A. From Albany to New York. 10

Q. And at what time of the day did she leave Albany? A. In the evening—8 o'clock.

Q. Did you see Mr. Drake on her at that time? A. Yes, sir.

Q. And was he accompanied by any one? A. Not when I see him; when I see him he was alone.

Q. And where did you first see him? A. At the purser's window.

Q. And later on the trip from Albany to New York did you observe him? A. Yes, sir. 20

Q. Was he alone at that time? A. No, sir.

Q. Whom did he have with him? A. He had a woman with him.

Q. What sort of a looking woman? A. Can't just describe it now; I know it wasn't his wife.

Q. You know it wasn't his wife? A. Yes; that's why I took notice.

Q. Did you observe whether this woman and Mr. Drake occupied the same stateroom? A. Yes. 30

Q. That night—coming down on the boat? A. Yes.

Q. What, if anything, did you do about this? A. Did nothing. It was none of my business.

CROSS-EXAMINATION by Mr. Crane:

Q. You used to be in the New York Police Department, Mr. McGinley? A. Yes, sir. 40

John McGinley—Cross

Q. And did you retire, or— (interrupted) A. I retired.

Q. And to what heights did you ascend while there? A. I was retired as a sergeant.

Q. And then you took up a position with the— (hesitating) A. Hudson Navigation Company.

10 Q. And were stationed on the "Charles W. Morse" to do police duty and maintain order if your services were required? A. Yes, sir.

Q. And what is your son-in-law's name? A. David H. Deeley.

Q. And Mr. Deeley is the party for whom Mr. Drake built this house you speak of? A. Yes, sir.

20 Q. Don't you remember that at Mr. Drake's request, Mr. Deeling joined the Junior Order of American Mechanics over at Newmarket? A. I remember that he joined, but don't know at whose request.

Q. And did you know that Mr. Drake was a member of that lodge? A. No, sir.

Q. Your son-in-law got out of that lodge? A. I don't know whether he is in it or not.

30 Q. Your son-in-law doesn't feel very kindly toward Mr. Drake? A. I have nothing to do with that; I haven't the slightest ill feeling towards him, and never did.

Q. How did you come to impart your knowledge of this "Charles W. Morse" trip to Mr. Moy? A. In the first place when I went back to Plainfield to my daughter I asked her if Mrs. Drake had died, if Mr. Drake was a widower, and had married again; and she said, "No," she hadn't heard anything; I said, "I saw him on the boat last night," I said, "With a woman."

40 Q. This was in 1914? A. Yes, sir.

John McGinley—Cross

Q. But this case wasn't started until 1915. I mean, after 1915 how did you get word to Mr. Moy? A. On another visit to Plainfield, the daughter said Mr. Moy wants you to see him.

Q. Are you on duty now? A. I was this morning.

Q. And you left your duty out of friendship and took the stand to testify as to what you have testified? A. I was asked by Mr. Moy to come.

Q. You knew as an officer of the law that a New Jersey subpoena was not good in New York? A. I got a subpoena.

Q. I understand that. But you know that it would not compel you. You knew you didn't have to come if you didn't want to? A. Yes.

Q. You didn't have to? A. Yes.

Q. You volunteered to come? A. I did.

Q. Was it in June or July or August that this occurred? A. I can't tell you.

Q. But you can tell within three months? A. It was in the summer time.

Q. You can't tell within three months? A. It was in June.

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

Q. Why did you say "June, July or August"? A. You asked me.

Q. No, no—(interrupted) A. You said that.

Q. What was the number of the state room? A. Four hundred and five.

Q. What name did he go on as? A. As "Charles Drake."

Q. How did his companion register? A. They simply registered as "Charles Drake."

Q. How about this state room? How's that furnished? A. One bed.

John McGinley—Cross

Q. Did you speak to Mr. Drake? A. I did not.

Q. Did Mr. Drake see you? A. I don't know that he did.

Q. But you were there with your buttons and all your regalia, doing your duty? A. He might
10 have seen me; I don't know.

Q. You didn't want him to see you? A. I didn't care.

Q. You didn't know whether to speak to him or not? A. Made no difference to me.

Q. Was this woman young or old? A. There you ask a question I can't tell.

Q. Was she a blonde or brunette? A. I don't know. She was dark.

Q. And you don't know whether she was young
20 or old? A. Oh, she was no girl.

Q. Are you guessing, or do you know what you're talking about? A. I know what I'm talking about.

Q. Was she young or old? A. She was neither.

Q. How much did she weigh? A. Less than a hundred and fifty.

Q. Ever see her before? A. Never did.

Q. Ever see her since? A. No; never since.

Q. Nobody else saw them besides yourself? A.
30 Not that I know of.

Q. And are you sure now that it was June when this occurred? A. Yes, sir.

Q. It wasn't July or August? A. No, sir.

Q. How old would you say this woman was?
A. Well, she could be twenty-five or thirty.

Q. Thirty-five? A. Well, now, a woman's age you can't tell.

Q. Of course, we have to be charitable about
40 that? How many times did you see Mrs. Drake

John McGinley—Cross

before 1914—the summer? A. Never seen her until now.

Q. Then why were you impressed with the fact that Mr. Drake was on the boat with this woman?

A. Because I didn't see Mrs. Drake.

Q. Well, you didn't know Mrs. Drake? A. I did know her. 10

Q. You just said you never saw her until now? A. Since then. I have seen her before.

Q. How long have you known Mrs. Drake? A. About seven years.

Q. How many times have you seen her in seven years? A. I haven't seen her but once.

Q. Once in seven years? A. Yes.

Q. You say this woman was dark? A. Yes, sir.

Q. Mrs. Drake is dark, isn't she? A. I never seen Mrs. Drake. 20

Q. No, no. Look at her now. She's dark, isn't she? A. She's dark; yes.

Q. And yet when you saw Drake on this boat with some woman you immediately went home and asked your wife or daughter or somebody if Mrs. Drake was dead? A. Yes, sir.

Q. Why did you do that? A. Because I see that this woman was not Mrs. Drake.

Q. Where was this once you saw her in seven years? A. I bought a book from her. 30

Q. Seven years ago? A. About seven it must have been, or more than that.

Q. And you mean to say that you kept a mental picture of Mrs. Drake right before you during all that time up until 1914? A. I had seen her before; I had seen her when she was going visiting my daughter.

Q. What number was the state room? A. Four hundred and five. 40

John McGinley—Cross

Q. And are there other officers of the company in its employ that were there in 1914? A. There hasn't been any change.

Q. So it would be possible for you to bring here other people that saw Mr. Drake just as you say you saw him? A. No, I wouldn't say that.

10 Q. They wouldn't have come? A. I don't think there was anything said about it.

Q. Well, when was it that you first saw No. 405 under a peculiar light? A. I gave you the date.

Q. Was it in 1914? A. Yes, sir.

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

Q. What fixes '14 in your mind? A. Because it wasn't last summer.

Q. Well, '13 wasn't last summer, either? A. I know it was '14.

20 Q. What makes you say it was '14? A. I can't say. I know it was.

Q. But you don't know whether it was Saturday, Sunday or Monday, or what day of the week? A. No.

Q. And you don't know whether it was May or June? A. I know it wasn't. Later than that.

Q. Couldn't you have gone to the books of the company and found out? A. I don't know if they keep a record; they had records up there.

30 Q. Why didn't you look it up on the record? A. I didn't care to go to all that trouble.

Q. Trouble? You knew you were coming here, didn't you? A. Oh, the Navigation Company is closed for the season.

Q. But you knew about this way back in 1914? A. Yes, it was impressed on my mind.

Q. And you haven't any way to account for how Mr. Moy found out that you had been on that boat? A. Can't understand it.

40

John McGinley—Cross

Q. You didn't know Mr. Moy? A. I saw the gentleman once before.

Q. When? A. I brought Mrs. Martin to him. They had a case in New York.

Q. But when you brought Mrs. Martin to him you didn't tell Mr. Moy that you had seen Drake on this boat with this woman you spoke of, did you? A. No; this was long before the Drake business. 10

Q. You haven't any way for accounting for how Mr. Moy knew of what you have testified to? A. I have no knowledge as to how he got his knowledge.

Q. You were friendly with Mr. Drake in 1914? A. I never had any conversation with the gentleman. 20

Q. Not when he was building your son's house? A. No.

Q. Well, you knew he was Charlie Drake? A. Yes.

Q. And in 1914 how long was it since you had previously seen him? A. Oh, I had seen him off and on, on Front Street, Plainfield.

Q. No; I mean had you ever seen him before on the boats of the Navigation Company? A. No, sir. 30

Q. Why didn't you go to him then and speak to him when you saw him on there? A. It wasn't my business.

Q. You knew him? A. I wasn't familiar with him.

Q. Why didn't you go up and say, "Hello, Drake"? A. I wasn't familiar with him like that; didn't know him at all.

Q. How tall was this woman? A. About five feet, three or four inches. 40

Joseph McGinley—Re-direct

Q. And had Mr. Drake been at Mr. Deely's house when you were there? A. I can't recall that.

Q. Now, don't you remember that Mr. Drake and Deely and yourself helped to move a stove into the house? A. No, I can't recall that.

10 Q. But you do remember that some time in May or June of 1914 Drake was on that boat? A. I do.

Q. You remember that? A. I do.

Q. You remember that he was there with a dark complexioned woman, about thirty years old as you estimate, and about five feet three inches tall, and weighing under a hundred and fifty pounds? You remember that? A. I do.

20 Q. How many passengers were on the boat that trip? A. I can't exactly tell you that.

Q. You don't know what trip it was, do you? A. I know it was a trip from Albany to New York.

Q. But they made those trips every night? A. Every night.

Q. You say you don't know what trip it was? A. Not the exact trip; the record will show.

30 Q. But you knew you were coming here to testify and you didn't look up the record? That would have given you the exact date. A. What business have I to be looking it up?

RE-DIRECT-EXAMINATION by Mr. Moy:

Q. Mr. McGinley, did they have a fire over in the offices of the Hudson Navigation Company? A. They did.

40 Q. And do you know whether or not the records were destroyed in that fire? A. I haven't any idea what was destroyed. I have been told that the records were gone.

Frances Van Nius—Direct

Q. You have been told that the records were all destroyed? A. Yes, sir.

FRANCES VAN NIUS, having been first duly sworn according to law on her oath deposes and says: 10

Direct-examination by Mr. Moy:

Q. Where do you live, Mrs. Van Nius? A. Plainfield—Willow Avenue.

Q. You are married? A. Yes, sir.

Q. Do you know Mr. Drake, the petitioner in this case? A. Yes, sir; I do.

Q. You know his wife? A. I do.

Q. How long have you known them? A. Five years the 4th of July; I met them for the first time in 1910. 20

Q. Do you remember being in New York with your husband in the summer of 1914, or the spring, and there seeing Mr. Drake on Broadway? A. I do.

Q. About when was that, please? A. It was on March 15, 1914, about a quarter past five on a Sunday afternoon.

Q. And where were you at the time? A. On Broadway; about 26th Street I should judge. 30

Q. You say your husband was with you? A. He was with me.

Q. And was Mr. Drake alone? A. He was not.

Q. Who was with him? A. There was a lady with him.

Q. What sort of a looking lady was with him? A. Short and dark and very slender; considerably smaller than Mr. Drake. 40

Frances Van Nius—Re-cross

Q. Do you know who the woman was? A. I did not.

Q. Do you know whether or not it was his wife? A. I know it was not his wife.

Q. Was anything said at that time by Mr. Drake
10 —No, one minute: Was anything said at that time
by Mr. Drake to either your husband or yourself?

A. Not to me but to my husband.

Q. At that time? Was there anything said subsequently by Mr. Drake to your husband? A. Not to me; to my husband.

Q. In your presence? A. No.

Q. Nothing said to you? A. No.

CROSS-EXAMINATION by Mr. Crane:

20 Q. What was the date? A. March 15, 1914.

Q. What were you doing? A. He was going up Broadway, New York, and we were going down.

Q. Did you see anything wrong in that? A. No, sir.

RE-DIRECT-EXAMINATION by Mr. Moy:

Q. Did Mr. Drake at any time in your presence ask your husband to go out with him? A. He did.

30 Q. And have a good time? A. He did.

Q. When was that? A. Four years ago.

Q. Yes? A. Yes. He told my husband to come down to Newark and, that is, to come down to Newark with him, and he would show him a good time; I wouldn't, of course, consent to that.

RE-CROSS-EXAMINATION by Mr. Crane:

Q. When was this? A. Four years ago.

40 Q. What did he say? A. He told my husband

Alfred Van Nius—Direct

to come down to Newark and he would show him a good time.

Q. Why did you interfere? A. There was a conversation that preceded that that made me believe the "good times" were not exactly what they ought to be.

Q. Your husband heard him? A. Certainly. 10

Q. And what are you complaining about? A. I am not complaining.

The Master: Well, the whole testimony seems to be irrelevant.

ALFRED VAN NIUS having been first duly sworn according to law on his oath, deposes and 20 says:

Direct-examination by Mr. Moy:

Q. Where do you live? A. Willow Avenue.

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

Q. How long have you known him? A. Ever since I was a boy.

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

Q. How long have you known her? A. For the last ten or twelve years. 30

Q. Do you remember being on Broadway, New York, in the spring of 1914 and there seeing Mr. Drake? A. Yes, sir.

Q. Was he alone? A. No, sir.

Q. Who was with him? A. Some woman.

Q. Was it Mrs. Drake? A. No, sir.

Q. Was anything said by Mr. Drake to you at that time? A. No, sir; only "How do you do?"

Q. When did you see Mr. Drake again after that? A. It must have been a month. 40

Alfred Van Nius—Cross

Q. And where? A. Park Avenue.

Q. Plainfield? A. Yes, sir.

Q. What, if anything, was said by him at that time? A. He said, "For God's sake don't tell my wife or I'll get killed."

10 Q. What was he referring to? A. Being with this woman I should judge.

Q. The remark made was, "For God's sake don't tell my wife or I'll get killed"? A. Yes, sir.

Q. What led you to infer that he was speaking of this woman?

Mr. Crane: I object.

The Master: We must draw the inferences; that is not for him.

20 Q. Is that all was said at that time. A. I think that was all.

Q. Was there anything said at any other time by Mr. Drake in regard to that matter. A. Not at that present time there wasn't.

Q. At any other time was there anything said about it? A. Once, later, he spoke about it I believe; he said he was going to see his girl.

Q. Is that all he said at that time? A. I asked him who the girl was, and he said the one he had
30 in New York.

CROSS-EXAMINATION by Mr. Crane:

Q. What was the date when you met him in New York? A. In March, 1914.

Q. They were just walking along the street, were they? A. Yes, sir.

Q. That didn't strike you as being terribly immoral or wrong? A. I wasn't shocked a bit.

40 Q. Your sense of morality wasn't shocked by his

Rosalie Fitzsimmons—Direct

walking along the street with this woman? A. No, sir.

Q. You didn't see anything more of him in New York? A. No, sir.

Q. How is that date fixed so well then in your mind? A. Well, it was the first time I had seen that occur. 10

Q. And did you tabulate it or index it in some way so that you now remember it? A. It is a thing I always remember.

Q. You always remember it—passing Drake on the street with a woman? A. Yes, sir.

ROSALIE FITZSIMMONS, having been first duly sworn according to law on her oath deposes and says: 20

Direct-examination by Mr. Moy:

Q. Where do you live? A. Dunellen.

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

Q. Do you know his wife? A. Yes, sir.

Q. How long have known Mr. Drake? A. Oh, for some time; he has been a friend of my father's a couple of years I guess; three years.

Q. Have you seen Mr. Drake at your father's house? A. Yes, sir. 30

Q. In what year? A. Oh, about two years ago, I guess.

Q. Do you remember whether that was summer or winter time? A. Well, it was about in the autumn.

Q. In the autumn? A. Yes, sir.

Q. 1914 that would be?

Mr. Crane: No, it would be 1916. 40

Rosalie Fitzsimmons—Direct

Q. Is that right? A. I guess it was about that time.

Q. In 1914? A. 1914.

Q. Where did you see Mr. Drake? A. At our place.

10 Q. In the house? A. Dunellen; yes, sir.

Q. Anybody else with him? A. Yes, sir; a woman. Two women there.

Q. Do you know who the woman was? A. No.

Q. Was Mrs. Drake with him? A. No, sir.

Q. Was this woman or either of them introduced by Mr. Drake? A. Not by Mr. Drake; not at that time.

Q. What did they do at your house? A. Nothing wrong; my father took them out and down to see the swimming pool and different things; that's about all.

20

Q. Did they stay there that night? A. I don't know; I couldn't swear to that; but I saw them the next morning.

Q. At what time was that? A. I couldn't say.

Q. What time in the morning? A. It was late; around eleven o'clock.

Q. What time did you see them that evening?

A. It wasn't in the evening; it was late in the afternoon.

30

Q. I mean, what time in the afternoon or evening did you last see them? A. Well, I don't know, because they—well, they were there and then I went out myself and when I came home I didn't see them until the afternoon.

Q. Well, was one of these women introduced as Mr. Drake's wife in your presence? A. My father told me that one of them was.

40

Rosalie Fitzsimmons—Cross

Q. That one of them was introduced as Mr. Drake's wife.

Mr. Crane: What difference does it make what they were told.

Q. Did you see Mr. Drake there at any other time, at your father's house? A. Lots of other times; yes, sir. 10

Q. Accompanied by whom? Accompanied by any one? A. One other time.

Q. When was that? A. Last summer.

Q. This last summer? A. Yes, sir.

Q. Accompanied by a woman? A. Well, there was a woman along.

Q. Was it Mrs. Drake? A. No.

Q. Was it the woman introduced at that time to you or to anybody in your presence by Mr. Drake? A. Not by Mr. Drake himself. 20

Q. Well, by any one in his presence? A. By my father.

Q. And how did he introduce her? A. Mr. Drake's wife.

Q. As Mr. Drake's wife? A. Yes, sir.

Q. Was it Mr. Drake's wife? A. No.

Q. So far as you know. Well, did they go home that night or did they stay there? A. They went home. 30

Q. Did Mr. Drake at any time, as far as you know, stay there at your house at night? A. No, I couldn't say.

Q. You don't know. A. No.

CROSS-EXAMINATION by Mr. Crane:

Q. Your father is Robert Fitzsimmons, the famous ex-heavy-weight champion of the world? A. Yes, sir. 40

Rosalie Fitzsimmons—Cross

Q. And he has a very ornate and attractive place in Dunellen opposite the car barns there? A. Yes.

Q. Where he resides with you and your brother?

A. Two brothers.

Q. Two brothers. Your father and his wife?

10 A. Yes, sir.

Q. And Mr. Drake from time to time did considerable work for your father, didn't he? Carpenter work? A. Yes, sir.

Q. You know Mrs. Drake, don't you? A. I do.

Q. And have you seen Mrs. Drake up to your house? A. Yes, sir.

Q. And you know that Mr. Drake advanced your father some money to support a place out in Long Island? A. No, he didn't tell me:

20 Q. Mr. and Mrs. Drake and your father were quite friendly? A. Yes; Mrs. Drake has been up there with her daughter and sons.

Q. And how long is it since you have been away from Dunellen? A. A couple of months, I guess.

Q. How long has your father been away? A. Quite a long while.

Q. Couple of years? A. Yes; staid over in Newark. He seldom gets out there.

30 Q. All the time Mr. Drake was visiting there, did you see anything wrong? A. No.

Q. He always conducted himself properly? A. Yes, sir.

Q. And the women conducted themselves properly? A. Yes; I saw nothing wrong.

40 Q. On Sunday following the time your father took them out and showed them the swimming pool and so on—Mrs. Drake came up after that Sunday and stayed there? A. I don't know if it was after.

Alice Gudgeon—Direct

Q. But she knew all about the women being there? A. Yes; I told her.

Q. And she didn't see anything wrong in it? A. She didn't say anything to me.

Q. Were either of these women that were up there visiting your father the same woman that Mr. McGinley spoke about, that was on the Albany boat? A. I don't know; I didn't take much notice of that at all. 10

ALICE GUDGEON, having been first duly sworn according to law on her oath deposes and says:

Direct-examination by Mr. Moy: 20

Q. You live in Plainfield? A. Yes, sir.

Q. And have lived there for some time? A. Yes, sir.

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

Q. And you know Mrs. Drake? A. Yes, sir.

Q. Are you acquainted with a party by the name of Mary Canary? A. Yes, sir.

Q. How long have you know her? A. Ever since she was a little girl. 30

Q. She has lived in Plainfield all that time? A. Yes; I have lived in Plainfield twenty years.

Q. Have you seen her with Mr. Drake at any time? A. Yes—on several occasions.

Q. Will you please state what those occasions were, and when? A. Well, I'm reminded of one time when Mrs. Flanagan came over and asked my boy. 40

Alice Gudgeon—Direct

Mr. Crane: What difference does it make what she told her boy?

A. I was called over to Mary Canary's place; she was sick.

10 Q. Who was sick? Mary? A. Mary Canary was sick; Mrs. Myers called me over and when I went in there Mr. Drake was in there and Mrs. Flanagan; and Mrs. Flanagan she fixed a plaster for Mary Canary and we were up-stairs and this lady and this Mr. Drake; and I helped to put the plaster on Mary Canary's stomach; and Mr. Drake was sitting on the bed at the same time.

Q. Did Mr. Drake help—offer any assistance in this matter? A. Not while putting the plaster on; but he gave her some pills after the plaster was
20 on.

Q. He gave her a pill as soon as the plaster was on? A. Yes, sir.

Q. And how long did he remain there, do you know? A. I was only there half an hour and he was after that.

Q. You staid there half an hour and he remained? A. Yes, sir.

Q. You don't know how long he remained? A. No, sir.

30 Q. What time was this? A. Between half past seven and eight in Sunday evening.

Q. What time did you leave? A. About half past eight.

The Master: This does not seem to be relevant.

Mr. Crane: I do not think it ought to be considered as part of the case.

The Master: No.

40 Defendant rests (as to cross-petition).

Charles E. Drake—Direct

CHARLES E. DRAKE, the petitioner, having first duly sworn according to law on his oath deposes and says:

Direct-examination by Mr. Crane:

Q. Mr. Drake, do you know Mr. McGinley? A. 10
Yes.

Q. How long have you known him? A. I should judge it's six or seven years since I got acquainted with him.

Q. How did you get acquainted with him? A. Building a house for his son-in-law.

Q. After you had become acquainted with his son-in-law by building a house for him, did you induce the son-in-law to join a lodge? A. I did.

Q. What lodge? A. Junior Order 181 Friend- 20
ship council.

Q. Up to the time that he joined that Lodge what were your relations with Mr. McGinley and Mr. Deedling, or whatever his name is, and yourself? A. Just simply he used to come over there while the house was in progress, and the day the son moved in it was a cold day—the son-in-law—and he helped to move the piano in, and I was there finishing up odds and ends.

Q. What happened his son-in-law in the Lodge? 30
A. Well, there was a thing brought up that night and he got up on his ear and withdrew.

Q. About what? A. A couple of fellows brought in for initiation, and he came in from New York—

Q. Why did this man leave, then? A. Simply because the Lodge members turned down two members in the Lodge—black-balled them, as we call it.

Q. Was there any reason for their being turned 40

Charles E. Drake—Cross

down? A. I believe the investigating committee found out something; and they were friends of Mr. Deedling.

10 Q. Now, after that, what were your relations with Mr. McGinley and Mr. Deedling? A. I haven't seen Mr. McGinley since the moving into that house—when they moved in there.

Q. Did they feel kindly toward you after that? A. No, they—(interrupted).

Q. Right there your friendship ceased? A. Yes; he went down the stairs and he said, "To hell with him," and didn't come into the Lodge again.

20 Q. Now, Mr. McGinley says that in May 1914 he saw you on the "Charles W. Morse," coming from Albany to New York and that you occupied stateroom No. 405 with a woman—is that so? A. That is not so.

CROSS-EXAMINATION by Mr. Moy:

Q. Have you ever had any quarrel with Mr. McGinley? A. No, sir.

Q. No ill-feeling between you? A. Not in the least—with Mr. McGinley.

Q. Hasn't been any reason for any, has there Mr. Drake? A. Not that I know of.

30 Q. And there is no reason to your knowledge why he should come here and tell this story that he has told, except that it's true, as far as you know, is it? A. Why, I can't understand it; my wife has been visiting his daughter on and off.

40 Q. I suppose you have taken trips to Albany on boat? A. Not with a lady. I went up in 1914—in July; a friend of mine, who was a painter, and used to work for me—Jack Leahy—lived up in Albany, and I went up there in July and saw him

Master's Certificate as to Accuracy of Evidence

and came back on Sunday and got back in to New York on Monday about half-past eight or near there.

Q. Did you occupy state room 409 (405)? A. I really couldn't you tell what one I occupied, but I know it was up on the top of the boat and it led out on near to the rail, because I remember sitting there smoking, and watching them turn the searchlight on; it was right near the rail and up in the bow of the boat; right in the bow of the boat; I couldn't say what the number of it was; but the captain was right up over the top of me. 10

Q. You occupied your state room that night? A. Yes.

Q. You heard what Mrs. Gudgeon said about Mary Canary and your being present there. Any foundation for that? 20

Mr. Crane: I object to that; that's out of the case as I understand the ruling of the Court; there's no use going into that.

Testimony closed.

Master's Certificate as to Accuracy of Evidence 30

I, William J. Magie, Advisory Master, do certify that the above depositions were taken in my presence and hearing by Frank J. Burns, sworn as above noticed, and that I believe that they accurately state the evidence given.

W. J. MAGIE,
Adv. Master. 40

Petition For Divorce

(Filed, October 9, 1915)

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

10 The petition of Charles E. Drake, of the City of Plainfield, County of Union and State of New Jersey, respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to his present wife, Elizabeth Drake, on the thirtieth day of June, 1898, by the Rev. Cubberly, in the Borough of North Plainfield, in the State of New Jersey.

20 2. Defendant, since her marriage to the petitioner, on the fifteenth day of August, 1915, and on other days of said month, and during the month of September, 1915, and on the first day of October, and on other days in said month, of October, Nineteen Hundred and Fifteen, wickedly disregarding the solemnity of her vows and sanctity of the marriage state, committed adultery with Joseph A. Bellott at Plainfield, in the County of Union and State of New Jersey.

30 3. Petitioner was a bona fide resident of this state, having his permanent home at Plainfield, in the County of Union when this cause of action arose, and has ever since continued to be such resident, down to the time of the commencement of this suit, residing continuously at Plainfield aforesaid.

4. Three children were born of the marriage, to wit: Edward, age seventeen years; Lilly, age thirteen years, and Clarence, age eleven years.

40 5. Your petitioner prays that the marriage between your petitioner and the defendant may be

Petition for Divorce

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

ROBERT NEWTON CRANE, 10
Sol'r and of counsel with Pet'r.

State of New Jersey, }
County of Union. } ss:

Charles E. Drake, being duly sworn, according to law, upon his oath deposes and says, that he is the petitioner named in the foregoing petition; and that his said petition is not made by any collusion between him and the defendant, but in truth and good faith, for the causes set forth in the petition. 20

CHARLES E. DRAKE.

Sworn and subscribed before me
at Plainfield, this
8th day of October, A. D., 1915.
May E. McLaughlin,
Notary Public for New Jersey.

Answer and Cross-Petition*(Filed, December 24, 1915)*

IN CHANCERY OF NEW JERSEY

10	Between CHARLES E. DRAKE, and ELIZABETH DRAKE, 	Petitioner, Defendant.	}	On Petition for Divorce.
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The answer of Elizabeth Drake, defendant, to the petition of Charles E. Drake, petitioner.

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

2. This defendant denies that since her said marriage, and on the 15th day of August, 1915, and on other days of said month, and during the month of September, 1915, and on the first day of October and on other days in said month of October, 1915, she committed adultery with Joseph A.
 30 Bellott, at Plainfield, in the County of Union and State of New Jersey, as in said petition is alleged, or that she committed adultery with said person, or with any other person at any other time or place; but to the contrary, this defendant says that she has ever faithfully observed her obligations as the wife of the petitioner.

3. This defendant admits it to be true that the
 40 petitioner and this defendant were bona fide resi-

Answer and Cross-Petition

dents of the State of New Jersey when this supposed cause of action arose as alleged in the petition, and that this defendant has ever since continued to be a bona fide resident of this state down to the time of the commencement of this action, residing continuously at Plainfield and this defendant admits it to be true that children were born of the marriage aforesaid, whose names and ages are as stated in the petition. 10

AND THIS DEFENDANT BY WAY OF CROSS-PETITION EXHIBITED AGAINST THE PETITIONER, SAYS:

4. That the petitioner, after his said marriage to this defendant, and on the 15th day of June, 1914, and on other days of said month and during the months of July and August, 1914, committed adultery with Mary Canary or some other woman, which said acts were committed at Plainfield, New Jersey and on a steamboat plying between New York and Albany in the State of New York. And this defendant has not condoned said acts of adultery since she discovered same. 20

5. Defendant prays that the marriage between defendant, as cross-petitioner, and the petitioner, as defendant to said cross-petition, may be dissolved for the cause aforesaid, according to the statute in such case made and provided; and that the petitioner may be compelled by the decree of this honorable Court to support her and the said children of the marriage, and that she may be awarded the custody of said children and may be permitted the use of her maiden name. 30

6. This defendant prays that the petition of the petitioner may be dismissed and that the defend- 40

Answer and Cross-Petition

ant may have the relief prayed for in her cross-petition and that she may have such further relief as may be just.

And this defendant will ever pray, etc.

10

ELIZABETH DRAKE,
Defendant.

G. W. V. Moy,
Sol'r and of Counsel.

State of New Jersey, } ss:
County of Union.

Elizabeth Drake, being duly sworn according to law upon her oath deposes and says, that she is the cross-petitioner named in the foregoing cross-
20 petition; and that her cross-petition is not made by any collusion between her and the defendant therein, but in truth and good faith, for the causes set forth in said cross-petition.

ELIZABETH DRAKE.

Subscribed and sworn to before me, this
24th day of December, 1915.

Walter L. Hetfield,
M. C. C. of N. J.

Answer to Cross-Petition*(Filed, December 29, 1915)*

IN CHANCERY OF NEW JERSEY

Between CHARLES E. DRAKE, and ELIZABETH DRAKE,	}	Pet'r, Def't.	Answer to Cross- Petition	10
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The answer of Charles E. Drake, petitioner, to the cross-petition of Elizabeth Drake, defendant.

1. This petitioner denies that since his marriage and on the fifteenth day of June, 1914, or on other days of said month, or during the months of July and August 1914, he committed adultery with Mary Canary, at Plainfield, New Jersey or on a steamboat plying between New York and Albany in the State of New York, as in said cross-petition alleged, or with any other person, at any other time or place; but to the contrary this petitioner says, that he has always been true to his marriage vows, and has faithfully observed his obligations as the husband of the defendant. 20 30

2. This petitioner therefore prays that the cross-petition of the defendant may be dismissed.

CHARLES E. DRAKE,
 Petitioner.

ROBERT NEWTON CRANE,
 Sol. of Pet'r. 40

Order of Reference*(Filed, December 29, 1915)*

IN CHANCERY OF NEW JERSEY

10	Between CHARLES E. DRAKE, and ELIZABETH DRAKE,	Pet'r, Def't.	} On Petition for } Divorce.
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This matter being opened to the Court by
 Robert Newton Crane, solicitor for and of counsel
 20 with the petitioner, and George W. V. Moy, Esq.,
 solicitor for and of counsel with the defendant,
 and upon reading the consent hereto under-
 written:

It is thereupon on this twenty-ninth day of De-
 cember, Nineteen Hundred and Fifteen, ORDERED,
 that the above stated cause be referred the Honor-
 able WILLIAM J. MAGIE to hear the same for the
 CHANCELLOR, and to report thereon to him and ad-
 vise what order or decree should be made therein.

30 We consent to the making of the above order.

ROBERT NEWTON CRANE,
 Sol'r of Pet'r.

GEORGE W. V. MOY,
 Sol'r of Def't.

Designation*(Filed, January 10, 1915)*

IN CHANCERY OF NEW JERSEY

Between CHARLES E. DRAKE, and ELIZABETH DRAKE, Petitioner, Defendant.	}	On Petition for Divorce.	10
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The above stated cause having been, by order of the Chancellor on the twenty-eighth day of December, Nineteen Hundred and Fifteen, referred to the Honorable William J. Magie, one of the Advisory Masters of this Court, to hear the same for the Chancellor and to report thereon to him and to advise what order or decree should be made therein, and an application having been made for an order designating the time and place of said hearing, 20

It is, on this sixth day of January, Nineteen Hundred and Sixteen, on motion of Robert Newton Crane, solicitor of the petitioner, ORDERED, that Thursday, the twentieth day of January, Nineteen Hundred and Sixteen, at the Court House, in the City of Elizabeth, at ten thirty o'clock in the forenoon, be, and the same hereby is, designated as the time and place for hearing the above stated cause, the said hearing to be continued on the day following if not finished. 30

We consent to the making and entering of the above order.

ROBERT NEWTON CRANE,
 Sol'r for Pet'r.
 GEORGE W. V. MOY,
 Sol'r of Def't. 40

Memorandum

IN CHANCERY OF NEW JERSEY

10	Between CHAS. B. DRAKE, v. ELIZABETH DRAKE, Defendant.	Petitioner, Defendant.
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Notwithstanding the denials of the defendant and Bellott the evidence satisfies me that she is guilty as charged by the petitioner.

This conclusion would ordinarily result in advising the decree nisi, in favor of the petitioner, but under the provision of Section 28 of Divorce
 20 Law, such a decree cannot be advised if the charges made by the defendant at her cross-petition are sustained by sufficient evidence.

The evidence on that subject is in my judgment, not satisfactory. It is encountered by the denials by petitioner of the charge. I would be unwilling to advise a decree thereon.

The result of all is that, petitioner is entitled to a decree nisi and I will so advise.

30 W. J. MAGIE
 Counsellor at Law
 556 North Broad St.

Elizabeth, N. J., Jan. 27, 1916

Robt. Newton Crane, Esq.,
 Geo. W. V. Moy, Esq.,
 Plainfield, N. J.

Gentlemen:

I have examined with care the evidence heard in the case of Drake v. Drake, and the briefs with
 40 which you have favored me.

Decree Nisi

The result is that I have reached the conclusion that I must advise a decree nisi in favor of the Petitioner upon his original petition, and a decree dismissing the cross-petition of the Defendant. If such a decree is presented to me I will advise it.

Very truly yours,

W. J. MAGIE.

10

Decree Nisi

(Filed, January 31, 1916)

IN CHANCERY OF NEW JERSEY

20

Between
CHARLES E. DRAKE,

Petitioner,

and

ELIZABETH DRAKE,

Defendant.

On Petition
for Divorce.

This cause coming on to be heard before the Honorable William J. Magie, one of the Advisory Masters of this Court, pursuant to the reference made to him, and in the presence of Robert Newton Crane, of counsel with the petitioner, and of George V. W. Moy, of counsel with the defendant, whereupon, and upon duly considering the petition of the petitioner and the answer of the defendant, and the evidence offered to sustain the allegations thereof, it now satisfactorily appears to the Chancellor that the petitioner and the de-

30

40

Decree Nisi

10 defendant were married on the thirtieth day of June, Eighteen Hundred and Ninety-seven; and that the defendant has been guilty of the acts of adultery charged against her in the second paragraph of said petition, and that petitioner was a bona fide resident of this state when the cause of action arose, and has continued so to be down to the time of the commencement of this action, and that the defendant was personally served with process within this State.

20 IT IS THEREUPON, on this day of January, A. D., Nineteen Hundred and Sixteen, on motion of Robert Newton Crane, of counsel with the petitioner, ORDERED, ADJUDGED and DECREED, by his HONOR, EDWIN ROBERT WALKER, Chancellor of the State of New Jersey, that a decree final dissolving the bonds of matrimony between the petitioner, Charles E. Drake, and the defendant, Elizabeth Drake, for the cause aforesaid, be granted and allowed; that the said decree final to be thereafter entered, and to become effective, in the manner provided by law; UNLESS within six months from the entry of this present decree, cause be shown to the contrary, if it be otherwise ordered or stayed, pursuant to the statute in such case made and provided.

30 And upon duly considering the cross-petition of the cross-petitioner, and the answer of the petitioner-defendant thereto, and the evidence offered to sustain the allegations thereof, and it appearing to the Court that the cross-petitioner has not sustained the truth of her cross-petition, and is not entitled to the relief therein prayed.

40 IT IS, THEREUPON, on this day of January, A. D., Nineteen Hundred and Sixteen, ORDERED,

Notice of Appeal

ADJUDGED and DECREED, that the cross-petitioner's cross-petition be, and the same is hereby dismissed.

Notice of Appeal

10

(Filed, October 14, 1916)

IN CHANCERY OF NEW JERSEY

Between

CHARLES E. DRAKE,

Petitioner and Defendant,
and

ELIZABETH DRAKE,

Defendant and Cross-
Petitioner.On Petition
for Divorce.

20

Elizabeth Drake, the above named defendant and cross-petitioner hereby appeals from the decree nisi filed in this cause and dated January 29, 1916, and from every part thereof to the Court of Errors and Appeals in the last resort in all causes.

30

Dated, July 25, 1916.

GEO. W. V. MOY,
Sol'r for and of Counsel with
Defdt. and Cross-Pet'r.

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

GEO. W. V. MOY,
Of Counsel.

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Answer to Petition of Appeal

holden, and that your petitioner may have such further relief as shall be meet.

GEO. W. V. MOY,
Sol'r for and of
counsel with Appellant.

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Answer to Petition of Appeal

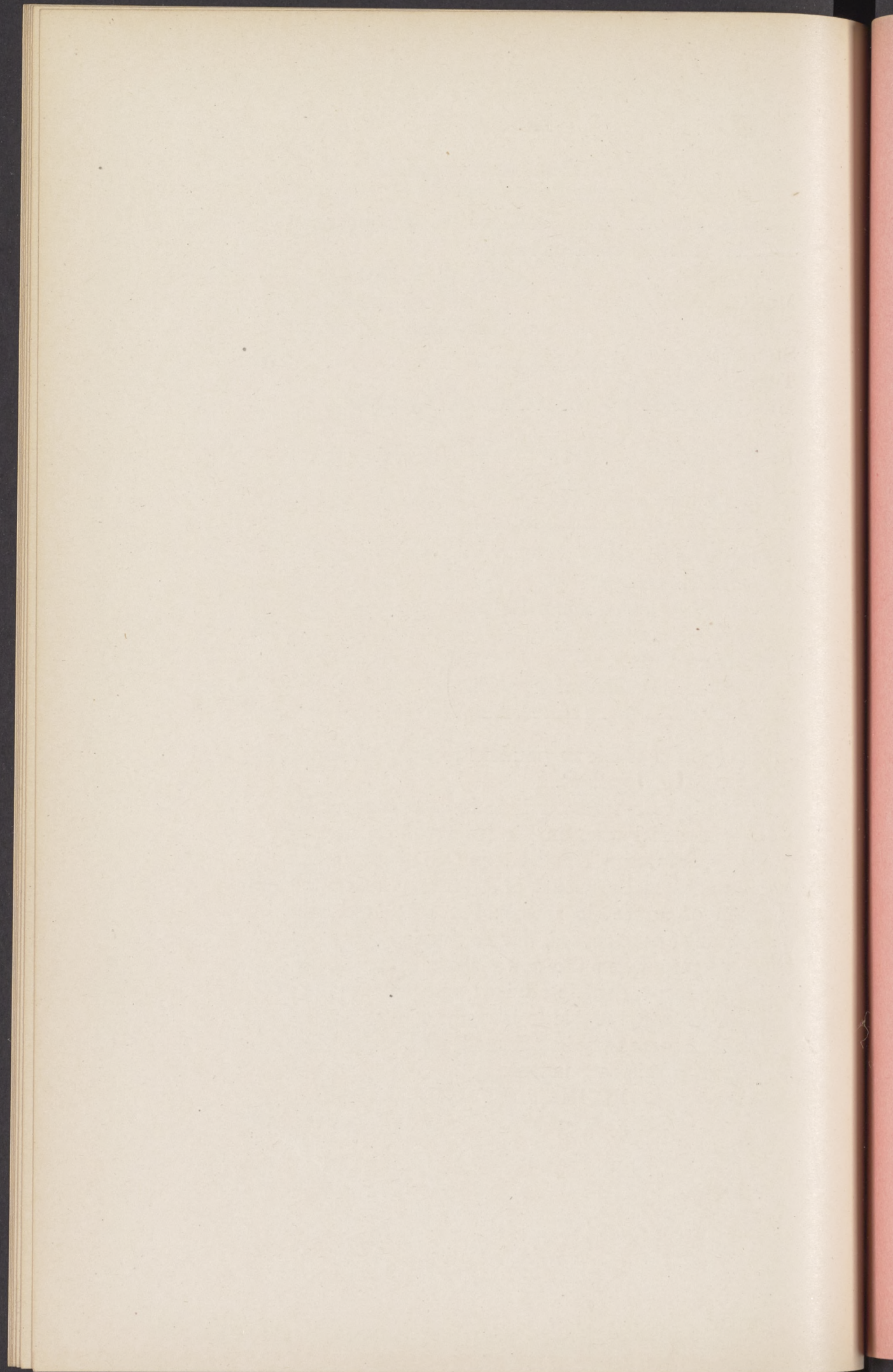
NEW JERSEY COURT OF ERRORS AND
APPEALS

Between CHARLES E. DRAKE, Petitioner-Resp., and ELIZABETH DRAKE, Defendant-Appel't.	}	20
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The answer of the respondent to the petition of appeal of the appellant.

The respondent admits it to be true that a certain decree nisi was, on the twenty-ninth day of January, Nineteen Hundred and Sixteen, made and entered in the Court of Chancery, as in the petition of appeal is 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 said decree is agreeable to law and equity, and he prays that same may be affirmed, with costs to be adjudged to this respondent. 30

ROBERT NEWTON CRANE,
Sol'r and of counsel with Respondent. 40





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MADE IN
CHINA