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PETITION.

(Filed Feb. 3, 1927.)

IN CHANCERY OF NEW JERSEY.

To his Honor, Edwin Robert Walker, Esq., Chancellor of the State of New Jersey:

The petition of Alfred H. Johnson of the City of Atlantic City, County of Atlantic and State of New Jersey, respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to his present wife, Martha A. Johnson, the defendant in this suit, in the month of October, to wit, October 3rd, 1900, by a minister of the Gospel, at Westchester, Pennsylvania.

2. Defendant deserted your petitioner sometime in the month of October, 1921, ever since which time, and for more than two years last past, said defendant has wilfully, continuedly and obstinately deserted your petitioner.

3. Petitioner and defendant have been *bona fide* residents of the State of New Jersey ever since, and prior to, their marriage, residing in Atlantic City, County of Atlantic. Petitioner was a *bona fide* resident of this State at the time this cause of action arose, to wit, October, 1923, and has been such resident ever since, residing continuedly in Atlantic City, at the Bertlunel Apartments, in said State. Defendant resides at the Maharba Apartments, in Atlantic City, New Jersey.

4. No children were born of the marriage between your petitioner and defendant.

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

And your petitioner will ever pray, etc.

ALFRED H. JOHNSON,
Petitioner.

WILLIAM CHARLTON,
Solicitor of Petitioner.

STATE OF NEW JERSEY, }
ATLANTIC COUNTY, } *ss.*

ALFRED H. JOHNSON, of full age, being duly sworn on his oath according to law deposes and says that he is the petitioner in the foregoing petition named; 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.

ALFRED H. JOHNSON.

Sworn and subscribed before me this 1st day of February, 1927.

ROSE E. SASLOFF,
Notary Public of N. J.

A true copy.
THOMAS BARBER,
Clerk.

ANSWER.

IN CHANCERY OF NEW JERSEY.

Between ALFRED H. JOHNSON, *Petitioner,* and MARTHA A. JOHNSON, *Defendant.*	On Petition for Divorce. Answer.

Defendant, Martha A. Johnson, of Atlantic City, New Jersey, answering the petition, says:

1. Paragraph 1 is admitted.

2. Paragraph 2 is denied.

3. Paragraph 3 is admitted.

4. Paragraph 4 is admitted.

Further answering defendant says that heretofore and before the filing of petitioner's petition she filed her bill in this court against the petitioner charging him with having deserted her without cause and praying for maintenance, and that such proceedings were had thereunder that on the 14th day of February, 1927, her bill was taken as confessed against the said petitioner and the matter was referred to C. C. Shinn, one of the Special Mas-

ters of this Court to ascertain and report as to the truth of the allegations of her bill and his opinion thereon, all of which will appear by the bill and decree by confession.

COLE & COLE,
Solicitors for Defendant.

REPLY.

IN CHANCERY OF NEW JERSEY.

Between
ALFRED H. JOHNSON,
Petitioner,
and
MARTHA A. JOHNSON,
Defendant.

Reply.

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1. Petitioner, replying to the further answer of the defendant says that the decree *pro confesso* entered as set forth therein was entered fraudulently and in violation of petitioner's rights and that application is now being made to set the same aside.

2. Petitioner joins issue.

WILLIAM CHARLTON,
Solicitor of Petitioner.

CROSS PETITION OF MARTHA A. JOHNSON.

IN CHANCERY OF NEW JERSEY.

Between
ALFRED H. JOHNSON,
Petitioner,
and
MARTHA A. JOHNSON,
Defendant.

On Petition for Divorce.
Cross Petition of Martha A. Johnson.

The cross petition of Martha A. Johnson, of Atlantic City, Atlantic County, New Jersey, respectfully shows:

1. Your cross petitioner was lawfully joined in the bonds of matrimony to her present husband, Alfred H. Johnson, on the third day of October, 1900, by a minister of the gospel, at West Chester, Pennsylvania.

2. Ever since the date of said marriage your cross petitioner and her husband have been *bona fide* residents of Atlantic City, New Jersey.

3. On March 8, 9, 10, 11, 24, 25, 28 and 30, and April 1, 1927, at Atlantic City, New Jersey, at Johnson's Garage, #10 North Ohio Avenue, Atlantic City, and other places in Atlantic City, and on other

dates both prior and subsequent to said dates, the petitioner, Alfred H. Johnson, and the defendant in this cross petition, committed adultery with one Mrs. Myra Tomlinson, a married woman.

4. No children were born of the marriage between your cross petitioner and the said Alfred H. Johnson.

5. Your cross petitioner prays that the marriage between your cross petitioner and Alfred H. Johnson may be dissolved because of the aforesaid, according to the statute in such case made and provided, and that he may be compelled by the decree of this Honorable Court to support her, and that she may be permitted to resume the use of her maiden name; and that she may have such further relief as may be just.

And this defendant will ever pray, &c.

MARTHA A. JOHNSON.

COLE & COLE,
Solicitors for Defendant.

STATE OF NEW JERSEY, }
COUNTY OF ATLANTIC, } *ss.*

MARTHA A. JOHNSON, being duly sworn according to law, upon her oath deposes and says, that she is the cross petitioner named in the foregoing cross 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.

MARTHA A. JOHNSON.

Sworn and subscribed to before me this day of April, 1927.

ANN GOOBERG,
Notary Public of N. J.

ANSWER.

IN CHANCERY OF NEW JERSEY.

Between ALFRED H. JOHNSON, *Petitioner,* and MARTHA A. JOHNSON, *Defendant.*	On Petition for Divorce. Answer.

Petitioner, Alfred H. Johnson, answering the cross petition of Martha A. Johnson, respectfully shows:

1. He admits paragraph one.

2. He admits paragraph two.

3. He denies paragraph three and says that he has not, on the dates alleged, or on any other dates, at Johnson's garage or elsewhere, or at any time ever or at any place committed adultery with Mrs. Myra Tomlinson, or any other woman.

4. He admits paragraph four.

WILLIAM CHARLTON,
Solicitor of Petitioner.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between
ALFRED H. JOHNSON,
Petitioner,
and
MARTHA A. JOHNSON,
Defendant.

On Petition for Divorce.
Final Hearing.

Atlantic City, N. J., September 27, 1927.

Testimony before HON. R. H. INGERSOLL, Vice-Chancellor.

APPEARANCES:
For petitioner, WILLIAM CHARLTON, ESQ.
For defendant, MESSRS. COLE & COLE.

ALFRED H. JOHNSON, sworn.

Direct examination.

By Mr. Charlton:

Q. Mr. Johnson, are you Alfred H. Johnson?
A. Yes, sir.
Q. Are you married?
A. Yes, sir.
Q. When were you married?
A. October the fourth—been married twenty-seven years this October, I think it is.
Q. 1900?
A. Yes, sir.
Q. Where were you married?
A. West Chester, Pennsylvania.
Q. What was your wife's name?
A. Martha Johnson.
Q. Is she here in court?
A. Yes, sir.
Q. Where did you live after your marriage?
A. 435 North Rhode Island Avenue, Atlantic City.
Q. Where have you lived since you were married, in what city?
A. Atlantic City.
Q. New Jersey?
A. Yes, sir.
Q. Any place else?
A. No, sir.
Q. Lived here, you and your wife the whole time since you were married?
A. Yes, sir.
Q. Any children born of the marriage?
A. No, sir.

Q. Now, Mr. Johnson, was your marriage happy in the beginning?

A. Fairly happy, yes, sir.

Q. What business are you in?

A. In the garage business now.

Q. How long have you been in that business?

A. I think it is ten or eleven years.

Q. When was the first difficulty between you and your wife?

A. Some years ago.

Q. Where were you living in October, 1921, or September, 1921?

A. Living in the Arnold Apartment, I think it is, Kentucky and Pacific.

Q. You and Mrs Johnson living there?

A. Yes, sir.

Q. As man and wife?

A. Yes, sir.

Q. Just tell his Honor what happened between you and Mrs. Johnson, if anything, then?

A. Well, I never could satisfy her with anything, it was always wanting this and wanting that and other things, so I finally got tired of it and she simply refused to be a wife to me.

Q. What did she say to you?

A. She simply said I could never touch her from that day long as I lived.

Mr. Cole: Said what?

A. She simply said I could never touch her from that day long as I lived.

Q. Was she angry when she said that?

A. She was.

Q. Was she excited?

A. Yes, sir.

Q. Now, have you in fact ever been a husband to her since that date?

A. No, sir.

Q. Have you ever occupied the same bedroom with her since that?

A. No, sir.

Q. Where did you go to live after she made that remark, Mr. Johnson?

A. Went back to the cottage on Ventnor Avenue.

Q. Did you own a house yourself?

A. I didn't own it.

Q. What?

A. It isn't in my name, no, sir.

Q. Whose name is it in?

A. Mrs. Johnson.

Q. Who paid for it?

A. I paid for it.

Q. You paid for it and put it in her name?

A. Yes, sir.

Q. Had you lived in that house before you lived in the Arnold Apartments?

A. I had.

Q. And went back to it again after you left the Arnold?

A. Yes, sir.

Q. What did you do, rent the house for the summer that year?

A. Yes, sir.

Q. And you went to live in the Arnold for the period of your tenants?

A. Yes, sir. There is a mortgage against the house down there, it isn't all paid for.

Q. It is substantially?

A. Yes, sir.

Q. Did you go back to live in the house on Ventnor Avenue?

A. Yes, sir.

Q. When you got back there did you have one bedroom?

A. Did we what?

Q. Did you have a joint bedroom?

A. No, sir.

Q. How did you sleep?

A. There is four bedrooms on the second floor, that is from the basement and I slept in the northeast room and she slept in the southwest room.

Q. Separate bedrooms?

A. Yes, sir.

Q. Have you ever occupied the same bedroom with her since that time?

A. No, sir.

Q. Now, other than sleeping together, you occupied the house, did you, together?

A. Yes, sir.

Q. Did you eat your meals together?

A. Yes, sir; some times.

Q. Some times?

A. Yes, sir.

Q. Whenever you were both home you ate together?

A. Well, I hardly ever ate breakfast with her, when we didn't have a girl that slept in the house, I simply had to get my own breakfast, sometimes we would have a girl get there seven o'clock A. M. and they wouldn't come at seven.

Q. Mrs. Johnson never had breakfast with you that early in the morning?

A. Not very often.

Q. Did you go home for lunch?

A. Yes, sir.

Q. Mrs. Johnson have lunch with you?

A. Some times.

Q. Did she have dinner with you at night?

A. We did at times. She got so that she wanted the car and was supposed to meet me at the place at half-past five, some times it would be six, so finally I got so I didn't go home nights to supper or dinner.

Q. That was because she didn't meet you with the car and take you home?

A. Yes, sir.

Q. Did you give her an automobile ?

A. Yes, sir.

Q. Before or after this withdrawal from your society?

A. She always had the use of the car pretty near whenever she wanted it.

Q. Who used the car more, you or she?

A. She used it more than I did.

Q. How did you travel up and down to your home on Ventnor Avenue?

A. Mornings some times I would take the car up and bring it back at lunch and leave the car and then I would come up on the trolley.

Q. Used the trolleys a great deal?

A. Yes, sir.

Q. Now at meal times did you have much conversation with Mrs. Johnson?

A. I—some times and some times wouldn't be anything hardly ever said.

Q. Did you take her about socially?

A. She refused to go and I asked her three times and she refused and I never asked her any more.

Q. Never went out socially together at all?

A. No.

Q. Did you have any mutual friends that you visited together?

A. Yes, we had had.

Q. You had had?

A. Yes, sir.

Q. After this breach came did you and Mrs Johnson go calling on friends together?
A. Not as I recall, no.
Q. Never?
A. No, I don't recall any.
Q. Did she exhibit any affection towards you?
A. None whatever.
Q. Did you ever hold her hand after that day?
A. She wouldn't have anything to do with me.
Q. Did you ever kiss her after that day?
A. Never would allow me to kiss her.
Q. Mr. Johnson, how long did that state of affairs go on after October, 1921?
A. Always went on.
Q. Still on?
A. Yes.
Q. How long did you and Mrs. Johnson live together in separate bedrooms in the Ventnor Avenue house?
A. Well, we haven't really slept together for a number of years.
Q. Do you now live in the same house with Mrs. Johnson?
A. No, sir.
Q. When did you stop living in the same house with her?
A. Last January a year, I think it was.
Q. January, 1926?
A. Somewhere around there.
Q. What?
A. I don't just remember the date.
Q. But in the month of January?
A. No. it wasn't in January—it was November—I don't just remember the month now.
Q. Do you remember what year it was in?
A. It has been 1925, I think it was.
Q. Could it have been any earlier than November?

A. No, I don't think it was.
Q. Couldn't have been any earlier than November, 1925?
A. No.
Q. Where did you go to live in November, 1925?
A. To my mother's.
Q. With your mother?
A. Yes.
Q. Where does your mother live?
A. Bertlunel Apartment, Virginia Avenue.
Q. Where do you live now?
A. Same place.
Q. Then from the time that you left the Ventnor Avenue house and went to your mother's you still remained with your mother?
A. Yes, sir.
Q. Have you talked with Mrs. Johnson since you actually left the house?
A. Oh, yes, sir.
Q. She brought a suit against you, didn't she?
A. Yes, sir.
Q. For maintenance?
A. Yes, sir.
Q. With respect to the time you left the Ventnor Avenue house when did she file the suit for maintenance?
A. When I left, I still kept sending her weekly money and then the expense was so great I had to cut it down and I sent her thirty dollars a week and before that time she came up and wanted me to come down and talk to her so I went down and she wanted me to pay her two hundred dollars a week.
Q. At that conversation—was that in the Ventnor house?
A. Yes, sir.
Q. Did she ask you to return?

A. She never asked me to return. She said she was going to make me.

Q. Make you what?

A. Return.

Q. Make you return?

A. Yes, sir.

Q. For what purpose, did she say?

A. Didn't say.

Q. Did she talk about the support at that time?

A. Oh, yes; she said she was going to make me support her.

Q. Make you support her?

A. Yes, sir.

Q. How much did she want?

A. She wanted two hundred dollars a week then and I couldn't talk to her so I put on my hat and coat and walked out and then a few days after that she came up to the garage, drove up in front of the office and beckoned for me to come out and I went out and she was going to knock my head off.

Q. Threatened to attack you?

A. That is what she said and opened the d or, so I simply walked back in the office and we didn't have any more to say.

Q. The next thing you were sued?

A. No.

Q. What happened then?

A. Then she came up again and demanded the keys of the house and said that she wanted to know what went out of the house. I said, "There is nothing going out of the house by me and I am not going to give you the keys," and she had made several trips up there to talk to me and had made appointments for me to come down to the house, which I didn't go.

Q. What was all this about, Mr. Johnson, that she wanted to talk to you and see you?

A. Sir?

Q. Why did she want to talk to you and see you?

A. I don't know. She didn't seem to be satisfied with what I was sending her and one thing another.

Q. Mr. Johnson, during the time that you lived in the house, after she withdrew from your society, did you support her?

A. I did.

Q. Did you pay for the food of the house?

A. Sir?

Q. Did you pay for the food of the house?

A. I did.

Q. Pay for the servant?

A. I did.

Q. Pay for the taxes and water rent and mortgage?

A. I didn't pay for all the taxes. The understanding was, I had my home clear on Rhode Island Avenue, north, when we went down there, the rent was supposed to pay the running of the house. It did for a while, but finally she got so that she said she didn't have enough money and she paid part of the taxes and I paid part of the taxes, paid part of the water rent, paid part of the sewer rent and paid part of the interest on the mortgage. I never got any of the rent.

Q. Who owned the house on Rhode Island Avenue?

A. I owned the house.

Q. What?

A. The house was in my name on Rhode Island Avenue.

Q. And she got the rents for it?

A. From Rhode Island Avenue?

Q. Yes.

A. We only owned that a year after we bought the house on Ventnor Avenue, that was the way it was

sold, the money that was in the Rhode Island Avenue house was transferred to Ventnor Avenue house.

Q. Did you buy her clothes when you lived on Ventnor Avenue?

A. I did.

Q. Paid all the expenses of running the house and her?

A. Yes.

Q. You gave her this automobile?

A. Yes, sir.

Q. Still at no time was she your wife?

A. No, sir.

Q. Now, Mr. Johnson, did you ever ask Mrs. Johnson to change this situation? Answer me yes or no.

A. Yes, sir.

Q. Can you tell us how soon after she told you what she did in the Arnold Apartments was it that you first asked her to change that situation?

A. I suppose it was a year afterwards.

Q. A year afterwards?

A. Yes, sir.

Q. Had you made any advances in the meantime?

A. I had. She simply told me, when her room door was closed that I should never open it.

Q. Did you try to go in her room?

A. I did open it, yes, and that is the orders I got.

Q. Was she undressed?

A. She was in bed.

Q. What did she say to you?

A. She told me never to enter her room when the door was closed.

Q. Did it impress you as if she meant it?

A. Yes, sir.

Q. Now did you ever try again?

A. Yes, sir; after that she closed the room, in the bathroom that goes into the other bedroom.

Q. Before that you slept with the bathroom door open between the two bedrooms?

A. That was open.

Q. Then she shut the bathroom door?

A. Yes, sir.

Q. Were those doors locked?

A. Not as I know of, no, sir; never was that I know of.

Q. Did you believe sincerely that she meant you were not to come near her?

A. I did.

Q. You did?

A. Yes.

Q. Now did you ever have any conversation with her about resuming your relations?

A. She always kept me at a distance; I never could resume my relations.

Q. Ever try to hold her hand or kiss her?

A. No, sir; she simply told me she didn't want anything to do with me that way at all.

Q. And you believed her?

A. Yes, sir.

Q. Now did Mrs. Johnson exhibit any interest in your welfare after this incident? I mean did she question you about yourself, what you were doing, whether you were happy and that sort of thing?

A. One time she called me in the room and said that she knew that I wasn't happy and if I had come to her some years ago probably the thing could have been fixed up and she said that I wasn't sport enough to split fifty-fifty. I said, "Well, I don't know what you mean by fifty-fifty; you have got everything now."

Q. She said she knew you weren't happy?

A. Yes.

Q. Well, did she say she was going to do anything to try to make you happy?

A. No, sir.
Q. Did she invite you to kiss her?
A. No, sir.
Q. She invite you to go out anywhere with her?
A. No, sir.
Q. During the years on Ventnor Avenue did you have your own friends and associates?
A. Well, to a certain extent that was her friends as well as mine. I never had any particular friends that I had taken there, that is of my own.
Q. I mean did you go with her with friends or each go your own way?
A. No, we had went out with friends and had friends to come there.

Cross-examination.

By Mr. Cole:

Q. Did you say that your married life had been happy?
A. Not altogether, no, sir.
Q. Was it ever happy?
A. Well, it was happy when I was first married because everything went along.
Q. How long after you were married?
A. I suppose five years.
Q. For five years you had a very happy life?
A. Yes, sir.
Q. Then did there come a woman into the case?
A. No, sir, not then.
Q. What?
A. No, sir.
Q. Not then?
A. No, sir.
Q. When did she come in?

A. The woman you have reference to I knew ever since I was a kid.
Q. Who do you think I have reference to?
A. I suppose you have reference to Mrs. Tomlinson.
Q. Mrs. Myra Tomlinson?
A. Yes, sir.
Q. Was she in any way responsible for the coolness between you and your wife?
A. None whatever.
Q. Did your wife ever tell you she was?
A. Yes, sir.
Q. How many times?
A. I couldn't say.
Q. Well, give us your best judgment as to how many times?
A. I couldn't say because I didn't keep account.
Q. Was it so many that you couldn't keep account?
A. No.
Q. What did she say to you about it?
A. She told me one time that I ought to be ashamed of myself and she felt as if she ought to take a gun and shoot me.
Q. Was there any reason for it?
A. I couldn't say myself. I had never did anything against her.
Q. What reason did she give for telling you that you ought to be ashamed of yourself?
A. She claimed that I was running with this woman.
Q. How soon after you were married did she claim that you were running with this woman?
A. I suppose twenty years, probably.
Q. You mean twenty years after you were married?
A. I suppose something like that.

Q. How long did she continue that complaint?
A. She continued it all the way along, I suppose.
Q. Did she finally tell you in substance that you had to choose between this woman and her?
A. There was never any such conversation.
Q. Nothing that approached that?
A. No, sir.
Q. You used to go out with this woman alone, didn't you?
A. Yes, sir.
Q. Used to be in public places with her and your wife wasn't with you?
A. Yes, sir. No more than any other.
Q. Used to dance with her?
A. I have danced with her, yes, sir.
Q. Your wife found fault with it, didn't she?
A. Yes, sir.
Q. Notwithstanding that you continued to do what you had done before?
A. I had been with her when her husband was with her.
Q. I say, in spite of the fact that your wife complained about you going around with this married woman, you continued to do it, didn't you?
A. Yes.
Q. Why didn't you stop when your wife told you that she didn't want that?
A. Because she never gave me any encouragement.
Q. What?
A. My wife never was a wife to me as far as a wife.
Q. Then, because she wasn't a wife to you, you concluded you had a right to run around with another married woman, is that right?
A. Just the same as she done with other men.

Q. I am not asking you that. Keep your mind on the question. I say because you thought she wasn't a wife to you, you concluded that you had a right to go around with another married woman, is that so or not?
A. I didn't think I had a right. It was a question of friendship.
Q. It was all friendship, was it?
A. Yes, sir.
Q. Now when did you say you left the Ventnor Avenue cottage?
A. I think it is very near two years ago, I don't just know.
Q. How long ago?
A. About November, I think it was or December, I don't remember which.
Q. What year?
A. 1926.
Q. Up to that time you and your wife were living in the same house?
A. Yes, sir.
Q. And you left the house?
A. I left.
Q. And you left?
A. Yes, sir.
Q. And left her there?
A. Yes, sir.
Q. Where did you go?
A. I went to my mother's.
Q. And did you say a moment ago that you had been living with your mother ever since?
A. I have.
Q. Where?
A. Bertlunel Apartments.
Q. You own the garage on Ohio Avenue?
A. Yes, sir.
Q. What is there above the garage?

A. A house.
Q. Which?
A. A house.
Q. Is it furnished?
A. It is.
Q. Who furnished it?
A. Ed McDevitt.
Q. You mean it is his furniture?
A. Yes, sir.
Q. When did he furnish it?
A. In March or April.
Q. What year?
A. This year, 1926.
Q. How did he come to furnish it?
A. Because he was going to run the house. He had rented the house.
Q. Is he a tenant now?
A. No, sir.
Q. His furniture still there?
A. Supposed to be there, yes, sir.
Q. Have you ever lived in that house yourself?
A. I have not.
Q. Never slept there?
A. No, sir.
Q. Do you mean to say that you have never slept in that house?
A. I never slept in the house.
Q. Have you been there?
A. Yes, sir.
Q. How often?
A. Three times a day.
Q. Who provides the food?
A. Mrs. Tomlinson.
Q. How long has she been living there?
A. In March.
Q. Of what year?
A. Last year—this year.

Q. 1927?
A. Yes, sir.
Q. Is she a tenant?
A. Not of mine.
Q. Whose tenant is she?
A. She was a tenant of Ed McDevitt.
Q. What?
A. She was running the rooming house for Ed McDevitt.
Q. And she has been sleeping there, hasn't she, from in, since March 1927?
A. So far as I know.
Q. What?
A. So far as I know.
Q. You have been up there occupying some rooms with her, haven't you?
A. No, sir.
Q. I don't mean you have been sleeping with her, now you have been occupying some rooms with her from time to time?
A. No, sir.
Q. You were never in the same room with her?
A. No, sir.
Q. What were you doing up there?
A. Getting my meals.
Q. Pay for them?
A. I have.
Q. Who did you pay?
A. Mrs. Tomlinson.
Q. What is your arrangement?
A. Twelve dollars a week.
Q. Get a receipt?
A. Yes, sir.
Q. Lets see it?
A. I haven't got them here.
Q. Will you produce some of them?
A. Yes, sir.

Q. Well, then, when you say you lived with your mother you mean you sleep at your mother's house?
A. I do. I never eat there at my mother's house very often.
Q. Of course, you know Mrs. Tomlinson is a married woman?
A. Yes, sir.
Q. You know her husband?
A. Yes, sir.
Q. And you knew the time that she left her husband?
A. Yes, sir.
Q. And she left her husband and came to you, didn't she?
A. She came to me, yes, sir.
Q. And she has been living in this house ever since?
A. No, sir.
Q. Where has she been living?
A. She was to mother's a few nights and she had a room after that.
Q. Where?
A. 110 St. James Place.
Q. You visit there?
A. Yes, sir.
Q. Eat there?
A. No, sir.
Q. Sleep there?
A. No, sir.
Q. Did you go around with her in an automobile?
A. Yes, sir.
Q. She comes down and helps you in your office?
A. No, sir.
Q. Didn't your wife refuse to cohabit with you upon the ground that you were unduly familiar with Mrs. Myra Tomlinson?
A. She did but didn't mention any names.

Q. In other words she did give you the reason why she wouldn't cohabit with you?
A. She did.
Q. What was the reason she gave you?
A. She said that she wouldn't let me touch her if I touched any other women.
Q. Well, did she charge that you were touching some other woman?
A. She did.
Q. Did she tell you what woman?
A. She didn't at that time.
Q. Did you ask her?
A. I did not.
Q. Were you interested in the subject at all?
A. No, because I knew I wasn't.
Q. Will you look at this memo paper and tell me whether that is your writing?
A. Yes, sir; that is mine.

(Paper marked D1 for identification.)

Q. Another; is that your writing?
A. It is.

(Paper marked D2 for identification.)

Q. Is that yours?
A. It is.

(Paper marked D3 for identification.)

Q. Is that your writing?
A. It is.

(Paper marked D4 for identification.)

Q. For whom were those notes intended?

A. For Mrs. Johnson.
Q. You remember writing them?
A. I do. She did the same thing.
Q. What?
A. She wrote me notes, same thing.
Q. This last one D4 says, "will be away four or five days. The car is down in the garage." Do you recall when that was written?
A. I do not.
Q. How many years ago?
A. I couldn't say.
Q. Was it while you were living together?
A. Yes, sir.
Q. Was it while you were cohabiting?
A. What do you mean by that?
Q. Having intercourse, man and wife?
A. No, sir.
Q. Where were you living?
A. 4509 Ventnor Avenue.
Q. Where did you go on this four or five days trip?
A. I think that was to Philadelphia and New York.
Q. Anybody go with you?
A. To Philadelphia?
Q. Yes.
A. No, sir.
Q. Anybody go with you to New York?
A. Yes, sir.
Q. Who?
A. Mrs. Tomlinson and her daughter. We went after Mr. Tomlinson.
Q. Where did you go to New York?
A. Went to the Pennsylvania Railroad station.
Q. Is that your writing?
A. Yes, sir.

(Paper marked D5 for identification.)

Q. It is addressed to Mrs. Flora A. Wren, who is that?
A. I don't know.
Q. Pardon me. Mrs. Flora A. Warren?
A. Yes, sir.
Q. Who is that?
A. Mrs. Tomlinson's mother.
Q. Is that your writing?
A. Yes, sir.

(Paper marked D6 for identification.)

Q. To whom were you writing?
A. Mrs. Tomlinson.
Q. Call her "My dear Sweetheart?"
A. Yes, sir.
Q. Was she your sweetheart?
A. No, sir.
Q. She wasn't?
A. No, sir.
Q. Then you didn't mean that?
A. No, sir.
Q. That wasn't so?
A. No, sir.
Q. Why did you say "My dear Sweetheart?"
A. Because just a word I had using.
Q. Just a habit?
A. Mrs. Tomlinson was a very dear friend of mine.
Q. That was a habit calling her "sweetheart?"
A. Yes, sir.
Q. How did she get that letter?
A. She didn't get it.
Q. She didn't?
A. No, sir.
Q. What did you do with it after you wrote it?

A. Mrs. Johnson got half and I got the other half.
Q. How did that come about?
A. She came in while it was in my hand and she grabbed it.
Q. Tore it in two?
A. Yes, sir.
Q. Didn't you get any of it?
A. I did at the time and I throwed it in the waste-basket and she went back and picked it up.
Q. Now you say "Just a line, dear, for it is hard, very hard to see you go." Where was she going?
A. I suppose she had gone home.
Q. Gone home from where?
A. Atlantic City.
Q. What did you intend to do with this?
A. Mail it.
Q. "For dear, it is a long time until the next time." What did you mean by that?
A. She had gone home after the summer.
Q. Was it distressing to you to be away from her?
A. Oh, I can't say that it was, no, sir.
Q. Why did you regret it would be so long until the next time?
A. I suppose that is the way I worded it. I don't know.
Q. Undoubtedly you wrote this?
A. Yes, sir.
Q. Did you write any such things to any other woman except Mrs. Tomlinson?
A. No, sir.
Q. Then you say "For I miss you, dear, and can say how much I do"—something—"for you. I miss you" &c. Were you missing her?
A. I guess I must have been for I said that in the letter; been good friends.

Q. "And love you dearly?"
A. Yes, sir.
Q. But you didn't mean that either, did you?
A. No, sir.
Q. That was all false?
A. Yes, sir.
Q. What were you trying to do, fool her?
A. No, sir.
Q. Why did you tell her that she was your sweetheart and you loved her when you didn't?
A. I couldn't say that.
Q. You can't explain that now?
A. No, sir.
Q. Had you forgotten that your wife had that letter?
A. No, sir.
Q. Those two sheets your writing?
A. Yes, sir.

(Letter marked D7 for identification.)

Q. Mrs. Tomlinson here in court today?
A. She is.
Q. Can you recall when you wrote this Exhibit D7?
A. No, sir.
Q. Do you know what you did with it after you wrote it?
A. No, sir.
Q. Your wife didn't get that one, did she?
A. No, sir.
Q. You don't know what became of it?
A. I suppose I mailed it.
Q. Do you know where you wrote it?
A. I suppose I mailed it.
Q. You mailed it to her to where?
A. To Philadelphia, I think.

Q. Where she was living with her husband?
A. I suppose so.
Q. Did you ever tell him you were writing these letters to his wife addressed "sweetheart?"
A. No, sir.
Q. Why didn't you?
A. He never asked me.
Q. He never asked you? How would he know you were doing it? How could he ask you?
A. I don't know.
Q. Did you think he had a mind that could read what you were writing to his wife?
A. No, sir.
Q. If he had asked you whether you were writing these letters to his wife, would you have told him yes?
A. Yes.
Q. You say "Sweetheart, just to think I will see someone that I love tomorrow and, dear, will be glad to see you, and it is like a year since the last time that I see you." You were in real distress then, weren't you?
A. It seems so, yes.
Q. Over what?
A. Of course I was always glad to see any of them.
Q. Any of who?
A. The Tomlinsons.
Q. Did you ever write any other member of the family except the wife?
A. I wrote to Mr. Tomlinson, I think.
Q. Can you produce a letter you ever wrote him?
A. No, sir.
Q. And then you say "And, dear, it was good to hear you yesterday." How did you hear her?
A. She must have called me on the phone, I suppose.

Q. How did she come to call you on the telephone?
A. Couldn't tell you that.
Q. Did you think it was nice thing to be writing to Mrs. Tomlinson these sweetheart letters and having talks with her over the telephone and not telling your wife about it?
A. My wife wasn't a wife to me then.
Q. I didn't ask you that.
A. No, sir.
Q. You didn't think it was a right thing, to do, did you?
A. No, sir.
Q. Why didn't you tell her you were writing these letters to this woman?
A. What?
Q. Why didn't you tell her?
A. She never asked me.
Q. She didn't ask you either, but she did tell you, didn't she, that she wasn't going to be a wife to you unless you stopped your connection with that woman? Didn't she?
A. She didn't say that, no, she simply said she wouldn't.
Q. After she had made those complaints you continued to visit that woman and you continued to write these letters, didn't you?
A. Yes, sir.
Q. And she wrote to you, didn't she?
A. Yes, sir.
Q. Have you any of her letters?
A. No, sir.
Q. What did you do with them?
A. Destroyed them.
Q. Why?
A. I never keep letters.
Q. Don't keep any letters?
A. No, sir.

Q. Why didn't you keep the letters she wrote you?

A. Because I didn't keep letters very often.

Q. Did you show your wife the letters you were getting from her?

A. I did not.

Q. They were all right, weren't they? Nothing wrong about them?

A. None at all.

Q. No reason why your wife shouldn't see them?

A. No, sir.

Q. Why didn't you show them to her?

A. Because my wife and I wasn't corresponding at that time.

Q. Now you say "it is good to hear you yesterday, but will see you soon and that will be better, and, dear, will tell you something nice." Now would you mind telling us what it was you were going to to tell her that was nice?

A. No, sir.

Q. Have you any idea at all?

A. No, sir.

Q. Your mind was as clean and pure as the driven snow, wasn't it?

A. Yes, sir.

Q. Your relations with this woman always just as pure as anything could be?

A. Yes, sir.

Q. Never anything wrong?

A. No, sir.

Q. And you were going to tell her something nice?

A. Yes, sir.

Q. You can't remember what you were going to tell her?

A. No, sir.

Q. Did you tell her something nice?

A. Couldn't tell you that.

Q. Don't remember?

A. No, sir.

Q. Now you say "Dear, your letter just came and was sure nice"—what did she say to you that made you think it was a nice letter?

A. Couldn't tell you?

Q. Don't remember?

A. No, sir.

Q. You say also "And, dear, will try and make it a long day." Did you make it a long day?

A. I couldn't say that.

Q. But that was your object anyhow, wasn't it, to make it a long day?

A. Looks that way.

Q. I show you four sheets, they your handwriting?

A. Yes, sir.

(Letter marked D8 for identification.)

Q. Now this starts off "Sweetheart. This is Sunday. What a wonderful day Friday was and to think that we had lunch together." Where did you have lunch together?

A. I couldn't tell you.

Q. Was Mr. Tomlinson along?

A. I couldn't say that.

Q. Was your wife along?

A. No, sir.

Q. What in the world were you doing taking this married woman out to lunch, not having your wife and not having her husband with you?

A. Her husband was with us a lot of times.

Q. You just said on this occasion he wasn't?

A. I didn't.

Q. Was he?

A. I don't remember.
Q. And then you say also "and I love you, dear." As a matter of fact you did, didn't you?
A. No, sir.
Q. Didn't love her?
A. I didn't love her dear.
Q. Are you in the habit of lieing when you write people letters?
A. No, not lieing, no.
Q. And you didn't think that was lieing to her?
A. It might have been.
Q. Telling her that you loved her when you didn't?
A. You say "dear." It is probably a way you have putting it.
Q. Is that the way you talk to your wife?
A. No, sir.
Q. Always call her "dear?"
A. No, sir.
Q. Why didn't you call her "dear" once in a while?
A. I never got it from her.
Q. Why didn't you sign your name to these?
A. Sir?

(Question repeated.)

A. I don't know that.
Q. Are you in the habit of writing letters and not signing your name?
A. Not always.
Q. Did you ever do it?
A. Yes, sir.
Q. Why?
A. I couldn't say why.
Q. Well, did you think it was likely, the reason you didn't want to sign these, you were afraid this

woman's husband might see them and he wouldn't know who they were coming from?
A. What say?

(Question repeated.)

A. Never thought anything about him seeing them.
Q. I ask you again, will you please tell us why you didn't sign your name to these letters?
A. It wasn't customary because she knew who they came from.

By Mr. Charlton:

Q. Mr. Johnson, at the time you went to New York in the automobile with Mrs. Tomlinson and the daughter who did you go to meet?
A. Mr. Tomlinson.
Q. Did you meet him?
A. We did.
Q. Drive him back home?
A. We did.
Q. All of you in the car?
A. Yes, sir.
Q. Did you—were you friendly with Mr. Tomlinson?
A. I was.
Q. Went about with him and his wife?
A. I did.
Q. Often?
A. Yes, sir.
Q. He came down here to Atlantic City with her?
A. Yes, sir.
Q. And you have been out with them here?
A. Yes, sir.
Q. How long have you known these people?

A. Known Mrs. Tomlinson all my life. I have known Mr. Tomlinson for a number of years.

Q. About how many years?

A. I guess twenty-five years, something like that.

Q. You and Mrs. Tomlinson been friendly since you were children?

A. Yes, sir.

Q. And that friendship continued all through the years?

A. The family.

Q. Continued from the early years of your marriage?

A. It did.

Q. Down to the present day?

A. Yes, sir.

Q. Mr. Johnson, these letters, were they written after your wife had withdrawn from your society?

A. Yes, sir.

Q. Were you lonely?

A. Yes, sir.

Q. And a great deal of Mr. and Mrs. Tomlinson's company?

A. Sure.

Q. And you wrote these letters?

A. Yes, sir.

Q. After she had withdrawn from your society?

A. Yes, sir.

Q. The notes that Mr. Cole has shown dealing with the fire and the car in the garage, were simply notes that you left on the table in the house, were they?

A. Just the same as I received, if she was going away she didn't see me, she would tell me.

Q. Leave a note for you?

A. Yes, sir.

Q. Of course, you destroyed those?

A. Sure.

Q. She saved these?

A. Yes.

Q. Mr. Johnson, was there ever any intimacy between you and Mrs. Tomlinson?

A. There was not.

Q. Did you have anything to do with her leaving her husband?

A. I did not.

Q. She left him voluntarily?

A. She did so far as I know. I didn't know anything about it.

Q. Did you know she was leaving him?

A. I did not.

Q. When you wrote these letters you were lonely?

A. Yes, sir.

Q. Mr. and Mrs. Tomlinson friendly with you?

A. Yes, sir.

By Mr. Cole:

Q. Did you give her a Masonic trowel?

A. I did not.

Q. Now think a moment?

A. Gave her mine, yes.

Mr. Cole: Let's see that, Mr. Tomlinson.

Q. You gave her that, didn't you?

A. Yes, sir.

(Masonic trowel offered, received in evidence and marked Exhibit D9 for identification.)

Mr. Charlton: I can't see the significance of it.

Q. You had been a very close friend of Mr. Tomlinson, hadn't you?

A. Yes, sir.
Q. And while as a very close friend of him you were writing his wife these letters, weren't you?
A. Yes, sir.
Q. And you knew that she had left him in Philadelphia, didn't you?
A. When?
Q. When she did leave him?
A. No.
Q. She came to you, didn't she?
A. She was to meet her cousin and myself and we was to drive to Philadelphia.
Q. How long has it been since you knew she and he were not living together?
A. December, 1924, that is when she came.
Q. And she has been in this garage over you for how long?
A. I think it was in March.
Q. Did you tell her to go back to her husband?
A. Yes, sir.
Q. When did you tell her that?
A. After she was here two or three days.
Q. And she wouldn't go back?
A. She was supposed to see him here.

By Mr. Charlton:

Q. When did she actually leave her husband?
A. Only thing I know was on this December twenty-fourth.
Q. 1926?
A. Yes, sir.
Q. Just last December?
A. Yes, sir.
Q. Did she have any money when she came here?
A. None to amount to anything that I know of.

Q. She was broke?
A. Yes, sir.

By Mr. Cole:

Q. She tell you she was broke?
A. What?
Q. She tell you she was broke?
A. She has not only told me, she has told a lot of people.
Q. And you have helped her, haven't you?
A. Sure, I helped her.
Q. What?
A. Sure, I helped her.

RENA BRUYNS, sworn.

Direct examination.

By Mr. Charlton:

Q. Mrs. Bruyns, you know Mr. and Mrs. Johnson?
A. Yes.
Q. Did you work in the household for them?
A. Yes.
Q. Where?
A. 4905 Ventnor Avenue.
Q. Ventnor Avenue?
A. Yes.
Q. How many years did you work for them?
A. About a year and a half.
Q. Do you know when it was?
A. Why it must have been about 1922, I guess.
Q. 1922?

A. Yes.
Q. Did you sleep in the house?
A. Yes.
Q. Lived right in the house?
A. Yes.
Q. Mr. and Mrs. Johnson have the same bed room, to your knowledge?
A. No.
Q. Did they eat their meals together?
A. Sometimes.
Q. Did they talk much to each other?
A. Very little.
Q. Did you ever see them go out together?
A. When I first went there they did.
Q. When you first went there they did?
A. Yes.
Q. And afterward not?
A. No.
Q. Did they have any friends that they went around with together?
A. Not that I know of.
Q. They simply lived in the house together, is that all just in the house?
A. Yes.
Q. Ever see any affection between them? Ever see them kiss each other?
A. No.
Q. Embrace each other, anything of that sort?
A. No.
Q. Never in the year and a half you were there?
A. No.

Cross-examination.

By Mr. Cole:

Q. Did that surprise you?
A. What say?
Q. Did that surprise you?

A. I don't know. What do you mean?
Q. Don't know whether it surprised you or not? You mean you didn't see them kiss one another or hug one another?
A. No.
Q. I say were you surprised at that?
A. That didn't mean anything to me, I was just working there.
Q. Didn't surprise you at all?
A. No.
Q. Did they quarrel?
A. I never gave my thoughts to it.
Q. Did they quarrel?
A. I don't know. I never heard them quarrel.
Q. Never heard any cross words passed?
A. Not that I know of.
Q. They neither quarrelled nor loved one another, apparently?
A. What?
Q. You say they neither quarrelled with one another nor loved one another?
A. No.
Q. Neither?
A. No.

Recess taken to 1:15 P. M.

AFTERNOON SESSION.

Trial of the cause resumed at 1:15 P. M.

PETITIONER RESTS.

DEFENDANT'S TESTIMONY.

Mr. Cole: I want to offer in evidence the writings which have been marked for identification, both on petitioner's case and also on the cross-petition.

Mr. Charlton: If the Court please, I am going to object to them unless some evidence now or will be offered to show the dates. I think the dates are very important. If Mr. Cole will say that he will produce evidence of dates of these writings, then I have no objection. If he can't, then I object to them.

Mr. Cole: I can't say for I don't know. They are undated.

The Court: I will permit them subject to your objection.

(Papers previously marked for identification, received and marked Exhibit D1 to 8 inclusive.)

JOHN L. TOMLINSON, sworn.

Direct examination.

By Mr. Cole:

Q. Are you the husband of Mrs. Myra Tomlinson about whom we have talked this morning?
A. Yes, sir.
Q. I show you this Masonic trowel marked D-9 for identification and ask you have you ever seen that before?
A. Not until the latter part of last week.
Q. Where did you get it?
A. In our bureau in our bedroom.
Q. Where, Philadelphia?
A. Yes, Philadelphia.
Q. Your home?
A. In my home, yes.
Q. Do you know how it got there?
A. No, sir, never saw it before.
Q. I show you two letters, one marked Exhibit D-7 and the other Exhibit D-8 and ask you whether you have seen those before?
A. Yes, sir.
Q. Where did you get them?
A. They came out of the bureau drawer in my house.
Q. Who used the bureau?
A. Well, both my wife and I used it.
Q. Were they covered up?
A. Under some of her clothing, underwear.
Q. When was it you found them?
A. About the middle of January.
Q. Of this year?

A. Yes, sir.
Q. After you found them, what did you do with them?
A. Turned them over to you.
Q. Did you know that Mr. Johnson was writing your wife these letters?
A. No, sir.
Q. Did you know that she was writing to him?
A. No, sir.
Q. Had you been friends?
A. Yes, apparently. At least I thought very dear friends of the Johnson family.
Q. He visit your home?
A. Yes, frequently.
Q. Are you and your wife living together?
A. No, sir.
Q. When did you cease living together?
A. On the morning of the twenty-fourth of December she left home, some time after I left to go to business.
Q. She ever return?
A. No, came to Philadelphia once and telephoned me and wanted me to stop suit against Al Johnson and if I didn't she was going to make me suffer. I invited her home to lunch that day, to take lunch at home and she wouldn't do it.

Mr. Charlton: If your Honor please, I think that is hearsay.

The Court: Yes.

Q. Did you learn after she left where she had gone?
A. From her mother.
Q. Her mother's name is what?

A. Warren.
Q. She live with you?
A. Yes, sir.
Q. Is her mother still living with you?
A. Yes, sir.
Q. I notice an envelope here addressed to Mrs. Warren, did you hand me that envelope too?
A. No, sir, I didn't see that.
Q. Did you learn where in Atlantic City she had gone to live?
A. I understood she was living on St. James Place.

Cross-examination.

By Mr. Charlton:

Q. Mr. Tomlinson, you found the two letters 7 and 8 in the bureau drawer commonly used by you and your wife?
A. No, in the drawer which she used.
Q. But you and she both used the same bureau?
A. Same bureau, yes, sir.
Q. And these letters were lying in the drawer?
A. Yes, sir.
Q. In envelopes, were they?
A. No, sir.
Q. Your wife left after you left in the morning of the twenty-fourth of December?
A. Yes, sir.
Q. She take her clothing with her?
A. Very little.
Q. Very little?
A. Yes.
Q. Do you remember an occasion when your wife and daughter and Mr. Johnson came over to New

York and met you when you were returning from a convention?

A. I do, yes.

Q. And you drove back with them from New York to Philadelphia?

A. Yes.

Q. All friendly?

A. At that time.

By Mr. Cole:

Q. When was that?

A. I believe that was January nineteen—let's see, I was south in 1926, I think it was. I am not sure whether it was 1925 or 1926, it was in January, anyhow.

Q. At that time had you any reason to suspect there was anything improper between your wife and Mr. Johnson?

A. No, sir, I thought Mr. Johnson was a very dear friend of mine at that time.

Q. Did there come a time when you did have cause to suspect as you thought?

A. Yes, sir, it was about the second Sunday prior to when she left.

Q. What was the circumstance?

A. She had a very dear aunt who was very sick and she told her mother that she would like her to come home for dinner early on this particular Sunday as she was going out. I presumed that she was going down ——

Q. Never mind what you thought, tell us what happened?

A. Well, she didn't come home for supper and I walked out, after supper, and happened to go up to North Philadelphia station, no particular reason,

and I saw Al up there getting on the bridge train coming down and my suspicions were aroused at that time. I came home and my wife had her hat on and coat off in the house. I accused her of seeing Al and said she was out with him. For a while she denied it ——

Mr. Charlton: If your Honor please, it is immaterial and hearsay.

Mr. Cole: I suppose we can't charge that up against him.

Q. At all events you did say something about it?

A. Leading up to how she came to tell me something about it.

Q. You can't tell it because Mr. Johnson wasn't there. But you did see him at the North Philadelphia station?

A. Yes, sir.

Q. Did he get on the train?

A. Yes, sir.

Q. What train?

A. On the train leaves there a little before eight.

Q. And where was he going?

A. Atlantic City.

Q. Was your wife at home when you left?

A. No, she hadn't gotten home.

Q. Was your wife there when you got back after seeing Mr. Johnson?

A. Yes, sir.

By Mr. Charlton:

Q. See your wife with Mr. Johnson?

A. No, sir.

Q. He was alone?
A. He was alone.
Q. Taking a train?
A. Yes, sir, but she admitted that she was there ——

Mr. Charlton: I ask that be stricken.

Mr. Cole: Don't want that.

MRS. MARTHA A. JOHNSON, sworn.

Direct examination.

By Mr. Cole:

Q. You are the defendant in this case brought by your husband, are you?
A. Yes, sir.
Q. Now he charges that a time came when you refused to sustain the marital relation with him and I ask whether that is true, did you?
A. There was a time that that took place, yes.
Q. Did you discuss with him the reason for it?
A. I did.
Q. Now you tell the Court, please, in your own way the circumstances which finally ended in your refusing to sustain the marital relation?
A. There was one evening after dinner, that twenty-third day of February, 1920, we had dinner and were ready to go out when the telephone rang and he and I were both at the door going out and I answered the phone and then was the first that I learned of his unfaithfulness to me.

Mr. Charlton: I ask that be striken.

The Court: Yes.

Q. What did you learn?
A. I was told of his relationship ——

Mr. Charlton: That is hearsay.

The Court: How can that be admissible, Judge Cole?

Mr. Cole: I am trying to find out. Maybe he told her, I don't know.

Mr. Charlton: Oh, no, she says it was told on the telephone.

Q. You say you were together in the house, is that correct?
A. That is correct.
Q. When the telephone rang?
A. Yes, sir.
Q. Did anybody answer the telephone?
A. I did.
Q. Did you talk with anybody?
A. I did.
Q. With whom did you talk?
A. With a gentleman.
Q. Who was it?
A. I don't know.
Q. Didn't he tell you who it was?
A. No.
Q. After talking with this gentleman did you talk with Mr. Johnson?
A. I did.

Q. What occurred between you?

A. He asked me what the conversation was about and I told him. He stood there ——

Q. What did you tell him, Mrs. Johnson?

A. I told him what the conversation was, that the party that had called me told me of his relationship with Mrs. Tomlinson and he, I asked him if he knew her, he said he did, and I asked him if it was true of his going around with her and he denied it and later on admitted it to me.

Mr. Charlton: I think that ought to be fixed.

Mr. Cole: Strike that for the moment. We will take this a step at a time.

Q. On that occasion he denied it, did he?

A. Yes, he denied it.

Q. At that time did you know Mrs. Tomlinson?

A. I—no, I truthfully couldn't say I knew her.

Q. Had she visited your home at that time?

A. Never in my home.

Q. Had you ever met her in her home in Philadelphia?

A. Never.

Q. Had you ever met her in company with anybody?

A. No.

Q. All right, now then that occasion. Is that all the talk you had at that time? Did you say anything to him after he had made this denial?

A. I told him that it was up to him to prove to me that it wasn't true. He said he could and would.

Q. Did he ever?

A. No.

Q. All right, now did anything happen after that?

A. In what way, Judge?

Q. Oh, between your husband and you concerning Mrs. Tomlinson?

A. Certainly, we talked it over.

Q. Won't you please tell us all the conversation you had with your husband and when you had it?

A. We had it right then. I was taken very ill and Dr. Woolbert was called in and asked him what was the cause of my illness, that he could tell I had received a terrible shock. He said he didn't know the cause of my illness, and I was very ill for three months. Well, at that time is when he admitted to me that it was true.

Q. You mean on this very day of the telephone conversation?

A. No, while I was still ill in bed.

Q. What did he say to you?

A. He said that he was sorry for what he had done and that if I would overlook it and forgive him he would never do such a thing again, that he would positively have nothing to do with her, and I believed him and I kept on living with him.

Q. All right, now did anything occur after that?

A. Yes.

Q. Tell us the next thing that happened?

A. The next thing that I knew that he was still going with her positively was the sixth day of September, 1921, when I walked in the office and he was writing a letter. He denied writing the letter. He said he was making out a bill. I asked him to show me the bill. He couldn't show me any bill because he was writing the letter. I walked over to the desk and I got part of the letter and he got part of the leter—that night ——

Q. Is this the letter marked Exhibit D-6?

A. That is the letter.

Q. Now the letter is torn, how did that happen?

A. He didn't want me to have it. He didn't want me to see it.

Q. How did it come to be torn?

A. When I went to pick it up he went to get it too and it was tore and he had part of it and I had part of it.

Q. How did you get all of it? All that is there I mean?

A. Well, we went home to dinner and I knew I didn't have all of it and I went back to the office and got the rest of it.

Q. Where was it?

A. In the scrap basket.

Q. Now did you have any further talk with him about that letter?

A. That night.

Q. Tell us what that was?

A. When he got there I asked him if he would come into my room and we would talk this over and he didn't come in and I went to him again and I asked him if he wouldn't come over and we would talk this over and try to settle it and he came over into my room and I asked him what he had to say for himself and he said "nothing." I said "what do you mean by nothing?" He said "I have nothing to say." I asked him if he was still going with this woman and he said yes. I said "you promised me by all that was holy that you would never have anything to do with her again if I would look over it and forgive you and be a wife to you, which I did." He said "well, I am going with her." I said "well, you will have to make your choice between she and I." I said "do you love this woman?" He said "I do." I said "well, that is all." I said "from now on I don't want you to touch my body at all,

if you are running around with other women, you positively cannot come home to me."

Q. And what did he say to that, if anything?

A. He said "all right" made his hands go like that and he said "all right."

Q. Now did you have any other talk with him about this woman after that?

A. Not for—well, not for a long time.

Q. Well, did you?

A. I never said anything to him, twitted him about it in any way for I thought the thing would never end if I did, and through his mother telling me to try to overlook it ——

Mr. Charlton: Ask that be striken out.

Q. Don't tell us that. You said not for a long time after that. Did you have any other talk with him? Now did you have some other talk with him no matter when it was?

A. I did.

Q. Now, when was that, about?

A. That was on the nineteenth of January, 1926.

Q. What was the occasion of the talk at that time?

A. On Monday morning, January eighteenth, I went down stairs and found the note that he would be away ——

Q. Where were you then living?

A. 4509 Ventnor Avenue.

Q. All right, you went down stairs; proceed.

A. And I saw the note lying on the table he would be away for four or five days.

Q. Is this the note marked Exhibit D4?

A. That is the note.

Q. Now proceed.

A. I believe that he was away because he said he

was going away. I was terribly afraid to be in the house alone and I didn't leave the house that day or that evening and the next day my sister called me and asked me to come up for lunch and we would go for a matinee. I told her I wouldn't be up for lunch but I would be up in time to go to the matinee, that she would be ready a little early, that I could take the car to the garage and have it washed while we were at the matinee and as I passed Ohio Avenue going up to my sister's, it was just a natural thing to look down Ohio Avenue, and I saw his car standing there and I thought if he was away who was using his car.

Mr. Charlton: I ask that be stricken.

Mr. Cole: Oh, strike that.

Q. You said on Ohio Avenue, was that at the garage?

A. At the garage.

Q. His garage?

A. His garage.

Q. That you saw his car?

A. His car.

Q. All right, proceed.

A. So I went down and got out of my car, after I got my sister, and I drove back Ohio Avenue. I got out of the car to walk in the office to ask the man to open the big door to let me drive the car in there and Mrs. Tomlinson was standing there tieing up a lot of my husband's clothes to go away on a trip with him and I walked over into the garage and asked the man for Mr. Johnson and he said he wasn't there. I went back in the garage and I stood down in the garage to wait for him to come back because I knew who she was and I saw what

she was doing. She finished tieing up the package and started to go in the garage and I walked over to her and I said "pardon me, but do you know"——

Mr. Charlton: I ask that be stricken.

Q. Was he there?

A. Not right then.

Q. He don't want you to tell the conversation you had with Mrs. Tomlinson, so just forget that a moment. Did you afterwards see your husband?

A. While I was talking to her he came in the garage and he told me right there in her presence that he loved her and she said "Al, you shouldn't have said that." He said "why shouldn't I have?" "Because you shouldn't have said that. You shouldn't have said in front of her that you loved me." He said "I do." She said "I am not going to go away now." He said "yes, you are, Myra, I won't go away without you," so I told her to leave the place. I asked her what right she had tieing up my husband's clothes. I asked her why didn't she tie up her own husband's clothes and go away with him.

Q. Did you know she was married?

A. I did.

Q. What did she say?

A. She said I would have to account to her husband for what I was saying to her. I said I wanted her to stop going around with my husband.

Q. He was there, your husband, at the time?

A. He was.

Q. What finally happened, what did they do?

A. I told her to leave there, she wouldn't leave and I put her out.

Q. You say she wouldn't leave?

A. No.

Q. How did you put her out?

A. Got hold of her and put her out.

Q. What happened to your husband?

A. After she left she called up and wanted to know if I was there. I was there near enough to the telephone to hear and he said "yes."

Q. Who talked with her?

A. He did.

Q. What did he say?

A. She asked him if I was there and he said yes I was there, so when he hung up the receiver why I asked him what he had to say for himself, he said nothing, he said "I am ashamed of you." I said "well, you should never be ashamed of me, what I have been to you. You never should be ashamed of me." He meant he was ashamed of me because I had talked to her the way I had.

Q. What became of his clothes that she had tied up?

A. I don't know what they done with them. I never saw them. He kept very few of his clothes at my home. His clothes were out somewhere else, even when we were man and wife.

Q. Well, did he come home after that?

A. No.

Q. Never after that?

A. No, not to live.

Q. That is what I mean?

A. He came down one evening and I had gone up to the garage and I asked him what he intended to do about it, and he said "I am not going to do anything." Well, I said, "I think the best thing for us to do is get together and have this over," and I said "settle it in the right way. There isn't but one way to do a thing," and I said "Al, you know

the right way is the only way." He said "well, I will be down." He came down and we talked it over and he asked me what I wanted. I told him I wanted enough to live off of, I thought he owed me that for the years of my life that he had taken up. We came to no agreement whatsoever and he went out. That is the last he was ever in the house.

Q. And that was when?

A. Well, that must have been, it was the nineteenth of January that I was talking to him in the garage when Mrs. Tomlinson was there with him.

Q. Nineteenth of January what year?

A. 1926, and it must have been along in February that same year.

Q. Now before that time that you saw her in the garage had you ever seen her and your husband together?

A. Yes, indeed, many times.

Q. Where?

A. On the boardwalk, in the machine, in the theatre, many times.

Q. Running through how long a period?

A. Well, that went on from, to my knowledge, from the twenty-third day of February, 1920, on up until January the nineteenth, 1926.

Q. Now when you saw them together in these various places was anyone else with them?

A. No.

Q. Was Mr. Tomlinson with them?

A. Never.

Q. Anybody other than those two together?

A. No.

Q. Where did you see them in an automobile?

A. At the foot of the different avenues, on the avenue.

Q. When the car was moving?

A. Not always.

Q. Now during that period that you are speaking of now when you saw them together do you know where she was living?

A. No.

Q. Had you ever met Mr. Tomlinson up to that time?

A. No, sir, never.

Q. Did you know that letters were passing between your husband and Mrs. Tomlinson?

A. No, sir, not until I got that one in the office. I knew nothing about these other letters.

Q. Now after he began this proceeding against you for divorce did you undertake to find out whether he was living with her?

A. I did.

Q. Did you do anything yourself personally?

A. I did.

Q. Now will you tell the Vice Chancellor what you did starting back as far as you can remember up until you quit, just what you did and what you saw?

A. Well, I was first informed that they were ——

Mr. Charlton: I ask that be stricken.

The Court: Yes.

Q. You can't tell what you were informed. You can only tell what you saw with your own eyes?

A. Well, I saw them going in and out of the house. There was nobody in the house at that time early, in the early part of the year, but their two selves, I saw them going in and I seen them coming out.

Q. Now to make that clear, you saw them going in what house?

A. Ohio Avenue house over the garage.

Q. Anybody with you when you saw them?

A. Yes.

Q. Who?

A. Mr. Foster.

Q. Anyone else?

A. No.

Q. Now when was it, fixing as near as you can, the time when you first saw them go upstairs over this garage?

Mr. Charlton: I ask that be stricken. She hasn't said yet she saw them going upstairs.

A. Yes, I did say so. I beg pardon, I did say I saw them go in the house.

Mr. Charlton: Move it be stricken.

The Court: Yes, it will be stricken.

Q. Don't have any controversy with the lawyer because you will get the worst of that. We will get it all out finally. Did you see your husband and Mrs. Tomlinson go upstairs over this garage?

A. Yes, sir, I did.

Q. About when was the first time you saw that?

A. Sometime during March.

Q. This year?

A. This year.

Q. Was it night or day?

A. Day and night.

Q. What time of night?

A. Around ten o'clock at night.

Q. How long did you stay there at night when you saw them go up?

A. I was there one night until two o'clock in the morning.

Q. Did he come out?
A. No, sir.
Q. Did she come out?
A. No, sir.
Q. When was that?
A. Last April.
Q. Did you see—did you ever see, while you were there looking, anybody go up over that garage other than your husband and Mrs. Tomlinson?
A. No, sir.
Q. Did you ever see anybody else come out?
A. No, sir.
Q. Now go into details about this night you saw them going in at ten o'clock. Where were you? How did you come to be there? Just explain that?
A. I went down there to see, he told me that—I had been told so many things that weren't true, and I wanted to know for myself if they were true.
Q. Where were you? Where did you stand?
A. Ohio Avenue.
Q. Did you walk or go in an automobile?
A. Sometimes I walked and sometimes I was in a machine.
Q. This particular night when you say he went in at ten?
A. I was in a machine.
Q. In the machine?
A. Yes.
Q. Where was your machine?
A. Ohio Avenue.
Q. Where did they come from just before they went upstairs?
A. Got out of the machine, out of his car.
Q. Did you recognize his car?
A. Yes, sir.
Q. Had they driven up to the garage?

A. They did.
Q. What became of the car?
A. Left it in the garage?
Q. Did she step out before the car went in or did she step ——
A. No, sir.
Q. Did they both drive in together?
A. Drove in.
Q. Did you see them come out together?
A. I did.
Q. Now did you notice anything about the lights upstairs?
A. There weren't any lights.
Q. When they went up?
A. No, sir.
Q. Was there any at any time while they were up there so far as you saw?
A. There was right after they got up there.
Q. What part of the house did you see the lights?
A. In the room right next to the porch which would be their first living floor.
Q. How long after they started upstairs before you saw the light?
A. The light go out you mean?
Q. No, went on.
A. Oh, went on almost immediately.
Q. How long was it after that before it went out?
A. I should say about three-quarters of an hour.
Q. Now during that period between ten o'clock at night and after one in the morning did you see anybody other than those two go up or come out?
A. No, sir.
Q. Now were you there on any other occasion?
A. Was I?
Q. Yes.
A. Yes, sir.

Q. When was that?
A. Well, right along during that time.
Q. How many times do you think you were there?
A. That I went there purposely?
Q. Yes.
A. Half a dozen times, I guess.
Q. You say purposely, were there some times when you weren't there purposely?
A. No, I went there purposely, Judge, because he said what I was told wasn't true, and I wanted to find out for myself if it was true, and that is why I went down there. I went purposely.
Q. Did you ever see Mrs. Tomlinson in the garage at any other time than the time you have stated about she was tieing his clothes up?
A. Only when he would drive in there with her or she would go in to get in the car and they would come out and drive away together.
Q. Anybody ever drive out that night?
A. No, sir.
Q. You arrived about ten o'clock?
A. No, I think I was there about nine o'clock.
Q. Now was there any other occasion at night when you saw them go upstairs?
A. Yes, sir, I did.
Q. Was that before or after this time?
A. After.
Q. How long after?
A. Right after, probably, the latter part of that same week or the next week.
Q. Was this still while Mr. Foster was working for you?
A. Yes, sir.
Q. Did you see them go upstairs that night?
A. Yes, sir.
Q. What is your recollection as to the time?

A. That night was before ten o'clock that they went upstairs.
Q. Did he come out while you were there?
A. Yes, he came down. He had an overcoat on and when he went upstairs, after he came down, he didn't have an overcoat on. He stayed around the garage a while and went back upstairs again and he stayed up there a while and while he was there, we walked over on the porch and he was walking around up there without a coat on at all then.
Q. Did he come out?
A. No, sir.
Q. Was she up there?
A. She was.
Q. How do you know?
A. Saw her.
Q. You mean you saw her up there or saw her go up?
A. I saw her go up and I saw her up there.
Q. How could you see her up there?
A. Through the window from the porch.
Q. Anybody else go up other than them during that period?
A. No, sir.

Cross-examination.

By Mr. Charlton:

Q. Mrs. Johnson, when did you stop caring for your husband?
A. I never stopped caring for him.
Q. Still care for him?
A. Is it necessary for me to answer that?

Mr. Cole: You answer the question, Mrs. Johnson, truthfully, that is all we want to know.

A. I can't care for a man that would do to me what he done to me.

Q. When did you stop caring for him?

A. September the sixth, 1921.

Q. You haven't cared anything for your husband then for over six years?

A. Not like I did before.

Q. Well, did you care anything about him since then?

A. Yes.

Q. Since then you have cared something about him?

A. Some, yes, I was interested in him.

Q. Not much?

A. What did you say?

Q. Not much?

A. Yes, I realized what a mistake he was making and I was caring to that extent.

Q. Since September sixth, 1921, you haven't been his wife, have you?

A. No, because he told me he loved this other woman.

Q. Yes or no, you haven't have you?

A. Have I been a wife to him?

Q. Yes.

A. No.

Q. Have you ever kissed him since then?

A. No.

Q. Has he ever embraced you?

A. No.

Q. You haven't even slept in the same bed with him, have you?

A. We haven't slept in the same bedroom for fifteen years.

Q. For fifteen years?

A. My doctor ordered me to sleep alone.

Q. But you have had nothing to do with him as a wife since September sixth, 1921?

A. No, sir.

Q. Now I understand he has supported you, hasn't he?

A. Yes, sir.

Q. Bought your clothes?

A. Some.

Q. Paid for your food?

A. Yes.

Q. Given you an automobile?

A. I have partly paid for it myself.

Q. Where did you get the money?

A. From renting the house.

Q. From the house?

A. Yes.

Q. The money he gave you to run the house with, wasn't it?

A. No.

Mr. Cole: I think this is irrelevant. It is not cross-examination.

Q. Since September sixth, 1921, have you and your husband gone about socially together?

A. Since September sixth, 1921?

Q. Yes.

A. No, he didn't take me anywhere.

Q. Have you asked him to take you any place?

A. No, because he didn't ask me.

Q. You didn't care to go with him, did you?

A. I wasn't asked.

Q. If you had been would you have gone?

A. I may.

Q. Did you ask him to take you any place?

A. No.

Q. Have you had any mutual friends since then that you called on together?

A. He and I?

Q. Yes?

A. He wouldn't meet them. If he came in the house and I had company he would simply walk upstairs and just ignore them entirely.

Q. You have lived practically apart ever since September sixth, 1921, haven't you?

A. No, I wouldn't say so.

Q. Although you have been under the same roof?

A. We have been under the same roof, yes.

Q. Other than that your lives have been apart?

A. We haven't been as man and wife.

Q. You haven't even had the same friends, have you?

A. I have my friends.

Q. And he has his?

A. I don't know what he has.

Q. But you had your friends that weren't his friends?

A. They were his friends at one time.

Q. He didn't go out with them socially, did he?

A. He certainly did go out with them, we went a lot and entertained a lot.

Q. After September sixth, 1921?

A. A few times, yes.

Q. In all those years? How many times have you seen your husband with Mrs. Tomlinson?

A. A number of times.

Q. How many?

A. I couldn't tell you truthfully how many.

Q. How many do you think?

A. I know it has been a good many times.

Q. Give us the number?

A. I couldn't do that truthfully.

Q. Five times?

A. More than that.

Q. Fifteen?

A. I couldn't tell you truthfully how many times I have seen them together.

Q. More than fifteen times?

A. I can't tell you.

Q. Not fifteen then?

A. I wouldn't say not fifteen, I can't tell you truthfully how many times.

Q. In six years? Did you ever see them stopped in an automobile anywhere?

A. I did.

Q. How far were you away?

A. Not very far, right at the door.

Q. Why didn't you go over to them?

A. I did go over.

Q. When they were stopped in an automobile?

A. I did.

Q. When was this?

A. At Ohio Avenue and the beach.

Q. Ohio and the beach?

A. Yes.

Q. When was that?

A. I couldn't tell you the date.

Q. Before or after the incident at the garage when you chased her out?

A. After.

Q. What did you see on that occasion?

A. I asked him what he was doing there, it was on a Sunday—and he said "nothing."

Q. Sunday afternoon?

A. Yes.

Q. Daylight?

A. I asked him why he wasn't attending to business and he said he didn't know.

Q. That was all the conversation?
A. No, there was other parts of the conversation but nothing that I remember particularly.
Q. Any other time you ever saw them stopped in an automobile?
A. Yes, on the avenue, I seen them in the machine.
Q. Moving along?
A. Not always, no.
Q. Ever see them parked?
A. I don't know what you call parking.
Q. The car stopped at the curb?
A. Yes.
Q. Did you go over on that occasion?
A. No.
Q. How many times did you see that happen?
A. Several times.
Q. But you didn't go over on those occasions?
A. No. What was the use?
Q. Were they before or after the garage incident?
A. After.
Q. Mrs. Johnson, the house on Ohio Avenue, how many ways can you get in and out of that?
A. One.
Q. One?
A. One.
Q. Can't you get in and out the back way?
A. I don't know.
Q. Don't know? Ever been in the house?
A. I have.
Q. How many times?
A. Several.
Q. Don't you know there is a back way out of it?
A. Not to my knowledge.
Q. Is there a back way out of the garage?
A. There is.

Q. Is there any other way to get down from the house into the garage than by the outside steps?
A. Not to my knowledge.
Q. If there was you didn't know about it?
A. No.
Q. Now did you go into the house when your husband was there with Mrs. Tomlinson?
A. No.
Q. Had detectives with you, didn't you?
A. I didn't care to go in the house.
Q. You didn't go in?
A. No.
Q. Didn't care to go in?
A. No.
Q. You saw him there with her several times?
A. I did.
Q. Where does your husband live?
A. Truthfully he lives at the house and garage on Ohio Avenue, at the garage.
Q. Do you know that?
A. I have been informed so, told so.
Q. Where does he ostensibly live?
A. There.
Q. Where?
A. There at Ohio Avenue.
Q. Where does he claim to live?
A. Well, he claims, I heard him testify this morning that he lived with his mother.
Q. Don't you know that he lives with his mother?
A. Not positively.
Q. Never knew that?
A. No.
Q. Do you know that he lived with his mother last year?
A. I know when he left me he went up there and was there a while.

Q. Did you know he lived there with his mother?
A. Not regularly he hasn't.
Q. He hasn't?
A. No.
Q. You don't know he lives with her now?
A. I don't know where he lives now.
Q. Yes?
A. Did you say I don't know where?
Q. Do you know where he lives now?
A. He lives at Ohio Avenue.
Q. Ohio Avenue?
A. Yes.
Q. When was the last time you saw him there?
A. That I saw him at Ohio Avenue? Sometime during July.
Q. During July?
A. Yes.
Q. And yet you want to tell the Court that he lives at Ohio Avenue and you haven't seen him there since July?
A. I haven't put myself out to go to see him there.
Q. Do you still want the Court to believe that he lives at Ohio Avenue?
A. Yes.
Q. But you haven't seen him there since July?
A. There is where he lived for many months.
Q. Now, Mrs. Johnson, after you and your husband separated, he left the house, he still continued to support you, didn't he?
A. Yes.

Mr. Cole: I object to all this. This isn't relevant in this matter.

Mr. Charlton: I think it is pertinent showing her frame of mind, the truth.

The Court: Sustain the objection.

Q. You brought a proceeding in this court against your husband for support?
A. I did.
Q. Did you bring that in June, 1926?
A. I don't recall the date.
Q. When did you and your husband last live in Ventnor Avenue?
A. On the eighteenth of January, 1926 when he left the house.
Q. January, 1926 and if you brought this proceeding in June, 1926 that would be correct, would it?
A. Yes.
Q. Within five months of the time that he left?
A. Yes.
Q. What made you think your husband was writing a letter when you went in the garage?
A. I didn't.
Q. Just came in by accident?
A. I did. I mean I didn't have—so I looked wrong at my watch. I had been going around there after him at 5:30 in the afternoon and I walked into the garage and as I passed the window I could see he was writing. When I stepped in and I said "hello" he jumped up from the desk and looked so suspicious looking I know he was doing something he shouldn't do.
Q. He looked suspicious looking?
A. He surely did.
Q. You were suspicious of him, were you not?
A. No, I wasn't because I believed him when he said he would have nothing more to do with her.
Q. You believed an anonymous telephone call?
A. No, proved to be true, he admitted to me it was true.

Q. At the time you received that anonymous telephone call you believed it?

A. I asked him about it.

Q. Did you believe it?

A. And he said it wasn't true, he would prove it wasn't true.

Q. You insisted your husband prove the falsity of an anonymous telephone call?

A. I had a right to do that.

Q. You say you were not suspicious of him?

A. Positively not.

Q. How did you want him to prove it?

A. I wanted him to prove, to bring this woman to me and prove to me that he had nothing to do with her.

Q. You demanded he would do that?

A. I didn't demand it. I asked him to prove it to me.

Q. How did you ask him to prove it?

A. I just said it in just the words I am telling it to you. I said "if there isn't any truth to this you prove it to me."

Q. Did you say if he didn't prove it what you would do?

A. I didn't tell him anything I would do.

Q. Suppose he didn't prove it, what did you intend to do?

Mr. Cole: I object.

The Court: Sustain the objection.

Q. And yet you weren't suspicious of the letter when you went into the garage?

A. I wasn't because he told me he was making out a bill head. I asked him "why don't you finish

writing your letter?" He said "I am not writing a letter." I said "what were you doing?" He said "making out a bill." I said "who are you making the bill to?" He said "to Eldredge Express Company."

Q. Why did you ask him all these questions?

A. Because he looked just exactly what he was doing.

Q. And you were not suspicious?

A. I was not.

Q. And you went in there not suspecting your husband of anything?

A. I did have that from him.

Q. And you became alarmed over this letter?

A. Yes, because he had done away with the letter.

Q. Why were you so curious about what he was doing?

A. Most natural thing.

Q. Most natural thing?

A. Yes.

Q. For your nature?

A. Not for me no, any more than anyone else, and he told me he was making out a bill and I knew he hadn't a bill head.

Q. And you even fought with your husband to get possession of it?

A. There was no fight at all.

Q. Snatched it out of his hands?

A. No, I picked it up and he undertook to get it out of my hand.

Q. You went back to the garage after and got the pieces out of the waste paper basket?

A. I went back and got, wouldn't make any difference whether he was there or not.

Q. And you were not suspicious?

A. Not a thing.

Q. On the strength of the letter you told him you wouldn't live with him again?

A. Not on the strength of the letter.

Q. But you told him that same night that you got the letter you wouldn't live with him again?

A. After he told me that he loved her and was going with her.

Q. You want us to believe he told you he loved this woman?

A. He did.

Q. Did you know who the letter was meant for?

A. Did I know who the letter was meant for? Certainly I did.

Q. How did you know that?

A. Because I knew what her mother's name was.

Q. You knew what?

A. I knew what her mother's name was and it was addressed to her mother.

Q. Then you did know who Mrs. Tomlinson was before?

A. I knew there was a Mrs. Tomlinson but never met her.

Q. How did you know her mother's name?

A. Through Mrs. Johnson.

Q. Mr. Johnson told you?

A. Mr. Johnson's mother.

Q. Mr. Johnson's mother told you?

A. Yes.

Q. Then you had talked with Mrs. Johnson about Mrs. Tomlinson?

A. No, I had met—Mrs. Johnson had told me about Mrs. Tomlinson's mother before Mrs. Tomlinson was married, her name at that time was Robinson.

Q. And that was a good many years before?

A. Yes, it was.

Q. And yet you remember the name all those years of Mrs. Tomlinson's mother?

A. Certainly, I remembered Mrs. Tomlinson's name too.

Q. Did you ever meet her in May's Landing?

A. Never.

Q. Never?

A. Never.

Q. Sure of that?

A. I am sure of it.

Q. And you knew immediately that this letter was intended for Mrs. Tomlinson?

A. I couldn't help but know it.

Q. It was addressed to Mrs. Tomlinson's address, wasn't it?

A. It was to her address.

Q. Addressed to her mother?

A. Yes, but it was the address of where she lived too because she lived with her mother.

Q. What made you think it was to Mrs. Tomlinson?

A. I knew he wouldn't be calling the old lady "sweetheart" and write such a letter as that.

Q. How did you know that?

A. Well, it isn't what anyone would do that had good sense anyway.

Q. That was the reason that you imagined he wrote the letter to Mrs. Tomlinson?

A. I didn't imagine it, I know he wrote it to her and I know now that he had been writing to her.

Q. You are very positive in your beliefs, aren't you?

A. He admitted it.

Q. When did he admit it?

A. That night.

Q. You want us to believe that your husband ad-

mitted that he loved a woman other than you to you?

A. He certainly did.

Q. What did he say?

A. I just told you what he said, that he loved her.

Q. What did you say first that started all that?

A. I asked him what he had to say about it.

Q. About what?

A. About me getting this letter, about him writing her mother, going with her after he had promised me he wouldn't have anything to do with her.

Q. Did you say that you knew he had gone with her?

A. No, I didn't know it.

Q. But you told him you knew it?

A. No, I wouldn't tell him that because I believed him when he told me he wouldn't have anything to do with her in 1920, I believed it and I knew no different until September sixth, 1921.

Q. But when you got the letter you suspected he had been going with her?

A. He admitted it.

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

A. I tell you that he admitted that he had been going with her.

Q. I want what he said. I don't want what you say he said. What did you say and what did he say?

A. I asked him what did he have to say about it. He said "nothing, I have nothing to say." And I said "you promised me that you would have nothing to do with this woman if I would forgive you and forget it," which I did, and we were just the same as man and wife after 1920 on up until the fifth of

September, which was the following day is when I got the letter.

Q. What else did he say and what else did you say after you got the letter?

A. I told him that he would have to choose between her and I, it would be her or I and I asked him if he loved her and he said he did.

Q. You asked your husband if he loved this woman?

A. Yes, I did, I certainly did.

Q. And he said what?

A. He said he did.

Q. He said he did?

A. He said he did.

Q. Told you that?

A. He did.

Q. Was anybody there?

A. Not then, but there was in the garage when he told me, she was there herself when he told me in the garage?

Q. Anybody else beside her?

A. No.

Q. And that was six years later, wasn't it?

A. No, that was 1921 and then, 1926.

Q. Five years later?

A. Yes.

Q. Sure your husband told you he loved this woman?

A. I certainly do.

Q. Now was it then that you told him that you never wanted him to touch you again?

A. I said if he was going around with other women he certainly couldn't come home and be a husband with me.

Q. Other women?

A. Other women.

Q. Other women?
A. Yes.
Q. Were there other women?
A. He has been seen with other women.
Q. Been seen with other women?
A. Yes.
Q. By you?
A. Yes.
Q. Who were they?
A. I don't know.
Q. More than once?
A. Yes.
Q. In Atlantic City?
A. In Atlantic City.
Q. In the daytime or night time?
A. Both.
Q. Were they matters of business, do you know?
A. I don't know.
Q. Any affection between them?
A. I don't know.
Q. But when you said with him if he wanted other woman ——
A. I said if he was going.
Q. Going with other women?
A. And he was going with her.
Q. You had in mind Mrs. Tomlinson and other women in Atlantic City?
A. No other women at that time. I had her in mind.
Q. Why did you say other women?
A. Because I said that.
Q. Did you have anything in mind when you said that?
A. I knew of no other at that time but her.
Q. Hadn't you seen him at that time with these other women?

A. No.
Q. And you hadn't yet but you said other women?
A. Yes.
Q. You didn't mention Mrs. Tomlinson?
A. He knew I meant Mrs. Tomlinson because her name had been mentioned before.
Q. Pardon me; you didn't mention Mrs. Tomlinson?
A. I don't recall if I did right then.
Q. If you did you would know it, wouldn't you?
A. I wouldn't say positively I would.
Q. Weren't you talking about the letter he had written to Mrs. Tomlinson?
A. We had said Mrs. Tomlinson. It was understood who we were talking about.
Q. You said if he wanted other women he couldn't have you?
A. I said he couldn't come home with me, yes.
Q. In the four or five years that he lived with you was there ever a time that you changed your decision not to live with him?
A. I don't know.
Q. You do know, don't you?
A. No.
Q. Did you ever change your mind about refusing your body to him?
A. I don't know as I did.
Q. Your resolution was firmly kept, wasn't it?
A. If he could have proven to me that he wasn't going with Mrs. Tomlinson I would have been to him the same as before, but he never proved it to me. He couldn't because he admitted to me that he had been going with her and I asked him how long it had been going on before I knew it and he told me

——

Q. There is no question.

A. —a year and a half.
Q. Now in the five years that you lived under the same roof with him you never changed your decision to be a wife to him, did you?
A. Not under the circumstances.
Q. Never once?
A. Not under the circumstances.

By Mr. Cole:

Q. Mrs. Johnson, Mr. Charlton had you say, by implication at least that this was an anonymous telephone message you received. Was it anonymous?
A. No. Proved to be true.
Q. No, I don't mean that, but I want to know whether the party who talked with you told you who it was?
A. Told me it was Mrs. Tomlinson, yes.
Q. No, but the one who was talking, did the one who was talking to you tell you who he was?
A. He said he was a friend.
Q. What?
A. He said he was a friend.
Q. Did he give you his name?
A. No.

DR. GARFIELD C. BURROUGHS, sworn.

Direct examination.

By Mr. Cole:

Q. Doctor, do you know Mr. Johnson?
A. I do.
Q. How long have you known him?
A. Possibly five years, between four and five.

Q. Do you know his wife?
A. I do.
Q. How long have you known her?
A. About the same.
Q. Have you ever seen Mr. Johnson in any public place with a woman other than his wife?
A. I have.
Q. And where was it?
A. At the Elks Hall.
Q. Atlantic City?
A. Yes, sir.
Q. When was it?
A. That was either February or March, the second Thursday, a year ago, 1926.
Q. Was his wife there at that time?
A. She was not.
Q. Who was the woman he was with, if you know?
A. I didn't know her at the time. I have seen her since.
Q. Is she in court today?
A. She is.
Q. The one we refer to as Mrs. Tomlinson?
A. Yes, sir.
Q. What were they doing there?
A. They were having their dinner, just at dinner time at night.
Q. There in the public hall?
A. In the public dining room.
Q. Did they dance, do you know?
A. I don't know, sir.
Q. Is that the only time you ever saw them together in public?
A. No, another time later than that I was going to the hospital, waiting at the curb to make a turn from Atlantic into Ohio Avenue and Mr. Johnson had to wait for the turn out Ohio Avenue coming

across Atlantic at the same time. That was some time later.

Q. From what direction did he come?
A. From North Ohio.
Q. Anybody with him?
A. Yes.
Q. Who?
A. This same woman.
Q. Automobile?
A. Automobile.
Q. Night or day?
A. That was in the daytime.
Q. When did you say that was about, approximately?
A. That was some time later possibly ten days or two weeks later.
Q. Any other occasion?
A. No, sir.

Cross-examination.

By Mr. Charlton:

Q. No affection between them apparently, just the ordinary?
A. Just the ordinary so far as I know.

Mrs. Martha Mack, sworn.

Direct examination.

By Mr. Cole:

Q. Mrs. Mack, do you know Mrs. Tomlinson?
A. I met her once.
Q. Do you know Mr. Johnson?
A. Yes, I do.

Q. Where did you meet Mrs. Tomlinson?
A. In the Shelburne at the manicure table.
Q. About when was that?
A. Around—it is about a year ago.
Q. A year ago?
A. Perhaps a year and a half; it was when she first left Philadelphia.
Q. Had you known her before that?
A. Never.
Q. How did you know she was Mrs. Tomlinson?
A. The manicurist knew her for some years and in her conversation, Mrs. Tomlinson's conversation at the time, I thought there was something mentally wrong with the woman.

Mr. Cole: No.

The Court: That will be stricken.

Q. What was she doing there?
A. She was getting a manicure.
Q. While she was there did Mr. Johnson call?
A. He called on the ——

Mr. Charlton: If your Honor please, I am going to object to these questions, the whole line on that. I want to get straightened on the law. As I understand our cause of action arose in 1923. Now if Mr. Johnson is seen with her since then, unless it is intended to show evidence of adultery on the cross-petition, I don't think it is admissible, if that is the purpose of it ——

Mr. Cole: Unless what?

Mr. Charlton: Unless your purpose is to show these intimacies referring to adultery?

Mr. Cole: Certainly.

Mr. Charlton: That is the purpose of it.

Mr. Cole: Yes.

Q. Mr. Johnson call while she was there?
A. He called on the telephone.
Q. How did you know it was he who called on the phone?
A. Miss Somers came to the table and she said ——

Mr. Charlton: I ask that be stricken.

The Court: I will hear that. I may strike it later.

A. She said, "here, I hope I didn't do wrong." She said "I thought it was the man that called up yesterday" and when Mr. Johnson called up she called this man by that name and then Mr. Johnson said "No, this is Al."
Q. Who said this?
A. Mr. Johnson, he said it was "Al" that called to Miss Somers, so when she came back to the table she told Myra, she said "I hope I didn't do anything wrong. It was Al."

Mr. Charlton: I think that all should be stricken.

Q. Did Mr. Johnson himself come there after that?
A. Yes, Mr. Johnson came in while we were there.
Q. And while Mrs. Tomlinson was there?
A. Oh, yes.
Q. Now what was said between them, if anything, that you recall at that time?

A. Well, just talked in general when they came in.
Q. Do you know how he came there?
A. He had a little dog in a basket.
Q. Well, did he come by machine or did he walk?
A. Oh, I couldn't tell you that.
Q. Did they go out together?
A. I left them there.
Q. Now did Mrs. Tomlinson, while she was there, make any reference to Mr. Johnson? Did she say anything about him?

Mr. Charlton: In his presence?

Mr. Cole: Certainly.

Q. Did Mrs. Tomlinson say anything in your presence and in Mr. Johnson's presence as to who he was?
A. Oh, I knew Mr. Johnson.
Q. I know you knew him, but what did she say about him, if anything?

Mr. Charlton: While he was there.

Mr. Cole: Yes, certainly.

A. Well, I just don't remember; they talked about going to dinner, going to lunch and Mr. Johnson asked me why I was in a hurry, but I knew them both and I didn't think—I wouldn't stay there and I walked on.
Q. Had you known Mrs. Tomlinson before that day?
A. Never met the woman before.
Q. Had you known Mr. Johnson before?

A. Oh, yes, I never would believe it about him.
Q. Had you ever seen them together before that?
A. I had never seen the woman before in my life.
Q. Now what I want to ask you again—I don't think you have answered it yet—did Mrs. Tomlinson say anything to you or to anyone else while Mr. Johnson was there as to what relation she bore to him?
A. Oh, not when he was there; she had carried on that conversation before Mr. Johnson came there.

Cross-examination.

By Mr. Charlton:

Q. No evidence of affection between them, Mrs. Mack, in your presence?
A. Only she was calling him "sweetheart" two or three times.

Mr. Cole: That is what I tried to get her to say.

Q. In his presence?
A. That is what she called him, addressed him, "sweetheart."
Q. In his presence?
A. He was there when she addressed him as "sweetheart" two or three times.
Q. While he was there?
A. Certainly while he was there.
Q. What did he say?
A. He didn't address her as anything, just answered her.
Q. When was this?
A. It was in the Shelburne.
Q. When?
A. When was it, Mr. Johnson? I just don't remember when. It was right after she left her husband.
Q. Six months ago?
A. It was more than that, Mr. Charlton.
Q. You heard her husband testify she left him at Christmas time, when was it?
A. It was right after she left. It was the first time she had seen Betty and she told us how she left her husband and was never going back.
Q. That is all.

By Mr. Cole:

Q. Did she tell that while Mr. Johnson was there?
A. No, Mr. Johnson wasn't there.
Q. That was before he arrived?
A. Before he arrived.

Edwin Bakely, sworn.

Direct examination.

By Mr. Cole:

Q. Where do you live?
A. Egg Harbor.
Q. How long have you lived there?
A. About six years.
Q. Where did you live before you lived in Egg Harbor?
A. Hammonton.
Q. Lived in this county all your life?
A. Yes, sir.
Q. How old are you?

A. Twenty eight.
Q. What is your business?
A. Chauffuer.
Q. Do you know Harry Foster?
A. I do.
Q. Did you do any work for him in connection with Mr. Johnson here?
A. I drove for Mr. Foster that night.
Q. Did you undertake to follow Mr. Johnson or find out where he was going?
A. No, sir.
Q. What did you do, if anything?
A. I drove Mr. Foster to Ohio Avenue.
Q. Now when was it you first drove him there?
A. You mean about the time in the evening?
Q. I am talking about the time you were down to the garage on Ohio Avenue, Mr. Johnson's garage?
A. About quarter after eight.
Q. I know but what month?
A. Oh, about the first of April, last of March or first of April.
Q. This year?
A. Yes, sir.
Q. How many times were you there?
A. Twice.
Q. Where did you drive from?
A. From Egg Harbor.
Q. Who were with you?
A. My wife and a girl friend of hers.
Q. Are they here?
A. They are.
Q. Now what did you do when you got to Ohio Avenue?
A. We parked on the south side of Ohio Avenue facing Atlantic Avenue.

Q. And for what purpose?
A. To watch the garage.
Q. Anybody, any particular person?
A. Yes, sir.
Q. Who?
A. Mr. Johnson.
Q. Gentleman sitting here?
A. Yes, sir.
Q. Now tell us, please, as well as you can remember, just what happened on the two visits that you made there. Take the first one first.
A. The first visit Mr. Foster and I had gone alone. It was raining. We stayed about a half hour and there was a car parked in front of the garage that was pointed out to me as Mr. Johnson's car. We stayed for about an hour. We didn't see anyone so we left and went home to Egg Harbor. The following Saturday night we drove down, I drove Mr. Foster down, my wife and Mrs. Garnich. We parked on the south side of Ohio Avenue facing Atlantic and watched for Mr. Johnson at the garage. Mr. Johnson drove up in his car, I should judge a half hour after we were there.
Q. What time was that?
A. We got there about quarter past eight, something like that.
Q. At night?
A. At night, yes. Approximately a half hour later Mr. Johnson's car drove up. Mr. Johnson got out, entered the garage, came out of the garage and went upstairs, came back and he had a small bundle, I believe, entered the garage and came out again in the car and drove away and, as he passed, I noticed a woman in the car. We hadn't noticed her before. He turned down Ohio Avenue and we stayed there.

We waited, it was well, some time after, approximately a half hour or so they returned and they left the car at the garage door, if I remember correctly I believe they went inside the garage, but I am not so sure, they came out and went upstairs and we stayed there waiting for some one to come out from upstairs but up until the time we had left ——

Q. What time did you leave?

A. Why it was after eleven, 11:30, something like that.

Q. Did either of them come down stairs?

A. No, sir.

Q. Did anybody else go up or come down while you were there?

A. No, sir.

Q. Did you follow them when they went out in this car?

A. No.

Q. Do you recall whether you watched for lights or not in the house upstairs?

A. We watched for lights, yes, sir.

Q. Did you observe anything about lights?

A. There was lights. There was lights in one of the rooms upstairs for a while after they went up, but when we left the lights were out.

Q. How long was it, according to your best judgment, after they went up that you say the lights and the lights went out?

A. Oh, possibly three quarters of an hour.

Q. Do you recall what part of the house it was that you saw the lights?

A. I believe in the middle room.

Q. Where were you during that time in the car?

A. I was at the steering wheel, sitting at the steering wheel.

Q. Did you get out of the car at all?

A. Once.

Q. Where did you go?

A. Up to the corner Ohio Avenue and Atlantic.

Q. Anybody go with you?

A. My wife.

Q. Is your wife here?

A. She is.

Q. Is the other young lady you say was with her?

A. She is.

Q. Did you see enough of this woman that night to be able to recognize her, would you know her?

A. No.

Cross-examination.

By Mr. Charlton:

Q. Have you ever been in the house?

A. No, I have not.

Q. Know anything about the rooms?

A. No, I do not.

Q. How then did you say the light was in the bedroom?

A. I didn't say in a bedroom.

Q. Didn't you say that?

A. No.

Q. Which room was it in?

A. Seemed to be in the middle room.

Q. The middle room?

A. What looked to be a middle room.

Q. See any people up there?

A. No.

Q. Shades up?

A. Shades were up.

Q. Any people in that room?

A. I didn't notice any in that room.

MRS. MARGARET BAKELY, sworn.

Direct examination.

By Mr. Cole:

Q. Are you the wife of the gentleman just on the stand?

A. I am.

Q. Were you with him on some occasions when he was in his car on Ohio Avenue?

A. Yes, sir.

Q. How many times were you there?

A. Once.

Q. What is the date you fix?

A. I couldn't say exactly but I judge it to be the beginning of April of this year.

Q. Who were with you?

A. A girl friend of mine, Mrs. Garnich and my husband.

Q. Was Mr. Foster along?

A. He wasn't there first and my husband met him later.

Q. You mean he came later?

A. Mr. Foster was around but he wasn't in the car when we first got there.

Q. Now then you tell what you know about it, what happened?

A. Well, we got there, parked on Ohio Avenue about a little after eight o'clock and we waited there. My husband was watching for this gentleman and no one was there. We waited until a car came, it was a Dodge sedan, and he came around the corner to the garage and got out, went into the garage and then he went upstairs and came out with

a package and went into the car and then he passed us, the car, and went around Arctic Avenue, down this way, and then we waited there quite a while until he should come back. We waited there about a half hour, I should judge, and girl friend and I went and had some ice cream in the meantime and husband stayed there and then we came back and waited just a little while and the car came and went right into the garage and then a man, this gentleman and this woman, went upstairs and then we saw a light shine through the doors in the front room or shining through and girl friend and I walked up to see where the light was and it was in the back room and then we went back into the car and waited quite a little while, it was close on to midnight when we left and as we went by with the car the light was out and then we went home.

Q. Did anybody come down stairs?

A. No, sir; we watched closely.

Q. Did they go up the stairway in front of the building?

A. Yes, sir.

Q. And you say you saw no one come down while you were there?

A. Yes.

Q. You said some thing about passing by looking at the light; just what did you mean? Where did you go to?

A. We went by the garage on this side of the street, my girl friend and I.

Q. On the side the garage was?

A. No, the other side of the garage so we could see.

Q. From what you saw of them would you be able to identify Mr. Johnson, this gentleman sitting here?

A. He but not the woman.
Q. You know him to be the man, do you?
A. Yes.
Q. Couldn't recognize the woman?
A. No.
Q. Now at what point, according to your recollection, did Mr. Foster arrive on this night?
A. Shortly after we got there; he had been reconnoitering around before we got there.
Q. Was he there when they went upstairs?
A. Yes.
Q. Did he stay as long as you did?
A. Yes, he came to the car; he was in the car.
Q. What is the name of the young lady who was with you?
A. Mrs. Garnich.
Q. Who?
A. Mrs. Garnich.
Q. She live in Egg Harbor?
A. Yes.

Cross-examination.

By Mr. Charlton:

Q. Could you see the steps at all times from where you were?
A. Yes, sir.
Q. Those steps are in an alley, aren't they?
A. Sir?
Q. Are the steps in an alley or not?
A. Right close to an alley.
Q. Right close to an alley?
A. Yes.
Q. Do they come down on Ohio Avenue or down in the alley?

A. I could see them from where I was.
Q. Bottom of the steps?
A. Yes, sir.
Q. Your eye was never, in the three or four hours you were there, from those steps?
A. Yes.
Q. Was?
A. Mine was, yes.
Q. There was a time when you were not watching those steps?
A. Yes.
Q. Do you know where the alley goes to?
A. The alley? No, I don't know.
Q. You don't know where that goes?
A. No.

Mrs. Carrie Garnich, sworn.

Direct examination.

By Mr. Cole:

Q. You live where?
A. In Egg Harbor.
Q. Did you go with this lady who was just on the stand on one occasion to the Ohio Avenue garage we have been talking about?
A. I did.
Q. How did you get there?
A. I went in the automobile with them.
Q. Whose automobile?
A. One that was hired by Mr. Foster.
Q. How many of you went together?
A. Mr. Foster and Mr. and Mrs. Bakely and myself.

Q. When was it you were there?
A. Couldn't say exactly, somewhere around in the beginning of April.
Q. Of this year?
A. Yes.
Q. Now tell us what you saw and what you did while you were there—about what time did you arrive?
A. Somewhere around eight or eight fifteen.
Q. You tell us what you did after you arrived?
A. Well, we drove up and we stood about a few doors away on the other side of the street from the garage on Ohio Avenue and we stood there waiting to see if anyone came out and I guess we were there about a half hour when a car drove up that w shown to me to be the car they were watching for, it was a Dodge sedan, and a man got out of the car, he drove into the front of the garage, on the street and he walked inside and just stayed in there a few moments and then he came out and he went up the steps on the side of the garage and he came down with a small bundle and he got in the car, which was facing towards Arctic Avenue, and he drove past us towards Arctic Avenue and as the car went by we could see there was a woman sitting in the car that hadn't gotten out at all in the front seat and then they turned down towards Ventnor or down town and I guess they were gone somewhere around a half hour when they returned and he drove the car into the garage or the incline into the garage and right there at the garage door they got out of the car, both of them, and they went up the steps on the inside and we stayed there about—well, then it was somewhere around ten o'clock, between nine thirty and ten, that they went up and we stayed there until eleven thirty and midnight and then we went home.

Q. Either of them come out while you were there?
A. No one came out.
Q. Did you make any observation about lights upstairs?
A. Yes, after they went upstairs there was a light lit and then when we went away, when we drove by, when we went home, there was no light in the apartment.
Q. Do you recognize Mr. Johnson here as the man that you saw?
A. Yes.
Q. Would you recognize the woman?
A. No, she was sitting back in the car, you know and couldn't very well—I wouldn't say that it was this woman.
Q. When they came back do you remember whether or not he still had the package?
A. I don't think he did, no, he hadn't the package then.

Cross-examination.

By Mr. Charlton:

Q. The steps led down into an alley?
A. I don't think so, along side of an alley, but I don't think they led into the alley.
Q. Did you make a physical examination of the ground?
A. Of what?
Q. The ground?
A. No, only by walking by.
Q. Did you walk by?
A. Yes.
Q. Did you look particularly at the steps?
A. I don't know what you mean by that.

Q. To see their location with respect to the building line?
A. No, I couldn't say.
Q. Were your eyes at all times during three hours or so on those steps?
A. They couldn't be when we went to eat.
Q. Then they weren't?
A. Not all the time, no.
Q. What floor was the light on?
A. On the floor, second floor, apartment floor.
Q. You mean the first floor above the street?
A. Yes, sir.

By Mr. Cole:

Q. I forgot to ask you, was Mr. Foster there when you left? Did he come away with you?
A. He came to Egg Harbor with us.
Q. Was he at the garage all the time you were there?
A. He was there all the time.
Q. He came away in the automobile with you?
A. Yes.
Q. And you say you were there only one night?
A. I was, but he was there I guess more.
Q. I am talking about you?
A. That is all.

Mr. Cole: Now, may it please your Honor, that is our case excepting Mr. Foster's testimony. I don't want to urge counsel to put in his case if he feels he doesn't want to do it until I get Mr. Foster's testimony.

Mrs. Virginia Johnson, sworn.

Direct examination.

By Mr. Charlton:

Q. Mrs. Johnson, you are the mother of Alfred L. Johnson, the gentleman here?
A. Yes, sir.
Q. Where do you live?
A. Bertlunel Apartment, B 1.
Q. Where does your son live?
A. He sleeps with me.
Q. Sleeps with you?
A. Yes, sir.
Q. How long has he been sleeping in your apartment?
A. Ever since he left home.
Q. Do you know about when that was?
A. I couldn't tell you that.
Q. Is it a year or more ago?
A. I think it has been over a year now, two years.
Q. Now, Mrs. Johnson, you see your son in the morning, do you?
A. Not always because he goes away six o'clock.
Q. Do you see his bedroom after he has been in it?
A. Yes.
Q. Has there been any time since your son came to live with you he hasn't slept home?
A. Sometimes he has to stay at the garage all night, you know the night man.
Q. What time of the year is that?
A. Summer time.
Q. In the summer time?

A. Yes.
Q. Does he ever stay at the garage in the winter time?
A. Well, I couldn't say that because if the night man don't come he has to stay there, you know.
Q. On duty?
A. Yes, sir.
Q. Do you recall this past March, March of this year?
A. Not especially.
Q. Well, do you recollect your son staying any night at the garage during March or April, early part?
A. Well, he might, of course, I never pay any attention to that.
Q. But generally he is home?
A. Generally he sleeps to my house.

Mr. Cole: That is quite leading.

A. But you see he goes away six o'clock in the morning.
Q. But you see the bedroom afterwards?
A. The bed has to be made.
Q. Do you know Mrs. Tomlinson?
A. Known her all my life.
Q. Has your son known her long?
A. Known her all his life, they were children together.
Q. Children together?
A. Yes, sir.
Q. Has she stayed at your home?
A. A great many times, her mother and I were great friends.
Q. Her mother and you were great friends?
A. You know.

Q. Her mother and you were great friends, I say?
A. Yes, sir.
Q. Been a friend of your family's for years?
A. Yes, when I was married.
Q. Have you ever seen between her and your son Alfred any familiarity?
A. Never.
Q. How have they conducted themselves toward each other?
A. Always as friends to me, all I ever saw.
Q. Never saw them conduct themselves any other way?
A. No.
Q. Do you know Mr. Tomlinson?
A. Yes, sir.
Q. Been in his company?
A. Yes.
Q. Has he been in your home?
A. Yes.
Q. Have you been in his home?
A. I have and been treated beautifully.
Q. On numerous occasions?
A. On numerous occasions.
Q. Your son Alfred been with you there?
A. Yes, a great many times.

No cross-examination.

ALFRED H. JOHNSON, recalled.

Direct examination.

By Mr. Charlton:

Q. Mr. Johnson, tell Vice-Chancellor Ingersoll the plan of that cottage over your garage, how many floors has it?

A. It has three floors.

Q. Three floors?

A. Yes.

Q. What is on the first floor above the street?

A. That is a so-called bedroom or sitting room, whichever you may use it, then comes another room which can be used as a sitting room, and comes the dining room and kitchen and the wash room.

Q. What is on the next floor?

A. The next floor has three bedrooms and a bathroom.

Q. What is the floor immediately over the garage? What was it being used for last March, bedrooms or living rooms?

A. There is a bedroom on the first floor but, I couldn't say what it has been used for.

Q. What part of the building is it on, the Ohio front or the back?

A. Ohio front.

Q. Which end of the building?

A. The front end of the building.

Q. Toward Atlantic Avenue?

A. It takes in the front.

Q. The whole front?

A. All but the hall that goes out on the porch.

Q. The whole front room then was a bedroom last March?

A. Was a bed in there, yes, sir.

Q. Bed in there?

A. Yes, sir.

Q. Now tell us about the steps?

A. The steps is on the alley goes in back of the—into Leopold's storage house, which they use to haul their furniture in and out, extend probably three or four foot back from the property line.

Q. Back from Ohio Avenue property line?

A. Yes, sir.

Q. Now where does that alley lead to?

A. It is a blind alley, leads back into back of Leopold's storage house.

Q. Does the alley come out on to Ohio Avenue?

A. Yes, sir.

Q. Is it possible to come down the stairs and on out to Ohio Avenue quickly?

A. Yes, sir.

Q. Mr. Johnson, do you ever remember seeing these people before that testified?

A. Yes, I saw them.

Q. What happened that night?

A. This Mr. Foster, which I didn't know his name, undertook to go up on the Salvation Army porch.

Q. Where were you when you saw him?

A. I was in the office.

Q. In the office?

A. Yes, but I didn't know who he was or anything about him, I think he wanted to go back on the side porch, on the Salvation Army porch and one of the drivers was standing over in the garage door and he says to me, night man, and he says "who is that fellow going in back there? Wonder what he is going back there for?" So he went over and went into the Salvation Army and he and the Captain came out and they went to this man and he said he

was looking for a fellow, and they simply drove him off the porch.

Q. Drove him off the porch?

A. Yes.

Q. Did you see any of the people later in the evening?

A. Later in the evening I stood at Ohio and Atlantic when they turned down off Ohio to Atlantic Avenue.

Q. You were standing on the corner Ohio and Atlantic when they drove away?

A. Yes.

Q. How long had you been out of the garage at the time they drove away?

A. I suppose I had been out there twenty minutes or something like that.

Q. And you saw them drive away?

A. Yes, sir.

Q. Foster and the young man and two women?

A. I didn't know the name at the time, but I saw them.

Q. But you remember the party?

A. Yes, sir, sure.

Q. Do you place it on account of the Salvation Army episode?

A. Yes.

Q. Now, Mr. Johnson, you heard the testimony that you went in there that night with Mrs. Tomlinson?

A. Yes.

Q. How long were you in there?

A. I suppose half an hour, something like that.

Q. What were you doing?

A. Simply talking, that is all.

Q. No other familiarity whatever?

A. No other familiarity whatever.

Q. And you came down and went out?

A. And I came down and went out.

Q. Have you been doing any night duty at the garage? Were you in March or April?

A. Not in March or April, I haven't.

Q. Home with your mother every night?

A. Yes, sir.

Q. Hear your wife testify about occasions she seen you go in with Mrs. Tomlinson?

A. Yes, sir.

Q. How long did you stay on the average when you took Mrs. Tomlinson up?

A. Sometimes might be ten minutes, might be a half hour, something like that.

Q. Not longer than that?

A. No, sir.

Q. What part of the building were you in with Mrs. Tomlinson when you go there?

A. In the sitting room.

Q. In the sitting room?

A. Yes, sir.

Q. Any familiarity between you and her?

A. No, sir.

Q. Mr. Johnson, can you look into that building from across the street on a porch?

A. Yes, sir.

Q. You can?

A. Yes, sir.

Q. Did you ever have your coat off in there?

A. I expect I did, because it is a habit I have taking my coat off as soon as I go in a house.

Q. That is your habit?

A. Yes, sir.

Q. In your mother's house too?

A. Yes, sir.

Q. Every house?

A. Yes, sir.

Q. She is running it for him?
A. She was, yes, sir.
Q. The rooming house?
A. Yes, sir.
Q. Providing food for the guests?
A. Not as I know of, no, sir.
Q. Well, she provided food for you?
A. She did.
Q. And you paid for it?
A. I did.
Q. How much did you pay?
A. Twelve dollars a week.
Q. What?
A. Twelve dollars a week.
Q. Twelve dollars a week for your board?
A. Yes, sir.
Q. She did the cooking?
A. Yes, sir.
Q. And the furniture in the house belongs to Mr. McDevitt, Ed McDevitt?
A. Yes, sir.
Q. When he pays you the rent how does he pay it, cash or by check?
A. By money.
Q. In money?
A. Yes, sir.
Q. Do you give him a receipt?
A. Not always.
Q. Did you ever give him a receipt?
A. I don't think I ever gave him a receipt.
Q. Never gave him a receipt?
A. Never got a receipt for anything he got.
Q. Now your books, you have kept books?
A. Yes, sir.
Q. Do your books show that you are getting sixty-five dollars a month from this property?
A. Yes, sir.

Q. Will you produce your books?
A. Yes, sir.
Q. All right.

Mr. Charlton: For that purpose only. I ask it be limited for that.

Mr. Cole: At least for that purpose.

Q. Now when you pay Mrs. Tomlinson twelve dollars a week what day of the week do you pay her?
A. Sometimes Friday, sometimes Saturday.
Q. Do you keep a record of that in your books?
A. No, sir.
Q. Do you pay her in cash or by check?
A. In cash.
Q. Is there any receipt passing between you?
A. Yes, sir.
Q. What?
A. Yes, sir.
Q. She gives you a receipt, does she?
A. Yes, sir.
Q. And you have them?
A. Yes, sir.
Q. Made up at the time that the money is paid?
A. Yes, sir.
Q. How did she come to come there to run that place for Mr. McDevitt?
A. She wanted to do something and she wanted to go to work.
Q. Did she ask you about it? Did you get the position for her?
A. No, she didn't ask me.
Q. How did she come to be there, if you know?
A. Well, I really don't know so far as that is concerned.
Q. What are you doing upstairs there with her?
A. Getting my meals.

Q. During the time that you spent up there with her was there anybody else around the house?

A. At times, yes, sir.

Q. Who?

A. Roomers.

Q. Have you got their names?

A. I have not, no, sir.

Q. Have you seen roomers there?

A. Yes, sir.

Q. When—is there a roomer there now?

A. I don't think there is any there now.

Q. When did you last see a roomer on that floor?

A. On the floor where we was?

Q. Yes?

A. Last Saturday.

Q. Where did you go that night that Foster was there when you and she took the automobile down Arctic Avenue with a package?

A. I don't remember that night.

Q. Didn't that occur?

A. What?

Q. Take her out in the automobile that night down Arctic Avenue?

A. I suppose it occurred, I don't know, she goes out riding every once in a while.

Q. And you go with her?

A. Yes, sir.

Q. Do you recall this occasion when you came down stairs with a package?

A. No, sir.

Q. How often do you go out together?

A. Oh, quite often.

Q. How often? You say quite often, every day?

A. Yes, sir.

Q. And you did all that even after your wife filed this petition against you for divorce, didn't you, charged you with adultery with this woman?

A. Been just the same.

Q. I am asking you the question?

A. Yes, sir.

Q. When is the latest hour you were in that room with her at nights?

A. Not later than ten-thirty or eleven o'clock.

Q. Did you ever sleep there?

A. No, sir.

Q. Always slept at home with your mother, in your mother's home?

A. Yes, sir.

Q. And your relations with this woman have always been just right?

A. Yes, sir.

Q. Is there a bedroom on that floor at all?

A. Yes, sir.

Q. Were you ever in the bedroom?

A. Was I ever in there?

Q. Yes?

A. I have been, yes, sir.

Q. How many bedrooms are there?

A. Six.

Q. Have you ever been in a bedroom when she was in there, in the bedroom?

A. I don't recall it, no.

Q. Just think a moment, see if you weren't?

A. I couldn't say as I do.

Q. All the time you were writing these letters, calling her "sweetheart" and telling her that you were in love with her, you said a little while ago you didn't really love her, you didn't mean anything by that?

A. There is a way to love her, then there is other ways.

Further testimony adjourned until October 13, 1927, 9:30 A. M.

Atlantic City, N. J. October, 13, 1927.

Trial of the cause resumed pursuant to adjournment.

HARRY A. FOSTER, sworn.

Direct examination.

By Mr. Cole:

Q. Where do you live?
A. Egg Harbor, New Jersey.
Q. How long have you lived in Atlantic County?
A. In Atlantic County? About twenty-two years.
Q. Do you know the defendant here, Mr. Alfred Johnson?
A. Well, I know who he is when I see him. I am not acquainted with the gentleman, no.
Q. Sometime in the month of March, 1927, did you go in the vicinity of the garage at 11 North Ohio Avenue, Atlantic City?
A. Yes, sir.
Q. Now will you please state, from the time you first went there until you concluded going, the dates and what you saw and what you did? Just tell it in your own way?
A. I don't know as I can give you exactly what you want without making reference to notes that I made at the time.

Q. Do you need those to help your recollection?
A. I think I should have them, yes, sir.
Q. Have you them with you?
A. Yes, sir.
Q. Well, you may refresh your recollection?
A. On the third month, twenty-first, 1927, was my first visit up in the neighborhood, I believe a Monday morning. I saw the man in question, Mr. Johnson, frequently around the garage, in the office rather the garage and on two or three occasions he went upstairs, didn't remain long. He left one time out of office at 2.10 and went upstairs.
Q. Afternoon?
A. P. M. He went upstairs and returned back 2:18 and he left the office at 7:55 and went upstairs again after looking over his tanks, doing something to them. He went up the stairs and I remained there until 11:45 and he still was upstairs, hadn't come down.
Q. Now on that occasion did you see any woman, that is I mean by that, any woman either in the garage, upstairs or going up and down?
A. I saw a woman the early part of the evening up in the front room. They lit a lamp there, large lamp stands right near the window, can be seen very plainly from the street, shades up halfway.
Q. Did you see her either go up or down stairs while you were there on that occasion?
A. No, I can't recall seeing her. I have no date that she was on that date there, no note of it.
Q. Now when was your next visit?
A. On the twenty-second.
Q. Relate that visit.

A. I didn't see Mr. Johnson until 2:50 P. M. when he came in with a Dodge car, sedan, 3156A license plate, left the car in the street, went upstairs and remained there about fifteen minutes, came out to the office, out of office and went upstairs and remained there until 8:10, and man and woman, Mr. Johnson and woman came out and drove in car out to Atlantic Avenue. Covered to one P. M. and didn't see either return when I left.

Q. Now will you give us your opinion or description of this woman that you saw on that occasion?

A. Judge she was a woman about 155 or 160 pound, medium height, I judge about five foot five and a half, and what you call neither light nor dark, medium complexion.

Q. Now where were you standing at the time you saw her get in the car?

A. I was sitting in a restaurant almost diagonally across from the office and after the restaurant closed, I went out and sat on some building material that was laid along the street, almost opposite to where the stairs going up to the apartment is.

Q. Is that all on that occasion so far as you can recall?

A. Yes, that is all the note I have of it.

Q. Your next visit, however, was when?

A. I have got no note on the twenty-third. I was there but I can't recall. I have got no note here. But on the twenty-fourth, at noon, saw man in question come out of the garage at 1:30. He stood about three minutes looking up and down the street. Shortly—he went upstairs after looking up and down the street about three minutes. I made abbreviation marks here, I didn't write this out and

I have got to study them. Shortly a woman drove away, he and woman—no—shortly a woman came down and talked to a colored man in the office. She came down from upstairs, talked to a colored man in the office and then returned upstairs. Man remained until 3:25 P. M.

Q. That is you mean remained upstairs?

A. Yes, remained upstairs. I was taken sick, feeling very badly and I quit the job at 3:25 in the afternoon.

Q. Do you mean to say that when you left he had not yet come down stairs?

A. No, he still remained upstairs. The woman came down, went in the office two or three minutes and talked to a colored man and she returned upstairs.

Q. Now was this woman the same woman that you had seen on the previous occasion?

A. Yes, I saw her along in there two or three occasions and use the telephone in the office.

Q. You mean in the garage?

A. In the office of the garage.

Q. All right, now, the next?

A. On the twenty-fifth man in question out of office upstairs at 2:05, remained up there over two hours, down and out, drove away in his car alone. I didn't see the woman that day.

Q. All right, next?

A. On the twenty-sixth of March Mrs. Johnson was with me with another man. We didn't see the man in question until 7:55 P. M. He went upstairs in front room, took off his overcoat, his under coat, his hat and appeared to lie down in a bed ——

Mr. Charlton: I object.

Q. Don't tell us what appeared.
A. From what I observed.
Q. Don't want any conclusion, just what you saw. You say he appeared to lie down?
A. On a bed or couch on the far left hand corner of the room. I was looking across the street on that opposite corner.
Q. Where were you standing?
A. On the porch across level almost with the window.
Q. All right, proceed.
A. A woman sat at the table near this man, by the window, doing something, I couldn't tell, but she would look up towards where he was lying, as though she was holding a conversation. I could see her head shaking yes or no. He remained there, he went up there 7:55 and he came down 8:25, without his overcoat.
Q. Where did he go?
A. He went in his offce. Returned upstairs, I covered until 1:40 A. M., and he didn't come down.
Q. He went up alone?
A. He went up alone.
Q. Any more on that date?
A. No, sir. I remained until 1:40, excepting that the light in the front room went out. I could see no more.
Q. Now the next occasion?
A. On the twenty-eighth of March at house at 12:40 P. M. remained until 2:20, colored man went upstairs and man in question and colored man returned down to the office. He remained in the office a few minutes and returned upstairs. He was up until 10:30 when I left and took the eleven o'clock train.

Q. Had he came down while you were there?
A. He had not, still remained up there.
Q. Now the next?
A. On the twenty-ninth, it was raining very bad and I couldn't stay out. On the thirtieth, no light in the front room, man up at 7:10, but I couldn't see. Eight P. M., from 7:10 to eight P. M., came down and went out in sedan 31 ——
Q. Who?
A. Man alone. Covered until 10:45, still remained out.
Q. Now who did you say were in that?
A. Man alone. I couldn't see, there was no light in the front room that night, so I couldn't see what was doing.
Q. I am speaking now about the car, when he went out in the car?
A. Alone in the car.
Q. He was alone in the car?
A. Yes, sir.
Q. Was it the same car?
A. Same car, Dodge sedan.
Q. All right.
A. April first at 8:50 P. M., man in question went in car—man in question and woman in car. They had been out when we saw them drive in at 8:50. The car stopped in front of the—drove into the driveway of the garage, but didn't go inside, remained on the street pointing in towards the garage entrance. Mr. Johnson got out of the car, went upstairs, returned with a small package, went in the office a moment, returned back, got in the car and drove to Arctic Avenue. I then saw a woman sitting in the car along side of him, in black or dark clothing. They drove down Arctic and returned at 9.25 P. M. He drove the car in the garage. He

and the woman came out and went upstairs together. I stayed and covered until 11:35 and they still remained upstairs.

Q. Now does that cover your work?

A. Yes, sir.

Q. Now you have a number of times spoken about a woman and I ask whether it was always the same woman that you saw?

A. To the best of my recollection, yes, sir.

Q. Did you ever see any other persons go up and down the stairway from the ground upstairs than Mr. Johnson and this woman and you refer to the colored man on one occasion?

A. That is the only three I ever saw was there at the time I was on, excepting once—I am wrong—I sent a man there to see if we could get a room over Saturday and Sunday and Monday and he was informed that the house was full.

The Court: No.

Q. You can't tell that. You saw your man go up, you mean?

A. Go up.

Q. Now can you recall whether on any of these occasions that you were there either the light in the front room went out or the curtains were drawn on any of the occasions, at night I have reference to now?

A. The night that I remained so late, yes.

Q. What happened then?

A. The one night. The light in the front room went out.

Q. Did you chance to learn the name of this woman?

A. I didn't make any inquiries in the neighborhood, but I was told ——

Q. Probably what was said anyhow ——

A. I was told only by another party. By the way, the woman was pointed out to me the night that Mr. Johnson went up in the room of a Sunday night, his wife, I called her attention, she went up on the porch with me and we saw in the room, saw the woman, and saw Mr. Johnson. She then said "that is the woman" and mentioned this woman's name.

Q. You mean Mrs. Johnson?

A. Mrs. Alfred Johnson.

Cross-examination.

By Mr. Charlton:

Q. Mr. Foster, you are a detective?

A. No, sir.

Q. Aren't you a detective?

A. No, sir.

Q. Do you do this work for hire?

A. At times, yes, sir.

Q. Did you do this work for hire?

A. I did.

Q. For Mrs. Johnson?

A. No, sir.

Q. For whom?

A. Judge Cole.

Q. Judge Cole hired you?

A. Yes, sir.

Q. In what capacity did he hire you?

A. To make an investigation.

Q. As a detective?

A. To make an investigation to see what was going on at this place.

Q. As a detective?

A. I didn't call it such. You can call it as you choose.

Q. What do you call it?

A. As an investigator.

Q. Then you were hired as investigator?

A. Yes.

Q. You hired yourself to the public as that?

A. What is that?

Q. You hire to the public as an investigator?

A. I just don't answer ——

Q. Are you open for employment as investigator?

A. Not as a rule, no. I haven't been for a couple of years.

Q. But you have in the past?

A. Formerly, yes.

Q. And you accepted this as an investigator?

A. I did.

Q. For hire?

A. For hire.

Q. What time did you arrive there these various dates?

A. Different times.

Q. Ever see Mr. Johnson come out early in the morning?

A. Out of what?

Q. Out of upstairs?

A. No, sir. Not early in the morning. I saw him come out around noon.

Q. You saw him come out around noon?

A. Saw him come out.

Q. Out around noon?

A. Around noon.

Q. After you had seen him go up?

A. No, I didn't see him go up. He may have went up, I won't deny that.

Q. What time did you arrive there?

A. Sometimes would be eleven o'clock, sometimes half past eleven, sometimes one o'clock, sometimes twelve o'clock.

Q. Eleven o'clock was the earliest you arrived there?

A. Sometime around that, yes.

Q. You are sure you weren't there any earlier?

A. I don't think I was, between ten and eleven, I think was the earliest I was there.

Q. Your eye the whole time on the steps coming down from this place after you saw him go up?

A. On the entrance where the steps came down.

Q. How far do those steps sit back from the building line?

A. I should judge twelve or fourteen inches.

Q. Couldn't be four or five feet?

A. No, sir, absolutely not.

Q. Did you look at them?

A. Many times, passed them by.

Q. Indicate, will you, for us about how far they sit in your opinion on this table?

A. Well, if you take about fourteen inches I think you will pretty near tell what I figure, the depth of the step back, about the full width of the step back.

Q. Something like that?

A. That is not fourteen inches, there is twelve inches, that is fourteen inches. (Indicating.)

Q. About that far?

A. Yes, I didn't measure this, all I am giving you is my opinion.

Q. Ohio Avenue is a dark street after nine or ten o'clock?

A. Not necessarily.

Q. Doesn't the restaurant close at eight across the street?

A. Around nine.
Q. Around nine?
A. Yes.
Q. Not always at eight?
A. No, sir.
Q. Any other illumination in that street?
A. Yes, there was lamps which, there is a lamp there by the entrance, I believe there is a light on the corner, right above it. Mr. Johnson's lights are there on the tanks.
Q. They go out, don't they?
A. Yes, they go out.
Q. How far is the corner light from there?
A. I don't know. I wasn't interested in the corner, Mr. Charlton. I was only interested in this stairway.
Q. The visibility didn't mean anything to you?
A. What say?
Q. The visibility didn't mean anything to you?
A. It did to me on the steps, but not the lights long as I could see, I didn't step off the distance.
Q. Your attention was on these steps every moment of those hours and these times you were there?
A. While I wasn't there, I had four or five with me, there was always a number of eyes on there. If there was anything moved we all looked that direction.
Q. Then on those occasions when you were there you had people with you?
A. Oh, yes.
Q. On all occasions?
A. No.
Q. Then on the occasions on which you were alone your eyes were always on those steps?
A. Absolutely.

Q. Never anywhere else?
A. Nothing could go up and down there but what I could have observed it.
Q. For long hours at a stretch? Now there were only two or three occasions you had anybody with you, weren't there?
A. I think four.
Q. Four?
A. I believe so.
Q. Wasn't the one occasion the time that you had Bakely and his wife and Mrs. Garnich with you?
A. Yes.
Q. Another occasion you had Mrs. Johnson?
A. Yes.
Q. Now who else did you have?
A. Another occasion I had Mr. Bakely. I had Mr. Bakely another occasion. Another occasion I had a man who was from Philadelphia.
Q. He is not here?
A. No.
Q. And Mr. Bakely testifies to only looking around once, doesn't he?
A. I don't know what he testified to. I wasn't there.

DEFENDANT RESTS.

PETITIONER'S REBUTTAL.

ALFRED H. JOHNSON, recalled.

Direct examination.

By Mr. Charlton:

Q. Mr. Johnson, there is one thing I want to ask you. Mrs. Johnson has testified on September twentieth or twenty-first, whatever it was, 1921, when she met you in the apartment after she had gone back to the garage and gotten the letter, that you made a confession of some sort to her. You tell us what happened then. What was said when you got to the apartment that evening?

A. I don't understand what you mean. I made no confession to her.

Q. Did you say that you loved someone other than her?

A. No, sir, I never made any confession whatever to her.

Q. Was there anything to confess?

A. No, sir.

Q. Mr. Johnson have you produced your receipts and books as Judge Cole requested?

A. I have.

Q. Is this the book that is kept in the ordinary course of your business?

A. Yes, sir, one of them.

Q. Dealing with the McDevitt account?

A. Yes, sir.

Q. Are these the receipts for your meals from Mrs. Tomlinson?

A. Yes, sir.

Q. Kept in your safe?

A. Yes, sir.

Cross-examination.

By Mr. Cole:

Q. You said you didn't make any confession to your wife that you were in love with anybody else?

A. No, sir.

Q. I think you said that in point of fact you were not in love with anybody else, is that right?

A. Yes, sir.

Q. Notwithstanding the frequent expressions of love in the letters that you wrote to this lady?

A. Yes, sir.

Q. You didn't mean that?

A. No, sir. Not the love the way you speak of.

Q. How do you know in which way I am speaking of it?

A. I don't know, only suppose.

Q. What do you suppose?

A. I suppose you think I love her enough to marry her or something like that.

Q. What kind of a love were you expressing in these letters?

A. Just merely childhood love, from childhood up.

Q. Have you ever written any other woman than this woman of this childhood love?

A. No, sir.

Q. You had other girl friends in your youth and childhood, didn't you?

A. Yes, sir.

Q. Never wrote any of those any letters?

A. No, sir.

Q. Who wrote these receipts?
A. Mrs. Tomlinson.
Q. How did you pay her?
A. By money.
Q. What?
A. By money.
Q. Cash?
A. Yes, sir.
Q. Was there some understanding that these receipts were to be given in order that if any question should arise as to what your relation with her was that you might appear to be just a boarder?
A. None whatever.
Q. Where are these receipts taken from?
A. Where are they taken from?
Q. Yes.
A. Couldn't tell you that, sir, that is her business.
Q. You don't know anything about it?
A. No, sir.
Q. Nothing at all?
A. No, sir.
Q. Where would she sign these receipts?
A. I suppose up in the house.
Q. She ever visit your garage?
A. Yes.
Q. What would she be doing there?
A. She would come down stairs and use the telephone, if she wished to.
Q. Charge this money you paid her up in your books?
A. No, sir.
Q. No record of that?
A. No, sir.
Q. Who kept the books?
A. I did.

Mr. Charlton: If the Court please, I object to examining any other account. He called for this and we produce it, unless it is merely to look over handwriting or something like that.

Q. How much of this property did McDevitt rent from you?
A. The upstairs. He has a car in the garage.
Q. The whole of the upstairs?
A. Yes, sir.
Q. How much upstairs is there?
A. It is a regular dwelling house upstairs.
Q. I know, but is it one or two stories above the ground?
A. One story, the garage is one floor and the house is three stories.
Q. Then there is a second and third story above the garage?
A. There is three stories above the garage.
Q. Three stories above the garage?
A. Yes, sir.
Q. And he rented it all?
A. Yes, sir.
Q. For sixty-five dollars a month?
A. Yes, sir.
Q. Whose funiture is it?
A. Part of it is his and Mrs. Tomlinson's and his wife's, I suppose.
Q. Any of it yours?
A. No, sir.
Q. Is the lease in writing?
A. Yes, sir.
Q. Where is it?

(Lease produced.)

Q. Any of your furniture up there?

A. No, sir.
Q. Some of it Mrs. Tomlinson's?
A. She has bought some that I know of.
Q. Do you know what the arrangement is between her and Mr. McDevitt?
A. No, sir.
Q. Don't know anything at all about that?
A. No, sir.
Q. Never discussed it with her?
A. No, sir.
Q. You did go up to visit her?
A. Oh, yes, sure.
Q. Just as these witnesses have said?
A. Yes.
Q. And what did you talk about?
A. That would be hard to say.
Q. Did you ever talk about her relation with Mr. McDevitt, what she was paying?
A. No, sir.
Q. Ever make any inquiry?
A. No, sir.
Q. Well, were there any other boarders, did you have any other boarders upstairs?
A. No regular boarders, had roomers.
Q. I asked you if she had any other boarders?
A. Not that I know of, no, sir.
Q. And you have been boarding with her since the third month, eleventh, 1927?
A. Yes, sir.
Q. And you and she were the only two ate at the table?
A. No, sir.
Q. Who else ate there?
A. Her cousin.
Q. All the time?
A. Most all the time.

Q. You mean to say that a cousin of hers has been in this house all the time she has been there?
A. Off and on, yes, sir.
Q. What do you mean by off and on?
A. Of course, she would go away probably two or three days or something like that or a day.
Q. How many meals a day do you eat there?
A. Sometimes two or three.
Q. But this twelve dollars a week is for three meals a day?
A. Yes, sir.
Q. Did you ever buy any of the food for the table?
A. No, sir, not myself, no, sir.
Q. I didn't mean whether you paid for it, did you ever buy any of it?
A. I have got things for her when she would ask me.
Q. Do you know who drew this lease?
A. Yes, sir.
Q. Who?
A. That is my writing.
Q. You drew it?
A. Yes, sir.
Q. When was it drawn?
A. February the twenty-fourth.
Q. Where was it drawn?
A. Drawn in my office.
Q. Is that where it was signed?
A. No, sir.
Q. Where was it signed?
A. Tennessee Avenue.
Q. How did Mr. McDevitt pay you?
A. Always paid me by money.
Q. Always cash?
A. Yes, sir.

(Receipt offered, received in evidence and marked Exhibit D10. Lease offered, received in evidence and marked Exhibit D11.)

Q. Any writing in this book Mrs. Tomlinson's handwriting?

A. No, sir. No one has anything to do with that book but myself.

Q. Can you tell us when these letters that were offered in evidence were written?

A. No, sir.

Q. Haven't any recollection?

A. No, sir.

Q. Now, Mr. Johnson, will you try and tell us, please, what you meant by this in the letter Exhibit D8. "And dear, was out last night to a show and, dear, I didn't have your nice warm body to get in bed for, dear, you did warm me up on Friday, for, dear, you was nice and warm and love too;" what did you mean by that?

A. I couldn't tell you, sir.

Q. Haven't any idea?

A. No, sir.

Q. Suppose you look at that and read it yourself and see if it will help your recollection by telling her about making you nice and warm?

A. I don't recollect.

Q. What?

A. I don't recollect.

Q. What you said in that letter was true, wasn't it, at the time?

A. I don't think so.

Q. Don't think it was?

A. No, sir.

Q. You think you lied about that too?

A. Yes, sir.

Q. Well, if you don't think it was true and you can't remember what it was, how can you say it was a lie?

A. I don't remember any such thing.

Q. Were you awake when you wrote this?

A. I suppose I was.

Q. And you don't presently have any idea what you meant when you told her this?

A. No, sir.

Q. "I didn't have your nice warm body to get in bed for, dear, you did warm me up on Friday, for, dear, you was nice and warm and love too." And you haven't any idea what that meant?

A. No, sir.

Q. And when you say "And, dear, I am all your dear, and I love and love you" it was still the childhood stuff you were talking about?

A. Yes, sir.

(Book offered, received in evidence and marked Exhibit P1.)

JUNE DOUEL, sworn.

Direct examination.

By Mr. Charlton:

Q. Miss Douel, you know Mr. Johnson and Mrs. Tomlinson?

A. Yes, I do.

Q. Where are you living now?

A. I am living with Mrs. Tomlinson now.

Q. How long have you been actually living there?
A. I have been living with her since the middle of April off and on, mostly with her all the time.
Q. And you have been living completely with her since the middle of April?
A. With the exception of the last week in August, about the first of September, I have been with her all the time.
Q. Living right in the cottage over the garage?
A. Yes, sir, right in the same place.
Q. Now during the winter and spring prior to the middle of April were you there frequently?
A. I was there off and on, very frequently yes.
Q. Stay over night?
A. Yes, I have.
Q. See Mr. Johnson there?
A. Yes, I have.
Q. Any of the times that you have seen Mr. Johnson there have you observed any familiarity between him and Mrs. Tomlinson?
A. No, I haven't seen any familiarity.
Q. Ever seen him kiss her?
A. No, I haven't.
Q. Hold her hand?
A. Do what?
Q. Hold her hand?
A. No, I can't say that I have.
Q. Never?
A. Never.
Q. Have they ever given you the impression that there might be anything between them?
A. No, I cannot say that there was ever the impression that there would be anything between them.

Cross-examination.

By Mr. Cole:

Q. Where is your home?
A. My home is in Atlantic City. I have been in Philadelphia, but I have been born right here, I consider this my home.
Q. Your parents living?
A. Yes, they are.
Q. Where do they live?
A. They live on California Avenue, here in Atlantic City.
Q. How long have they been living here?
A. Parents you mean?
Q. Yes?
A. They have been living here for years, ever since I have been born and before that.
Q. When you went to live with Mrs. Tomlinson did you go from your parents' home there to live?
A. Yes, I did.
Q. What is your relation?
A. My relation is second cousin, I think, or third cousin.
Q. You went there to live permanently when?
A. It was the thirteenth of April that I went there permanently to live.
Q. And you have been sleeping there ever since?
A. Yes, I have, with the exception of the time I went away on a vacation.
Q. When did Mrs. Tomlinson go to this place to live?
A. Why in March, around the eleventh of March or around the first week in March.
Q. How do you know?
A. Because I heard and I know that she was

there, I had been visiting up to that time and also helped her to move, in fact.

Q. Where had she lived before she went there?

A. She had a room on St. James Place.

Q. Did you visit her there?

A. I did.

Q. How many rooms did she have there?

A. She had a single room on St. James Place.

Q. Did you ever sleep there?

A. I have slept with her there, yes.

Q. How many times before she moved to the garage?

A. Oh, a couple of times anyway.

Q. How long did she live there?

A. Well, from December until March.

Q. Mr. Johnson visit here there?

A. Not when I was there.

Q. You mean you never saw Mr. Johnson there?

A. No.

Q. Well, you say not while you were there, you were there all the time during that period, weren't you?

A. He was never visiting there while I was there. I visited her there off and on and I have slept with her there.

Q. You were merely a visitor, you didn't live there with her?

A. Not there at St. James Place, no.

Q. How did you come to go to this place over the garage to live with her?

A. Just to help her with the work and to be company with her.

Q. What did she say to you, she ask you to go?

A. Not necessarily, I just knew she would like me to go and I went of my own volition.

Q. You eat there?

A. Yes, I have, many and many a meal.

Q. You ate all the time that you lived there, didn't you?

A. While I was there I ate there, yes.

Q. Did you sleep on the first floor above the garage?

A. Yes, I have slept on the first floor and also on the second floor.

Q. Did you sleep alone?

A. There are times when I slept alone and times when I slept with cousin Myra.

Q. Where did she sleep mostly, on which floor?

A. Well, she would sleep sometimes on the first floor and sometimes on the second floor.

Q. Tell us, please, the rooms, kind of rooms that are on the second and third floor of that building?

A. There is a kitchen and dining room, living room and bedroom on the first floor and three bedrooms and bath on the second floor.

Q. Where is the bedroom on the second floor, what part of the building?

A. The bedroom on the second floor?

Q. Yes.

A. There are three bedrooms on the second floor, the front, and middle bedroom, bath and rear bedroom.

Q. Maybe I am confused or you are. When I speak of the second floor, I am talking about the first floor above the garage?

A. I see.

Q. I think you said there was one bedroom on that floor?

A. There is.

Q. Where is that bedroom?

A. That is in the front room and then the living room, dining room and kitchen.

Q. That is the room you can see from the street into?

A. You can see lights from the street.

Q. That is what I say, you can see lights in the bedroom from the street on the second floor?

A. You can, yes.

Q. Mrs. Tomlinson has slept there, didn't she?

A. We have slept there together, yes.

Q. Did she ever sleep there alone?

A. No, not alone because I always slept with her in that front room.

Q. Then am I to understand that you and she always slept together?

A. No, there were times when we shared single rooms, communicating rooms when the house has been so we could. We have had the rooms taken.

Q. How often did Mr. Johnson visit upstairs?

A. How often? He took his meals upstairs.

Q. He came there also when he wasn't taking his meals, didn't he?

A. Yes, he would come up and go down.

Q. Did you ever see him there late as ten or eleven o'clock at night?

A. Yes, indeed and even later.

Q. How late have you seen him there?

A. I have seen him there as late as one, two o'clock in the morning, when we have been having company, and playing cards.

Q. They used to go out together in the automobile?

A. Indeed I have.

Q. Were you with them when they would go out?

A. I certainly have been, yes, indeed.

Q. Were you always with them?

A. Whenever I have been around there I always went.

Q. Were you always with them when they went out together?

A. Yes, sir.

Q. Always?

A. Yes, sir, every time I was there I went too.

Q. I am not asking you that, I am asking you whether every time they went out together you were with them?

A. Yes, sir, I was.

Q. They never went out in an automobile together except when you were with them?

A. I was with them, yes.

Q. Every time?

A. When I was there, I was with them, yes.

Q. How often was that?

A. It was a good many times because we would go out in the afternoon, go out in the evening.

Q. How did it happen you always went with them?

A. Because I was invited and I was free to go and I went.

Q. You are quite sure about that, are you?

A. Yes, I am.

Q. Now do you remember the night of April first this year?

A. Yes, I do, at least I think I can remember it.

Q. Distinctly?

A. April the first? I don't even know what day of the week that was.

Q. You couldn't have been there at that time, were you?

A. Yes indeed, I was.

Q. I thought you said you went there in April?

A. I said the last week in August and first week in September.

Q. Didn't you say you went there to live permanently in the middle of April?

A. Yes, sir, the thirteenth.

Q. So you weren't there on the first of April?

A. Not unless it was one of the times I visited. I wasn't living there permanently.

Q. Then I come back and ask you whether you remember the night April first, 1927, when Mr. Johnson and Mrs. Tomlinson went out and had a package, drove down Arctic Avenue, remember that? Were you there that night?

A. Well, I don't know about that. I went with them, at least I went with them every time from the time I was living with them permanently, of course, up to that time I wouldn't be going with them excepting I would visit.

Q. Night and day whenever they went you were with them?

A. Yes, after the middle of September.

Q. Do you know on what terms and conditions Mrs. Tomlinson is occupying that building?

A. Indirectly I do, yes.

Q. What do you mean by indirectly?

A. Well, I haven't any particular interest in their business in that respect, understand.

Q. Has she rented all the upstairs?

A. Only—to persons ——

Q. I am asking you whether she has rented all the upstairs?

A. Yes, she has the whole house.

Q. From whom?

A. From Mr. McDevitt.

Q. Furnished?

A. No, it has been furnished by she and Mr. McDevitt.

Q. Have you talked with her about it?

A. Not intentionally, I know something.

Q. Have you talked with her unintentionally?

A. Just in the way of passing conversation.

Q. What did you find out from her as to how much she is paying rent to Mr. McDevitt for this property?

A. Well, I understand she pays a rental of sixty-five dollars a month.

Q. She pays Mr. McDevitt sixty-five a month?

A. No, Mr. McDevitt pays Mr. Johnson.

Q. I didn't ask you that. I am asking you what she is paying Mr. McDevitt?

A. I don't know about that. She is running the house for Mr. McDevitt.

Q. How is that?

A. She runs the house for Mr. McDevitt, but I don't know about whether she pays ——

Q. She rents the house from Mr. McDevitt?

A. She rents it for him—runs the house for him.

Q. She is running it for him, is that right?

A. As I understand it.

Q. From whom did you get that understanding?

A. Well, maybe it is just my own.

Q. Your own what? You said a moment ago that she was running that house for Mr. McDevitt. I would like to know where you got that information?

A. Well, it is just I understand that is the situation.

Q. From whom did you get that understanding?

A. Well, just as a matter, I guess ——

Q. Did you get it from Mrs. Tomlinson?

A. As I understand.

Q. What did she tell you about it?

A. I don't think I can tell you the exact verbatim conversation, it is just my understanding, Mr. Cole.

Q. Do you know what she gets for her work in running it for Mr. McDevitt?

A. No, I do not.

Q. Does she get paid a percentage, commission or what?

A. I don't know.

Q. Haven't any idea?

A. No.

Q. Did you ever see Mrs. Tomlinson draw those receipts for Mr. Johnson?

A. Once in a while I have.

Q. Where does she get the receipts?

A. What do you mean, the blank pad?

Q. Yes.

A. I think I purchased them for her.

Q. When?

A. A long time ago.

Q. When?

A. Early in March sometime.

Q. How many books did you buy?

A. Only one book.

Q. Anybody else board there except Mr. Johnson?

A. No.

Q. He is the only boarder?

A. He is the only boarder, yes, there have been different ones eat and room for that matter.

Q. Does she give a receipt to the other people?

A. Yes.

Q. Out of this same book?

A. As far as I know, yes.

Q. How many blanks are there in that book?

A. I think there is a hundred and some, a good thick book, I know I got it at Beyers on Atlantic Avenue.

Q. I would like you to help me a little, if you can, about this understanding between Mr. McDevitt and Mrs. Tomlinson, about this house, what the arrangement is?

A. I don't think I can help you out on that.

Q. Is there any writing, so far as you know between Mrs. Tomlinson and Mr. McDevitt?

A. Not as far as I know.

Q. Mr. McDevitt ever visit there?

A. Yes, as far as I know.

Q. You have been there, haven't you?

A. Yes.

Q. Have you ever seen him there?

A. No. I haven't necessarily seen him there.

Q. If you haven't necessarily seen him there, you have been there on and off, at least, since April, permanently, and you have never seen Mr. McDevitt, there, have you?

A. No.

Q. Have you ever seen Mrs. Tomlinson pay him any money?

A. No, I haven't seen her.

Q. Have you ever seen her draw any check to him?

A. She could do that without my seeing her.

Q. She certainly could, what I want to know is whether you ever saw her do it?

A. No, I haven't.

HOWARD COLBATH, sworn.

Direct examination.

By Mr. Charlton:

Q. Mr. Colbath, do you know Mr. Johnson?

A. I do, yes, sir.

Q. And Mrs. Tomlinson?

A. I do, yes, sir.

Q. Have you ever visited the house above Mr. Johnson's garage?
A. I have.
Q. A few times or many times, Mr. Colbath?
A. Well, I should judge from maybe somewheres between ten and fifteen visits during the summer.
Q. That is from March on?

Mr. Cole: He said during the summer.

Q. When did you start to go there?
A. I just can't recollect the first visit I made to that house, but somewheres along in the spring, I think.
Q. In the spring?
A. I think so.
Q. You can't give us the date?
A. I couldn't give you the exact date.
Q. When you have been there who has been there?
A. Well, Mrs. Tomlinson, her cousin, who was just on the stand, and myself, Mr. Johnson has been there too and different gentlemen I met there. Another time I was there and had some dinner on a Sunday there was a young lady there.
Q. Have you been there at night?
A. Yes, mostly at night that I visited there.
Q. Mostly at night?
A. Yes.
Q. How did you divert yourself?
A. Well, we had a pinochle game every evening that I visited there.
Q. Pinochle game?
A. Yes.
Q. Keep up late in the evening?
A. Usually around midnight, sometimes later, I have known late as three o'clock in the morning we had one game.

Q. You, of course, have been there before the card game started?
A. Sir?
Q. You have been there before the game started?
A. Oh, yes, I came there.
Q. Any of the times you have been there have you seen any familarity between Mr. Johnson and Mrs. Tomlinson?
A. No, I never did.
Q. Any evidence of affection?
A. No.
Q. Call each other by any pet names?
A. Not a word.
Q. Any kissing?
A. No.
Q. Hand holding, anything like that?
A. No.

Cross-examination.

By Mr. Cole:

Q. What is your business?
A. I am an employe of the Pennsylvania Railroad.
Q. In what capacity?
A. Why a machinist.
Q. Where?
A. Atlantic City engine house.
Q. How long have you been living in Atlantic City?
A. About fifteen years.
Q. How long have you known Mr. Johnson?
A. Well, I should judge I have known him, to see him go along the street, but I never met him, I don't think, until last winter, that is to talk to him.

Q. How long have you known Mrs. Tomlinson?
A. Well, I should judge around fifteen years.
Q. And you have known her most of her married life?
A. A great deal of it.
Q. Where did you become acquainted with her?
A. Where did I become acquainted with her?
Q. Yes.
A. I became acquainted with her through one of her relations, John Preble, who is an employe of the Atlantic Garage along back I judge in 1912, somewhere along there.
Q. And that was in Atlantic City?
A. In Atlantic City, yes.
Q. Since that time have you been quite friendly with her?
A. Well, I used to see her ocassionally, I can't —I was a friend of hers, I can't say how often I would see her.
Q. Did you ever visit where she lived before you visited the Johnson garage?
A. Just where do you mean, where she lived before?
Q. Didn't she live in Atlantic City somewhere before?
A. No—I see what you mean—no, I never visited her there, didn't know where she lived.
Q. How did you come to visit her over the Johnson garage?
A. She invited me to come some evening and we would have a pinochle game.
Q. And when was the time you got the first invitation?
A. I can't give you the exact date, only thing I can say is somewhere in the spring, I believe she had just moved there at that house over the garage,

anyhow she told be that she was living there and to come up some evening and we would have a pinochle game.
Q. When was it you went or how did you get word from her to come?
A. Why, if I remember right, she called me up on the telephone.
Q. Do you know where she was when she telephoned you?
A. No, I couldn't tell you that.
Q. And where were you?
A. I think I was at my work, she called me one evening at the office.
Q. You can't fix the month?
A. No, I can't. You see I didn't expect there would be any investigation like this, it just passed my mind.
Q. How soon after you received the invitation was it you went there?
A. I don't know, it may have been a week.
Q. Anyone with you when you went?
A. No.
Q. Went alone?
A. I did.
Q. Are you married?
A. Yes, sir.
Q. Tell your wife where you were going?
A. No, sir.
Q. How late did you stay on that occasion?
A. I think around half past eleven or twelve o'clock.
Q. Who were there?
A. Why Mrs. Tomlinson, her cousin and Mr. Johnson on that first.
Q. How many times from that time on do you think you visited there?

A. I judge anywheres from ten to fifteen visits I had. I never kept no tract but I figure about.

Q. On any of these occasions did your wife go with you?

A. No, sir.

Q. And you say you have been there late as three o'clock in the morning?

A. Yes.

Q. Where do you live?

A. I live in Ventnor.

Q. Where in Ventnor?

A. Five South Richards Avenue.

Q. What room did you play pinochle in?

A. In the dining room.

Q. Any other room?

A. No; that is the only room.

A. And that is the room immediately above the garage?

A. Well, it is on the next floor above the garage.

Q. You go by way of the stairway from the sidewalk?

A. Yes, sir.

Q. On all these occasions you went there you went alone?

A. Yes.

Q. Was this cousin always there?

A. Well, I think she was, yes, except one visit.

Q. Did you ever go in the bedroom?

A. No, I don't think I have been in the bedroom.

Q. Did you ever see her and Mr. Johnson in the bedroom?

A. No.

Q. Now did she ever tell you how she came to be there?

A. No. she didn't for I never questioned her.

Q. When were you last there?

A. I don't know; I think it has been a couple of weeks ago.

Q. Night or day?

A. In the evening.

Q. And just how she comes to be occupying the property you don't know anything about?

A. No.

Q. Never was discussed in your presence at all?

A. Not the least; none of my business.

Q. Never told you anything about Mr. Johnson's relation there?

A. No, sir.

Q. How he comes to be there?

A. No, sir.

Q. Now how did they address one another?

A. Well, "Al" or "Myra."

Q. What?

A. We address all, each other by the ——

Q. Not "we" how did they?

A. She calls him "Al" and he calls her "Myra."

Q. Calls her what?

A. Myra.

Q. Ever hear the word "dear" used?

A. Not in my presence.

Q. Or "love?"

A. No, sir.

By Mr. Charlton:

Q. Mr. Colbath, you know Mr. Tomlinson?

A. Mr. Tomlinson? Yes, sir; I have met Mr. Tomlinson.

Q. Have you visited in their home in Philadelphia?

A. Yes, quite a number of times.

Q. Been friends of both of them?

A. Yes, sir.
Q. For years?
A. Yes, sir.

PETITIONER RESTS.

MRS. MYRA TOMLINSON, sworn for defendant.

Mr. Charlton: Mrs. Tomlinson is ill; that is the reason I haven't called her. I will ask you to be easy with her, if you can.

Direct examination.

By Mr. Cole:

Q. Are you the Mrs. Tomlinson about whom we have heard something in this case?
A. I am.
Q. Will you state, please, under what terms and conditions you have been and are occupying the rooms above the garage which you are occupying?
A. At the time of Mr. McDevitt's life, I was running the house for Mr. McDevitt and since Mr. McDevitt died I have been running it for myself.
Q. When did he die?
A. Twenty-second of August.
Q. This year?
A. Yes, sir.
Q. On what terms were you running it?
A. I was running it for him to make money.
Q. What?
A. I was running it for Mr. McDevitt to make money and as soon as it was on a paying basis I was

to receive it for myself, after it was paid back what he had paid.
Q. Any writing between you?
A. No, sir.
Q. How long were you supposed to run it?
A. Until it was paid off.
Q. What was paid off?
A. Until Mr. McDevitt's money was paid back what he had put in the house.
Q. How much was that?
A. His rent and what he paid for his furniture.
Q. How much was that?
A. I don't know.
Q. Did you ever turn any money over to him —
A. I certainly did.
Q. —while he was alive?
A. Yes, sir.
Q. Keep any books?
A. I did not.
Q. Get any receipt from him?
A. I did not.
Q. You don't know how much you paid him?
A. I do.
Q. What?
A. I do.
Q. How do you know?
A. Because I know what I paid out.
Q. You have nothing in writing as to the arrangement?
A. No, sir.
Q. You have no receipts from him for the money you paid over?
A. No, sir.
Q. And you kept no books?
A. No, sir.
Q. But you can tell from your memory how much money you paid to Mr. McDevitt in his life time?

A. Yes, sir.
Q. How much have you paid him?
A. I paid Mr. McDevitt fifty dollars.
Q. During what period?
A. From the time I took the house until his death.
Q. Now you took the house when?
A. Mr. McDevitt took the house on the twenty-fourth of February; I went there on the fourth of March, I did.
Q. All the money you paid him or have paid his estate is fifty dollars?
A. That is all.
Q. You have furniture there?
A. I have a little of my own.
Q. Most of it Mr. McDevitt's?
A. Yes, sir.
Q. Now you gave Mr. Johnson a receipt for his board?
A. I did.
Q. Did you get a receipt from him for what you paid him?
A. You mean for the house for the two months that I had it?
Q. Yes.
A. Yes, sir.
Q. Where is the receipt?
A. My cousin has them in the pocket book.
Q. How much money did you take in in the month of August?
A. I don't remember that.
Q. How much did you take in in the month of September?
A. I don't remember that exactly.
Q. Has anyone from the McDevitt estate ever filed any claim with you?
A. They have not. Mrs. McDevitt and I talked it over but she never has filed any claim.

Q. What were you talking over?
A. Why the affairs of the house, the money Mr. McDevitt had supposed to have put into it, the rent and his furniture.
Q. How long are you supposed to remain there?
A. As long, I guess, as I can pay. When I can't pay, I guess I will be put out like anyone else.
Q. You don't know how much you are taking in, do you?
A. No; I don't know exactly how much.
Q. Do you keep any books?
A. No, I do not.

(Rent receipts offered, received in evidence and marked Exhibits D12 and 13.)

Q. How can you tell whether you can afford to stay there?
A. Because I haven't any bank account, therefore, when the money is used you haven't any more and, as long as I can pay the bills I guess I can continue.
Q. Now you paid sixty-five dollars rent for the month of September, didn't you?
A. For the month of August and month of September.
Q. Where did you get the sixty-five dollars to pay the rent for the month of September?
A. From the roomers I had.
Q. Have you any record of that?
A. I have not.
Q. You haven't any books at all to show that you took in sixty-five dollars in the month of September?
A. I have not; no, sir.

Cross-examination.

By Mr. Charlton:

Q. Mrs. Tomlinson, I want to ask you a question or two. Mr. Johnson has visited you in the evening at your home?

A. You mean at eleven North Ohio Avenue?

Q. Yes.

A. Yes, sir.

Q. Has he ever on any occasion stayed all night in that house?

A. No, sir.

Q. Have there ever been between you and he any sexual relations?

A. Positively not.

Q. How long have you known Mr. Johnson?

A. All my life.

Q. As children you knew each other?

A. Yes, sir; we were brought up practically together.

Q. Were you affectionate with each other as children?

A. We have always thought a great deal of one another, yes, sir.

Q. Call each other affectionate names?

A. At times.

Q. Tell me about the Masonic trowel. Did Mr. Johnson give you that?

A. No, sir; Mr. Johnson entered the Masonic order and he asked me if I had ever seen the trowel that was presented to the members. I said I never had. He said "I will bring it up and show it to you." He brought it up in the presence of my mother and my daughter and we all looked at it. Mr. Johnson came to the house very frequently, and forgot to

take the trowel. It stayed down stairs for some time, Mr. Charlton.

Q. Mr. Tomlinson see it?

A. I couldn't say about Mr. Tomlinson, but it was down stairs. I couldn't say whether he ever saw it or not, but my mother did and my daughter. Finally I took it upstairs and put it in the drawer where Mr. Johnson had shaving apparatus as well.

Q. Mr. Johnson have his razors and shaving apparatus in your home?

A. Yes.

Q. Shave there?

A. And it was in the same place the trowel was, yes, sir.

Q. But it wasn't a gift to you?

A. No, sir.

Q. These letters, Mrs. Tomlinson, that Judge Cole has referred to; have you ever seen those letters?

A. I positively have not.

Q. Never delivered to you?

A. Never were delivered to me, no, sir.

Q. Never read by you?

A. Never saw them.

Q. Know nothing about them?

A. I know nothing.

Mr. Cole: You know his handwriting.

Q. One moment, Mr. Cole. In the Shelburne Hotel did you call Mr. Johnson "sweetheart?"

A. I did not.

Cross-examination.

By Mr. Cole:

Q. You know his handwriting?

A. I know Mr. Johnson's handwriting but I couldn't swear to it, no, sir.

Q. Now here is a letter which he says that he wrote to you; and he says that is his handwriting?

A. It looks like his handwriting but I never saw the letter nor I couldn't swear it was his handwriting.

Q. You don't know how it got into your bureau drawer?

A. I never put it there and I didn't know that it was there; if it was there it was never put there by me.

Q. Well, then if he was writing these letters you didn't receive them?

A. I didn't receive those letters.

Q. You disown them?

A. I never saw those letters; never did.

TESTIMONY CLOSED.

CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

Between
ALFRED H. JOHNSON,
Petitioner,
and
MARTHA A. JOHNSON,
Defendant.

On Petition for Divorce.
Conclusions.

These conclusions are not to be published in the official or unofficial reports.

Mr. William Charlton for the petitioner.
Messrs. Cole & Cole for the defendant.

INGERSOLL, V. C.:

The husband files his petition for divorce, alleging that the defendant deserted him in the month of October, 1921, and since that time has wilfully, continuedly and obstinately deserted him.

The desertion alleged is that she withdrew from him all marital relations at that time, and that al-

though importuned to resume such relations, she has never since refused so to do.

The defendant admits that such is the fact, but alleges that she was justified in her position by the fact, that she believed he had committed adultery with one Mrs. Myra Tomlinson. There is no testimony corroborating the charge made by the petitioner, except the admission of its truth by the defendant.

Corroboration need not be the testimony of witnesses, it may be furnished by surrounding circumstances adequately established. *Bissell v. Bissell,* 93 N. J. Eq. 537; *Rogers v. Rogers,* 89 N. J. Eq. 1; *Parmly v. Parmly,* 90 N. J. Eq. 490; *Meek v. Meek,* 92 N. J. Eq. 23; and those circumstances include among other things the manner in which the trial is conducted. *Parmly v. Parmly, supra.* As in that case, it is in the instant case impossible to conceive the idea of collusion.

In this case the testimony satisfies me that the refusal of sexual intercourse by the defendant was desertion and was wilful, obstinate and continuous, for the period of two years prior to the filing of the petition.

The cross-petition alleges that the petitioner committed adultery with said Myra Tomlinson at a time subsequent to the filing of the petition. No attempt is made to prove adultery, at or before the time of the wife's desertion or at any time prior to the filing of the petition. No proof is made of the actual commission of adultery.

There has been offered in evidence letters admitted by the petitioner to have been written to him. He was asked to explain them, but failed to do so. In connection with the other testimony, I am convinced that both "desire" and "opportunity"

existed in this case, and that the allegations of the cross-petition have been sustained.

No divorce, however, can be advised under this situation.

A wife is not entitled to a divorce on the ground of adultery committed by the husband, after he has become entitled to a divorce from her on the ground of desertion. *Young v. Young,* 94 N. J. Eq. 155; *Rankin v. Rankin,* 121 Atl. 778.

It is needless to state that a petitioner guilty of a matrimonial offense during the pendency of a suit brought by him for divorce, will not obtain the relief prayed for.

The result is, that both the petition and the cross-petition must be dismissed. No costs will be allowed either party.

ORDER AND DECREE.

IN CHANCERY OF NEW JERSEY.

Between ALFRED H. JOHNSON, *Petitioner,* and MARTHA A. JOHNSON, *Defendant.*	On Petition, etc. Order and Decree.

This matter coming on to be heard in the presence of William Charlton, Esq., of counsel with petitioner, and Cole & Cole, Esqs., of counsel with defendant, on petition, answer, cross-petition and

answer thereto, reply and oral proofs taken in open court; whereupon and upon duly considering the said pleadings and proofs and hearing and considering the arguments of counsel, from all of which it now appears satisfactorily to the Chancellor, that the petitioner and defendant were lawfully joined in the bonds of matrimony on or about the 3rd day of October, 1900, and that the defendant has been guilty of willful, continued and obstinate desertion of the petitioner for a term of more than two years as alleged in said petition, and that at the time the cause of action arose, to wit, sometime in the month of October, 1921, the said Alfred H. Johnson and Martha A. Johnson, and both of them, were *bona fide* residents of this State, and that the said Alfred H. Johnson has continued so to be down to the time of the commencement of this action; that the said Martha A. Johnson and Alfred H. Johnson have been for the two years next preceding the commencement of this action, *bona fide* residents of this State; and it further appearing that jurisdiction herein has been acquired by personal service of process upon the defendant within this State, and it further appearing that the petitioner herein has, since the date of the filing of this petition, been guilty of the adultery charged against him in the cross-petition filed in this cause and that at the time the cause of action arose under said cross-petition, said Alfred H. Johnson and Martha A. Johnson, and both of them, were *bona fide* residents of this State, and that the said Martha A. Johnson has continued so to be down to the time of the commencement of this action; it is thereupon, on this 13 day of December, A. D. nineteen hundred and twenty-seven, by his Honor, Edwin Robert Walker, Esq., Chancellor of the State of New Jersey.

E

Will not be down for dinner lo

D

This is the last week I paid the

D-

Will not be down for dinner.

D-4

Will be away 4 or 5 days
The car is down in the gagage

D-6

My Sweetheart

Just a lien dear for it is har
for dear it is a long time til the
miss you dear I cant--
say how much I do m---
you for I miss you so---
And it has been gr---
See you all summer--

ink of
not to
I had
out last
warm
on Fri-
iday.
ow much
f the
n for
wn for
Dear it
ne one say
and I love
d
ar we will
dear I
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I hope at
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cold here

answer thereto, reply and oral proofs taken in open court; whereupon and upon duly considering the said pleadings and proofs and hearing and considering the arguments of counsel, from all of which it now appears satisfactorily to the Chancellor, that the petitioner and defendant were lawfully joined in the bonds of matrimony on or about the 3rd day of October, 1900, and that the defendant has been guilty of willful, continued and obstinate desertion of the petitioner for a term of more than two years as alleged in said petition, and that at the time the cause of action arose, to wit, sometime in the month of October, 1921, the said Alfred H. Johnson and Martha A. Johnson, and both of them, were *bona fide* residents of this State, and that the said Alfred H. Johnson has continued so to be down to the time of the commencement of this action; that the said Martha A. Johnson and Alfred H. Johnson have been for the two years next preceding the commencement of this action, *bona fide* residents of this State; and it further appearing that jurisdiction herein has been acquired by personal service of process upon the defendant within this State, and it further appearing that the petitioner herein has, since the date of the filing of this petition, been guilty of the adultery charged against him in the cross-petition filed in this cause and that at the time the cause of action arose under said cross-petition, said Alfred H. Johnson and Martha A. Johnson, and both of them, were *bona fide* residents of this State, and that the said Martha A. Johnson has continued so to be down to the time of the commencement of this action; it is thereupon, on this 13 day of December, A. D. nineteen hundred and twenty-seven, by his Honor, Edwin Robert Walker, Esq., Chancellor of the State of New Jersey.

EXHIBITS

D-1

Will not be down for dinner look after the fire.

D-2

This is the last week I paid the girl.

D-3

Will not be down for dinner.

D-4

Will be away 4 or 5 days
The car is down in the gagage

D-6

Wednesday ---

My Sweetheart

Just a lien dear for it is hard very hard to see you go for dear it is a long time til the next time. And---
miss you dear I cant--
say how much I do m---
you for I miss you so---
And it has been gr---
see you all summer--
day and you was--
to dear. And love your de--
I love you dearie and dear it will be hard to think at I am not go to see you to night dear my mine will be right on you dear, and dear I am right on the ---

now dear it is--
will try and w--
the next tim--
I miss you--
I love you and --
the loveing time at--
Dear I cannot w---
my head is full

Best love and

As ever you--

D-7

Tuesday

Sweetheart,

Just to think I will see some one at I love tomorrow and dear will be glad to see you and it is like a year seen the last time at I see you. And will call you as soon as I get in the city. And dear it was good to hear you yesterday. But will see you soon and it will be better and dear will tell you something nice, it looks like wnow here today but I will be up. Dear your letter just came and was sure nice one to And dear will try and make a long day.

And dear why do you thank me for something at I did not do for you- you say it will be hard to let me go dear it is hard to go Dear I will ask you next time I did everything but ask you to come down but I will come right out and ask you next time. Will see you tomorry and will be glad to see you

Best love and kisses
From

Your loving _____?

D-8

Sunday

Sweetheart

What a wonderful day Friday was and to think at we had lunch together and dear you were so nice to and I lowe you to dear. And dear I hope at your cold is better and at you feel better dear it was a batter day to be out and dear it is hard to see you go away when I no if I had no everything you

would not go away at all. And dear every time I think of it I get mad of myself and think what a fool I was not to no it. And dear to think at you call up to see if I had got away and it was very nice of you. And dear was out last night to a show and dear I did not have your nice warm body to get in bed to for dear you did warm me up on Friday, for dear you was nice and warm and love to.
Dear I look for you when I came down the street Friday. We left 10 of 3 and was home at 6:30 it did not snow much came down but it snow after we got here and dear if the once at love was along how nice the ride would been for dear you did not go out of my mine all the away down for I did wish for you to be along, all the way down. Dear it was one love week and you say in your letter at some one say at you keep me to yourself dear I am all your dear and I love and love you. Yesterday dear you did not feel good did you dear you must take care of yourself for dear we will have some love time and dear we will be happy. And dear I did not rec'd the letter on Saturday but some one at I love did not feel good when they got home and dear I hope at you are not sick for you say a cold is not bad but dear do take care of yourself for dear I do not want you to be take away from me for when you go I go to. And dear will be glad to hear from you on Monday. Dear it is very cold here today. Best love and kisses.

Your loving and kisses from

As ever _____?

Ordered, adjudged and decreed, that the said Chancellor by virtue of the power and authority of this Court and of the act of the Legislature in such case made and provided, doth hereby

Order, adjudge and decree, that both the petition and the cross-petition herein be demissed in that the petitioner, being guilty of the marital offense during the pendency of the suit, cannot obtain the relief prayed for in his petition, and the defendant is not entitled to relief under her cross-petition on the ground of adultery committed by the petitioner after he has become entitled to a divorce from her on the ground of desertion.

It is further ordered, adjudged and decreed, that no costs, be allowed to either petitioner or defendant.

E. R. WALKER,
C.

Respectfully advised,
R. H. INGERSOLL,
V. C.

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

Between ALFRED H. JOHNSON, *Petitioner,* and MARTHA A. JOHNSON, *Defendant.*	On Petition for Divorce. On Cross-Petition, &c. Notice of Appeal.

The defendant, Martha A. Johnson, hereby appeals from so much of the final decree made in the above entitled cause on the 13th day of December, nineteen hundred and twenty-seven, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, as advised by his Honor, Robert H. Ingersoll, Vice-Chancellor, finds the defendant guilty of desertion as alleged in petitioner's petition, to the Court of Errors and Appeals in the Last Resort in all causes.

Dated December 14, 1927.

COLE & COLE,
Solicitors for and of Counsel with Defendant.

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

C. L. COLE,
Of Counsel with Defendant.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between ALFRED H. JOHNSON, *Petitioner-Respondent,* and MARTHA A. JOHNSON, *Defendant-Appellant.*	On Appeal from Chancery. Petition of Appeal.

To the Honorable, the Court of Errors and Appeals in the Last Resort in all Causes:

The petition of Martha A. Johnson, the appellant in the above entitled cause, respectfully shows that:

1. Petition finds herself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, as advised by his Honor, Vice-Chancellor Robert H. Ingersoll, bearing date the thirteenth day of December, nineteen hundred and twenty-seven, in a certain cause in said Court of Chancery wherein the said Alfred H. Johnson was petitioner and the said Martha A. Johnson was defendant, in this respect, to wit, that the said de-

cree among other things adjudges that the said Martha A. Johnson was guilty of desertion as alleged in petitioner's petition.

And petitioner appeals from that part of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that it should have denied the prayer for relief on the charge of desertion made by the petitioner.

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

COLE & COLE,
Solicitors for and of Counsel with Appellant.

ANSWER TO PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between ALFRED H. JOHNSON, *Complainant-Appellant,* and MARTHA A. JOHNSON, *Defendant-Respondent.*	On Appeal of Alfred H. Johnson, Complainant. Answer to Petition of Appeal.

The answer of Martha A. Johnson, the above named respondent, to the petition of appeal of Alfred H. Johnson, the above named appellant.

The respondent, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that a decree was, on the thirteenth day of December, 1927, made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree this respondent begs leave to refer thereto when the same shall be produced.

This respondent is advised and believes that the part of said decree from which appellant appeals is agreeable to equity; and she prays that the same

may be affirmed with costs to be taxed in favor of the respondent.

COLE & COLE,
Solicitors for and of Counsel with Respondent.

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

Between ALFRED H. JOHNSON, *Petitioner,* and MARTHA A. JOHNSON, *Defendant.*	On Petition for Divorce. On Cross-Petition, etc. Notice of Appeal.

The petitioner, Alfred H. Johnson, hereby appeals from so much of the final decree made in the above entitled cause on the 13th day of December, 1927, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, advised by his Honor, Robert H. Ingersoll, Vice-Chancellor as finds the petitioner guilty of adultery as alleged in the cross-petition of the defendant, to the Court of Errors and Appeals in the last resort in all causes. Dated: December 23, 1927.

WILLIAM CHARLTON,
Solicitor for and of Counsel with Petitioner.

[ENDORSED]

Due and legal service of a copy of the within hereby acknowledged this 23 day of Dec., 1927.

Cole & Cole,
Solrs. for Deft.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

ALFRED H. JOHNSON, *Petitioner-Appellant,* v. MARTHA A. JOHNSON, *Defendant-Respondent.*	On Appeal from Chancery. Petition of Appeal.

To the Honorable, the Court of Errors and Appeals, in the Last Resort in all Cases:

The petition of Alfred H. Johnson, the appellant in the above entitled cause, respectfully shows that:

1. Petitioner finds himself aggrieved by a final decree made in the Court of Chancery by His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, as advised by his Honor, Robert H. Ingersoll, Vice-Chancellor, bearing date the 13th

day of December, 1927, in a certain cause in said Court of Chancery, wherein the said Alfred H. Johnson was petitioner and the said Martha A. Johnson was defendant, in this respect, to wit, that the said decree among other things adjudges that the said Alfred H. Johnson was guilty of adultery as alleged in the defendant's cross-petition.

And petitioner appeals from that part of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that it should have denied the prayer for relief on the charge of adultery made by the defendant as cross-petitioner.

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

WILLIAM CHARLTON,
Solicitor for and of Counsel with Appellant.

[ENDORSED]

Due and legal service of a copy of the within hereby acknowledged this 23 day of Dec., 1927.

Cole & Cole,
Solrs. for Resp't.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
ALFRED H. JOHNSON,
Petitioner-Respondent-Appellant,
and
MARTHA A. JOHNSON,
Defendant-Appellant-Respondent.

ON APPEAL, ETC.

BRIEF OF PETITIONER-APPELLANT.

FACTS.

Petitioner, the husband, filed a petition charging his wife with wilful, continued and obstinate desertion under the Statute, to which the defendant, the wife, filed an answer and cross-petition, which cross-petition alleged adultery committed by the petitioner as set forth in the petition with one Mrs. Myra Tomlinson.

At the trial the petitioner proved a desertion by the defendant and the defendant then entered upon her proof of the petitioner's adultery in support of her cross-petition.

The examination of the testimony, as shown in the State of the Case, and as was found by the Vice-Chancellor in his conclusions, page 158, lines 28, 29 and 30, shows that no proof was offered of any overt act of adultery. The evidence was all circumstantial. The defendant, the cross-petitioner, testified that on one occasion she was present at the garage of the petitioner and saw him go into the living quarters above the garage, from which place, she says, he did not emerge until the time she left, as she says, until two o'clock in the morning. She testified to no incident that she saw happened there, other than that she saw the petitioner and the alleged paramour go into the premises, and negatively did not see them emerge. She testifies also to several times seeing them in the petitioner's automobile driving about the streets of Atlantic City in the daytime. She testifies to no acts of affection whatsoever. The rest of the testimony concerning the acts of adultery consists of the testimony of detectives, who likewise saw no acts of intimacy, although they testify they observed the petitioner and his alleged paramour in the Ohio Avenue house on a number of occasions. The testimony is all negative in that the witnesses all testified that they did not see him come out until the hour they left.

There is not in the whole testimony anywhere any evidence whatever of any affection being exhibited between the petitioner and the alleged paramour unless it can be said that the use of the word "sweetheart" in reference to the petitioner as used by her in the Shelburne Hotel, as testified to, can be considered, and this was claimed. The defendant produces three letters upon which she hung her case in attempting to prove an affectionate relation between the petitioner and the alleged paramour. Two of these letters are harmless in that they contain no expressions of vulgarity or indication of any meritricious conduct between the parties. The third letter contained, as it does, a statement indicating guilt, is important. These letters, unfortunately, will not be before the Court, so that the Court cannot see their antiquity, but they are obviously old letters written a long time ago and antecedent to the commission of the alleged offenses. The Vice-Chancellor found the adultery proved.

ARGUMENT.

Under the present state of the law, it is fundamentally true that the burden of proof of adultery is on the one who alleges it and the circumstances which establish its evidence must be such as would lead the guarded discretion of a reasonable and just man to that conclusion. It must not be a rash and intemperate judgment moving upon appearances that are equally capable of two interpretations, and likewise the facts proven must be such as cannot be reconciled with the probability and the innocence of the parties. *Berkmans,* 16 Eq. 122; 17 Eq. 453.

The proof necessary to establish adultery has been held in our Courts to be a criminal desire and an opportunity to gratify it. Where both these concur, guilt is presumed. Likewise, criminal desires may be inferred from strong expressions of attachment, stolen interviews, clandestine correspondence. *Black v. Black,* 30 Eq. 228.

In the case at hand, there being no direct proof of adultery, the burden was upon the defendant-cross-petitioner to prove a criminal desire and an opportunity to gratify it. If we grant for a moment that there was the opportunity, has there been proved in this case a criminal desire. Examination of the testimony reveals that the letter marked "Exhibit D5" never reached the alleged paramour. The letters marked "D6 and D7" were produced by the husband of the paramour who testified that he found them in a bureau drawer in his home in the bureau used by him and his wife, and that he found them there some time after his wife had designedly left him and his home. The alleged paramour testified that she had never seen the letters, had never received them and knew nothing whatever about them.

It seems hardly consistent with ordinary human conduct to hold that a married woman would leave letters of this type in a bureau drawer to which she and her husband had common access and that when she had designedly left her husband with intent never to return, that even though she had kept such letters, for what purpose I cannot conceive, that she would have left them behind her. The letter "D8" was a serious charge against her chastity and I cannot conceive that anyone would act as Mr. Tomlinson would have you believe his wife acted in leaving that letter for him. I think it may be argued as clear truth that Exhibits D7 and 8 were intercepted by the husband, kept carefully by him until the time of this suit and produced at this hearing. They were old letters. The paper was smeared and blurred, the creases where they had been folded were very heavily creased, the writing was faded and they bore clear indication that

they had been written many years before. If the petitioner did write such letters, he has denied that they were true and the alleged paramour, who has been adjudged guilty of adultery by this decision, in my judgment has never had an opportunity to know that the letters were in existence or to refute them. These letters constitute the whole of the petitioner's case as showing a criminal desire between the alleged guilty parties.

If the verdict is to be sustained, then it must be said that not only was there a desire from these letters existing years before the date of the offenses charged in the petition, but that that desire continued through all of the years as evidenced by the age of the letters, and was in full bloom still in March of the year 1927.

When it is considered that these persons had known each other since childhood, that they have been intimately thrown together in all of their lives, that they are both upwards of forty-five years of age, a time at which the flame of passion does not burn so brightly, can it be said that even though a criminal desire existed years ago, that they still carried it over and gratified it in March of 1927.

Now, so far as the opportunity was concerned, the testimony was that the alleged paramour was operating a rooming-house over the garage of the petitioner; that he took his meals with her, for which he paid her, as was evidenced by the receipts offered in evidence, that she had no other means of support; that she took other roomers and boarders promiscuously from the public; that the petitioner was seen sitting with her in the living room in his shirt sleeves on two or three occasions and that he was not seen to leave the premises until 2.00 o'clock A. M. on one occasion, and on the other occasions up until 11.00 and 12.00 o'clock at night.

Both the petitioner and paramour have denied guilt of any offense at the time alleged, or any other time. The petitioner has said that his letters were lies; the paramour, she never received them. They have produced the testimony of persons who have been with them in the house on Ohio Avenue playing cards who have never seen any evidence of criminal desire. They produced a witness who lived with the paramour from early in April, 1927, down until the time of the final hearing in September, who testified that she slept with the paramour, had always been present when the petitioner was there and that in all of that time there had never been any criminal gratification.

Both Mr. Johnson and Mrs. Tomlinson have denied that he ever stayed at the Ohio Avenue house during the times testified to by Mrs. Johnson and the detectives. Mr. Johnson has recounted at least two occasions at which he was on the outside of the building and saw the detectives in the neighborhood. There is also testimony of the distance of the steps behind the front wall and of the darkness of the spot in which they stood and also the admission of the detectives that they were not at all times watching the steps, so that from the location of the steps, coupled with the inattention of the detectives, support the probability of the testimony of Mr. Johnson and Mrs. Tomlinson that he was out of the building during a great part of the time the detectives testified they did not see him come out.

It is of course unnecessary to refer to the weight with which the testimony of the detectives is received in our Courts under the opinion of the present Chancellor. Attention is directed to the fact that despite the testimony of the witnesses with the detective Foster, that they were only accompanying him, nevertheless that they were paid detectives.

Additionally, it must be considered as an important element in this case that this petitioner had at the time of the alleged acts of adultery, already filed his petition charging the defendant with the desertion four years previously; that no final hearing had been had thereon, and that during that time and until final hearing, his conduct would of necessity have been more circumspect than ever before. It is not human nature to believe that the petitioner in such circumstances would, for the sake of the physical gratification, coupled with his forty-nine years of age, commit adultery, which would destroy his hopes of obtaining a divorce under his petition. As I said before, the burden of proof is on the defendant under the existing rules.

This Court has heard and considered the evidence in cases in which the facts, it seems to me, were far more conclusive of guilt than in this one, and it is found that the facts did not constitute adultery. I refer to *Osborne v. Osborne,* 44 Eq. 257; *Larrison v. Larrison,* 20 Eq. 100; *Mayer v. Mayer,* 21 Eq. 246; *Farrel,* 60 Atl. Rep. 1102.

The whole situation coupled with the fact that the defendant herein was found by the decree of this Court to have wilfully, obstinately and continuedly deserted her husband some four years prior to the commission of the alleged offense, leads me to believe that there should be a reversal. She is hardly in the position of an innocent, outraged woman, but stands here herself guilty of the matrimonial offense of desertion and deserves to be considered and adjudged by the whole circumstances.

WILLIAM CHARLTON,
Solicitor of Petitioner-Respondent-Appellant.

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NEW JERSEY

Court of Errors and Appeals

BETWEEN

ALFRED H. JOHNSON,
Petitioner-Respondent,
and
MARTHA A. JOHNSON,
Defendant-Appellant.

} Cross Appeals from Chancery.

BRIEF FOR MARTHA A. JOHNSON

STATEMENT.

Petitioner filed a petition for divorce, alleging desertion, and defendant countered, alleging adultery.

The Vice-Chancellor convicted both, and both appeal. The state of the case embodies the entire record.

ARGUMENT.

The woman in the case is a Mrs. Tomlinson, wife of John L. Tomlinson, for many years a close friend of Alfred H. Johnson. She is the axis on which the case revolves. Alfred was more considerate of her than he was of his wife or his dear friend of many years. He sacrificed both for "the girl of his childhood days." How sweet of him. When Mrs. Johnson was convinced that he had more affection for Mrs. Tomlinson than he had for her (his wife), she remonstrated. He

promised not to cheat, but breached his promise. Again she remonstrated, again he promised, and again he breached and so ad infinitum. She then said to him you must choose whom you will serve, and he chose the *axis*. According to his story, she then refused to be a mere piece of flesh to him; he thereupon left the home, joined the girl of his childhood days, and when the curtain lowered on the last act of the frightful drama he was still joined.

The petition alleges an actual desertion. This could not be, because he admits he vacated the home (page 15). At best the case is one of constructive desertion, and that is not alleged. Of course, the entire record must be carefully read and thoroughly analyzed. In this type of case, lengthy quotations from the case is rarely justified. But since we believe the Vice-Chancellor misconceived the full import of the proofs which induced and, we contend, justified Mrs. Johnson's act, we make passing reference to some of the testimony. First came the suspicion that Johnson was unfaithful, and subsequent events which demonstrated adulterous relations fully justified the suspicion.

See cross-examination of Johnson at page 20 as follows:

"Q. Did you say that your married life had been happy?

A. Not altogether, no, sir.

Q. Was it ever happy?

A. Well, it was happy when I was first married because everything went along.

Q. How long after you were married?

A. I suppose five years.

Q. For five years you had a very happy life?

A. Yes, sir.

Q. Then did there come a woman into the case?

A. No, sir, not then.

Q. What?

A. No, sir.

Q. Not then?

A. No, sir.

Q. When did she come in?

A. The woman you have reference to I knew ever since I was a kid.

Q. Who do you think I have reference to?

A. I suppose you have reference to Mrs. Tomlinson.

Q. Mrs. Myra Tomlinson?

A. Yes, sir.

Q. Was she in any way responsible for the coolness between you and your wife?

A. None whatever.

Q. Did your wife ever tell you she was?

A. Yes, sir.

Q. How many times?

A. I couldn't say.

Q. Well, give us your best judgment as to how many times?

A. I couldn't say because I didn't keep account.

Q. Was it so many that you couldn't keep account.

A. No.

Q. What did she say to you about it?

A. She told me one time that I ought to be ashamed of myself and she felt as if she ought to take a gun and shoot me.

Q. Was there any reason for it?

A. I couldn't say myself. I had never did anything against her.

Q. What reason did she give for telling you that you ought to be ashamed of yourself?

A. She claimed that I was running with this woman.

Q. How soon after you were married did she claim that you were running with this woman?

A. I suppose twenty years, probably.

Q. You mean twenty years after you were married?

A. I suppose something like that.

Q. How long did she continue that complaint?

A. She continued it all the way along, I suppose.

Q. Did she finally tell you in substance that you had to choose between this woman and her?

A. There was never any such conversation.

Q. Nothing that approached that?

A. No, sir.

Q. You used to go out with this woman alone, didn't you?

A. Yes, sir.

Q. Used to be in public places with her and your wife wasn't with you?

A. Yes, sir. No more than any other.

Q. Used to dance with her?

A. I have danced with her, yes, sir.

Q. Your wife found fault with it, didn't she?

A. Yes, sir.

Q. Notwithstanding that you continued to do what you had done before?

A. I had been with her when her husband was with her.

Q. I say, in spite of the fact that your wife complained about you going around with this married woman, you continued to do it, didn't you?

A. Yes.

Q. Why didn't you stop when your wife told you that she didn't want that?

A. Because she never gave me any encouragement.

Q. What?

A. My wife never was a wife to me as far as a wife.

Q. Then, because she wasn't a wife to you, you concluded that you had a right to run around with another married woman, is that right?

A. Just the same as she done with other men.

Q. I am not asking you that. Keep your mind on the question. I say because you thought she wasn't a wife to you, you concluded that you had a right to go around with another married woman, is that so or not?

A. I didn't think I had a right. It was a question of friendship.

Q. It was all friendship, was it?

A. Yes, sir."

Also page 26 as follows:

"Q. Of course, you know Mrs. Tomlinson is a married woman?

A. Yes, sir.

Q. You know her husband?

A. Yes, sir.

Q. And you knew the time that she left her husband?

A. Yes, sir.

Q. And she left her husband and came to you, didn't she?

A. She came to me, yes, sir.

Q. And she has been living in this house ever since?

A. No, sir.

Q. Where has she been living?

A. She was to mother's a few nights and she had a room after that.

Q. Where?

A. 110 St. James Place.

Q. You visit there?

A. Yes, sir.

Q. Eat there?

A. No, sir.

Q. Sleep there?

A. No, sir.

Q. Did you go around with her in an automobile?

A. Yes, sir.

Q. She comes down and helps you in your office?

A. No, sir.

Q. Didn't your wife refuse to cohabit with you upon the ground that you were unduly familiar with Mrs. Myra Tomlinson?

A. She did but didn't mention any names.

Q. In other words she did give you the reason why she wouldn't cohabit with him?

A. She did.

Q. What was the reason she gave you?

A. She said that she wouldn't let me touch her if I touched any other women.

Q. Well, did she charge that you were touching some other woman?

A. She did.

Q. Did she tell you what woman?

A. She didn't at that time.

Q. Did you ask her?

A. I did not.

Q. Were you interested in the subject at all?

A. No, because I knew I wasn't.

Q. Will you look at this memo paper and tell me whether that is your writing?

A. Yes, sir; that is mine."

The cross-examination is continued with relation to letters he admitted he wrote to Mrs. Tomlinson. They are lustful and show a depraved mind. His explanations are so silly and so plainly false as to compel disbelief of his entire testimony where it is material to the issue. Mrs. Johnson intercepted one of the letters. Despite her protest he continued to write Mrs. Tomlinson. At page 33 we have:

"Q. Why didn't you tell her you were writing these letters to this woman?

A. What?

Q. Why didn't you tell her?

A. She never asked me.

Q. She didn't ask you either, but she did tell you, didn't she, that she wasn't going to be a wife to you unless you stopped your connection with that woman? Didn't she?

A. She didn't say that, no, she simply said she wouldn't.

Q. After she had made those complaints you continued to visit that woman and you continued to write these letters, didn't you?

A. Yes, sir."

The letters, with one or two exceptions were found by Mr. Tomlinson in Mrs. Tomlinson's bureau drawer, after she deserted her husband.

She was sworn, denied ever having seen the letters but offered no explanation for leaving her husband and living in the building owned by Johnson and in which he conducted a garage on the first floor.

Now read the testimony of Mrs. Johnson, beginning at page 50, with particular reference to page 57, being the colloquy between Mr. Johnson and Mrs. Tomlinson in the presence of Mrs. Johnson after she caught them arranging for an auto trip and after *Exhibit D*-4, a significant note. This condemning instance was not denied by either. Johnson's improper relations with Mrs. Tomlinson are plain, and this before the final break with his wife. It is plain that his love (or lust) for Mrs. Tomlinson was greater than his love for his wife. It is equally plain that he did not purpose being faithful to his wife and she knew it. In this posture we submit her conduct did not amount to desertion. Reading backward from the letters, the conclusion is irresistible that the immoral relation existed for a considerable time.

The petition alleges the desertion began in October, 1921, and continued until October, 1923. The bill was not filed until February 3, 1927, and after a maintenance order against petitioner on bill filed by his wife. It is fairly inferable from the proofs that as early as February, 1920, he was unfaithful to his wife (page 50);

admission page 51; continued intercourse with Mrs. Tomlinson between February, 1920, and January, 1926 (page 59).

Of course she could not be held guilty of desertion during the period of his immoral conduct. It follows that the alleged desertion could not have been willful and obstinate for the two years named in the petition.

Immediately after the filing of his petition Mrs. Johnson proceeded to obtain evidence of his adultery with Mrs. Tomlinson and filed a cross petition. The Vice-Chancellor found him guilty. He could not have done otherwise. See testimony of Mr. Tomlinson, Dr. Burroughs, Mrs. Mack, Bakely, Mrs. Bakely, Garnich and Foster. Inclination and opportunity are abundantly and convincingly shown. He called her sweetheart in public (page 88), they went riding together (page 119), they were together in her bedroom over the garage as late as 11:35 P. M., when the lights were turned out; he admitted being in her bedroom (page 113) and removing his hat and coat (page 107-108). He was seen to lie on bed while Mrs. Tomlinson was in the room (page 107-108). She admitted calling him affectionate names (page 154).

Counsel's brief stresses the contention that the criminal letters, for such they are, never reached Mrs. Tomlinson. This is based wholly upon her denial. But how absurd. He wrote them. How did they reach the bureau drawer? Did Mr. Tomlinson intercept them? He denies it. The letters refer to letters received from her. Manifestly clandestine correspondence existed. It is said that it is improbable that Mrs. Tomlinson would have allowed the letters to remain in the drawer. Doubtless these were but a few of many, and that it was a tragic oversight not to have destroyed them. Alas, alas, "and be sure your sin will find you out." See Numbers, 32d chapter, latter part of the 23d verse. Old stuff, but still true. Johnson and Mrs. Tomlinson had secret meetings in Philadelphia (p. 47-48). After discovery of the relation, Tomlinson sued Johnson and

Mrs. Tomlinson threatened her husband if he continued the action (page 46). It is puerile to contend that the relation between Johnson and Mrs. Tomlinson was merely a childhood affection. The Vice-Chancellor cast upon Mrs. Johnson the burden of proving adultery before her refusal to be his wife in order to escape the charge of desertion. We submit this was too onerous. Surely a woman, whose life is pure, is not required to establish adultery by the law's standard, to justify her refusal to submit to sexual intercourse, where, as here, the proof is that the husband is giving his attention to a married woman and persists in this until caught in the way Johnson was. Mrs. Johnson was entitled to his loyal support and considerate attention. She received neither.

The decree in her favor should be affirmed; that against her reversed with costs and counsel fee.

Respectfully submitted,

COLE & COLE,
Solicitors of Martha A. Johnson.

84 FEB.T.1928
94 FEB.T.1928

New Jersey Court of Errors and Appeals

Between
ALFRED H. JOHNSON,
Petitioner-Respondent-Appellant,
and
MARTHA A. JOHNSON,
Defendant-Appellant-Respondent.

On Appeal, etc.

ANSWERING BRIEF OF PETITIONER-RESPONDENT-APPELLANT UPON APPEAL OF DEFENDANT-APPELLANT-RESPONDENT.

STATEMENT.

The facts are as stated in the brief of Judge Cole.

ARGUMENT.

I have read Judge Cole's brief with a great deal of interest. It is unusual in that it cites no authorities, but gives only Judge Cole's opinion as to what

he thinks the Court should do in this matter, without regard for any of the existing law. If there could be a reversal of the finding of the Vice-Chancellor adjudging the defendant guilty of desertion in accordance with the Statute, it would be, of course, satisfactory to the defendant and her counsel, but unfortunately citizens of this State are bound in dealing with each other to deal according to the existing law.

Among other things, Judge Cole indicates that the petitioner's petition should have set up a constructive desertion. In this, he is obviously incorrect as Vice-Chancellor Garrison found in *Rector v. Rector,* 78 Eq. 386, an almost parallel case which case has been affirmed by several subsequent decisions in our Court of Errors and Appeals and is today the existing law: *Parmlay v. Parmlay,* 90 Eq. 490; *Horwath v. Horwath,* 91 Eq. 435; the obvious remedy of the petitioner was a petition for desertion.

My opponent in his brief has gone to a great deal of trouble to insert into it extracts of the testimony. In doing this, he has been particularly careful to omit any of the revelations of the defendant herself with respect to her course of conduct toward her husband in support of his petition. He likewise makes a statement on page 6 of his brief near the bottom that Mr. Tomlinson denies intercepting the letters. A careful reading of the State of the Case will fail to show anywhere any denial by him that he did intercept the letters.

In support of petitioner's case, of course, attention is directed to the testimony of the defendant herself concerning her refusal to have marital relations with her husband as found on the following

pages: page 50, line 22 and the answer thereto: page 54, line 20 to the end of the page: page 55, lines 1 and 2: page 65, line 29 to the end of the page: page 66, lines 1 to 33: page 67, line 1 to the end of the page: page 68, lines 13 and 14: page 80, line 22 to the end of the page: page 81, line 17 to the end of the page: page 82, line 1 to 8.

I call the Court's attention to another mis-statement by Judge Cole of the facts as shown by the testimony. He says that the desertion is alleged because the husband left the home. The petition says the defendant deserted the petitioner in October, 1921, and continued in that desertion until October, 1923. Testimony shows that the petitioner did not leave his home until sometime in January, 1926, long after the cause of action had arisen and ripened under the Statute. It is not fair to charge the petitioner with not having filed his petition until after the filing against him of a bill for maintenance, which bill, by the way, has never yet been brought to hearing, although it is the defendant's bill. Defendant and her solicitor would likewise have the Court disregard entirely the existing law of the State dealing with the rights of husbands and wives to desert each other. He would have you say that because the defendant discovered the petitioner writing a letter in his garage, the letter is certainly not lustful or particularly affectionate (see Exhibit D6) that she was upon said letter justified in deserting her husband by refusing thereafter to have any physical relation with him. Such is not the law of this State: *Suydam v. Suydam,* 79 Eq. 144; *Drayton v. Drayton,* 54 Eq. 298; *Rogers v. Rogers,* 81 Eq. 479, in all of which cases it is settled that under our Statute desertion is justified only when the de-

serting party has been so offended against as to authorize at his or her instance a decree of divorce or judicial separation, but the guilt of the defending party must appear by clear and satisfactory proof.

When Mrs. Johnson discovered her husband writing a letter (Exhibit D6) in 1921, to justify her position, that letter, coupled with whatever evidence she had, must have been enough to establish by clear and satisfactory proof that her husband was guilty of adultery. Her other proofs consist of an anonymous telephone call which was ruled out by the Court. I cannot conceive how, at that time, or two years later, when her proof was no stronger, she could have maintained successfully any action for divorce based upon adultery, or how she could have met the requirements of the law. From the authorities already cited, if she could not so have done, then she has not justified her desertion.

So far as the corroboration of the petitioner's case is concerned, I refer again to the cases I cited to the Vice-Chancellor: *Bissell v. Bissell,* 93 Eq. 537; *Rogers v. Rogers,* 89 Eq. 1; *Parmlay v. Parmlay,* 90 Eq. 490; *Meek v. Meek,* 92 Eq. 23.

As Vice-Chancellor Lane said in the Parmlay case where there is obviously no collusion between the parties, corroboration may be implied from the atmosphere of the case. From the bitterness with which this trial was conducted and the subsequent proceedings, since, I think it is obvious to anyone that there was no collusion and under the rule of law the petitioner was corroborated fully and completely.

I am not going to discuss all of the testimony recited in Judge Cole's brief. All of it happened long after the cause of action herein had ripened, including even the two letters, Exhibits D7 and 8, which by the testimony were never seen by the defendant or Mr. Tomlinson until sometime in January, 1927. All of the other conversations and occurrences occurred in the years 1925 and 1927 and hence cannot be construed as ground for justification of defendant's desertion.

It is respectfully submitted that the judgment should be affirmed with respect to the desertion of the petitioner by the defendant.

WILLIAM CHARLTON,
Solicitor for Petitioner-Respondent-Appellant.