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Bill of Complaint.

Filed May 3, 1915.

In Chancery of New Jersey

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

The petition of Ella S. Smith, of the Town of Boonton, in the County of Morris and State of New Jersey, respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to her present husband, Ernest N. Smith, the defendant in this suit, on the fourteenth day of May, A. D. 1902, by Rev. Charles H. Dodd, a Minister of the Gospel, at Newark, in the State of New Jersey.

2. Petitioner and defendant cohabited at Forest Hill, Woodside, Newark, Perth Amboy, Bayonne, and Boonton, with some interruptions as hereinafter stated, from the date of their marriage until April 14th, 1915, when she was compelled to separate from him, finally, because of his extreme cruelty to her, as hereinafter set forth.

Almost from the beginning of her married life, petitioner suffered from the violent and ill-governed temper of her husband, especially when he was out with other women or under the influence of liquor, in the use of which he recently habitually indulged. That these attacks, together with the use of vile epithets, continued at intervals, until they culminated in the instances now particularly described.

In March, 1906, while living at Woodside, N. J., her husband fell into a violent rage with petitioner; and choked her at the breakfast table, shaking her head, and saying he would like to kill her. In the latter part of 1907, while living on South Broad Street, Newark, N. J., petitioner's husband struck their child, then two years old, over the head and when petitioner interfered, he cursed at her and violently struck her in the arm, from which petitioner suffered several days.

In 1908 while petitioner lived with her husband at Newark he continued his abuses and ill treatment toward her until

petitioner became ill and required the constant attention of a physician, and during this sickness there was given to petitioner, with her coffee, a certain drug producing immediate drousiness. Petitioner, becoming aware of this practice did not take the coffee on one occasion and thereupon discovered her husband in another room committing adultery with the household servant. Petitioner then gave her husband the choice of leaving Newark and his associates or of her leaving him, whereupon they moved to Perth Amboy, New Jersey.

In July, 1910, while living at Bayonne, New Jersey, petitioner asked her husband for some money to buy things for their child, and he made no reply, but later when she went to put the child to bed, he stood secluded in a dark corner by the bathroom door and when petitioner's back was turned, struck her across the back of her neck, giving her a sudden fright and nervous shock and dazing her for a few minutes from which she suffered several days.

On July 25th or around August 1st, 1910, petitioner went away to the country, being in ill health and highly nervous condition and while at the depot petitioner's husband, without any cause or reason, cursed at her so that it attracted attention, greatly mortified and embarrassed her, and when petitioner went to kiss him good-bye, he knocked her aside, calling her a dam, dirty bitch, and at the same time threw their child on the steps of the train and had it not been for the conductor, she would have been killed, all of which greatly upset and disturbed petitioner and affected her general health and physical condition so that she was under the care and attention of a physician for considerable time.

On January 7, 1910, petitioner and her husband and child moved to Boonton, N. J., and while there it was a common thing for petitioner's husband to strike her and curse at her. In the month of May, when they would be in the yard he would start in and say "Get in the house, you dam bitch. You're not my wife, only my housekeeper, and a God damn poor one at that." On one occasion he threw a big stone at petitioner. On another occasion on a Sunday petitioner's husband struck her with a brush and cursed at her, and the maid interfered. At this time petitioner was sitting up for the first in three weeks, having been in ill health because of these continued abuses. During periods of intercourse by petitioner with her

husband, he treated her in a cruel, inhuman manner and would leave her bed for long periods. In May, 1913, petitioner underwent an operation in Saint James' Hospital, Newark, and during this sickness her husband made no inquiries concerning her health and did not visit petitioner at any time. Petitioner's husband would get up mornings and start cursing because petitioner was talking to their child, and would say "Get your God damn yap going. Jesus Christ All Mighty, how I'd like to finish your dirty bitch of a face." On another occasion, when petitioner's father and her washwoman were in the house, he jumped up from the table and without any provocation, came in the room where petitioner and her child were, took an electric light bulb and tried to jam it down her throat, saying "I'll fix her. The dam dirty bitch." He twisted petititoner's finger and upset her so that she had to send for a doctor and was sick in bed for several days.

On Monday, March 22nd, 1915, while petitioner was talking to their child, her husband started by saying, "Now get your God damn yap going." She told him to be quiet and went down stairs. He followed her downstairs, and in the presence of her washwoman called her a bastard bitch whore, said she was out whoring all night and said he would do anything, go to jail for two years, for the sake of smashing her face, or he would do anything so he would never be obliged to see her again.

During the past twelve months petitioner's husband has refused to cohabit with her as her husband, has left her bed, and about three months ago threatened to shoot her, and after such remarks petitioner saw her husband handling a gun in his room, all of which upset petitioner's general state of health and produced a nervous condition. During all of the times mentioned and particularly during the last two years, petitioner's husband has been intimate with other women and has often told petitioner to "Get to hell out," that he did not care for her any more, that he had other women, that if she wanted to stay she must put up with the life he gave her and that if petitioner had any sense she would take the hint and leave him, as he had no more use for her and she could do as she pleased. Petitioner's husband has repeatedly threatened to put her out of the way and on March 26, 1915, she and her daughter were taken suddenly ill after dinner at night. Her husband took very little interest in the meal and sat watching the results,

there being no household servant present on this occasion. Petitioner's husband refused to call a physician and petitioner persuaded her daughter, who was also suffering, to summon a doctor, which was done. Petitioner's husband became greatly enraged, swore and declared there was nothing the matter. The physician worked over petitioner several hours and finally aroused her from the effects of such sickness. She was sick in bed for several days, it being diagnosed by the physician that she had been given knock out drops. During this sickness petitioner's husband made no inquiries concerning her health and did not go into her room at any time. Upon recovering from this sickness and being in a very weak condition, petitioner attempted to perform her household duties and on April 9, 1915, she asked her husband to get a pail of coal and he started to curse and call petitioner a whore and bitch and finally threw at her a glass dish, which caused a severe gash in her neck and she had a relapse.

During the long course of abuse to which petitioner was subjected, she became nervous and ill, and was rendered unfit to properly discharge her duties as his wife, constantly requiring the attention of a physician, yet she continued to live with her husband, trusting that she might regain his love, and reclaim him to a sense of duty, until the day last mentioned, when it appearing that further cohabitation with him must be attended with grave danger to her life, and being in great fear, anguish and discomfort, she left defendant's house, on April 14th, 1915. Petitioner says, that from his past extreme cruelty, and abusive treatment to her and his present hatred for her, it would be improper and unsafe for her to return to him, and live with him as his wife.

3. Petitioner and defendant were bona fide residents of the State of New Jersey when this cause of action arose and they have ever since continued to be bona fide residents of this State down to the time of the commencement of this action, residing at Forest Hill, Woodside, Newark, Perth Amboy, Bayonne and Boonton, in the County of Morris.

4. One child was born of the marriage, to wit, Audrey, age nine years, that by reason of the defendant's habits of intemperance, association with women and his habitual violent and ungovernable temper towards all the members of his household, he is unfit to have the charge and custody of said infant child.

Bill of Complaint.

5. Petitioner has no means of support except from her own exertions. Defendant possesses real and personal property to the value of ten thousand dollars and above the income therefrom, is in receipt of a salary of two thousand dollars per annum.

6. Your petitioner prays, that she may be divorced from the bed and board of her said husband for the cause aforesaid, and that the defendant may be compelled by the decree of this honorable Court to support her and the said child of the marriage; and that she may be awarded the custody of the said child; and that she may have such further relief as may be just.

And your petitioner will ever pray, &c.

ELMER W. ROMINE,
Solicitor of and Counsel with Petitioner.

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

ELLA S. SMITH, being duly sworn according to law, upon her oath deposes and says, that she is the petitioner in the foregoing petition; and that her said petition is not made by any collusion between her and the defendant, but in truth and good faith, for the causes set forth in the petition.

ELLA S. SMITH.

Sworn and subscribed before me at Boonton
this first day of May, A. D. 1915.

LILLIAN EDNA ROMINE,
Notary Public,
Morris Co., N. J.

A true copy.

ROBERT M. MCADAMS,
Clerk.

Answer.

Answer.

Filed May 14, 1915.

The answer of Ernest N. Smith, the defendant, to the petition of Ella S. Smith, filed in the above cause.

This defendant answering says:

1. This defendant admits that he was married to the petitioner, whose maiden name was Ella S. Buckbee, on May fourteenth, nineteen hundred and two, as stated in the petition.

2. This defendant further admits that the petitioner and the defendant after the marriage aforesaid, cohabited at Forest Hill, Woodside, Newark, Perth Amboy, Bayonne and Boonton, all in the State of New Jersey, until the fourteenth day of April, nineteen hundred and fifteen, when the petitioner left this defendant, but this defendant denies that the petitioner was compelled to separate from him because of his extreme cruelty to her.

This defendant denies that from the beginning of their married life the petitioner suffered from the violent and ill-governed temper of this defendant, especially when he was out with other women or under the influence of liquor, in the use of which he is alleged to have recently habitually indulged. This defendant denies that since his marriage to the petitioner he has gone with other women, and he denies that he has ever been under the influence of liquor, and he alleges that the allegations in the petition relating thereto are wholly false.

This defendant denies that in the month of March, nineteen hundred and six, while living at Woodside, New Jersey, he fell into a violent rage with the petitioner. He denies that he choked her at the breakfast table, shaking her head and saying that he would like to kill her. This defendant denies that in the latter part of nineteen hundred and seven, while living on South Broad street, Newark, he struck their child, then two years old, over the head and he denies that he cursed the petitioner and violently struck her in the arm. This defendant alleges that on the occasion alluded to in the petition he was correcting the child, but denies that he acted in any way other than a parent should act.

This defendant denies that in the year nineteen hundred and eight, while living at Newark, he continued his abuses and ill treatment toward the petitioner as alleged in the petition; he ad-

mits that the petitioner required the attention of a physician, and his defendant alleges that the petitioner during all their married life was sickly and frequently required medical treatment, but this defendant denies that such medical attendance was due to his treatment of the petitioner or to any cruelty on his part. This defendant denies that a certain drug producing immediate drowsiness was at any time given to the petitioner by this defendant, and this defendant absolutely denies that he at any time committed adultery with any household servant and he absolutely denies that the petitioner ever discovered this defendant committing adultery with a household servant. This defendant denies that the petitioner gave her husband the choice of leaving Newark and his associates or of her leaving him, whereupon they moved to Perth Amboy, New Jersey, but this defendant alleges that the reason that petitioner and defendant moved to Perth Amboy was because such was the desire of the petitioner, who wished to move there so as to enjoy the benefit of salt water which the petitioner said would be good for her throat.

This defendant denies that in the month of July, nineteen hundred and ten, while living at Bayonne, New Jersey, the petitioner asked her husband for some money to buy things for their child and he made no reply, and denies that later when she went to put the child to bed he stood secluded in a dark corner by the bathroom door and denies that when petitioner's back was turned he struck her across the back of her neck, giving her a sudden fright and nervous shock and dazing her for a few minutes, and denies that she suffered several days.

This defendant admits that in the month of July or August, nineteen hundred and ten, the petitioner went away to the country and he admits that the petitioner was or claimed to be in ill health and highly nervous condition, but this defendant denies that while at the depot he cursed at her so that it attracted attention and greatly mortified and embarrassed her, and he denies that when the petitioner tried to kiss him good-bye he knocked her aside, and he denies that at this time he threw their child on the steps of the train and denies that if it had not been for the conductor the child would have been killed, and he denies that any of these alleged facts greatly upset and disturbed the petitioner and affected her general health and physical condition so that she was under the care of a physician for considerable time.

Answer.

This defendant denies that he and the petitioner moved to Boonton on January seventh, nineteen hundred and ten, but alleges that it was January seventh, nineteen hundred and twelve. This defendant denies that while in Boonton it was a common thing for him to strike the petitioner and he denies that he ever struck the petitioner, but alleges that on one occasion when he and the petitioner were in an argument he pushed the petitioner from him, and alleges that this is the only time that he has laid hands upon the petitioner. He denies that he threw a big stone at the petitioner or that he ever struck her with a brush, and denies that the maid ever interfered between them, and denies that at any time was the petitioner ever confined to her bed for three weeks because of ill-health produced by this defendant's abuses. This defendant denies that during periods of intercourse with the petitioner he ever treated her in a cruel and inhuman manner. This defendant admits that in May, nineteen hundred and thirteen, the petitioner underwent an operation in St. James' Hospital, Newark; during this sickness he made no inquiries concerning her health, and did not visit her. He alleges that she went to the hospital against his wishes because he did not think it was necessary for her to go there. This defendant denies that he would get up mornings and start cursing because the petitioner was talking to their child, and denies that he ever jumped up from the table and without any provocation came in the room where the petitioner and her child were and took an electric light bulb and tried to push it down her throat, and he denies that he ever twisted the petitioner's fingers and upset her so that she had to send for a doctor and was sick in bed for several days.

This defendant admit that during the past twelve months he has refused to cohabit with the petitioner and alleges as a reason therefor that while in bed the petitioner would continually talk and complain and row about various matters and disturb this defendant's sleep; that defendant commuted to New York during the day time and had to get up around six o'clock in the morning and frequently worked late in the city and would not get home until late. He needed his sleep, and the continual complaining and nagging of the petitioner prevented him from obtaining the necessary sleep so that he refused to sleep in the same room with her and occupied and has occupied since a room by himself. This defendant denies that he ever threatened to shoot the peti-

tioner. He admits that he owns and has owned for a number of years a shot gun which he uses on shooting trips, and alleges that he takes short shooting trips every year in the fall and always obtains a license for such purpose, and admits that the petitioner may have frequently seen this defendant with this gun, but denies that he ever used, or threatened or intended to use the gun for other than a proper and lawful purpose, and denies that petitioner's general state of health was changed because of the fact that this defendant owned such gun, and denies that such fact produced a nervous condition. This defendant denies that at any time since his marriage to the petitioner has he been intimate with other women, and denies that he ever told the petitioner that he had other women and that if she wanted to stay she must put up with the life he gave her, and that if petitioner had any sense she would take the hint and leave him as he had no more use for her and she could do as she pleased. This defendant denies that he has repeatedly threatened to put the petitioner out of the way. With reference to the occasion of March twenty-sixth, nineteen hundred and fifteen, this defendant admits that the petitioner and her daughter were taken ill after dinner at night, but this defendant absolutely denies that such illness was due to any act of his, and denies that such illness was produced by knock-out drops and denies that he ever gave to the petitioner or to their child knock-out drops or anything similar to that. This defendant alleges that before dinner petitioner had complained of feeling badly. She got the dinner herself on the night of this illness; she had told the defendant that at lunch she had eaten canned salmon and the illness which the petitioner had and which produced vomiting during the night was due in this defendant's opinion, as he told the petitioner, to ptomaine poisoning caused by eating such canned fish. This defendant denies that the petitioner was sick in bed for several weeks and says that she was in bed for not over two days. This defendant denies that he ever threw a glass dish at the petitioner which caused a severe gash in her neck, or which caused a relapse in her illness. With reference to this particular allegation, defendant says that the petitioner threw a cup at him which broke and the defendant then said that if the petitioner wanted to break the crockery up he might as well help her and he picked a glass dish up off the table and dropped it on the floor, but it did not

even break and it did not touch the petitioner. This defendant further says that the petitioner threw corn meal mush at him and it went all over his coat and he wiped his coat off on the petitioner.

This defendant denies that the petitioner became nervous and ill and was rendered unfit to properly discharge her duties as a wife because of the long course of abuse to which she was subjected, and he denies that the petitioner was ever in grave danger of her life because of his actions and denies that the petitioner was ever in great fear, anguish and discomfort because of his actions, and he denies that he has ever been extremely cruel to the defendant or treated her in an abusive manner, and denies that he has any present hatred for her and denies that it would be improper and unsafe for the petitioner to return to him and live with him as a wife.

3. This defendant admits the third paragraph of the petition.

4. This defendant admits that one child was born of the marriage, to wit, Audrey, age nine years. This defendant denies that by reason of his habits of intemperance, association with women and his habitual, violent and ungovernable temper towards all the members of his household, he is unfit to have the charge and custody of said infant child. He alleges that he is not of intemperate habits, but on the contrary does not drink, and has never been intoxicated; that he does not associate with women and never had and that he has no cruel, violent and ungovernable temper.

5. Defendant denies the fifth paragraph of the petition.

6. Defendant further answering says that the petitioner has been sickly and in poor health from childhood, and that the result of this has been to make her nervous and irritable; that she has for some years suffered with the idea that her husband had been unfaithful to her, and had accused not only this defendant but various of her girl friends with being intimate with this defendant, and that these accusations have been so continued and so persistent, without foundation and unwarranted, that they have become very annoying to this defendant and he has frequently remonstrated with the petitioner concerning the same; that this continual nagging has been the cause and occasion of frequent

quarrels that arose between the petitioner and the defendant, in which both the petitioner and the defendant have been equally guilty of cursing and swearing, and so far as the petitioner is concerned she has also been guilty of throwing cups and other things at the defendant. The petitioner has required frequent medical attendance and has employed doctors in all places that they have lived and has been operated upon at least twice, all of which has caused great expense to this defendant and has prevented him from saving any money. Defendant further says that the petitioner was continually scolding and nagging their child and was bringing the child up to feel ashamed of its father, and the petitioner has even accused defendant of being intimate with the child. This continual nagging by the petitioner, both to the child and to this defendant, and the continual false accusations made against this defendant by the petitioner worked on this defendant so that he could not properly attend to his business and did not get the sleep which he required and finally he moved to and occupied a room separate and apart from the petitioner, and she then accused him of going there so that he could communicate out of the window, where she could not see him, with women on the street and in other houses. These actions on the part of the petitioner have resulted in causing the defendant, who is not a profane man, to at times curse and swear at the petitioner and the defendant has frequently told the petitioner that he did not see how he could stand it much longer, but this defendant alleges and insists that he has never in any way or manner whatsoever treated the petitioner with extreme cruelness nor has he acted in such a manner as to injure the safety or the health of the petitioner in such manner as to make her reasonably apprehensive as to her safety or health; that he has not assaulted, beat or wounded her in any manner, nor physically abused her, nor used violence to her in any way, nor has he committed adultery with anyone, nor grossly abused his marital rights, and this defendant alleges that the allegations relating thereto in the petition are wholly false.

This defendant prays that the petition of the petitioner may be dismissed, and that no divorce from bed and board may be granted her, and that no decree may be entered compelling this

defendant to support the petitioner and the child of the marriage, and that the custody of the child may not be awarded to her.

ERNEST N. SMITH,
Defendant.

KING & VOGT,
Solicitors of Defendant.

Opinion.

Submitted September 20th, 1916.
Decided October 25th, 1916.

Mr. Elmer W. Romine for petitioner.
Messrs. King & Vogt for defendant.

FOSTER, *V. C.*

The petition in this cause is filed for a divorce on the ground of extreme cruelty.

The parties were married on May 14th, 1902, and have continuously resided since their marriage at various places in this State. They have one child, a daughter, nine years old.

On April 14th, 1915, petitioner left defendant because, as she claims, of his abuse and cruel treatment, and her fear that he would continue to do her personal injury if she continued to live with him.

Petitioner's proofs show an almost uninterrupted course of cruel and brutal treatment of her, by the defendant, for over ten years; these proofs show that defendant has repeatedly struck, kicked, pinched and choked her; that he frequently cursed and abused her and called her vile names and accused her of being unfaithful; that he threatened to kill her and drive her crazy; that he threatened to do her bodily injury with a revolver which he kept in his room; that he attempted to push an electric light bulb down her throat; that he taunted her about his relations with other women; that this treatment was at times of almost daily occurrence, and frequently caused petitioner to become so ill that she required the attention of physicians; that defendant manifested no affection for her, and that they have not cohabited for over a year prior to the date she left him; that the immediate

cause of her leaving was an assault he made on her, cutting her neck with a glass dish.

Petitioner is a very delicate woman, of a highly nervous temperament, and for some years has suffered from heart trouble; she claims defendant's cruelty and abuse greatly aggravated her nervous condition and heart trouble, and that she would be confined to her bed for a week at a time as a result of his abuse and cruelty and of the bodily injury he sometimes inflicted upon her. She has on her arm a bruise which she claims was caused by defendant continually pinching her, and she frequently had bruises on other parts of her body from his assaults.

Defendant denies nearly every charge the petitioner or her witnesses have brought against him; he admits that for a short time prior to their parting, he did occasionally swear at her and slapped her a few times, but claims that this conduct on his part was provoked by the unwarranted accusations of immoral conduct which petitioner continually made against him.

Defendant claims petitioner has always been insanely jealous of him; that she has imagined many of the things that she accused him of; that such accusations had no foundation in fact; that petitioner became obsessed with the idea that he was having improper relations with every woman he met or looked at.

Petitioner has testified to certain acts of adultery on the part of the defendant, but her testimony on these matters is without corroboration, and the charges are not sustained.

I do not find, as defendant contends, that if he had been guilty of all petitioner charged him with, that she has condoned his offenses by continuing to live with him.

There is nothing in the case to indicate that petitioner had forgotten or forgiven his treatment of her; she was obliged to live with him; she had no place to go; she was without money and was sickly and unable to earn a living for herself and her child. Since leaving defendant she has been working for six dollars a week, and this, with the alimony she is receiving and the payment of her room by some of her relatives, enables her to support herself and the child.

The proofs satisfy me that petitioner has suffered extreme cruelty, both by bodily injury from the assaults committed on her by the defendant, as well as severe mental suffering caused by the profane, abusive and opprobrious language and names addressed to her.

Petition of Ernest N. Smith.

From his treatment of her and his threats petitioner was justified when she left him in fearing him, and in fearing a continuance of the cruelty she had suffered.

A decree will be advised in favor of the petitoiner.

Petition.

Filed by Court Dec. 18th, 1916.
Filed with Clerk Feb. 20, 1917.

IN CHANCERY OF NEW JERSEY.

Between		
ELLA S. SMITH,	*Petitioner,*	*On Petition for Divorce, etc.*
and		*Petition.*
ERNEST N. SMITH,	*Defendant.*	

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

The petition of Ernest N. Smith, of the Town of Boonton, in the County of Morris and State of New Jersey, respectfully shows:

1. Your petitioner and the said Ella S. Smith were married on the fourteenth day of May, A. D. 1902, at Newark, New Jersey, by Rev. Charles Dodd, Minister of the Gospel, and lived together as man and wife until the said Ella S. Smith left your petitioner in the month of April, 1915, as hereinafter set forth.

2. One child was born of the said marriage, to wit, Audrey Smith, now ten years old.

3. The said Ella S. Smith left your petitioner and his home on the fourteenth day of April, 1915, and has not lived with your petitioner since that time.

4. On the third day of May, A. D. 1915, the said Ella S. Smith filed a petition in the Court of Chancery of New Jersey

against your petitioner for a divorce from the bed and board of your petitioner, under the Divorce Act of 1907 of the State of New Jersey.

5. In said petition, the said Ella S. Smith alleged that your petitioner had been cruel and abusive to her; that she could not longer safely live with your petitioner, and alleged many acts of cruelty, adultery and abuse on the part of your petitioner, and prayed for a divorce from the bed and board of your petitioner and for the custody of the child Audrey.

6. Your petitioner, on the fourteenth day of May, A. D. 1915, filed an answer to said petition, specifically denying all of the allegations contained therein.

7. Such proceedings were had in said cause that the matter was referred to the Hon. John E. Foster, one of the Vice-Chancellors, to hear the same for your Honor and to report thereon and advise what decree should be made therein.

8. Evidence was taken in said cause before the said Vice-Chancellor and before Nicholas W. Bindseil, Esq., as master, on the fourth and fifth days of April, 1916, May 19th, 1916, June 16th, 19th, and 22nd, 1916, and July 8th, 1916, and said Ella S. Smith was present at all of the hearings on said days, with two exceptions, and heard the testimony of the witnesses, and on some of these days testified in her own behalf

9. That from and after the time that the said Ella S. Smith left your petitioner in April, 1915, she lived with Nellie Blowers in Boonton, for about nine weeks, then moved to Morristown and lived in a house on Mount Kemble avenue until August, 1915, from which place she moved to a flat owned by Hyman Fine on Speedwell avenue, Morristown, where she stayed until May, 1916; then she moved to Linden street, in Morristown; she lived there until August, 1916, then moved to 44 North 43rd street, Irivington, New Jersey, where she lived until about November, 1916. She is now, as your petitioner is informed and believes, not a resident of the State of New Jersey.

10. That the said Ella S. Smith was represented in the litigation mentioned heretofore by Elmer W. Romine, a solicitor of this Court, of Morristown, New Jersey.

11. That in her endeavor to ascertain facts detrimental to your petitioner and favorable to her case, the said Ella S.

Smith, through her solicitor, employed one William H. Lyons, of Morristown, New Jersey, as a detective, to secure evidence of cruelty or adultery on the part of your petitioner; that said Lyons was employed before the actual filing of the petition in said litigation by the said Ella S. Smith.

12. That the said cause so instituted by said Ella S. Smith was determined in her favor by the said Vice-Chancellor in an opinion filed the thirteenth day of November, 1916, and application has been made by the solicitor of said Ella S. Smith to the said Vice-Chancellor for the advising of a decree in her favor, decreeing the separation from bed and board of your petitioner and the said Ella S. Smith, the fixing of an amount of permanent alimony, the allowance of a counsel fee for the said Elmer W. Romine, and the allowance of taxed costs to said Ella S. Smith, and the determination of the custody of the child Audrey, which said application is now pending before the said Vice-Chancellor to whom the cause was referred, it having been adjourned from December fifth, 1916, to December eighteenth, 1916.

13. That your petitioner and your petitioner's solicitors have been lately informed, by various persons with whom your petitioner and his solicitors were unacquainted, (with but one or two exceptions), of matters which your petitioner is advised materially affect the standing of his case before this Court, and which your petitioner deems of sufficient importance to bring to the attention of this Court. Your petitioner and his solicitors are informed that the said Ella S. Smith and the said William H. Lyons aforesaid, a married man with a wife and family, have lived together and cohabited as man and wife from a time shortly after the said Ella S. Smith left your petitioner in April, 1915, to about October 28th, 1916, and during the whole time that the present litigation between your petitioner and said Ella S. Smith has been pending; that the said Lyons visited the said Ella S. Smith while she lived with Nellie Blowers in Boonton; that he almost daily visited her apartment in Hyman Fine's flat in Morristown, staying until the late hours of the night, and that the said Ella S. Smith was requested to leave Hyman Fine's apartment by Hyman Fine because of her relationship with Lyons; that the said Lyons visited her frequently at her home on Linden street, Morristown, staying for days at

a time; that said Lyons lived in the same apartment at Irvington, New Jersey, which said Ella S. Smith occupied, and that she and said Lyons visited at least one hotel in Kings County, New York, in or about the month of July, 1916, and stayed there as man and wife for several days. This information has come to your petitioner and his solicitors from persons who have occupied the same houses that Ella S. Smith occupied, or who were near neighbors to her; from a physician who attended her, and from the keeper of the hotel in Kings County aforesaid, and others. All of the persons from whom said information has come are persons in whom your petitioner has every reasonable cause to repose confidence; that some of said information came to your petitioner or his solicitors wholly unsolicited, and from the information so received by your petitioner, he is advised by his solicitors that he has a valid ground for absolute divorce from the said Ella S. Smith on the ground of adultery, and your petitioner has filed a petition in this Court against his wife, the said Ella S. Smith, for a divorce upon such grounds.

14. Your petitioner is advised that the acts and conduct of the said Ella S. Smith, pending the litigation in this Court between your petitioner and the said Ella S. Smith, has constituted and does constitute a fraud upon this Honorable Court, and shows that her action was not brought and prosecuted in good faith and she is not entitled to the relief prayed for in her petition, and particularly that she is not entitled to a divorce from the bed and board of your petitioner in the pending litigation, nor to be allowed permanent alimony nor costs nor counsel fees and that she is not a fit and proper person to have the care and custody of the child, Audrey, and is not entitled to such custody.

Your petitioner therefore prays that no final decree may be entered in this Honorable Court in the pending litigation instituted by the said Ella S. Smith against your petitioner, decreeing that your petitioner and said Ella S. Smith be divorced from bed and board, and that no decree for the custody of said child, Audrey, be entered, nor any decree for permanent alimony, nor for costs nor counsel fees, be entered until your petitioner has had an opportunity of presenting the facts, which your petitioner has ascertained and which are set forth herein, in a formal manner or proceeding before this Honorable Court,

either upon testimony in open court or before a master, and it has been ascertained by this Honorable Court that such facts have not been substantiated, nor until the divorce case instituted by your petitioner has been determined adversely to him, your petitioner hereby tendering himself ready and willing to pay the temporary alimony awarded to the said Ella S. Smith in the suit instituted by her until the further order of this Court.

And your petitioner will ever pray, etc.

ERNEST N. SMITH,
Petitioner.

KING & VOGT,
Solicitors.

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

ERNEST N. SMITH, of full age, being duly sworn on his oath, deposes and says:

I am the petitioner in the foregoing petition named. The matters, facts and things, therein stated to be within my own knowledge, are true, and so far as the matters therein set forth relate to the acts or statements of others, I believe them to be true.

ERNEST N. SMITH.

Sworn and subscribed to before me this
16th day of December, A. D. 1916.

ROBERT H. SCHENCK,
Master in Chancery of New Jersey.

Affidavit of Harold W. Price.

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

HAROLD A. PRICE, of full age, being duly sworn on his oath, according to law, deposes and says:

I am associated with the firm of King and Vogt, of Morristown, New Jersey, solicitors for the defendant, Ernest N. Smith, in an action for divorce from bed and board brought against Mr. Smith by his wife, Ella S. Smith. I am familiar with the facts of said case.

On November 13th, 1916, his Honor, John E. Foster, one of the Vice-Chancellors of the Court of Chancery, filed his opinion in said action. The time for the settlement of the decree, based on said opinion has been adjourned to December 18th, 1916.

On or about November 15th, 1916, I received word from Mr. Smith that a lady living in Boonton, New Jersey, had told him that William H. Lyons, a detective employed by the solicitor of Ella S. Smith, had come to her home and told her facts which would indicate that for a large portion of the time while said litigation was pending, he had been living in adultery with the said Ella S. Smith. On November 16th, 1916, I went to Boonton and saw the lady who had spoken with Mr. Smith. She related to me, with particularity, the story told to her by Mr. Lyons. The story told by her to me, if true, showed that Lyons had co-habited with Ella S. Smith for a large portion of the time above mentioned. From November, 1916, until December 5th, 1916, I endeavored to verify the story so told me by the lady in Boonton. I saw a member of Mrs. Smith's family who told me that one of the members of her family had learned that Mr. Lyons was staying at a house occupied by her at 44 North 43d street, Irvington, New Jersey, and that he had protested against it; that Mrs. Smith had told at least one person that Mr. Lyons had made love to her. I further learned since December 5th, 1916, that when Mrs. Smith left her husband in April, 1915, she boarded at the home of Nellie Blowers at 503 Lathrope avenue, Boonton, New Jersey, that Lyons repeatedly visited her while she was living there, that she has stated that she was in love with him and would eventually marry him. That she moved from Boonton to Morristown, New Jersey, where she lived on Mt. Kemble avenue until August, 1915; that she moved from there to a flat owned by

Hyman Fine on Speedwell avenue, Morristown, where she stayed until May, 1916. From the latter place she moved to Linden street in Morristown, where she stayed until August, 1916, and then moved to a house at No. 44 North 43d street, Irivington, New Jersey. I have ascertained from various people that while she was living in Morristown, New Jersey, Mr. Lyons would repeatedly call on her, would spend evenings with her and frequently would stay at one of the places where she lived for days at a time. I have also been told that while at Irvington, New Jersey, Lyons would call on her repeatedly, would be at the house nights and stay there for several days at a time. That on several occasions Mrs. Smith and Mr. Lyons would leave the house together and be gone for several days. That on at least one occasion the child was left with a near neighbor while Mrs. Smith, according to her own statement, went away with Lyons; that for a portion of the time Mrs. Smith went under an assumed name while living in Irvington. Information has also been conveyed to me that on at least one occasion Mr. Lyons and Mrs. Smith went to Coney Island, Kings County, New York, where they stayed at a hotel, occupying the same room and registered under an assumed name, and on another occasion occupied the same room at a hotel at 123rd street and Lennox avenue, New York, where they registered under an assumed name.

HAROLD A. PRICE.

Sworn and subscribed to before me this
eighteenth day of December, 1916.

ROBERT L. MURPHY,
Commissioner of Deeds of New Jersey.

Order.

Filed February 20th, 1917.

This matter being opened to the Court by King and Vogt, solicitors of the defendant and petitioner, Ernest N. Smith, and in the presence of Elmer W. Romine, Esq., solicitor of the petitioner, Ella S. Smith, and it appearing by a duly verified petition filed in the above cause by the said defendant, Ernest N. Smith, that the said Ella S. Smith and Ernest N. Smith were married May 14th, 1902, by Rev. Charles Dodd, a minister of the gospel, and that they lived together as man and wife until April 14th, 1915, when the said Ella S. Smith left the said Ernest N. Smith, and that on the third day of May, 1915, the said Ella S. Smith filed her petition in the above cause praying a divorce from bed and board from the said Ernest N. Smith on the ground of cruelty and adultry, and for the custody of their only child Audrey Smith, then about ten years old, and it further appearing that an answer was duly filed to said petition in said suit by said Ernest N. Smith denying all the charges and allegations therein contained, and that such proceedings were had in said cause that the matter was referred to the Hon. John E. Foster, one of the Vice-Chancellors, to hear the same for the Chancellor and report thereon to him and advise what order or decree should be made therein, and it further appearing that a portion of the evidence was taken in said cause before said Vice-Chancellor in open court, and that a further portion thereof was taken, with the Court's direction and approval, before Nicholas W. Bindseil, Esq., one of the Masters of this Court, and that on November 13th, 1916, the said Vice-Chancellor filed an opinion finding the facts of the case in favor of the said Ella S. Smith on the ground of cruelty but not on the ground of adultery, and it further appearing that no final decree has yet been advised or entered in said cause; and it further appearing from said verified petition, that the said Ernest N. Smith alleges and charges that during substantially all of the time that the above stated cause was pending the said Ella S. Smith was living and co-habiting with one William H. Lyons, and that the said Ella S. Smith committed adultery with the said William H. Lyons at various times and places during such time, and that she is not a fit and proper person to have the care and custody of said child Audrey, and praying that no

Order.

decree be entered in said cause until he has had an opportunity of substantiating the allegations of said petition, and application further being made in said cause, in the presence of the solicitors aforesaid, to open the above stated cause for further hearing, and for authority and permission on behalf of said Ernest N. Smith to file in said cause a supplemental answer or counter-claim or both as he may be advised, covering facts and matters which have arisen since said cause was instituted and of which the said Ernest N. Smith has just learned, and no cause appearing or being shown to the contrary.

It Is, on this 17th day of February, A. D. one thousand nine hundred and seventeen, on motion of King and Vogt, solicitors of defendant and petitioner, Ernest N. Smith, and in the presence of Elmer W. Romine, solicitor of the petitioner, Ella S. Smith, Ordered, that the above stated cause be and the same is hereby opened for further hearing therein and the said defendant, Ernest N. Smith, is hereby permitted and authorized to file a supplemental answer or counter-claim, or both, in said cause as he may be advised, covering facts, matters and things which have arisen since said cause was instituted.

And it is further ordered that no final decree a *mensa et thoro* be entered in this cause in favor of Ella S. Smith, and that no decree for the custody of said child, Audrey, nor for permanent alimony, nor for costs or counsel fees be entered herein until the further order of the Court.

And it is further ordered, that the said defendant, Ernest N. Smith, file his said answer or counter-claim, or both, as he may be advised, in said cause, within thirty days from the date hereof, and serve a true copy thereof upon the said Ella S. Smith or her solicitor and that the petitioner Ella S. Smith file her answer or reply thereto as she may be advised within thirty days from the service of such copy upon her or her solicitor, Elmer W. Romine, and that the said Ernest N. Smith, bring on the further hearing of said cause as rapidly as possible thereafter according to law and the rules of this Court, and that in the meantime and until the further order of this Court, the rights of the parties to said cause, except as herein otherwise provided, be and remain in *statu quo;* in the event that the said Ella S. Smith refuses, fails or neglects to file her said reply or answer within the time herein limited, then and in such case the said Ernest N. Smith may proceed with said cause according to law and the rules of this Court.

Counter-claim of Defendant.

And it is further ordered that Ernest N. Smith continue to pay to Ella S. Smith the temporary alimony heretofore awarded to her, to wit, $7.50 per week, until the further order of this Court.

And it is further ordered that at this time a counsel fee of $100.00 (one hundred dollars) be allowed Elmer W. Romine, solicitor of Ella S. Smith.

And it is further ordered that all further equities are reserved until the further order of the Court.

E. R. WALKER.
C.

Respectfully advised.

JOHN E. FOSTER,
V. C.

I approve the above order as to form.

ELMER W. ROMINE,
Solicitor of Ella S. Smith.

Counter-claim.

Filed March 9th, 1917.

Defendant, by way of counter-claim, exhibited against the petitioner, by leave of the Court first had and obtained, says:

1. He was lawfully joined in the bonds of matrimony to his present wife, Ella S. Smith, the petitioner in this suit, on the 14th day of May, A. D. 1902, by Rev. Charles Dodd, a minister of the gospel, at Newark, Essex County, New Jersey.

2. Petitioner, since her marriage to defendant, and on the 20th day of April, 1915, and on various days thereafter to June 1st, 1915, at the home of Nellie Blowers in Boonton, Morris County, New Jersey; and on the 20th day of August, 1915, and on various days thereafter, to the month of May, 1916, at a flat owned by Hyman Fine on Speedwell avenue, in Morristown, Morris County, New Jersey; and on June 1st, 1916, and on various days thereafter, to August, 1916, at a house on Linden street, Morristown, New Jersey, owned by a Mrs. Priestman; and on the

Counter-claim of Defendant.

20th day of August, 1916, and on various days thereafter until October 28th, 1916, at a flat at No. 44 North 43rd street, Irvington, Essex County, New Jersey; and on June 29th, June 30th, July 1st, 2nd, 3rd and 4th, 1916, at a hotel kept by Louis Arkenaw, on Tilyou's Walk at Coney Island, Kings County, New York; and on a date, unknown to your petitioner, at a hotel at 123rd street and Lennox avenue, New York, committed adultery with William H. Lyons.

3. Defendant was a bona fide resident of the State of New Jersey when this cause of action arose and has ever since continued to be a bona fide resident of this State, down to the time of the commencement of this action, residing at the Town of Boonton in the County of Morris and State of New Jersey. Petitioner was a bone fide resident of this State at the time when this cause of action arose, and has ever since continued to be a bona fide resident of this State until on or about October 28th, 1916, residing at the Town of Boonton, the Town of Morristown, in the County of Morris and the Town of Irvington in the County of Essex.

4. One child was born of the marriage aforesaid, to wit, Audrey Smith, now ten years of age, and who at present is in the custody of petitioner, who is unfit to have the custody of said child; and that the welfare of said child requires that she should be removed from the custody of petitioner and restored to that of defendant.

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

And defendant will ever pray, &c.

ERNEST N. SMITH,
Defendant.

KING & VOGT,
Solicitors and of Counsel with Defendant.

Counter-claim of Defendant.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } *ss.*

ERNEST N. SMITH, being duly sworn according to law, upon his oath deposes and says, that he is the defendant named in the foregoing counter-claim; that his said counter-claim is not made by any collusion between him and the petitioner, but in truth and good faith, for the causes set forth in the counter-claim.

ERNEST N. SMITH.

Sworn and subscribed to before me this
2nd day of March, A. D. 1917.

(SEAL) GEORGE F. KAISER,
Notary Public, Kings County No. 129.

Certificate filed in New York County No. 89.

A true copy.

ROBERT D. MCADAMS,
Clerk.

Amended Answer to Counter-claim.

Amended Answer to Counter-claim and Further Petition and Counter-claim by Petitioner.

Filed.

The petitioner, answering the counter-claim of the defendant says:

1. The petitioner admits that she was lawfully joined in the bonds of matrimony to Ernest N. Smith on the 14th day of May, A. D. 1902, by Rev. Charles Dodd, a Minister of the Gospel at Newark, Essex County, New Jersey.

2. Petitioner denies that since her marriage to defendant and on the 20th day of April, 1915, and on various days thereafter to June 1st, 1915, at the home of Nellie Blowers in Boonton, Morris County, New Jersey, and on the 20th day of August, 1916, and on various days thereafter to the month of May, 1916, at a flat owned by Hyman Fine on Speedwell avenue, Morristown, Morris County, New Jersey, and on June 1st, 1916, and on various days thereafter to August, 1916, at a house on Linden street, Morristown, New Jersey, owned by a Mrs. Priestman, and on the 20th day of August, 1916, and at various days thereafter until October 28th, 1916, at a flat at No. 44 North 43rd street, Irivington, Essex County, New Jersey, and on June 29th, 30th, July 1st, 2nd, 3rd and 4th, 1916, at a hotel kept by Morris Arkman on Tilyou's Walk, at Coney Island, Kings County, New York, and on a date unknown to your petitioner at a hotel at 123rd street and Lennox avenue, New Yrok, committed adultery with William H. Lyons.

4. And petitioner further denies that she at any time committed adultery with William H. Lyons and denies that during her married life with Ernest N. Smith she committed adultery with any person whatsoever, and denies that she ever committed adultery with anyone.

5. Petitioner admits paragraph 3 in the counter-claim but denies that the defendant, Ernest N. Smith, has any cause of action against her for divorce.

6. The petitioner admits that one child was born of the marrigae aforesaid, to wit, Audrey Smith, now ten years of age, and who is in the custody of petitioner, but petitioner denies that she is unfit to have the custody of said child and denies

that the welfare of said child requires that she should be removed from the custody of petitioner and denies that the defendant is entitled to or should have the care and custody of the said child.

The petitioner prays that the counter-claim of the defendant may be dismissed against her and that a decree be entered in favor of petitioner on her original petition for a legal separation.

By way of further petition and counter-claim against Ernest N. Smith, the petitioner, Ella S. Smith, says:

1. Defendant and petitioner co-habited for about twelve years from the date of their marriage and during the early part of this period defendant treated your petitioner kindly and maintained and supported her; but in or about the year 1906, the defendant commenced a course of cruel and abusive treatment toward petitioner and did continue the same without provocation or just cause until petitioner was compelled to leave defendant in April, 1915, that the defendant refused to cohabit with petitioner for at least a year before she was compelled to leave him in April, 1915. And petitioner further shows that by reason of the extreme cruelty and abuse which is more particularly stated in the original petition, the petitioner feared for her personal safety, her health became impaired and she was no longer able to discharge her duties as defendant's wife through such fear, anguish and discomfort and therefore she did as heretofore alleged, on the 9th day of April, 1915, leave defendant's house and go to the home of Nellie Blowers, that subsequently thereafter she maintained a home at Morristown and at Irivington and since the 9th day of April, 1915, has lived apart from the defendant, who has never sought her return to him and has never given petitioner any assurances on which she can rely that if petitioner would resume cohabitation with defendant he would treat petitioner as a just man and husband. Defendant, by the true intent and meaning of the statute in such case made and provided, has ever since January 1st, 1914, and for more than two years last past, willfully, continuedly and obstinately deserted your petitioner, aside from being guilty of acts of adultery alleged in the original petition.

Amended Answer to Counter-claim.

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 defendant may be compelled by the decree of this Honorable Court to support her and the said child of the marriage and that she may be awarded the custody of said child and that she may have such other relief as may be just and your petitioner will ever pray, etc.

ELMER W. ROMINE,
Solicitor of Petitioner.

Objections in Point of Law to the Counter-claim of the Defendant, Ernest N. Smith, and the Relief Prayed for by Said Counter-claim.

1. The petitioner will object to a decree for divorce in favor of Ernest N. Smith on the ground that he has been guilty of extreme cruelty toward Ella S. Smith and as such is not entitled to any decree for divorce against Ella S. Smith.

2. The said Ella S. Smith will also object to a decree for divorce in favor of Ernest N. Smith because the said Ernest N. Smith has been guilty of adultery.

3. The said Ella S. Smith will also object to a decree for divorce in favor of Ernest N. Smith on the ground that the said Ernest N. Smith has deserted petitioner constructively from January 1st, 1914, to April, 1915, and thereafter actually deserted Ella S. Smith by forcing her from his home by his cruel and inhuman treatment and that the said Ernest N. Smith has since said time willfully refused to cohabit with Ella S. Smith and has never sought her return and has never given any assurances that if she did resume cohabitation he would treat her as a husband should.

4. The said Ernest N. Smith being guilty of these various offenses cannot obtain relief in this Court so as to entitle him to a decree for divorce from the bonds of matrimony.

ELMER W. ROMINE,
Solicitor of Petitioner.

Reply to Further Petition and Counter-claim.

We hereby consent to the filing of this amended answer and further petition and counter-claim.

Dated June 1, 1917.

KING & VOGT,
Solicitors of Ernest N. Smith.

Reply to Further Petition and Counter-claim of Petitioner.

Filed June 18, 1917.

1. Defendant admits that defendant and petitioner cohabited for about 12 years from the date of their marriage and says that during all this period defendant treated petitioner kindly, maintained and supported her. Defendant denies that in or about the year 1906, he commenced a course of cruel and abusive treatment toward peitioner and denies that he continued the same as alleged in the petition. Defendant admits that petitioner left him in April, 1915, but denies that she was compelled to do so by reason of any cruel or abusive treatment of her by defendant. Defendant admits that for about a year prior to April, 1915, he refused to cohabit with petitioner and alleges as a reason therefor, that while in bed, petitioner would continually talk and complain about various matters and disturb defendant's sleep; defendant commuted to New York during the day and had to arise above six o'clock in the morning, and frequently worked late in the city, returning home at a late hour of the night. He needed sleep and the continual complaining and nagging of petitioner prevented him from obtaining the necessary sleep, so that he refused to sleep in the same room with her and thereafter occupied a room by himself. Defendant denies that he ever abused or treated petitioner cruelly, and denies that petitioner had any cause, so far as defendant was concerned, to fear for her personal safety; he denies that, by reason of any act or acts of this defendant, the health of petitioner became impaired, and denies that she was no longer able to discharge her duties as defendant's wife through such fear, anguish and discomfort. Defendant admits that on or about April 9th, 1915, petitioner left defendant's house and went to the home of Nellie Blowers, but he denies that she was

forced to so leave by reason of any act or acts of defendant. Defendant admits that subsequently petitioner lived at Morristown and Irivington, and since on or about April 9th, 1915, has lived apart from defendant. Defendant admits that he has never asked petitioner to return to him for the reason that he knew, from said petitioner's actions and statements that such request would be in vain, and denies that he has not communicated with her, and says that petitioner never sought to return to him. Defendant denies that by the true intent and meaning of the statute in such case made and provided, he has, ever since January 1st, 1914, and for more than two years last past, willfully, continuedly and obstinately deserted petitioner, and denies that he has been guilty of adultery as alleged in the original petition.

Defendant prays that the further petition and counter-claim of petitioner may be dismissed, and that the marriage between petitioner and defendant may not be dissolved for the cause set forth in the further petition and counter-claim of petitioner, and that no decree be entered compelling defendant to support petitioner and the child of the marriage, and that the custody of the child may not be awarded to petitioner, and further prays that said further petition and counter-claim of petitioner, may be dismissed on the ground that petitioner has no legal right to file the same.

Answer to Objections to Counter-claim of Defendant.

Answer to Objections in Point of Law to the Counter-claim of Defendant, Ernest N. Smith, and the Relief Prayed for in Said Counter-claim.

1. Defendant denies the allegation that he has been guilty of extreme cruelty toward petitioner, and further says that such allegation, if true, would constitute no defense to the counter-claim of defendant.

2. Defendant denies that he has been guilty of adultery.

3. Defendant denies that he has constructively deserted petitioner from January 1st, 1914, or April, 1915, and denies that he thereafter actually deserted petitioner by forcing her from his home by cruel and inhuman treatment, and denies that he has since said time willfully refused to cohabit with petitioner. He admits that he has not sought her return for the reason that defendant knew from said petitioner's actions and statements that said request would be in vain, and charges that he has always treated petitioner as a husband should.

4. Defendant denies that he is precluded from the relief prayed for in his counter-claim by reason of anything alleged in petitioner's amended answer to counter-claim, or in the further petition and counter-claim by petitioner.

KING & VOGT,
Solicitors of Defendant.

Deposition of Carrie Scherer.

IN CHANCERY OF NEW JERSEY.

Between ELLA S. SMITH,	*Petitioner,*	*On Petition for Divorce.*
and ERNEST N. SMITH,	*Defendant.*	

Deposition of Carrie Scherer, taken before HERBERT W. KNIGHT, a Master in Chancery of New Jersey, pursuant to the stipulation, at the City Hospital, Newark, N. J., on Wednesday, January 26th, 1916.

Present:

Elmer W. Romine, Esq., solicitor for petitioner.

King and Vogt (by Robert Schenck, Esq.), solicitors for the defendant.

To the HONORABLE EDWIN R. WALKER, Chancellor of the State of New Jersey.

I, Herbert W. Knight, one of the Masters in Chancery of New Jersey, do respectfully certify and report that on Wednesday, the 26th day of January, 1916, in company with Elmer W. Romine, solicitor for the petitioner, and Robert Schenck, Esq., representing King and Vogt, solicitors of the defendant, I went to the City Hospital on Fairmount avenue, Newark, N. J., for the purpose of taking the deposition of Carrie Scherer (formerly Carrie Scott), a patient in that institution. On arriving at the hospital the solicitors for the respective parties, and myself were informed by Dr. Sobin the physician attending Mrs. Scherer that she was in a very critical condition; Dr. Sobin said she was in a dying condition and that it would be extremely dangerous to have the Master and the solicitors for the respective parties go to her bedside for the purpose of taking her deposition.

Whereupon it was stipulated and agreed between the solicitors for the respective parties that if the witness Carrie Scherer

was sworn as a witness in this cause and testified her general testimony would be, in part, along the lines of the statement hereunto attached.

It was further stipulated and agreed that such statement might be read in evidence on the trial of this cause in the same manner and with the same force and effect that if the witness has been sworn thereto, had testified as herein set forth and had signed such statement.

It was further agreed between the solicitors for the respective parties that if Carrie Scherer should regain her health sufficiently to be examined either at the trial or before a master this stipulation and the statement of the witness should not be used at the trial, the burden of proof, the condition of the witness to be on the party objecting to the use of the annexed statement.

Statement of Carrie Scherer,

(formerly Carrie Scott).

I worked for Mrs. Ella Smith at Boonton, New Jersey, for about a year during the time she lived there. I heard Mr. Ernest Smith, her husband, abuse her many times, on one occasion in the presence of her daughter Audery, by calling her "a dirty bitch" and "a whore." One Sunday, the date I do not remember, Mr. Smith accused his wife of burning papers in the yard, but it was not her who did it, it was me that burned the papers. They had trouble and I interfered.

Respectfully submitted this 27th day of January, A. D. 1916.

HERBERT W. KNIGHT,
Master in Chancery of New Jersey.

Emma Knell, direct.

IN CHANCERY OF NEW JERSEY.

Between

ELLA S. SMITH,

Petitioner,

and

ERNEST N. SMITH,

Defendant.

Transcript of shorthand notes of testimony and proceedings in the above entitled cause before Hon. John E. Foster, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, on Tuesday, April 4th, 1916, at ten o'clock in the forenoon.

Appearances:

Mr. Elmer W. Romine for petitioner.

Messrs. King & Vogt and Mr. Price for defendant.

EMMA KNELL, sworn for petitioner.

Direct examination by Mr. Romine.

Q Where do you live? A I live 276 Sussex avenue, Newark, New Jersey. I am taking care of the home now, but train nursing before I was married. I have been a trained nurse. I am acquainted with Mrs. Smith, the petitioner. I know Mr. Smith, the defendant. I first met them at 1203 South Broad street, Newark, New Jersey. They lived in that house and I lived there at the same time. My husband had charge of the house. I lived right opposite them; our private hall doors were adjoining.

Q What was Mrs. Smith's condition of health at the time you knew her in Newark? A Very miserable.

Q Explain to us what you mean by that. A One day my husband came in and asked me if I would please—

Mr. King. I object.

A (Continuing.) Would I step in and see about Mrs. Smith, she was very ill.

Court. Strike it out.

Emma Knell, direct.

Q As a result of your husband's request, you went in her room? A Yes, and found her suffering I thought from her heart.

Q What did you do for Mrs. Smith? A I gave her aromatic spirits of ammonia and asked should I send for her husband.

Q Did you send for him? A I did, and he came; I don't remember how long afterwards, but I think it was an hour or hour and a half.

Q Did you notice what Mr. Smith's attitude was toward Mrs. Smith while they lived in that house? A There was constant quarrelling.

Q Do you know what Mr. Smith said during those times? A What Mrs. Smith told me?

Court. What you heard, if anything.

Q Did you hear Mr. Smith say anything to Mrs. Smith in your presence or hearing? A No, I couldn't hear.

Q Could you hear his voice? A Yes.

Q Was it loud? A Yes, at times.

Q Did you have any talk with Mr. Smith in the hall about Mrs. Smith? A The day he came—the day he was summoned home about his wife? Yes. I can remember just how we met at the private hall door, but he said his wife was crazy.

Q What did you say? A I said "No, Mr. Smith."

Mr. King. I object.

Court. Anything said in his presence might call for a contradiction or explanation.

Q At that same time what did you say to Mr. Smith? A I said, "No, Mr. Smith, Mrs. Smith is a very sick woman."

Q What else was said, if you remember? A He said he thought she lied, and I said, no, she didn't; I considered he had a very good woman, noble woman, and that it was her illness, and he agreed with me.

Court. What did he say?

Witness. He said she was good; he did speak of her as being good.

Q Do you recall the conversation with Mr. Smith out in the yard a little later than that? A One Saturday morning I went out to call my husband and Mr. Smith said, "Mrs. Knell,

what do you know about me?'' and I said, ''Mr. Smith, I heard enough about you,'' and I came in and closed the door.

Q Did you at any time while Mr. Smith lived there say anything to him about having him arrested? A I didn't, but my husband did.

Q Was that in your presence? A No, my husband came in and told me.

Mr. King. I object and move to strike it out.

Court. Strike it out.

Q At any time while you were present did you hear your husband say anything to him about having him arrested? A No.

Q Did anyone in that house complain to you about Mr. Smith's conduct?

Mr. King. I object.

Objection sustained.

Q When did they move from the house? A I don't remember; it was October, I believe, 1910.

Q Do you recall the date when Mrs. Smith moved there? A 1909 they moved in. The way I have of remembering it, I was operated on in 1909 shortly after Mrs. Smith moved in, and was again operated on before Mr. and Mrs. Smith left the apartment in 1910. That is how I have the dates; otherwise, I wouldn't know.

Q (*By the Court.*) When do you think this illness of Mrs. Smith occurred when you gave her the ammonia? A In 1910.

Q (*By the Court.*) What time of the year, do you recall? A I cannot remember; she was sick a great deal; I cannot remember.

Q Do you recall the time when they moved from the house? A Yes, 1910.

Q Did you say anything to Mr. Smith about moving? A I didn't; my husband was caretaker.

Q Where is your husband now? A He is dead.

Q You didn't say anything to Mr. Smith about moving? A No, it wasn't my place.

Q Did you say anything to Mr. Smith about anyone complaining about him? A I don't know; I don't know if Mr. Knell did.

Florence Branthwaite, direct.

Q You visited Mrs. Smith recently? A Four weeks ago—four or five weeks ago.

Q How does her appearance compare with her appearance at the time she lived in Newark? A I think Mrs. Smith looks better, if anything.

Q Before Mrs. Smith moved from that house what was her general condition? A Very sickly.

Q What is her condition now, from your observation and your talk with her six weeks ago, compared with that time? A Very much better.

No cross examination.

FLORENCE BRANTHWAITE, sworn for petitioner.

Direct examination by Mr. Romine.

Q Where do you live now? A Edgemere Hotel, in East Orange, 301 William street.

Q Were you at any time employed by Mrs. Smith or Mr. Smith? A By Mrs. Smith.

Q Where were they living at that time? A Old Boonton road. I went there in 1915, I think.

Q Or 1914, which was it? A 1915—it was 1914.

Q They were living at Old Boonton road at that time? A Yes.

Q What was Mrs. Smith's condition of health when you went to work for them? A She was very sickly and nervous.

Q Describe it if you can. A Very nervous.

Q What was she able to do about the house, anything at all? A Oh, yes.

Q Your occupation there was a maid, was it? A Yes, sir.

Q Housekeeper or what? A General maid.

Q Did you do the heavy work? A No washing and ironing.

Q Someone came in to do the washing and ironing? A Yes.

Q Who was it that did the washing and ironing while you were there? A Mrs. Tompkins.

Q What was Mr. Smith's attitude toward Mrs. Smith when you worked there? A He was very quiet.

Q While they were having their meals how would he act? A Sometimes they would talk and sometimes they were quiet.

Q Did you ever hear Mr. Smith say anything to his wife? A What do you mean?

Florence Branthwaite, direct.

Q Using any language of any kind toward her, calling her any names? A Sometimes when he was angry.

Q Can you recall any of those instances? A I cannot just recall them, but I know sometimes he was angry and would say things.

Q What would he say? A Just use profane language sometimes.

Q Can you tell us the language he used, to the best of your recollection; what did he say? A I don't know how to express that.

Q Speak out plainly the words he used? A He would say "damn."

Q Would he say anything else that you can remember? A I don't remember just now.

Q Were you there when there was some trouble upstairs over an electric light bulb? A Yes.

Q Where was Mr. Smith at the time of that trouble? A I don't remember that; I was downstairs and I think they were upstairs; I am not sure.

Q Had Mr. Smith been downstairs just prior to the trouble? A Yes, he had been down and had his breakfast.

Q Did you notice whether he went upstairs quickly or not? A I don't remember that.

Q Mrs. Smith, had she been downstairs that morning? A I don't think so.

Q But Mr. Smith had been down? A And had his breakfast, yes, sir.

Q Do you recollect his going upstairs? A I know he was upstairs, but I don't remember his going up.

Q How long after he went upstairs did this trouble occur? A I don't remember, because I went ahead doing my work.

Q What was the first thing you heard? A I think I heard the bulb fall downstairs.

Q Did you hear anyone cry or call up? A I heard the holler.

Q Whose voice was it? A Mrs. Smith's.

Q Was anyone visiting there at that time; do you recall whether Mrs. Smith's father was there or not? A Mrs. Tompkins was there.

Q Do you recall whether Mrs. Smith's father was there? A Yes.

Florence Branthwaite, direct.

Q Do you know where he was at that time? A No, sir.
Q What did you do; did you remain downstairs or go upstairs? A No, I stayed right downstairs about my work.
Q After the trouble was over did you go upstairs? A No.
Q After this trouble did Mrs. Smith come downstairs? A Yes.
Q What was her condition?

Mr. King. I object.

Mr. Romine. I will connect it up.

Court. If it is not connected I will strike it out.

A I think she was crying.
Q Did you notice anything about her appearance—the face or hands? A Her fingers she said were hurt.

Mr. King. I move to strike that out.

Court. Yes. What did you see?

Q Did she show you her finger? A Yes.
Q What was the condition of her finger? A It was all red.

Court. What time in 1914 did this incident occur?

Witness. I don't just remember that; it was during the time I was employed there.

Q During the time you were there did you ever see Mr. Smith strike or push Mrs. Smith? A No, sir.
Q How long did you work there? A Eight months.
Q And during all that time that you were there did you see Mr. Smith do anything at all to Mrs. Smith? A No.
Q Did you say that they had quarrels? A Upstairs.
Q Have any downstairs? A Yes.
Q Where you could hear them? A Yes, many times in the dining-room.

Court. Could you hear them?

Witness. No, I could hear the mumbling.

Q After these quarrels what would Mrs. Smith's appearance be?

Mr. King. Would we be responsible for that?

A She would be all nervous and broke up.
Q Would she cry on any of those occasions? A Yes, sir.

Florence Branthwaite, direct.

Q Do you know whether Mrs. Smith went to bed after any of those troubles? A I don't know; she was sick in bed quite a little.

Q And would she be sick in bed after these quarrels or after the nervousness or crying? A I don't know whether it was just then or not, but I know she was sick.

Q During the day would she go to bed? A She went to bed lots of times.

Q Would that be after they had these quarrels? A I don't just remember that, whether it was after that or not.

Q Can you state when these quarrels would take place, morning or night? A Sometimes in the morning and sometimes at night.

Q Do you know who would start the quarrels? A I cannot just answer that.

Q What did you observe? A I didn't know, because if they were downstairs the door was shut and I couldn't hear until they were arguing.

Q When Mr. Smith came in the house from work or from out in the yard would he on any of those occasions start in to quarrel with Mrs. Smith? A Sometimes he would say something and sometimes she would say something.

Q During the time you were there was Mrs. Smith sick in bed for any length of time, a day or so or three days or four days or anything like that? A Yes, sir.

Q Do you know whether Mr. Smith would go to the room or inquire about her? A Sometimes he would go up there and sometimes he wouldn't.

Q Was it more often that he would not? A He didn't go very often.

Q What was his attitude toward Mrs. Smith when she was sick? A He was very quiet and distant.

Q Did he seem to manifest any interest in her sickness or in her? A No; I was taking care of her and so he didn't seem to bother; he thought I would take care of her, but he got anything I asked him to get for her.

Court. He asked you if he manifested any interest in her while she was sick.

Witness. I don't think so.

Q You don't think he manifested any interest in her? A No.

Florence Branthwaite, direct.

Q On Sundays would Mr. Smith stay home or go away? A He was mostly always home.

Q Did he go away on any Sundays automobiling that you know of? A Not while I was there.

Q Do you know Mr. Schwartz? A No, sir.

Q Do you know of a man coming to the house by the name of Mr. Schwartz? A I know of him only coming once while I was there.

Q On that occasion do you know whether he had a talk with Mr. Smith? A Yes.

Q What did Mr. Smith do at that time; how did he act? A Mr. Smith was out talking to Mr. Schwartz, and Mrs. Smith went to the window to speak to him and Mr. Smith came in and went upstairs.

Q What did Mr. Smith say when he went upstairs? A "Cut it out."

Q How did he say it? A He hollered it.

Q When he came down what was Mr. Smith's attitude and condition? A I think he was angry.

Q What did he do or say? A I don't remember.

Q Do you know whether Mr. Schwartz went away with Mr. Smith that day, or whether Mr. Smith went away with Mr. Schwartz? A I don't remember that, because I was inside working.

Q Mrs. Smith didn't go away with him, did she? A No, sir.

Q Do you recall ever calling up Mrs. Smith's folks about her condition? A Yes, sir.

Q What was her condition at the time you called up?

Mr. King. If we didn't produce it, we are not responsible.

Court. Do you propose to connect this up and show the defendant was responsible for this?

Mr. Romine. Yes, sir; if I do not connect it up, it may be stricken out.

A She had been sick in bed; I think she was just getting out of bed.

Court. No time is fixed.

Q You say Mrs. Smith had been sick for several days on this occasion? A On this one occasion she had been sick in bed.

Florence Branthwaite, direct.

Q Had Mrs. Smith had any trouble with her husband prior to her being taken sick on that occasion? A No, I don't think so.

Q Are you sure about it? A No, I am not sure about it.

Q You don't know what caused this sickness? A No.

Q Was it a fact that it was because you called up her folks on account of Mr. Smith's attitude and conduct toward Mrs. Smith?

Mr. King. I object.

A She asked me to; I asked if her people had been to see her, and I was a stranger there.

Q Was it because of Mr. Smith's— A No.

Q During the times you were there did Mr. Smith say anything about Mrs. Smith's character, in any of those quarrels? A No.

Q You mean you didn't hear him say anything? A I didn't hear him say anything.

Q Why did you leave Mrs. Smith's house?

Mr. King. I object.

Court. Is it material?

Mr. Romine. It is material on the attitude of the witness at this time.

Mr. King. Does your Honor think that the witness is antagonistic to the other side?

Court. It hasn't been devoloped yet.

A I had several reasons.

Court. Please give them.

Witness. One was because Mr. Smith's work wasn't so good and they wouldn't be able to pay me and have the wash done besides, and I couldn't afford to stay for less.

Q The other reasons? A And the other reason because I didn't like to stay when they didn't get along.

Q And did you leave because you didn't want to get into this affair? A No; I was going to leave long before that.

Q Did you tell Mrs. Smith that one of the reasons why you were leaving was because you didn't want to get into this? A

She said if I couldn't be a witness for her then she would have to get one that would.

Court. Do you think any of this is competent?

Mr. King. I do not; and move to strike it out.

Q Didn't you tell Mrs. Smith that you didn't care to get into this and didn't care to testify? A No, I did not.

Court. Have you any interest in this controversy?

Witness. No, sir. I simply told her that I wouldn't say anything between man and wife, and that is why I left.

No cross examination.

JOSEPH BUCKBEE, sworn for petitioner.

Direct examination by Mr. Romine.

Q You are the father of Mrs. Smith, the petitioner in this case? A I am.

Q Where do you live? A 45 State street, Newark.

Q You recall the time when she was married to Ernest Smith, the defendant in this action, do you? A I was there at the service.

Q And after they were married where did they go to live? A I think they went up to Forest Hill.

Q Did you visit them after they were married? A Yes, sir, once or twice or more.

Q Did you notice any trouble or observe any trouble between them? A Not particularly at that time.

Q Did you at any time? A Yes.

Q When was the first time? A I have seen it so frequently that I cannot mention the first.

Q What is the first thing that you can recall? A On one occasion—

Q Where were they living at that time? A At Boonton.

Q Do you remember where they lived in Woodside, New Jersey? A Yes, sir, Summer avenue, Woodside.

Q Did you visit them there? A Very seldom.

Q On any of the occasions that you visited them there did you see any conduct on the part of Mr. Smith? A I don't say that there was any conduct; I didn't see anything particularly

out of the way; he would come in late at night; she would ask a question and he would say, "It is none of your damn business."

Q He would say that? A Yes, sir.

Q Did you visit them while they lived at Perth Amboy? A I was there once or twice; twice, I think.

Q What was his attitude toward Mrs. Smith then? A It was pretty much the same thing year out and year in for a number of years.

Q What would he say or do? A He would damn her and cuss and swear at her.

Q What would she say to him? A She would say nothing; she would look as if she could sink through the floor.

Q At meal time how would he act toward her? A He would act toward her, sit beside her the same as you and I, and say "You God damn bitch, what are you looking at now?"

Q That was while they sat at the table? A Yes.

Q Did she say anything? A She would say "Can't I look at you?" and he would say, "I know what you think I was; you think I was out drunk last night."

Q Did she nag him? A I cannot say if there was any nagging in asking the question.

Q What was the condition of your daughter's health at the time she lived at Perth Amboy? A I think it was very fair.

Q Did you visit them while they lived at Bayonne? A Yes.

Q And what was Mr. Smith's attitude toward your daughter then? A It was the same old nagging, cursing and swearing at everything that didn't go to suit him.

Q What would he say while cursing and swearing? A I cannot recall all that was said; there was so much said.

Q How would that affect Mrs. Smith, your daughter? A She looked wilted down, as if she would drop through the floor, every time, almost.

Q You say when they moved to Boonton you visited them there? A I was there a month at a time sometimes.

Q Was that the time that they lived on Washington street? A I don't think I was there in that house more than twice.

Q While they lived at Old Boonton road were you there? A Yes, a number of times.

Q How long would you stay on those occasions? A I think I was over there a month one time.

Joseph Buckbee, direct.

Q Were you there when there was some trouble about an electric light bulb? A I was.

Q Where were you at that time? A I was in bed when that thing took place.

Q What was the first thing you heard? A Audrey screamed —her daughter.

Q What did you do? A I jumped out of bed to see what the row was.

Q Where did you go? A I went across the hall and went in the room, and Ernest just had her hand up that way (indicating), holding it that way, and was trying to put that bulb down her throat, and she kept turning her head, and I told him to stop.

Q What did he say when he was standing there with the bulb? A "God damn you, swallow that, and then you will always have a bulb with you."

Q What did you do? A I told him to stop, and he went— and then he started to run out downstairs; as he went down the short flight of stairs she grabbed the bulb and threw it at him, and it ought to have hit him in the neck and cut his jugular vein.

Q What did Mrs. Smith, your daughter, do after he tried to put this bulb down her throat? A Wilted down and sat there and I went out.

Q Do you know whether she cried or not? A I think she sniffled some, yes, sir.

Q Do you know whether she was sick in bed after that occasion? A I think she was for two or three days, and hardly fit to get up.

Q Do you remember an occasion when there was some argument over paying a washwoman? A Yes, sir.

Q Where were you at that time? A I was outside the kitchen door.

Q Was that when they lived at Old Boonton road? A Yes, sir.

Q What did you hear while you were outside? A I heard her make the remark—she said, "I swear I will stick you with this knife if you hit me again."

Q You heard who say that? A Mrs. Smith.

Q Your daughter? A Yes.

Joseph Buckbee, direct.

Q And then where did you go? A I pitched in the house then and told her to put the knife down.

Q When you got in the house who was there? A I don't recall who was there; there was one other, I think it was a servant girl, Elsie Starkman.

Q When you went in the house on that occasion was Mr. Smith in there? A Yes, sir.

Q What did you hear him say? A I heard him say a good deal that ought not to have been said.

Q What did you hear him say? Just tell us. A I forget whether it was on that occasion that he said if she was in such and such a condition it wasn't by him, and I think that is where the row commenced.

Q What did you hear your daughter say to him? A That he knew when that thing took place with him.

Q We are talking now about the washwoman. A Oh, about the washwoman.

Q What did Mrs. Smith say to Mr. Smith on that occasion? A She asked him for money to pay the washwoman.

Q And what did Mr. Smith say to her? A He denied but what he had paid it to her.

Q And what did you do? A What could I do; nothing.

Q Did you interfere in any way? A The interfering with that—

Q Did you step between them? A Yes.

Q And what did Elsie Starkman do? A Elsie Starkman—I don't know; she went out somewhere.

Q What did Mr. Smith say to you when you stepped between your daughter and him? A He wanted to know if I stood in between him and his wife? I said "On such occasions as this I certainly do."

Q Did he say anything about going to California then? A He went out doors and I went out and I said, "What is the use of your having such a row?" He said, "I swear if I had my money out of this place I would skip the country." I said, "You might be sorry for it afterwards."

Q On any other occasions when you were at the home did you see Mr. Smith do anything to your daughter? A I cannot say that I ever saw him strike her.

Q Other than what you have already stated? A Yes, about holding up her hand.

Joseph Buckbee, direct.

Q Did you ever hear him call her any names while they lived at Boonton? A I did.

Q Can you recall any of the things he said? A Yes, he said, "Who are you looking at now?" She said, "Can't I look at you?"

Q When was this? A That was after—

Q Was that while they were sitting at the table? A While they were sitting at the table, and he said, "No, you God damn bastard bitch—" and I said, "Hold on, you are going too far," and I said, "Who do you refer to?" He said, "You can sit there and you cannot move; you have got to take just whatever I am a mind to give you; you will get nothing more."

Q Whom did he say that to? A To Mrs. Smith. And I said, "Understand one thing; your folks won't have you at home." I said, "She has got just as much right in this home as any of the rest of you; you are talking about jailbirds and bastard bitches." I said "All the crooks in the family have been married in; he can put that in his pipe and smoke it, if he wants to."

Q At the time they lived in Old Boonton road did Mr. Smith sleep in the same room with Mrs. Smith? A I think he did for a time.

Q Was there a time when he didn't? A Yes.

Q Do you remember occasions when you and he would sit upstairs in the sitting-room? A Yes.

Q Where would Mrs. Smith be then? A In the front room upstairs.

Q Would you hear any noises or anything? A I heard some peculiar raps on the side of the house.

Q What kind of raps were they? A (Indicating a number of raps with his knuckles on the desk in front of witness.)

Q Then what would Mr. Smith do? A He would sit still; first there would be a rap (indicating one rap), the next time it would be (indicating three or four raps) and Mr. Smith then would go right downstairs; he would say "There is that blasted dog trying to get in." He would go downstairs and the knocking would have stopped. It might be the shutters.

Q How many times would that happen? A Two or three times; I often jumped out of the bed and looked out of the window.

Joseph Buckbee, cross.

Q On each occasion would he say it was the dog or give a different reason? A One time he said he had left the barn door open; another time he had left the chicken coop open.

RECESS.

Q Did you tell Mrs. Smith about this knocking? A No, sir.

Q Where would your daughter be at the time of this knocking? A She would be in bed in her own room.

Q Did you ever hear Mr. Smith say anything to her about hating her? A I don't know as you call it hate.

Q Did he use those words? A I don't know exactly what words he used; I had no idea that this thing would come to anything like this, or I would have taken every word down and kept a memorandum of it.

Q Do you remember his saying anything about going with other women? A He said he would go with whom he damn pleased, it was none of her business, "You have got to stay right there and you cannot go away, and take just what I am a mind to give you and nothing more. I will spend my money as I damn please."

Q Were you there when any of your daughter's folks other than yourself would come up? A Certainly.

Q How would Mr. Smith act on those occasions? A Them occasions was all right; he was a perfect gentleman, as far as that is concerned.

Q How would he act when they would go away? A They would wrangle first one way and then another; then he would begin cursing and swearing.

Q Did you ever hear Mr. Smith say anything about setting your daughter crazy? A He said he would set her crazy so he could get her away, at that time.

Cross examination by Mr. King.

Q In reference to this electric light bulb, when you went in the room did Mr. Smith have the bulb in his hand? A No, sir, he had her hand up that way (indicating), and he grabbed up the bulb and she tried to get away; I told him to stop, and he would take that bulb, and she would throw her head first one way and then another.

Q When you went in the room did he have the bulb in his hand? A I cannot swear that he did.

Joseph Buckbee, cross.

Q Who had it? A It laid on the table, I think.

Q Who picked it up? A Mr. Smith.

Q Did you see Mr. Smith pick it up? A I didn't, but he had it in his hand.

Q Then when you got in the room, did you see it in his hand or in your daughter's? A I saw it in his hand; it wasn't in my daughter's hand until after he laid it down and she picked it up and threw it at him.

Q When you got in there in which hand did he have the electric light bulb? A In his right hand.

Q Which hand of your daughter's was being held, or arm? A I think it was her right arm; he had it up that way (indicating).

Q Which arm of your daughter's was being held? A I say the right arm.

Q Then he was holding your daughter's right arm with his left arm? A Yes.

Q And he had this bulb in his right hand? A Yes.

Q Then in order to put it over to her face, he must have crossed his arms like I do (indicating)? A Not necessarily so at all.

Q Were they facing each other? A No, not exactly.

Q To be fair with you—I take my left hand and take hold of your right hand, and I am holding it up. A You have got my left hand.

Q Is that the way it was? (Indicating.)

Court. Is that the position they were in?

Witness. No, more like this (indicating).

Q Take my hands and show how he had her. A He had her by the finger that way (indicating).

Court. He took her by the right hand, holding her with his left hand, and was endeavoring to put the bulb in her mouth with his right hand?

Mr. King. He had her by his left hand, holding her left hand instead of her right.

Court. Yes.

Q And with his right hand he was trying to put this bulb in her mouth? A Yes.

Joseph Buckbee, cross.

Q How near was the bulb to her mouth, if you saw? A Closer than you and I were.

Q How large a bulb was it? A An ordinary electric light bulb; I don't know the size.

Q Was your daughter angry? A She was trying to get away from him.

Q Was she angry? A I cannot say.

Q Was he angry? A Yes.

Q Then when you went in, how long did they continue in the position you saw them when you went in? A Not but a very short time, as I stopped them.

Q What did he then do? A He threw it down and started to run down the steps and she grabbed it up.

Q Then when he started she picked it up and did what? A She went out and threw it at him.

Q That is all you saw of that occurrence? A Yes.

Q Coming down to the occasion of the knife; you saw the knife in her hand, did you not? A Yes, sir.

Q And she said she was going to cut him with it? A She said if he struck her again that way she would stick that knife into him.

Q And you went in and told her to put the knife down? A I certainly did.

Q What kind of a knife did she have? A Big carving knife.

Q Where did the occurrence take place? A They were in the kitchen at that time.

Q The occurrence took place in the kitchen? A Yes.

Q And had they been having trouble that night? A Not that I know of; I cannot remember; there were so many little flurries.

Q Did you see him strike her then? A I never saw him strike her myself.

Q This occasion when there was knocking on the side of the house—had you lived at the house or stayed at the house long enough so you knew there were trees about the house? A Certainly.

Q Did you notice that there was an apple and a chestnut right near the side of the house? A Yes.

Q Were they near enough so the limbs could strike the side of the house if the wind was blowing? A I don't think so.

Q Could they? A I wouldn't be positive.

Abram R. Buckbee, direct.

Q Will you say that at these times when you heard these knockings at the side of the house, that the wind wasn't blowing in that direction? A I wouldn't say whether the wind was blowing at all.

Q That you don't know? A No.

Q When he said perhaps he had left the barn door open or door of the chicken house, did he go out to see whether they were open or not? A Yes.

Q How soon did he come back? A About three to five minutes.

Q You haven't any idea that he met a woman at that time?

Mr. Romine. Objected to.

Objection sustained.

Q On how many occasions did these knockings take place? A Three or four times.

Q Over what period? A I was there six weeks at that time and I had been up there once or twice other times, a week or ten days.

Q Was it late or early when you heard these knockings? A It was after bed time.

Q At what time? A At eleven o'clock or ten o'clock; ten to eleven o'clock.

ABRAM R. BUCKBEE, sworn for petitioner.

Direct examination by Mr. Romine.

Q Where do you live? A 54 Academy street, Newark.

Q Are you a brother of the last witness? A Yes.

Q And an uncle to Mrs. Smith? A Yes.

Q Do you recollect the time when she was married to Ernest Smith? A Yes.

Q Did you visit their home after they were married? A Yes, sir.

Q And do you recollect the time when they lived at Woodside? A Yes, I can.

Q Do you know what year that was? A I cannot remember the year; it was shortly after they were married.

Q Will you tell us what Mr. Smith's attitude was toward his wife? A Very affectionate at that time.

Abram R. Buckbee, direct.

Q How many times while they lived at Woodside did you visit them? A On an average of once a month, the last day of the month; the last day of the month and the first night of the coming month.

Q Did you ever visit them when you observed any trouble between them? A Yes, sir, frequently.

Q Where were they living the first time you observed this trouble? A In Summer avenue.

Q Is that at Woodside? A Yes.

Q And what trouble was that? A He would come home late at night and she would say, "Ernest, you are late tonight."

Q Who would say that? A Mrs. Smith.

Q What would he say? A "It is none of your God damn business if I am."

Q What would Mrs. Smith say to him? A She would just look at him.

Q Did she quarrel with him then? A No, sir.

Q Were you there on any other occasions when you observed trouble? A After that there was hardly a night that I went up there but what they had just that kind of a wrangle, and I finally quit going there on that account.

Q What, if anything, did Mrs. Smith do that caused him to speak this way? A Nothing that I could see, any further than to look at him; he would want to know who the hell she was looking at.

Q What was her condition of health at that time? A I considered it was poor.

Q Can you describe to us in any better language how she was? A She was complaining of pain in her chest.

Q Did she complain of trouble around her heart? A Yes, sir.

Q Did you observe whether she was nervous or not? A I know that she was nervous; that was the reason I was up there when he was away nights, late nights.

Q What did Mrs. Smith say to him after these occasions when he would ask her what she was looking at, or "what the hell she was looking at?" A She said, "Ernest, if you keep on that way, you will drive me crazy."

Q What did he say? A "That is what I mean to do and get clear of you."

Abram R. Buckbee, direct.

Q On any of those occasions when you went up there would Mrs. Smith be sick in bed? A Yes.

Q How many times? A I cannot recall, but several times.

Q Did you ever visit them while they lived at Perth Amboy? A Yes, sir.

Q What was Mr. Smith's attitude toward Mrs. Smith then? A It got to be so he hardly could come in the house after awhile but what he would find fault about the cooking, and he would get up in the morning and the cooking was wrong, and wanted to know what she was keeping such God damn help as that for, and do it herself.

Q Had she said anything on those occasions to warrant that? A No.

Q Did you visit them at Bayonne? A I did.

Q What was his attitude toward her there? A Just about the same, and it kept growing worse every time I went there.

Q What was Mrs. Smith's condition then? A I considered that she was not a healthy woman.

Q Has she always been sickly and nervous? A I should not say so; I think she has been rather nervous.

Q Was her condition worse then than while she lived at Summer avenue, Woodside? A A great deal worse.

Q Do you remember the time Mrs. Smith went to German Valley, to the country, while living at Bayonne? A Yes.

Q Did you see Mrs. Smith just prior to the time when she went to the country? A Yes, sir.

Q And observed her condition and appearance at that time? A Not being a physician, but what I would call a woman that was run down, worried.

Q And was she nervous at that time? A Yes, sir.

Q When Mrs. Smith came back from German Valley or from the country did you see her again? A Yes, sir.

Q Within how short a time afterward? A Within a week or ten days.

Q Had her condition improved? A She looked better to me.

Q Do you recall the time when they moved to Boonton? A Yes.

Q Did you visit them in Boonton? A Yes, sir.

Q Where did they live at the time you visited them? A I packed her furniture for her at Bayonne, and the truck took the

furniture up there to Boonton; I took the train up and I don't know what street it was on; I stayed there for about a week or ten days.

Q Was it Washington street? A It was the first place they lived while at Boonton.

Q Did you help Mrs. Smith arrange the house? A Yes.

Q Was Mr. Smith present at the time to help in any way? A No, sir, he would be in New York.

Q Did you observe how Mr. Smith treated Mrs. Smith when he would come home evenings while living at Boonton? A I noticed there wasn't as much affection as there was when he was first married.

Q What do you mean; how would he act or what would he say? A He would come in and wanted to know what the hell the reason was the meals were not ready.

Q What time of the night would he come in? A I cannot recall.

Q Around meal time or after the usual meal hour? A Sometimes he said the train was late, and other times he wouldn't make any remark about it; she would say, "Ernest, you are a little late tonight," and he would say, "It is none of your God damn business if I am."

Q How would he act while at the table during meal time? A He used the same kind of language and found fault a good deal with everything, the cooking.

Q Did he make any remarks about her character or affecting her character? A He called her a God damn bastard, bitch; the whole family was nothing but crooks and jailbirds.

Q Did he say anything else? A I don't know as I recall anything else.

Q Would Mrs. Smith make any reply on these occasions? A She just sat and looked at him.

Q Had she said anything on those occasions to warrant him making that remark or using that language? A He happened to look up and saw her looking at him, and he said, "Who the hell are you looking at now?"

Q That would start the flow of language? A Yes, sir.

Q What was Mrs. Smith's state of health while she lived at Washington street, Boonton? A I don't think it was good.

Abram R. Buckbee, cross.

Q Was it any worse than it was while she lived at Perth Amboy or Bayonne? A It kept getting worse, yes, sir.

Q In what respect would it get worse, with regard to her heart? A Worriment.

Q She seemed to worry over it? A Yes.

Q How did that affect her?

Mr. King. Would he know?

Q Did Mrs. Smith complain about her heart? A She complained.

Q How did she appear so far as nervousness was concerned? A She didn't want to be there alone; she wanted to have the girl get the meals ready, and if she hadn't any girl, she wanted to have them ready when Mr. Smith returned.

Q Do you recall whether she was confined to her bed in the first place they lived in Boonton? A I know she was in bed, but the time I cannot say.

Q Do you recall whether Mr. Smith ever said anything to Mrs. Smith in your presence about going with other women? A Yes, sir.

Q When? A When I was in Boonton.

Q The first place in Boonton? A I don't know whether it was the first or last place; I only heard him make the remark once that he would go with whomever he pleased and wouldn't ask any odds of her either.

Q Did you ever ask him when he came home at night whether he had been at the office or not? A I didn't ask him, no, sir.

Q Did Mrs. Smith ask him? A Yes.

Q Do you know as a matter of fact whether he had been at the office on the occasions when she would ask him? A All I know, Mrs. Smith called up at the office and asked—

Q Did you ever call up? A No, sir.

Q Did you know whether Mr. Smith was ever intoxicated? A I cannot say he was intoxicated, but I think a man that talked the way he did to his wife wasn't perfectly sober.

Cross examination by Mr. King.

Q Mrs. Smith wasn't very amiable towards Mr. Smith, was she? A When they get so they lose affection for one another, they were not.

Q She didn't seem to care much for him than he appeared to care for her? A She was doing everything—

Abram R. Buckbee, cross.

Q How did she manifest any love toward him? A When he would come home at night she would offer to kiss him and embrace him and he would go off without returning.

Q Returning what? A His offer to kiss her.

Q And did she kiss him? A Yes, sir, more than once.

Q Did she put her arms around him? A I have seen her do it many a time.

Q Did she ask him at the same time whether he had been out with other women that day? A I don't know.

Q Did you ever hear her ask him that? A Not that I know of.

Q Did you hear it or didn't you? A I have heard her say that she heard he was out with other women; he said he would go with whomever he damn pleased.

Q Didn't she accuse him of that practically every night he came home? A Not that I know of.

Q Did you or didn't you, every night you were there? A Once or twice when he was out late at night she accused him of it; other nights I don't know that she did, because he would come home on time, on his regular train.

Q If he didn't come home on time, then her suspicions were aroused and she accused him of being out with women?

Mr. Romine. I object.

Court. I will permit the question.

Q Didn't he deny that he had been out with any woman? A Certainly he did.

Q Wasn't she extremely jealous? A I cannot say she was.

Q What did her actions indicate to you? A In what way do you mean?

Q As to whether she was jealous or not, extremely jealous?

Court. By her actions and conduct; from what you saw, and what she said and did.

A I cannot say that her actions were that she was extremely jealous; I think we all are, you and I both of us are jealous.

Q At any rate, when he put you in with the class of crooks and jailbirds you didn't like that? A No.

Q You have got that in for him? A No, sir.

Q You mean to say you forgave him after saying that you belonged to a family of jailbirds and crooks; have you forgiven

him for that? A I mean to say that I don't care what he calls me.

Q Have you forgiven him for making that false statement to you? A He never asked for it.

Q You haven't forgiven him, have you? A No, I haven't.

Q And the same anger that rankled in your breast when he made that false accusation against you and your family, including his wife, still rankles there? A I don't know that it does.

Q If you haven't forgiven him, it must be there? A I think a man repents for a thing.

Q What is your present thought about that man; if you haven't forgiven him, don't you still dislike him for saying that? A You can forgive anybody.

Q Were you ever convicted of crime? A No, sir.

SARA M. TOMPKINS, sworn for petitioner.

Direct examination by Mr. Romine.

Q Where do you live? A Towaco.

Q How far is that from Boonton? A I think about four miles and a half.

Q Are you acquainted with Mr. and Mrs. Smith? A I am.

Q Did you ever work for them? A I did.

Q In what capacity; what did you do? A I went there and washed and ironed.

Q Where did they live at the time you began to work for them? A I forget what the street is.

Q Down by the cemetery? A When I worked there last; Washington street I think it is where I first worked.

Q You worked for them also while they lived down at the last place? A Yes.

Q Do you recall an incident about an electric light bulb? A I do not; I don't know anything about it, until she told me of it.

Q Just prior to the time that she told you had Mr. Smith been in the house? A I don't remember that. I cannot remember things now like I used to.

Q Do you recall anyone screaming in the house on the occasion when you— A I don't remember ever hearing Mrs. Smith scream.

Sara M. Tompkins, direct.

Q Did you hear the little girl call out and cry? A I have heard her holler, but that was upstairs, but I cannot tell what it was about.

Q Do you remember whether Florence Branthwaite was there in the house at the time? A I think she was.

Q You were busy washing that morning? A Yes.

Q Did you see what Mrs. Smith's condition was after she told you about this trouble? A Her arm and things—I don't remember whether Mrs. Smith showed me her arm or not.

Q Do you recall Mrs. Smith saying something to you about an occurrence over an electric light bulb? A Yes, she told me that.

Q At the time she spoke to you about that did you see the condition of her hand? A I don't remember; honestly, I don't.

Q Do you recall about the condition of her arms or face at the time she was telling you this? A Yes, but I don't remember her showing me the arm.

Q On these occasions when you were in the house washing, can you tell us whether Mr. Smith did anything towards his wife? A I didn't see him do anything, any more than they talked.

Q Would you call it quarrelling with his wife? A I don't know what you would call it; I cannot say it was quarrelling, not regular quarrelling.

Q What would he be saying to her? A I cannot say; I didn't take notice.

Q Do you recall whether he said anything about her being crazy? A I have heard Mr. Smith say that, that was all.

Q Did you hear him say anything about going to jail, an incident about going to jail? A I wouldn't lie about that and I wouldn't lie about any of it; I heard him say one morning that he would go to jail for two solid years to mash her face; that is all I ever heard him say.

Q What was Mrs. Smith's condition on that day after he threatened to go to jail? A I don't know as there was anything, any more than she was right there; she didn't say much about it.

Q Do you know whether her condition was nervous or otherwise? A I don't know.

Q Do you know whether she was sick in bed on these occasions? A I don't know that she was sick on that occasion; she often had sick spells.

Inez Decker, direct.

Q Did he ever say he hated her? A Yes, I heard him say that.

Q Did you ever notice what Mr. Smith's actions would be or his conduct when he would come from the barn in the mornings? A No.

Q Did you ever recall what he would do in case the dog should happen to be anywhere near him when he would come in from the barn? A Only one time when he was in the house.

Q What did he do then? A Mrs. Smith dared him to kick her and he went by the dog but he didn't kick him.

No cross examination.

INEZ DECKER, sworn for petitioner.

Direct examination by Mr. Romine.

Q Where do you live? A On the old Boonton road.

Q Do you live near where Mr. and Mrs. Smith lived? A Right across the street.

Q Did you ever go over to their house? A Often.

Q What did you go over there for, to play with the little girl? A Yes.

Q Did you ever hear Mr. Smith use any language towards Mrs. Smith? A I did several times.

Q Can you tell us on any occasion what you heard him say to her? A I don't like to swear, but he cursed at her a few times when I was over there.

Q Can you recall what he said when he swore at her; just repeat it as near as you can what he said. A He called her a God damn bitch and then he told her she was no damn good, and then he told her several other things that I cannot recall.

Q On these occasions did Mrs. Smith say anything to him before he used those words toward her? A Nothing whatever.

Court. How long ago did this happen; in what year?

Witness. I think this happened in 1914.

Court. What was the occasion for him making use of such language to Mrs. Smith; what brought it about?

Witness. That I don't know; he was quite angry at her.

Court. Had she said or done anything to him to cause him to make the remark?

Witness. No, she hadn't said anything to him, only just he wanted to say it, and perhaps he was mad at her for something.

Court. Hadn't there been any other conversation except just these expressions?

Witness. No.

Court. Do you understand my question? Where was he when he made use of the remarks?

Witness. In the kitchen.

Court. And you were there?

Witness. Yes.

Court. And Mrs. Smith?

Witness. Yes.

Court. Anybody else?

Witness. And Mrs. Smith's little girl Audrey.

Court. Was he in the kitchen all the time or did he come in?

Witness. He come in from the barn.

Court. What did he say; what you have told us?

Witness. Yes.

Court. Is that all he said?

Witness. That is all I can remember that he said.

Q Did you ever see him do anything toward her, push her or strike her? A There was one time that I went over there on a Saturday, and I just got in the door and I saw Mrs. Smith move back; whether he had pushed her or not, I don't know.

Q Was he using any language at that time? A No, sir; not when I went in.

Court. Did they seem to be angry at that time? Either one of them?

Witness. No.

Q Why did you think that she had been pushed back; what brought that thought in your mind? A That kind of puzzled me.

Cecelia Sandusky, direct.

Q Why did you think of it at all when you saw her step back? A Because he stood right near her.

Cross examination by Mr. King.

Q Where were his hands when you saw her pushed back, as you say? A His one hand was almost down and the other hand was down beside.

Q How far was she from her husband? A About as far as I am from this man right here (indicating four feet).

Q When you first saw them? A After I had gone in the door; that was after I had gone in the door, but when I went in the door, he was quite near.

Q Was his back to you? A No, facing me like these two are now, because they were standing by the stand and I was at the door.

Q Had she said anything to him that you heard? A No.

Q All you saw was that she stepped back? A Yes, that is all I saw, excepting his hand up.

Q His hand up? A The way I just told you.

Q Which hand? A It was his right hand. Standing around that way with his face this way (indicating).

Q Was that the part of his body next toward her, or don't you remember about that? A I don't remember.

Q What did she say to him after you stepped in? A She asked him if he wouldn't take the clothes line down and he wouldn't do it. After I had stood there awhile she asked him that and then there was a quarrel over that, and he wouldn't take it down, and he started to curse again.

Q You say that you hadn't heard him before that? A This was after that, after she had asked him if he wouldn't take the clothes line down.

Q And then he swore at her? A Yes.

Q You said that he started to swear at her again; when had he sworn at her before that? A I said after she had asked him to take the clothes line down he swore at her.

Q You used the word "again"; didn't you want to use that? A I didn't mean that; he began to swear at her.

CECELIA SANDUSKY, sworn for petitioner.

Direct examination by Mr. Romine.

Q Where do you live? A 218 Washington street, Boonton.

Cecelia Sandusky, direct.

Q Did you at one time live at Old Boonton Road adjoining Mrs. Smith? A Yes.

Q What year was that? A Last year.

Q Did you live there during 1914 or any part of it? A 1914, I lived until 1915 there.

Q Did Mrs. Smith ever come over to your house? A She often come, about two or three times a week.

Q What would be her condition when she would call at your house? A The first time she come just to visit like a new neighbor, because we just come from Indiana, and the second time she come and was so excited and looked so bad—

Q What time of day would Mrs. Smith cover over there? A Sometimes she would come in the morning and sometimes afternoon.

Q On any of those occasions did she exhibit to you her arms or face or anything? A Only once in the morning she showed me her arm.

Court. When was this?

Q Was it 1914 or 1915? A 1914.

Mr. King. I object.

Court. What time of the year was it, or what date, if you can recall?

Witness. I don't remember.

Q Can't you give the season of the year? A I think it was in the spring—no, it must be in the fall, because it was summer, not winter, but I cannot tell at all.

Q Can't you tell us what part of 1914 it was, fall or spring? A I cannot tell, because I didn't pay any attention to it.

Q What did you observe; what did you see; what did Mrs. Smith show you? A She showed me the arm and I said, "What is the matter?"

Q What was the matter with the arm? A It was all black mark—

Court. Bruised, black and blue mark?

Witness. Yes, black and blue mark.

Q How long after you had moved there was it that she came ever showing you her arm? A About two months after.

Cecelia Sandusky, cross.

Q Tell us then when you moved there. A It must be before Christmas, I think, because after about two months, we moved in March—the first of March she moved.

Q It was two months after you moved there in March? A We moved to another street.

Q What year in March did you move away? A 1915.

Q How many months before you moved away was it? A About two months.

Q How many times did Mrs. Smith call at your house? A About two or three times a week.

Q Just before you moved away did she call and see you in 1915? A Yes; I think she was twice in that new place.

Q What was her condition on those occasions? A The first time she was living with her husband yet, and the second time she was parted, or they didn't live together.

Q But on those occasions when she lived with him, how many times do you think she called at your house or came over to your house in the morning? A Sometimes mornings, sometimes afternoons, about two or three times a week.

Q What was her condition? A She always told me about—

Court. How did she look or act?

Witness. That one time she was only so bad looking, she had red eyes—

Q You cannot tell what she told you, but you can tell us how she looked. A She looked bad at that time.

Q What can you tell us regarding nervousness? A She was nervous.

Q How did she act when she was nervous; did you do anything for her? A No.

Q Did you get anything for her or give her anything? A No, we never were so close.

Q How long did she stay at your house? A Never longer than half an hour, the longest time.

Q When she left would she be in better condition than when she came? A When she left my house she was not so bad nervous.

Q More quieted down, you think? A Yes.

Cross examination by Mr. King.

Q A talk with you seemed to do her good? A Yes.

Ella S. Smith, direct.

Q On which arm was this condition that you observed when she came there two months before March? A I don't remember which arm because I didn't pay attention very much.

Q Whereabouts on the arm? A This place, I know that, but I don't know which arm.

Q On the upper arm you mean? A Yes.

Q What did you see there? A There was a blue mark, big mark, about that big mark (indicating).

Q Was it on the outside or inside of the arm? A Outside, right here.

Q On the upper part of the arm near the shoulder? A Yes.

Q Do you know whether Mrs. Smith has varicose veins or not, those veins that are out on the surface of the arm? A I never noticed that.

Q Did you ever strike her skin to see whether if you hit it like that, that it wouldn't turn black and blue? A No, sir.

ELLA S. SMITH, petitioner, sworn.

Direct examination by Mr. Romine.

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

Q And the wife of Ernest N. Smith? A I am.

Q And you were married when? A In 1902, by the Reverend Charles Dodd.

Mr. King. We admit the marriage in the pleadings.

Q Where did you first go to live after being married? A We went to Forest Hill, and resided there from 1902 until 1906 or 1907—I don't know just which, I think 1906; then we moved from there to Summer avenue, 746 Summer avenue, Woodside, New Jersey.

Q How did you get along with your husband after you were first married? A We were very happy.

Q Did you experience any trouble in your married life at any time? A Frequently, later on.

Q When did it begin? A Mr. Smith started treating me very coolly in 1905, before my child was born.

Q Where were you living at that time? A At Forest Hill.

Q After you moved to Woodside, New Jersey, how was his treatment towards you? A Sometimes he was very kind to me and very good to me, and at other times there seemed

to be something that I couldn't understand; he would treat me so ugly.

Q Do you recall while at Woodside having any trouble at the breakfast table? A I do, frequently.

Q What trouble did you have? A Upon one occasion I asked Mr. Smith what time I would have dinner ready and he would swear at me.

Q What did he say? A He said, "None of your God damn business," and I said to him, "That is a nice way to answer me."

Q Did you have any other trouble at the breakfast table when there was any violence used? A Yes, sir, on one occasion, the same thing, when I asked him what time he would be home for his dinner, he came up to me, he seemed to be so dreadfully angry over it, and he came up and shook my head as if he was going to shake it off; he put both hands around my neck and just shook my head.

Court. Where were you living then?

Witness. Summer avenue; that was the first time that he really struck me.

Court. That occurred when?

Witness. At the breakfast table. I cannot tell you the year, but I think it was 1907.

Q What had you said to him other than to ask him what time he was coming home to dinner? A That was all I had asked him.

Q While living at Woodside, New Jersey, did you learn whether he had affection for anyone else? A He told me frequently that he cared for another woman and that he didn't any longer care for me.

Q Did you learn anything about the other woman? A Only in this way: I saw conduct in my house at that time with my maid which was unbecoming a married man.

Q What conduct was that? Relate the circumstances; were you sick at that time? A I was sick at that time and had a nursing baby, and I noticed that after I drank my coffee at night I immediately got so sleepy, I couldn't keep awake.

Q Who prepared this coffee for you? A The girl that was in the house at that time, a Polish girl.

Ella S. Smith, direct.

Q Was your husband in your house at the time that the coffee was prepared? A He was.

Q Who gave you the coffee or brought it to your bedside? A It wasn't at my bedside; he would bring it at the table; sometimes the maid would bring it in; Mr. Smith very frequently went out in the kitchen with the maid and brought it in.

Q On the particular occasion you refer to what happened? A I had spoken to the doctor that I had at that time, that I was so sleepy after I drank the coffee, I couldn't keep awake, and he said, "then let coffee alone."

Court. Strike that out.

Q After he told you that, what did you do? A I didn't drink the coffee.

Q What happened? A I went to bed early; my suspicions had been aroused and I went to bed early, and I pretended to be asleep; my husband came in, leaned over me and looked at me, and I didn't move; a little later on I heard somebody come in the dining-room; I waited awhile, I was half fearful to go out, I didn't know what I was going to see.

Q Did you go out? A I did.

Q What did you find? A My husband in a very compromising position with this maid, and he also said, "My God, Mary, here she comes, get out quick." I was pretty near crazy that night when I caught him.

Q What did you do about this affair? A That night I didn't do anything about it; I simply went back to bed and I didn't say anything or do anything.

Q What happened to the girl? A I got thinking it over, and I thought if that was the kind of a girl she was, the best thing for me to do was to discharge her.

Q Did you discharge her? A I did, the following Saturday.

Q Was your husband present at the time? A He was present at that time.

Q Anything take place between him and the servant girl? A There was; on that afternoon I went up to the depot to meet Mr. Smith; I had given the girl orders to have the dinner ready when we came in; when we came in, dinner was not ready; upon my asking her why dinner wasn't ready, she told me that she was watching at the window for Mr. Smith. I said, "Well, Mary, you have no right to do that."

Mr. King. Was Mr. Smith present?

Witness. Mr. Smith was present. I was in the house.

Q Then what else took place? A Just before I went out that day I had gone up to the maid's room and found that she had taken a number of things that were in her satchel that belonged to me.

Court. Don't go into that.

Q You say you said, "Mary, you have no right to do that." A And I said she should have gotten dinner ready, and Mr. Smith turned to me and said, "Let her alone." So then I said no more until the things were on the table. When we came to the table Mary deliberately came up and put her arm around Mr. Smith's shoulder, and that was more than I could stand, or any wife could stand, and I immediately told her to pack her things and leave.

Q What did she say to Mr. Smith? A She said, "you won't let me leave?" Mr. Smith didn't dare to say anything. I ordered him to pay her and let her go.

Q How did these things that you saw and his conduct toward you affect you while you lived there? A I used to feel as if I would go crazy; I worshiped the man; I worshiped the ground he walked on, and I used to feel as if I would go crazy; I was alone and had no one to stand by me and see these things but myself.

Q How would that affect your health? A My heart would get aching so, and I cannot tell you; I would feel so dreadful I wouldn't know what to do; I was sick and had a young baby; I couldn't do anything.

Court. How many children are there of the marriage?

Witness. One; only the one.

Q How old is she? A Nine years old.

Q From Woodside, New Jersey, where did you move? A We moved from there—I think it was 1908, we moved to Dr. Warren's flat on Mt. Prospect avenue.

Q What was Mr. Smith's attitude toward you then? A He was very ugly to me.

Q What language did he use toward you, if any? A It was always the same, any time I asked any questions that a wife should ask, it was cursing me.

Ella S. Smith, direct.

Q Did you nag him then? A I did not. If Mr. Smith called nagging anything when I would ask him for money; if I asked him what time he was coming home, he would say, "Stop nagging me."

Q During the time you lived at Mt. Prospect avenue was there any abuse? A He frequently hit me and pinched my arm; he would slap me; he would take his hand and slap me, and he said my people told him to do it.

Q Do you remember an occasion when he struck your child? A Yes.

Q What was that occasion?

Mr. King. I object.

Q Where were you living at that time? A We were then on South Broad street, Newark.

Q As a result of that, what did Mr. Smith do, if anything, or what took place? A He used to carry on right—

Court. On this occasion what happened to you?

Witness. He struck me because I interfered because he struck the child; he hit her over the head and I said that was not a proper place to whip the child.

Q How old was the child? A Two years old.

Court. What did you say he did to you?

Witness. He struck me then and swore at me.

Q Was that the place where Emma Knell lived? A Yes.

Q Did anything else happen while you lived at that house? A It was a repetition every day of cursing me and swearing at me and doing everything he could think to annoy me, and he would frequently tell me—he would say, "I will set you crazy, or I will kill you; I don't care for you; I do care for another woman."

Q Did you move from that house? A Yes, things got so bad that I gave him his choice of my leaving him or our moving away from there.

Q Your husband says in his answer that the reason you moved from there was because you wanted to go near the salt air; is that so? A I didn't know anything about Perth Amboy; that was Mr. Smith's suggestion; he asked me if I would like to go where there was salt air; I told him it had

always done my throat good, as I had a great deal of catarrhal trouble.

Q Was that the real reason why you moved to Perth Amboy? A No, it was because Mr. Smith made things so unpleasant in that home I couldn't stand it.

Q What year did you move to Perth Amboy? A I think that it was in 1910.

Q While living at Perth Amboy did you experience any trouble with him there? A The same thing.

Q How would he act on coming home to his meals? A Sometimes he would come in and he would be extraordinarily pleasant, and maybe the next time he would come in and start right in cursing over the dinner that didn't please him, or over something he thought I should have done; I never could please him. I tried; I also on two occasions while we lived there went up and put my arms around him and kissed him, and he told me there was only one woman that had a right to do that, and I was not the one.

Q Did you have gas or electric light in that house? A I think we had electric lights.

Q Did you have gas also? A Not on Kearny avenue.

Q Did you move to any other house in Perth Amboy? A Yes.

Q What street was that on? A 320 High street.

Q Did you have gas or electric lights? A We had both.

Q What was your custom about the gas lights on retiring? A On account of nursing my baby and seeing to her, I used to leave the gas turned rather low so I could pay attention to her.

Q Did you make a practice of going to a certain light? A I did; there was only one light to go to in that bedroom.

Q Would you do that every night? A Every night, several times during the night.

Q Did you at any time while attending to that light discover anything? A I did.

Q What did you discover? A I had been to Philadelphia and upon my return right under that light there was a tack or a nail, I don't know what you would call it, put in the floor in such a position that had I stepped there it would have run in my foot.

Q Did you bring that tack with you? A I have it.

Q Will you produce it now? A Other times it was put this way and the crib was on top of it.

Court. That is a horseshoe nail.

Witness. I don't know what it is called.

Q The crib was on top of it? A We had rugs and this was right where I would put my foot to turn on the light, and was up in that position.

Court. Was this a bedroom?

Witness. Yes, sir.

Mr. Romine. I offer the nail in evidence.

(Marked Exhibit C. 1.)

Court. On the second floor of the house?

Witness. We were in an apartment.

Court. On what floor was that apartment?

Witness. I think it was the third floor.

Q While you were living at Perth Amboy did you occupy the same bed with your husband? A I did there.

Q Were there any abuses? A There was.

Q What did he do? A If I put my foot against him—we had been in the habit when we were first married, of his taking me right in his arms and sleeping that way, and he got so that he would push me away from him, and frequently he would kick me until my legs were black and blue; sometimes in my sleep I would go over by him unconsciously, and he would kick me.

Q While in bed would he complain or say anything to you? A Frequently; he frequently cried in Perth Amboy and begged of me to get a divorce.

Q What was your condition of health while you lived there? A I was sick.

Q In what respect? A I seemed to have a lot of trouble with my heart at that time.

Q What sort of trouble was it? A I cannot tell you; I don't quite understand myself; I couldn't pick anything up off the floor; I couldn't reach over to pick anything up off the floor, and I was in constant pain; I would have such pains around my heart that I could hardly get my breath. Frequently I would be blue from the pain.

Ella S. Smith, direct.

Q On the occassions when Mr. Smith would come home and use language toward you such as you detailed, did you notice whether that had any effect upon you? A It certainly did; I used to feel as if I would go crazy.

Q How did that affect your heart? A I cannot describe it; I cannot describe the way my heart would feel. Sometimes it would feel as if it was just a big heavy stone. At that time I cried from morning until night over Mr. Smith's actions.

Q Did you experience any nervousness? A I was extremely nervous, and especially after these spells that he would curse me and all, I wouldn't know where I was at.

Q How long did you remain at Perth Amboy? A I don't remember; I think that it was two years; it may have been only a year.

Q Did your father or your uncle call upon you on these occasions and visit you? A Yes, they were there.

Q While you lived at Summer avenue and Broad street, Newark? A They were there frequently.

Q From Perth Amboy where did you move to? A At Mr. Smith's request, to Bayonne.

Q Where did you reside at Bayonne? A West 34th street.

Q Did things get any better there? A No, they were worse.

Q In what respect? A Frequently he would stay out until eight o'clock at night and then come in and demand his dinner, and he was very ugly to me. He told me while we lived there, frequently, that he would go out with any woman that he pleased, and he wanted me to understand that he did go out with other women, and he said, "You cannot do anything; your family don't stand by you, you have got to take just what I give you."

Q During that time did he occupy the same bed with you? A When we first went to Bayonne he did, then he left my bed.

Q And for how long did he remain away? A He was away from me after that two years.

Q Did he make any suggestions to you about divorce at the end of that time? A He told me that was the reason he left my bed.

Court. What was your husband's business?

Witness. He was a bookkeeper in Wall street.

Ella S. Smith, direct.

Q While you lived at Bayonne you say he came home at eight o'clock at night; on those occasions how would he act toward you? A Very ugly; one night he threw the coffee grounds all over the kitchen floor and frightened the maid I had.

Q On the occasion when you lived at Bayonne did any of the maids leave? A They did; I had two maids leave.

Q While you were living there did he strike you? A Frequently. On one occasion just before I went to German Valley with my child, we were out on the porch and I asked him for four dollars to get my child a few necessary things; he didn't answer me, but he went upstairs; he went in the house and shortly afterwards I went upstairs with my little girl to put her to bed. I took her into the bathroom; when we came out of the bathroom he stood and barred the door so I couldn't go any further, and he called me all sorts of names; he said, "You were very bright asking me for four dollars in front of the neighbors." I said, "Ernest, the neighbors didn't hear me ask you for money," but he said they did, and I said no, and that seems like a dream to me, almost, because it all came so suddenly on me; we were in the dark, there was no light in the upper halls, and I struck a match on the wall to light the lamp, and I cannot describe it to you; he struck me on the back part of my neck; my back was toward him, and he struck me, which made my child give a perfect scream, and I turned and looked at him; for a few minutes I was so dazed I didn't know where I was at, and then I turned to him and I said, "How dare you strike me like that?" and he said, "I will do worse than that, you God damn bitch." That was a common expression with my husband.

Q How did that affect you? A I went all to pieces; I couldn't sleep all night and I was completely upset. I was always upset when he talked to me and acted so.

Q Were you able to attend to your duties? A Not as I should have. I was too sick and nervous and upset; he kept me that way all the time.

Q While living at Bayonne did you have occasion to go shopping in New York? A I did; I did dressmaking to help get a little extra money.

Ella S. Smith, direct.

Q And with the money you received from dressmaking what did you do? A I quite foolishly put it in the house to help out in the home.

Q While shopping in New York City in the department stores did you see Mr. Smith there? A I saw him one morning with a woman.

Q Do you know whether they saw you or not? A I don't know; I think they did, for they separated.

Q Did you speak to him about that? A When he came home that night I said to him—at the table he started in to be very ugly; I said, "Well, Ernest, your place was in the office at ten o'clock in the morning and not in a department store." He said, "You cannot help yourself; your sister won't have you home; your brothers don't take your part, and you cannot do anything; you have got to stand what I do and take it."

Q You say your little girl was sick while you lived at Bayonne; did you take her away anywhere? A We went to German Valley.

Q And with whom did you stay while you were there? A Mr. Harry Webster.

Q What was your condition of health at the time you went to the country? A I was extremely nervous.

Q Any trouble with your heart then? A I was having trouble all the time at that time.

Court. Were you receiving any medical treatment?

Witness. I did off and on, not constantly; all the medicine didn't seem to do me much good.

Q Did you have a physician while you lived at Bayonne? A Yes, Dr. Davis, but not for myself in Bayonne, but for Audrey.

Q Did any physician at all outside of Dr. Davis treat you? A In Perth Amboy Dr. Cottrell treated me and Dr. Hulse.

Q What did Dr. Cottrell treat you for? A He didn't tell me; he only told me to try and be as quiet and take life as peaceably as I could.

Q How did you go to the country, by what means of transportation, wagon or train? A We went by train.

Q Did your husband accompany you to the train? A He certainly did.

Q And what took place at the station? A Not at the station, but from the time we left the house, it seemed as if he had

made up his mind to attract as much attention toward me as possible; he cursed and swore at me all the way to the train until I made an excuse to get a cake of soap, so as to get ahead of me; I left him and Audrey walking along and I went in the store and bought a cake of soap, so people wouldn't look at me.

Q At the station what happened? A I felt kind of bad at going away, and I did have an idea that perhaps I wouldn't come back alive; I felt I was in such a condition, and I tried to kiss him and he struck me, and he said, "You God damn bitch, don't you dare to kiss me," and with that he took Audrey and he slung her, and if it hadn't been for the conductor, the child would have rolled off the other side of the train.

Q How did that affect your health? A I got in the car and began to cry and the conductor came up and said— I sat in the car and cried; I felt perfectly dreadful.

Q How long did you remain at German Valley? A From August until November.

Q During that time did your husband call up there to see you? A He did not.

Q Didn't call at all during that time? A No.

Court. Did he write you?

Witness. He did not, only enclosed check for board, that was all.

Q Didn't write you any more lengthy than that? A No.

Court. How did he address you in the letter?

Witness. He didn't address me at all.

Q What did he say?

Mr. King. Let us have the letter.

Mr. Romine. That particular one isn't here.

Witness. He didn't address me at all; he just said, "Enclosed find check."

Q Have you retained the letters that he sent you while you were at German Valley? A No, not all, and they were all the same; I think I gave you the ones I had.

Court. If the letter can be produced, it will speak for itself.

Ella S. Smith, direct.

Q After you were at German Valley for some time how did you feel as to your health? A I got better; Audrey was very sick there; the air did me lots of good and I got quieted down.

Q Did you go back to Mr. Smith after that? A Not until I got a letter saying that I had better—I went back, yes.

Q Before going back had you made any other decision? A Yes, I had.

Q Is this one of the letters you received while at German Valley? A Yes, sir.

Mr. Romine. I offer it in evidence. It has no date.

Q Is this the envelope that the letter came in, postmarked October 2, 1911? A Yes, sir.

Mr. Romine. I offer the letter and envelope in evidence.

"#52 Bdy N. Y. C.
Enclosed find check $15.
E. N. S."
(Marked Exhibit C. 1.)

Q What was your first decision about coming back? A I was going up to Hackettstown and do nursing.

Q Had you after staying at German Valley for these several months decided to go back at first or not? A No, I decided it was better for me not to go back with Mr. Smith.

Q Why? A On account of his cruelty to me, and he telling me that he didn't care for me.

Q What prompted you eventually to come back? A My sister wrote me a letter.

Q And as a result of receiving that letter did you then decide to go back? A I did.

Q And did you go back? A I did.

Q And did you continue to live then in Bayonne? A No.

Q When you went back? A I went back to Bayonne.

Q What was Mr. Smith's attitude toward you when you went back? A When I first went back he was very kind to me.

Q Any abuse? A No, for a while he was just as kind and loving as he could be.

Q Then what happened? A I don't know; all of a sudden he started in again; I never could tell why it was.

Ella S. Smith, direct.

Q Did you do anything? A No, I was only too glad to have him loving and kind to me.

Q Did you try to make things pleasant for him? A I did; I thought as long as he was acting so much kinder I would do anything I could to keep it up.

Q While you were at Bayonne did you make a visit to Boonton? A I don't think so. We moved to Boonton, but I don't remember making a visit.

Q Before moving to Boonton? A Yes, Andrey and I.

Q Had you made any arrangements with Mr. Smith as to where you were to meet him? A Mr. Smith had made the arrangements with me where to meet him.

Q Where were these arrangements made, at your home in Bayonne? A In my home in Bayonne.

Q What did Mr. Smith tell you to do about going to Boonton? A He told me to be sure to go over and get on the Boonton train but not to wait in the station.

Q Go where? A To go to Hoboken and get on the Boonton train.

Q But not to wait in the station? A He told me emphatically not to wait in the station.

Q What did you do about it? A I thought it was very queer that he didn't want me to wait in the station, and I wasn't going to stand in any car, and I went in the station.

Q Was your little girl with you? A She was.

Q And did Mr. Smith come in the station or not? A He came in the station.

Q Accompanied by anyone? A Yes, by a woman.

Q Can you describe the woman? A I can; she was a tall woman, very beautiful shape and light hair, but rather an unrefined face.

Q And did Mr. Smith observe you in the station? A I guess he did.

Q What happened then? A They both separated; she walked a little bit ahead of him and he was very much rattled.

Q Did you speak to Mr. Smith about that? A I said, "Ernest, who is that woman?"

Q What did he say? A He said, "Keep still, I will tell you when we get on the train."

Q Did he tell you? A He said "It is none of your G—— d—— business."

Q Had you ever seen that woman before? A I had seen that woman before.

Q Where? A In the lobby of where Mr. Smith worked, and I remember asking him who that woman was; I thought maybe it was some other man's wife waiting for him, the same as I was waiting for him, and he said one of the boys owed her money and she was waiting to get it.

Q But when you were on the train he told you "none of your G—— d—— business"? A He did.

Q How long did you continue to live in Bayonne after that? A We were only there a couple of months after I came home from German Valley. I came home in November, after Thanksgiving, for I was at my sister's home for Thanksgiving, and I went home after Thanksgiving and we stayed there until January.

Q How did you come to leave the house in Bayonne? A We were requested to move.

Q And did you move? A We did.

Q At the time you were requested to move what was Mr. Smith's attitude toward you? A He was very ugly; he was doing everything he could think of, and frequently telling me that he would do one of two things, he would kill me or set me crazy, so he could put me in an insane asylum.

Q How did that affect your condition? A I was afraid I would go crazy from the way he was treating me; I had to bear it all alone; I had no one to help me.

Q How was your heart at that time? A It was bad.

Q When you came back from German Valley you say you were feeling much better; how long did you continue to live in Bayonne after you got back from German Valley, before you moved to Boonton? A From November to the 7th of January.

Q And at the time you moved was your condition any worse than it was when you came back from German Valley? A I began to be nervous again from the constant quarrelling.

Q Where did you move; what place in Boonton? A We moved 318 Washington street.

Q Did anyone assist you in moving? A My Uncle Abram.

Q The gentleman who testified here today? A Yes.

Q How long did he remain with you at that time? A I don't remember; I think it was a week, perhaps longer. He helped me get the home to rights.

Ella S. Smith, direct.

Q During the time you were getting the home to rights, what was Mr. Smith's attitude toward you then? A When we first went to Boonton, I couldn't complain of Mr. Smith's actions toward me; he seemed to be so kind to me again; it seemed as though whatever made him get that way toward me had disappeared for a time, and he was just as kind and lovely as he could be, and went back to my bed.

Q During that time when you say he was very kind to you, did you do anything to upset him? A I did not.

Q Did you try to please him in every way? A I tried in every way to please him.

Q How long did his kind attitude toward you continue? A From January until May, I think it was; when the weather got pleasant so we could sit out doors, he acted very kind and we went out socially together and had very nice times. We had quite a lively time for awhile, joining clubs and dancing and so on.

Q And had absolutely no trouble between you and Mr. Smith then? A Not at that time; he acted very kind and good.

Q At what time, if at any time, after you moved to Washington street did you experience any trouble with him; or did he change his attitude toward you? A I never could tell just what ailed Mr. Smith; it would be sprung on me all of a sudden; he would start in and get ugly and I wouldn't know why.

Adjourn until tomorrow morning, at ten o'clock.

Continuation of testimony in the foregoing cause, pursuant to adjournment, before Hon. John E. Foster, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, on Wednesday, April 5th, 1916, at ten o'clock in the forenoon, in the presence of counsel as before.

ELLA S. SMITH, resumes the stand for further

Direct examination by Mr. Romine.

Q While living at Newark, Mrs. Smith, did you find anything in your husband's coat frequently? A I found handkerchiefs—oh, that was in Forest Hill.

Q You found what? A I found a letter in his pocket.

Ella S. Smith, direct.

Q Can you identify this letter as being the letter you found? A That is the letter; I took it out of his pocket while living at Forest Hill.

Mr. Romine. I offer the letter in evidence.

(Marked Exhibit C. 2.)

Q How long did his kind attitude toward you continue while you lived at Washington street, Boonton. A Until it got spring, until we went out in the back yard to sit out in the yard; I think it was about the first of May.

Q What year was that? A I think 1912.

Q Did his attitude change toward you at that time? A Yes.

Q How long after the spring came—how soon after the spring came? A It was during May when he got out digging his garden and I went out in the yard with him.

Q What happened? A At that time he would curse me right out in the yard where everybody could hear it.

Q What would he say? A "Go in the house, you God damn bitch," and he would say, "You are not my wife, I can prove you are not my wife, you are only my housekeeper, and a damn poor one at that," repeatedly, right out where everybody could hear it.

Q Had you said anything to him prior to his making that remark? A No; I was only too glad to have peace.

Q Had you nagged him in any way at that time? A No, I want to say that when my trouble first started, for a year or two years there I did go on perfectly dreadful; I had no one to stand by me and I do think that I said everything that came in my head to say to him, I was almost crazy.

Q That is when your trouble first started in Woodside? A Yes, I was pretty nearly beside myself.

Q But at this occasion in Boonton when you say he was working the yard, did you say anything to him? A No, I said nothing to him.

Q In reply to his remark what did you do? A I went in the house intending to avoid publicity.

Q Who was working for you at that time? A I think that it was Mary Shepard, the colored lady.

Q Did you have anyone boarding with you while you lived there at Washington street? A I did, I had Anna Casner.

Ella S. Smith, direct.

Q Who is she? A School teacher that I met in German Valley.

Q How long did she board with you? A It was only a few months I think.

Q Did she teach school at Boonton, New Jersey? A Yes.

Q Did you ever notice anything between her and Mr. Smith? A No, not when she first came to the house, I didn't.

Q At any time during her stay there? A Not until my maid who was there at that time, Carrie Scott at that time was with me.

Q She told you something? A Yes, that made me watch.

Q What time of the day did she tell you that? A She told me something.

Q What time of the day was it, morning or night? A No, she told me one evening.

Q As a result of what she told you, what did you do? A I was teaching dancing and I told my class to go on.

Q What did you do? A I went upstairs and quietly went to the sitting-room door where Mr. Smith and Miss Casner were; as I got near the door Miss Casner ran out crying and went into the bathrom; I went to the door.

Q What did you see then? A Mr. Smith stood there buttoning up his pants and he did not see me, and I stood there, and he finally put on his vest and his coat, and all I did was to look at him; I never said a word.

Q Did he observe you after that? A He saw me and he had nothing to say.

Q What did you do then? A I went back downstairs.

Q You say that you were having a dancing class at that time? A Yes.

Q How did you come to have a dancing class? A Well, in the first place, I wanted money.

Q Why did you want money? A Because I didn't have sufficient money.

Q How much money did you have? A Mr. Smith gave me ten dollars a week to run the house on.

Q What did you do with the ten dollars? A I got everything that I could get with the ten dollars; I made the ten dollars go just as far as I could.

Q Did you make known the fact to Mr. Smith whether that was sufficient or not? A I certainly told him it was not.

Ella S. Smith, direct.

Q What did he say? A He said I would have to make it do, that he couldn't afford any more.

Q What would his reply be to you? A Well, always cursing me, he never spoke in any other way.

Q Was that the only reason why you started the dancing class? A Not entirely. I felt that if I didn't do something I would go out of my head, from the treatment I was getting.

Q Was that the full reason why you started the dancing class so as to relieve your mind? A So as to try and not think.

Q How long did Miss Casner remain in your house after this occurrence on that night? A She left the very next morning.

Q Did she make any excuses? A She said she was sick; she never even waited for her trunk; she wrote to me to send it.

Q Did anything happen to you while at Washington street in Boonton that year? A Yes, on one occasion Audrey and I were out in the yard and Mr. Smith was out there watering the garden or digging the garden, and for fun I picked up the hose and I said, "Come on, Audrey, let us sprinkle papa"; he turned around and picked up a great big stone and said, "You bitch, you get in the house; you cannot fool with me," and he threw the stone, and I dodged it.

Q Did you actually sprinkle him with water before he threw the stone? A I don't think I did; I didn't get it over far enough.

Q Did you do that for the purpose of tantalizing him? A No, Audrey and I were fooling out in the yard.

Q Audrey is your little girl? A Yes.

Q Do you recall any trouble on a Sunday when you had been sick? A Yes.

Q What was that? A Mr. Smith came in and accused me of balling up all his Sunday papers.

Q Then what happened? A He picked up a large book on the table and started to throw it at me, and Carrie Scott came in and stood between us; she was the maid who was at the house at that time.

Q Carrie Scott is now dead? A Yes, she is.

Mr. Romine. We have a stipulation as to her testimony.

Ella S. Smith, direct.

Q Do you recall an occasion at the bathroom while at Washington street?

Mr. Vogt. We think he should not lead the witness.

Q Did anything else happen during the year 1912, while you lived at Washington street? A Yes, one evening at nine o'clock there was a woman who I have seen very frequently walking up and down in front of our house; Carrie Scott was with me, and I said, "Carrie—

Q What did you do? A Carrie and I waited in the parlor and watched the woman; we formed a plan that when Mr. Smith came in she was to go upstairs and pretend to put the child to bed and I was to hide in the parlor and see what took place, which I did.

Q Then what did you do? A I gave Mr. Smith a chance to get in; he deliberately came in and went right into the cellar; I waited I thought a sufficient time; then I went downstairs in the cellar, and I was just in time to see Mr. Smith coming up out of the cellar and the woman at the bottom of the stairs; Mr. Smith took his coat and spread it out this way (indicating) and he said, "My God, get out of here quick." She flew out, I flew downstairs, but she got away from me. The back yard was very dark; I couldn't see which way she went. The next day Mr. Smith said I had a crazy spell.

Q Are you sure what you tell us what you saw that night? A Absolutely.

Q Is that an imagination on your part? A It is not.

Q You positively saw that? A I saw the woman and watched her before Mr. Smith came home.

Q What did Mr. Smith say to you about the incident? A When I caught Mr. Smith that way he had nothing to say.

Q Were there any threats made while you lived at Washington street?

Court. What else, if anything, happened in 1912, in Washington street?

Witness. It was simply a repetition every day of this sort of thing, day in and day out.

Court. You mean woman coming to the house?

Witness. Yes, one woman would come there and Mr. Smith would pass things out to her in the way of eat-

ables; I couldn't keep things in the house and my bills got terrific, I couldn't meet them; I have some bills here to prove it.

Q At that time were you conducting a dancing class? A Yes, I was.

Q You say Mr. Smith's conduct was the same toward you at the time you lived at Washington street, the same thing over and over again? A Yes.

Q What would he do or say to you? A If I asked him an ordinary question that any wife would ask, it was simply cursing me and swearing, or telling me it was none of my God damn business, and if I asked him for any more money, he would use vile language at me, and tell me I wouldn't get it, and he used to frequently tell me he could do just as he pleased to me.

Q Did he ever tell you anything else, what he would do to you? A Yes, he frequently told me that he would set me crazy; he would either kill me or set me crazy, so he could put me away.

Q Did he say anything else to you by way of threats? A He said once that he would shoot Audrey and himself and me; I said he should shoot himself, it was a good thing, but he couldn't touch us. I also told my family at that time—

Q On these occasions when you say he cursed and swore at you, what was your condition? A I was terribly nervous and sick.

Q And did you remain around where you could come in contact with him? A No, I got so that I kept out of his way all I possibly could.

Q Why did you keep out of his way? A Because I wanted to avoid having so much quarrelling; it upset me so I didn't know what to do.

Q During the time you lived at Washington street did any of your folks come to visit you? A Yes, but they never stayed.

Q Who came? A I think my sister and my brothers were there usually for New Year's dinner and maybe once or twice during the year, but very little.

Q How many times at the very most do you think they came there during the year? A I don't think they were there in my house over three times.

Ella S. Smith, direct.

Q On those occasions what would Mr. Smith's attitude and conduct be? A Perfectly lovely, lovely to me and lovely to them.

Q What would he do by way of attention or being lovely, as you speak of? A Only spoke nicely to me at the table, calling me by my name, and say "Ella, will you have this," or "Ella, I will help you with the dishes," just to be as nice as he possibly could be to me.

Q Would he help you with the dishes? A Very frequently.

Q When your folks would leave what would his conduct be then? A They probably wouldn't be out of the house five minutes before unconsciously I would do something to him that would cause him to swear at me, I never knew what started him off.

Q Would you on those occasions say anything to him or nag him? A Usually I was too happy, I would go to bed.

Q During the time you lived at Washington street can you tell us any words he actually said to you on any occasion? A He was constantly telling me that I was not his wife, that I was only his housekeeper and cursing me; telling me that he had other women and that he intended to have them and that I couldn't do one thing about it.

Q Call you any other names? A He was always calling me a whore and a bitch and a dirty bastard; Mr. Romine, it was a common occurrence; it was day in and day out, year in and year out.

Q Did he make any other charges against your character or your conduct? A Only to call me those terrible names, telling me I was no good, or something like that.

Q On those occasions of calling you these names, how would it affect you at the time? A I cannot describe it; I got so that I couldn't cry; it seemed as if I was turned to stone.

Q And shortly after that passed over what was your condition; were you able to attend to your household duties? A I don't think I did as I should have done.

Q Were you at any time confined to the bed? A Very very frequently.

Q Did you have the attendance of a physician? A I did.

Q Whom did you have? A I had Dr. Peck.

Court. For what did he treat you; do you recall?

Witness. I don't know; I think sometimes just for sheer nervousness, and for the other times local trouble.

Q Do you recall whether Dr. Peck treated you on occasions when your husband made any remarks to you? A Yes.

Q How many times do you think? A There were several times.

Q And where were you at the time he came to the house, when Dr. Peck came to the house? A Sometimes I would be up around the house and sometimes in bed.

Q Did you have any serious illness while you were living at Washington street in Boonton? A Yes, I think I had pleurisy.

Q Who attended you at that time? A Dr. Peck attended me.

Q Were you confined to your bed during that illness? A I was.

Q What was your husband's attitude toward you on those occasions? A When he came in, the first day that I had Dr. Peck, he cursed me; I told him that Dr. Peck had said that I had to have a nurse, and he stood and cursed me and he said, "Some more of your God damn imagination"; he said, "There is nothing the matter with you; Dr. Peck is running up a bill on me and I will make him wait for his money; there is nothing the matter with you."

Q Did you have a nurse? A I did.

Q How long did you have the nurse? A I don't just recall whether it was one week or two weeks, I really cannot recall it.

Q During that time where were you? A In bed.

Q How many times do you think that the doctor called to see you? A I don't know; I was so sick at that time that I cannot honestly tell you.

Q During the time you were sick in bed how many times would Mr. Smith call and see you? A He never bothered about me at all.

Q How long did you continue to live at Washington street in Boonton? A I think we only lived there a year, if I remember rightly; we may have lived there a little over a year but I think that we were only one winter at that house.

Q Then where did you go? A Mr. Smith wanted to buy a place on Old Boonton road.

Q Did you move there eventually? A Yes.

Ella S. Smith, direct.

Q Tell about when that was you moved there? A I think it was in April, either 1912 or 1913, I don't know.

Q What was Mr. Smith's attitude toward you at the time you moved there? A Well, his mother was with us, and while his mother was with us things were very different in the house.

Q In what respect? A Mr. Smith did not curse and swear and go on at me that way when Mrs. Smith was there; we had a very pleasant time while she was with us.

Q How long did his mother remain there? A I think two weeks after we moved there; because right after she went home I was taken ill.

Q What do you mean by saying you were taken ill? A I didn't know what happened to me; Mrs. Smith and Mr. Smith and I were going out to spend the evening; I stooped over to put on a pair of rubbers, and it felt as though something stung me in my side, and that was the beginning of that illness.

Q How long were you ill at that time? A I was in bed a long time; it seemed to me it was seven or eight weeks, if not longer.

Q Who attended you at that time? A Dr. Peck.

Q What was your husband's attitude towards you at that time? A Simply one of indifference and telling me I was trying to run him in debt, or there was nothing the matter with me.

Q Did he frequently visit you in your sick room? A Only to come in and find fault and curse and swear at me.

Q Was his mother there at that time? A No, she went home the day after I was taken with that spell, in the morning.

Q As a result of this sickness what happened; did you remain home or go away? A The doctor said—I went to the hospital.

Q Upon whose advice did you go to the hospital? A Dr. Peck's advice. I went to St. James' Hospital.

Q What day did you leave home? A I do not recall.

Q Was your husband home at the time? A No, he was not; he went to work in the morning.

Q Was he home the day you left? A Yes.

Q Did he say anything to you as you left? A He just stood and slurred at me and laughed as if it was a good joke.

Q Did you go away that day? A I did that morning.

Q Where did you go? A Down to my sister. I stayed there for lunch with her and she took me to the hospital.

Ella S. Smith, direct.

Q While you were there what was your condition? A I remember sobbing my heart almost out at the table because Mr. Smith had let me go in such a manner.

Q How long were you at the hospital? A I don't know; I think several weeks—a long time; it seemed to me three or four weeks, if not longer. It may not have been quite so long.

Q During that time did your husband visit you? A He did not come near me.

Q Did he write you any letters? A He did not.

Q And after you left the hospital where did you go? A I went back home.

Q Did anyone accompany you? A My brother sent me home in an automobile, in an ambulance, my sister took me home.

Q How long did your sister remain with you? A She stayed over that night until the next noon, I think.

Q Did you see your husband the day you arrived home? A I did.

Q Where were you at the time he came in? A In bed.

Q Did he say or do anything for you; say anything to you? A No, he simply came in and looked at me and walked out the room again; he didn't say "How do you do" or anything.

Q What physician treated you after you came back? A Dr. Peck was sent for immediately.

Q How long did this attitude of indifference of your husband's continue after you came back from the hospital? A It seemed to me that the next day or two he realized how sick I had really been and he was just as good and as kind to me as he could be.

Q What did he do for you? A He did everything that he could do for me; he kept the room full of flowers; he would bring little things home from New York that he thought I would like; he was very kind to me, and even went so far one day as to put me on another bed and push me over to the window where I could see the flowers in the garden.

Q As you began to get better did he do anything else for you? A He helped me to walk; I couldn't walk when I got out of bed; he would take hold of my arm and walk me around until I got my strength, and he was very good to me.

Q How long did his affection for you in that respect continue? A I think it was several weeks that he was very kind and good to me.

Q And was there a change? A Yes.

Q In what way? A When I got so that I could be taken out on the piazza, I remember the incident that started the trouble in question; I felt rather weak, and I said to him, "Ernest, will you please help me out on the porch, I want to get out"; he said, "You need not think you are going to be an invalid all the time; don't let that imagination run away with you; you are capable of walking downstairs now and out on the porch." I said, "No, I am not, I am afraid I will fall downstairs."

Q What happened after that? A From that time then he began to be ugly to me again.

Q What else did he say or do towards you after that occasion? A Just swearing, the same thing day in and day out, swearing at me, and found fault with my cooking, and called me lazy, and used very vile language at me and to me at those times; I don't care to repeat it.

Q Was he occupying your bed at that time? A He was not.

Q Are you acquainted with Mrs. Sandusky? A Yes.

Q Where did she live with reference to your house? A Next door to me.

Q Did you frequently visit her? A Yes, I used to run in there maybe two or three times a week.

Q And on any of the occasions you went there had you had any disturbance in your home? A It was usually when I did that I went over; I would be so worked up I wanted to go to somebody.

Q Why, what happened? A Very frequently he would strike me and pinch my arm; I wanted to say that frequently before Mr. Smith left my bed, he would pinch my arm until it was black and blue, and he would take hold of me and say, "Stop your talking," and lots of times I had not yet been asleep, I was wide awake.

Q Where were you living at that time? A Both Washington street and Old Boonton road.

Q On those occasions had you said anything to him? A No, I didn't talk to him after I got in bed.

Q Where would he pinch you? A My arm; I always laid on the right side; on account of the operation, that side used to get tired and ache, on the right side, and I would lie on that

side and he was on this side of the bed (indicating), and it was this arm that he always pinched (indicating).

Q Which arm? A I mean my left arm.

Q During the time when he would pinch you which arm would he pinch? A He would take hold of my arm and pinch it; sometimes it was one arm and sometimes the other arm.

Q You say on those occasions you would go to Mrs. Sandusky? A Yes, I would go in there and lots of times I would be so worked up, and sit down and talk to her about it, and it seemed to be a relief to me, and when I came back I would feel better.

Q What else would you do while at Mrs. Sandusky's? A That is all; I would sit there and then she tried to get my mind off my trouble and talk about other things, about the West.

Q When you first went to her home about the pinching, did you say anything to her? A She saw I would be all worked up and she tried to comfort me, and I would show her my arm.

Q Which arm did you show her? A This left arm.

Q Is there anything on the left arm at the present time, in the vicinity of where the pinching was? A There is.

Q Will you just show your arm? A Yes.

Mr. Romine. She produces her arm and shows a black and blue mark.

Court. How old is that?

Witness. It came so gradually here within the last two years, that arm was sore and pained, but I cannot tell you when it first began to develop; I didn't notice it.

Q During the past two years? A Yes, it has come there.

Court. It seems to be a raised lump.

Witness. It is very painful.

Q That is the arm that you say he pinched? A Yes, continually in bed, but he pinched both arms.

Court. Did you ever tell him that this pinching hurt you and caused you pain?

Witness. Very frequently I said, "Stop your pinching me." He wouldn't say anything; he would look at me and sneer, that was all.

Ella S. Smith, direct.

Q How long did Carrie Scott remain with you while at Old Boonton road? A From April I think it was, until just before the holidays, I think; she might have been there longer; I really don't remember.

Q Did you obtain the services of another maid? A Yes.

Q How was that accomplished? A Carrie got very hysterical and got carrying on at the house and I couldn't do anything with her.

Q How was the services of a new maid accomplished, in what way? A I telephoned down for one.

Q Who came to the house? A Florence Branthwaite.

Q Did you at any time while you lived at Old Boonton road have in your employ a woman by the name of Elizabeth White? A We did.

Q When in reference to the time that Carrie Scott worked there? A It was after Florence Branthwaite that Elizabeth White came.

Q And Florence Branthwaite came after Carrie Scott left, is that right? A Yes.

Q Did you have in your employ a girl by the name of Elsie Starkman at any time? A I did.

Q When in reference to the time that Florence Branthwaite came? A That was before Florence came; Carrie went home for two weeks' vacation and I hired Elsie Starkman in her place.

Q Do you know where she is? A In Germany.

Q During the time she was there, what year was that? A I think that was 1913; I don't know if it is 1913 or 1914.

Q Do you remember an incident about the washwoman? A I do.

Q Who was present at that time? A Elsie Starkman; my father was at the house and myself.

Q Was Mr. Smith there? A He was.

Q What happened on that occasion? A It started in the kitchen; I asked him for $1.50 which I had paid out to the washwoman.

Q You paid that out to the washwoman from what? A From my own money.

Q What did he do? A He started in to curse and swear and told me I lied, that he had paid that himself, and I couldn't convince him until Elsie spoke up, and he started to

strike me. I know he did strike me and I picked up a carving knife, I was so indignant, and I said, "If you touch me again, I will kill you."

Q Did you know whether your father was present at that time? A My father was there, but he was outdoors, and he didn't know anything until I picked up the knife; I had just picked up the knife when he came in the door, and he told me to put it down.

Q Then what happened? A Papa got between us, Elsie was between us, and Mr. Smith went right on cursing and swearing before he went out in the yard; that night at six o'clock he seemed to realize that he had made a mistake and gave me the money.

Mr. King. I object.

Court. Strike out "that night he seemed to realize" and so forth.

Q Can you tell us the month that Florence Branthwaite came to the house? A I can.

Q Was it that same year? A Yes.

Q With reference to Christmas time, can you tell us whether it was before or after Christmas? A No, it was before Christmas.

Q Do you know how long before? A No, I do not.

Q What was your condition at the time Florence Branthwaite came to the house? A I was in a terribly nervous condition.

Q Did Florence Branthwaite do anything for you? A Yes, she did everything she could for me; she would jolly me along, talk and laugh, and do everything she could to get my mind off my trouble.

Mr. King. I object.

Court. I think it is immaterial.

Q While Florence Branthwaite was there did your father visit you for any length of time? A Yes.

Q Did anything happen on an occasion when your father was there up in the bedroom? A Yes.

Q What was that? A I don't know the day, but I got up one morning with my little girl, and our bedroom was very cold and we went into the sitting-room, it was a very dull morning, a

clammy dark morning, my little girl asked—it was at her request I lighted the bulb, I turned the electric light on.

Q Where was Mr. Smith at the time? A I think that he was downstairs.

Q He was not in the same room? A No.

Q Did anything happen while you were there with the little girl? A Yes.

Q What was it? A He came racing upstairs and came directly over to me; it was done too quickly, he undid the bulb, and took my right hand and twisted the finger with one hand and with the other he took the electric light bulb and he said, "Here, damn you, swallow this, you dirty bitch."

Q Had you had any conversation with him that morning before that? A None whatever; I didn't hear him get up; I was asleep when he got up.

Q You say your father was in the house at the time? A He was in the house at the time.

Q Did you see your father that morning at the time this happened?

Mr. King. I object to it.

Q Did anyone come in the room? A My father came in the room.

Q What did he do or say while your husband was there? A He told Ernest that he must be crazy, for him to stop.

Court. State what happened.

Witness. He kept twisting my finger and shoving the bulb until I took my knee and tried to kick him with my knee to make him let me go, and then Papa said, "Stop it," and he dropped the bulb and flew out of the room, but not before he went over to my desk and upset everything in the desk; he took my Bible and Prayer-book and hid it in the lining of the couch; he took my comb and brush and stuck it in the coal bin, and said, "Damn you, I will get square with you."

Court. This was all in connection with the bulb incident?

Witness. Yes. I don't know what ailed him that morning, he seemed to me as if he had really a crazy spell.

Ella S. Smith, direct.

Mr. King. I ask that that be stricken out.

Court. Strike it out.

Q How many days a week would Mr. Smith work while you lived at Old Boonton road? A At first he worked every day.

Q Did he work on Sunday? A No, he did not.

Q Where would he go? A Very frequently Mr. Smith would go out automobiling on Sunday with friends of his.

Q Do you know who they were? A I only know what he told me, that they were Mr. and Mrs. Schwartz.

Q How did he go? A Very frequently they would come to the house for him.

Q How many times a month would that take place? A Frequently.

Q How would they come? A They would come in their automobile.

Q Who would be in the automobile? A Sometimes just Mr. and Mrs. Schwartz; sometimes there would be another couple in there.

Q What kind of a car was it, a single-seated car? A No, a five-passenger car.

Q Would you say anything to Mr. Smith regarding that? A I did. I told him I didn't think it was right for him to go out that way when he never took me out.

Q What would he answer? A "We have always gone this way."

Mr. Vogt. Is this material?

Court. Yes.

Q On any of those occasions did you go with Mr. Smith? A No.

Q How many times a month would this happen? A I don't know; he went frequently with them.

Q On those occasions when he would go away, how would that affect you? A It made me very unhappy.

Q In what way? A Because I was not included, and they would act as if he was a single man, ignore me entirely, come right up to the door in the automobile and ignore me as a wife entirely, just take him off and he would go and be gone all day long.

Ella S. Smith, direct.

Q What time of the night would he come back? A Sometimes he would come back early, sometimes it would be half-past eight, sometimes it would be nine o'clock.

Mr. Vogt. I ask to have these two last answers to questions stricken out.

Court. It is a circumstance in connection with his whole course of conduct, and I will let the evidence stand.

Q For how long a time did this continue, Mrs. Smith? A Right straight along until I left Mr. Smith.

Court. Does it appear anywhere on the record when she left?

Mr. Romine. I am coming to that.

Q As this thing continued would you make any request or say anything to Mr. Smith about the matter? A I used to tell him that I didn't think it was a nice thing for him to do, to go off that way and leave me; I never had money enough to go off and have a good time, and he used to tell me that he would do as he damn pleased with his money, that it was his, and that I had to stay and take just what he gave me and just who he went with, that my family were all against me—which they were—and I couldn't do anything but take the life he would give me. He said, "You are a little pinched warped brained pimp," and he said, "You cannot earn your living and you have got to take the life I lead you." And he said, "Moreover, if you were a decent woman, you wouldn't stand what I give you, you would get out." That I got frequently.

Q You say that he made you miserable on these occasions and unhappy when he would go away on Sunday. Did you ever make known that fact to him? A I certainly did; he could see it for himself that I was unhappy over it.

Court. Did you make it known to him?

Witness. I told him.

Q How did you tell him; what words did you use? A I would say I didn't think it was right and I didn't see why I couldn't be included as a wife in those amusements.

Q How would his conduct affect you as to your condition? A I always got worked up and nervous.

Ella S. Smith, direct.

Q Would there be any evidence on any part of your body of anything? A Where he used to strike me when he felt like it.

Q Aside from striking, when this language was used towards you was there any evidence at all? A I used to have these spells with my heart afterwards.

Q Did you ever speak with Mr. Schwartz? A Yes, upon three occasions, three or four occasions.

Q Can you tell us when the first occasion was? A No, I cannot tell you that he came to the house quite some time before I ever had an introduction to him, and if I remember rightly, I don't think I was introduced to him; I think the man spoke to me himself.

Q Can you tell us what happened on any particular occasion when you talked to him as to Mr. Smith's attitude? A Yes, on one occasion we were out in the vegetable garden early in the morning and Mr. Schwartz came to see Mr. Smith and he said something—

Mr. Vogt. Was Mr. Smith there?

Witness. He was talking to him, and he turned to me and he said, "Mrs. Smith you and I are in the same boat." I said, "Is that so, Mr. Schwartz; why?" "Oh," he said, "both of us have trouble with malaria." I looked up at him, I said, "No, Mr. Schwartz, that isn't what ails me," and with that Mr. Smith quickly called him away from me. When Mr. Smith came in the house he cursed and swore at me because I had spoken to Mr. Schwartz. I couldn't do anything else and be a lady.

Q How did that affect you? A It upset me.

Q Do you recall another occasion? A I do. Soon after my return from Asbury Park, Mr. Schwartz knew I was at Asbury Park and he came one morning to see Mr. Smith one Monday morning, and I sat by the window in the dining-room embroidering; he came up deliberately after seeing Mr. Smith in the yard and talked to me, asking me how—

Q What did Mr. Smith say on that occasion? A He came in and flew upstairs and on the way in he said "Cut it out" at the top of his lungs; I didn't quite catch what he had said.

Q Did he then come back downstairs? A He did; he came downstairs afterwards and ate his breakfast; before he sat down to the breakfast table he seemed to be very much upset.

Mr. Vogt. I ask to have that struck out.

Court. Yes.

A (Continuing.) He sat at the table and he screamed at me; he said, "I hate you; I hate you"; he said, "God damn it, I would do anything to get rid of you" and hammered the table, and I said, "Well, I don't understand why you should act like this because Mr. Schwartz spoke to me at the window."

Q You said something about going to Asbury Park; when did you go to Asbury Park? A I think it was in August.

Q At whose suggestion or upon whose advice did you go? A Dr. Summer's.

Q What was your condition of health at that time? A Miserable, nervous.

Q What year was this? A The year before I left Mr. Smith, 1914.

Q How long did you stay at Asbury Park? A I think it was two weeks, not over that.

Q Did Mr. Smith visit you while you were there? A He did not.

Q Did he write you any letters while you were there? A One.

Q I show you a letter dated August 10, 1914, and an envelope August 10, 1914, and ask you if that is the letter and the envelope which you received? A That is the one that he sent me; I had one more.

(Letter offered in evidence and marked Exhibit C. 3.)

"August 10, 1914.

Enclosed find check $23, $17 & $6. Ernest."

Q You say you received another letter from him? A I did.

Q Have you that letter with you? A No, I didn't keep it.

Q What was the substance of that letter? What did he say in the letter?

Mr. Vogt. I object.

Court. Did you destroy it?

Witness. I don't know what became of it; there are lots of things that I didn't keep.

Q Have you made any effort to find the letter? A No, I haven't.

Court. Then you cannot testify to it.

Ella S. Smith, direct.

Q Did you stay longer than two weeks? A No, I don't think I did; I think I was only there two weeks.

Q Why didn't you stay longer? A I didn't have the money to stay.

Court. This letter is dated August 10; when did you go to Asbury Park, before that date?

Witness. That was sent to pay my board.

Q Was your daughter with you? A Yes.

Q Why didn't you continue to stay longer? A I stayed as long as I had money to stay. I stayed my time out, the two weeks.

Q Did you make known the fact that you desired to stay longer? A I did.

Court. How, by writing?

Witness. Yes, I wrote him a very nice letter.

Q Did you receive any reply? A I did.

Q Did you remain longer? A No.

Q Why not? A I hadn't the money to remain.

Q Did Mr. Smith send you the money? A He did not, not to remain longer.

Q What was your condition of health at the end of the two weeks? A I was better.

Q And did you come directly home then? A Yes.

Q While you were living at Old Boonton Road or while you were living at Boonton did you open any letters addressed to Mr. Smith? A I certainly did.

A Q Kindly look at this letter and tell me whether this is the one that you opened? A Yes.

Q Where were you living at the time you opened this letter? A In Old Boonton Road.

Mr. Romine. I offer this letter in evidence, dated December—the post mark on the envelope is December 8, 1913.

Court. Do you say that is competent?

Mr. Romine. It is addressed to Mr. Smith.

Court. How is it binding upon him?

Q Did you write this letter? A No.

Mr. Romine. I will withdraw the letter for the present.

Ella S. Smith, direct.

Q While you were living at Old Boonton Road did you have occasion to go into the city or go to the station? A Yes, I went to New York.

Q In company with your husband? A Yes, I met him on the train several times in going into the city.

Q At the Boonton station? A At the Boonton station.

Q What was his attitude? A He would simply ignore me, not act if he saw me at all.

Q Would he ever use any language? A On one occasion at the station.

Q Can you tell us when that was? A Yes; his mother was visiting me at the time and I went ahead to buy the tickets, and when Mr. Smith got to the station he was evidently talking to his mother.

Mr. Vogt. I ask to have that stricken out.

Court. Yes.

A (Continuing.) He came to me and he cursed at me and swore at me and said I was a liar, so everybody around could hear it.

Q He talked in a loud voice? A Very loud, just shouted.

Q Did you have anyone washing for you while at Old Boonton Road? A Yes, Mrs. Sara Tompkins.

Q Anything happen while she was there, between you and Mr. Smith? A The morning the bulb was put in my mouth she was there, and on another occasion she was there when Mr. Smith came in from the barn and attempted to kick the dog because he was in his way, and I spoke to him and told him not to kick that poor dog, and he said, "Well, I will kick the dog, and I won't only kick him, but I will kick you, too, and do worse."

Q What did he say he would do, if anything? A He said he would smash my God damn face.

Q Did he say what he would do if he could do that, or where he would go? A He said on several occasions "I will either kill you or I will set you crazy so that I can put you away, God damn you."

Q Do you remember an occasion meeting your husband on going to the station one evening in the early part of 1915? A I went to the station several times to meet him.

Q On any particular occasion on coming home was there any trouble regarding a gun?

Ella S. Smith, direct.

Mr. Vogt. Objected to.

Court. I will allow it.

A Yes, Mr. Smith threatened me, but that was down in Old Boonton Road.

Q What did he threaten to do? A He threatened to shoot me and himself and Audrey.

Q Did you see him do anything? A He had his gun in his hand fooling with it and had cartridges in it or something.

Mr. King. I object.

Q What was he doing with the cartridges; did you see them? A Yes, he was putting them in the gun.

Q Did you do anything? A I did.

Q What? A When he went downstairs I took the gun and locked it up in my closet in the room where I slept.

Q Had he made these threats to you before you saw him handling the gun? A Frequently.

Q How did that affect you? A I got so I was afraid of him.

Q What would you do on those occasions; you say you were afraid of him when he came in the house in this condition, what did you do? A I would avoid him all I could.

Court. There is no condition proven yet.

Q You say you got so you were afraid of him? A I certainly was.

Q What did you do to protect yourself? A I took the gun and locked it up in my room in my closet and I used to avoid him all I could. If he started upstairs in back of me I was so afraid he would hit me or something, or do something to me, that I would wait until he got upstairs; I never let Mr. Smith see it, but I was deathly afraid of him.

Q During this time you were living at Old Boonton Road did Mr. Smith occupy your room? A He did not.

Q On any occasion did you attend to his room in the day time while he was out? A I did.

Q Did you find anything in his room? A I did.

Q What did you find? A I found a comb by his bed one morning.

Q What kind of a comb was it? A A side comb.

Ella S. Smith, direct.

Q Can you identify this as being the comb? (Witness shown comb.) A That is the comb.

Mr. Romine. I offer the comb in evidence.

Mr. Vogt. I object to it.

Court. That is not your comb?

Witness. No, I never wear them.

Court. It may be marked.

(Marked Exhibit C. 4.)

Q While you were living at Old Boonton Road in 1915, were you taken sick? A I was.

Q Can you tell us about when it was? A I think it was along about March 22nd.

Q What was your condition at that time; how did it affect you? A On that day when I was taken sick?

Q Yes. A Just before I left Mr. Smith I was taken suddenly—

Q That is the occasion in March, was it? A Yes.

Q What was your condition then; how were you taken sick; how did it affect you? A By violent vomiting.

Q Who was in the house at that time? A Nobody but Mr. Smith and myself and the little girl.

Q Did you have a servant then? A She was away on a visit.

Q At what time in the night were you taken sick? A Between seven and eight o'clock.

Q Had Mr. Smith been home to his dinner that night? A He came home three o'clock that afternoon to dinner.

Q Did you have a physician? A I did.

Q Who called the physician, if you know? A I asked Mr. Smith to call a physician and he paid no attention to it, so I said to Audrey, "No matter how dark it is you must go across the street and get a doctor, Audrey, for mamma is very sick."

Q What did your husband say about this sickness? A He was in the sitting-room and paid no attention to me.

Q What physician did you get? A I called for Dr. Peck. but I believe he was out to a maternity case, and Dr. Summers was ill, and finally they got Arbuckle.

Ella S. Smith, direct.

Q How long were you confined on account of this sickness? A A week or two I was sick, but Dr. Arbuckle only attended me three times.

Q Was your little girl sick on this occasion, A She was taken sick.

Q Anyone else? A The dog.

Q When you recovered from this sickness were you able to attend to your duties? A Not for some time, I was very weak.

Q Did you have anyone come in to work for you? A Mary had come back by that time, the maid.

Q What was your husband's attitude toward you on this occasion? A One of utter indifference.

Q Did he come to your room? A I called him before Dr. Arbuckle came and asked him if he wouldn't please put his hand on my side while I was vomiting, on account of the previous operation I had, it hurt me so, I was afraid it would burst.

Q Did he do anything for you? A He did not; he stood and looked at me and went back in the sitting-room.

Q When did you leave the home? A I think it was April, 1914.

Q Just before leaving did anything happen between you and Mr. Smith? A Yes, that was the cause of my leaving. I hadn't been downstairs but a short time from that illness; my maid got a pail of coal and Mr. Smith took it out to the barn for his fire out there; I was afraid that he would forget to get another pail, and I said, "Ernest, get another pail of coal, because Mary is too old to carry up two pails like that, one right on top of the other," and he paid no attention to me, and I thought he didn't hear me and I turned to him again and I said, "Ernest, don't forget to get Mary another pail of coal;" then he turned on me and we had a terrific row.

Q What did he say? A He called me the usual run of names.

Q Concentrate your mind, if you can, and tell us what he called you at that time. A He called me a dirty whore, a bitch, a dirty bastard; he said, "You have just got up for a fuss this morning; that is all that ails you, you God damn dirty bitch you, you dirty whore." I got so excited and worked up over his continually calling me such names as that, I got up,—I was pretty nearly crazy,—I got up and took a cup and threw it at

him, and I took mush and threw it at him, I would have thrown anything at him I had in my hands that morning.

Q What did he say? A I don't remember, I was so terribly excited; I remember having a shawl over my head, how it got there I cannot tell you.

Q When you recovered yourself where was Mr. Smith—sufficiently to recall what happened, where was Mr. Smith? A He had gone; he could have these spells and go right out and meet someone and be as pleasant and lovely as could be, and with me, I couldn't get over it.

Mr. Vogt. I ask to have that struck out.

Court. Strike it out.

Q How were you affected that morning after this affair? A He cut my neck with a piece of glass and I was all upset and nervous, I was pretty nearly beside myself.

Court. How did he cut your neck?

Witness. He took out a piece of glass—I don't know how it was done, but he cut my neck with it.

Q In connection with this incident about the pail of coal? A Yes.

Mr. Romine. We have a deposition of the witness who testified as to the neck being cut.

Q How long after this trouble was it you left? A Right away.

Q The same day? A No, but I think two or three days afterwards or a week after.

Court. When he returned that day did he make any reference to this trouble?

Witness. Not in the least; he came in as pleasant at night as could be, as if nothing had happened.

Q What was your condition during that time? A I was so worked up and nervous I didn't know what to do with myself.

Q And you say you left him two or three days later? A I think it was two or three days later.

Q And you have never been back to the home since? A No.

Court. Why did you leave two or three days later?

Witness. I went up to my attorney; I told him I could not stand it, and my attorney ordered me to leave.

Q Why did you leave him? A I left because of his cruelty, I couldn't stand it.

Q The day you left, or the following day or any day after that has Mr. Smith asked you to return? A He never has.

Q Mr. Smith says in his answer that for some years you have suffered with the idea that he has been unfaithful to you? A I have accused Mr. Smith of that.

Q Why have you done that? A Because I have caught him myself repeatedly.

Court. What do you understand that answer to mean?

Witness. I have caught him with other women; he has been out with them, I have caught him with them, and on two occasions there were women out at the barn; Elsie Starkman was there on one occasion.

Q Where were you living then? A In Old Boonton Road.

Q What other incidents do you refer to as having caught him? A I caught him on Summer avenue with my Polish maid.

Q Any other occasion?

Court. Any others than those you have mentioned?

Witness. I have named them in my testimony.

Q He says that you have continually nagged him and that has been the occasion of the quarrels; is that so, Mrs. Smith? A The first two years that I found out about Mr. Smith's unfaithfulness and the way he was doing, I did go on terribly; I guess I said everything that came in my head.

Q During the latter part of your married life, or your living with Mr. Smith, did you continually nag at him? A No, I stopped. I let him alone; I didn't say anything to him, no matter what he said.

Q Mr. Smith also says in his answer that you have been guilty of cursing and swearing; have you ever used any bad language? A I don't think there is anybody that knows me that would ever accuse me of that.

Q Have you? A I have not.

Ella S. Smith, direct.

Q Mr. Smith also says in his answer that you have continually scolded and nagged the child and brought the child up to be ashamed of its father; have you done that? A I have not; on the contrary, I have tried to get Audrey to love her father.

Q Mr. Smith further says in his answer that he separated from your bed the last time—I assume it is, from his answer—because of the nagging; did you nag him to cause him to do that? A I never spoke to Mr. Smith after he came to bed.

Q Did you nag at him? A No.

Q He further says that you charged him with going to another room so he could communicate out of the window with other women on the street; what have you to say about this? A I used to see him doing things that were very indecent, that I beg to be excused from mentioning.

Mr. Vogt. I ask to have that stricken out.

Court. I don't think the answer is responsive; strike it out.

Q I ask you again to tell what you saw him do; it may be indecent, but we must have it. A Upon one occasion I went to go downstairs and Mr. Smith stood in front of his window without a stitch on him.

Q Was the shade up or down? A The shade in his room was always up to the very top.

Q Did you observe anything else? A He was acting in an indecent manner.

Mr. Vogt. I object.

Court. Strike it out.

Q Did you observe anything on any other occasion, either in his room or bathroom? A In the bathroom, I very frequently saw him waiving out the bathroom window.

Q Did you speak to Mr. Smith about it? A I think on one occasion I told him it was a very poor place to do his waiving.

Q Did you nag him about it? A I did not.

Q Continually talk to him about it? A I did not.

Q These occasions when you would speak to him about it, how would he answer you? A "I will do as I God damn please; you cannot do anything about it; you have got to take just what I give you."

Ella S. Smith, direct.

Q You say during the time you lived with Mr. Smith you frequently had physicians attending you? A I did.

Q Since you left Mr. Smith have you required the services of a physician? A I have not.

Q Have you had any sickness in the home? A Yes, we have; Audrey has been sick three times, very sick.

Q Who doctored her?

Mr. Vogt. I object; how is that material?

Objection sustained.

Q What is your condition of health now compared with the time when you lived with Mr. Smth and just prior to the time of leaving?

Mr. Vogt. I object

Court. I will take the evidence.

A I am very much better.

Q In what respect are you very much better? A I am capable of getting up at half-past five every morning and getting my work done and taking care of my little girl, cooking my meals, getting them prepared for dinner at night and going to work.

Q In what other way are you better? A I am not nervous, not like I was, not by any means, I am not sick.

Cross examination by Mr. Vogt.

Q You were married in 1902? A I was.

Q When was your child born? A In 1906.

Q Where were you living then? A In Forest Hill.

Q Where did you live immediately after your marriage? A In Forest Hill.

Q How old are you? A Forty-five this summer; Mr. Smith is a year younger.

Q How long did you continue to live at Forest Hill? A From 1902 until 1906; I think it was in the spring.

Q Then you moved to where? A To Summer avenue, Woodside. Woodside is in the upper part of Newark; it is part of Newark up town.

Q How long did you live in Woodside? A We moved there in 1906, to 1908; I think we lived there about two years. We

moved from Summer avenue to Mt. Prospect avenue, in Dr. Warren's flat, in Newark, and lived there not very long; we didn't live there a year, I don't think; then we went to South Broad street, still in Newark, in an apartment, and lived there I think about a year, 1909 and 1910; then we moved to Perth Amboy; we went to Perth Amboy in July and stayed there—I don't know if it was one or two years we stayed there. We had a home on Kearny avenue, rented it.

Q You didn't live in this home all the time you were in Perth Amboy? A No, we moved to 320 High street, in an apartment. From Perth Amboy we went to Bayonne, I think it was in 1911 or 1912; we moved so much and at that time there was so much trouble I paid very little attention, but I think it was 1911—either 1911 or 1912. We only lived in Bayonne a short time; we lived there from the spring, either April or May—I cannot tell you which—until January; we moved January 7th to Boonton, and we were in Boonton from that time until I left Mr. Smith last spring.

Q January of what year did you move to Boonton? A January 7, 1912, I think.

Q What was Mr. Smith's occupation when you were married? A A bookkeeper.

Q The same position he has now? A I think he was with Post & Flagg.

Q With a brokerage concern in New York City? A Yes, a brokerage concern.

Q When you lived at Forest Hill did you keep a maid? A Yes, not at first.

Q How long had you been house keeping before you kept a maid? A The year my child was born, 1906, just before she was born.

Q Have you kept a maid off and on ever since then? A I have.

Q What was the name of your maid at Perth Amboy? A That I really cannot tell you.

Q How long did you have her? A We had two or three maids while there; they would be just for a short time.

Q What was the name of the Polish maid? A That I cannot tell you.

Q How long did you have her? A While we lived on West 34th street, that was only a few months, a short time, from the

time we moved there, which was in the spring, April or May, up until we left.

Q You don't recollect what the Polish girl's name was? A No, only her first name was Annie.

Q At that time could she talk English? A Not very good English.

Q When did the difficulty between Mr. Smith and yourself first start, as you recollect? A The year before Audrey was born, a few months before Audrey was born, Mr. Smith's attitude toward me began to change.

Q She was born in what month? A July.

Q So from the first part of 1906 you noticed that Mr. Smith's attitude toward you changed? A Yes.

Q What first called your attention to it? A He was very ugly toward me.

Q How had he been prior to that? A Very loving.

Q During all the time of your married life? A Yes.

Q You say he was ugly to you; what do you mean? A He never kissed me; he never took me in his arms when we retired, like he used to do, and he started to be very ugly towards me, finding fault with everything.

Q Did all this start very suddenly or grow upon you? A No, it gradually grew worse; it started with this coldness towards me.

Q What was the first thing that you noticed about this coldness? A I don't understand your question.

Q What was the first thing that caused you to feel that Mr. Smith was turning cold toward you? His attitude toward you—what did he do or didn't he do? A He stopped kissing me, he stopped loving me and he started finding fault with everything I did.

Q When he stopped kissing you did you comment about that? A I did frequently.

Q What did he say? A Well, he wouldn't say anything sometimes, and then again on other occasions, he would say "Well, don't you like it?"

Q Did he stop kissing you without any excuse whatever? A He did, and he stopped loving me in the same manner.

Q What did he commence to complain about? A About my cooking; he complained about my being down at my home so much.

Ella S. Smith, cross.

Q Were you down at your home much? A I was down at my home a great deal; they were ill and I went down to take care of them.

Q What did he say about going there so much? A He said if I had married my people I had better take my trunk and move there.

Q What did you say? A I thought I was doing my duty; they had taken care of me for years and it was up to me to help care for them.

Q Did they care for you after you were married? A On several occasions when I was so ill she did.

Q How much money was Mr. Smith making when you were married? A He never told me.

Q How much did he allow you? A Four dollars a week when we were first married.

Q For what? A For dressing.

Q Did he allow you anything for the house? A Yes, ten dollars.

Q And that included what? A My household expenses, whatever I had to buy for the house, and I usually paid for the gas out of it and for the butcher and the milk man and bread man.

Q What else, the rent? A No, not the rent.

Q Did he pay the rent? A He did.

Q How much was that in Forest Hill? A There was no rent, we owned that place.

Q How much rent did you pay at Woodside? A I think $20, but I can't tell positively; I had nothing to do with his financial conditions whatever.

Q Has ten dollars a week been allowed you ever since you have been married? A Yes, sir.

Q For the purpose of the table and small incidentals of that kind? A Yes.

Q And a personal allowance made to you? A As Mr. Smith's wages increased he gave me more until he got giving me $6 a week.

Q For personal use? A For my child and me.

Q And Mr. Smith paid all other bills that you didn't pay outside of this $10, rent and whatever it might have been? A Rent and for physician, if we needed one. At that time I had

to spend a great deal of the money for other things out of this dress allowance—for things that we needed for the house.

Q Because of the increased cost of living? A It seemed to me I couldn't make the ten dollars go as far.

Q Have you had any difficulty with Mr. Smith over money matters during your married life? A Very frequently.

Q When did that start? A After he went to Prince & Whitely; that is where he is now.

Q When was that? A I cannot tell you; I haven't kept track.

Q Do you recall where you were living? A I think we were on Mt. Prospect avenue, but I wouldn't say for sure.

Q In other words, difficulties over money matters have run on for some years? A Yes.

Q What was the difficulty about money matters; what complaint did you have to make, if any? A I complained that I didn't have money enough to dress Audrey on and get the necessary things for the house..

Court. Did you pay the maid out of your allowance?

Witness. No, Mr. Smith paid her $4 a week.

Mr. Romine. There is a matter I overlooked.

Court. You may examine her further if you desire.

Further direct by Mr. Romine.

Q You said, Mrs. Smith, that you had employed at one time Elizabeth White? A Yes, that was after Florence Branthwaite was there.

Q How did you come to employ her? A I advertised, or answered an advertisement in the paper, and as a result she came to the house.

Q Had you ever seen her before? A I had seen that woman frequently.

Q How long did she remain with you? A Not more than two or three months; I don't know whether it was that long.

Q State the circumstances that happened while she was there. A She came to the house—I believe she came up on the same train with Mr. Smith—

Mr. Vogt. I object.

Court. Strike it out.

Ella S. Smith, further direct.

A (Continuing.) She came down to the house and I recognized her immediately as a woman whom I had been trying to find out who she was and where she lived for at least three years.

Q After she came there what happened? A She wasn't down there more than a week or two before Mr. Smith and I decided we would join a dancing school, and the first that I noticed peculiar was one evening, we were upstairs and I was in the hall; I said to Mr. Smith, "What are we going to do, are we going to join the dancing class or not?" He said, "Oh, for God's sake, shut up." I said, "What is the matter with you?" He said, "Shut up." I said, "What is the matter?" He said, "Keep still." I said, "Why are you telling me to keep still?" He said, "Don't let Elizabeth hear it." I said, "What has a new maid got to do with our affairs?" and he made quite a fuss about it; we finally went downstairs and went out.

Q Did you go to dancing school that night? A We did.

Q Was anything said between you after leaving? A Not that night; the next week, when we went to dancing school, this Elizabeth White deliberately sat down by the kitchen door where she could see us go out, and when we got outside Mr. Smith turned to me and he said, "Ha, she is playing martyr." I said, "Playing martyr; who is playing martyr?" He said, "Elizabeth." I said, "That is strange; why should a strange girl play martyr; what do you mean?" He had no more to say and I didn't say any more.

Q Did you go to dancing school again? A We did; the next week we went to dancing school; that same thing happened again; in crossing the lawn he said to me again, "Ha, playing martyr; she is playing martyr." I said, "Who is playing martyr?" "Elizabeth." I said, "What over; why should a strange girl play martyr; I don't understand; what has she got to do with us?" And he stopped talking.

Q Did you notice anything between them in the house? A Yes, I noticed things that didn't seem quite right; there were looks that passed between them that didn't seem to be right; I couldn't quite understand what it was.

Q Did she on any occasion say anything in your presence? A Yes, she did.

Ella S. Smith, further direct.

Q What was it? A She came upstairs one day and had quite a conversation with me.

Q At the table in the presence of Mr. Smith? A Yes. Mr. Smith called her in for her dinner and she stood alongside of him, and as he put the food on the plate, she turned and she said, "You know Ernest," and he stopped and he looked at her, "baby won't eat this"; he said, "Who?" "Oh," she said, "Helen."

Q Did she have anyone with her? A She had a child with her.

Q What was the child's name with her? A Her name was Helen.

Q Did anything else happen at that time? A No, he gave her a sharp look and she went on out in the kitchen and after that she came upstairs one day and had a conversation with me.

Q Not what she told you; when did she leave? A Just before Christmas.

Q What were the circumstances, if any, just before her leaving? A I saw Mr. Smith and Elizabeth close together on several occasions down in the kitchen; when I went down it would seem as though they were parting—

Objected to. Objection sustained.

A (Continuing.) —on two occasions; on one occasion I saw Mr. Smith hand her money, which was not the pay money, not for her services, and I saw her put it in her stocking. On two occasions I saw that.

Q What were the circumstances just before her leaving, if any, that caused her to leave? A I cannot just remember; Mr. Smith one day came to me and he said, "For God's sake, get her out of here, or she will set me crazy, I will go crazy." I said, "It is a very strange thing that a strange girl that comes in to work has such an effect on you as this; I don't understand the situation."

Q What did you do? A I thought if it was affecting his nerves so, it was easy to get another girl, and I discharged her.

Court. This child Helen, how old was she?

Witness. A child about five years old.

Court. Was she living there?

Witness. Yes.

Q Whose child was it? A She was Elizabeth's child.

Ella S. Smith, cross.

Cross examination by Mr. Vogt.

Q He gave you $10 a week, $6 for yourself and daughter, and paid the maid $4 a week? A Yes, at that time.

Q Did he continue giving you that much up to the time you left? A No.

Q When did he stop? A He stopped several months, something like a year before I left him.

Q But it was continuous up to a period of a year before April, 1915? A There were occasions when Mr. Smith would say he didn't have it to give me, and gave me less.

Q Were there occasions when Mr. Smith didn't work? A Only shortly before I left him.

Q For a period of almost a year before you left him he didn't work steadily? A Yes.

Q You are sure of that? A It was, I think, when the war started; it was after the war started that Mr. Smith—I cannot tell you just when—he told me they had laid him off, he was on half time.

Q Worked every other day? A No, every other week.

Q And was it about that time that he shut down on this six dollars a week? A Before that.

Q How long before? A I think a year before that; he would once in awhile give me six, but more often four; he said he didn't have it.

Q When did he shut down absolutely from giving you any money for personal use? A He never absolutely shut down.

Q Then up to the time you left he always gave you a certain amount of money a week? A A small amount toward the last.

Q How much? A Sometimes three, sometimes four.

Q But always something? A A little something.

Q And when he gave you a smaller amount, he told you that he didn't have enough to give you six dollars? A He did.

Q When did he buy the property on Old Boonton road? A When we moved down there in 1912, I think—whenever it was we moved down there.

Q When did you first accuse Mr. Smith of infidelity? A I really don't remember, Mr. Vogt.

Q What is your best recollection? A Upon an occasion where I asked him for money and he had been out the night before very late and he told me he didn't have it, and I asked him why he didn't have it, and he said, "It is really none of

your business, but if you want to know, I will tell you, because I spent too much last night."

Q That doesn't answer my question. A I asked him why he had spent so much; he said he was out to dinner; I said, "With whom?" He said, "A lady, and it is none of your business who she is."

Q (Last two questions read.) What is your best recollection about when you first accused him of infidelity? A As I have just stated, about his not having the money.

Court. Can you tell was it before or after the birth of the child?

Witness. After Audrey was born, a year after, I should say.

Q Hadn't you accused him of infidelity long before Audrey was born? A No.

Q And a short time after you were married? A No.

Q You are sure of that? A I am positive of that; we were very happy the first four years we were married.

Q Where were you living at the time of the incident you have just related? A We were living on Summer avenue.

Q Didn't Mr. Smith work frequently at night? A Yes, he did.

Q It was uncertain, was it not, in all the places that you lived, just what time he was going to get home? A No.

Q Did he always get home at the same time? A He came home of an evening at first at the same time, yes, sir.

Q But sometimes and frequently didn't he come home late? A Very.

Q And had been working at the office? A He had been working, so he said.

Q Did you have any reason to doubt his word? A I did.

Q All the time? A Not all the time, no.

Q When did he first tell you that he had been working, on an occasion when he got home late, and you doubted his word? A That was in Woodside; our trouble started worse in Woodside; it was at that time.

Q Did your trouble start after he told you that he had been out with this lady, or did it start after he told you that he couldn't give you any more money? A It was for both reasons.

Ella S. Smith, cross.

Q Did you ever swear at Mr. Smith? A No, I have not.

Q Never? A No, I never have sworn at him.

Q You have called him names? A What do you mean by "calling him names"?

Q You testified on your direct examination you called him everything you could think of; what did you call him? A I really cannot tell you, but I know I went on awfully.

Q Tell us. A I cannot tell you, for I don't remember; I know that I told him that he was unfaithful to me and he owned up that he was.

Q Is that all? A I really cannot recall.

Q You remember with distinct particularity everything else that occurred, why can't you recall what you called him? A Because I never called him anything that I can remember that was wrong; I simply used to accuse him of lying to me.

Q Is that what you meant when you said on direct examination you called him everything you could think of, that he had lied to you? A Yes; I cannot remember Mr. Vogt, positively anything more than telling him he lied to me.

Q When you say in your direct examination that you called him everything you could think of, do you mean that you said he was a liar? A I said he was a liar and he was unfaithful to me.

Q Is that all? A It is all I can recollect.

Q When did you first tell him that he was unfaithful to you? A Just before I caught him with my Polish servant.

Q That was down at Perth Amboy? A No, it was on Summer avenue, 746.

Q And in what year? A 1908.

Q So that just before you caught him with the Polish girl you said to him that he was unfaithful? A I accused him of unfaithfulness to me.

Q What did you base that charge on? A His own talk, the things that I saw—the flirting that he did; he said he would flirt with anything in petticoats.

Q Because he flirted, did that indicate to you that he was unfaithful? A He would carry it to the extreme.

Q What do you mean? A He would do things that were very dreadful; I don't care to go into it any further.

Q I think we are entitled to know what he would do. A I think I stated in my petition his attitude and what I saw, and I don't care to go into such vileness.

Ella S. Smith, cross.

Q I want to know, Mrs. Smith, what Mr. Smith did besides flirting before you caught him with the Polish maid, that led you to make a charge of unfaithfulness against him? A Very well, if you will insist—I have caught him a number of times at the bathroom window without a stitch of clothing on him, leaning right up against the window; I have gone in and caught him and told him if he didn't stop, I would call in a physician and have him examined.

Q Where were you living then? A We were living on Summer avenue when that started.

Q And because you saw him stand in front of the bathroom window without any clothes on did that indicate to you that he had been unfaithful to you? A Yes, that was one of the reasons.

Q What do you understand by unfaithfulness? A I mean being too fond of other women.

Q Being too fond in what manner? A Going with other women.

Q That is your idea of unfaithfulness? A It certainly is.

Q What kind of a house did you live in at Woodside? A An apartment house.

Q Bathroom front or rear? A The bath room was in the back, on the side, that way (indicating).

Q What was next to the side of the apartment house that the bathroom was on? A I think another flat or a house.

Q Where was the window in the bathroom? A Right above the toilet seat.

Q How high above the floor was the bottom of the window? A Not very high.

Q How high, in your opinion? A From the waist up you could see; you were shielded to the waist.

Q What floor was it on? A Second floor.

Q Was the bathroom in the rear of the apartment? A Sort of in between; there was a sitting-room, parlor and dining-room, then the bathroom and then two rooms on the other side, and kitchen; it was sort of in between the rooms.

Q Did the window have a side or rear exposure? A Side.

Q You say on that side was another apartment house? A Either apartment house or a house, I don't remember.

Q How far from the house you lived in? A Not very far.

Q A narrow alley? A No, there was quite a space.

Ella S. Smith, cross.

Q That is the bathroom window that your husband stood in front of? A That is one of them.

Q Where was the other? A In Bayonne.

Q As I understand you, the toilet was at the side of the window? A The toilet was here, the window here (indicating).

Q How close to the wall in which the wondow was, was the toilet? A Very close.

Q So a person couldn't stand between the wall and toilet? A No.

Q What kind of a house did you live in in Bayonne? A Whole house, private house.

Q One you rented? A Yes.

Q Bothroom on the second floor? A Yes.

Q Front or rear side? A In the rear.

Q How many windows? A One very large window with a rear exposure.

Q How near to another house were you, on the rear? A There was just the width of their yard between their house.

Q You had no yard? A We had a yard.

Q Then it was the width of your yard and their yard? A The two yards, the yards joined; this was rear to rear.

Q The other house faced on the other street? A Yes.

Q How high was the bottom of that bathroom window above the floor? A That was quite a low window; I think it had been a room before being made into a bath.

Q Was that up to your waist above the floor? A No, that was a very low window.

Q How low? A Not to your waist.

Q About to your knees? A About.

Q Where else did you see him stand in front of a window naked? A Nowhere else only those two places.

Q Where did you see him flirt with anybody? A You had better ask me where I didn't see him flirt; any place.

Q When you lived at Woodside? A Yes.

Q Prior to that? A No, my trouble started at Woodside.

Q Whom have you seen him flirt with? A People that would pass; anybody that would flirt with him.

Q And what would he do that would indicate to you that he was flirting? A He would waive his hand and wink at them.

Ella S. Smith, cross.

Q When you were with him? A I was right in his presence, right in the room.

Q How many times have you seen him waive to a woman when you were with him? A I cannot tell you; lots of times.

Q Did you ever remonstrate with him about it? A I did; I did not like it.

Q What would you say to him? A I told him I didn't think it was showing me proper respect; that he would not like it if I did a thing like that.

Q What would he say? A He said, "It is none of your God damn business; I will flirt or carry on with whomever I choose; you have got to take it and you cannot do a thing."

Q When did Mr. Smith first commence to swear at you in the manner you have testified? A The year Audrey was born, 1906.

Q Prior to that he had never sworn at you? A No, I don't remember that he did.

Q What caused him to swear at you in 1906? A There would be lots of things I would say to him that would make him swear at me.

Q What would you say to him? A For instance, if I asked him what time he would be home for dinner, he would say it is none of your "God damn business. I will come when I get here."

Q Mr. Smith hadn't been a swearing man at all? A He told me he got in the habit of swearing after he got in Wall street, in the brokerage place.

Q How long had you known him before you were married? A For nine years before I was married to him.

Q He wasn't a swearing man then? A He was always very lovely to me then.

Court. You don't know whether he was?

Witness. No.

Q He was in Wall street when you married him? A I think he just got that position in Wall street.

Q With Post & Flagg? A I think so.

Q But from the time you were married up to the time you lived at Woodside in 1906, he didn't curse and swear at you in this manner? A No; he would get angry spells and curse, but it wouldn't be at me.

Ella S. Smith, cross.

Q So that apparently, without any reason, he commenced to use these harsh words after the child was born? A He did.

Q Without any provocation on your part at all? A There was not; I couldn't understand it, and it was what started me watching him.

Q Why did his swearing at you start you watching him? A It was everything he did, it was his general attitude toward me; I worshipped the ground he walked on and I couldn't understand why he treated me so; if ever there was a man loved, it was Ernest Smith.

Q He wasn't a drinking man, was he? A I didn't consider him so at that time; he would drink socially, the same as anybody else would.

Q He kept nothing in the house to drink? A Yes, my brother frequently gave us whiskey and wine; he was in the business.

Q What was that whiskey used for? A Sometimes if I had a spell with my heart, Mr. Smith would give me a teaspoonful in a half glass of water, but very frequently he took it himself instead of giving it to me.

Q Did you have it on the table for meals? A Oh, no.

Q Did you serve it to company that came in? A If we had my people there for New Year's dinner or a card party, we frequently had wine for my brother.

Q When you say wine, you don't mean whiskey? A No.

Q You never served whiskey on the table? A Never.

Q How much would you have in the house at a time, a quart? A I think they were quart bottles that my brother sent us, Mt. Vernon whiskey.

Q Your brother sent them as a gift? A He would sometimes give them to Mr. Smith to bring home.

Q Mr. Smith didn't purchase whiskey then? A No.

Q Did you have beer in the house? A I think a year after Audrey was born I had porter.

Q What I mean is, a habit or practice of keeping it in the house? A No.

Q You didn't drink or Mr. Smith didn't drink? A No, not at that time.

Q Did he ever drink to excess? A Mr. Vogt, he had something, I don't know what it was.

Ella S. Smith, cross.

Q Did you ever see him intoxicated? A I have seen him when I thought he must be under the influence of something, but what I didn't know.

Q When? A Upon his return from New York.

Q Where were you living then? A In different places.

Q You have frequently seen him in that condition? A Before the holidays, yes, quite frequently; it grew more frequently, but I never realized that he drank very much.

Q Did you ever notice whiskey or beer or other wine odors upon him or upon his clothes? A He had stopped kissing me then, so I didn't notice it; there was something that he took, that when he came in, it would scent the whole house up, and I would know from his attitude that he had been having something, and the smell, I don't know what it was.

Q You know the smell of whiskey, don't you? A Yes, it wasn't whiskey. It was so sweet—I don't know what it was—it was sickening.

Q Was it a liquor? A I don't know; I don't know enough about those things.

Q How would Mr. Smith act; what would his actions be that led you to think he was intoxicated? A He would get silly.

Q How; what would he do, walk unsteady? A No, I think he could never walk unsteady.

Q What would he do beside act silly? A He would curse and swear and then kind of giggle and then he would say, "You accuse me of being drunk," before I had a chance to say anything to him.

Q Is that all? A Yes.

Q You say that all happened after he stopped kissing you? A Yes.

Q When did he stop kissing you? A About the time Audrey was born.

Q How long after? A That year.

Q Hasn't he kissed you since 1906? A No.

Q Not at all? A No; I have kissed him.

Q Not even on those occasions when you say he acted very lovely toward you? A He told me that when he cared for another woman he would stop kissing me, and I would always know it.

Q And then he stopped? A Apparently he stopped.

Ella S. Smith, cross.

Q I mean he stopped kissing you? A Yes.

Q He never kissed you good night since 1906? A He has not.

Q Occupied the same room with you? A He left my bed for two years.

Q And then he came back? A Yes, upon our moving to Boonton he came back to my bed.

Q When did he leave your bed first? A In Bayonne.

Q But he occupied the same room with you at Woodside and at Mt. Prospect avenue and Perth Amboy in both houses? A Yes.

Q For a period of four years? A Yes.

Q And during all that time he never kissed you once? A He got so he didn't kiss me at all.

Q Then he left your room in Bayonne? A He did.

Q And came back to it in Boonton? A Yes.

Q While you lived on Washington street? A I don't remember; it seems to me that he came back to my bed, I think, when we got down to Old Boonton road.

Q And then left again? A He did.

Q About a year before you left him? A Yes.

Q And during all that time while you lived at Old Boonton road he never kissed you? A He never did.

Q During the times that Mr. Smith occupied your bed, did you have sexual intercourse? A We did not.

Q Not since 1906? A Yes, since then.

Q When did the sexual intercourse between you and him stop? A In Bayonne.

Q How long before you moved to Boonton? A I cannot just remember; he left my bed in Bayonne, I think, right after we went to Bayonne; I am sure it was right after we got to Bayonne.

Q You and he occupied the same room at Old Boonton road for a period of something like two years, didn't you? A No.

Q How long a time was it? A I think it was a little over a year, 1913 and first part of 1914, I think.

Q And during that time you had no sexual intercourse whatever? A Once, I think.

Q That was the only time you recall while living at Old Boonton road? A That is all I recall.

Q You never had but one child? A That is all.

Ella S. Smith, cross.

Q Did you tell Dr. Summers in Boonton that you had had a miscarriage? A I didn't tell him I had; I didn't know what it was. It seemed to me as though it was a miscarriage; Dr. Summers did not positively state that it was.

Q That was while you lived on Old Boonton road? A Yes.

Q Will you tell us again, Mrs. Smith, of the incident concerning the Polish maid, when you say you found your husband in a compromising situation? A What do you wish me to tell you?

Q What did you see? A I went in the room and saw them separate; they had been on the couch together.

Q That was in what room? A In the sitting-room.

Q On your direct examination you said it was in the dining-room? A No, I never said so. The dining-room was opposite my bedroom, and the door was open.

Court. Was the sitting-room opposite the dining-room?

Witness. No, the sitting-room was opposite the parlor in the front of the house.

Q How long had you had that maid, the Polish maid? A She came to me shortly before we left Forest Hill for Woodside, only a short time, I think a month.

Q Did you know her before you hired her? A No, I did not, I knew nothing whatever about her.

Q Where did you get her from, an agency? A I think so.

Q How long had she been in the house as your servant before you found her in this position? A Quite a little while.

Q Had you ever noticed any other intimacy between Mr. Smith and her? A No, only that Mr. Smith would insist upon going out into the kitchen for his own coffee and bringing in the things and going out to her instead of letting her wait on the table.

Q Had he ever done that before? A No, he hadn't. He would make the girls do it.

Q When was it that your husband told you that he loved another woman? A On Summer avenue.

Q What was the occasion of his making that remark? A I had seen some things that looked very much as though he cared for a girl.

Q What had you seen? A It was more of a loving attitude; I cannot just describe it.

Ella S. Smith, cross.

Q Loving attitude toward him? A Toward some girl. It the way he looked at her and acted toward her.

Q You had seen the girl? A I had.

Q Did you know her? A I did.

Q Who is it? A The girl is married now and I do not like to mention her name; I do not wish to make trouble for her.

Q Was she a friend of yours? A She was.

Q Visited at your house? A She did, in Forest Hill, twice a week, and Mr. Smith always took her to the car.

Q At night? A At night; I never went.

Q How late at night? A Every time she went home, if it was eight o'clock or nine o'clock.

Q How far was the car from your house? A About five blocks.

Q There was nothing out of the way in his doing that? A I sent him.

RECESS.

Q Will you tell us the name of that young lady? A She is a married woman; I don't care to make trouble for her. Florence Jacobus—I don't know what her married name is.

Q You say your family was against you; what do you mean by that? A They stood by Mr. Smith.

Q Do you know why they stood by him? A Yes.

Q Why? A They hadn't seen these things in my home.

Q You had told your family about these things? A I had.

Q Mrs. Canfield is your sister? A Yes.

Q Prior to the birth of Audrey hadn't you told Mrs. Canfield and her husband and Dr. Dougherty that your husband had been running with other women and had been untrue? A No, there was something wrong, I didn't know what.

Q Within a short time after you were married didn't you tell your sister and her husband and the doctor I have just mentioned various things about your husband, and stated to them that he had been unfaithful to you and had run around with other women? A I do not remember that incident at all.

Q Will you say you didn't make such a statement to them? A I don't remember of doing so.

Q The first complaint you have any recollection of, of that nature, is after your daughter was born? A The year before she was born.

Ella S. Smith, cross.

Q On these two occasions when your husband left your bed did you ask him to come back? A I did.

Q Frequently? A Not frequently, no.

Q But several times? A Several times.

Q What reason, if any, did he give for not coming back? A He said he didn't consider me his wife.

Q What reason, if any, did he give for leaving your bed? A He told me the same thing, he didn't consider me his wife and he didn't love me.

Q During all the time on these two occasions that he was away from your bed, were you willing that he should come back? A Yes, any time.

Q Were you jealous of your husband? A Not any more than any decent woman would be of the man she loved.

Q After you had noticed your husband's actions with this young lady, whose name you don't wish to develop, did you say anything to her about it? A I don't remember.

Q Did you ask her not to call at your house any more? A No.

Q Did you tell her that she was making trouble between yourself and husband? A No.

Q Why not? A I didn't say anything about it.

Q Why not? A I don't know really why.

Q How long did this Polish maid stay with you after you found your husband in this compromising condition? A Only a few days.

Q Did you discharge her? A I did.

Q For that reason? A For that reason.

Q And told her so? A For that reason; I told her for her conduct in the house.

Q Did you particularly refer to this one occasion? A No.

Q Did you at any time say anything to her about this one occasion? A No.

Q Say anything to your husband about it? A Yes.

Q What did you say to him? A I reprimanded him.

Q What did you say? A I don't remember.

Q What did he say? A I dont' remember that.

Q Was that the only time you found him in a compromising position with this maid? A Yes.

Q Why didn't you leave him then? A Because I was sick and had a young baby.

Ella S. Smith, cross.

Q Why didn't you leave him after you got well? A Because my folks wouldn't believe me; there was no one to do anything for me, I was alone.

Q You assumed marital cohabitation with your husband after that? A Yes, I did.

Q Do I understand you to say that upon the occasions when your husband, as you say, cursed and swore at you, you hadn't given him any provocation? A I consider I had not.

Q What generally led up to such actions on his part? A Sometimes asking him what time he would be home for dinner.

Q Would that be all? A That would be all.

Q And that would cause these outbursts that you mentioned? A Yes, sir.

Q Did you ever complain to him because he didn't get home until late hours at night? A I never complained.

Q This woman that you saw in the Hoboken station, did you know her? A No, I did not.

Q You said you had seen her once before? A Yes.

Q Do you recall when that was? A I cannot, only it was in the lobby where Mr. Smith worked in New York.

Q Mr. Smith was not with her then? A I was in there waiting for Mr. Smith and she stood there outside of his door.

Q In the lobby of the building or lobby of the office? A I cannot just describe to you; it was upstairs as you went in the hall.

Q Was she an employee of Prince & Whitely's? A I don't know.

Q Did you go to Mr. Smith's place of business very frequently? A For a time I would go down to meet him; not very frequently, no.

Q You say, "for a time;" what time was that? A I really don't remember. Once or twice when we were going out for dinner.

Q With reference to the birth of Audrey, was it before or after that? A After.

Q You say, Mrs. Smith, that this Polish maid put her arms around Mr. Smith? A She did.

Q Will you explain how she did that? A Just as I say, put her arm around his shoulder.

Q Both arms? A One.

Q Was there anything in the hand of that arm? A No.

Ella S. Smith, cross.

Q You were sitting at the dining-room table? A Yes.

Q Who was there beside yourself and Mr. Smith? A No one.

Q Was your daughter? A I think she was in her carriage.

Q Was the maid waiting on the table? A She had been.

Q What was she doing in the dining-room at that particular time? A She had brought something in.

Q What? A I don't remember.

Q Had she put it on the table? A Yes.

Q Had she set it on the table near Mr. Smith? A No, near me.

Q Were you sitting on one side of the table and Mr. Smith on the other? A Yes.

Q And did she walk from your side around to his side and put her arm around him? A Yes.

Q What did you say? A I fired at her right then and there.

Court. What did you say?

Witness. I told her to leave.

Q Was this before or after the occurrence in the sitting-room? A After.

Q What did she say? A She turned to Mr. Smith and sh said, "You won't let me be fired?" I said, "He has got nothing to do with it."

Q Is that all the conversation? A That was all I remember.

Q Did you say anything to Mr. Smith about his letting her do it? A I don't remember.

Q Did he ask her to? A No.

Q How long after this occurrence in the sitting-room was it that this happened? A A few days.

Q Then you didn't discharge her because of what you had seen in the sitting-room, did you? A Yes.

Q You say you discharged her because she put her arm around Mr. Smith? A I discharged her for her conduct.

Q Why did you let her remain those few days? A Because I couldn't help myself.

Q You could have fired her just as well the time you caught her in the compromising position as you could the time she put her arm around him? A No.

Q Why? A Because I was not fit to be left alone.

Q Why not? A Because I was in ill health.

Ella S. Smith, cross.

Q Had you recovered your health in those few days? A I had not.

Q Had you ever had heart trouble? A I don't know; I had a great deal of trouble with my heart; that is all I can tell you.

Q Did you ever doctor for heart trouble? A I don't know.

Q Did you ever call on any physician during your married life and tell him you had heart trouble? A No.

Q What do you mean when you say you don't know whether you doctored for it or not? A I don't know what they doctored me for.

Q Did you ever show anybody besides Mrs. Sandusky any bruises on your body? A I don't remember.

Q Did you ever go to any physician to be treated for bruises on your body? A I don't think so.

Q Have you varicose veins? A I have bursted veins; I have never been told they were varicose.

Q When did Mr. Smith first commence to pinch you? A I think it was when we were in Perth Amboy.

Q About 1910? A Yes, somewhere around there.

Q Did he pinch you in play or earnest? A Not in play.

Q Did he ever pinch you in play? A Never.

Q Did he pinch your left arm in Perth Amboy? A Yes.

Q How long did that pinching continue on your left arm? A I cannot tell you; as long as I slept with him.

Q And it then continued when you slept with him in Boonton? A Yes.

Q When did that spot first appear? A I cannot tell you.

Q You said two years ago; is that correct? A I don't know.

Q Was there any spot there before the one that is there at present appeared? A No.

Q Did you ever see a doctor about that? A No.

Q Have you a bursted vein in your left arm? A Not that I know of—pardon me, I had a physician for my little girl and asked him to look at my arm; I forgot it.

Q When was that? A Just recently.

Q Since you started this suit? A Just recently—just this last sickness of my child.

Court. Within a month or two?

Witness. She is still ill.

Ella S. Smith, cross.

Q Have you any bursted veins in your left arm? A No.

Q Is that the spot that you showed Mrs. Sandusky? A No.

Q Had you shown that to anybody until you exposed it in court this morning? A Yes.

Q To whom? A Mrs. Emma Knell.

Q How long ago? A About six weeks.

Q You have no such spot on your right arm? A I have not.

Q Or anywhere else on your body? A No.

Q Have you any marks which show on your body which you claim were caused by your husband? A Not now.

Q Did you show anybody, except Mrs. Sandusky, any such marks? A I don't remember.

Q You said once that you had a spell when you leaned over or stooped over, do you know what caused that? A It was the time I was having so much trouble with my heart, with Mr. Smith.

Q Just prior to your going to the hospital, was it not? A No.

Q Was that the only spell of that nature you ever had? A No, I had them frequently.

Q Ever have them before you were married? A Not like that. I never had anything like that before I was married.

Q Did you ever have any heart trouble before you were married? A Not that I know of.

Q Or pains around the heart? A Not that I know of.

Q Have you ever been in real robust health? A Never.

Q Since a child you have been delicate, have you not? A Somewhat, yes, sir.

Q Is that delicacy constitutional? A I don't think so.

Q You said you had doctored for local trouble; such as what? A Well, I don't know; I really don't know; I had local trouble and I had my kidney operated on.

Q That was the time you were in the hospital? A Yes, sir.

Q You say Mr. Smith frequently hit you; where did he strike you? A Any place that he happened to be near me.

Q That does not tell us very much? A Sometimes on the arm; once across the back of the neck; once across the head.

Q What did he hit you across the back of the neck with? A He always hit me with his hand.

Q Was his fist open or closed? A I never knew.

Ella S. Smith, cross.

Q He never knocked you unconscious? A Very nearly in Bayonne.

Q Were those painful hits? A Naturally; they certainly were.

Q Raise bruises? A Yes.

Q Any abrasions of the skin? A Not from the knocks.

Q Any abrasions of the skin at all caused by Mr. Smith? A Yes.

Q What? A In the neck.

Q That is the cutting time? A Yes.

Q Did you ever faint? A A number of times.

Q Before you were married? A I don't remember before I was married.

Q Before your daughter was born? A Yes.

Q Were you subject to fainting spells? A I don't think I was.

Q Were they frequent or infrequent? A Not frequent.

Q In the four years prior to the birth of your daughter, how many times do you recall you fainted? A The first year I was married I had several fainting spells. After that, never.

Q How often after the birth of your child? A No, I was in very much better health for a short time.

Q Didn't you have a fainting spell once after the birth of the child and bruise yourself by falling? A Never.

Q Did you ever bruise yourself by falling with a fainting spell before Audrey was born? A No, never.

Q Nor before you were married? A Never.

Q And you never had a fainting spell after the birth of Audrey? A I don't remember.

Q Were you ever treated medicinally for fainting spells? A I don't think so.

Q Do you know what caused the fainting spells? A No, I do not.

Q What did Mr. Smith strike you on the head with? A His hand.

Q On your face or back of the head or where? A Back of my neck.

Q Did he ever strike you anywhere except in the three places I have just mentioned? A You wouldn't call them striking when he kicked my foot or leg over when I happened to get close to him?

Ella S. Smith, cross.

Q When did he do that? A Frequently, when I slept with him.

Q That was at Perth Amboy? A At Perth Amboy.

Q Did he kick you in bed any time after that? A A number of times.

Q When you lived where? A When I lived in Woodside.

Q That was before you went to Perth Amboy? A Yes.

Q I mean after you left Perth Amboy. A I don't remember that.

Q What is your best recollection about it? A I cannot recollect at all.

Q And were bruises raised upon your limbs by those kicks? A They were.

Q Did you have them treated by any physician or home treatment? A No, I never did anything to them.

Q Was the skin abraised? A No.

Q Did he ever say to you why he was kicking you in bed? A Yes.

Q What did he say? A Get your God damn leg away from me.

Q That doesn't say why he kicked you; did he ever say why he kicked you? A No, I don't think he ever did.

Q Did you ever give him any cause to kick you? A I did not.

Q When he said to take your leg away, had you been irritating him by putting it on his side of the bed, or kicking him? A I was asleep a number of times and he awakened me.

Q At times when you happened to be awake first? A Then I didn't do it.

Q You didn't irritate him in any manner? A I didn't do anything.

Q Had you said anything to him which might cause him to have a fit of anger of that nature? A No.

Q Where were you living when he first kicked you in bed? A In Perth Amboy, I think, and a few times on Summer avenue. I just don't remember.

Q What did you say to him when he first did it? A I said, "You have hurt me."

Q What else did you say? A That is all.

Q What did he say? A I don't remember.

Q Why didn't you ask him why he was doing it? A I asked so many of those questions and never got a satisfactory answer.

Ella S. Smith, cross.

Q Why did you continue to sleep with him? A I saw nothing else to do.

Q There were other rooms in the house you might have slept in? A I could have.

Q Did he ever do anything else to you besides kick you and strike you in the three places mentioned? A You mean in the way of cruelty?

Q In the way of physical violence. A That is all.

Q Did he continue to kick you in bed when you slept with him over in Boonton? A He did.

Q And did that course of treatment continue continuously from the time you lived in Woodside until you left him? A Off and on.

Q How many times did he strike you in the head? A A number of times, I cannot tell you just how many times.

Q Three or four or a dozen? A Dozens of times.

Q How many times did he strike you in the back of the neck? A Just that once.

Q How many times did he strike you in the arm? A I cannot tell you.

Q Mr. Smith and yourself quarreled frequently, did you not? A He quarreled more with me than I did with him.

Q You didn't hold up your end of the quarrel? A I am afraid I didn't.

Q There were times, though, when you did, were there not? A The first two years I was married—not the first two years, but the first two years after I found out the way he was doing.

Q Did he strike you before Audrey was born? A No.

Q Isn't it true that you had frequent quarrels with your husband, in which both you and he used language that you should not have used? A I never did.

Q Isn't it true that frequently during these quarrels you struck him? A I never struck Mr. Smith except at the last.

Q Isn't it true that you threw things at him? A Only at the last.

Q How many times did you throw anything at him? A I threw a cup at him the morning of our quarrel, and mush at him.

Q Didn't you throw a cup at him in Woodside? A No.

Q Sure of that? A I didn't throw a cup at him.

Q What did you throw at him? A He came up and took my neck and shook it like a cat would shake a mouse, and I was

very indignant, and I took my cup and threw my hot coffee at him.

Q But you hung on to the cup? A I did.

Q So coffee and mush is all you ever threw at him? A That is all.

Q Did you ever threaten to shoot him? A No.

Q What kind of a gun did Mr. Smith own? A A hunting gun.

Q A shotgun, wasn't it? A I don't know what it was; I don't know enough about it.

Q It had been around the house ever since you were married? A No.

Q How long had he owned it? A Just on Boonton road.

Q Mr. Smith went hunting in the fall, didn't he? A Very frequently.

Q And that is the purpose for which he got that gun? A He said so.

Q He used it for that purpose? A He did.

Q It was a big gun, three or four feet long? A I cannot tell you how long it was.

Q It was a big gun? A Yes.

Q Did you ever own a revolver? A Never.

Q Or ever have a revolver in the house? A Never.

Q Didn't you write Mrs. Canfield, your sister, that you were going to shoot your husband? A I never remember it.

Q Didn't you write your sister you would shoot anybody that you caught with him? A I never remember that.

Q That is your best answer to that? A It is. I do not remember of any such occurrence.

Q If you had written such a letter, you would have recollected it? A I think so.

Q I show you a letter without date and ask you if you wrote that? A Yes, that is my letter.

Q You sent that to Mrs. Canfield? A I must have.

Mr. Vogt. I ask to have that letter marked for identification.

(Marked Exhibit D. 1 for identification.)

Q I show you an envelope bearing the United States Government postage stamp, marked March 4, 1913, and ask you if that is your handwriting? A Yes, that is my writing.

Ella S. Smith, cross.

Mr. Vogt. I offer that for identification.

(Marked Exhibit D. 2 for identification.)

Court. Is that the envelope the letter came in?

(No answer.)

Q Is that the envelope you sent the letter in which I have just shown you? A I don't remember; I didn't remember writing it, and sending it, but I must have done so.

Q You were continually accusing Mr. Smith of going with other women, were you not? A Not continually; I accused him of such conduct.

Q Quite frequently, was it not? A Quite frequently.

Q The first trouble that arose over any other woman was with the lady whose name you don't care to divulge? A No.

Q Who was it? A The Polish girl.

Q That was first? A Yes.

Q And was this young lady I have just mentioned the second? A I don't remember.

Q Who was next? A I don't remember.

Q The time that you saw him with this young lady in Hoboken, did you know who she was? A I did not.

Q Have you ever seen her since then? A I have not.

Q Was Mr. Smith talking to her? A They were talking together.

Q Did you ask him who she was? A I did not.

Q Was anybody else with them? A No.

Q Had they just come off the boat? A They were in Gimbel's store.

Q You said you saw her in the Hoboken station? A That was a woman.

Q The woman with a very nice figure but an unrefined face? A Yes.

Q Were they talking together? A Yes.

Q Was anybody else with them? A Not that I know of.

Q Had they just come off the boat? A Yes, apparently so.

Q Do you know whom you saw him with in Gimbel's store? A No.

Q Had you ever seen her before? A I don't remember.

Q Have you ever seen her since? A I don't think so.

Q It wasn't the same woman you saw him in the station with? A No.

Ella S. Smith, cross.

Q And it wasn't the woman you had been looking for for three years? A No.

Q Who was that woman? A Elizabeth White.

Q At one time your maid? A At one time my maid.

Q Did you know her before she was your maid? A No.

Q What year was she your maid? A Just recently, I think a year ago last winter.

Q Why had you been looking for her for three years? A Because I recognized her.

Q Where had you seen her before? A In Newark.

Q Whereabouts? A On Wright street.

Q With whom? A In a house.

Q With anybody? A In a house.

Q Whose house? A I don't know.

Q Were you in the house? A No.

Q Saw her through the window? A I did.

Q When did you see her on Wright street? A When we lived on South Broad street.

Q That was about 1908? A 1910.

Q Had you seen her since the time you saw her in the Wright street house to the time you employed her as a maid? A In Bayonne twice.

Q Whereabouts in Bayonne? A On the street.

Q How did you know who she was? A I didn't know who she was.

Q Did you know what her name was? A I did not.

Q You saw her once at the Wright street house and twice in Bayonne? A Yes.

Q When did you next see her? A Shortly after we moved to Boonton.

Q And before she came to you as a maid? A Yes.

Q How many times did you see her in Boonton? A A couple of times.

Q And she was the same girl you had seen three years before in the Wright street house? A Yes.

Q How did you know that? A I knew her by her dress, and if one saw her they could never forget her.

Q Did she have the same dress on? A Yes.

Q For all those three years? A She certainly did.

Q How long was she your maid? A Only a short time.

Ella S. Smith, cross.

Q You say Mr. Smith frequently said he would like to drive you crazy; is that so? A Yes.

Q Did he say why he would like to drive you crazy? A He said he hated me.

Q Was that the only reason he gave? A That was all.

Q Did he say why he hated you? A He did not.

Q Did you ask him? A I did not.

Q Did you ask him if he had any more affection for you? A I did not.

Q Why not? A Because he had told me he had none.

Q Why, when he told you these things, didn't you make some inquiry to find out what the trouble was? A I tried.

Q What did you say to him? A I would tell him I didn't understand him.

Q What response did he make to that, if any? A I really don't remember.

Q Did you ever ask him if you had done anything or caused him to treat you in the manner you say he did? A I had never asked him.

Q Didn't Mr. Smith say to you time and time again that you were continually nagging him about going with other women, and that it wasn't so and he wanted you to shut up? A No.

Didn't he frequently ask you that if you had any just accusations of that nature to make, to produce proof before him to show that he was telling you a falsehood when he denied it? A No.

Q Didn't he on every occasion when you accused him of unfaithfulness deny it? A He did not deny it.

Q Didn't he tell you frequently that you were crazy over that subject? A He told me I was crazy over everything.

Q Didn't he tell you that you were crazy over that subject? A Yes.

Q Didn't he tell you that he was tired of having you make those unjust accusations? A No.

Q And that he wanted you to stop? A No.

Q You say he said he wanted another woman? A He told me frequently he did.

Q Did he tell you whom he wanted? A He did not.

Q Did you ask him? A I did not.

Ella S. Smith, cross.

Q Did you have any conversation with him about that remark? A There was always talk about it; I don't really know.

Q Did he ever tell you why he wanted another woman or what you had done which caused him not to want you any more? A No.

Q Did you make any endeavors to find out? A Yes.

Q What? A I tried in every way; I tried by watching him.

Q Did you watch him yourself? A I did.

Q Did you employ any detective agency to watch him? A I did.

Q Did you ever find him in the company of any other woman? A He was in the company of women, yes, sir.

Q Where? A New York.

Q On what occasions besides the Gimbel store episode? A I don't know.

Q You saw him, didn't you? A I saw him in New York in Gimbel's store.

Q You told us about that; where else have you ever seen him in the company of any other woman? A I have seen him in Perth Amboy.

Q With whom? A I don't know, some girl.

Q Did you know who the girl was? A I did not.

Q What time of the day was it? A In the afternoon.

Q On a public street? A Yes.

Q Did you ask him who it was? A I did not.

Q Ask him why he was with her? A I did not.

Q You made no comment about it whatever? A I did not.

Q Why not? A There was no use.

Q Is that your best answer? A It is.

Q You say you saw him in New York besides Gimbel's store; whereabouts in New York have you seen him outside of Gimbel's with any other woman? A In the Hoboken station.

Q That isn't New York; you said New York; confine yourself to New York and tell us about that. A I really don't remember.

Q If you had seen him you would have recollected it? A I have had too much in the last ten years to remember anything.

Q You remember particularly a whole lot of this story that you tell: why don't you recollect it all? A That is an utter impossibility.

Ella S. Smith, cross.

Q You were following him for the purpose of ascertaining whether or not he went in the company with other women, were you not? A Once in awhile.

Q How frequently did you follow him? A Not so very frequently.

Q But you followed him for that particular purpose, didn't you? A I did.

Q And you say you saw him in New York besides Gimbel's store in the company of other women; is that true? A I think I saw him on the street.

Q Aren't you sure whether you saw him or not? A I saw him a number of times, but I cannot tell you just where; I caught Mr. Smith a number of times.

Q Did you ever walk up to him and say "Who is this?" A I didn't.

Q Or ever say to him, when you got home, "Whom were you with on Broadway today"? A Yes.

Q What did he say to you? A "None of your God damn business."

Q Where were you living then? A I think we were in Bayonne then.

Q Mr. Smith commuted to New York from the various places you lived? A He did.

Q Did you ever see him in Boonton in company with any woman? A Yes.

Q Who? A I don't know who it was.

Q After you had gone to Boonton to live? A Yes.

Q And upon what occasions? A When he was out.

Q Give us an instance of when you saw him in Boonton in the company of some woman. A I cannot tell you; I saw him taking a walk way back, the back part of Boonton, I cannot tell you just what locality, down our way somewhere.

Q You don't know whom he was with? A I do not.

Q Had you ever seen her before? A Sure; not one girl that I saw him with.

Q In the day time was this? A No, in the evening.

Q How late? A Around eight o'clock.

Q In the summer time? A Yes.

Q Was this after dark? A Just walking down on one of the roads.

Q How did you come to be there? A I had been up town.

Ella S. Smith, cross.

Q Then it was between where you lived and the town? A Yes.

Q Where is Old Boonton road? A I cannot describe that—down on the flats.

Q Which way out of Boonton? A Toward Parsippany.

Q Toward the reservoir? A Yes.

Q That part of Boonton is all built up? A There are walks out back there.

Q Did you live on the main road leading from the bridge crossing the reservoir into the heart of the town? A We lived next to the cemetery.

Q That was one road in from the main Morristown-Boonton road? A I think so—more than one road in.

Q Isn't that section of Boonton all built up? A Old Boonton road, it is all built up.

Q This occasion when you saw some woman in the cellar of your house, did you know who that was? A No, I did not.

Q Had you ever seen her before? A Yes.

Q Where? A She came to my door as an agent one time.

Q In Boonton? A Yes.

Q How long prior to this occurrence? A I think shortly after we moved to Boonton.

Q While you lived on Washington street? A Yes.

Q Before you saw her in the cellar of your house on Old Boonton road? A Yes.

Q That was on Washington street yet? A Yes.

Q Was that the only time that you had seen her prior to the time you saw her in the cellar? A I think so.

Q What time of the night was it she was in the cellar? A After the 9:15 came in.

Q That is the train your husband came home on? A Yes.

Q Will you tell us just what you noticed at that time? A I don't understand what you mean.

Q You saw her before you saw her in the cellar? A Yes.

Q Where did you see her? A Walking up and down in front of the house.

Q Was your husband home? A He was not.

Q So that she was in front of your house before your husband came home? A Yes.

Q Did you see your husband come up the street from the train? A I did, I saw him coming up the street.

Ella S. Smith, cross.

Q And did he pass this woman walking up and down? A No.

Q How did he get by her? A He didn't pass her; just before he came she went—I didn't know where, she left the front of the house.

Q She went outside of your vision? A Yes.

Q And your husband came in the house? A Yes.

Q You didn't see him talk to her before he came in? A No.

Q How long had you seen her in front of your house before Mr. Smith came along? A I think it was about fifteen minutes she was walking up and down; I really didn't time it; it was a few minutes before Mr. Smith came home.

Q You were watching her all that time? A We were watching her; I was not alone.

Q You and the maid? A Yes.

Q What was her name? A Carrie Scott.

Q That is the one that died? A Yes.

Q Her name was Mrs. Scherer? A Yes, I believe so.

Q When you saw this woman first walking up and down in front of the house did you recognize her? A I recognized her as the woman who had come there to canvass.

Q How far back from the road did your house sit? A We were almost on the sidewalk.

Q Had Mr. Smith had supper when he came in? A Yes.

Q What did he do when he came in the house? A He asked the maid where I was.

Q You and the maid were together? A Not when he came in.

Q What else did he say? A Nothing.

Q Did the maid tell him where you were? A I think she said I was putting Audrey to bed.

Q Were you? A No.

Q Had you told the maid to tell him that you were putting Audrey to bed? A We had planned it; yes, sir.

Q Where did Mr. Smith go when he came in the house? A He took off his hat and coat in the hall and went immediately down in the cellar.

Q What time of the year was this? A I think it was in the spring, I am not quite sure.

Q Furnace going? A I think it was real early in the spring.

Q Was the furnace going? A I don't remember, I think it must have been, he had a coat on.

Q Did Mr. Smith take care of the furnace at all? A Oh, yes.

Q Was he accustomed to go into the cellar at night when he came home late, to fix the fire? A If he came home very late.

Q If he came home at nine o'clock or fifteen minutes after? A Not immediately.

Q But he would go in the cellar to fix the fire? A Before going to bed.

Q Has your cellar a back entrance? A It had.

Q What did you do when Mr. Smith went down in the cellar? A I waited a few minutes.

Q Then what did you do? A I went down, too—started down.

Q Was the cellar door open before Mr. Smith came home? A It was not.

Q Or unlocked? A I don't know.

Q Did you hear him open it? A I don't remember that.

Q Did you see this woman in your back yard? A No.

Q Did you go in the back yard for the purpose of seeing whether she was there or not? A No.

Q Did you have any idea in your head at all that she was going in your cellar? A I had.

Q What gave you that idea? A Because I had seen Mr. Smith passing out things, and I imagined—I thought that was what it was for.

Q Passing out things? A Yes.

Q What kind of things? A Groceries.

Q To whom? A To some woman.

Q When? A On several different occasions.

Q From your house? A From my house.

Q This same woman? A I don't know.

Q You saw the woman, didn't you? A It was a tall woman, on three occasions.

Q You saw the woman on each of those three occasions? A You cannot see in the back yard very plain to tell whether it was the same woman.

Q How do you know that Mr. Smith passed groceries out to some woman? A Because I saw him do it.

Ella S. Smith, cross.

Q Where were you when you saw it? A I had been sick and I went to the window and looked out.

Q Those three occasions were how far apart in time? A During the one summer.

Q Of a year? A When we were on Washington street.

Q Was that before or after the agent had called at your house? A After.

Q Mr. Smith was in what room or what part of the house when he handed these groceries out? A In the kitchen.

Q And where was the recipient of this bounty standing? A On the steps.

Q Bright day light? A No, at night.

Q Where were you? A In the window.

Q On the second floor? A Yes.

Q Mr. Smith on the first floor? A Yes.

Q Did Mr. Smith come out of the house at all when he passed these groceries out? A On the stoop.

Q How wide a stoop was it? A Small stoop.

Q With a roof? A No.

Q Could you see from the window you were in on the second floor Mr. Smith standing on the stoop? A I could.

Q And the things he had in his hand? A I cannot tell what he had.

Q How do you know they were groceries? A Because they looked so.

Q Were they done up in bundles or canned goods or what? A Usually in a paper.

Q Then how do you know they were groceries? A Because my groceries were disappearing.

Q Did you keep track of your groceries? A I had to.

Q Did you or your maid? A I did.

Q Then the reason you say these were groceries was not because you saw them, but because your groceries were disappearing? A They were, and he was passing things out.

Q How big a bundle was it? A Not very large.

Q And it happened on three occasions? A It certainly did.

Q What groceries of yours disappeared? A My flour would go, my sugar would go, and my coffee, things of that sort.

Q Did it go so rapidly that you noticed that you were not using it that fast in the house? A I did.

Ella S. Smith, cross.

Q Did you say anything to the maid about it? A I did.

Q You were in a position to see this bundle; couldn't you see the woman also? A I saw the woman, but not her face.

Q You haven't any idea who she was? A No, I have not.

Q Had any woman ever been in your cellar before? A No.

Q So that you thought that because your groceries were disappearing and Mr. Smith had handed them out on three occasions to a woman whom you did not know, that this woman you saw in front of your house on this particular night might go in your cellar? A I did think so.

Q You didn't hear her come in? A I couldn't.

Q Nor see her come in? A I couldn't.

Q How long had Mr. Smith been downstairs before you went down? A Five minutes.

Q Had he fixed the fire? A He had not.

Q Had he done anything down there that he usually did? A I don't know.

Q Was your cellar lighted? A I think there was one electric light bulb there.

Q Was that lit? A It was.

Q How many rooms in your cellar? A Just one cellar, one room.

Q Didn't Mr. Smith keep chickens down there? A He had none at that time down there.

Q Did he keep chickens in the cellar in the Washington street house? A Sometimes.

Q But had none at that time? A No.

Q Did you get all the way down the stairs? A I didn't get all the way down, not at first.

Q Where was this woman in your cellar when you first saw her? A At the foot of the stairs and Mr. Smith was half way up to the kitchen.

Q And it was the same woman that had called at your house as an agent? A The same woman.

Q But you don't know whether it was the same woman he handed groceries out to? A No, I don't know that.

Q Did you say anything to her? A I didn't get a chance.

Q Did you say anything to her? A No.

Q Did you ask Mr. Smith who it was? A I did.

Q While she was there? A He rushed her out; he pushed her out.

Ella S. Smith, cross.

Q Out of the door? A He pushed her out.

Q Did he go downstairs? A He flew down the stairs when he saw me coming.

Q Did you see her again after that? A I don't remember.

Q Did he ever pass anything more out after that? A I think there were several occasions when he passed groceries out while I lived in that house.

Q All this happened while you were sick? A Oh, no, not always.

Q Were you ever downstairs on any occasion when he handed groceries out to anybody? A Downstairs?

Q Yes, on the first floor. A No.

Q Did it always happen at night? A Always.

Q Did you ever see this particular woman hanging around your house any more? A Which woman?

Q The one you found in your cellar? A I don't remember seeing her.

Q Did you ask Mr. Smith after he came upstairs who it was? A No, he started to curse and swear at me.

Q You made no comment about the fact that she had been in the cellar? A I did.

Q What did you say? A I said, "What right have you got to have a woman in that cellar and who is she?"

Q What did he say to that? A "None of your God damn business."

Q Is that all the conversation you had concerning this particular occasion? A That was all.

Q Had such a thing ever happened in your house before? A I think that night was the first night I had caught anybody in the cellar.

Q How old was your daughter at that time? A About six or seven years old.

Q Where was she? A In bed.

Q Were you down at the hospital where Carrie Scott was at the time we were going to take her deposition? A Yes.

Q Outside of yourself and Mr. Smith and this woman, Carrie Scott was the only person in the world that knew anything about that occurrence? A She was.

Q You say Mr. Smith asked you to get a divorce? A Yes.

Q What did he say to you when he asked you that? A He used to lay and cry in bed.

Ella S. Smith, cross.

Q What did Mr. Smith say to you when he asked you to get a divorce? A He asked me to get it.

Q Did he say why? A He told me he loved another woman.

Q Is that all he said? A That is all he said, he loved another woman.

Q Did he ask you to get a divorce on more than one occasion? A He did.

Q And on each of these occasions did he tell you he loved someone else? A He did.

Q Did you ever say to him whether or not you would consider getting a divorce? A I begged my sister to separate us; I told her that he was begging me to get a divorce.

Q Did you ever tell Mr. Smith whether or not you would get a divorce? A I did not.

Q What did you say to him when he told you that he loved another woman? A I couldn't say anything.

Q And that is all the conversation that took place over such a serious matter? A It didn't do me any good to talk.

Q Is that your only reason? A Yes.

Q You never did contemplate getting a divorce, did you? A I couldn't; I had no means anyway.

Q You said your husband had been unfaithful to you; did you know whether or not that was a ground for getting a divorce? A I knew his actions toward me, his ugliness toward me, should separate us.

Q You knew of his relations with this Polish maid? A Yes.

Q Did you know whether or not, or make any endeavor to find out, whether or not such actions on his part were grounds for a divorce? A I did know it.

Q And yet you never contemplated getting one? A I couldn't.

Court. You mean because of lack of means?

Witness. Lack of means and nobody to help me.

Q On the occasion of your trip to German Valley Mr. Smith paid your expenses of going there, your own and your little girl's? A He did.

Q And your board while you were there? A He did.

Q He always paid your doctor's bills? A He did.

Q Did he ever tell you that he thought you were having a doctor needlessly? A Very frequently.

Ella S. Smith, cross.

Q And that it was useless expense? A Never that.

Q Did he tell you there wasn't anything the matter with you necessitating you going to a physician? A He certainly did.

Q You say that Mr. Smith threw Audrey on the train; just explain that fully. A I don't know how to explain it any more fully.

Q Tell us just what happened. A I went to kiss him good-bye and he gave me a push and he was so angry about it, that he just took Audrey and threw her that way (indicating).

Q Did he pick her up? A No, the conductor picked her up. The conductor grabbed her.

Q Did he pick her up and throw her? A Yes, he threw her that way (indicating).

Q Did he pick her up from the station platform and put her on the train? A No, he chucked her that way; he lifted her or did something and threw her.

Q Did he convey her from the station platform to the train? A We were right by the steps of the train.

Q Were you on the train? A No.

Q Was the train moving? A No.

Q You say you found a handkerchief in your husband's coat; where were you living then? A In Bayonne.

Q A woman's handkerchief? A No.

Q You found a letter in his coat pocket? A Yes.

Q You were then living at Forest Hill? A Yes.

Q Did you ask him who the letter came from? A I did not.

Q Did you tell him you had found it in his pocket? A I did not.

Q Did you never in any way communicate to him that you knew that he had such a letter? A I did not.

Q You never said anything to him about that letter from that time to this? A Never.

Q Did you open Mr. Smith's mail as it came to the house? A No, not always, no.

Q What do you mean by that? A These letters that my attorney has, I opened.

Q These are the only letters? A Yes.

Q Who is this maid Annie—the woman by the name of Annie that boarded with you, the school teacher? A Miss Castner.

Q Do you know where she is now? A I do not.

Ella S. Smith, cross.

Q Have you made any effort to find her? A I had a postal from her a year ago last summer from Germany.

Q She is the one that is abroad? A I don't know where she is now.

Q Have you made any endeavor to locate her present whereabouts? A I never have.

Q Did you know her before she came to board with you? A Only slightly.

Q This was in Boonton when she boarded with you? A Yes.

Q She was a school teacher in Boonton? A Yes.

Q Had you met her before you went to Boonton? A Yes, it was through me that she taught school there.

Q Where had you known her prior to your living in Boonton? A German Valley I met her.

Q Did your husband know her before she came to board with you? A I do not know.

Q Did you have a maid at that time? A Yes.

Q Who was the maid? A Carrie Scott.

Q How long did Miss Castner board with you? A I really don't know.

Q What is your best recollection? A I don't think it was a year; I think it was only through one summer, I think—no, it must have been in the fall, because I was teaching, so it must have been in the fall.

Q Teaching dancing? A Yes.

Q Didn't Mr. Smith remonstrate with you about that dancing class and tell you he didn't want you to have it? A He did not.

Q Did you ever see any signs of intimacy between your husband and Miss Castner except this one you have related? A No, I didn't.

Q And that was the latter part of her stay? A Yes, the night before she left me.

Q Upon what day? A That I cannot say.

Q A secular day or Sunday or when? A I think it was during the week.

Q Daytime or nighttime? A When she left me?

Q When this particular occurrence happened between herself and your husband? A Night.

Q What time of the night? A I think it must have been about quarter of ten.

Q Had you gone to bed yet? A No, I was teaching.

Ella S. Smith, cross.

Q You had your class in your own house? A Yes.

Q And was your class there that night? A It was.

Q Where was your husband? A Upstairs in the sitting-room.

Q Miss Castner was not a member of your class? A No.

Q She was upstairs also? A Yes.

Q Will you tell the Court just what you saw when you went upstairs? A I went to the door, just as I got to the door, Miss Castner flew out, she was crying and she ran into the bathroom; I went to the door and Mr. Smith was buttoning up the front of his pants, and then he picked up his vest and put that on; in the turning, he saw me standing in the door.

Q Is that all that happened? A I then went downstairs to my class again.

Q What caused you to leave your class and go upstairs? A Carrie Scott told me to go up and see what I could.

Q Did you go on with your dancing class? A We stopped at ten.

Q Had your class stopped before you went upstairs? A No, I told them to go on dancing; I gave them a waltz and told them to go on, I had an errand to do.

Q Were they still dancing when you came downstairs? A They were.

Q Was that the last dance that night? A Yes.

Q What did you say to Miss Castner in the presence of your husband after what you had just seen? A I didn't say anything.

Q What did you say to your husband? A I didn't say anything.

Q Why not? A There was no use of talking about those things.

Q Is that the reason you didn't say anything to him? A Yes; there was no use; it only caused trouble; he would curse and swear at me so terribly that I got so I would do anything for peace.

Q You always say when I ask you why you didn't remonstrate with these people that you saw with your husband upon some such occasion as this, it was no use; why did you continue to live with him? A I could not help myself.

Q You had a family? A I had a family, yes.

Q Brothers and sisters? A I had a brother and sisters.

Ella S. Smith, cross.

Q Mother and father dead? A My mother is dead.

Q Where did your father live? A He lives in Newark.

Q At that time where did he live? A In Newark.

Q Maintaining a house of his own? A My brother and sister were running the house for him.

Q Couldn't you go there to live? A I didn't feel that I could.

Q Did you ever ask them if you could? A I did not.

Q Did you ever tell them that life with your husband was unbearable because of his actions, and that you wanted to leave him and come to them to live? A I did.

Q Did they say whether or not you could come to live with them? A No, I don't think they ever said.

Q They never made any comment, then, to your request? A Only to tell me that I was crazy.

Q They told you that? A They told me frequently that I imagined things.

Q Did your father tell you that, too? A Never.

Q When you say "them," who do you mean? A I mean my sister and brother.

Q You could have left your husband upon any of these occasions just as readily as you did in April, 1915, couldn't you? A I could not.

Q You could have earned your living then just the same as you earn it now? A I could not.

Q You could have started suit against him then and receive support from him just as you are now? A I could not.

Q Why not? A I wasn't fixed so I could.

Q Why not? A My health was too poor.

Q Your health was poorer yet when you left in April, 1915? A It was just about the same then.

Q Then, why if your health was just as bad in April, 1915, as it had been prior to that, couldn't you have left at any time prior to that, that you saw fit, because of your husband's conduct? A I couldn't.

Q Is that your only reason? A I could not; I was not fixed so I could leave; I had no place to go.

Q You had no place to go when you left in April, 1915? A I did.

Q You went to live with a friend? A I did.

Ella S. Smith, cross.

Q And paid board? A I did.

Q And you could have done that at any time? A I didn't know it at that time.

Q You could have made inquiry to find out? A I could.

Q But you didn't? A I didn't.

Q You continued to live with your husband nothwithstanding all these horrible things you say he did? A I could not help it.

Q When you told these various things to your relatives, didn't they ask you to substantiate what you had said by proof? A Lots of times.

Q And you never did? A I didn't.

Q Yet Carrie Scott was alive? A Yes.

Q You never took her down? A On one or two occasions I was told that these people would say these things for me.

Q What do you mean by that? A They seemed to think that I would get them to tell those things.

Q But you never tried to get any of your servants to tell your relatives any of those things, did you? A If I remember rightly, when we lived in Bayonne, a girl that I had at the house at that time, wrote my sister a letter in Polish.

Q Does your sister read Polish? A I don't think so, but I think that she told me afterwards that there was some remark about Mr. Smith's treating me like a dog, something to that effect.

Q How do you know that was in the letter? A My sister told me afterward.

Q Was that postal card written at your suggestion? A It was not.

Q So that you never during the course of your married life made the slightest endeavor to satisfy your own family that what you had been saying about your husband was true? A There was no use.

Q Answer the question, please. A No.

Q This young lady whose name you didn't wish to disclose, you told your sister about her actions? A I did.

Q And you and Mrs. Canfield went up to see her? A No.

Q Sure of that? A I didn't go see that young lady.

Q And didn't you say after you got there, that that wasn't the young lady, that you had made a mistake? A No.

Ella S. Smith, cross.

Q You said this morning that upon one occasion coming from the barn Mr. Smith kicked a dog; is that so? A Yes.

Q Did you hear Mrs. Tompkins testify yesterday? A I did.

Q Do you recall that Mrs. Tompkins said that you dared Mr. Smith to kick the dog and he wouldn't? A I did not.

Q Did you hear Mrs. Tompkins swear to that? A I heard her say something but I didn't get what she said.

Q If Mrs. Tompkins said in her testimony that you dared Mr. Smith to kick the dog and that he refused, that isn't the truth of the matter, is it? A No, it is not the truth.

Q You say that you ran a dancing class for the purpose of increasing your income for household expenses? A I did.

Q Had you asked Mr. Smith for any more money? A I had frequently.

Q Had he refused to give it to you? A Most assuredly.

Q Upon what ground did he base his refusal, if you know?

Mr. Romine. I object.

Court. I will admit it.

A He said I had enough.

Q Had you ever given dancing lessons before this time in Boonton? A No.

Q About the time when you saw Mr. Smith throw a stone at you in the back yard, you had the garden hose then, did you not? A Yes—no, it was lying on the dirt.

Q Was the water running through it? A Yes.

Q Did you pick it up and point it at him? A Audrey and I were fooling and then I said, "Let us turn it on papa."

Q Did you pick it up and turn it on him? A I did.

Q Did you sprinkle him with it? A No.

Q You are sure of that? A Yes, positively.

Q He then threw a stone at you? A Yes.

Q It didn't hit you? A No.

(At this point the further cross examination of the petitioner was discontinued for the purpose of taking the testimony of other witnesses.)

Helen L. Dean, direct.

HELEN L. DEAN, sworn for petitioner.

Direct examination by Mr. Romine.

Q Where do you live? A Morristown, New Jersey.

Q How long have you resided there? A About seventeen years.

Q Are you acquainted with Mrs. Smith? A Yes.

Q The petitioner in this case? A Yes.

Q When did you become acquainted with her? A When she came to Morristown.

Q Do you know how long ago that was? A It is nearly a year.

Q What was her condition of health at the time she came to Morristown?

Mr. Vogt. Objected to.

Court. Has she observed it? I will admit it; it goes to the weight of her testimony.

A She was a person that was grief stricken, I should say.

Mr. Vogt. I ask to have that stricken out.

Court. Yes; what did you observe about her condition; was she frail, strong or vigorous or ill, or what?

Witness. She was nervous.

Q Did you observe anything else about her? A That she was very sorrowful and that she carried a load of care, it seemed to me.

Mr. Vogt. I ask to have that stricken out.

Court. You mean she was worried?

Witness. Yes.

Q How frequently after she came to Morristown did you see her? A I saw her very often; sometimes I would see her twice a day; then, of course, there were times when I didn't see her for, perhaps, weeks at a time.

Q How frequently have you seen her within the last few months? A I have seen her nearly every day.

Q How does her condition of health or appearance compare now with the time you first saw her? A I think she is happier and stronger.

Helen L. Dean, cross.

Court. Has she improved in health apparently?

Witness. She has improved in health.

Q Do you know what work she has been doing? A She has been doing her own housework and taking care of her child, and she has been clerking in stores and a very successful clerk.

Q Do you know whether she has had any sickness in the home or not? A Her child has been sick; and she has had colds; she has had a severe cold; otherwise, she has not been ill.

Q Do you know what care has been given to the child? A Very good care.

Court. Is there any need of pursuing that?

Mr. Romine. There is an allegation in the answer I wanted to meet.

Cross examination by Mr. Vogt.

Q Work was agreed with Mrs. Smith? A Yes, I guess so; it does with most people.

Q Have you treated her at all? A How do you mean?

Q In any manner; has she been under your care? A Somewhat.

Q In what manner? A That is a personal question that I cannot see has any bearing upon that.

Court. It goes to the extent of your knowledge as to her condition, and the improvement in it. I think he is entitled to an answer.

Witness. I treated her in Christian Science; that is, I prayed for her; is that what you mean?

Q I don't know what Christian Science means, but I mean what manner of care have you taken of Mrs. Smith? A It has been more of a care of a friend who has helped her; I have waited on her when she was sick; she had no one else, as a brother or sister, to wait on her; I nursed her when she had a cold and I treated her and she recovered quickly, and I don't know anything more that anybody could do.

Q Is she a member of the Christian Science Church? A No, she isn't; I have been a friend to her.

Dr. Ellery N. Peck, direct.

DR. ELLERY N. PECK, sworn for petitioner.

Direct examination by Mr. Romine.

Q You are a physician practising at Boonton, New Jersey? A I am.

Q Did you attend Mrs. Smith at any time? A I did.

Q Can you tell us when you began attending her? A April, 1912.

Q Can you tell us when the last call was? A October, 1914.

Q When you first began attending Mrs. Smith what was her condition? A I don't remember; it is three years ago—four years ago.

Q Can you tell us her general condition? A My impression was she was in a highly nervous condition; I treated her for various conditions during the year and a half I attended her.

Q Can you tell us how many calls you made; were they frequent or otherwise? A Frequent.

Q Where did Mrs. Smith live, if you recall, when you first attended her? A Washington street, Boonton, New Jersey.

Q Can you recollect at any time while she lived there whether Mrs. Smith was seriously ill? A I cannot give a definite answer to that question.

Q Do you recall, if I should mention the fact to you, whether she had pleurisy? A I have a dim recollection of treating her for pleurisy; I couldn't give a definite answer, however.

Q You treated her also while she lived at Old Boonton Road? A I did.

Q On the occasions when you would visit her where would you find Mrs. Smith, in what part of the house? A Usually in bed.

Q Did she complain of any trouble outside of the nervous condition? A I don't remember.

Q Do you recall whether she complained about her heart? A She did.

Q Were you attending Mrs. Smith at the time she had an operation? A I was.

Q Did you advise the operation? A I did.

Q Do you know what the operation was for? A I do.

Q What was it? A It was a uterine suspension; I don't remember all the details of it.

Dr. Ellery N. Peck, direct.

Q Do you know what was the cause of that? A I do not.

Q Do you know what produced her highly nervous condition? A I do not.

Q Did Mrs. Smith tell you of the troubles in the home? A She did.

Q Would that, in your opinion, if they were true, produce an extreme nervous condition.

Mr. Vogt. Objected to.

Court. Do you recall all that she told you?

Witness. I do not.

Q Do you recall some of the things that she told you? A In a hazy way, yes.

Q In your opinion, if those things were true, would that have a tendency to produce the nervous condition?

Mr. Vogt. I object.

Court. I think it is too vague.

Q Did you form an opinion at that time, Doctor, that if the things she told you were true, that it would produce that condition? A I did not.

Q Would abuse or reflection upon her character by her husband have a tendency to accelerate her nervous condition?

Mr. Vogt. I object.

Court. There should be more embodied in the question than you have included. It assumes a certain amount of detail and knowledge.

Witness. I am not here as an expert witness.

Court. But you are here now as an attending physician. I will sustain the objection.

Q Can't you recall now, Doctor, in thinking the matter over, in substance, what Mrs. Smith told you of her troubles at the home with her husband? A I can only in so far as my recollection has been refreshed with the testimony that has been given here this morning.

Q Has that refreshed your recollection sufficiently so that you could form an opinion at this time as to whether those things would produce the nervous condition? A They would.

Mr. Vogt. I object.

Dr. Judson G. Cottrell, direct.

Court. Are you now in a position as the result of the information you heard here, to form an opinion?

Witness. I am not; I didn't understand the question.

Q You don't care to form an opinion? A I do not.

Cross examination by Mr. Vogt.

Q You stated that Mrs. Smith complained to you of heart trouble? A I did.

Q As a matter of fact did she have heart trouble? A There were no murmers or other signs of cardiac disease, except in so far as the history—she complained frequently of sharp pains in the region of the heart.

Q Did you treat her for heart trouble? A There was no treatment at that time; these attacks were there at the time I saw Mrs. Smith.

Q You said that Mrs. Smith asked you to attend her frequently; did she request you to make calls at times when you did not make them? A She did.

Q Were those frequent or otherwise? A At times frequent.

Q How did you finally cease attending her; was there any reason for that? A I wasn't called.

Q When making a statement to you about her home life, did she make complaint about other women going with Mr. Smith? A I don't recall.

Court. Why didn't you go?

Witness. Frequently I didn't think it was necessary.

Q From what you knew of the history of her condition? A Yes.

Re-direct by Mr. Romine.

Q Her condition was one of nervousness which passed over in a short while? A No, she was in a highly nervous condition most of the time when I saw her.

DR. JUDSON G. COTTRELL, sworn for petitioner.

Direct examination by Mr. Romine.

Q Are you a physician? A Yes, practicing in Perth Amboy.

Dr. Judson G. Cottrell, direct.

Q You recognize Mrs. Smith? A I do.

Q Did you treat her while she was at Perth Amboy? A Yes.

Q Do you recall when she lived there? A I don't recall, except I looked up in the records and found that I treated her from July 16, 1910, until April 4, 1911.

Q What did you treat Mrs. Smith for? A I don't remember all the instances. It seemed to me she used to have some nervous trouble of some sort, nerve exhaustion and complained of considerable palpitation of the heart.

Q Did you treat her for those troubles? A Yes; I think she had some spells of some sort that I went down there and attended her for, I don't remember exactly; it has been several years ago.

Q Do you recognize Mr. Smith? A Yes.

Q Did he call upon you and have any conversation about Mrs. Smith? A I think in going down there we probably talked the case over.

Q What did he say about her? A Well, I don't remember exactly just the discussion, but it seems to me that we talked over that she was insane, something of that kind.

Q Who suggested that? A I believe Mr. Smith did.

Q What did he want you to do about it, if anything? A Of course I told him I couldn't do anything in a case of that sort, and the law required five years—

Q What did Mr. Smith want you to do in regard to the matter; did he ask you to do anything? A It was discussed about the examination and so forth, as to her mental condition; I told him I couldn't do anything of that sort, and he would have to have a man that had been practicing in the state for five years, and I had not.

Q Did you refer him to anyone? A I told him that Dr. Ramsey was the man that usually looked after those cases.

Q Did you make any examination of Mrs. Smith and advise whether she was crazy or insane, as he suggested? A No, I didn't make any examination in that line.

Q From your treatment of her and seeing her, in your opinion, was she a person of unsound mind? A Well, she appeared to be all right. I didn't know the house troubles, and from general discussion of house troubles, if Mr. Smith was not the man that she said he was, she must have been insane; if he was, her mind was all right.

Dr. Judson G. Cottrell, cross.

Q Did she tell you any of the troubles that she had? A It was merely his fondness for women or something of that sort, and it seemed almost impossible that he could have so many of them.

Q But if it were true that he did have fondness for other women, then, in your opinion, was Mrs. Smith sane or insane? A In my opinion, I didn't see anything that would indicate insanity there outside of that.

Cross examination by Mr. Vogt.

Q How frequently did you attend Mrs. Smith? A That I cannot tell you.

Q Frequent or infrequent, Doctor? A I think I made thirty visits in all; I wouldn't say they were all to see Mrs. Smith; I think I saw the little girl part of the time, and once or twice for the maid.

Q Were all those visits made upon her call, or was it a continuing treatment? A Usually I would be called down there and make a couple of calls, and she would be fairly good, and someone would call me again; I don't exactly know how the case ran.

Q During those visits you made, or some of them, did Mrs. Smith tell you about her family or alleged family troubles? A She gave me that as the cause of her nervous trouble.

Q And did she tell you that Mr. Smith was familiar with other women? A Yes.

Q Did she specify any particular instances of familiarity that she knew of? A I don't know positively; it passes through my mind that she told me, that when she lived in Newark, it seemed that the flat or house they had, someone lived right next door that he became familiar with, or in the same house, something of that kind, and pretty near every place she went, it seemed there was someone near by.

Q The story she told you made an impression upon you? A It made an impression that way, and it seemed to me—I don't know—

Q It made an impression upon you that it was an odd story, if true, did it not? A It made an impression upon me in this way, I didn't see how a man could go right so close at home.

Q And so frequently? A And that was the reason I didn't pay any attention to it at the time.

Dr. Harvey Arbuckle, direct.

Q You didn't think, then, that Mrs. Smith was telling the truth about it?

Court. What difference does it make what he thought?

Q Did you ever tell Mrs. Smith that she didn't need your attention or the attention of a physician? A I don't remember that; when I went down there she seemed to be all worked up and in this nervous spell.

Court. Did you ever tell her she didn't need a physician?

Witness. I am explaining the reason why I didn't.

Court. Did you or did you not?

Witness. I don't remember.

Q Did you ever tell Mr. Smith that she did not need any attention? A I don't remember.

Q How did this nerve exhaustion manifest itself? A You would go down there and she acted as if she had been in some trouble, hysterical spell like; the heart was beating very rapidly and she would probably tell you some little trouble she had, and might work up in this way, and you give her something to quiet her nerves, and she would be all right until the next time you would call.

Court. Can you state about what interval elapsed between the calls, in days or weeks?

Witness. I made thirty calls between July 16, 1910, and April 4, 1911; I think about three or four of those were made at the office; I wouldn't say all those were for her; some were for the little girl and two for the maid.

DR. HARVEY ARBUCKLE, sworn for defendant.

Direct examination by Mr. Price.

Q Where do you live? A At Boonton, New Jersey.

Q You are a practising physician in the State of New Jersey? A I am.

Mr. Price. Do you admit the doctor's qualifications?

Mr. Romine. Yes.

Dr. Harvey Arbuckle, cross.

Q Mrs. Smith testified that on an occasion in March, 1915, her husband arrived home early from work and prepared the evening meal and that immediately thereafter she was taken ill. It is insinuated that she was poisoned by virtue of something that she had eaten during the meal.

Mr. Romine. I object.

Court. The insinuation, that is objectionable. That is your conclusion.

Q Were you called to treat Mrs. Smith on an occasion in March, 1915? A I was.

Q From what was she suffering at that time? A Somewhat nauseated.

Q Could you tell what was the cause of that nauseation? A I could not.

Q What did you give her? A Simply a sedative—a little alkaline mixture.

Q Who secured that mixture? A I had a little emergency with me, and Mr. Smith went to the drugstore and got something.

Q Did you notice any signs of poisoning? A In what way do you mean?

Q Did you see any signs of her being poisoned at that time? A Not that I would say, by any poison being administered.

Q How long was she sick, Doctor? A As I recollect it, I think four visits I made; I made the visit and she asked me to return the next day; the next evening they called me and I was also called by phone on the following day, three days, I think, four visits.

Q Was their child Audrey ill at the same time? A Not that I noticed.

Cross examination by Mr. Romine.

Q You didn't treat the child? A No.

Q Mrs. Smith for a time was in a rather serious condition? A I didn't consider her very serious.

Q How long did you remain there that night? A While Mr. Smith went to the drugstore at her request.

Q How long did you remain there? A From the time I was there—probably three-quarters of an hour.

Q You don't know what caused it? A I do not.

Dr. Harvey Arbuckle, cross.

Q Do you recollect, Doctor, at that time whether you said to Mrs. Smith these words, "This time you have escaped; the world is too wise to stand anything like this"? A No.

Q You don't recall whether you said it or not? A I don't recall saying it; I have no reason to.

Q You don't recall whether you said it or not? A I had no reason for saying it.

Q You don't recall whether you said it? A I have no recollection; I had no reason to say it.

Q You don't recall whether you said it or not? A No, I don't remember it.

Court. I will adjourn the further hearing of this cause until June 19th, 1916.

As suggested by counsel, I will make an order that either side may take such evidence before Mr. Bindseil as Master as they may desire.

IN CHANCERY OF NEW JERSEY.

Between

ELLA S. SMITH,

Petitioner,

and

ERNEST N. SMITH,

Defendant.

Transcript of testimony taken in the above entitled cause, pursuant to an order made by the Honorable John E. Foster, Vice-Chancellor, at the hearing had in the Court of Chancery, before Nicholas W. Bindseil, a Master in Chancery of New Jersey, at the Chancery Chambers, Newark, New Jersey, on Friday, May 19th, 1916, at ten o'clock in the forenoon.

APPEARANCES:

Mr. Elmer W. Romine for petitioner.

Mr. Harold C. Price for defendant.

Milton M. Canfield, direct.

It is stipulated and agreed by and between the counsel for the respective parties that the testimony of the witnesses may be taken down in shorthand by the Master and afterwards reduced to typewriting, the signatures of the witnesses to their said testimony being waived.

MILTON M. CANFIELD, sworn for defendant.

Direct examination by Mr. Price.

Q Where do you live? A 45 State street, Newark.

Q What is your business? A Cashier, 144-150 Franklin street, New York City.

Q Are you related to the petitioner Ella S. Smith? A Brother-in-law.

Q Are you acquainted with the defendant Ernest N. Smith? A I am.

Q How long have you been acquainted with him? A I should judge for a matter of twenty years.

Q Where did you first become acquainted with him? A 45 State street, Newark.

Q While you were living there? A Yes, sir.

Q Were you present at the marriage of the petitioner and defendant? A I was.

Q And since the marriage of petitioner and defendant have you frequently visited their homes in the various places where they lived? A Frequently in the city of Newark; outside of Newark, not so frequently.

Q Has Mr. and Mrs. Smith frequently visited your home? A While living in this city, yes, sir.

Q Have you ever heard statements made by Mrs. Smith respecting her husband's infidelity? A I have, many times.

Q What was the general nature of those complaints? A Misconduct on his part with other women.

Q Did she specify with any degree of particularity what that misconduct was? A Only by inference, not directly, as I could get it.

Q As near as possible will you tell us the way she used to state these complaints?

Mr. Romine. I think the time should be fixed, the year or month.

Milton M. Canfield, direct.

Q When did she first make these complaints to you? A Almost from the beginning of their married life, when they were living on Lake street in Forest Hill, in the City of Newark.

Q What was the nature of those complaints, as near as you can recall them, directing your attention to the words which she used to use, as near as possible? A As near as I can recall them, it started with the neighbor next door.

Q That is at Forest Hill? A At Forest Hill. Mr. Smith would be working in his garden and the woman would be working outside in her flower garden, and they would get in conversation and that led to the statement that he was being intimate with her.

Q That was the first occasion you recall? A Yes, that was the first occasion.

Q And that was shortly after they were married? A Yes, sir.

Q Tracing from that time on down and specifying as near as possible the times when those complaints were made, will you tell us if the general nature of them still continued as you have indicated? A Yes; with servant girls in the house, black or white, it didn't make any difference.

Q Did she accuse him of being intimate with other neighbors than the one you have just mentioned? A I don't recall any while they were living there.

Q Subsequently, when they were living in other places, do you recall accusations made concerning neighbors? A Yes, in other locations.

Q In the city of Newark? A Yes; that is the only way I can recall them, by going from house to house.

Q And they were all of this same general nature? A Yes.

Q Accused him of being intimate with these neighbors and servant girls? A Not in all cases with neighbors—in certain locations; it was a continuation from one place to another of different women.

Q Did you ever hear Mrs. Smith state that she had received anonymous letters? A I have, yes.

Q And what did she say those letters contained? A She didn't say; we asked her to show them to us and she never would.

Q Did she state that they were— A Reflected on the character of her husband.

Milton M. Canfield, cross.

Q Relative to his association with other women? A His associations with other women.

Q Do you recall an occasion when she asked you to move the refrigerator? A I do, that was in the two-family house opposite the fire house corner of Hallock street near Summer avenue, Newark.

Q What did she say? A It obstructed her view to the cellar stairway and she had it moved to the opposite side, on the sunny side of the building.

Q Why did she say that she wished the refrigerator moved? A So she could see down the stairway.

Mr. Romine. What she did; not why did she say it.

Q Did she give the reason why she wished the refrigerator moved? A She was suspicious of her husband's actions with the servant girl.

Q To how recent a date have these complaints on the part of Mrs. Smith continued, to your knowledge? A To my knowledge, since they have been living in Boonton.

Q In other words, she has complained to you since they have been living in Boonton? A Not to me directly, but in my presence, I heard her.

Q Were the complaints of the same nature as you have already mentioned? A Just the same.

Q Did you ever ask Mrs. Smith for proof of her statements? A I have, yes, sir.

Q What would she reply? A Her reply was that she wouldn't or couldn't show them to us, and that we would know some other time.

Cross examination by Mr. Romine.

Q You say that from the beginning of the married life Mrs. Smith complained about her husband's misconduct? A Yes, sir, I did.

Q Where were they living at the time the first complaint was made, as near as you can recall it? A As I already stated, they were living in a house on Lake street, Forest Hill, in this city.

Q Do you recall when the child Audrey was born? A Sure.

Q With reference to the birth of the child, when were these complaints first made apparent to you? A They were made apparent to me long before the child was born.

Milton M. Canfield, cross.

Q Were they of more consequence after the child was born? A Yes, the matter seemed to grow worse instead of better.

Q In the first instance, they were of trifle consequence? A Not at all, just the same as they have always been.

Q But you say, they continued to be more aggravated after the child was born, more frequent? A I don't think I did; I said the matter grew worse.

Q That is, Mrs. Smith stated to you that conditions were worse in the home than they had been before? A Yes.

Q What was the first incident that Mrs. Smith complained to you about respecting Mr. Smith? A The first incident was this neighbor next door.

Q How long after that time was it before any other complaints were made? A It continued from that time on.

Q How long had they been married at that time? A Not more than a month or two, perhaps, as near as I can recall.

Q You are not sure about that? A Not positive, no, sir.

Q What was the nature of those complaints by Mrs. Smith at the time or about the time that Audrey was born; you say conditions grew worse; can you tell us what Mrs. Smith told you about those things? A At the time Audrey was born, I don't recall.

Q Shortly before she was born do you recall anything? A I recall that she made statements that he was misconducting himself with the servant girls, and that matters would grow better when the child did come.

Q After the child was born were there any complaints about a servant girl? A Yes, sir.

Q Did Mrs. Smith tell you what that complaint was? A Merely the general accusation that he was misconducting himself.

Q Did Mrs. Smith tell you that on one occasion she had found her husband in a compromising position with the servant girl after Audrey was born ? A Not that I recall.

Q You say that she told you about a servant girl; don't you recall that Mrs. Smith told you about how she had found her husband committing adultery in an adjoining room with the servant girl? A She never mentioned that in my presence.

Q You knew of it, though? A Only by hearsay.

Q But you knew that Mrs. Smith had complained about it? A Only by hearsay.

Milton M. Canfield, cross.

Q It came to your knowledge, didn't it? A Through other people, yes.

Q And you also knew that Mrs. Smith discharged the girl because of her conduct with her husband? A She discharged many girls for the same thing.

Q And she told you that? A I heard her say that.

Q When Mrs. Smith first complained about these matters, you thought them of no consequence, didn't you? A I thought them of no consequence, surely.

Q You told her that it couldn't be so, didn't you? A I don't know as I said just those words; until she substantiated her statements we didn't believe them.

Q You didn't take Mrs. Smith's word about the matter? A Because she gave us no proof.

Q Isn't it a fact that your wife received a postal card from one of the servant girls while they were living in Bayonne, New Jersey, in which she told your wife, or in which it was stated in the postal card that Mr. Smith was such a bad man, she had to leave? A I didn't know anything of the sort.

Q Don't you know that your wife did receive a postal card from a servant girl complaining about Mr. Smith? A I do not.

Q You don't remember that? A Why should I? It came to my wife; it didn't come to me.

Q If it came to your wife, it came to your knowledge? A It did not.

Q Didn't your wife tell you about it? A No.

Q Didn't you know about it? A Not that I can recall.

Q Try and recall; didn't someone speak to you about it? A I don't remember any such incident.

Q That you don't remember? A The thing has run over a matter of fourteen years; I cannot remember everything.

Q During all this period of time you didn't charge your mind with what was going on or what was being said? A Not necessarily.

Q And while Mrs. Smith lived at Bayonne she complained of Mr. Smith's conduct, did she? A So far as I can recall, yes.

Q And while she lived at Boonton she complained of his misconduct? A I have stated that before, that she complained of Mr. Smith's conduct in every place they lived.

Milton M. Canfield, cross.

Q What did she say about him while living in Bayonne? A Intimate with some women that had come between other married people at the same time; he was also making signs through the window to women in other houses.

Q Did you make any efforts to see if they were true or not? A Only by asking her to produce the proof.

Q You asked her to produce the proof? A Yes.

Q Didn't she go down there and endeavor to produce proof before you, and that you and your wife and the members of your family refused to consider it? A Not that I recall.

Q You don't remember that? A No.

Q What did Mrs. Smith tell you about Mr. Smith's conduct while in Boonton? A That he was having these same relations with other women; no names were mentioned that I recall.

Q Didn't Mrs. Smith also tell you that he was treating her in a cruel manner? A Only by using harsh language.

Q And didn't she write a letter to you or to your wife or one of the members of the family where you were living, in which she incorporated in the letter some of the language that Mr. Smith used toward her, impugning her character? A No, I don't recall any such letter.

Q You don't remember that? A No.

Q Didn't Mrs. Smith come to your house and cry about the way her husband treated her? A She may have when I was not present.

Q You knew that she came there and cried about it, didn't you? A No, not that I recall.

Q You don't remember that? A No.

Q Didn't Mrs. Smith complain about his striking her? A Not in my presence.

Q You knew that she did complain about his striking her? A I did not.

Q The members of your family and your wife never told you about that? A Not that I know of.

Q You say you have known Mr. Smith for a period of twenty years? A I have.

Q He was a peculiar man, wasn't he?

Mr. Price. I object, unless you specify in what manner he was peculiar.

Q He was a peculiar man? A Not to my way of thinking; he was a normal man in every respect.

Milton M. Canfield, cross.

Q He was disagreeable at times? A Not to me.

Q To others? A To his wife, perhaps.

Q You knew him before he was married? A I did.

Q He would have these spells in which there would be that peculiar disagreeable part about him, wouldn't he? A Before he was married?

Q Yes. A Not that I know of.

Q Never took particular notice of it, did you? A I don't know why I should.

Q He had a violent temper, didn't he? A I never saw any of it.

Q Did you ever hear about it? A No.

Q Mrs. Smith always tried to make things pleasant for him, didn't she? A As far as I know, while I was in the house.

Q While you were there she always tried to make things pleasant? A Except by complaining to us about his misconduct.

Q That was at your home? A That was at her own home.

Q But outside of her complaints about his misconduct, she always tried to be pleasant to him? A As far as I know.

Q Mrs. Smith was in ill health the greater part of the time after Audrey was born? A Not that I can recall particularly.

Q Didn't she tell you that the occasion of her ill health was because of the treatment she received from her husband? A Not to me.

Q Did you hear that she did complain? A No.

Q Did Mrs. Smith when you asked her to produce proof ever request you to come to the house and see for yourself? A Only when we were there at the time.

Q Didn't Mrs. Smith tell you to come up there and secrete yourself behind the door or something in the house and see the conduct? A She never asked me to.

Q She never asked you to do that? A No, sir.

Q Did she ever say that in your presence to any one? A She might have; I don't recall.

Q At any rate, you never did go up to see for yourself in that manner? A I never went for that purpose, no.

Q Isn't it a fact that Mrs. Smith had to go away to German Valley on account of her ill health? A She said she did.

Milton M. Canfield, re-direct.

Q Isn't it a fact that she decided to stay away from her husband at that time and not to return to him because of his conduct toward her? A I don't recall anything of the sort.

Q Did she say so? A Not to me.

Q Did she write to your wife to that effect? A I don't know.

Q Did your wife write to her and tell her that she should come back to Mr. Smith? A I don't remember that.

Q Have you tried to keep Mrs. Smith and her husband together? A Most assuredly.

Q Irrespective of all the things she told you and the life she had to lead, it was because of your influence and your suggestions that Mrs. Smith and Mr. Smith remained together; is that so? A I wouldn't say my influence was great enough to produce any such effect as that.

Q Your endeavored to persuade Mrs. Smith to live with her husband? A Yes, and he with her.

Q You say you were very friendly with Mr. Smith; isn't it a fact that he has talked with you considerably about Mrs. Smith and about the home life? A He has not, no, sir.

Q Do you have any stocks or bonds of any kind? A No, sir.

Q Does your wife hold any? A Not that I know of.

Q Any member of the family? A I think her older brother has.

Q Has Mr. Smith, to your knowledge, given the advice regarding the purchase or sale of stocks? A Not to my own knowledge, no, sir.

Re-direct by Mr. Price.

Q Mrs. Smith testified in her examination that her husband used intoxicating or some sort of dope, the nature of which she did not know; do you know anything about whether Mr. Smith was intoxicated at various occasions or not? A I never saw him in any such condition.

Q Did you ever see any evidence of the use of dope on his part? A Not at all.

Q It is also testified to by Mrs. Smith that Mr. Smith used vile and profane language to her repeatedly, impugnating her character; was Mr. Smith a profane man? A Naturally I wouldn't call him a profane man; I never heard him utter an oath in my life.

Lott E. Buckbee, direct.

Re-cross by Mr. Romine.

Q Did you ever see him take a drink? A I have.

Q Mr. Smith was always very pleasant when you were at the house? A Always very pleasant, as far as I can remember.

Q And during the times you were out with him, your relations were very pleasant? A Always.

Q And there was no occasion for the use of profane language by Mr. Smith? A In playing games usually there are.

Q Would he go so far as to say "damn" at any time that you ever heard? A Possibly he would say "damn," but not beyond that.

Q Beyond that you don't recall? A No, sir.

LOTT E. BUCKBEE, sworn for defendant.

Direct examination by Mr. Price.

Q Where do you live? A 45 State street, Newark, New Jersey.

Q In what business are you engaged? A Wholesale butter, egg and cheese business.

Q Where is your business located? A New York.

Q Are you related to the petitioner Ella S. Smith? A I am her brother.

Q Are you acquainted with the defendant, Ernest N. Smith? A I am.

Q How long have you been acquainted with him? A About twenty years.

Q Were you present at the marriage of the petitioner and defendant? A I was.

Q And since the marriage of these parties have you visited at their home and have they visited at your home? A Yes.

Q Have those visits been frequent or otherwise? A Frequent, I should say; that is, specially when they lived in Newark.

Q During their married life has Mrs. Smith in your presence or to you accused her husband, Ernest Smith, of infidelity? A She has.

Q When, to your knowledge, did these complaints first begin? A To me direct, I should say—

Q Or in your presence? A Possibly a year after her marriage.

Lott E. Buckbee, direct.

Q And what was the nature of that first complaint? A Misconduct with other women.

Q With a woman? A With other women.

Q Did she specify any particular one on that occasion? A Yes.

Q Was it a neighbor or servant girl? A A neighbor.

Q Where were they living at that time? A Forest Hill, Newark.

Q Can you tell me what the next complaint was? A A friend of hers; she stated that his conduct was improper with her and that he was spending his afternoons on the street with her; and I will say that as to this particular party, she invited me and the lady up to her house, to see how they would act in her presence, and we went there to dinner and there was nothing unusual occurred, and I think the lady was a virtuous girl.

Mr. Romine. I move that be stricken out.

Q What was the next complaint as you recall it? A The next complaint was while she lived on Summer avenue, Newark, of a girl friend who was a musician. She openly accused this girl of misconduct with her husband, and Canfield and Mrs. Canfield and the lady involved went up to her home, and she said that her detective described the lady he saw, and it was a case of mistaken identity; she had openly accused this girl.

Q Did she apologize to the girl? A No more than just withdrawing her statement.

Q Were her complaints frequent before the birth of the child Audrey? A Yes, they were.

Q And was the general nature of them reflecting on her husband's fidelity? A It was.

Q What was the next occasion as you recall it after the one you have mentioned? A When she lived on South Broad street, Newark, she invited me to dinner there one night, and she related about some lady that lived in the house with her, and accused her of misconduct with Mr. Smith, and said she was receiving notes and found them under the doorsill. I asked to see these notes, but the time wasn't proper to show them.

Q She said the time was not proper to show them? A Yes, the time was not proper to show them.

Q Did she state what the notes contained? A Not to me.

Lott E. Buckbee, direct.

Q Did she say that they referred to her husband's conduct with other women? A She didn't say.

Q She merely mentioned that she had received them? A That is all.

Q Do you recall the incident following the one you have just mentioned? A I should say the next was when they lived at Perth Amboy, New Jersey; she told me of a woman down there who he was very intimate with.

Q Mentioning her name? A No, she mentioned no name, simply some woman there; I don't know who she was.

Q Do you remember any subsequent occasion of complaints made by Mrs. Smith concerning her husband's fidelity? A During all this period I would say that she had accused different servant girls in the house, saying he was very intimate with them, following them to the bathroom and general misconduct.

Q Did this apply to servant girls whether they were colored or white? A It did.

Q Have you frequently or otherwise asked Mrs. Smith for proof of these accusations? A I have.

Q What did she reply? A The time was not yet to show the proofs.

Q Mrs. Smith has testified that she frequently complained to her husband concerning the amount of money she was allowed for household expenses and personal use; did she ever take that matter up with you? A She did.

Q And what, if anything, was done on that occasion? A At one time on her own statement she took a pencil and paper and figured out from Mr. Smith's salary how he expended his money, and before we finished with the list, his entire salary had been expended, so that he couldn't have much of anything to spend on the outside. The figures didn't prove anything to her mind, however.

Q She was not convinced but what he ought to have given her more? A She wasn't convinced but what he had money that he was spending outside.

Q Have you visited the petitioner and defendant while they lived at Boonton, New Jersey? A I have.

Q Has Mrs. Smith made complaints to you concerning her husband's fidelity since they were living at Boonton? A Yes.

Q Was the nature of those complaints the same as the previous ones or not? A Yes, they were, but in one instance,

perhaps, there was a variation; she had me go to the window one evening to look over to a house on the hill, when she lived on Washington street, Boonton; there was a cupola on this house, and someone was up in the cupalo with a lamp, and she said they were signals for Mr. Smith. That was her accusation at that time.

Q Did she intimate that these signals were made by a woman? A By a woman, yes, sir.

Q With the exception of the one you have just mentioned, her complaints reflecting on her husband's fidelity were the same as before? A Yes.

Q And involved neighbors, friends and servant girls? A They did.

Cross examination by Mr. Romine.

Q How many complaints did your sister, Mrs. Smith, make to you about Mr. Smith after the time she was married and before the girl Audrey was born? A Two specific cases, the first two I mentioned.

Q That is all that you knew of? A That is all I knew of.

Q After Audrey was born were those complaints more frequent than they had been before? A I think they were.

Q While they were living at Forest Hill Mrs. Smith complained to you about Mr. Smith's conduct with a servant girl in the house? A Yes.

Q Did she tell you that she actually caught Mr. Smith in a compromising position in an adjoining room with the servant girl? A She did not tell me that.

Q While she lived at Summer avenue did she tell you of an occasion there between Mr. Smith and a servant girl? A No, she never told me of that incident.

Q Did anyone bring that to your attention at the home? A Not that I recall, no, sir.

Q You don't know, then, anything about that circumstance? A I don't know the particular occasion.

Q You don't know that Mrs. Smith discharged the servant girl because of her relations with Mr. Smith? A She discharged a great many for that purpose.

Q You don't know of your own knowledge whether Mrs. Smith had justifiable cause or not? A I do not.

Q She may have been perfectly justified in what she did? A So far as I know.

Lott E. Buckbee, cross.

Q While living at Perth Amboy did you know that one of the servant girls left of her own accord because of Mr. Smith's conduct? A I did not.

Q You never heard of that? A No, sir.

Q Did you know that your sister, Mrs. Canfield, received a postal card from one of the servant girls, stating that Mr. Smith had treated Mrs. Smith like a dog, and that because of his misconduct she proposed to leave? A No, sir, I do not know of such an incident.

Q Did you know that your sister received a postal card from a servant girl concerning Mr. Smith? A I think there was a letter of some sort written in a foreign language that was sent to Mrs. Canfield; what it contained, I have no knowledge.

Q You say that you visited your sister, Mrs. Smith, and Mr. Smith while they lived in Newark quite frequently, and visited back and forth; on those occasions didn't Mrs. Smith try to make things pleasant for her husband? A I should say yes, in my presence.

Q You say you have known Mr. Smith for twenty years? A I think so.

Q You knew him before your sister married him? A Yes.

Q Did you know a girl by the name of Julia Van Fleet? A I know of her.

Q Did you accompany your sister to her home before she married Mr. Smith? A I think we did go up there once.

Q And Mr. Smith was there? A I don't know whether he was with us or not.

Q Was he there at any time that evening? A I don't recall whether he was or not; I wouldn't say.

Q And isn't it a fact that at that time this Julia Van Fleet had a child two years old and that she accused Ernest Smith of being the father of that child? A Not to my knowledge.

Q You never heard that? A I never did.

Q The night that you visited that house, do you recall Julia Van Fleet taking your sister upstairs? A I do not, no, sir. My call there that evening, to the best of my knowledge, was simply one of friendliness.

Q As a result of that friendly call did you not learn from either Julia Van Fleet or some other person on her behalf, that Ernest Smith was the father of the child two years old? A No, sir, I never heard that.

Lott E. Buckbee, cross.

Q And did not Julia Van Fleet prevail upon you and other members of the family not to permit Mrs. Smith, then your sister, to marry Mr. Smith? A I never saw Julia Van Fleet but on the one occasion, and never saw her since or heard from her.

Q Mrs. Smith complained to you about Mr. Smith's cruel treatment after they were married, didn't she? A Not at first, no, sir.

Q But subsequently? A After she moved to Boonton, not before.

Q You had never heard of any ill-treatment prior to the time that they moved to Boonton? A No, sir.

Q You recall the occasion when your sister was in ill-health and was obliged to go to the country and did go to German Valley, don't you? A I know she went to German Valley, yes, sir.

Q And isn't it a fact that you learned at that time that your sister, Mrs. Smith, determined to leave her husband because of his misconduct and ill-treatment toward her? A I did not.

Q Don't you know that your sister, Mrs. Canfield, prevailed upon her to keep the home together and to come back to Mr. Smith? A I do not know it.

Q As a matter of fact, they did resume relations after that time? A She returned to his house, that is sure.

Q And then they moved to Boonton? A I don't remember just the time when she went to German Valley.

Q What was Mr. Smith's disposition? A Always very good.

Q But at times didn't he have an ugly disposition? A Not in my presence.

Q But didn't you know that he did have these spells where he was disagreeable? A Mrs. Smith told me so.

Q But before he was married to your sister you went out with him on occasions, didn't you? A Yes.

Q And on some of those occasions wouldn't he display this disagreeable attitude? A He did not.

Q Is it because you don't remember, or did you take notice? A No, he didn't act that way in my presence.

Q During the past two or three years has he acted that way? A Not in my presence, no, sir.

Q Do you know of his attitude? A In what respect?

Q Toward your sister, Mrs. Smith, during the last two years? A I know of it through her.

Q Have you heard it through others? A No.

Q Isn't it a fact that she has frequently come to your home and cried because of his conduct toward her? A Not to my knowledge.

Q You never heard it? A No.

Q Did she ever cry before you about it? A No, she has complained often enough.

Q And on the occasions when you would go up there to see what the situation was, he would be very pleasant? A Always.

Q Always pleasant, always agreeable? A Yes, always.

Q And Mrs. Smith the same way? A Yes.

Q No trouble whatsoever that you saw when you went there? A No.

Q Didn't Mrs. Smith tell you that you should come there unbeknown to Mr. Smith and secrete yourself in the house and then see his conduct and attitude toward her? A I think she has suggested that.

Q And you never adopted the suggestion? A I never have.

Q Do you recall Mrs. Smith writing you a letter within the past two years complaining to you about Mr. Smith's attitude? A Yes; in fact, I have the letter with me.

Q Will you produce it? A Yes, sir.

(Letter produced, postmarked October 31, 7 A. ., 1914, Boonton, N. J.)

Q You received this lettr through the mail? A I did.

Mr. Romine. I ask to have the letter marked for identification.

Q You know as a matter of fact that the last two years of your sister's life with Ernest Smith has been very miserable and disagreeable? A I believe so; yes, sir.

DR. WILLIAM H. WARREN, sworn for defendant.

Direct examination by Mr. Price.

Q Where do you live? A 863 Mt. Prospect avenue, Newark.

Q Are you a practicing physician in this city? A I am.

Q When were you admitted to practice in the State of New Jersey? A 1894.

Dr. William H. Warren, direct.

Q From what colleges have you been graduated? A University of the City of New York.

Q Are you acquainted with the petitioner Ella S. Smith? A I am.

Q And with the defendant Ernest N. Smith? A I am.

Q Did they ever live in your home on Mt. Prospect avenue, New Jersey? A They did.

Q What part of your home did they occupy? A The second flat in the corner building.

Q And you occupied the lower floor? A I had a drug store on the lower floor.

Q What years were they living at your home on Mt. Prospect avenue, Newark? A From 1906 to 1909.

Q During that time did Mrs. Smith complain to you concerning her husband's fidelity? A At times.

Q What was the nature of those complaints as near as you recall them? A She didn't think he was faithful.

Q And did she say that he went with other women? A Yes.

Q Did she mention anything upon which she based these accusations? A Stained handkerchief that she found.

Q Whereabouts? A In his pocket.

Q Anything else that you recall? A No.

Q Did she mention the names of any of the women with whom she claimed he had had improper relations? A No.

Q Did she say whether they were servant girls or not? A No.

Q Merely said women? A Yes.

Q Did she give no foundation whatever for her accusations except the one thing you mentioned? A That is all I know.

Q Basing your statement upon your opinion as a physician, can you state whether or not Mrs. Smith is a woman of sound mind or not?

Mr. Romine. I object to that; it does not appear that he is qualified to testify on that point yet.

Q Have you had any experience in relation to sanity of persons? A Some.

Q Of what has that experience consisted? A I have had quite a number of people that have gone insane that I have examined.

Q For the purpose of ascertaining their sanity or insanity? A Yes.

Q And those examinations have taken place during the time that you were a practicing physician? A Yes.

Q Basing your opinion upon your knowledge as a physician in cases of this kind and upon the statement made to you by Mrs. Smith, would you say that she was a woman of sound mind?

Mr. Romine. I object, because it does not appear that he has had sufficient relations with Mrs. Smith to know of her reasoning or sanity; he hasn't made any examination of her for that purpose; it doesn't appear when he had these sanity cases, whether before the time Mrs. Smith came there or afterwards, and it does not appear that he made any examination of any of those people that he has testified about, for the purpose of determining whether they were sane or insane, but simply states that they went insane.

Q Were the examinations which you have made of these other people for the purpose of ascertaining their sanity or insanity. made before you became acquainted with Mrs. Smith, or some of them? A Yes.

Mr. Price. I now ask to have the question answered.

Q (Repeated.) Basing your opinion upon your knowledge as a physician in cases of this kind and upon the statement made to you by Mrs. Smith, would you say that she was a woman of sound mind?

Mr. Romine. I make the same objection.

A As far as I could see.

Q Was she a victim of paranoia, in your opinion?

Mr. Romine. I submit that is a leading question.

A She was an extremely nervous woman, and at times seemed to have thoughts of aberration and imagining a great many things, I thought.

Q Concerning Mr. Smith's fidelity? A Yes.

Zella M. Dawson, direct.

Cross examination by Mr. Romine.

Q You say Mrs. Smith imagined things, you thought; is that true? A Yes.

Q If it be a fact that Mrs. Smith found her husband in the act of adultery with a servant girl in her own home, and that circumstance was true as she has related it, would you then say that she imagined things? A No.

Q You do say that Mrs. Smith, so far as you could see, was of sound mind? A Yes.

Q But the things she complained of you thought were imaginations? A Yes.

Q But if they were in fact true, then they were not imaginations, were they? A No.

Q And would, in your opinion, her nervous condition be accelerated by reason of the fact of her finding her husband in that compromising position with the servant girl? A Undoubtedly.

ZELLA M. DAWSON, sworn for defendant.

Direct examination by Mr. Price.

Q Where do you live? A Boonton, New Jersey.

Q Are you acquainted with Ella S. Smith, the petitioner? A I am.

Q How long has that acquaintance been? A About twenty-five years.

Q Are you acquainted with Ernest N. Smith, the defendant? A I am.

Q How long have you known him? A About eighteen years.

Q Do you recall the occasion of their marriage? A I do.

Q Were you present? A I was.

Q Since the marriage of the petitioner and defendant, has Mrs. Smith complained to you, or in your presence, concerning her husband's infidelity? A She has.

Q When were those complaints first made, to your knowledge? A About two years after they were married, living at Forest Hill, Newark, New Jersey.

Q What was the nature of those complaints? A She said he was flirting with servant girls on the trolley; that was the first complaint she made to me, and she complained that he was too intimate with her servant girl.

Q That was the first one? A That was the first I ever recall.

Q Can you tell what followed that one? A When she went down on the trolley—we were on the trolley, Mr. Smith was with us—and when we got off the trolley she asked me if I had seen Mr. Smith flirting with those two girls; I told her I had not; that was the first I had heard anything about Mr. Smith.

Q Did she continue to complain after that about him? A Every time I visited her home, it was the same thing.

Q What woman did she mention? A It wasn't one woman, it was many women, servant girls, neighbors at large and whoever was around.

Q Do you recall just what the nature of the complaint was, how she worded her complaint? A That he was too intimate with other women.

Q Did these complaints on her part continue after they had moved to Boonton, New Jersey? A Yes, very much so.

Q And that is where you live? A Yes.

Q You were visiting her and associating with her while in Boonton? A I did.

Q Immediately after she moved there? A Right away.

Q And were the complaints she made while in Boonton of the same general nature that she had made before? A Just the same.

Q Did she accuse her friends and neighbors and servant girls?

Mr. Romine. I submit that that is entirely too leading. you should ask what she said or did.

Q With what woman did she mention Mr. Smith had been intimate? A She never mentioned any one person, but she said she knew them, but she wouldn't mention their names; she said she knew who they were.

Q Did she ever point out a woman to you on the street and accuse Mr. Smith of going with her? A She did.

Q What did she say? A She was coming out of her house, going to walk up with me to my house, and about two blocks away from the house she said, "Do you see that woman?" she said, "that woman has come to Boonton; every place we go, Mr. Smith moves her to annoy me."

Q What did you reply? A I said, "Why don't you go up to her?"

Q What did she say? A She said, "I may be mistaken, but it looks very much like her."

Q And she did not go to her? A No, she did not go.

Q Did Mrs. Smith ever complain to you about personals found in papers? A She has.

Q What was that complaint? A She was visiting me—she and Mr. Smith, and one Sunday morning Mr. Smith went out to get the Sunday papers; she took the papers up and said, "These are personals that he put in to meet these women," and she said it was his initials, and it was with the object of meeting these women.

Q Do you recall an occasion while you were at Perth Amboy visiting Mr. and Mrs. Smith, when something was said about some salt cellars? A I do.

Q What was that? A Mr. Smith called for salt cellars—salt and pepper, and they weren't on the table; he got up to go from the table to the china closet, and the china closet was locked, and he asked what this meant, and she said she was tired of having her dishes given to other women so she locked up her closet.

Q Did Mrs. Smith ever accuse you of being intimate with Mr. Smith? A Only once that I know of.

Q What did she say about that? A I had been to the city for the day, and when I came home she called me up on the phone and she asked me if I had had a nice time with Ernest that day.

Q What did you reply? A I told her that she must not commence on me, that it wouldn't be well for her if she commenced on me.

Q What did she say? A She said she was only having some fun with me.

Q Did you state how soon after they were married that these complaints commenced? A To my knowledge, about two years after they were married.

Q And that was before the birth of the child? A Yes.

Q When Mrs. Smith returned from St. James' Hospital where she had been under treatment, did Mr. Smith attend her in her own room at Boonton? A I remember once very distinctly of being there one evening and Mr. Smith was bandaging her when I went in.

Zella M. Dawson, cross.

Q Have you ever remonstrated with Mrs. Smith concerning her complaints? A I have.

Q What would you say? A I would try to tell her that I didn't think there was any truth in it, and told her to try to think of something else different; I told her that lots of times.

Q Have you asked her for proof? A I have.

Q What reply did she make? A She said she would bring them forward at the proper time.

Cross examination by Mr. Romine.

Q Mrs. Smith complained to you about Mr. Smith being too intimate with other women? A She has.

Q And so far as you personally know, she may have been justified in doing it? A I don't know anything about it, only what she told me.

Q But she told you about his being intimate with servant girls? A She has.

Q And how she discharged the servant girls because of that fact? A She has.

Q She told you about his intimacy with the servant girl at Perth Amboy to such an extent that the servant girl left herself, didn't she? A I don't remember that.

Q She told you of the occasion in Summer avenue when she actually caught Mr. Smith committing adultery with the servant girl in the adjoining room, didn't she? A I don't remember anything of that kind.

Q You never heard of that? A No.

Q You were never in the home to see any of those things that Mrs. Smith complained of? A I visited her by the week.

Q But of course while you were there you saw none of those things going on? A Not with Mr. Smith.

Q He was a perfect gentleman when you were there? A He certainly was.

Q And he treated Mrs. Smith with respect then? A I cannot say anything else.

Q They seemed to get along very nicely, didn't they? A They had their quarrels; I cannot say that.

Q They did have quarrels? A Yes.

Q Did Mr. Smith quarrel with her? A Yes, sir, when she would commence about these other women.

Zella M. Dawson, cross.

Q And then Mr. Smith would quarrel with her about it? A Yes, I have heard him call her a damn fool.

Q You have heard him use that language? A Yes, that is the most I ever heard him say.

Q But so far as you know, Mrs. Smith's story may have been true when she said that he did have improper relations with a woman; so far as you know personally, it may have been true? A As far as her telling it, but I don't know anything about it.

Q This woman that Mrs. Smith pointed out while she was living in Boonton, can you describe her appearance? A Yes, she was dressed in a black dress and she said that she always dressed that way.

Q What was the color of her hair? A A light haired woman.

Q Was she stout or medium build? A Medium.

Q About how tall was she? A She wasn't as tall as Mrs. Smith.

Q Did Mrs. Smith mention to you the fact that she was Elizabeth White? A No, I never heard any name; Mrs. Smith never mentioned any names.

Q You don't remember whether she attracted your attention to this woman as her name being Elizabeth White? A No, I never heard that name.

Q But she did tell you— A She told me that that woman —that wherever they went, Mr. Smith moved that woman to annoy her.

Q She did say that that woman was at other places they moved to? A Yes.

Q You say that Mrs. Smith accused you of being intimate with Mr. Smith; you didn't mean that? A I didn't say intimate; I said she asked me if I had had a pleasant time that day with her husband.

Q But she never accused you of being intimate with him? A Not to my face; no, sir.

Q But she did say that she was just having a little joke with you? A Just having a little fun.

Q And you were good friends with Mrs. Smith at that time? A Yes, but I wasn't as intimate as I had been.

Q But you were friends at that time? A Yes.

Q You are quite friendly with Mr. Smith, are you? A I have always been friendly with Mr. and Mrs. Smith for over twenty years.

Q But since they have separated Mr. Smith has— A I never was in Mr. Smith's house only when his father and mother had been there.

Q That is since they separated? A Yes, and that was only once.

Q Has Mr. Smith visited you and your husband? A Only once of an evening.

Q Only once since they separated? A Only once.

Q He requested you to come here and testify for him? A He came there of an evening; I have never seen Mr. Smith in my house but once.

Q But you and your husband are on friendly terms with Mr. Smith? A We are friendly as we have always been.

Q Do you know what Mr. Smith's disposition was? A Yes.

Q What was it? A Working in a broker's office.

Q His disposition? A Whenever I visited him I can say he was always very agreeable.

Q Did he ever display any temper before you? A No.

Q Ever appear disagreeable? A Never, only when Mrs. Smith would give him a sneering look, and then he might be disagreeable at the table.

Q Do you remember an occasion when you called there to take Mr. and Mrs. Smith to Asbury Park? A Yes.

Q Mr. Smith flew into a rage and refused to go, didn't he? A He didn't refuse to go, but he didn't go. He didn't come out bluntly and say he wouldn't go. He did to Mrs. Smith, but not to me.

Q His attitude on that occasion was a very disagreeable one? A We didn't go.

Q His attitude was a very disagreeable one on that occasion? A I cannot say his attitude was disagreeable when we didn't go; I wasn't where the man was; I cannot say he was disagreeable; we stopped there and turned around and went back.

Q You didn't go? A No.

Q You didn't see him? A No, I went and saw Mrs. Smith.

J. HERBERT DAWSON, sworn for defendant.

Direct examination by Mr. Price.

Q Where do you live? A Boonton, New Jersey.

J. Herbert Dawson, direct.

Q And in what business are you engaged? A The undertaking business.

Q Are you acquainted with the petitioner, Ella S. Smith? A I am.

Q And with the defendant, Ernest N. Smith? A Yes.

Q How long have you been acquainted with Ella S. Smith? A About twenty years.

Q How long have you been acquainted with Ernest N. Smith? A About eighteen, I should say.

Q You were present at the marriage of the petitioner and defendant? A Yes.

Q And have you maintained your acquaintanceship since that time? A Up until about a year and a half ago.

Q During the married life of the petitioner and defendant did Mrs. Smith complain to you concerning her husband's fidelity? A At different times.

Q What was the nature of those complaints? A That he was flirting with other women and running with other women and remarks of that kind, improper conduct toward other women.

Q Did she mention any names? A No, only one instance, about this woman that followed him from Perth Amboy to Boonton, that wherever he moved Ernest brought this lady along; wherever he moved from place to place, the lady moved.

Q Did she state whether the lady had come to Boonton or not? A Yes.

Q Did you ever visit Mr. and Mrs. Smith in Newark, New Jersey? A Yes.

Q While there did Mrs. Smith ask you to do any work with relation to the bathroom? A While they lived in Newark?

Q Yes. A I think when they lived in Mt. Prospect avenue, over Dr. Warren's drug store, she did.

Q What did she ask you to do? A To put some windowphaning on the bathroom window.

Q Did she say why she wanted that done? A Not until after it was done.

Q Then what did she state was the reason? A She said, first, so people couldn't look in the bathroom; and after I put it on and Mr. Smith came home, they had quite a quarrel about it; it was just the reverse, so that he couldn't see from the inside outside, and they had quite a quarrel over it.

J. Herbert Dawson, direct.

Q Did she state that to you? A Yes—she told it to him, not to me.

Q In your presence? A Yes.

Q Did she state why she didn't want him to see outside? A Some of the servant girls, in the rear, I believe, or across the street, in the rear of their bathroom, that that was the reason it was put on.

Q So he would not communicate with them, you mean? A Yes.

Q The previous witness testified to an occasion in Perth Amboy where some conversation was had concerning salt cellars. A I was present at the incident.

Q What was that? A We were about to sit down to dinner and Mr. Smith wanted the salt and pepper and there wasn't any on the table, and he got up to go to the china closet to get it and found the closet was locked, and when he asked why it was locked, she said she was tired of having her dishes carted around to his affinities, and then they had another quarrel over that.

Q How soon after they were married did her complaints concerning her husband commence? A I think we went once or twice to Forest Hill and everything was all right and pleasant, and the next time and from that on, we never visited but what there was quarrelling frequently.

Q Did she make a complaint before the birth of the child Audrey? A Yes.

Q Of the nature which you have described? A Yes.

Q Did you ever ask Mrs. Smith for proof of her accusations? A Yes.

Q What did she reply? A She said it wasn't time; I even offered to go to New York and pay her fare to go see this woman that she had seen in New York and saw him buying different articles for this other woman; I offered to pay her fare to go to New York and see the woman, but she wouldn't go.

Q Did she say why? A No; she named the articles that he bought.

Q Do you recall complaints made by Mrs. Smith concerning the presence of a personal item in the paper? A Yes, one Sunday morning.

Q What was that? A I don't know what it was; he went out and got a morning paper before breakfast, and he was about to read it as she yanked the paper out of his hand, and I don't

remember just the wording, but it was E. S. or E. N.; it started with an E. and that was enough to start the thing going; so they had a quarrel Sunday morning before breakfast; that was at our house.

Q What did she claim regarding the personal? A That he was communicating with some woman.

Cross examination by Mr. Romine.

Q You say that at Mt. Prospect avenue, Newark, Mrs. Smith requested you to put some windowphaning on the bathroom window? A Yes.

Q And when Mr. Smith came home did he discover this work that you had done? A Right away, yes, sir; he went to the bathroom to wash up, I believe, and he saw it and come out, and I don't remember the conversation between them.

Q What did he say about it? A I don't remember the conversation; I remember he saw it and a quarrel followed in regard to it.

Q Did he complain to Mrs. Smith about its being there? A Yes. I remember his saying, "This is another one of your damn tricks of putting up stuff so I cannot see outdoors"; but I don't remember just the conversation.

Q And then followed this quarrel? A Yes.

Q In other words, Mr. Smith was the one that came out after using the bathroom and complained to his wife about it? A Yes.

Q He was the one that actually started the discussion on that subject? A He did. I told Mr. Smith I was innocent enough of it, and if I had known the ins and outs of it, I wouldn't have put it on.

Q You didn't know the ins and outs of the trouble up to that time, and why Mrs. Smith permitted you to do it? A Not about that bathroom.

Q Then in that conversation or in that quarrel didn't Mr. Smith curse and swear at Mrs. Smith? A Not that I remember, no, sir.

Q You don't remember about that? A No, sir.

Q But he got angry? A He did.

Q Did he display temper at that time? A Not any than any other man would under the circumstances.

Q But he did under those circumstances? A Yes.

Q Did he talk loudly? A Not any louder than you are.

J. Herbert Dawson, cross.

Q How long did this argument with his wife continue? A Possibly ten or fifteen minutes; it wasn't a very lengthy affair.

Q Didn't Mrs. Smith in that conversation say to her husband, in your presence, that the reason she put that glass up there was because he stood in the bathroom nude and communicated out of the window with other people? A I cannot tell you; I have heard so many different times descriptions of affairs of that description, that I cannot really tell you the conversation.

Q But you do remember— A They all lead up to that one thing.

Q You do remember, because one of the reasons was— A Because he was flirting with other women; the exact conversation I don't remember.

Q What do you mean by this windowphaning? A A preparation of paning put on the inside of the window so you cannot see.

Q Up to that time was there something up to the window? A Yes, three, one that pulls or rolls, and one this way, and another on a rod, and the one I put on made the fourth.

Q That made it solid? A It was well curtained, yes, sir.

Q How many windows were there in the bathroom? A I don't remember.

Q Is your memory about the curtains good? A I remember there were plenty of curtains on there, because I took them down to put the windowphaning on.

Q There was a shade? A Yes.

Q When the shade was up you had a clear view out of the window? A Yes.

Q And when you put this windowphaning on, which was a preparation which permitted the light to come in, but you couldn't see out? A Yes.

Q So far as you know personally, Mrs. Smith may have been perfectly justified when she said that her husband was acting improperly with other women—so far as you know about it? A There has never been any proof shown to me.

Q But so far as you know? A I cannot give any other answer.

Q If it should appear to be a fact— A If it was proven to me, then I would say it was not.

Q If it should appear to be a fact that Mrs. Smith caught her husband in adultery with a servant girl in the house, would that be proof enough for you? A If it was proven to me, yes.

Dr. Frank E. Depue, direct.

Q If that fact was true that he did? A If it was proven to me, yes.

Q If the fact was true that he did do this, would that satisfy you? A It would have to be proven to me.

Q You know what it means by a thing being true? A Yes.

Q And if it were true that his conduct with the servant girl in Perth Amboy was such that the servant girl left on account of his conduct, that would satisfy you? A That I don't know anything about.

Q But if that were true? A I suppose so, yes, sir.

Q You recall when Mrs. Smith was at German Valley, or did you know of the fact that she was there? A Oh, yes.

Q And did Mr. and Mrs. Smith come to your home after her return from German Valley? A No, she was supposed to be at German Valley but she was at our house for a week afterwards, and her husband thought at the time she was at German Valley, but she was visiting at our house.

Q Do you remember the occasion when Mr. Smith was at your house, and in your presence and Mrs. Smith's presence, it was said that while Mrs. Smith was at German Valley he had taken other women out to lunch and dinner? A No, I never heard any such conversation.

Q Were you down at Mrs. Smith's house at Old Boonton road on an occasion when Mr. Smith admitted that while his wife was at German Valley that occurred? A No, I never heard any conversation of that kind.

Q You don't remember that conversation? A No, I do not.

DR. FRANK E. DEPUE, sworn for defendant.

Direct examination by Mr. Price.

Q Where do you live? A Boonton, New Jersey.

Q Are you the pastor or rector of any church? A Of the First Reformed Church in Boonton.

Q Are you acquainted with the petitioner and defendant? A I am.

Q Have you visited their home? A Yes, I have.

Q In Boonton? A In Boonton.

Q Has Mrs. Smith ever complained to you concerning her husband's infidelity? A Yes, she has.

Dr. Frank E. Depue, cross.

Q What was the nature of the complaint which she made? A She accused him of having improper relations with other women.

Q Did she specify any persons? A Not that I recall.

Q You mean by name? A By name.

Q She just mentioned women when she made these statements? A She spoke of—I don't recall her giving any names in any particular way or specifying in any particular way; she may have done so, but I don't recall.

Cross examination by Mr. Romine.

Q When did you become acquainted with Mr. and Mrs. Smith? A About five years ago.

Q When they first came to Boonton? A I don't know if it was when they first came to Boonton; it was soon after I came there.

Q Where were they living at the time you first met them? A On Washington street, Boonton.

Q You called there as a visiting pastor? A Yes, although they were not members of my church or my parish.

Q How long after you began calling there at the home was it that Mrs. Smith told you of her husband's misconduct? A I don't know; I think it was inside of the first year; maybe a year and a half; I cannot say definitely.

Q It was about a year or year and a half? A Something like that, I should judge.

Q And had they attended your church during that time? A Not much; Mrs. Smith may have been there; I don't know if Mr. Smith had been or not, but not very frequently.

Q During that year and a half did you start a Bible Class in your church? A I think I did; I don't remember just how soon after I came I started that Bible Class.

Q Did you call at the Smith home for the purpose of having Mr. Smith join that class? A It seems to me that I did stop there one time and talk to him about it; I don't remember the conversation.

Q But Mrs. Smith was heartily in favor of her husband joining the class, wasn't she? A I think so.

Q And she rather encouraged him in it? A I believe so; I don't remember anything to the contrary.

Mary Shepard, direct.

Q So far as you know, Mrs. Smith may have been perfectly justified in her complaints about her husband? A I don't know anything to the contrary.

Q So far as you know, she may have been justified? A I never took any particular interest in the whole matter.

Q Did the little girl attend your church or Sunday School? A Yes, she came there to Sunday School, I think, all the time. I don't know whether she came all the time or not.

Q She attended there some of the time during the year? A Yes.

Q Didn't Mrs. Smith also try to have you use your influence for the purpose of having Mr. Smith join the church? A No, I don't recall that.

Q Or to go to the church? A I am sure she was in favor of his going, and I don't know anything about her particular efforts; I am sure she was favorable.

Q Outside of the fact that she did encourage him in going to the Bible Class? A I believe she did.

MARY SHEPARD, sworn for defendant.

Direct examination by Mr. Price.

Q Where do you live?

Mr. Romine. I object to any testimony given by this witness, because her testimony has been taken in full to the extent of thirty-six pages before a Master in Chancery of the State of New Jersey, by consent, before this case was tried originally before the Vice-Chancellor, and her testimony is in full and in detail; she was examined by the defendant's counsel and cross examined by myself representing the petitioner, and I see absolutely no reason for going into the question again. Her testimony is in full and at length, and I object to any further examination of the witness.

Mr. Price. I wish to have noted on the record that the testimony of Mrs. Shepard was taken at a time when she was seriously ill and there was some doubt as to whether she would survive, and now that she has recovered, her testimony is properly produced by her own presence in court.

Q Where do you live? A In Boonton.

Q On what street? A On Lincoln street.

Q Were you ever employed by Mr. and Mrs. Smith? A Yes.

Q Where were they living when you were employed by them? A On Washington street first.

Q Is that in Boonton? A Yes.

Q Do you recall about what year that was? A That was in—

Q 1912? A 1912.

Q How long did you stay there? A I first stayed about three months and then I went away, and then she wrote to me that she was alone and I came back again just three weeks after Christmas and I stayed there until this spring.

Q Three weeks after Christmas of what year, do you recall? A 1914.

Q How long did you remain with them when you returned the second time? A Pretty near a year.

Q What were your duties in the household? A Cooking and cleaning.

Q Were you present in the house every day? A Yes, sir.

Q Did you have any days off? A Yes, sir.

Q What days were these? A In the afternoon on Thursdays.

Q Did you do any other work besides the cooking? A I cleaned—sometimes I would clean upstairs and sometimes I wouldn't.

Q But you didn't do the heavy work such as washing? A No, sir, I didn't do any heavy work.

Q Have you heard Mrs. Smith complain concerning her husband's infidelity? A Yes, sir, often.

Q Do you know what I mean by infidelity? A No.

Q Have you heard Mrs. Smith complain about her husband associating or going with other women? A Oh, Lord, yes.

Q What would she say, Mrs. Shepard? A She said that he had them and he was going out to make a date, all those kind of things; I didn't pay much attention to it, but that is what she would say.

Q Did she ever mention any names? A No, sir, she did not, only one name she mentioned, but I never called that name.

Mary Shepard, direct.

Q When Mr. Smith came home at night did she usually accuse him of having gone with other women? A Sure.

Q What did she used to do? A She said "Your shirt is rumpled and you wasn't that way when you went away, and your hair is rumpled, and you have been to bed with some woman," or something like that.

Q Did she ever take any hairs off his coat? A Yes, she took two off and put them in the vase; she was trying to find out what color they were, and one was light and the other was gray.

Q What did she do that for? A I burned them up.

Q What did she do? A She put them in the vase in the parlor and I burned them up.

Q Did she ever accuse Mr. Smith of having women come into his room in the house in Boonton? A Yes, I heard her accuse him of it, but not to him—to me.

Q What did she used to say about that? A She would say that he had a woman in and she heard him walking and she heard him upstairs and in the cellar and all those places.

Q Did she say how the woman got in the house upstairs? A No; he put a ladder up on the outside and got in; that is the only way she could get in.

Q Mrs. Smith has testified to an occasion when Mr. Smith and she had some trouble over a pail of coal; do you recall that occasion? A Yes.

Q Will you state what happened on that occasion? A He used to keep fire in the barn and he took a pail of coal and took it to the barn to make his fire, and he came in and he didn't go fill it any more, because I didn't bring up any coal, and she said to him, "You fill that scuttle up again, you fill it up, Mary cannot go down and get coal; you bring it up," and he said, "You go to hell and mind your own business." That is what he said, and he said, "I will bring it up when I get damn ready," and so that went on, and he went in to get his breakfast and he was saying nasty words to her and she threw the cup at him, but she didn't hit him; it went on the radiator and broke it, and then she dipped her hand in his cereal when he was eating it and threw it all over him.

Q Where did the cereal strike him? A All over, and on his clothes, and he was wiping it off on her shawl she had on, and when she broke the cup, he said, "If you want to break dishes,

Mary Shepard, cross.

I will break dishes with you'' and he took this dish off the sideboard and threw it down on the floor and smashed it all to pieces.

Q Was it a glass dish? A No.

Q Did he throw it at her? A No. If he had thrown it at her, it would have killed her, it was very heavy, cutglass.

Q Did Mrs. Smith appear to be a healthy or unhealthy woman? A She appeared to be a healthy woman while I was there.

Q Did she have a dancing class? A Yes, sir, she did.

Q How often each week did that meet? A That met sometimes twice a week; she had little ones and then she had big ones at night and in the afternoon she had little children.

Q Did you have a conversation with Mrs. Smith just before she left? A I did.

Q What did she say at that time, if anything, regarding her health and what she would do? A She said she could make her living; I was trying to coax her to stay at home; I said she was a foolish woman to leave her home, I wouldn't leave it.

Mr. Romine. I object.

A (Continuing.) I didn't want her to leave her home because I thought it was too good a home for her to leave.

Mr. Romine. I move that that be stricken out.

Q Confine your answer to what Mrs. Smith said to you. You already stated that Mrs. Smith said she was going away? A Yes.

Q What else did she state? A And she could make her own living for her and her child, and she wanted to get Christmas home and she couldn't have it there; I told her yes she could have it there, if she wanted it.

Cross examination by Mr. Romine.

Mr. Romine. I will cross examine her at length and also insist that the evidence taken go in also.

Q While you lived with Mr. and Mrs. Smith you heard him curse and swear at her? A I did.

Q And didn't you say that if you had a man like that you would kill him? A Yes, that is because I didn't know as much as I know now.

Mary Shepard, cross.

Q You did say that? A I wouldn't kill nobody.

Q You wouldn't now because he has been very kind to you in the past year? A Mr. Smith has always been kind to me.

Q But he has been particularly kind to you during the last year? A He has; he hasn't been particularly kind, but he has been as kind as any gentleman would be to a servant.

Q You were at your home sick? A Yes; the old lady done just what any Christian person would have done.

Q Who do you mean by the old lady? A That is his mother.

Q He lived at the home now with his mother? A Yes, he does.

Q And they sent you over fruit and things of that kind? A They didn't send me over nothing; they come and brought it.

Q They brought it to you; all the better? A Yes, all the better.

Q Then Mrs. Smith did find hair on Mr. Smith's coat? A Yes, like any other wife would find if they looked; they would find lice and bedbugs in the car.

Q She did find hair on his coat? A Yes.

Q And lots of them? A No, sir, she didn't find lots of them.

Q How many? A Two.

Q That is on the one occasion? A Yes.

Q On other occasions? A I don't know anything about other occasions.

Q On this morning when they had trouble over the coal pail or the getting of the coal, Mrs. Smith asked her husband to go and get the coal? A Yes, she asked him.

Q She did ask him to get the coal because you were not able to carry it up? A Yes, I was.

Q What is that? A I could have carried it up.

Q Didn't you testify a moment ago, on direct examination, that you were not able to carry up the coal? A That is the bargain I made, but I carried it up lots of times.

Q So Mrs. Smith did tell her husband to get up the coal because you couldn't get it? A Yes, that is right.

Q Mrs. Smith had been sick just before that, hadn't she? A Yes, she had been sick.

Q And she was in a rather weak condition, wasn't she? A I don't know.

Q You have testified here as to her condition; didn't you wait on Mrs. Smith? A Yes, I waited on her.

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Mary Shepard, cross.

Q You knew that she was in that weak condition, didn't you? A Yes.

Q And the reply that Mr. Smith made back to Mrs. Smith was "Mind your own God damn business"; is that right? A Yes, that was right.

Q They had quarrels repeatedly while you were there, didn't they? A No, they didn't; they didn't have so much, but she talked to me.

Q But didn't you hear Mr. Smith quarrelling with his wife? A Sometimes, but not very often.

Q And on these occasions you heard him use this language toward her, didn't you? A That was that morning, yes, sir.

Q On other occasions you heard him curse and swear at her, didn't you? A Very seldom.

Q But you did hear him, didn't you? A Yes.

Q Did Annie Castner, a school teacher, board at the house while you worked for Mrs. Smith? A Yes.

Q And Mr. Smith paid considerable attention to her, didn't he? A No, he didn't.

Q Was he kind toward her? A He is kind to everybody around the house.

Q Was he kind toward her? A Yes, he acted like a gentleman.

Q Would he wait on her? A At the table like any other gentleman would.

Q But on those occasions his attitude was one of indifference toward his wife? A I don't know—sometimes it was.

Q Annie Castner boarded with the Smiths while they lived on Washington street, didn't she? A Yes.

Q And you left? A I left.

Q Didn't you tell Mrs. Smith that you left because of Mr. Smith's affection for Annie Castner? A No, indeed, I never did. You need not get up that lie about me.

Q Mr. Smith and Annie Castner were affectionate, weren't they? A Not as I know of.

Q Their actions were such that you didn't want to get into any trouble, wasn't that it? A I told you the truth; I never seen nothing in them that I could speak of at all, nothing.

Q Tell us some of the things that you can speak of. A I cannot speak of that; he treated her just the same as he would any other lady that was boarding with them.

Mary Shepard, cross.

Q Didn't you tell Mrs. Smith that you didn't like the actions of Miss Castner and that you left because you didn't want to get into any trouble? A No, sir, I will tell you right straight out how it was. Mrs. Smith—

Mr. Romine. That answers the question.

Q Didn't Miss Castner think quite a lot of Mr. Smith? A I don't know whether she did or not.

Q Didn't she show it in her attitude toward him? A No.

Q The two of them were together a good deal about the house? A I wasn't looking after them.

Q They were together a good deal? A I don't know nothing about that.

Q Didn't you see them? A Of course I saw them at the table.

Q But outside of the table? A No, sir.

Q Didn't you see them sitting down together in the room talking? A No, sir.

Q Never saw them walk outside around the house together? A No.

Q You never saw her in his bedroom? A Never, never.

Q Didn't you tell—you remember being at my house in Boonton in January, 1915? A Yes, I do.

Q And didn't you tell me at my office in Boonton that you left Mrs. Smith's home because the woman boarding there named Castner had caused trouble? A Yes; I will tell you how it was; let me tell you the truth.

Mr. Romine. That answers it.

Q And didn't you tell me at my office that that is the reason you left? A No; I didn't.

Q Didn't you testify before the man over at your house on January 29, 1916—you know the man that came there and took your testimony down when you were sick in bed? A Yes, sir.

Q And didn't you at that time say in answer to my question—didn't I ask you this question. "Didn't you tell me at my office that is the reason you left?" (referring to the Annie Castner trouble), and didn't you say in answer to that question, "Yes, that is the reason I left; I left on that reason." A On what reason?

Mary Shepard, cross.

Q On the reason that Annie Cartner made trouble? A Annie Castner didn't make no trouble.

Q Didn't you tell me in my office? A No.

Q And didn't you testify before Mr. Matthews, the man who was over there taking your testimony down in shorthand on January 29, 1916, that the reason you left was because of Annie Castner? A Why don't you let me tell my reason?

Q Didn't you testify to that? A No, I did not.

Q When you first went to work for Mr. and Mrs. Smith how did Mr. Smith treat his wife? A Very nice.

Q Did you notice any difference in his treatment of her while you lived at Washington street and before you left? A Not much, because it was a muss on Washington street, too.

Q What do you mean by a "muss"? A Quarrelling on Washington street.

Q Then his treatment towards Mrs. Smith did change, didn't it; he was not as affectionate to her after you began working there as he was when you first went there? A He was all the same, I didn't see no difference.

Q Then why do you say he quarrelled? A Don't women make men quarrel?

Q I asked you at what time after you began working there did Mr. Smith's attitude toward Mrs. Smith change? A I don't know if it did or not.

Q But you do say that after you began working there he quarrelled with her? A She made him.

Q Did he quarrel with her? A No, he didn't quarrel with her.

Q You just said a moment ago that he did quarrel with her; do you know, Mary Shepard, what you are testifying to here? A I do and you won't give me a chance to testify.

Q Will you try and be consistent and remember what you have said? A Yes, you don't give me a chance to do it.

Q How long after you began working for them on Washington street did he quarrel with her? A I don't know; it wasn't very long.

Q You say that Mr. Smith went out to the barn to fix his fire there; did you ever notice when he came in any odor— A He came in right away.

Mary Shepard, cross.

Q On any of the occasions when Mr. Smith came in from the barn, did you ever notice the odor of liquor about him? A Never.

Q Don't you know that he had liquor out in the barn there? A No, indeed, I never saw any liquor in the house.

Q Didn't you see his face flushed when he came in? A No, sir, I did not.

Q Didn't Mr. Smith tell his wife on many occasions that he was going with other women? A Not as I know of.

Q Just try and remember; this is no laughing matter; this is serious. A I don't remember hearing him say so.

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

Q Did you ever hear him tell Mrs. Smith that she would have to put up with it? A No, sir, never; Mrs. Smith has told me so.

Q She told you that he said that? A Yes.

Q Didn't you tell Mr. Lyons, this gentleman sitting here, that Mr. Smith told you in the presence of his wife that he was going with other women? A No, I wouldn't talk like that.

Q And didn't you tell Mr. Lyons that Mr. Smith told you that Mrs. Smith would have to stay and put up with it? A No, sir, never, because I never heard no such conversation as that from him. Mr. Lyons has forgot.

Q Didn't you tell Mr. Lyons that if you had a man like Mr. Smith, that you would leave him and that if Mrs. Smith would leave him, that you would go and live with Mrs. Smith? A Yes, I did—I don't exactly remember that I said that, either; I don't remember, but I said I would live with her; if she left and kept house, I would live with her.

Q When he cursed at her what would he say? A He called her a damn liar, a damn bitch, something like that.

Q Did he ever say that Mrs. Smith was running out all night whoring with men? A I never heard it.

Q Ever say anything about her going with other men? A Never heard it.

Q How frequently would Mrs. Smith be confined to her bed while she lived at Old Boonton road? A I never knew her but once, and when I was away and come home and found her sick, and she said she was poisoned then.

Q That was the occasion shortly before she left? A Yes.

Q On other occasions wasn't it a fact that one or two or three times a week Mrs. Smith would not get up until late in

the morning, and that you would wait on her while she was sick in bed, that you would take things up to her? A Who would?

Q You. A Yes, I did.

Q On those occasions when they would have these quarrels didn't Mrs. Smith get terribly nervous? A I don't know.

Q Didn't she tell you that she was nervous? A No, never told me nothing about it.

Q Didn't she call in a doctor on some of those occasions to treat her? A On one occasion, that was when she was poisoned.

Q On other occasions when they had these quarrels and he cursed and swore at her, didn't she go to bed on some of those occasions? A I say no; I was downstairs, I wasn't watching her.

Q Didn't Mrs. Smith complain of headaches after these quarrels? A I don't know whether she did or not; I forget.

Q Didn't you testify on January 29, 1916, in answer to a question, as follows: the question was, "Mrs. Smith wasn't in very good health, was she?" and didn't you say, "I don't know; I never seen nothing, only a headache or something like that." Didn't you say that? A No, I don't think so.

Q And wasn't the further question asked you, "Didn't she appear to be nervous?" and didn't you say, "I guess she was nervous likely"? A No.

Q You didn't say that? A No.

Mr. Price. Mrs. Shepard, do you understand the question?

Witness. Yes, sir, I do.

Q Wasn't the further question asked you on that date, "Now, her nervousness and these headaches would follow quarrels between her and her husband, wouldn't they?" and didn't you say, "If he was there I guess they would, but he wasn't there very much"? A No, he was at his work.

Q Didn't you say that in your former testimony? A I don't remember saying that.

Q You don't remember that you said that? A I don't remember saying that stuff.

Q When would they have these quarrels? A In the morning.

Mary Shepard, cross.

Q After having these quarrels how would it affect Mrs. Smith? A How did it affect her?

Q Yes. A I don't know that it affected her at all, only maybe like everybody else would be.

Q She might act like everybody else would? A Yes.

Q Did she get so mad that she had a headache? A No.

Q Or had to go to bed? A I don't know. I have been very mad and I didn't go to bed for it.

Q Did Mr. Smith ever quarrel with you? A No, indeed, never.

Q Isn't it a fact that he did and you got mad at him and was going to leave? A What for?

Q (Last question repeated.) A No, sir.

Q You are on very good terms now with Mr. Smith? A Me?

Q You are very close friends now? A Not a bit, no more than I was the day I went into that house.

Q Irrespective of all the fruit and all the things he has done for you? A He hasn't done anything for me; I was burned out and they didn't even give me five cents; what do you think about that, such a friend? I was burned out the other night and lost everything I had.

Q But you do think a great deal of Mr. Smith because of what he has done for you? A I think a great deal of the family because they are nice people and them is the kind of people I like.

Q So you think Mr. Smith was a nice man when he quarrelled with his wife? A They all do that.

Q You think he was a nice man when he told her to mind her own God damn business, when she asked him to get a pail of coal? A I don't approve of that.

Q Did they have liquor in the house? A No, sir, not a drop.

Q Didn't you tell Mr. Lyons that you saw Mr. Smith take a drink every morning? A In the name of God, no.

Q You never told him that? A No, sir, how could I?

Q In 1915, just before you left or just before Mrs. Smith left the house, didn't she ask her husband for money and didn't he refuse to give her any? A I don't know anything about that.

Q Didn't you tell me in my office in January, 1915, that when Mrs. Smith asked her husband for money he didn't give

it to her and that he called her a damn liar and a fool? A I did not.

Q You don't remember whether you told me that or not when you were there? A No, I don't know anything about it.

Q When Mrs. Smith's people were there he was very nice and pleasant, wasn't he? A Of course he was.

Q He didn't have any of those quarrels or fits of his then? A He didn't have them before they come.

Q You have already said that he did quarrel with her? A Sometimes; very seldom.

Q Now, it is very seldom? A Yes, I am telling you the facts.

Q How many times do you think during the last time you were at their home in Old Boonton road was it that he had quarrels with her; how many times did it happen; every morning or twice a week or once a week? A Maybe once a month.

Q And maybe oftener? A Yes, it might have been, I don't know.

Q Didn't Mr. Smith abuse his wife? A Abuse his wife?

Q Yes. A I never knew him to do it.

Q Didn't he threaten to strike her? A Not as I knew of.

Q Didn't Mr. Smith say on more than one occasion, in your presence, that he had other women and that his wife could go to hell? A I never heard him say it.

Q Do you remember it? A I never heard nobody say it but her.

Q She told you he said it? A She told me, yes, sir.

Q Did Mr. Smith ever say in your presence that he wished his wife would leave him? A Never.

Q In this disturbance over this pail of coal, didn't Mr. Smith get a shawl and put it around Mrs. Smith's neck? A No, he didn't.

Q What is that? A No, sir, he did not; she had a shawl around her shoulders, and when she threw the cereal he went up to her and took the shawl and wiped it off his face and his clothes; he was getting ready to go to the city.

Q He had hold of both ends of the shawl? A Certainly he did.

Q And they were right close together at the time that fracas took place? A Yes.

Q And Mrs. Smith screamed? A No, sir.

Mary Shepard, cross.

Q Didn't she try to get loose from him? A No, sir, she didn't, no such thing; the little girl was screaming, not her.

Q Didn't you tell Mrs. Smith immediately after that occurrence that Mr. Smith was trying to choke her? A No, sir; no, sir.

Q Nothing like that? A No, sir.

Q What was the occasion of Mrs. Smith throwing cereal at him? A Because she was ugly tempered, that is the reason.

Q Because he got her riled up? A Yes, that was it.

Q What did he say to get her riled up; he called her a lot of names, didn't he? A He didn't call her a lot of names, but he called her ugly names, of course.

Q He did call her some ugly names? A Yes.

Q And right then and there she picked up this cereal and threw it at him? A Yes; she put her hand in his cereal and threw it that way (indicating).

Q Was that after she threw the cup at him? A After she threw the cup at him.

Q And then Mr. Smith got up and took the dish? A Yes, and got up and threw it on the floor.

Q Isn't it true that he threw it up against the door jamb where Mrs. Smith stood? A No, he took it off and threw it down like that (indicating).

Q Mrs. Smith's neck was cut, wasn't it? A No, sir, it was a little scratch, either off her fingers or off of his'n, I don't know which.

Q You did see the scratch after this occasion? A Yes, about this long (indicating about two inches).

Q Didn't you tell Mrs. Smith at that time that that scratch came from the broken glass? A I did not, because if I had, I would have told a story; how did I know?

Q Didn't you tell Mr. Lyons that the broken dish that he threw is what caused the scratch on Mrs. Smith's neck, and didn't you give him the very piece of the broken glass? A I showed Mr. Lyons the piece that was left from this dish; it was broken so fine.

Q You heard Mr. Smith threaten to shoot his wife, haven't you? A Never.

Q He had a gun up in his room, didn't he? A Yes, he had a double barrel gun up there in the closet.

Mary Shepard, cross.

Q Did Mrs. Smith tell you that he threatened to shoot her? A Yes.

Q Mr. Smith frequently went out on Sunday with some man and woman in an automobile? A Yes, once or twice while I was there.

Q And Mrs. Smith would be left home; she didn't go with him? A No, I guess she wasn't invited.

Q You say Mrs. Smith had a dancing class there; isn't it a fact that she had that dancing class because Mr. Smith refused to give her proper allowance? A I don't know anything about that, sir.

Q Isn't it a fact that she used the money from that dancing class in the home? A I don't know anything about it.

Q Didn't you testify on January 29, 1916, before Mr. Matthews, a Master in Chancery, as follows, in answer to this question: "Now, then, when Mrs. Smith had this dancing class there do you know whether she used the money from the dancing class in the home?" Didn't you say in answer to that question, "She said she used it on her fine clothes"? A She told me that she bought her clothes with the money that she earned.

Q Didn't she tell you that she used some of the money in the home? A No, sir.

Q Didn't she tell you that she used some of the money for Audrey's clothes? A No, sir, she didn't tell me that.

Q She used it for clothes; is that right? A I suppose it is right.

Q Don't you know whether it is right or not? A No, I don't know anything about it.

Q You don't want to tell any lie about it? A No, I don't intend to tell any lie.

Q You know Albert Husk of Boonton? A Of course I know him.

Q Did he come to the Smith house in Old Boonton road frequently? A He come there every Saturday to get orders for groceries.

Q Did you ever talk with him? A I never talked with Mr. Husk.

Q Never had anything to say to him? A No, sir.

Q Never discussed with him the troubles of Mrs. Smith? A No, indeed.

Mary Shepard, cross.

Q Didn't you say on your examination before, and in answer to a question by the other side, which question was, "Is that because she dismissed you?"—now speaking of Annie Castner and the reason why you left the house—and didn't you say, "No, she didn't. She says (speaking now of Mrs. Smith), 'Mary, I was told by one of my scholars that you said Mr. Smith was a gentleman but you didn't know what I was.' I said, 'Mrs. Smith, if you have got to quarrel with me about your husband, I wouldn't stay with you if you gave me ten dollars a week'." A That is true.

Q Did you say that before? A I did. I left.

Q Why is it you can remember that statement and you cannot remember the other statement? A Because it was hurting me, you know; don't you see?

Q You can remember that? A I bet you; I want my character as well as other people.

Q But you cannot remember about these other things? A I don't remember what I don't hear.

Q You remember what you testified to before? A I remember what I testified to before; I remember some of it and some of it I cannot.

Q Did you ever hear Mr. Smith call Mrs. Smith a crazy fool? A Yes, I heard him say that lots of times.

Q Did you ever hear Mr. Smith use any language at the table? A Never.

Q When Mrs. Smith left the house she had arranged with you to come with her as soon as she got a place, hadn't she? A Yes, sir.

Q But you were prevailed upon by Mr. Smith to stay with him? A I had sense enough for myself.

Q I asked you, you were prevailed upon to stay with Mr. Smith; he requested you to stay with him? A No, she told me to stay with him.

Q Until she got a place? A Yes.

Q Didn't Mrs. Smith tell you that the reason she was leaving Mr. Smith was because she could not stand his conduct any longer? A No.

Q Didn't she tell you that she was leaving because he had abused her and cursed at her and that she couldn't stand it any longer? A No.

Q What reason did she give you then for leaving? A She said she wanted a happy home.

WILLIAM H. LYONS, sworn for petitioner in rebuttal.

Direct examination by Mr. Romine.

Q Do you know Mary Shepard, the last witness? A I do.

Q When did you first meet her? A In March, 1915.

Q Where did you meet her? A At the house in Old Boonton road, the home of Mr. and Mrs. Smith.

Q Did Mary Shepard tell you that Mr. Smith had said that he was going with other women? A She did.

Q And did she tell you that Mr. Smith said that Mrs. Smith would have to put up with it, or she could get to hell out? A No, she didn't say it that way; she said that Mrs. Smith told her that she heard Mr. Smith say that she would have to put up with whatever the hell he gave her, and she would have to stand for it.

Q Did Mary Shepard tell you that Mr. Smith had thrown a dish at Mrs. Smith and that it had cut her neck? A She did, and gave me the piece of dish to bring home with me.

Q Can you tell us anything else that Mary Shepard told you at that time? A I cannot tell you word for word, but I can give you the synopsis; the main idea was that she said that Mrs. Smith had previously complained to her, and of course I asked the question what she complained about; she said about the abuse; I asked her if she saw any of it, and she said she did, and she illustrated the pail of coal and said about the coal, and she wasn't hired to get up coal, and Mrs. Smith asked him to get up coal, and said "to hell with it, and let the black wench get it up herself."

Q Did she say to you that if she had a man like that she would kill him? A No, she said she would leave him.

Cross examination by Mr. Price.

Q This remark that you have spoken of that Mrs. Shepard made to you, something about "get to hell out," Mr. Smith told her? A No, she would have to take whatever the hell he gave her and stand for it.

Q Did Mrs. Shepard say that she heard Mr. Smith say that? A She did.

Elizabeth F. Canfield, direct.

Q How did you come to ask these questions of her? A I was sent there by Mr. Romine.

Q To investigate the case? A Yes.

Q Where did this take place? A In the house on the Old Boonton road, Boonton, New Jersey, Mr. and Mrs. Smith's.

Q (*By Mr. Romine.*) Was that before Mrs. Smith left? A It was in March.

IN CHANCERY OF NEW JERSEY.

Between

ELLA S. SMITH,

Petitioner,

and

ERNEST N. SMITH,

Defendant.

Transcript of testimony taken in the foregoing cause before Nicholas W. Bindseil, one of the Special Masters in Chancery of New Jersey, at his office, Prudential Building, Newark, New Jersey, on Friday, June 16th, 1916, at nine o'clock in the forenoon.

Appearances: Same as before.

ELIZABETH F. CANFIELD, sworn on behalf of the defendant.

Direct examination by Mr. Price.

Q Are you related to the petitioner in this case? A Sister.

Q Where do you live, Mrs. Canfield? A At the present time, 704 Sewell avenue, Asbury Park.

Q Is that your permanent home? A No, sir; 45 State street, Newark, N. J., is my home.

Q Do you know the defendant, Ernest N. Smith? A I do.

Q Were you present at the marriage of the petitioner and defendant? A I was.

Q Since the marriage of the petitioner and defendant, have you visited at their home and the various places where they have lived? A Yes, sir.

Q Have they visited at your home? A Yes.

Q Have these visits been frequent or otherwise? A Frequent.

Q During any portion of the time since the marriage of Mr. and Mrs. Smith have they spent any lengthy time at your home? A Yes, at one time between three and four months.

Q Since the marriage of the petitioner and the defendant, has Mrs. Smith complained to you concerning her husband's infidelity? A Many times.

Q How soon after the marriage of Mr. and Mrs. Smith were these complaints first made to you? A The first time I remember her making the complaint, they were coming to my house to dinner on Sunday afternoon; it was shortly after they were married, and she complained about his winking at some servant girl coming down on the car.

Q Will you tell us what Mrs. Smith said in making this complaint to you and in so doing, if possible, state what complaints were made before and what after the birth of the child Audrey, and specify also if possible where they were living at the time the various complaints were made? A That I am almost sure I cannot do, because it has been a continuous performance for the last twelve years.

Q Tell them as near as you can? A I can tell some of the instances but I cannot tell you perhaps the places that they lived.

Q Do the best you can. A After this first complaint—when they moved to Forest Hill that was their home, she complained of a neighbor who lived next door. This woman was old enough to be Mr. Smith's mother. She complained of her calling him to the fence to get him over into her yard, and she made many complaints in regard to this woman; still this woman was a very good neighbor to her when she was sick, helped her out, and finally she accepted money from this woman, so she told me, and hired a detective to spy on Mr. Smith. Then there was a young woman who was a friend of hers, who by her own invitation used to come to visit them. She complained finally that this girl was making signs to her husband across the table. When I asked what kind of signs, she said that sometimes they would hold up one finger, sometimes two, sometimes three, sometimes the whole hand. It was the position of the hand that meant the sign. She couldn't tell me what they meant,

but she knew they were making signs at each other. Then there came next two girls who were sisters. She said then that Mr. Smith was leaving his office early in the afternoon to meet these girls on the street, either one or both. You see I have heard so many of these complaints, it is pretty hard to remember all of them. Then she began to complain that there were anonymous letters put under her door. This was while she lived at Forest Hill. She complained of these letters many, many times to me and told me that they told her of her husband's misdoings. I asked finally to let me see these letters, I refused to believe it unless she let me see them; she said when the proper time came she would produce them, but not before; consequently I never have seen them. Then after that I made a little note—(interrupted).

Q Was this memorandum made by yourself? A Yes, sir; I will write for you and you can compare the writing if you wish.

Mr. Romine. I would like to have an opportunity to cross examine the witness on this paper.

Q Are you going to refer to this memorandum now for the purpose of testifying? A Yes.

Mr. Romine. When did you make the memorandum?

The Witness. Last night.

Mr. Romine. I object to it.

Q If possible, testify without reference to the memorandum if you can. Can you state any further complaints made by Mrs. Smith reflecting particularly on the infidelity of Mr. Smith? A Next on the list came a little girl who was a friend of hers, a music teacher to my daughter. She began to make complaints, she said that Mr. Smith was in love with this girl. She continued to make these complaints to me until after the child was born. Then one day we were going to New York with my brother in his machine to take dinner. Mr. Smith was to come to my house and have dinner with my people, while we were over in New York. This girl had been to my house that afternoon to give a music lesson. She watched her come down the street after she had finished and turned to me and she said, "She is going to start for New York to meet Ernest," and she was very much excited about this thing, and we went

on the automobile ride to New York, and during the time we were going over, there was reference continuously to this girl and of Mr. Smith, that this girl probably was coming to New York to take dinner with Mr. Smith, and I said, "What would you say if you found that Mr. Smith took dinner with our family?" But she would have it that he was going to New York to meet her, or she was going to meet him, rather. After we got home that night, I asked what time Mr. Smith had gotten there. He had gotten there in time for his dinner with the family.

Mr. Romine. I object to that and move that that be stricken out.

Mr. Price. I consent to that.

Q (Continuing.) Then I said to her, "You see he was here," and of course naturally that led to a quarrel. She quarrelled about it and I quarrelled about it with her, and I finally told her that I had heard so much about this girl and this trouble that if she didn't send for this girl and tell her what she accused her of, I would—

Q Then what happened after that? A You see the girl was coming there by her invitation all the time, she was accusing her and the next morning the girl came to my house with a letter from Mrs. Smith and asked what it meant.

Q What then followed, what did you do? A I had to tell the girl what she meant, and she said that she would have her arrested.

Mr. Romine. I object

Q What did you do after this girl came down to the house? A We went to the home of Mrs. Smith that evening to accuse her of these things in front of Mr. Smith and Mrs. Smith.

Q Was this girl that Mrs. Smith accused with you at that time? A Yes, sir; she went with us.

Q What did you then say to the girl in the presence of Mrs. Smith? A The girl did the talking.

Q State what was said? A She said that she heard what she had accused her of, and she wanted to know how she could do such a thing. Mrs. Smith said that she never for one moment thought it was she, but it was someone who answered her description from her detectives.

Elizabeth F. Canfield, direct.

Q Do you recall other complaints of infidelity on the part of Mr. Smith, made by Mrs. Smith? A She came to my house one morning and said he had a wife and child in Jersey City. She didn't tell me how she knew it or anything about it.

Q Do you recall any further complaints made by Mrs. Smith? A As I say there were so many. Then the baby came just as this music teacher—(interrupted).

Q Was there any allegation at that time? A There had been many of course. She had servant girls at that time, she had to have help and the servant girls shared with the others, in those terrible accusations.

Mr. Romine. I object and move that that be struck out.

Q Did Mrs. Smith ever state to you that a letter had been shoved under the door in her room, an anonymous letter? A Yes, in the Broad street house, she complained of a school teacher who lived on the top floor writing things and shoving them under her door. One day, as proof, she showed me a little piece of paper, and on that piece of paper was the word, "Pinched."

Q What did she say on the envelope, what did she say that indicated? A She said she was getting a letter right along shoved under the door and she should need this as proof. I once took her to task for sitting herself in the room and turning on the gas with the child; I told her I thought she must be crazy, but she told me that she did it to frighten Mr. Smith; she knew perfectly well what she was doing, and she did.

Q During the time Mrs. Smith made these accusations against neighbors and friends as you have testified, did she maintain friendly relations with them? A Yes, sir, as far as I know.

Q Did she invite them to her home? A She did right along. These accusations were being made and yet she invited these people to her home.

Q Where did Mr. Smith work at the time these accusations were made? A New York.

Q Did he commute? A He did.

Q While Mrs. Smith was staying at your home, did Mr. Smith come there evenings from his work? A He was always there in time for dinner, our dinner was never later than half-

past six, but many times she would watch the clock and as soon as it came near time for him to get home she would walk the floor and every five minutes she would look out on Broad street.

Q When Mr. Smith did arrive home did she accuse him of associating with women? A That would be the cause of many quarrels, because she accused him of not coming straight home from the office, of having sometimes stopped somewhere to see someone.

Q Mrs. Smith has testified that during their married life, following complaints made by Mrs. Smith, she became hysterical and nervous prior to her marriage? A She has always been a very nervous and hysterical person from a girl.

Q You recall an accusation made by Mrs. Smith involving J. Herbert Dawson, of Boonton? A Yes, she accused Mr. Dawson and Mr. Smith of sodomy while on a visit here.

Q Did Mrs. Smith ever accuse Mr. Smith of signalling to the neighbors? A Frequently.

Q How did she say that he would signal? From the window, he put the curtain up or down or moved the lace curtain sideways. Mrs. Smith said she fixed the curtains so she would know whether or not he was signaling.

Q You have spoken of accusations made by Mrs. Smith involving servant girls in their employ? A Many times.

Q Did this apply to servant girls in the various places where they lived? A Yes, sir; different places.

Q Have you visited Mrs. Smith since you have been living at Boonton? A Yes.

Q And has she visited you since she has been living in Boonton? A Yes, sir.

Q Have the complaints made by Mrs. Smith against her husband continued since she moved to Boonton? A Yes, sir.

Q Are they of the same general nature as those prior to her moving there or otherwise? A Just the same, except that she would accuse him of bringing the women into her house.

Q Did you ever ask Mrs. Smith for proof of her allegations? A Yes.

Q What did she reply? A When the proper time came she would produce it.

Q Were many of these complaints or a few made before the birth of the child, Audrey? A Those were all made up to the time of this music teacher. In fact, the music teacher

came in at that time but we didn't take the music there until after the child was born; but all those complaints prior to that were made before the child was born.

Q Have you had occasion to observe what care Mr. Smith took of the child, Audrey? A He took very good care of the child, Audrey. When Mrs. Smith was sick, he used to give the little one a bath and take care of her. If they were sick he would wait on them; he was very kind as far as I know.

Cross examination by Mr. Romine.

Q How long had you known Mr. Smith before your sister married him? A I cannot tell you that; it depends on how long she knew him before she married him, I knew him about the same time.

Q Several years before? A That I cannot tell you, I really don't know how many years she knew him before she married him; I probably knew him as soon as she did, that is after he came to the house.

Q When was Mrs. Smith married to Mr. Smith? A I think it was fourteen years ago this May.

Q How many years before that did you know him? A I cannot tell you.

Q Was it sometime before they were married? A It seems to me that it was.

Q Did you have occasion to observe his conduct toward her and his attitude? A Nothing special.

Q You never noticed specially. A No, never specially.

Q You never noticed how he would act when he would be out with Mrs. Smith? A In what way?

Q Did you ever see him have any spells of any kind, display any anger? A Mr. Smith was a man that was always indifferent, that is, he never was very demonstrative; he never was very gallant.

Q He was naturally indifferent? A Yes; I never noticed that he was any more so after the marriage than before.

Q Would you say that after he was married, he became more indifferent? A I cannot say that he did.

Q He may have? A Excepting after these accusations were made, of course he would become angry and they would quarrel.

Elizabeth F. Canfield, cross.

Q Isn't it a fact that after they were married the relations between the two became wider, the relations were not as friendly? A Yes, in later years.

Q Mr. Smith then became more indifferent, so to speak? A Yes, in later years.

Q Were you ever out on occasions with Mr. Smith and Mrs. Smith before they were married and observed his conduct, his attitude, his demeanor, his behavior? Do you know whether he was easily excited? A I would not say easily excited, no.

Q Was he a man that was easily angered or provoked? A I don't think so.

Q Did he allow things to get the better of him so he displayed any ill-temper? A I cannot remember that he did.

Q You wouldn't say about that? A I cannot remember.

Q That is one of the things you cannot remember? A That is.

Q But you wouldn't say that he did not do so? A I would not say that he did or did not.

Q After he was married did he display that temperament? A Yes, after.

Q These accusations that you say Mrs. Smith brought to your attention, became more frequent after the child was born, weren't they? A Yes, sir, because there were more to accuse; there were servants then.

Q That became more serious after that? A Very much so.

Q Do you recall an occasion when Mrs. Smith told you of having found her husband in a compromising position with a servant girl while they lived at Summer avenue? A Yes, sir; she told me that.

Q So far as you know that occurrence may have been so? A That I cannot say, I have no proof one way or the other.

Q And when they lived in Perth Amboy didn't you receive a postal card from one of the girls that worked there? A No, sir.

Q While they lived in Bayonne? A No, sir.

Q While they lived at any place did you receive a postal card? A No, sir.

Q Written in Polish? A No postal card.

Q Was it a letter? A Yes, a letter came for me. I will not say that it came through the mail for it did not, and I don't know whether Mrs. Smith brought me that and handed it to

me, or whether she brought it to me and told me to keep it, that I cannot say, but I received such a letter.

Q What did you make out of that letter? A I couldn't make anything out, because it was written in a foreign language.

Q Didn't you have the letter interpreted? Or find out that a portion of the letter said that Mr. Smith was a very bad man? A No, sir, I did not.

Q And that she couldn't continue to work there any longer? A No, sir, I did not for I never had it interpreted.

Q Didn't you also have the letter interpreted or infer from the letter, that she said that Mr. Smith treated Mrs. Smith like a dog? A No, sir.

Q Have you got the letter now? A No, sir; not here.

Q Where is the letter? A In Asbury Park. It was written in a foreign language, I could not read it.

Q Will you mail the letter to Mr. Bindseil? A Yes.

Q You acquainted Mrs. Smith with the fact that you received this letter, didn't you? A I am not going to say because I cannot tell you whether Mrs. Smith brought me that letter.

Q You made known to Mrs. Smith the fact that you had such a letter, didn't you? A I think Mrs. Smith made known the fact to me—I cannot tell you because if Mrs. Smith brought me the letter she would know it.

Q You know whether you discussed this fact with her? A No, I did not discuss this fact with her.

Q You discussed other things about Mr. Smith? A Yes.

Q Why did you hesitate about saying whether you discussed this letter with her? A Because how could I discuss this letter if I didn't know what it contained and what was in it?

Q It was of such importance to you— A No.

Q Didn't you take measures to find out what that letter was about? A No.

Q Weren't you inquisitive about it? A I was not.

Q And all this time you never asked anybody? A I never asked one soul to interpret that letter.

Q Why did you keep it? A Because Mrs. Smith requested me to keep it until she needed it.

Q Then you did discuss it with her? A That is all.

Q Didn't you both try to make out what was in the letter? A No, sir, absolutely not.

Elizabeth F. Canfield, cross.

Q Aside from these friends that you speak of and these neighbors— A She finally picked people from the street.

Q Aside from these friends and neighbors that Mrs. Smith complained to you about, you did receive a letter from one of the servant girls? A Yes, sir, purporting to be from one of the servant girls.

Q And were told by Mrs. Smith that she actually caught her husband committing an act of adultery with a servant while on Summer avenue? A I received a letter you say?

Q She actually told you that? A Yes.

Q So that there were two positive occasions, aside from these other accusations? A Yes.

Q And so far as you know, your sister may have had just cause for complaint? A I am not saying a word about that.

Q So far as you know she may have had? A Yes.

Q You took no steps to inquire into those things or to corroborate them in any respect, did you? A How could I?

Q You didn't, did you? A No, because I couldn't.

Q You didn't believe these things about Mr. Smith? A No.

Q You have always stood up for him? A I have.

Q And defended him in these matters? A What do you mean, defended him?

Q You have defended him in these matters when accusations have been made against him, you have stood up for him and disbelieved them? A I said I would disbelieve them. If I had proof—if she would show me some proof, I would believe them.

Q You were not willing to go with her to ascertain and get proof? A She never asked me to go to these servant girls and find out.

Q Didn't Mrs. Smith ask you to go to the house and secret yourself and see what he did? A Yes, she did, she said that I could do that.

Q You wouldn't do that? A I couldn't.

Q So you didn't want to believe these things against Mr. Smith? A I wouldn't want to believe them about anyone.

Q Irrespective of the fact whether they are true or not, if they were true, you would have to believe them? A That would make no difference; if they were true, I would acknowledge it.

Q You have always had great respect and confidence in Mr. Smith? A Yes, sir, I have.

Q And it is very hard for you to believe these things? A Certainly, unless I have proof.

Elizabeth F. Canfield, cross.

Q And for that reason you have taken the attitude of pushing these stories aside that your sister has told you? A The inquiries that I had made—

Q You have disbelieved these stories that your sister has told you because of your great confidence in Mr. Smith? A Not particularly my great confidence in Mr. Smith, but my lack of confidence in Mrs. Smith.

Q And your lack of confidence in Mrs. Smith was due to the fact that you had great confidence in Mr. Smith? A Not necessarily.

Q Well, because you believed him to be a man incapable of those things? A I don't think any man is incapable of those things.

Q But you don't believe them about him? A I do not.

Q And therefore you didn't believe the stories that your sister told you? A Yes, sir.

Q Irrespective of the fact that she actually caught her husband on one occasion committing adultery? A How do I know that?

Q Irrespective of that, you didn't believe that story? A Why should I believe it?

Q You disbelieved it? A Of course I do not until I have proof.

Q Therefore you have confidence in your sister and believe her when she says she actually saw those things? A No, sir, I do not.

Q You know that your sister has had a very miserable and disagreeable life with Mr. Smith, don't you? A I know that they have both had a very miserable life.

Q Did you know particularly that it grieved your sister? A I know that it has been dreadful for both of them.

Q (Last question repeated.) A So she said.

Q Hasn't she grieved so that it was observant to you? A She has made her complaints to me.

Q And she has cried to you about it? A Yes, sir, she has cried many times.

Q And she has written you letters about it? A Yes.

Q Written you letters at the times of the occurrence of these things in which she has fully stated what has happened, has she not? A Yes, she has written letters stating those things.

Elizabeth F. Canfield, cross.

Q You say that Mrs. Smith was always from childhood of a nervous disposition? A Very.

Q And these things that she told that happened in her home had a great tendency to make her condition worse, didn't they? A Probably, if they happened.

Q And her condition grew worse, did it not? A I wouldn't say that it grew worse.

Q After the child was born— A She made more accusations.

Q And as those accusations increased did not her condition, her hysterical nervous condition become worse than it had been before? A No, I cannot say that it would, because before she was married, she had nervous prostration and she was very hysterical, for several years.

Q So that things of this kind had a tendency to make her worse, is that so?

Mr. Price. The witness has already answered that by saying they did not.

A I said I cannot see any difference.

Q Isn't it a fact that Mrs. Smith's condition became so bad on account of her husband's treatment that she was compelled to go to German Valley? A Not that I know of.

Q Did she go to German Valley? A She went to German Valley.

Q Did she tell you that her condition was such that she was compelled to go away? A I cannot remember that she did, she said that she needed to go away and take the child for a little rest on the train.

Q Didn't she tell you that her condition of health was such that she couldn't remain here and had to go away? A I cannot remember that she did.

Q Did Mrs. Smith tell you what her husband did on the day she left for German Valley, how he threw her on the train, and his language to her at the station? A I think she said he didn't kiss her good-bye and was very indifferent.

Q She felt grieved about that? A Yes.

Q And she also told you his attitude toward the little girl, how he threw her on the train, did she not? A I don't remember about that. I remember particularly though that she said he didn't kiss her good-bye.

Elizabeth F. Canfield, cross.

Q Why did Mrs. Smith go to German Valley, if you know? A Why did she go to Asbury Park—because she said she needed a change.

Q Was the reason she went to German Valley because she needed a change? A So she said.

Q And she needed a change because of Mr. Smith's attitude toward her, did she not? A No, she did not say anything about that; she said it was on account of her health and the child.

Q Hadn't she told you repeatedly that his conduct and his attitude toward her was injuring her health? A I cannot remember that she said that.

Q Didn't Mrs. Smith write you a letter or make known to you the fact that while she was at German Valley she decided to remain away from Mr. Smith because of his accusations and his conduct toward her? A That I cannot remember. I know she was going to remain in German Valley on account of the child's health not being so well.

Q Didn't she make known to you the fact that her condition of health was much better while she remained away from her husband in German Valley? A She was always feeling better when she was having a good time.

Q But she was feeling better when she was away from him? A I cannot tell you about that, she didn't put it in so many words; she told me she was better.

Q You inferred from what she said to you that her condition of health was better while she was in German Valley? A Yes.

Q And while there she told you that Mr. Smith did not visit her there? A Yes.

Q And her condition of health was better while she remained away from Mr. Smith? A I presume that is so.

Q Mr. Smith made known to you the fact, or you learned of it, that Mrs. Smith was not going to return to Mr. Smith? A No, sir.

Q Didn't you write her a letter or advise her— A To come home, but not because she was going to remain away from Mr. Smith, I knew nothing about that.

Q Mrs. Smith had decided not to return? A Not to my knowledge.

Q Then why did you make known to her the fact that— A Because Mr. Smith came to my house and said he was tired of being alone and thought it was time she came home and

attended to her household. I wrote her to that effect as far as I can remember.

Q Do you know whether Mr. Smith ever made known that fact to her that he wanted her to return? A No, I don't know that he did; I don't know about it.

Q You don't know whether he came to you and asked you to intercede? A He didn't ask me.

Q Had he told you at the time that he came to see you that he had prevailed upon Mrs. Smith and she refused to come home? A No, he did not.

Q He just came to talk to you and said— A He simply came and said that he thought it was time he had someone to look after the house. I wrote to her to that effect, she had better come home.

Q Did you know at the time that Mrs. Smith was in German Valley that Mr. Smith had women at the house? A No, I do not.

Q You never knew that when Mrs. Smith returned unexpected to the home that she found in the bed a comb of a woman? A No, sir; I did not.

Q Didn't Mrs. Smith finally say that she would come back to Mr. Smith and try to resume relations, providing they were agreeable and satisfactory and that he would not abuse her any more? A No, sir, there was no such stipulation made.

Q What was the stipulation? A Nothing at all, she came home, she came to my house and I said to her my advice to you is to go home, and my husband or someone I cannot tell you who now, went and started the fire for her, and she went home with the child.

Q Why did you advise her to go home? A Simply because Mr. Smith had made a complaint that he was tired of being alone.

Q You knew that her life was unpleasant with him when they lived together, didn't you? A Yes.

Q And you knew that she felt a great deal better away from him, didn't you? A I don't know only what she told me.

Q But she told you that her condition of health was better? A She did tell me that she was better.

Q Notwithstanding that fact you prevailed upon your sister to return to him? A I did.

James M. Schwartz, direct.

Q Did you have any talk with Mr. Smith regarding the condition of health of your sister and that he should desist from these things that she complained of? A No, sir.

Q You never discussed these things with Mr. Smith? A No, sir; I never discussed it with Mr. Smith.

Q Notwithstanding the fact that you knew their relations were unpleasant you wanted them to live together? A Yes.

Q Notwithstanding the fact that you knew that when she was away from him her condition of health was better, yet you never discussed the thing with him? A I did not.

Q How many times did you visit their home while in Boonton? A Not very often in Boonton.

Q Once or twice a year? A Yes.

Q How are you able to tell us about Mr. Smith's treatment of the child, Audrey? A Well, they haven't lived in Boonton twelve years or fourteen years.

Q They have lived in Boonton some three years? A That isn't their whole family life.

Q Take during the three years you are able to tell us with any definiteness— A No.

Q You cannot tell us anything about his treatment? A Nothing about Boonton.

Q Haven't you repeatedly said you were going to do all you could to prevent your sister and Mr. Smith from being separated by a divorce? A No, I never said such a thing.

Q Are you opposed to Mrs. Smith having a separation under the conditions that have been stated? A Not at all.

Mr. Price. I object to that question.

JAMES M. SCHWARTZ, sworn on behalf of defendant.

Direct examination by Mr. Price.

Q Where do you live? A Boonton, New Jersey.

Q How long have you lived there? A About six years.

Q Are you acquainted with the petitioner, Ella S. Smith? A Yes.

Q And the defendant, Ernest N. Smith? A Yes.

Q Have you visited their home in Boonton? A I have been to their home, yes, sir.

Q Mrs. Smith has testified on her direct examination that you frequently called at their home and took Mr. Smith out

for automobile rides and that she was not asked to go. Can you tell me whether that is so or not? A That is not so.

Q Have you requested her to go? A I have to my knowledge on one occasion at least.

Q And did she refuse or not? A She refused on one occasion.

Q Have you taken Mr. Smith out frequently in the car or otherwise and if so, how many times? A Just for riding purposes you mean?

Q First for pleasure purposes? A Maybe four or five times.

Q And have you taken him on other occasions? A Yes.

Q For what purpose was that? A We had poor train service at Boonton, and whenever I had to stay in town at night, I would take my car, and in coming down I would ask Mr. Smith if he wanted to come along and he surely did.

Q Mrs. Smith has testified that soon after her return from Asbury Park you came to her home one evening and stood by the window, and that as you and Mrs. Smith were standing there by the window, Mr. Smith ran upstairs and hollered, "Cut it out," at the top of his lungs. Did any such thing as that happen? A No, sir.

Cross examination by Mr. Romine.

Q How long have you been acquainted with Mr. Smith? A I should say a little while after he came to Boonton.

Q How long is that? A Maybe three years, I don't know how long it is; since he has been in Boonton.

Q Did you know him while he lived in Newark? A No, sir.

Q Sure about that? A Positively.

Q How did you come to get acquainted with him? A I met him on the train.

Q Was he at South Broad street, Newark? A I never knew the man in Newark at all.

Q You and Mr. Smith became very good friends did you? A I and Mr. Smith?

Q Yes. A Yes, sir.

Q Went around a good deal? A I went to New York with him about every day—working day.

Q When you did not go to New York to business, you went around with him on other occasions, or he went with you? A I went to New York every week day.

James M. Schwartz, cross.

Q On Sundays, was that a day of pleasure? A It surely was.

Q And then you and Mr. Smith went out together? A A few times.

Q Quite a few times? A No, sir.

Q You called at the Smith home with your automobile and you say you extended an invitation to Mrs. Smith to go on one occasion? A I did on one occasion.

Q How did you come to do that? A I don't know how I did that.

Q Was that a mistake, or accident or what? A Not that I know of. I asked if she wanted to go along.

Q Where were you going that Sunday? A I cannot say.

Q What Sunday was it? A I cannot say.

Q What time of the day did you go there? A I don't know.

Q Who was with you? A I don't remember anything except by her answer and I remember the incident of having asked her.

Q You don't remember the occasion at all? A I remember the occasion of her answer.

Q You cannot tell us anything about the day or who was with you or whether Mr. Smith went with you or not? The day that Mrs. Smith refused to go, or Mrs. Smith eventually refused to go with you? A I cannot say that surely, I think he did though.

Q Notwithstanding the fact that Mrs. Smith refused to go, still Mr. Smith went? A I said I don't know surely if he did, but I think he did.

Q How is it if you don't remember all the circumstances connected with it that you can remember the fact that you asked Mrs. Smith to go and she refused? A By her peculiar answer.

Q What was her peculiar answer? A She could not go that day because she had a great ordeal to go through the next day.

Q And that is all you remember about it? A That is all I remember about that particular occasion.

Q During the time they lived in Boonton can you tell us on an average how many times a month you took Mr. Smith out on Sunday? A The whole time we were there I don't believe we went on Sunday more than four or five times.

Albert Husk, direct.

Q You knew Mrs. Smith objected to his going? A Knew it? I didn't know excepting one occasion she called up my wife and asked where we were going and what we were going to do and all those things.

Q What did you say? A She didn't ask me, she asked my wife.

Q On some occasions when you came there to the house you would have other women in the car wouldn't you? A Every Sunday we went away my wife was surely in the car, and on other occasions we went away there was another woman in the car with her.

Q Mr. Smith along? A Yes.

Q And you didn't get back until late that night? A What night?

Q The night that Mr. Smith went and this other woman was there. A I don't know what time we got back, we got back any time from six, eight to nine o'clock.

Q As a general rule you didn't extend any invitation to Mrs. Smith to go with you? A No, sir.

ALBERT HUSK, sworn on behalf of defendant.

Direct examination by Mr. Price.

Q Where do you live? A Boonton, New Jersey.

Q What street? A Lathrop avenue.

Q In what business are you engaged? A Grocery.

Q Where is your place located? A Washington street.

Q Are you acquainted with the petitioner, Ella F. Smith, and the defendant, Ernest N. Smith? A Yes, sir.

Q How long have you known them? A I don't know how many years they have lived in Boonton; ever since they have been in the town.

Q Have you supplied groceries for their home? A I have.

Q Has Mrs. Smith ever made complaint to you concerning her husband's infidelity? A Yes.

Q Will you state as nearly as possible what these complaints were? A I don't know that I can, all of them.

Q As many as you can? A She said he used to steal groceries out of the cellar, take them out and give them away.

Q Did she say to whom he gave them? A Different women and would hand them out through the window.

Albert Husk, cross.

Q Do you recall any other complaint? A Yes, she said he was continually running after other women; she picked hair off his coat, and he had his collar soiled.

Q She said his collar was soiled? A Yes.

Q What did she say that indicated? A That he was with other women.

Q Did she ever say that she found handkerchiefs on his person? A Yes, sir.

Q What did she say concerning those? A That she had found these handkerchiefs in his pocket and that he had been intimate with other women.

Q What did she say about the handkerchiefs? A Were soiled.

Q Did you ever remonstrate with her concerning those complaints? A Only what she told me and I would say if such was the case it wasn't right, if he was doing those things.

Q Did you ever discuss the troubles of Mr. and Mrs. Smith with the colored maid, Mary Shepard? A Never in my life.

Q You never had any conversation with her concerning it? A Never.

Cross examination by Mr. Romine.

Q Did you ever talk with Mary Shepard? A No, sir.

Q Did you ever talk with her in your life? A If I went to the house with the orders, she would call Mrs. Smith.

Q Did she ever say anything to you about any subject at all or talk to you? A Never.

Q Do you remember any occasion when there was a talk at the house about a quarrel, and Mary Shepard spoke up and said that Mrs. Smith had never done that much to him, pointing to her finger? A No, sir.

Q You don't remember that? A No, sir.

Q So far as you know, the complaints that Mrs. Smith made about her husband may have been true? A Only what she said.

Q So far as you know, they may have been true? A From what she said; that was all I have to go by.

Q So far as you know, they may have been true? A From what she says.

Q So far as you know personally, they may have been true? A Only from what she said; I only have her word for it.

Henry A. Dunn, direct.

Q So far as you know personally? A I don't know anything about it.

Q So far as you know personally, it may have been true? A Yes.

HENRY A. DUNN, sworn on behalf of defendant.

Direct examination by Mr. Price.

Q Where do you live, Mr. Dunn? A Keyport, New Jersey.

Q Is that your permanent home? A Yes, sir.

Q Are you related to the petitioner, Ella S. Smith? A I am.

Q What is the relation? A Uncle.

Q Are you acquainted with the defendant, Ernest N. Smith? A I am.

Q How long have you been acquainted with him? A A year or two prior to his marriage; I have known him about ten or fifteen years.

Q Since the marriage of the petitioner and defendant, have you visited at their home in the various places where they have lived? A I have.

Q Have those visits been frequent or otherwise? A I was in their home one time six weeks, and for three or four days, and when they lived in Newark I was there frequently. When they went to Boonton, my visits were not so frequent.

Q During the time that you have known Mr. and Mrs. Smith since they were married, has Mrs. Smith made complaints to you concerning her husband's unfaithfulness or infidelity? A Yes, sir.

Q What has been the nature of those complaints? A His fondness for other women was the principal complaint.

Q Did she state specifically in what way he manifested that fondness? A I don't know; she has accused him frequently of being out with other women and taking them to dinners and suppers, and leaving his business in New York.

Q At any time when you were visiting Mr. and Mrs. Smith did Mrs. Smith refer to a photograph on the table and make remarks concerning it? A Yes, sir.

Q What was said on that occasion by Mrs. Smith?

Witness. Will you allow me to make an explanation.

Mr. Price. Certainly.

Henry A. Dunn, direct.

A We were looking at the photographs on the table—this was when they lived in George street, I think it was—and she picked up the photograph and she said to Ernest, "Do you know her?" He said, "I know who she is, but I wouldn't know her if I met her." She turned to me and said, "He don't know her; that is one of his girls that he meets on the train and takes to New York."

Q Was it a photograph of a woman? A Yes, and I called her down sharply for making the accusation against him, because I have known this woman ever since she was big enough to get around; I knew her character and disposition.

Q What did Mrs. Smith reply to your remonstrance? A She afterwards wrote a letter retracting it and said it was another woman by the same name.

Q Did Mrs. Smith ever accuse a woman who threatened to bring suit on account of an incident? A I have heard of the incident.

Q You don't know personally about it? A No.

Q You know the fact that she was about to bring suit? A Yes.

Q Do you know what the complaint was at that time?

Mr. Romine. Not unless Mrs. Smith told you.

Mr. Price. Question withdrawn.

Q Did Mrs. Smith complain to you about the woman in question? A I have heard her complain.

Q About this woman in question we are just speaking about? A Yes.

Q What was the complaint?

Mr. Romine. Did you hear someone else say it or did she tell you?

Witness. I talked to Mrs. Smith personally.

Q What was the nature of that complaint? A His familiarity with the woman.

Q Did you say that you knew of your own knowledge that this woman threatened to bring suit? A I never heard the woman say that.

Mr. Romine. I move that that be stricken out.

Henry A. Dunn, cross.

Q Did Mrs. Smith withdraw her statement as to this woman, withdraw or retract it? A I understood she did; I didn't hear her, because I wasn't present at the time she did retract.

Mr. Romine. I move to strike that out.

Q Did she state to you that she did or not? A I heard her say afterwards that she was the woman all right. I heard Mrs. Smith say that.

Cross examination by Mr. Romine.

Q Didn't Mrs. Smith say that the reason she didn't press this matter against the woman was because she didn't want to have any trouble, but that she was the woman all right? A I don't recall just the words which Mrs. Smith used.

Q But it was words to that effect? A Yes, words to that effect; she said she was mistaken in the woman.

Q And afterwards she explained the reasons why she said that, and then said that she was the woman all right? A The same case as the woman I had reference to on the photograph.

Q You say you visited the home of the Smiths quite frequently while they lived in the Newark section of the state, that is, in this section? A Yes.

Q And on those occasions Mr. Smith was not always pleasant, was he? A Mr. Smith was a splendid man to visit, splendid man, and I have seen him riled, and justly so.

Q And on those occasions he said things and did things that were not very pleasant? A I have heard him swear, and he had cause to swear, too.

Q And he had used that language against his wife, has he not? A Will you let me—

Q Answer the question. A "Language" covers a great deal of language.

Q The language that you heard him use, that was used towards his wife on some of these occasions you say you heard him curse and swear? A Yes.

Q That cursing and swearing on some of the occasions was directed towards his wife, was it not? A Undoubtedly.

Q You know that they were very unhappy, that is, that they didn't live harmoniously together, didn't you? A They did not.

Q You say that Mrs. Smith wrote you a letter after you had this conversation in her home about a photograph; have you that letter? A I think not.

Q It wasn't of sufficient importance to keep it? A It satisfied me, that is all.

Q Later on Mrs. Smith did tell you that as a matter of fact she was the woman? A No, sir.

Q You heard she said it, you have testified here. A That is another case altogether, but this case I had reference to the photograph, she didn't say it was the woman in her letter.

Q But later on, after she had accused some woman, and then there had been some remark on her part that she was not the party, she later on said that as a matter of fact she was the party? A No, sir.

Q What did you mean by testifying then— A There are two separate cases; the one that threatened prosecution is one case, and the case of the photograph is another.

Q I am talking now about the one who threatened to bring suit; isn't it a fact that Mrs. Smith later on said that she was the woman? A Yes, that part is correct, but the photograph is not.

Q You never heard what Mrs. Smith said about the woman in the photograph?

Mr. Price. He has already testified that he did.

Q You never heard her say after she wrote this letter, whether she was actually the woman or not? A No.

Q You never heard her say that? A No, sir.

Q On these occasions when you visited the home, Mrs. Smith was very pleasant and agreeable, wasn't she? A I was an honored guest in their house; treated nicely by both of them.

Q And Mrs. Smith always treated you with respect? A She always did.

Q And tried to make it pleasant? A She did.

Q Did you ever hear of an occasion when your wife was present at the Smith home, when Mr. Smith's condition was such at the table that it embarrassed her, and that Mrs. Dunn cried at the table because of the language and the conduct of Mr. Smith; did you ever hear of that occasion? A I did.

Q Mr. Smith was the kind of a man who would flare up over little insignificant things, wouldn't he? A No, sir.

Q He was a man easily excited, wasn't he? A I should say not.

Q He did become excited over little trivial things, didn't he? A I never considered them trivial things.

Q He very frequently became angry and swore and cursed? A I have been there when I have told them both that I enjoyed myself, that I had a real pleasant visit, and no friction whatever.

Q And there were other occasions when Mr. Smith would fly up and curse and swear? A Yes.

Re-direct examination by Mr. Price.

Q You testified that Mr. Smith would frequently swear; when he did was it provoked or unprovoked? A Provoked.

Q By whom? A By his wife.

Q What did she say that provoked him? A Sometimes she would say things, and sometimes more by her actions than anything else. I can relate one little instance that comes to my mind: She had an early dinner at night and she said that Mr. Smith would be late; instead of that, before we got up from the table, in he came, and she paused and looked at him, and she said, "You are home rather early"; he said, "No, it is my regular time." And she made some remark, and he said, "You are a damn fool; are you crazy or what is the matter with you?"

Q Were these accusations made by Mrs. Smith deflecting on his infidelity? A On his appearance and infidelity, that he had been out—not so much as that, but out to dinner and lunches.

Q When she made these accusations, then he swore? A Yes.

Re-cross examination by Mr. Romine.

Q This night when you were there when she talked about his coming home early, he swore before she said anything about infidelity? A He would swear at her at that time; then when he went out, and got mad and left the table, she would say, "Now, Uncle Henry, you see I didn't say a word." I said, "Ella, you are responsible for the whole thing; you brought that on yourself."

Q As a matter of fact, don't you know, and didn't Mrs. Smith tell you then, that Mr. Smith had told her that he was going to work late that night, and that he wouldn't be home until late? A No.

Q So that you don't know then whether or not there was an understanding between Mr. and Mrs. Smith that he was coming home late that night? A No.

Henry A. Dunn, re-direct—re-cross.

Q Mrs. Smith appeared to be surprised to have him walk in at that early hour, didn't she? A I wouldn't call it "surprised"; I would call it "annoyed."

Q She didn't expect him, did she? A She said she didn't.

Q And she really asked him why it was that he was home so early, and the discussion was about his coming home early, and then he swore at her? A There was no discussion before he swore.

Re-direct examination by Mr. Price.

Q On this occasion to which you refer, did Mrs. Smith make any complaint against Mr. Smith as to his association with women, either by word or by action? A By action she did.

Q How did she do that? A By posing and looking at him and scanning his clothes and necktie and one thing and another like that.

Re-cross examination by Mr. Romine.

Q That is what you characterize as indications of infidelity on his part; is that what you mean to say now, that by looking at him, that that is a characterization of his infidelity? A No, sir.

Q Then why do you say so in answer to the question; you don't mean that, do you? A I said her action.

Q If that is all there was about her actions—what was there about her actions which indicated any infidelity on his part? A You used the word "infidelity" different from what I do.

Q Then you didn't mean that? A I don't mean that every time that she looked at him, that he was accused of any impropriety with another woman—simply taking them out to meals.

Q And this particular occasion when he came and she simply looked at him, there was nothing said about infidelity? A No, sir.

Q Then all he did was to curse and swear after she had looked at him? A He cursed and swore at her.

Q You are a particular friend of Mr. Smith? A I like Mr. Smith.

Q You have great confidence in him? A I have.

Mr. Romine. I would like to recall Mrs. Smith for a moment.

ELLA S. SMITH, recalled.

Direct examination by Mr. Romine.

Q I show you a letter and an envelope postmarked Boonton, Oct. 31, 7 A. M., 1914; the letter is headed "Friday 3 P. M." and is marked Exhibit A for identification, and I ask you if that letter was written by you? A It was.

Q When was it written, with reference to the occurrences mentioned in the letter? A Right away; right after it happened, I sat down and wrote the letter.

Q It was written to your brother, Mr. Lott E. Buckbee? A Yes.

Q That letter is in your handwriting? A Yes.

Mr. Romine. I offer that letter in evidence.

Mr. Price. I object on the ground that it is a self-serving letter, written by the petitioner to her brother, and could in no way be binding on the defendant.

Mr. Romine. I offer it in evidence for the purpose of corroborating what Mr. Lott E. Buckbee says of his knowledge of these circumstances. He admitted in his testimony that Mrs. Smith had told him of occurrences with her husband and occurrences with other women, and he also admitted that he had received letters, one of which he had in his possession and produced, being the letter in question. The letter also corroborates what Mrs. Smith has testified in her direct examination regarding the occurrences with her husband, and tends to show that those things actually existed, and that her brother had knowledge of them, and it is for the Court to say whether the letter is proper evidence, and I submit that it ought to be copied in the record.

(Marked Exhibit A, June 16, 1916.)

"Friday, 3 P. M.

My dear Lott,

I am going to leave Ernest as quickly as things can be arranged. I am in constant fear of that man and will not stand any longer such a life and the dirt right under my nose. Yesterday is the first I have been outside my doors since my return to Boonton from Asbury. I went at 3 P. M. took Audrey and got back at 6:20 P. M. to a

minute to find E. had gotten in the window and was in his room but not *alone* as their shadows showed on the curtain. Whoever it was got out on the roof and down a ladder to the ground. Ernest was frighted and started to curse. There is not a night in the week that he gets home until 6:20 P. M. How he came to be home so early last night I can well imagine. I asked him who he let out of my home. All he did was to curse and say none of my business. Then he turned on me and said he did not care, that I had my orders from my Brothers & Sisters to stay right where I was and I had to take this sort of a life and just suck his little asshole. He had my people so they would take his word any day against mine, &c. Such dreadful talk Audrey had a terrible spell with her heart and I got faint as well. Since I have been trying to do my duty by him and trying to help him by not keeping a girl. I have taken more than any decent pure woman would take. Wed. night he came in so ugly and when I told him to behalf himself he said he would give me a sum of money each week and I could get out of here. Now you boys can make him do the right thing by Audrey & I or I shall have Ernest arrested and made to do what is right. He owns stocks and this house (which we have a client for) So he is likely to sell and that money must come to A & I I am not sleeping nights but am under a constant strain for Ernest would stop at nothing to gain his point. But I did make him cry last night when I told him some day he would stop and think and would realize the good woman he failed to appreciate when he had her. I know I am doing the right thing to leave him and I do believe if I take my stand right now instead of condoning his faults (as my lawyer says I do by putting up with such rot) he will come to his senses and be a better man. He may even come back to us and be different. But he has lost his respect for the wife who will take all I have. One of the things he said was our home life was just as bad at 45 State St. before I was married. There was not enough in our family. If you boys will not do anything Very well then E. can have all in the house and I shall take a position as housekeeper with Audrey until I can save enough for a home. No trying to check Ernest

and smooth things over will do for such a bad man. Your only course is to let him see or believe you are standing by me. He is a coward. If he dared to do the things to a man he has done to me he would not be alive.

Lovingly,

ELLA.

I tell you again I am afraid to be here alone with him. I was rather protected when I had a maid."

IN CHANCERY OF NEW JERSEY.

Continuation of testimony taken in the above entitled cause before Hon. John E. Foster, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, on Monday, June 19th, 1916, at 10 A. M.

Appearances:

Mr. Elmer W. Romine for petitioner.

Mr. Carl Vogt and Mr. Harold C. Price for defendant.

ERNEST BRAUER, sworn for defendant.

Direct examination by Mr. Price.

Q Where do you live? A At Westwood, New Jersey.

Q Are you acquainted with the petitioner, Ella S. Smith? A I am.

Q And with the defendant, Ernest N. Smith? A I am.

Q Where were they living when you first became acquainted with them? A 780 Summer Avenue, Newark.

Q Where were you living at that time? A In the same house; it was a two-family house.

Q At that time did Mrs. Smith accuse Mr. Smith of infidelity? A She did.

Q Approximately what year was that? A I should judge it was 1906 or 1907; it was summer—the first summer they were there.

Q You say that Mrs. Smith accused her husband of infidelity at that time? A She did.

Q What were the circumstances of that complaint?

Ernest Brauer, direct.

Mr. Romine. I object unless he was present and heard it.

Court. Did you hear what she said to him?

Witness. That was the whole thing; it was continually to him.

Court. Did you hear what Mrs. Smith said to her husband in relation to this matter?

Mr. Romine. Not what someone told you.

Q Did you hear it? A Not direct to her husband.

Q Did Mrs. Smith complain to you about her husband's infidelity? A Yes, she did.

Q What was that complaint?

Court. Was Mr. Smith present at the time?

Witness. It was so much and Mr. Smith was present some of the time, and other times he wasn't; of course, I can lead up to the whole case.

Mr. Romine. I object to anything that may have been told this witness by outsiders, not by Mrs. Smith.

Q What was the first complaint made by Mrs. Smith concerning his infidelity? A The first complaint was that it was an excuse—they had a Polish servant girl at the time, a slovenly creature, and I was building a boat in the cellar; Mr. Smith came down to help me and watch me in the evenings; she came and stated to me that Mr. Smith came down in the cellar as an excuse to have intercourse with this servant girl when she would come down to get coal, and that she caught Mr. Smith on the back porch once with this same Polish servant girl; of course, each time that she would tell me those things, I—

Mr. Romine. I object.

Q What was the next complaint, if any, she made? A The next complaint—they moved from there down the street, I guess it was 742, a few doors down; the motor boat was completed at that time, and one Sunday Mr. Smith wanted to go down to Edgemere to look at a boat that he thought of buying, and he said to me—

Mr. Romine. I object.

Ernest Brauer, direct.

Q Did you go at that time down to where it was? A We went down to the boat; he came along with us and we went down this Sunday; a few days after my wife and I were invited over.

Court. I will strike out anything that is not relevant to the present inquiry; the witness is inclined to talk.

Q You say you and your wife were invited over? A Over to their house for tea one time, and after tea we were playing cards; at that time she accused—

Court. What did she say?

Witness. Mr. Smith and myself of having—especially me, of having that Polish servant on the boat with other girls, and I said, "Mrs. Smith, you are mistaken," and she said she was; I took $50 out of my pocket, I said, "If you can prove that there was a female on the boat, the $50 is yours." That closed it, but my wife said to her—

Q Was this in your presence? A Yes, "You can say what you please about your husband," but don't have anything to do or say anything about me—her husband.

Q Did Mrs. Smith at any later occasion while at Newark still make any complaints concerning her husband, in your presence? A She did.

Q What was that? A My wife and a friend of my wife's was invited to tea again, and my wife had a bad headache—this was a young lady from Washington, and she said, "You go over, Nellie, with Mr. Brauer and not disappoint Mrs. Smith." We got there early, Mr. Smith hadn't come home, and Nellie was left in the parlor; she took me out on this veranda and was telling me how she had caught Mr. Smith having intercourse with the colored servant girl at the time—at this 742 Summer avenue; then after tea it was all this vile stuff about Mr. Smith, which this cousin of mine going back home told my wife that—

Q Was there any other complaint at that time? I directed the question before to the occurrence at the railroad station; was any complaint made then? A Yes, Mrs. Smith and I were down at the station—I think she had the baby in the baby carriage, and Mr. Smith was coming from business, and as the train pulled in and stopped we saw Mr. Smith in the car, and

she said, "Did you see Mr. Smith kiss that girl?" I said, "No, Mrs. Smith, he didn't kiss that girl." "Why," she said, "Yes he did." I said, "You are mistaken." I said, "That woman got up just ahead of him; it may have looked that way." Then she said, "That that is all Mr. Smith did, was to go back and forth with this woman, and she asked me if I would go over to Arlington some time and get in the train and see just what girls Mr. Smith was travelling with.

Q What did you say? A I said Mr. Smith was too much of a man, he wouldn't do anything like that, and there wasn't a shred of truth in anything she said.

Q Did you ask for proof? A I did time and time again, but there wasn't any proof forthcoming.

Cross examination by Mr. Romine.

Q How long have you known Mr. Smith? A I should judge for ten years.

Q Very intimate with him, are you? A We were very intimate when we lived with each other.

Q You have always been intimate with him, haven't you? A Whenever I was in New York I would always go to see Mr. Smith; I didn't go to New York often.

Q You were great friends then? A Yes, I considered Mr. Smith a great friend of mine.

Q You were an admirer of Mr. Smith? A I was and am still.

Q At the present time? A Yes.

Q Mr. Smith has talked with you about the circumstances of his married life? A Mr. Smith was too much of a man—

Q Answer the question.

Court. Has he talked to you?

Witness. No, he has not.

Q Has he ever talked with you since you have known him down to the present time regarding the circumstances of his married life? A In answering that question, I met him and I didn't want to bring up the subject; my wife—

Court. Strike that all out and answer yes or no.

Witness. No, he has not.

Q Have you ever talked with him about it? A No, I haven't.

Ernest Brauer, cross.

Q Have either you or Mr. Smith discussed it among yourselves as to complaints which Mrs. Smith has made against him? A To say yes and no on a thing on that—

The Court. You can say it; you have or have not discussed it.

Witness. No, we haven't discussed it.

Q Hasn't Mr. Smith talked to you recently about this matter and explained to you or told you of complaints which his wife had made against him? A Except that she had a suit against him.

Q You did discuss that part of it? A Yes, he said there was some sort of a suit, accusing him of a lot of things, which he didn't have to say anything about, because I knew.

Q So that he did tell you of the accusations in this suit against him, didn't he? A He didn't have to.

The Court. Did he tell you or didn't he?

Witness. Yes.

Q So that he has talked to you about the circumstances and the accusations which Mrs. Smith has made against him? A Not about the accusations; the things that I told you are the things that I know, just how the thing runs, because I know Mrs. Smith—

Court. Listen to the question; he asked you if Mr. Smith did tell you what he was accused of?

Witness. No, he didn't tell me what he was accused of.

Q You just mentioned a moment ago that Mr. Smith told you that some sort of a suit had been instituted against him.

Court. Listen to the question and answer it responsively.

Q Didn't you tell us just now that Mr. Smith told you that some sort of a suit had been started against him and that accusations had been made against him by his wife? A Yes.

Q And didn't he tell you some of those accusations? A No.

Q How did you come to testify in this case. Did Mr. Smith ask you to? A No, he did not.

Q Did Mr. Smith tell you this morning or in the last month or two what he wanted you to testify to? A He did not.

Ernest Brauer, cross.

Q Have you talked with Mr. Smith within the last three months about this case? A No.

Court. Have you talked with him in the last three months about this case?

Wtiness. I have, but not—

Court. About this case?

Witness. No.

Q Has Mr. Smith talked with you about this case within the last three months? A He hasn't talked about the case.

Q When did he ever talk to you about this suit which was instituted against him by his wife? A When I met him on the train.

Q When was that? A I think it was two weeks ago last Saturday.

Q What train was it? A D. L. & W.; we left Hackettstown at 6.44.

Q In the morning? A In the morning.

Q Had you seen Mr. Smith at Hacketttstown the night before? A I did not, because he gets on—

Court. Leave off the cause.

Q Were you living at Hackettstown? A No.

Q Mr. Smith got on the train at Boonton? A Yes.

Q You saw him get on the train? A I didn't see him get on the train; I saw him walking in the car.

Q Had you any previous arrangement to meet Mr. Smith on that particular train? A I saw Mr.—

The Court. Read the question to him.

A Yes.

Court. Why did you hesitate so long to answer?

Witness. I saw him going up on the night train.

Court. He asked you if you had any arrangement the night before.

Q So that you had had a previous arrangement to meet Mr. Smith that morning? A Yes.

Q You sat with Mr. Smith on the train from Boonton to New York and in going to New York? A No, not to New York.

Ernest Brauer, cross.

Q To Hoboken? A To Paterson; that is where I got off.

Q Between Boonton and Paterson you and Mr. Smith talked about the case, did you? A No.

Q Didn't you say a word about it? A Oh, said a word; but didn't dilate on it.

Court. He asked you if you talked about it.

Witness. Yes; he said a few words about it.

Q And in those words that he said, he told you about the suit which his wife had brought? A Yes.

Q And he told you of the accusations, did he not? A He said she was suing him for a divorce, if divorce is accusation.

Q What did he tell you that his wife was suing him for? A Nothing.

Q All these things that you have told us here, that you say Mrs. Smith said to you about Mr. Smith, is that story made up, or are you telling us the truth? A The absolute truth.

Q You are positive about that? A I am just as positive as I am sitting here and you are sitting there.

Q You are swearing on your oath that the things testified to here as told by Mrs. Smith were actually said by her? A Were actually said; I swear to that.

Court. All you have testified to here is under oath; you have sworn to do that.

Q You say that your wife was in your home at the time that Mrs. Smith charged you with having some women on a motor-boat. A She was.

Q At that time did Mrs. Smith say anything about her husband taking anyone on the motor boat? A That is the whole thing; she said we went out—it was kind of blaming me for having the motor boat and taking him out.

Q Did she in that conversation say that her husband had anyone on the motor boat? A Yes.

Q Your wife was present? A She was.

Q And your wife objected to the accusations against you? A Of doing those things.

Q Did she? A Yes, she objected.

Q Notwithstanding that fact, you visited the home again, went there again for tea? A Yes.

Ernest Brauer, cross.

Q After these accusations were made, you and your wife still went back there again? A Yes.

Q You say that Mrs. Smith told you that her husband had had intercourse with a colored servant; did she mention what colored servant it was? A Two colored servants; there were two instances; there was one on Mt. Prospect avenue and one on Summer avenue. The Summer avenue incident was first.

Q And she mentioned particularly the fact that they were colored servants? A Yes.

Q Did you ever visit Mrs. Smith while she lived on Summer avenue? A Yes.

Q Did you ever see a colored servant there? A Yes.

Q You did? A Yes.

Q Did you ever visit Mr. and Mrs. Smith on Mt. Prospect avenue? A I did.

Q And can you tell us whether they had a colored servant there or not? A They certainly did.

Q Tell us just what Mrs. Smith said to you down in the cellar about Mr. Smith. A She didn't tell me down in the cellar.

Q Where was it? A Upstairs in her place.

Q What did she say? A She said that Mr. Smith only went downstairs so that he could be down there when this Polish girl would go downstairs.

Q What did she say at the time they were at the station, when she saw Mr. Smith get up out of the car, as you say; what was that? A She said, "Did you see Mr. Smith kiss that girl?" I said, "No, Mrs. Smith;" "Well," she said, "You see the girl?" I said, "Yes, I see the girl, but there are lots of girls coming out in front of him."

Q What station was that? A North Newark, the Greenwood Lake of the Erie.

Q As a matter of fact, haven't you agreed with Mr. Smith to come here and help him out in this case? A No, no.

Q Didn't you, on the train from Boonton to Paterson that morning when Mr. Smith talked to you about this case, agree to come as a witness? A I said—

Court. Did you agree or not?

Witness. I said "Yes."

Ella S. Smith, cross.

ELLA S. SMITH, recalled for further

Cross examination by Mr. Vogt.

Q Referring to the time that you lived at Perth Amboy, you stated on your direct examination with reference to your practice concerning the gas light in the bedroom near where you found this nail which you produced, that on account of nursing your baby and seeing to her, you had to leave the gas turned rather low, so you could pay attention to the baby; is that so? A I used to leave it turned low at times; other times I had to get up and light it.

Q You did that on account of nursing your baby and taking care of it? A I did.

Q You said on account of nursing her; is that correct? A I don't know whether I nursed her then; I gave her milk during the night.

Q You said in your direct examination that you were nursing her at that time; was that correct? A I cannot remember whether I nursed Audrey when I first went to Perth Amboy or gave her milk.

Q How old was she when you first went to Amboy? A She was born 1906.

Q When did you go to Perth Amboy? A 1908-9— I can tell you; I gave her milk.

Q Then you were mistaken in your direct examination? A If I said that—when you recall the date, I can remember I gave her milk during the night.

Q With reference to the alleged occurrence in Boonton, where you say there was a woman in the cellar; did you go all the way into the cellar that night? A I did.

Q And did you go outside in the yard? A I did.

Q Where was Mr. Smith when you did that? A He tried to bar my way.

Court. Strike it out.

Witness. He was in the cellar.

Q Was he in the cellar? A He followed me out.

Q You say he rushed upstairs before you got all the way down? A Before I even went down; I was only at the head of the stairs when Mr. Smith came up the stairs.

Ella S. Smith, cross.

Q Did he get all the way up? A He did not, he turned and went back.

Q Did you follow him down? A I did.

Q When did you take up Christian Science? A When my trouble started with my husband.

Q That doesn't tell me anything; when was that? A In 1910, I think.

Q After you went to Perth Amboy? A No.

Q Long before that? A Before I moved to Perth Amboy.

Q When you were living up in Woodside? A Yes; not very strenuously at that time; I was just looking into it.

Q Long before 1910? A That was about 1910 that I took it up.

Q You didn't go to Perth Amboy until 1909, did you? A No, we went to Perth Amboy in 1910.

Q You took up Christian Science when you lived at Woodside, didn't you? A Yes, in a way.

Q You went to a Christian Science healer and took lessons? A No.

Q Paid $10 for them? A No.

Q You took treatments from a Christian Science healer? A Both Mr. Smith and I in regard to our unhappy life.

Court. Did you do that?

Witness. Yes.

Court. Strike the rest out.

Q You went personally to a Christian Science healer? A She came to the house.

Q Didn't you tell Mr. Smith that you were having absent treatment given to him? A To Mr. Smith?

Q Yes. A No, you cannot say that.

Court. Did you?

Witness. No.

Q Did you take ten lessons or treatments? A That I cannot tell you.

Q You don't recall about that? A No.

Q Did you pay a dollar a treatment? A Mr. Smith paid the bill.

Q At your request? A At my request.

Ella S. Smith, cross.

Q Didn't you tell Mr. Smith that you were taking the treatment? A Mr. Smith knew it.

Q Did you tell him? A Certainly.

Q Didn't you subsequently tell him that you hadn't improved? A No, never.

Q Didn't you tell him the reason that you hadn't improved was because you hadn't taken the treatments, but you had had absent treatment given to him. A No.

Q And didn't you tell him that the Christian Science healer told you that he was receiving letters from women at his New York office? A I never did.

Q And didn't the Christian Science healer come before Mr. Smith personally and retract that statement in your presence? A That was some—

Mr. Vogt. Yes or no.

Court. Did she come before Mr. Smith?

Witness. There was something that she retracted.

Q That is your best recollection? A Yes, that is my best recollection.

Q Did you ever accuse Mr. Smith of having a date with a woman when he changed his necktie or put on a clean collar? A No.

Q Never? A No.

Q Or say that he was going to meet a woman? A No.

Q Did you ever accuse him of signaling to women when he would light the gas in the house? A I have.

Q Frequently? A I have.

Q And when you lived where? A At different places.

Q At nearly all the places you lived? A Mostly.

Q Didn't you accuse Mr. Smith of signaling to women by lighting matches and waving them in front of a woman? A I have seen him do that.

Court. Did you?

Witness. Yes, I have.

Q Frequently? A I have.

Q And at nearly all the places that you have lived? A I have.

Ella S. Smith, cross.

Q At Woodside you had Mr. Dawson put a paper of some kind over the window. A I did.

Q To obscure it? A I did.

Court. Bathroom window?

Witness. A bathroom window—the incident which has been referred to.

Q You did that and told Mr. Smith that you had done that to keep him from signaling to women? A I told him nothing; it was his own suggestion.

Q That it was put there? A No, Mr. Smith gave the reason why I put it there; I said nothing to Mr. Smith.

Q Why did you put it there? A I put it there for the purpose that he suggested, exactly.

Court. What was that?

Witness. To keep my house decent as I wanted it, not to have things that were indignities to me going on.

Court. These exposures that you complained about?

Witness. Yes.

Q And this signaling to various women? A Yes.

Q Who is Mr. Dawson? A A gentleman from Boonton.

Q A friend of yours? A Not particularly.

Q Mrs. Dawson was? A Yes, she was.

Q A school girl friend? A No.

Q You had known her some time? A We have known each other for years.

Q Was that one of the reasons you moved to Boonton, because Mrs. Dawson was there? A It was.

Q You had lost nearly all the other friends you had? A I had not.

Q Didn't Mrs. Dawson tell you when you came to Boonton that you had better keep your mouth shut and not talk so much? A She did not.

Q Where did you have this paper put on the bathroom window? A I had that put on in Bayonne.

Q Is that the only place? A No, other places.

Q Where? A Woodside.

Q Where else? A That is all.

Ella S. Smith, cross.

Q Those are the only two places? A Yes, as far as I can recall.

Q You accused Mr. Smith of signaling either by matches or gaslight at Boonton? A I did.

Q And at Perth Amboy? A I have.

Q And at Broad street? A I have.

Q Did you accuse Mr. Smith of signaling to girls that lived over your apartment at Broad street, by turning on the water faucet in the bathroom? A I did.

Q What else did you accuse him of doing? A I have accused him of undignified, unmanly actions with other women where I could see it.

Q During all the period of your married life? A No, since my child was born.

Q Why didn't you have this paper stuff put on the room at Boonton? A I put a curtain up there.

Q You had three curtains there? A I did not.

Q Where did you have the three curtains? A I never had three curtains; I never owned three curtains for the bathroom.

Q You had two? A I have not.

Q Never had a curtain that came down and one that went across-ways? A I had a lace curtain and a shade.

Q And at any time when you happened to see one of these curtains up, did you accuse Mr. Smith of putting them up for the purpose of signaling to women? A He told me he did that.

Court. Did you accuse him of that?

Witness. I did, upon his own statement.

Q How did this turning on of the water faucet indicate to your mind that he was signaling to anybody upstairs? A It didn't at first, but it was a continuous thing, and he would turn it on and he would go in there for no purpose whatever, and even this woman upstairs would turn it on in return, and it would happen every night that way.

Q Did it happen every night? A It did.

Q Did you ever remonstrate with the woman upstairs? A I never spoke to her.

Q Was she ever in your apartment? A Never. I never spoke to the woman in my life.

Ella S. Smith, cross.

Q When you turned the water on what kind of a noise was made? A It made a very peculiar noise; I cannot describe it to you.

Q Do you know what caused it? A I asked the janitress what caused it.

Q Did the faucet in any other house you ever lived in make the same kind of a noise? A No.

Q That is the only place he signaled with water? A That is the only place that I know of.

Q You nailed up the windows in some of the houses you lived in, did you not? A I did not.

Q Anywhere? A No, sir; I never nailed up any windows unless I have shut up the house to go away.

Q Did you obtain anybody to nail them up? A No.

Q Didn't you nail up the windows in Mr. Smith's room in Boonton? A No.

Q Sure of that? A I do remember on one occasion we were all away and I had nothing to fasten the windows.

Q Didn't you nail the windows of the barn at Boonton? A Yes.

Q And didn't you tell Mr. Smith that you nailed up those windows to that he couldn't communicate with women on the outside? A No, sir; that was Mr. Smith's suggestion to me.

Q What was Mr. Smith's suggestion to you? A When I nailed up the window in his room that night, in that bedroom.

Q Then you did? A I told you when we were all away, I had nothing to fasten the windows with, and I put a nail in them, and he said I nailed them so he couldn't get in or out, so I nailed the window up; that was his own suggestion.

Q Didn't you accuse Mr. Smith of having women come in the cemetery? A I did.

Q And the cemetery lay right behind the barn? A Alongside of our yard.

Q This is in Boonton? A Yes.

Q Did you ever see him with women in the cemetery? A I have.

Q When? A When we lived on Old Boonton Road.

Q When? A On several occasions; I cannot just recall the date or the month.

Ella S. Smith, cross.

Q Who was the woman? A But usually in the summer—I don't know.

Q Have you made any endeavor to find her? A I have not.

Q Daytime or night? A This was always of an evening at dusk.

Q How late in the evening? A About seven o'clock, or somewhere around there.

Q Summer or winter time? A Summer.

Q Where would you be at those times? A In the house. I wish to say they were accidents when I caught him.

Mr. Vogt. I didn't ask you that.

Q When Mr. Smith came home at night or later than usual, didn't you accuse him of being with women? A I did not.

Q Never? A No, I didn't talk to him.

Q And when he came home late at night, wouldn't you frequently, in all the places you have lived, accuse him of having been out with women? A I did not.

Q Didn't you accuse Mr. Smith of committing sodomy with Mr. Dawson? A I never heard the word until I came to court.

Q Did you accuse Mr. Smith of having improper relations with Mr. Dawson? A I did not.

Q Didn't you tell Mrs. Canfield, your own sister, that Mr. Smith had had improper relations with Mr. Dawson? A I said there was something going on which was not right; what it was I could not tell. What it was I cannot tell.

Q You know what it was now? A I have found out since the fourth of April, in the court here.

Q Did you make the same accusations to Mr. Smith concerning Mr. Husk? A I did not; I never have.

Q Did you ever tell Mr. Smith that you had taken soiled handkerchiefs from his pocket and accused him of having connection with other women? A I didn't have to.

Q Did you? A I did not; I didn't have to.

Q Did you ever tell him that you had found soiled handkerchiefs in his pocket? A I did.

Q Frequently? A Frequently.

Q And wherever you lived? A Yes.

Q And what did you say to him when you told him that? A I told him those were not proper handkerchiefs to give a washwoman to wash.

Q Did you tell him why they were not proper? A Yes.

Q What did you say? A I told him those handkerchiefs were dirty.

Q That is all? A Yes.

Q Did you tell him why? A He understood.

Q Did you tell him? A I only made that remark, that they were not fit to give a washwoman.

Q That is all you said? A Yes.

Q Did you ever tell Mr. Smith that you had had any of those handkerchiefs chemically analyzed? A I never did.

Q You never told him that? A No.

Q Did you ever have any chemical analysis made? A No.

Q Did you ever accuse Mr. Smith of having a wife and child in Jersey City? A I never said "wife."

Q A Child? A I accused him of there being a woman and child.

Q His child? A I don't know.

Q What accusation did you make against him about that? A I asked him who they were.

Q What accusation did you make against him about that woman and child? A I told him that he was having something to do with that woman.

Q Is that all you said? A That is what I accused Mr. Smith of.

Q Didn't you accuse Mr. Smith of telling him that it was his child? A I did not; I did not understand that situation at all.

Q What do you mean, you don't understand that situation? A I didn't understand that situation in regard to that woman.

Q Who was the woman? A Elizabeth White.

Q In Jersey City? A I don't know where she came from. When I got here she was in Newark.

Q Is she a woman that worked for you? A Yes, a woman with the girl.

Q I particularly directed your attention to Jersey City, and asked you if you didn't accuse Mr. Smith of having a wife and child in Jersey City? A No.

Q And didn't you tell Mrs. Canfield that Mr. Smith had a wife and child in Jersey City? A I told him Mrs. Canfield—

Q Yes or no. A Not in those words.

Q Didn't you tell Mrs. Canfield that Mr. Smith had a wife and child in Jersey City? A No.

Ella S. Smith, cross.

Q Didn't you make such an accusation against Mr. Smith? A No.

Q You don't know who Elizabeth White is? A I do not.

Court. You don't know what relation, if any, is?

Witness. No, I haven't been able to get at the bottom of it.

Q You never saw Mr. Smith or Elizabeth White at any time in your life together? A Yes.

Q Where? A On the street in Perth Amboy, in Newark, and I think when I first went to Boonton I saw her one Monday morning get on the same train with Mr. Smith—when I first went to Boonton.

Q Whereabouts in Perth Amboy did you see Mr. Smith and Elizabeth White together? A I don't know what the name of the street is; it was on a main street.

Q Day or night? A In the afternoon.

Q Sunday or holiday? A No, after he came home from work.

Q How late? A Along about five o'clock.

Q What time did Mr. Smith get home from work? A At different hours, sometimes at five o'clock, sometimes at six o'clock; different hours.

Q How many times did you see them together in Perth Amboy? A Never but the once.

Q Was that after you had been living there a little while or when you first went there? A No, we had lived there about a month.

Q You didn't know who she was at that time? A No.

Q When did you next see her? A Bayonne.

Q Had you seen her before you saw her in Perth Amboy? A Never.

Q When did you see her in Newark? A I didn't see her in Newark; I saw Mr. Smith with the child on his lap in Newark.

Q But you didn't see Elizabeth White with him? A No, he sat in the house.

Q I thought you said you saw Elizabeth White and Mr. Smith together in Boonton and Perth Amboy? A Every place where I have been I have seen Elizabeth White there at some time.

Q At Newark? A Yes, but not with Mr. Smith.

Ella S. Smith, cross.

Q Before you went to Perth Amboy? A When we lived on South Broad street.

Q Where did you see Mr. Smith with this child in his lap? A When we lived on South Broad street.

Q Whereabouts? A In the house on Wright street.

Court. Whose house?

Witness. I don't know; I was a stranger here.

Q Why didn't you tell us that on your direct examination? A I don't think that question was asked me.

Q You were asked on your direct examination whom you saw in the Wright street house, and you said a woman, you didn't know. A There was a woman in there, but she was not Elizabeth White.

Q Why didn't you tell us that you saw Mr. Smith there? A I think I did.

Q When was it you saw Mr. Smith in the Wright street house? A When we lived on South Broad street.

Q What time of the day was that? A About five o'clock, half-past five, between half-past five and six.

Q Where is Wright street? A It is in the lower end of Newark.

Q How far from where you lived in South Broad street? A Right around the corner.

Q You don't know whose house it is? A No.

Q You never made any inquiries? A There was inquiries made—

Q I said you? A Not through myself, but through someone else.

Q Where was he sitting when you saw him with the child? A He sat by the window and ducked as I passed.

Q Did he see you? A Is it permissible for me to tell what else happened that day?

Q What time of the day was it? A Between five and half-past five, as near as I can tell.

Q What were you doing around there? A I had been to the store.

Q How long have you had a detective after Mr. Smith? A Just different times when I could do it.

Q For how long a period back?

Ella S. Smith, cross.

Court. When did you first employ one?

Witness. When I was on Summer avenue.

Court. What year?

Witness. 1909, when we lived there—1908 or 1909.

Q Did you have legal advice at that time? A I did not.

Q Who hired the detective? A A friend of mine.

Q Who was it; who was the detective? A I don't know what his name was.

Q You saw him? A I saw them both; they were some private detective agency, I have forgotten what their names were.

Q You haven't made any endeavor to ascertain? A I have not been able to, Mr. Vogt; I have had no money to do anything.

Q When was the second detective put on? A When we lived on South Broad street.

Q Do you know who that detective was? A I do not; it was the same people.

Q Employed in the same manner? A I cannot tell you how they came to come to me. I recollect now, the first detective, I think, as far as I can tell you, was from the Grove Detective Agency.

Q Who employed that detective for you? A A friend of mine.

Q Who was it? A Mrs. Perrine.

Q Did she employ the detective that was secondly employed? A No.

Q Who employed them? A I cannot tell you just how I got those men, because I do not recall.

Q When did you hire the next one? A That is all I had.

Q That is all you ever had? A Yes.

Q You had one all during the progress of this suit and for some time prior thereto? A A detective?

Q Yes. A I have hired no detective.

Q But you have employed one? A No.

Q You know that a detective has been following Mr. Smith? A I know that my attorney put a detective on him; I think.

Q With your acquiescence? A Yes.

Q And for the purpose of spying on Mr. Smith? A Yes.

Q When was that detective first put on his trail, the one that is now employed? A I think last March.

Ella S. Smith, cross.

Q Just before you left? A I think it was just before I left.

Q You had been contemplating bringing an action for separation or for divorce three or four years ago, hadn't you? A I have tried for the last twelve years to break away from the life I have been leading.

Mr. Vogt. I ask to have that struck out.

Court. Strike it out.

A I have.

Q And notwithstanding the fact that you have made these endeavors, you have continued to live with your husband? A I have.

Q Did you ever accuse Mr. Smith before you were married of being the father of a child? A I didn't, no, sir.

Q Or anybody in your presence? A There was an insinuation made in my presence.

Q Did anybody accuse Mr. Smith in your presence of being the father of a child? A Yes.

Q How long before you were married was that? A That was quite some time.

Q What is your best recollection about it? A I think it must have been three or four years; I don't know; I really cannot tell you.

Q Did you ever accuse Mr. Smith of signalling to women on the outside of your various houses while he was sitting at the dining-room table? A I have.

Q You have frequently changed the position of his seat at the table on that ground? A I have not.

Q Did you or did you not frequently change his position at the dining-room table? A I did not.

Q Never? A Mr. Smith has always had the same place.

Q Never? A Never.

Q But you did accuse him of signalling to people on the outside? A I have.

Q Frequently? A I have.

Q And at all the various places you lived? A I have; not every place; we have lived places where he could not signal on the street.

Q Where was that? A When we were in flats.

Ella S. Smith, cross.

Q How would he signal to people on the outside? A Frequently waving his napkin as a person passed.

Q Would you see someone walking by? A Yes, at the time he did it.

Q He would take his napkin and wave it at them? A Yes.

Q Do you know who it was that was walking by? A I did not.

Q Did you see them? A I could see a number of people. There were generally crowds.

Q He would wave at the crowds? A He would wave evidently at the crowd.

Q (Last question repeated.) A He waved.

Q Did you ever see anyone wave back? A No.

Q Did that happen at Summer avenue? A He couldn't wave there from the dining-room.

Q Did it happen at Forest Hill? A He couldn't wave from Forest Hill.

Q Did it happen at Bayonne? A He couldn't there.

Q At South Broad street? A No.

Q Perth Amboy? A Yes.

Q It did happen there? A Yes.

Q Boonton? A Yes.

Q Are those the only two places? A Those are the places.

Q How frequently did it happen? A Enough for me to notice it.

Court. That doesn't tell us anything; on a number of occasions?

Witness. On a number of occasions, yes.

Q When he would wave in the manner you have indicated, would you look out to see who was going by? A I would.

Q Did you recognize anybody out there? A No.

Q Any friends of yours? A No friends of mine passed who go to work.

Court. When would this waving occur?

Witness. In the morning at the breakfast table.

Court. In your presence?

Witness. Yes.

Court. Was it done to annoy you or to attract the attention of someone outside?

Witness. I don't know; he was capable of doing it to annoy me.

Mr. Vogt. I ask to have it struck out.

Court. It is an answer to my question; I will let it stand.

Q Did it ever happen in the evening? A Never, not that I know of.

Q Or at noon? A He was never home at noon.

Q Wasn't he home Sundays at noon? A Sometimes.

Q Wasn't he home frequently Sunday at noon? A We never had dinner at noon Sunday.

Court. Did you ask him to whom he was waving; whose attention he was trying to attract?

Witness. I did not, because I would get such cursing I preferred to keep quiet.

Q What started the cursing? A Anything I would ask him.

Q But you never remonstrated with him or asked why he did it? A I remonstrated with Mr. Smith on this woman question and on the indignities that I was taking, frequently.

Mr. Vogt. I ask to have that struck out.

Court. That is not responsive to the question.

A I have remonstrated with Mr. Smith.

Q At the time it was done? A At the time when it was done, sometimes.

Court. At the time of the waving of the napkin?

Witness. Of late years I didn't bother with him.

Q You never said anything to him about the napkin waving? A No.

Q Why not? A Because it would cause such a terrible row and such cursing.

Q That is what you thought? A I know it.

Q That is what you thought, isn't it? A It certainly is.

Q Did you ever accuse Mr. Smith of being intimate with a music teacher? A I did.

Q The music teacher was going to threaten to sue you for slander? A So I heard.

Ella S. Smith, cross.

Q Didn't she come before you personally— A She never told me that.

Q Didn't she come before you personally and say that she was going to sue you for slander if you didn't retract that? A She came before me.

Q Didn't she come before you personally and threaten to sue you for slander if you didn't retract that statement? A She came to the house.

Q Is that your best answer to my question? A She had nothing to say to me about bringing a suit; she asked me what I meant.

Q Didn't you tell her that you were mistaken, that she wasn't the person? A No.

Q In the presence of Mrs. Canfield, your sister? A I didn't make that remark.

Q And in the presence of Lott Buckbee, your brother, and your sister? A Yes; I didn't make that remark.

Q Didn't this music teacher, Mrs. Canfield and Mr. Buckbee come before you personally concerning this accusation that you had made? A Yes, they did.

Q And didn't you retract it and say you were mistaken? A No; pardon me, I did; I remember.

Court. When did this occur?

Witness. When we lived on Summer avenue, in 1909, I think.

Q After these people had gone out that I have just mentioned, didn't you then tell Mr. Smith that you were not mistaken, that that was the woman? A I did.

Q Why did you retract the statement before this lady? A I was ordered to do so, because they—

Q Who ordered you to do it? A The man that told me that they were going together.

Mr. Vogt. I ask to have that struck out.

Court. I think it is clearly responsive to the question.

Q Who was that? A That was the detective.

Q The first detective or the second? A I think it was the first detective.

Q Then you personally conferred with that detective, didn't you? A No.

Ella S. Smith, cross.

Q How did he tell you to do this, in writing? A Through Mrs. Perrine.

Q Then Mrs. Perrine told you that the detective told her to tell you to do this? A Yes.

Court. That is, to make the retraction?

Witness. Yes.

Court. Where did you get the information from originally, from this detective directly or through Mrs. Perrine?

Witness. No, from the detective.

Q Then you did see the detective personally? A No, I don't even know what he looks like, but I went to the office.

Q You just told the Vice-Chancellor that you got this information in the first place from the detective; is that so? A Yes, through that detective agency.

Q Through this agency? A Through the man that I employed; the man that was on the case I don't know.

Court. Did you get a written or verbal report?

Witness. Verbal.

Q Then you knew this detective agency and where their offices were? A Yes, that one.

Q And have you made any endeavor to ascertain where that detective is now? A I have not; I have had no money to do anything on.

Q You knew, didn't you, that he would be a material witness in a matter of this kind? A There have been several material witnesses that I haven't been able to furnish.

Mr. Vogt. I ask to have that struck out.

Court. Strike it out.

Q (Last question repeated.) A He would, yes, sir.

Q Why, then, haven't you made some endeavor to locate him? A I have had nothing to do it on; it takes money.

Q Didn't Mr. Lott Buckbee, your brother, tell you that if you would produce the evidence to meet all these various accusations, that he would give you the necessary money to bring your suit? A He did not.

Q Never? A They wanted me to leave Mr. Smith and have a separation—sign papers of separation.

Ella S. Smith, cross.

Q Didn't Mr. Buckbee tell you that if you would produce the proof of these various accusations that you had made, that he would give you the money to go ahead? A He did not; on the contrary, they had objected—

Q You went to your brother, Mr. Buckbee, and to your sister, Mrs. Canfield, with all these various accusations that you have made in court? A Many times.

Q And they put no faith in your story? A They did not.

Q And they asked you to produce proof? A I gave them an opportunity.

Q Of what? A Of finding out for themselves.

Q Didn't they ask you to produce proof to substantiate your charges? A Yes, they did.

Q And did you ever do it? A I gave them an opportunity to find out.

Q Did you ever produce proof yourself as they asked you to? A I have shown them letters.

Q Is that all? A That is all.

Q And upon this one occasion when you had made an accusation against your husband concerning this music teacher at the time they confronted you with her? A They did.

Q And you said you were mistaken, isn't that so, and withdrew what you said? A I don't recollect exactly; I remember her remark to me, "You don't believe that I am not the woman?" and I said, "No, I do not."

Q Did you ever accuse Mr. Smith while living at Summer avenue of having any woman in the cellar? A I did not.

Q Where did your ice box sit in the Summer avenue house? A I don't know; I cannot recall where my ice box stood.

Q Did you have it changed from the place where it stood originally to another place? A I think I had the ice box changed.

Q Didn't Mr. Smith remonstrate with you concerning that, stating where you had placed it was in the sun and you were wasting ice? A To my knowledge it was because the sun was on it that I had changed it, if I remember rightly.

Q Didn't you tell Mr. Smith that you wanted the ice box removed so you could have a clear view of the cellar and see— A I did not.

Q How do you know what I was going to ask you? A By your remark.

Ella S. Smith, cross.

Q Was I finished? A You asked me—

Q Had I finished my question?

Mr. Romine. He has no right to argue with the witness.

Q Had I finished my question? A I thought you had.

Q Didn't you tell Mr. Smith that you wanted the ice box removed so you could have a clear view of the cellar and see whether or not he was taking women down there? A No, the cellar was four flights down.

Court. It was in an apartment house at this time?

Witness. Yes.

Q Did you live in an apartment house in Summer avenue? A We did at Summer avenue.

Q Where did you live in a two-family house? A Summer avenue, it was three or four flights down; you had to go down my flight of stairs and down the next and then into the cellar; I never went down.

Q Did you when living in any other place change the ice box? A No.

Q Did you ever attempt to commit suicide? A Never.

Q Did you ever locked yourself and your little girl in your room and turn on the gas? A Never.

Q Didn't you tell Mrs. Canfield you had done that to frighten Mr. Smith? A I did not; Mr. Smith suggested that.

Q Did he suggest you go in the room and turn on the gas? A No, that was Mr. Smith's talk, both to myself and my sister; he made that remark to me, that I had gone in a room and locked myself in and turned the gas on; I did go in a room and lock myself in and stayed there and walked the floor and cried on account of something that happened in the afternoon.

Q Did you go in the room and lock yourself in for the purpose of frightening Mr. Smith? A Never; it was impossible to frighten Mr. Smith.

Mr. Vogt. I move to strike it out.

Court. Strike it out.

Q Did you go in the bathroom or any room in Perth Amboy, or South Broad street, and turn on the gas? A I never did.

Q Did you ever tell Mrs. Canfield that? A No.

Ella S. Smith, cross.

Q Then when Mrs. Canfield said that, she is mistaken? A She is not telling the truth.

Q And she is your sister? A I cannot help it; we are here to speak the truth.

Q While living at Boonton did Mr. Smith take a key to the door? A We never had any keys.

Court. What do you mean?

Witness. Except one place I don't think we had a key to the front door; someone always let the other in.

Q When Mr. Smith came home late at night he had no means of letting himself in? A No, we never had any keys.

Q You had to go downstairs and let him in? A Yes.

Q Weren't there keys to the back door? A Yes.

Q Didn't Mr. Smith have a key to the back door ? A There wasn't any key unless he went out and I wasn't home.

Q Did you have bolts on the doors? A Every door had a bolt on and every bedroom a chain; they were there when we went there.

Q Didn't you tell Mr. Smith you didn't let him have a key, because if he had a key he would use it for the purpose of bringing women in the house? A I never did.

Q Did you continue your Christian Science treatment while at Boonton? A I am very much interested in Christian Science; I am not a member of the church, but I am interested.

Mr. Vogt. I ask to have that struck out.

Court. Strike it out. You mean receiving treatment while at Boonton?

Q Receiving treatment? A Off and on, if I have had a severe cold, instead of having a physician, I took treatment.

Q Didn't you write on the wall of your bedroom in the Boonton house a passage from a chapter of a book on Christian Science? A No, I wrote a prayer where I could see it every morning the first thing when I awakened.

Q You wrote it on the wall? A Sure, on the wall.

Q On the paper? A There was no paper.

Q On the white wall? A Yes, sir, it could easily be rubbed off.

Q Did you ever say to your daughter Audrey in the presence of your husband that Mr. Smith was going out that night

with his affinity? A Never; the child would not know what I meant.

Mr. Vogt. I move to strike that out.

Court. Strike it out.

Court. Did you ever say that?

Witness. Never.

Q Did you ever take any hairs off of Mr. Smith's clothing and tell him that that proved that he had been out with a woman? A I have.

Q Where? A In Boonton.

Q Is that the only place? A In Bayonne.

Q Where else? A That is all.

Q What did you do with those hairs? A I usually saved them; they were always the same.

Q Always the same color? A The same color.

Q The same length? A The same.

Q Did you put them in a vase? A No.

Q How did you save them? A In a paper.

Q Where are they? A I haven't them at present.

Q Did you ever accuse Mr. Smith of employing maids for the purpose of spying on you? A Never. I never thought of such a thing.

Q Did you ever hire maids for the purpose of spying on him? A Never.

Q Didn't you tell Miss Castner, a school teacher, that you wanted her to come and live with you and keep her eye on Mr. Smith? A I did not. Miss Castner requested that I take her.

Q You went out of the house while Miss Castner lived with you in Boonton and stayed away all night? A I did.

Q And left Miss Castner and Mr. Smith there alone? A I did.

Q Did you have suspicions at that time that your husband had been unfaithful to you? A Not in the least with Miss Castner.

Q With anybody else? A I had absolutely.

Q Yet you felt perfectly safe in going away and leaving him there with her? A Yes; with Miss Castner, yes, sir.

Ella S. Smith, cross.

Q How many times, frequently or infrequently, did you find hairs upon Mr. Smith's clothing and accuse him of having been out with women? A Quite frequently.

Q In all of these places that you lived? A Mostly in Boonton.

Q At any time when Mr. Smith's hair might have been mussed did you ever accuse him of having been out with women and having it done at that time? A I did not.

Q Never? A I did not. That could be done on the train.

Q You have accused him at one time or another of acts of infidelity with a great many of your personal friends, have you not? A No, not a great many.

Q Several of them? A I have accused him of being unfaithful to me.

Q Were they friends? A Two of them.

Q Is that all? A That is all of my personal friends.

Q Who were they?

Witness. Can I make an explanation in regard to that?

Court. Answer the question.

A Miss Jacobus, the music teacher, for one, and a Miss Miller; that is all.

Q Didn't you accuse him of having improper relations with Mrs. Perrine at Forest Hill? A I did not.

Q Is that the same lady that hired the detective for you? A Yes, she was all right.

Q There were two Florence Jacobuses, were there not? A There was.

Q And didn't you make accusations against your husband concerning both? A I didn't, no.

Q Only against one? A Against one.

Q And that is the one that you subsequently retracted? A I happened to know of the other occasion, but not through me.

Q Did you ever go to a dance with a single man after you lived in Boonton? A I did, with Mr. Smith's permission.

Q That was Mr. Cahart? A Yes.

Q Did Mr. Smith ever tell you that the reason he left your bed was because he couldn't stand the continual charges that you were making against him and had to have sleep? A He accused me of talking all night in my sleep.

Q And gave that as a reason for leaving your bed? A And gave that as a reason and also that he did not love me.

Q You went auto riding while you lived in Boonton? A With Mrs. Dawson I think several times.

Q Anybody else? A My husband.

Q Anybody else? A No.

Q Did you hire an automobile and go automobile riding? A Yes, crowds of us.

Q That is what I am asking you about? A Yes, parties.

Q I think I asked you on your former appearance here, whether or not you ever went with Mr. Schwartz; did you? A I never did, except one morning they took me as far as Newark to my sister's house, when they were together.

Q Did Mr. Schwartz ever ask you to go? A He has not.

Q Didn't you come back with Mr. Schwartz that same day that you came to Newark? A At Mr. Smith's suggestion.

Q Then when Mr. Schwartz says he did ask you to go out riding with him and you refused, he is not telling the truth? A He is not.

Q When you went to Asbury Park was Mr. Smith's mail forwarded there? A Lots of it.

Q How did that happen? A I don't know; I found fault with my letter carrier when I came back.

Q Did you return any of his mail to him at Boonton? A I returned it twice and it came back to Asbury Park twice, his personal mail.

Q Did you open any of those letters that went to Asbury Park? A I did not; I simply sent them back; they were nothing but gas bills.

Q How do you know that? A I could tell from the corner of the envelope.

Q How many gas bills did you receive while in Asbury Park? A They sent the same one back and forth two or three times, and advertisements.

Q Is that the only gas bill that you got? A I think so.

Q And advertisements? A Yes, I cannot tell just what it was; it was nothing of any importance, only it was annoying to have it sent to me.

Witness. Is it permissible for me to tell what I told the letter carrier before leaving Asbury Park?

Ella S. Smith, cross.

Court. No.

Q You opened Mr. Smith's mail at Boonton, didn't you? A Yes, I did open a couple of letters at Boonton.

Q Did you open it anywhere else? A I have a couple of places.

Q When you lived where? A Bayonne.

Q Anywhere else? A Broad street.

Q Perth Amboy? A I don't remember.

Q Woodside? A I don't remember about that.

Q Forest Hill? A He never had any mail in Forest Hill.

Q And you then turned them over to him after you had opened them? A Some of them.

Q Some you kept yourself? A I did.

Q And said nothing to him about them? A Nothing.

Q What did you do with those letters that you kept? A I kept them.

Q Where are they now? A A great many of those letters have disappeared from my dresser with other things.

Q What became of the great many that haven't disappeared in such manner? A I have given my lawyer what I thought was necessary.

Q You have given your lawyer two? A Yes.

Q Is that all? A I don't know.

Q How many letters did you withhold from Mr. Smith? A I think I have had three or four letters that I haven't given him.

Court. In addition to those two?

Witness. Yes; about five or six letters that I haven't given Mr. Smith.

Q During all this course of ten years? A Yes.

Q And of those five or six you turned over to your lawyer two? A Yes, all I had left—I have been to the hospital twice and destroyed lots of things.

Q One of these two letters you got from his pocket? A One of them, yes, sir.

Q So that didn't come to the house in the mail? A No.

Q The other one did come to your house in the mail? A Yes.

Q Which one is that? A I cannot recollect.

Ella S. Smith, cross.

Mr. Romine. I offered this in evidence and had it marked and said I would introduce it later; the other side objected to it.

(Marked Exhibit C. 10 for identification.)

Mr. Vogt. The two letters produced—one Exhibit C. 2, the other is a letter dated December 8, without a year, in an envelope dated December 8, 1913, not marked in any manner; the envelope is addressed to Mr. Ernest Smith, Boonton, N. J.

Q Exhibit C. 2 you obtained from Mr. Smith's pocket? A I did.

Q Where is the envelope that that letter was in? A I don't think that letter was in any envelope; it was folded the way it is in his pocket.

Q And the one in the envelope of December 8, 1913? A That came through the mail.

Q And the one marked C. 10 for identification—

Mr. Romine. This letter was offered on page 119.

Q Out of all the letters that came through the mail addressed to Mr. Smith, which you held up and didn't turn over to him, this one marked Exhibit C. 10 for identification is the only one you turned over to your counsel? A I think so.

Q Why didn't you give the other letters that you had opened, to Mr. Smith, to your counsel? A When they were from other people, from girls, I considered that that was my business to hold on to them.

Q Why didn't you turn them over to your counsel? A I didn't have a counsel at that time.

Q Did you destroy them before you obtained counsel? A No, they disappeared while I was in the hospital.

Q Did you ever light matches and wave them before the window in the Boonton house? A I never did.

Q What kind of a house did you live in at Forest Hill? A The house Mr. Smith built. What do you mean?

Q An apartment or two-family house or private house? A A private house.

Q Is Forest Hill one of the places that you accused Mr. Smith of waving to people from the dining-room? A He couldn't.

Ella S. Smith, cross.

Q Did you ever accuse Mr. Smith of signalling across the dining-room table to friends that might be taking a meal with you? A Never.

Q I was told of such an occasion. Didn't you tell Mrs. Canfield that Mr. Smith had been signalling to friends at the same table? A No.

Q And that if he held up one finger it meant one thing, and if held up two fingers, it meant another thing, and three fingers, it meant another thing? A That was signalled to my servants.

Q Then you did accuse him of signalling to your servants? A With my servants.

Q With his fingers? A Yes.

Q At Forest Hill? A At Forest Hill, and different places.

Q Woodside? A Woodside.

Q South Broad street? A Yes.

Q Perth Amboy? A We didn't have a girl all the time in Perth Amboy.

Q When you did have one? A No, not at Perth Amboy.

Q In Bayonne? A No, not in Bayonne.

Q Both houses in Boonton? A The last of them, yes, sir.

Q So that at all those places, except Perth Amboy and Bayonne, you accused Mr. Smith of signalling to the maids in your own house with his fingers? A Yes.

Q Would he do that in your presence? A Right in front of me.

Q And while you were all in there around the table? A There was only my child and I.

Q While you three were together? A Yes, at the table.

Q Did you remonstrate with him about it? A I did.

Q Tell us one of the maids that he would signal to? A It was a colored maid that we had at that time.

Q Is that the only one? A He has done it with others; I don't really remember.

Q Tell us some other maid besides this colored maid. A I think we had two or three white maids that he has signalled to that way.

Court. What you saw.

Witness. He has signalled to other maids.

Q Who besides the colored maid? A I cannot tell you; we have had different maids.

Ella S. Smith, cross.

Q But you saw it done, you say? A Yes; he has done it.

Q If you saw it done, why can't you tell us with whom it was done? A It was with different maids that we have had.

Q You recollect specifically this colored maid incident? A Yes.

Q Where was that? A When we first went to Boonton, a young colored girl, and when I remonstrated with her, she left.

Q That was about three or four years ago? A That was when we first went to Boonton; she did not stay long.

Q Who did you get after you had the colored maid in Boonton? A I think Mary Shepard.

Q She was colored? A Yes.

Q Did he signal to Mary? A No, never to Mary.

Q Who did you get after you got Mary? A Carrie Scott.

Q Did he signal to her? A No.

Q Whom did you get after Carrie? A Florence Branthwaite.

Q Did he signal to her? A No.

Q Who after that? A That was all.

Q So while you lived at Boonton in the last four years he signalled to one colored maid? A Yes, I remember that incident.

Q Do you recollect any other incident with any other maid at Boonton? A Not at Boonton.

Q At Bayonne you say not? A I think not.

Q At Perth Amboy? A I think not.

Q Whom did you have as a maid at South Broad street? A I had several while there; I cannot recall their names.

Q Black or white? A Mostly black.

Q Did he signal with all of them? A He certainly did with one.

Q Which one? A I cannot tell you her name.

Q Colored or white? A A colored girl.

Q Once or more than once? A On several occasions.

Q Did you discharge her for that purpose and that reason? A She was discharged for talking in the neighborhood.

Q Then you didn't discharge her because she was signalling to your husband? A Not for the one reason, no, for everything.

Q Did you have any white maids in South Broad street? A I don't think so.

Ella S. Smith, cross.

Q How would he signal to this colored maid in South Broad street? A He would be holding up his fingers, I never could understand. He would stand there and put up his fingers like that (indicating), and I would look at him and I would think what a ridiculous thing it was to do, and then she would put up three fingers back to him, and then sometimes he would put his hands this way (indicating).

Q He would lay one finger or two fingers or more alongside of his cheek? A He would.

Q And she would answer? A By laying one or two or three or four alongside of her cheek.

Q Did you ever ask him what he meant? A I did.

Q Before her? A Before her.

Q What did he say? A I don't like to say.

Q Did you discharge that maid because of that occurrence? A I did.

Q Was she colored? A I think she was colored.

Q Are you positive you never accused your husband of signalling in the manner with the fingers as you have related, to a friend of yours at your own table? A No, I cannot recall anything of that sort.

Q That is your best answer? A Yes.

Q It might have happened and might not? A Yes, but I don't remember that.

Q And consequently when Mrs. Canfield says that it did happen, you would not say that she was not telling the truth? A Mrs. Canfield was never there.

Mr. Vogt. I move to strike that out.

Court. Yes, strike it out.

Q (Last question repeated.) A I cannot say; I do not remember.

Q (Question repeated again.) A I cannot remember such an occasion.

Q And when Mrs. Canfield says that you told her that Mr. Smith was signalling to this friend of yours across your own dining-room table, Mrs. Canfield is telling the truth? A I don't remember that occasion.

Q That is your best answer? A Yes.

Q Did you ever threaten to have Mr. Smith arrested? A I have.

Ella S. Smith, cross.

Q Prior to living in Boonton? A Yes.

Q At all these other places that you have lived? A No, only twice.

Q Where? A In Bayonne.

Q Both occasions in Bayonne? A Yes.

Q What were you going to have him arrested for? A For striking me.

Q Why didn't you? A My child has prevent my doing a great many things; on account of notoriety I have submitted to many indignities.

Q So that on account of your child, notwithstanding the fact that Mr. Smith struck you, as you say, you didn't have him arrested? A I did.

Q And is that the same reason that you didn't have him arrested in Boonton? A That is the same reason.

Q You told him frequently that you were going to have him arrested? A I have told him frequently when he hit me, that I would have him locked up and he has dared me.

Q Dared you to have him locked up? A Yes.

Q But you wouldn't take the dare? A I wouldn't for the sake of the notoriety.

Q Would there have been any more notoriety than there is in this case? A Not as much.

Q Where are you working now? A I am not working, except to do a little dressmaking at home.

Q How long since you have been working? A I think since April 4; shortly before that my little girl was taken ill.

Q Where are you living now? A On Linden street, in Morristown.

Q With whom? A With my father, my child and myself.

Q That is all? A That is all.

Q Occupying a rented house? A I do.

Q Who is paying for it? A My brothers and sister.

Q Mr. Lott Buckbee and Mrs. M. M. Canfield? A Mr. Buckbee and Mrs. Canfield and the other brother, Mr. Lewis R. Buckbee, are paying my rent and helping me out.

Q You are on good terms with them? A I am not; I haven't been home in four years.

Q Did you ask them to help you in this matter? A No, they have volunteered to help me and give me my orders as to what I am to do, until after this case is closed.

Q Where did you work when you first came to Morristown? A In Carson's dry goods store.

Q How long did you work there? A I cannot tell you; I think all one summer and pretty near up to Christmas.

Q How much did you get there? A Only $6 a week.

Q You lived at that time where? A I had two rooms in Mt. Kemble avenue.

Q You lived on Speedwell avenue for a while? A I did.

Q How long have you been in Morristown? A Since June, 1914, I think; it was after I left Mr. Smith; from June, I think.

Q Did you obtain employment as soon as you came to Morristown? A I came to Morristown to take the position with Mr. Carson.

Q You were with him until April of this year? A No.

Q How long did you stay with Mr. Carson? A Until nearly Christmas.

Q Then where did you go? A Then I was home.

Q Home where? A In Speedwell avenue, then.

Q You worked with Mr. Carson from June until December? A Yes.

Q At six dollars per week? A Yes.

Q Then you went home? A I moved up to Speedwell avenue in Morristown.

Q You were not working then? A I was doing dressmaking; I have always worked.

Q Did you have any employment in any store in Morristown in any other place after December? A I did.

Q Where? A At Mr. Kasdin's.

Q What is his business? A A dry goods store; I had full charge of the store.

Q Where is that store? A Next to the Palace Theatre; it is a bazaar.

Q How much did you receive there? A $6 a week.

Q You had full charge of the store? A Yes.

Q And that was up until April? A That was up until April.

Q And since April you haven't done anything except this dressmaking? A Yes, dressmaking at home.

Q The expenses other than what you make in your earnings from dressmaking are met by your brothers and sister? A My rent is paid by my brothers and sister.

Ella S. Smith, re-direct.

Q Is that all? A That is all.

Q So that your eatables, your water and your lights, and things like that— A We have no water; I have lights and my meals and my eatables.

Q They are paid out of what you get—out of the alimony? A Yes, and what I try and earn.

Court. What is the rate of alimony?

Mr. Vogt. $7.50 a week.

Q The orders you referred to as given to you by your brothers and sister were that you were to stay in Morristown? A Yes, until this case is closed.

Q You wanted to come to Newark? A I wanted to go to work in Bamberger's.

Q You said in your direct examination that you didn't know Miss Castner very well? A Not very well when I first got acquainted with her.

Q You didn't know her very well when she first came to Boonton? A Yes, she asked me to—

Q You obtained a situation for her there? A Yes, on her request.

Q How long were you in German Valley? A I was in German Valley from August until November.

Q And was Miss Castner there all the time? A No, she was not.

Re-direct by Mr. Romine.

Q With reference to the time you were living at Old Boonton road, just prior to your leaving Mr. Smith, and when you were taken sick, it is stated in the paper somewhere, the answer of Mr. Smith, that you had fish for supper that night? A I did.

Q Do you know who prepared the fish? A My husband.

Q Do you know how he prepared it? A I do not; I didn't watch him.

Q You stated that you had Dr. Arbuckle treat you that night? A Yes.

Q Did Dr. Arbuckle say to you upon arriving at the house, "This time you have escaped; the world is too wide for you to stand anything like this"? A Yes, the last time he visited me he made such a remark.

Ella S. Smith, re-direct.

Q De you recall an occasion while you lived at Old Boonton road when your husband charged you with infidelity? A I do.

Q What was that occasion? A I had a miscarriage.

Q What did your husband say? A He made the remark that it wasn't by him if it was that.

Q On any other occasion did he say anything with reference to infidelity on your part?

Mr. Vogt. I object as not re-direct.

Court. Any matters that are omitted I will permit him to put in.

Q On this other occasion what did Mr. Smith say to you? A He accused me of being out whoring all night. I was with my father and my uncle in Newark that evening all night.

Q Do you know what time that was, with reference to the date when you left Mr. Smith? A It was just shortly before I had gone to Newark to talk matters over with my father.

Q You have stated in your examination to Mr. Vogt something about having keys to the house when you returned to Bayonne from German Valley; do you know whether anyone had a key to the house? A Yes, there was.

Q Who was that person? A It was a woman.

Q What was the circumstance about that? A Audrey and I had just arrived—

Q At the time was Mr. Smith home? A He was not.

Q What happened? A We were upstairs, taking off our hats and coats and the front door quietly opened and Audrey screamed; I went to the head of the stairs just in time to see this woman going out; I did not see her face.

Q Can you describe how the woman was dressed? A Only that she had a blue skirt on; the child was very frightened.

Mr. Vogt. I ask to have it struck out.

Court. Strike it out.

Q You have said in your testimony that you saw Mr. Smith passing out things to women at various places where you lived; can you recall any instance while you lived at Boonton, with reference to someone being in the cemetery? A I can.

Q What was that? A I had been making jelly and he came in and took a glass of jelly off the table and took it and passed it over the fence.

Ella S. Smith, re-direct.

Q To whom? A To some woman.

Q Did you see her? A My maid and her girl—

Court. Did you see her?

Witness. I was upstairs and saw the woman but I didn't see the jelly passed.

Mr. Vogt. I move to strike it out.

Court. Yes.

Q You did see the woman? A Yes.

Q And you saw Mr. Smith? A Yes.

By the Court.

Q Did you see Mr. Smith and the woman talking to each other? A Yes.

Q Where were they? A Across the fence in the vegetable garden.

Q Did you miss much of your food or provisions in that way? A I did.

Q Did you have colored girls at this time? A Off and on, but they never took anything out.

Q Did it ever occur to you that they might take it and blame it on Mr. Smith? A No, they never took anything out with them when they went out; they went out empty-handed always.

Q I don't suppose you saw them go out always? A Most always. I was in the kitchen about the time they would go out, about one o'clock; I never had many girls that did go out.

By Mr. Romine.

Q You said Mr. Smith would signal with the gas and the lighting of matches; did you see that? A I did, repeatedly.

Q Why did you say that he was signalling with curtains; did he say anything to you that led you to believe that? A He acknowledged it, and then he would take the curtains and tie them all up in great big knots and put them up as high as he could.

Court. That was in connection with this signalling of the light?

Witness. Yes.

Ella S. Smith, re-direct.

Q What about the handkerchiefs, did Mr. Smith say anything about the condition of the handkerchiefs? A He said it was none of my business.

Court. When did that incident first begin when you found these handkerchiefs in his pocket, to which you objected; how many years ago?

Witness. Several years ago.

Q And did he continue to come home with these handkerchiefs in his pocket after he knew you were waiting to find them about him? A He didn't care; he took them and threw them at the head of the stairs, where he knew I had to pick them up and put them in the wash.

Q Did you notice his handkerchiefs first or was your attention called to them by the servants? A My attention was called to them by the washwomen.

Q Did the washwoman object to washing them? A She did.

Q You said something about there being a woman and a child; you made reference to Eliazbeth White; did Elizabeth White ever say anything to you which led you to believe that there was some relation between her and your husband? A Yes.

Q You say that you saw Mr. Smith sitting in a house on Wright street in Newark, and that he had a child on his lap; what were the circumstances of that? A I saw him, and as I passed he ducked his head.

Q What happened that day after you saw him? A I got a party to go around there that night and investigate as to who lived in that house and he was told—they had gone, disappeared.

Mr. Vogt. I object.

Court. Strike it out.

Q Did you later learn that the people in the house had moved away?

Mr. Vogt. I object.

Objection sustained.

Q Did you discuss the matter with your husband? A No; when he came home he cursed and swore at me and said, "You think you have been damn smart, don't you?"

Ella S. Smith, re-direct.

Court. Did he say what he was swearing about?

Witness. No, he just made that remark.

Q You said you had detectives off and on to follow Mr. Smith. Has Mr. Smith ever said anything to you about those detectives? A He has.

Q What has he said about them? A He said he knew it and he was too smart for them.

Q Particularly with reference to the time that you lived at Old Boonton road, can you tell us anything what he said about being followed?

Mr. Vogt. I object as not re-direct.

Court. I will allow it.

A He said he knew I was having him watched but he was too damn smart for anybody that I could have.

Q Did he say anything in those conversations about his going with women, or whom he would go with? A He said he would go with them whenever he pleased.

Court. She has already said that.

Q And this Mrs. Perrine, you say that she was a neighbor of yours when you lived in Newark? A Yes, she was.

Q That is the neighbor that your sister Elizabeth Canfield referred to? A It was.

Q Your sister says in her evidence that you told her that Mr. Smith was intimate with this Mrs. Perrine; did you tell your sister that? A No, never.

Q Were you on friendly terms with Mrs. Perrine? A Very.

Q And she is the woman that assisted you in having Mr. Smith watched? A Yes, she did.

Q You said you were trying to break away from this life with Mr. Smith; why were you trying to do that?

Mr. Vogt. We have been all over that.

A Because I felt that it would do one of two things: I would either die or I would go out of my head finally.

Mr. Vogt. I object and move to strike it out.

Court. I will sustain the objection.

Ella S. Smith, re-direct.

Q You were shown a letter post marked December 8, 1913, at Newark, Exhibit C. 10 for identification; is that one of the letters that you identified as withholding from Mr. Smith? A That was one of the letters.

Q Do you recall whether you withheld any postal cards? A I did.

Q I show you two postal cards, one post marked Butler, September 18, 1914, 9 A. M., addressed to Mr. Ernest Smith, Boonton, N. J., and signed "Delia," and ask you if that is one of the postal cards you withheld? A Yes.

Q I show you also another postal card post marked Butler, September 17, or 18, 1914, 9 A. M., addressed to Mr. Ernest Smith, Boonton, N. J., and signed "Nora"; is that one of the cards you withheld? A It is.

Mr. Romine. I offer these cards in evidence.

Mr. Vogt. I object to them.

Court. Where did you get those postals?

Witness. They came direct to the house.

Q The same way as these letters? A Yes.

Q One letter you found in Mr. Smith's pocket? A Yes.

Q And the other came in the regular course of mail? A Yes.

Q And the other came in the regular course of mail? A Yes.

Q And received by him? A Received by me.

Q And the same thing is true in regard to the postals? A Yes.

Court. I will allow them for what they are worth.

(Marked Exhibits C. 11 and C. 12.)

Q Do you know Mr. Ernest Brauer who testified here this morning? A I do.

Q Did you ever tell him that your husband went down in the cellar so that he might have connection with the servant girl? A I did not.

Q Did you ever tell him in the presence of his wife and Mr. Smith, that he and Mr. Smith had servant girls or girls on a motor boat? A I don't remember ever such an occasion as that.

Q Did you ever tell him at the railroad station in Newark, when you were there for the purpose of meeting Mr. Smith,

that Mr. Smith kissed some girl in the car? A No, I couldn't see it if he did.

Q Speaking of Florence Jacobus, did you ever see anything between her and Mr. Smith? A Not that would indicate that she was a bad girl, but there was love.

Mr. Vogt. I object.

Court. Strike it out.

Q (Last question repeated.) Speaking of Florence Jacobus, did you ever see anything between her and Mr. Smith at your home when she was ready to leave? A Yes, she ran out of the bedroom to go in and talk to Mr. Smith for a few minutes before leaving; Mr. Smith threw open a portiere, partly open, and I came out just as she was leaning over to say something to him, and interrupted them.

Mr. Vogt. I ask that the latter part of that be stricken out.

Court. Strike out that portion, "I interrupted them."

Q Did Mr. Smith ever say anything regarding his fondness for this woman? A He did; he told me repeatedly that he loved her, and if I was loved one-half as much as he cared for her, that our lives would be very different; he told me that not once, but many times.

Q Your sister Elizabeth Canfield has said in her testimony that you told her that letters were put under the door while you lived at Forest Hill; did you relate the circumstances of how you knew that? A I happened to go down to the door and I would find these letters under the door, anonymous letters.

Mr. Vogt. I object on the ground that it is immaterial.

Court. I will allow it.

Q How did you come to know by whom these letters were put under the door? A I didn't know who put them under the door.

Q What did you do with the letters that were received? A I kept them for a long time until I went to the hospital.

Q Where did you keep them? A In my dresser.

Q When you returned from the hospital did you find the letters there? A No, they were gone.

Q Since that time you have never seen the letters? A No.

Q You don't know what became of them? A No.

Q You didn't destroy them yourself? A No.

Q Does it appear in the record to whom the letters were addressed? A Those letters were addressed to me, telling me of my husband's unfaithfulness.

Mr. Vogt. I object.

Court. Strike it out; you cannot give the contents.

Q Your sister testified that you accused your husband of infidelity at her home when he was present; did you do so? A I have accused by husband of infidelity toward me.

Q At your sister's home? A When I was home, yes, sir, repeatedly.

Court. At your sister's home?

Witness. Yes.

Q Mr. Schwartz has testified that he asked you to go one Sunday, you and your husband, for an automobile ride, and that you told him you couldn't go because you had an ordeal to go through the next day; did you tell him anything like that, and did he ask you to go? A He did not ask me to go; I made that remark in connection with his asking me if I was going to Newark the next day; there was something going on—I don't know what—and I said no, I had a trying ordeal to go through the next day.

Q Albert Husk has testified that you complained to him about your husband's infidelity; did you ever say anything to Albert Husk about your husband's actions or attitude? A Yes, I complained repeatedly that I couldn't get all the groceries that he wanted me to get because Mr. Smith was very ugly about it, and he was very ugly to me all the time.

Q Did you ever say anything to Albert Husk about your husband's infidelity? A I have mentioned the fact that he wasn't true to me.

Court. Who is he?

Witness. He used to be a friend.

Court. Why did you discuss your relations with your husband with him?

Ella S. Smith, re-direct.

Witness. Because he himself would make remarks about Mr. Smith's actions toward me.

Q Albert Husk has testified that you spoke to him about those handkerchiefs and the condition that they were in; did you do that? A I did not.

Q Mr. Dunn, your uncle, said that you wrote him a letter regarding accusations against some woman whose photograph you showed him, and that you retracted the accusations against this woman in a letter to him; did you write such a letter? A I never did, no, sir.

By the Court.

Q Will you tell me why your uncle and your brother and your father and your sister attach no importance to your complaints and grievances in this matter? A They have always been very much infatuated with Mr. Smith; even before I married, they were so afraid that I wouldn't have Mr. Smith, and I have begged of them to come up and stay in the house and see for themselves. Mr. Smith repeatedly has made the remarks to me he could do anything to me, when we were alone, when we had no witness, because they would take his word any day against mine.

Q Why did you think they would take his word against yours? A Why do I think so?

Q Why do they? A They seemed to think such a lot of him, and seemed to think that he couldn't do these things, and I think the very fact of their taking this attitude has made Mr. Smith's actions worse towards me, because he has seen I have no one to protect me.

Q Your family is kind to you? A They haven't been.

Q You say they are providing for your support now? A Yes.

Q Have they been unkind in any other way? A Yes; I don't think they have watched over me or done the things that I have asked them to do.

Q In connection with your husband? A In connection with my household troubles. These things mostly have taken place when we have been alone, when he could do as he pleased.

Q Are there any of your relatives who have espoused your cause in this proceeding, or have they all espoused Mr. Smith's?

Ella S. Smith, re-cross.

A I don't know, because I have not seen any of my relatives for about four years or discussed this situation whatever with the exception of my uncle and my father; they are the only two, and they have been in my home and seen for themselves; the rest have not.

Q And yet they believe your husband to be guiltless? A They do. I have had three witnesses who, if my case had come off when it was first set, could have testified in my favor in regard to the woman question. I have the notices of their death; one died on December 29, one of my main witnesses, Mr. John Knell, and his wife started to tell here and was told she couldn't give her husband's evidence; another one, Dr. Schultz, of Perth Amboy, could have testified; he was taken. Carrie Scott, one of my maids, who absolutely saw these things, was taken just before my case came up April 4th.

By Mr. Romine.

Q Your father is living with you now? A Yes.

Q Your father has testified in this case? A Yes.

Q And your uncle Abram? A Yes.

Q And those two visited your house frequently? A Yes, they have been there to see.

Re-cross by Mr. Vogt.

Q Was Mr. Smith a cook? A He always claimed that he was.

Q He got your meals, didn't he at times? A Very seldom.

Q He did at times? A Once or twice I think that he did.

Q You ate them after he had prepared them? A I did.

Q Did he ever cook anything else around the house? A No.

Q Nothing at all? A Not that I can recall.

Q You are positive about that? A There may have been occasions when Mr. Smith a number of years ago, when we were first married, cooked some meals for me.

Q What, for instance? A Anything for a dinner, when I happened to be sick.

Q Could he cook anything besides dinner? A I don't understand.

Q Could he put up preserves? A He never did.

Q You were asked on your former examination where you had seen Elizabeth White before and you said in Newark; you

Ella S. Smith, re-cross.

were asked whereabouts, and you said on Wright street; I asked you with him, and you said "In the house"; I said, "With anybody" and your answer was "In the house." Why didn't you tell us that Mr. Smith was there, too? A Because Mr. Smith was not in that house where I saw Elizabeth White. It was another house.

Q On Wright street? A Wright street.

RECESS.

Q There were two houses on Wright street, were there, Mrs. Smith, one where you saw your husband with a little girl in his lap and one where you saw Mrs. White? A I saw her coming out of the house; I don't know whether she lived there or not.

Q But you didn't see your husband in the house that you saw Mrs. White in? A No, I did not.

Q You didn't see Mrs. White in that house which you saw your husband in? A No.

Q Where you on the side of the street that the house was on when you saw this? A When I saw what?

Q Mr. Smith with the little girl in his lap? A I passed right by the window.

Q How close? A Very close; the house was right on the sidewalk.

Q Did you recognize the little girl? A No, but I recognized my husband.

Q Had you ever seen the little girl before, or since? A No, not that child; I cannot tell which; it was just a child; that is all I could tell.

Court. How old did the child appear to be?

Witness. A little thing, may be a year or two, just a little thing.

Q Was it the same child that was at your house when Elizabeth White was there as a maid? A That I could not swear to.

By the Court.

Q How long after this occasion of seeing the child was it that Elizabeth White and the child were at your house? A Just recently, a year ago this last Christmas they were in my home.

Ernest N. Smith, direct.

Q That was how long after this occurrence when you saw the child in the Wright street house? A About five years.

Q How old was the child that came to your house? A She told me the child was in its sixth year.

Q Did it appear to be about six years old? A Yes, it was a very large child anyway for its age.

Re-direct by Mr. Romine.

Q Mrs. Smith, the money that you are receiving now as alimony from your husband, is that sufficient to maintain you and your child in your home?

Mr. Vogt. I object.

Court. We won't go into that now.

Mr. Romine. I do not want it to appear on the record that we are satisfied with the alimony allowed.

With the exception of two short witnesses that I will examine before Mr. Bindseil on next Friday, I will rest.

ERNEST N. SMITH, sworn.

Direct examination by Mr. Vogt.

Q You are the defendant in this suit? A I am.

Q And live on the Old Boonton road at Boonton? A I do.

Q In a house owned by yourself? A Yes.

Q And purchased in about 1912? A Yes.

Q Who is living with you now? A My father and mother.

Q And they have lived there since Mrs. Smith left? A Yes, soon after.

Q How old are you? A Forty-four.

Q How long have you been a resident of New Jersey? A I don't know.

Q How long before you were married approximately? A Five or six years.

Q What is your occupation? A Bookkeeper.

Q In a brokerage house in New York? A Yes.

Q Have you been in the employ of a brokerage house in New York ever since you were married? A Yes, since I was married I have been employed by brokers.

Q Whom were you employed by first? A Post & Flagg.

Q Now by whom? A Prince & Whitely.

Q Those are the only two firms you have worked with in the past fourteen years? A Yes.

Q What were you earning when you were first married? A $800 a year.

Q Your salary now is what? A $2,000.

Q During the time that you have been married has your employment been steady or otherwise? A Steady, except when the war commenced.

Q And then you went on half time? A Half time.

Q Were you in constant attendance at your office in New York during your married life? A I haven't missed a day at the office for fifteen years, sickness nor had a doctor in the whole fifteen years I worked there.

Q You commuted back and forth to New York from the various places you lived? A Yes.

Q Leaving your home, wherever it may have been, in the morning? A Yes.

Q At about what time? A Anywhere from quarter of eight to ten minutes after.

Q And getting home at what time at night? A From 5:30 to 6:15.

Q And upon any occasions later than that? A Always at the end of the month, the last day of the month, sometimes next to the last and the first two, we always have to work nights until midnight; always have for the last fifteen years.

Q And upon those occasions you returned home late? A At half-past one, the last train out; fifteen minutes of twelve I left the office for the ferry.

Q Your married life has not been very happy? A It has not.

Q When you were first married you went to live at Forest Hill, did you not? A Yes.

Q When did the trouble between yourself and Mrs. Smith first start? A The first was before we were married.

Q And when was that, how long before? A About four or five years before we were married.

Q How long had you known Mrs. Smith before you were married? A About five or six years, along there, six years say.

Q What was this trouble that occurred first before you were married? A I got acquainted with a young lady in East

Orange and she knew that I knew Miss Buckbee at that time, and she invited Miss Buckbee and her brother Lott and myself to her house one evening, and we went up there to spend the evening; the next time I saw Mrs. Smith she accused me of being the father of a child that she saw there. The thing was so impossible, I had only been in New Jsreey a year, and the child was four years old and running around the house and talking, and when I explained the circumstances she could see it immediately.

Q Where did you come from? A Rochester, New York State.

Q How soon did the trouble between yourself and Mrs. Smith start after you were married? A The first year.

Q Will you relate to the Court what occurred between yourself and Mrs. Smith while you lived at Forest Hill? A The first one I remember, there was the neighbor Mrs. Perrine; we both had gardens and I would work in my garden and she worked in hers, and we talked across the line; there was no fence, and if I got near the line Mrs. Smith accused me of whispering to Mrs. Perrine—she was about sixty-five—of making dates with her and meeting her in New York, and things like that, and I denied them all, but she still believed it. That was the first women that she accused me of in Forest Hill.

Q What else happened at Forest Hill? A Then she picked out some of her personal friends, this Florence Jacobus, whose name was taken out, and she purposedly brought her up one evening with her brother again to dinner, and everything that was done at that dinner that night was watched; if I even laid my hand on the table, my fingers meant something; or if I put my hands up to my face, or under the table, that was some sign that I would meet Miss Jacobus on some date, and if I would say things that didn't have any meaning at all, those things were all laid up against me, and afterwards I was accused of making dates and meeting this girl on the outside.

Q Accused by Mrs. Smith? A Yes. Then she accused me of the servants and making signs to them; I never knew there was any sign with the finger, except holding up two fingers when I was a boy, which meant "Can I go swimming," and every boy in the United States knows that. That is all I know of in holding up two fingers or dates, but she said that I did.

Ernest N. Smith, direct.

Q What would Mrs. Smith say when she would make any of these charges against you; do you recall any of the conversations? A Yes, she would accuse me that I had been meeting women in New York; when I would come home, I would change my clothes, change my necktie, and that was a sure sign for her that when I went out in the morning I would meet someone that day.

Q Did she mention that fact to you? A Yes, in this way: "I will meet you at lunch today." I knew of course what that meant, that she was suspicious immediately, and was going to dog me up.

Q Any other accusations made while you lived at Forest Hill? A Yes, she started personals in the Herald, cutting out personals; if she would get the paper she would tear the first page out, and if a letter of my name or some of the girls she accused me of happened to be on that personal, I had no show there, because the personal might say Wednesday, and on Wednesday I might put on a clean necktie or collar or change my suit, then of course my changing the suit and the personal would coincide immediately, and that was sure proof that I was doing it, so I was up against it both ways.

Q Would she call your attention to the fact that you had changed your necktie on the day the personal said someone was to meet someone in New York, or wherever it might have been? A She said, "You are going to meet your friends today," and looked me over with that sneering smile. "I see why you changed your clothes"—just enough to rile you up.

Q Were these personals in the Herald shown to you? A No, she cut them out; if I got the paper three or four were cut out, maybe the whole front page would be torn off.

Q Would she refer to these personals that she cut out as applying to you? A She accused me of putting them in, to my face.

Q Had you put them in? A No, I never did.

Q Anything else you recall that occurred at Forest Hill? A Not personal, only as a general—every servant girl we had, it was the same thing, anywhere from three to four while we were in Forest Hill.

Q Had you been intimate with any of those servant girls or with any of those friends that Mrs. Smith accused you of? A Never.

Q Had you given her any cause to make such accusations against you? A Never any cause whatever.

Q From Forest Hill you went to Woodside? A Yes.

Q You lived in two houses in Woodside? A Yes, on Summer avenue.

Q What do you recollect that occurred at the first house? A The first house was where the Brauers lived underneath; that was a two-family house, we had the top floor. Mr. Brauer was building a boat and I used to go down at night and help him build it, and Sundays, and worked with him on the boat, and Mrs. Smith said I simply went down there to meet the servant girl when she came for coal, notwithstanding we turned out a 24-foot boat and 4-foot beam.

Q Who was your maid at the Woodside house? A She came with us from Forest Hill, the Polish Mary that was mentioned.

Q Were there any accusations made against you at that house? A Not that I remember, so that I could recite the date at all; it was general accusations of different people and different women; there were so many of them that I don't remember the time; we were only there two or three months, a very short time, and we moved up the street.

Q Did you hear Mr. Brauer's testimony this morning? A Yes.

Q Have you any recollection of an incident when Mr. and Mrs. Brauer and yourself and Mrs. Smith were present? A Yes.

Q State that. A I am not sure whether it was that house or the next one—they were both on the same street, but we were playing cards and Mrs. Smith accused Mr. Brauer and me of being out in the boat with women, and Mr. Brauer got up then and pulled out a roll of money and offered her $50 if she would prove if we ever had one woman in the boat with us, and Mrs. Brauer immediately spoke up and said, "You can say what you please about your husband, but let mine alone."

Q Did Mrs. Smith say anything to that? A She never said anything when she was cornered.

Q Had you had any women out in this boat? A Mr. Brauer and his brother-in-law and a friend would go down to Newark Bay on the Kill von Kull in the boat, fishing, and come back in the boat; nothing but men ever went in the boat.

Q Had you given Mrs. Smith any cause to make such a charge? A No, none whatever.

Q Do you recollect anything else that happened in the Woodside houses or either of them? A Yes, the second house we moved in in Woodside was where the music teacher came in; she made that accusation about her, and I don't remember dates, but Mrs. Canfield threatened to tell Miss Jacobus, the music teacher, and Mrs. Smith beat her to it, by writing a letter and explaining the thing herself.

Q Did she tell you that she had written this letter? A Yes, and then they came up.

Q Who? A Miss Jacobus, Mr. Canfield, Mrs. Canfield, Lott Buckbee, myself and Mrs. Smith were all together.

Q What took place? A Mrs. Smith retracted what she said; that she was mistaken and that she resembled the woman whom she thought she had seen.

Q Will you relate what occurred further at the Woodside house? A Another case at the Woodside house I remember, a quarrel started at the breakfast table over the same thing, servants and women, and we got into a squabble, and I held Mrs. Smith's hands, and I knew I was standing by the wall, and she started to hit me; I grabbed her wrists and held them; when I let go and started down the stairs, she picked up a cup of coffee and threw it at me, and I got around the corner and it didn't amount to anything or go on me.

Q Did you strike her at that time? A Never. Then there was another case, we had a colored servant girl; she said every time she went down to the icebox, which was on the first landing below ours, that I always took the coal pail and went down after coal to the cellar so she had me move the icebox out to the end of the porch in the sun, so she could stand in the kitchen window and see the icebox, so if we happened to go down at the same time, she could see as we passed; I made complaint because it was in the sun in the hottest part of the day and melting the ice for nothing.

Q What did she reply? A She wanted it there and that settled it.

Q Did she say for what purpose? A No.

Q What else occurred in the house, if anything?

Court. How did you know that that was what she wanted the icebox moved there for?

Witness. Because she accused me of meeting the woman at the icebox.

Q Did anything else occur at the second Woodside house? A Only in this way, saying whether we had a colored servant girl, I remember the colored servant girl so distinctly, because Mrs. Smith told me she caught her on the back porch drinking her beer which she had in the icebox; that circumstance was very plain.

Q From Woodside where did you next move? A Dr. Warren's flat on Mt. Prospect avenue and Verona avenue, Newark.

Q What occurred at that flat, if anything? A She picked out a girl who was living across the street, and said that I was flirting with this girl out of the window and making all sorts of signs with her, so Mr. Dawson was there—

Q Did she accuse you of that? A Yes, and we had this windowphane and she got him to put it on; when I come in the house—they had it on the lower sash, and I complained about it, because I had to shave in the bathroom, and I needed the light; she was going to have it, and Mr. Dawson put it on the top one, too, so it covered the whole thing; I let it go. The reasons she put it on was to keep me from seeing across the street or making signs to the other woman.

Q Did she state that to you? A Yes. Then about that time I think she went to the hospital for an operation; I know Mr. and Mrs. Dunn come up and took charge of the house, and she was down there for a couple of weeks and I used to work until about seven o'clock; I come home, eat my supper and go down and sit until nine o'clock, always kissed her when I went in the hospital each time, and the first week or beginning of the second week I had a new necktie which I bought that day, and she began again.

Q What did she say? A That I had been out with women.

Q Did she say the fact that you had a new necktie on indicated to her mind that you had been out with a woman? A No, but that was the supposition?

Mr. Romine. I move that that be struck out.

Court. That is the way he understood it.

Witness. Every new necktie was the same story, or if I changed my clothes, it was the same story.

Q Did you continue to stay at the hospital until nine o'clock evenings while she was there? A Yes, every night; that was as late as you could stay.

Q Anything else occur at Dr. Warren's flat? A After she came back—I think it was after—then she got interested in Christian Science. She said she wanted to take some treatments, I think they were ten for $10, so I said, "All right"; I thought maybe that would do her good; it seems they were unsatisfactory, because after it was over I couldn't see that it had improved her, and it wasn't any improvement on me, and she confessed that I had received absent treatment, so that neither one of us got any benefit out of it from them; that is where that ended.

Q Did she state whether or not the Christian Science healer who attended her had stated anything in regard to your actions? A No, but I understood that she had explained to the Christian Science healer why she was having them given to me.

Q Did the Christian Science healer, according to her own story, hear anything about her accusations? A No, she knew nothing except what Mrs. Smith told her about her accusations.

Q Did anything further result from this treatment of Christian Science? A No, not there, not while we were in that flat.

Q Did anything else occur at Dr. Warren's flat that you recall? A Only general accusations of several girls around the neighborhood I was accused of being intimate with, although I didn't know their names nor spoken to them.

Q After leaving Dr. Warren's flat where did you go? A South Broad street.

Q What occurred there? A There were four girls who lived in the same apartment building, who went to work in the morning about the time I did, and came back at night about the time I did; I had to miss the whole four in the morning by five or ten minutes and miss them again at night by five or ten minutes, or if one of the four came in before or back of me, that was the one I had been meeting that day.

Q Did she accuse you of that? A Yes; I had the four to miss back and forth night and morning. I had to look out to see

that neither one of them had gone ahead, or go ahead so I could get between stages. In that flat the water pipe made a terribly large buzz when you turned it on. I would go into the bathroom to wash—then I was making signals to some of these girls two or three apartments above me, making dates to meet them; she accused me of that, of telegraphing by water to the apartment wherever they lived; I didn't know which ones they lived in.

Q Anything else occur? A Here Mrs. Smith went into the bedroom, locked the door, and had Audrey with her, and I kicked the door in, and forced her to open it, and the gas was turned on in the room, and I turned it off.

Q Was the odor of gas noticeable at that time? A Yes; she had had it turned on for five or six minutes before I forced the door in and shut it off. It was there, I think, that she told me that her detective had reported to her that there was another woman, and possibly another child, and that it could be seen from the back kitchen door; every time I went anywhere near them she was right behind me and watching, and if I touched the curtains or those windows I was making signs to this house which was a couple of blocks away.

Q What did you say that she stated about the other woman and child? A That her detective had reported to her that there was another woman and possibly another child that I had and was supporting, and she also said that Audrey had led her around to Wright street and showed her the house where I was keeping them.

Q Did you hear any more about Christian Science at Broad street? A Yes; she then accused me of getting letters at the office; I denied it and asked for proof, and she gave me the name of a party who had told her, the first time in her life she had ever given me a chance to defend myself, or the name of any person who had ever told her.

Q Who with? A Her Christian Science healer.

Q Did she give the name? A Yes; it took me about two days to get her. Mrs. Smith, myself and Miss Williams who had told me—she acknowledged before the four of us—

Q Who did? A The Christian Science healer acknowledged that she had lied; there was no truth whatever in the matter; she had done it to do good; how, I don't know.

Ernest N. Smith, direct.

Q Lied, in what particular, in what statement? A That I had been receiving letters at the office.

Q And this acknowledgment of falsehood was made in the presence of Mrs. Smith? A Mrs. Smith and myself and the Miss Williams; about three months later I received a letter from the mother church in Boston asking me for the circumstances of the case, and I wrote it out just as I had it, with the four witnesses, and afterwards I learned that she lost her certificate.

Mr. Romine. I object.

Q Anything further occur at South Broad street house that you recall? A No; I don't remember any more particular ones.

Q From South Broad street, Newark, to what place did you move? A Perth Amboy.

Q What occurred there, if you recall? A Mrs. Smith wanted to go down near the water for her throat, and Audrey's; we moved down there—I had a friend who lived there and he said, "Come down and look it over," and we went down and rented a house. While we were there she picked out another woman about two blocks across the field, whom she said I was intimate with. I have never spoken to the woman and don't know her to this day. And she also commenced to talk to me about my friend's wife, making it very uncomfortable for me, for fear they would hear it, and it was there that Mr. and Mrs. Dawson came and saw it, and at dinner there was no salt and pepper on the table and I asked for it and got up and went to the china closet to get it, and it was locked; then I of course raised cain and said "What is the sense of locking it," and she explained that I had been taking dishes out of the closet and handing them over to women so that she had to lock all her dishes up in order to keep them. I think that is about all that happened there, and we moved from there.

Q Did Mrs. Smith go in the room and lock the door and turn on the gas at any other time than at South Broad street? A Yes; the house in Perth Amboy.

Q Relate that. A That was over in the next flat we moved into, about two flights up; here she went into the bedroom again, locked the door, took the child with her and turned on the gas; I again kicked the door open and shut the gas off again.

Q What else occurred in the second house in Perth Amboy? A There was a family underneath, a young lady Mrs. Smith learned had been an actress, and I was immediately accused of being intimate with her, and the pieces she would play on the piano in the evening when I was at home or at dinner was meant to communicate to me whatever it was or dates; she was doing it for my benefit.

Q Did Mrs. Smith so state? A Yes; then here she accused me again that the woman and the child were still living around the block some place, and that I had brought them down there from Broad street, Newark, and was supporting them around the corner some place, and that I was taking the groceries out of the house and handing them to her for herself and the child.

Q From Perth Amboy to what place did you move? A It was at this time, too, that I went to see Dr. Cottrell, to pay his bill, and I had a talk with him, and from the intimations he made—

Court. No, you cannot state that.

Q Did he make any statement? A He said—

Mr. Romine. I object.

Court. You cannot repeat that. She wasn't with you when he told you.

Witness. I paid the bill that she had run up there.

Q From Perth Amboy to what place did you move? A Bayonne, New Jersey.

Q What, if anything, occurred at Bayonne? A It was in Bayonne that I first remember that she accused me of the burning of the matches, lighting matches in the bathroom, making signals in the windows for two girls who lived in the next block back of us. Also, if I went down on the porch at night and sat down there and lit my pipe or a cigar she was watching the house about two blocks across in the next street, and if a light happened to light up in the second or third house after I lit my pipe then she was sure I had made the sign and the people recognized the sign, and there was a date there.

Q Did she accuse you of that? A Yes; it was during this time that I slapped her, which was the only time I ever touched her or even slapped her.

Q Where was that? A I had gone up to the bathroom after something there and instead of lighting the gas I lit a match; as I blew the match out to come down Mrs. Smith's head came up over the stairs in time to see me blow the match out, and she immediately accused me that I had been burning matches and making signals on the window to the women in the back, the two girls. I lost my temper and slapped her with the back of my hand as she accused me of these signs. That was the only time I ever struck her, before or after.

Q Did you slap her hard? A No; with the back of my hand across her mouth.

Q What else occurred at Bayonne? A Sundays they had ball games, and every time I went out Sunday to a ball game she accused me of going out with women; every one in town went to the ball game Sunday, and I went with the rest, and I was accused of meeting women by so doing.

Q Was it while you were at Bayonne that Mrs. Smith left for German Valley? A Yes. She said she had to have a vacation. I said I couldn't afford to go, or afford a vacation, but I said I would give her $15 a week, and if she could get board for herself and Audrey she could stay as long as she pleased.

Q Did you pay that while she was away? A Yes; I paid $15 a week while she was away, and also $15 a week for two weeks while she was visiting friends when I thought she was there, still in German Valley, but she was visiting friends.

Q From Bayonne to what place did you move? A Do you want the occurrence of where she went to German Valley on the train from there?

Q Mrs. Smith has testified that she left on the train to go to German Valley, that you refused to kiss her good-bye, and that you grabbed hold of the child Audrey and threw her on the steps of the car; is that so? A At the station when the train pulled in I picked Audrey up as you would a child four or five years old and swung her up on the steps as far as I could and held her until she took hold of the rail; when she took the next step she stumbled and fell into the brakeman's arms as he stood there.

Q Did you sling her on the train? A No, I picked her up under her arms and set her down on the second step. I didn't carry her up and put her in the car, I swung her up next to the

top step; she caught the rail and stubbed her toe and the brakeman stood right there.

Q Did you curse then? A No.

Q Did you curse and swear at Mrs. Smith at that time? A No; I did not.

Q Did anything else occur at the station? A Mrs. Smith tried to kiss me good-bye; I said, "No, play your game; you don't want to kiss me, you are simply going off on a vacation, you dont' care whether you kiss me or not—play your game as it stands."

Q From Bayonne where did you move to? A To Boonton.

Q What street? A Washington street.

Q What occurred at that house? A Up to that time I hadn't cursed at Mrs. Smith; "damn" is the only word I had ever used against her up until the Washington street house in Boonton, but up until that time I had been accused of bigamy, infidelity, adultery, sodomy; I was a drunkard, I was a dope fiend, I was a thief, an attempted murderer; still I had worked fifteen years and never missed a day, never had a doctor in all that time, and still I had been a master of all these crimes, and not only that, I had—

Q What occurred at the Washington street house in Boonton? A The first one she picked out was next door, an old lady about sixty or seventy years old, and the servant; I had a garden and she had; we would work and talk across the fence about the garden; I would give them some plants I had, and that was enough to start that.

Q What did she say about that? A That I was meeting the servant girl; then she had one about a quarter of a mile back of the house—a house with a tower on it.

Court. A girl?

Witness. I never saw her; I just saw the tower, but I would light matches, make signs out of the bathroom window to the woman in the tower. Then she picked out one down the street on the other side of the house, about two blocks, a woman whom I had never spoken to, just knew her by sight, and then she got one in front of the house; so I was surrounded there—one on each side, all around the house.

Court. What were you accused of doing?

Witness. Being intimate, making dates, meeting them in New York; every time a woman down the street passed the house and took the same train I took, then that woman and I would meet that day, and I was accused when I came back.

Q At that time did you curse Mrs. Smith? A Yes.

Q What language did you use? A Anything I could think of; I had stood it ten or twelve years.

Q What language did you use? A Calling her a God-damn fool, a damn fool, and not only that, she cursed; she would repeat what I said and try to go me one better; if I called her a damn crazy fool she would add one to it, and say "You are a God-damn crazy fool." The cursing was not all one-side.

Q Do you recall anything else that occurred at the Washington street house in Boonton? A Miss Cassimer came to board with us in Boonton—a school teacher; we had a servant girl, a colored maid, who left right after dinner at night and slept home. Mrs. Smith went away in the morning, and when I came home at night there was no one but Miss Cassimer and the maid there; Miss Cassimer and I had dinner alone and the maid went home. I was suspicious, I put on my coat and hat—

Mr. Romine. I object.

A (Continuing) As soon as dinner was over I put on my coat and hat and went out and left Miss Cassimer alone.

Q What time did you return? A About half-past ten or eleven at night; I went uptown.

Q Do you recall anything else that occurred at the Washington house in Boonton? A I remember the instance of the hose. She and Audrey came out and turned the hose on me, and I immediately hollered at them and started to run for the hose and they dropped it and I grabbed it and got it on them before she got around the house.

Q Mrs. Smith states you swore and cursed at her on that occasion? A No.

Q It was a matter of playing with the hose? A It was on both sides.

Q From the Washington street house in Boonton, to what place did you move? A Down in Old Boonton road, 605.

Ernest N. Smith, direct.

Q Is that where you live now? A Yes.

Q What occurred there? A About everything on the calendar.

Q State some of the things that occurred. A I had a 30-watt lamp in the bathroom, I took it out and put in a 15 Mazda; Mrs. Smith accused me of putting in lights in order to make signals, and she took the globe and hid it. She also put a curtain in the window and then she put a lace curtain up over the window; if I wanted a light to shave by I would turn them up and throw them up over the pole in the morning when I shaved; that was a signal—you couldn't see a house and there was a wood back there, but nevertheless that was a sign to some woman in the back. At night she would go to bed and open her windows, put her door on the chain; I would want to sit up and read a little longer, and I would get up and close her door so I could sit there without getting cold; she would get right up and open her door, and then I would close the sitting-room door where I was, and she would come in and open that door and leave the light burning in the hall so she could see and hear what I was doing. She would stand there and look me over, and she would go back an leave the door open, and I had to sit there and freeze or go to bed, or shut the door when I went to bed. There was a double switch in the upper hall and lower hall; they were only about an inch apart; I would go out and turn the light out in the hall, maybe I would put my finger on the wrong switch and light the one downstairs, and in pushing them out that would make three distinct clicks; she would hear those, come out in the hall and turn them off and on four or five times, in order to say that I was making signals.

Q Did she accuse you at that time? A Yes; and also on the porch the same thing occurred; if I made a mistake and turned it on on the porch, that was a signal to some one outside. She would come in the sitting room and put the curtains down, never allowed me to have one up, and put pins in the curtains to mark them, to know if I had touched them at night at any time. She would come in the sitting room, run up the curtain to the top, take a couple of matches and light them and stand in front of the window herself, swinging them up ond down and crosswise; I sat there trying to read my newspaper or book and said nothing. Then she accused me of meeting women out in the cemetery.

First she nailed the shutters on the barn and window on that side of the cemetery.

Q Did she say why? A That I was meeting in the cemetery; then she nailed the gate up going into the cemetery and told me that the cemetery people had told her they didn't allow anyone to walk through the cemetery any more, therefore she had the gate nailed up.

Q Did Mrs. Smith nail the windows in the bedroom? A Yes; she nailed the shutters in the barn first, then she nailed the windows in the barn; not satisfied with that, then she nailed the windows in my bedroom, so when I went to my bedroom I had to take a clawhammer to pull the nails out in order to open the window to get some air in the room.

Q Did she state why she nailed the windows? A I was letting women in the bedroom.

Court. Did you occupy separate rooms at times?

Witness. Yes.

Court. This was about what year?

Witness. I moved nine times in six years, so that the dates all run together.

Q This was at your present residence? A Yes, that was 1913 or 1914.

Q Do you recall anything else occurring at the Old Boonton Road house? A Yes; one morning she got up—I just came out of my room, she called Audrey and she said, "Audrey, your papa hasn't been in that bed all night, his bed isn't even mussed."

Q Was it mussed? A Yes; I had thrown the quilts off, but it wasn't kicked around as much as usual.

Q You had slept in that bed? A Yes; she had seen me go in there at night, and she slept with her door open and light in the hall.

Q What else occurred? A If she found my bathrobe thrown across the foot of the bed, then she was sure that I had taken my bathrobe, crawled out of the window and met some woman in the cemetery.

Q Did you have a key to the old Boonton Road house? A No; there was only one key to the back door; if I had a key she would put the bolts on.

Ernest N. Smith, direct.

Q Did she prevent you from having a key? A If I had a key and she found the key on me she said I had given it to a woman. She would accuse me of giving the key to some woman, so she could get in at night.

Court. Why did you occupy separate rooms; why did you separate?

Witness. I had to have sleep; I was working then until midnight. Mrs. Smith would get up and let me in at midnight, come down to the door, open it and light the light on the porch, and then look me over; she said, "You dirty, drunken bum, you have been out whoring again." I wouldn't say a word; I would walk in, hang up my hat, and she would go out on the porch, stand on the top step and whistle two or three minutes; she stood there whistling to see if some one wouldn't answer that I had met, and I couldn't stand it; I had to get my sleep; she started these arguments after I got home and kept them up until two or three o'clock in the morning. Mrs. Smith told me that she wouldn't have any more children, that if she became pregnant she would cause a miscarriage, and I thought it best to change and sleep by myself. I wanted the rest.

Q Mrs. Smith said you left her bed while in Bayonne; is that so? A Not until we got to Boonton.

Q At which house? A The second house, the last, the one that we are living in now.

Q How long was that before she left you? A A year and a half, I should judge; I cannot state.

Q Did Mrs. Smith find a comb in the room, or say that she found a comb in the room, and accuse you of infidelity on that ground? A Yes; she found a comb in the room; she came down one morning and said, "There, do you want any better proof?" There were two leaves in the bed. It was also here that she told her father and her uncle that I called them jailbirds and crooks; I had come in that day—they were there to dinner on Saturday—and she had given me the look-over, and maybe my hair wasn't straight, or my necktie was crooked; she told me several times that if I had my hat off and didn't go and brush it first that my hair looked as if some woman had been rumpling it. I had my hat off on the train, and blown it around, and she looked me over

and gave me a sneering look, and I asked, "What in hell was she looking at?" She didn't have to say anything, it is not necessary to say anything; I knew what was coming. Then she told her father and her uncle that I had called them jailbirds and crooks. In calling them that it was in this way: I had told Mrs. Canfield and her brother Lott that I had been calling them names—

Mr. Romine. I object.

A (Continuing)—I called them names in order to switch Mrs. Smith's mind back to the defects of her family, which would break up the fight that much sooner.

Q Did you find it did switch her mind off? A Yes. The same way that I found a better way than that was to admit it. She would accuse me of being out with a woman; and would say, "You were, because I know you were." I said, "Where is your proof?" I said, "All right, I was out with them, I did what you say; let it go at that; have it your way; what are you going to do about it?" There was nothing to do; the fight broke up automatically.

Q In addition to stating you admitted it and produce her proof, did you tell her that her brothers and sisters were opposed to her? A Yes.

Q In what way did you state that? A I said, "Why, your own brothers wouldn't take you back, because you raised so much Cain down there; they don't want you back to the house, and you have got to stay here with me and take it, or else get out," and she said, "No, you get out." I said, "No, you can get out," and then it would end right there. There was no more argument. It was easiest to own up and break it up immediately.

Q Did Mrs. Smith ever accuse you of having an affinity and making such statements to your child Audrey at the dining table? A Yes; more than once. When I got to the breakfast table I would sit there and eat my meals; in fact, I would wait until they were through, and go in and eat by myself, and go in the sitting room; I was not out of the house one night during the time I was married. Then she would talk to Audrey—talk to me over Audrey's head—"Your papa is going out to see a little boy," or "Your papa is going out to see some other woman," or "his lady friends," and make the remark to the child, so I couldn't say anything.

Ernest N. Smith, direct.

Q Mrs. Smith has stated that you stated that she was not a wife to you? A No; I said she didn't act like a wife to me; she never tried to help me in the least bit. Mrs. Smith's policy was "Let the future take care of itself; spend all the money you are making and let the future take care of itself. I will not save any money for any second wife."

Q Were you at this time accused of stealing groceries? A Yes.

Q Relate what happened at that time. A Nothing happened; I had to take it.

Court. Who accused you?

Witness. Mrs. Smith accused me of taking them out of the house; that she had missed them; she said I had moved this woman all the way from Newark to the different houses up to Boonton.

Q Did she ever accuse you of having a can on the porch? A Yes; she accused me of stealing the fruit and handing it out; I had canned the fruit, picked it and canned it until 12 o'clock at night and put it in the cellar and took care of it all, and then she accused me of stealing it because there were some empty Mason jars on the back porch. She said, "There is one of your whores left a can on the back porch, and bring it in." I said, "It can stay there as long as it pleases." About two or three weeks later there was another can on the back porch; when I came in from the barn the grocery clerk was there; I stepped up, I said, "Is that your can on the back porch?" He said, "Yes." I said, "Did you leave one there a couple of weeks ago?"

Mr. Romine. Was Mrs. Smith there?

Witness. Yes. He said, "Yes, that my my can; I forgot it. I was taking some things across the street." I said, "There is the party who is leaving cans on the back porch." I said, "If you will only follow it back you will find out."

Q What did she reply to that accusation? A No reply; she never made any reply when she was cornered; she said, "You didn't do it this time, but you did the other time."

Q Did she leave the canned fruit in the cellar? A No; it was carried off and put in the attic and locked up.

Q Did she say why? A To keep me from stealing it and giving it to the other women.

Q Mrs. Smith was in the hospital while in Boonton; after her return from the hospital did you take care of her evenings? A Yes; I put all the bandages on from her hips all the way up under her arms, where the incisions were on the back and on the abdomen.

Q Did Mrs. Smith state anything to you concerning your treatment of her at that time, as to the bandaging? A Yes; she said that I put them on even better than the doctor did.

Q And after she was able to get around did you help her? A I carried her up and down until she could go up and down on the porch.

Q Did Mrs. Smith pin the curtains in the Old Boonton road house at the window? A Yes; she put pins in the window so she could tell whether I had moved them or not; also, at the dinner table, I would get up, shove the curtains up to the top in the evening, to get the light; she was accusing me of a woman next door; I sat facing that window, she would get up, pull the curtains down, throw on the electric lights to eat dinner with, when there was plenty of daylight to do so, because she wouldn't have the curtain at the top, because that was a signal.

Q Did Mrs. Smith change your seat at the table? A Yes; she said to Audrey, "You sit here and put papa on the other side of the table."

Q Who paid the maid while you lived in the Old Boonton Road? A Once in awhile I paid the maid; as I passed through paying my bills I would throw her money down; Mrs. Smith accused me of giving her more than the wages were, and I was requested to give Mrs. Smith the money and let her pay the maid. She did that with several maids.

Q Did Mrs. Smith ever accuse you of having improper relations with Albert Husk? A Yes; of doing things to each other which we could not do.

Q Where did she say this occurred? A He came down one time; I showed him a swarm of bees I had in a box; he said it was too cold for them to fly; he kicked it, and they immediately come out and we both brought it to the barn and shut the door;

that was the whole circumstance. While we were in the barn—while the bees were coming back—we stayed in the barn.

Mr. Romine. I move that that be stricken out as not responsive.

Court. I will allow it to stand.

Q Did Mrs. Smith ever accuse you of having improper relations with J. Herbert Dawson, of Boonton? A Yes.

Q What was that accusation? A On the same order, that Herbert and I went around to the corner to the blacksmith shop to see some tires, and when we would come back, we had been out, we had used each other for ways in which we should not use each other.

Q Did you have a shotgun while living at Boonton? A Yes, and went hunting.

Q How long have you owned it? A I bought it in the Washington street house after coming to Boonton.

Q Did you ever threaten to shoot Mrs. Smith? A No, sir.

Q Did Mrs. Smith ever threaten to shoot you? A Yes; she said she had a gun and knew how to use it and would use it; also, that gun I missed at one time, when I wanted to shoot a rat in the yard, and I went to get it and couldn't find it in my closet, and Mrs. Smith admitted she had it locked up in her closet; I didn't have it.

Q While Mrs. Smith was at Asbury Park did you receive your mail? A No; all my mail first went through Mrs. Smith's hands; if she went out she took the mail, hid the mail, and she would go through it.

Court. Strike that out.

A (Continuing)—All my mail while she was at Asbury Park went to Asbury Park and went back to me.

Q In what condition did it reach you? A She opened all of it. She always went through all the letters that came to the house for me, bills or anything else.

Q Further than what you have related, do you recall anything else that happened at the Old Boonton Road house? A Yes; that occurrence with the dishes occurred there; I came downstairs, took the coal pail and went out to the barn and put some coal on the barn stove for the little chickens; I brought it up

and Mrs. Smith said, "You go downstairs and fill that coal pail;" I said, "I will go down when I get damn good and ready. I will bring another one up, but you will not order me to do it." I went in the dining room, shut the door, and sat down to breakfast. Mrs. Smith followed me, shoved the door wide open and stood there in the door and started the whole thing over again.

Q What did she say at that time? A That I should go down and get the pail of coal and bring it up when she wanted it; then she got excited and picked up a cup and threw it at me.

Q Did it strike you? A Yes; I reached around—the sofa was next to me—and picked it up, and just pushed my hand so (indicating); it happened to be a cut glass celery dish, and the table was between Mrs. Smith and the other side of the room, and I tossed it on the floor—the table being between Mrs. Smith and the dish, it fell on the floor and broke. Mrs. Smith came around and said—my watch laid there—she said, "I will smash it to pieces." I put it in my pocket. Then she took a handful of cereal and threw that on my coat and vest; I got up and took hold of her and held her and took my coat and rubbed the cereal in her face, as you would a little child, and rubbed it all over her and let go of her.

Q Did you throw the glass dish at her? A No.

Q Was Mary Shepard, the colored maid, present on that occasion? A Yes; in the kitchen, looking on all the time, seeing the whole thing.

Q Mrs. Smith has stated you told her frequently that you cared for another woman, and that you no longer had any love for her? A I never told her that in my life.

Q She has testified that on one occasion while living in Newark she found you in what she describes to be a compromising position with a servant girl in the house, and that she found you in the dining room, and as she discovered you you cried, "My God, Mary, here she comes; get out of here quick." Did she at any time find you in such a position? A No.

Q Did you at any time make such an exclamation in her presence? A No.

Q Did you at any time have intercourse with a servant girl in the Newark house? A No, in no house.

Q Mrs. Smith further testifies that later in the week this same servant girl had prepared dinner and that when you came home

at night and sat down at the table the servant girl came up to you and deliberately put her arms around your shoulder; is that correct? A She did not. That was the Polish Mary; all she did was to stand in the front window, watch for me as I came from the station and jumped and got dinner by the time I got in the house.

Q Mrs. Smith says that while living in Newark, on Mt. Prospect avenue and at Woodside, that whenever she asked any questions, even of a trivial nature, that you cursed her? A I never cursed until I got to the Boonton house; that is where my temper got away—not until then.

Q She said that while living at Mt. Prospect avenue you hit her and pinched her arm and slapped her? A I did not.

Q She further says that after you did these acts you said that her people told you to do it; is that true? A Her brother one time told me that he thought the best thing—

Court. Not what he told you.

A (Continuing)—He told me to give her a damn good beating, it would do her good.

Q Mrs. Smith further testifies that while living in Newark on South Broad street, you struck her child, Audrey, who was then two years old, and that when she remonstrated you struck at her and swore at her? A No; I may have slapped Audrey for something she did; I was the only one that would correct the child; she never corrected her.

Q Did you strike Mrs. Smith on that occasion? A No, sir.

Q She further testifies that you said you would set her crazy, "I will kill you, I don't care for you, I do care for another woman;" did you state that? A No, sir.

Q Mrs. Smith further testifies that on two occasions while living in Perth Amboy she went up to you and put her arms around you and kissed you, and you replied that there was only one woman that had a right to do that, and that she was not the woman; is that so? A No, sir.

Q Mrs. Smith has testified to finding a horseshoe nail in a room in the Perth Amboy house underneath the gas jet; do you know anything about that? A I saw it first in this room on this case; I never saw it before.

Ernest N. Smith, direct.

Q She further testifies that when you had retired at night you would order her away from you and kick her until her legs were black and blue? A No.

Q Did you kick her while in bed or at any other time? A No.

Q She testifies that while living at Perth Amboy you told her you would go out with any woman you pleased, and you wanted her to understand you did go out with other women; you further said, "You can't do anything; your family don't stand by you, you will have to take what I give you;" did you make that remark? A I may have, in Boonton.

Q That is what you have already testified to? A Yes. I don't remember the Perth Amboy incident at all.

Q Did you at any time say that you would go out with any woman you pleased? A No.

Q You wanted her to understand you did go out with other women? A No.

Q Mrs. Smith has testified that you left her bed while in Bayonne; you say that is not so? A No; not until we went in the last house in Boonton.

Q She further says that you frequently asked her to get a divorce; you told her that was the reason why you left her bed; is that so? A No; Mrs. Smith told me her brother Lott had offered her the money at any time she wanted it, whenever she produced the evidence, and she could get a divorce.

Q She further testifies that while living at Boonton you threw coffee grounds all over the kitchen floor and frightened the maid, is that so? A No, sir.

Q She further testifies that while living in Bayonne and just before she went to German Valley, that you and Mrs. Smith were out on the porch and she asked you for four dollars, and that later when you went upstairs you complained to her about asking for the four dollars, and at that time you struck her. A I explained that in my other answer.

Q Is that the occasion when you say you struck her with the back of your hand? A Yes; I testified to that.

Q She further says that on this occasion when she said you struck her she turned to you and said, "How dare you strike me like that?" and you replied, "I will do worse than that, you God damn bitch;" is that so? A No, sir. I did no cursing until I went to Boonton.

Q Did Mrs. Smith do dressmaking while living in Bayonne? A I cannot remember that part.

Q She further testifies that on one occasion she found you in a New York department store with a woman and that when she saw you you separated, and when you came home that night she accused you of being with a woman in the department store? A Yes; she accused me of that.

Q Had you been in a department store with a woman on that occasion. A I had not.

Q She further says that at that time, in response to her accusations, you said, "You cannot help yourself; your sisters won't have you home; your brothers don't take your part, and you cannot do anything, you have got to stand what I do and take it." Did you say that to her at that time? A Yes; I said the general things; I made those statements to break the fight off. I may have said it then, too; it broke off immediately when I made those statements. I would rather do that than argue with her.

Q Do I understand you that on the occasion while leaving for German Valley and while at the station you did not swear at her? A I did not.

Q While she was at German Valley did you write to her or to Audrey? A While she was at German Valley I was sending the fifteen dollars each week; I would write a check and tear a piece of paper off a pad and say, "Enclosed find check for $15," and throw it in the box; I didn't have time for more; I wrote to Audrey six or seven times when she was there; she received one letter in Boonton; I wrote all the news there was there. I didn't think it was necessary to write any more; all she was after was the check.

Q Mrs. Smith relates an occurrence after she had returned from German Valley to her home in Bayonne and was about to go to Boonton on a visit, in which she states that you told her to be there and get there, and get on the Boonton train, but not to wait in the station; do you recall that occasion? A Yes.

Q What occurred at that time? A It was Saturday. On Saturday we never know how much business we will get, and I didn't know whether I would get the train or get in the last car on the run, so I cautioned her to get her ticket and take the child take her suitcase and get on the train; it is an express, first stop

Boonton, and the seats are all taken unless you get there early; I knew that and I cautioned her to be there. Going through the ferry house, going off the boat, I met a young lady coming from East Orange.

Q Who was that? A I don' think it is necessary, it is?

Court. No.

A (Continuing)—I hadn't seen her for ten years and I spoke to her and she was going for the East Orange train; we walked through the ferry house; half way through I saw Mrs. Smith and Audrey and the suitcase she; asked me who the woman was; I said, "Wait until we get on the train." When I got on the train Mrs. Smith asked me again; I said, "It is a girl I knew in East Orange long before I knew you and before I was married." She said, "What is her name?" I said, "It is none of your business." I was protecting the girl; I didn't care for myself; I knew she would go through East Orange with a fine-tooth comb and find the girl if I told her, and I was not going to cause a scene.

Q Mrs. Smith said she has frequently seen this woman in the lobby of the places where you work in New York; did you ever see her there? A No, sir; I hadn't seen her in ten years until I met her that day getting off the ferry.

Q She testified that you were requested to move from the Bayonne house? A The people were coming back from Florida January first, and wanted their house.

Q At that time she said you were ugly and saying everything you could think of, and frequently telling her that you would do one of two things—either kill her or set her crazy, so you could put her in an insane asylum; did you say that? A No; at this time I was working until midnight; I received a telephone from my father stating if I wanted to see him alive I had to see him the next day; one of the best men I had in the office was sick; I was working from eight until twelve, and very nervous at that time, but I don't remember saying it, but I was worried about my father, and she wanted to move at the same time, and even called me up at the office to ask me if she could move, and I said, "Go ahead and move."

Q I show you a letter marked Exhibit C. 2, which Mrs. Smith testified she found in the pocket of your coat; do you know anything about that letter? A I never saw it.

Ernest N. Smith, direct.

Q Mrs. Smith testified that while living at the Washington street house in Boonton you frequently cursed her while you were out in the yard? A No; I didn't curse in the yard; I did all my cursing in the house.

Q A comb has been offered in evidence in this case, which Mrs. Smith testifies she found in your room; do you know anything about that? A I do not; Audrey had three or four little girls running around the house all the time with her; our house was the collecting place for all the children in the neighborhood.

Q Mrs. Smith testified that while living at the Washington street house in Boonton frequently while standing in the yard of your home you said, "You go in the house, you G. D. bitch, you are not my wife; I can prove you are not my wife, you are only my housekeeper, and a damn poor one at that." Did you swear like that? A No; as I said before, I made the one accusation.

Q She testified that while living in Boonton she found Miss Cassimer one evening running from the room where you were, and as you came in she found you buttoning up your trousers; did she find you in that situation? A I never heard of that until I came here.

Q Did you at any time have improper relations with Miss Cassimer? A No, sir.

Q She further testifies that while living in Boonton you accused her of balling up your Sunday papers, and that you picked up a large book on the table and started to throw it at her, and that Carrie Scott interfered on that occasion? A No, sir, I never had any large books.

Q She further testified that on an occasion while living in Boonton, she went down to the cellar and found you there with a woman at the bottom of the stairs, and that you had your coat off and spread it out and said, "My God, get out of here quick," and that she flew out (meaning the woman); Mrs. Smith went downstairs and the woman got away. Did she ever find you in the cellar in your home with a woman? A No.

Q Did you make any such remark? A No, I never heard of it until I came here.

Q She further testifies that the following day you said she had a crazy spell; did you state that? A No.

Ernest N. Smith, direct.

Q Referring to the occasion of being in the cellar with the woman? A No.

Q Mrs. Smith has testified that you frequently gave groceries to women; did you ever return any of the groceries that you had in the house? A After Mrs. Smith left, I went through the closet myself to see what was left; I found in the closet four quarter-of-pound boxes of mustard—one would last a year; three boxes of Van Houtens' Cocoa—one box would last a year; three boxes of cracker dust, four boxes of pepper. What Mr. Husk would take back, I sent back. The grocer was there every day; it was not necessary to order a year ahead.

Q Mrs. Smith says that she frequently asked you for more money; that your only response was to swear and curse at her; is that so? A No, I said, "Why not do the maid's work and get the maid's money." If the maid went off for two weeks' vacation, Mrs. Smith would collect the money for doing the work for the two weeks she was away.

Q Did she ever offer to do the maid's work? A No, she wouldn't do it.

Court. She was strong enough at that time?

Witness. At that time she said she was perfectly well, she could go out and make her own living any time she wished to.

Court. Your family consisted of yourself and child and Mrs. Smith?

Witness. Yes; she had the wash woman besides the maid simply did the cooking and then the wash woman did the washing once a week.

Q At that time how much money were you earning? A About $35 I think a week.

Q How much were you giving Mrs. Smith? A I was paying all bills, giving Mrs. Smith six dollars a week and the maid four dollars and the wash woman a dollar and a half.

Q For what was the six dollars a week that you gave Mrs. Smith? A For herself, for her personal use, for herself and Audrey, for clothes or anything she wished to spend it for. Every time I got a raise in salary I raised Mrs. Smith. If I was on half time, that week I wouldn't pay Mrs. Smith; when I worked two weeks, then I paid Mrs. Smith.

Ernest N. Smith, direct.

Q She further states that while living in Boonton you frequently told her that you would set her crazy or kill her, so you could put her away; did you say that? A No.

Q She further testifies that you told her that you would shoot Audrey, yourself and Mrs. Smith; did you ever threaten to do that? A No, I never did.

Q Mrs. Smith testified that while at the hospital, while living in Boonton, that you did not visit her; did you or did you not? A I wouldn't give my consent for her to go to the hospital; from the conclusion I had drawn from Dr. Cottrell, from what the doctor told me, there was nothing the matter to need an operation; I didn't think it necessary.

Q Is that the reason you didn't go down? A Yes.

Court. How long was she in the hospital at that time?

Witness. From two to three weeks.

Q Did she have an operation? A Yes, that was the time when she came home, I bandaged her every night and every morning.

Court. That wasn't the first operation?

Witness. No, that was in Newark.

Q She further testifies that after some time had elapsed following her return from the hospital, that she asked you to help her out on the porch one day, and that you said, "You need not think you are going to be an invalid all the time; don't let your imagination run away with you; you are capable of walking downstairs now and out on the porch." Did you make such a statement? A No, I carried her down or up whenever she wanted to be carried.

Q Mrs. Smith testifies that while living in Boonton you frequently struck her and pinched her arm, until her arm became black and blue; is that so? A No.

Q Did Mrs. Smith while in bed at night ever talk in her sleep? A Yes, she would talk in her sleep, and after she would talk that way for sometime, maybe five or ten minutes, or fifteen minutes, she would faint away, and the only way I could arouse her was to go to the bathroom and get some valerian and ammonia and hot water, and her teeth were clinched so, I would run my finger down in her mouth and hold her cheek open and pour the valerian down, so she could swallow, and

then she would rouse up; that is why I several times shook her in bed and raised her eye, because I didn't want to get up and get the valerian and give it to her; it was sort of a nightmare.

Q What was her condition when she had this fainting spell? A Seemed to be unconscious; I know I poured the valerian down her throat and that would rouse her and she would come out of it.

Q What would she talk about in her sleep? A What I have told you about, about the women I had been with, all these accusations, talked them over night after night.

Q After you retired, while still awake, did she accuse you of various misdeeds? A That is why I left her bed; she started the arguments after we got in bed; I had to have rest.

Court. What would happen when she had these fainting spells?

Witness. She lay there until she came out; she never told me.

Q You say you have given her ammonia at that time? A Yes, valerian and ammonia in hot water in a glass, about a teaspoonful.

Q She testifies that on one occasion when the question arose as to whether the washwoman had been paid or not, that you swore and cursed at her, and told her that she lied, and that you attempted to strike her, and that she picked up a carving knife; do you remember that? A No, I remember the argument on the washwoman; I admitted afterwards I was wrong, and gave her the money. She came to me several times with a carving knife; I would take hold of her and grab her wrist. Once in awhile I would stand in front of her and say "Go ahead and hit me," but she never had the nerve to do it.

Court. Where did this incident of the electric bulb occur?

Witness. It was there at that house.

Q Mrs. Smith testified that while at the home in Boonton one morning you came to her room and grabbed an electric light bulb and attempted to put it down her throat; did that happen? A No, as I remember that, her father stayed all night with us and in the morning she came out in the hall the same time I did; she had a 30-Watt lamp and it wasn't big enough; I got

her a 60-Watt and that wasn't large enough; she got a 100-Watt, and then afterwards 120; she said she could not see without she had the larger lamp to sew by or to read by; it seems that this morning the lamp wouldn't light; she came out in the hall with it in her hand and accused me of spoiling it, breaking it, burned it, I suppose, and started to throw it at me, and I grabbed her wrist, as I always did, and turned the bulb down towards her face, and then her father came to the bedroom and told us to stop; I let go of her, started down the stairs, and she threw the bulb at me as she went down the stairs; that was the circumstances of that.

Q She said at that time you swore at her and said "Here, damn you, swallow this, you dirty bitch"; did you say that? A Swore, but I didn't say I would shove it down her throat. I admit I cursed after we got in Boonton.

Q She further testifies that on the same occasion relating to this bulb incident, that you dropped the bulb, flew out of the room, but before you did so you went over to her desk and upset everything in it, and that you took her Bible and Prayer Book and hid it in the lining of the couch and took her comb and brush and stuck it in the coal bin; did you do that? A The coal bin was in the cellar.

Q Did you do that? A No; the occasion occurred in the hall; I wasn't in her room and didn't go in it.

Q Did you go out automobile riding on Sundays? A I went out two or three times.

Q With whom did you go? A Mr. and Mrs. Schwartz, Mr. and Mrs. Doress and myself; there were five of us.

Q Were they neighbors of yours? A Mr. Schwartz and I went in the car together; his car held five; Mr. Doress took his car the next Sunday, but it would only take four; this Sunday he invited me to go along, because his car will hold five; he said; "I might as well take you along." The other time he asked Mrs. Smith to go along and she said "No, I have a great ordeal to go through tomorrow, and I don't think I had better go." At that time there was myself and Mr. Smith, Mr. Schwartz's stepson. We rode up through Sparta and was back by five or six o'clock.

Q In addition to the occasions when you went out on Sunday for pleasure, did you on other occasions go with Mr. Schwartz? A Yes, on business; he used to take his car down to Newark,

East Orange, Bloomfield, wherever he could, when he wanted to use it to come out at night; there is no train between eight and twelve on the Boonton Branch. He would take his car half way down; go into East Orange and get his car and come home. Mrs. Smith went down with us one morning to Bloomfield, waited and came back at night with us about half-past ten; we met him in Bloomfield and came back together, Mr. and Mrs. Doress, myself and Mrs. Smith.

Q Mrs. Smith further testified that you told her you would do as you damn pleased with your money, that it was yours, she had to stay and take what you gave her; her family was all against her; that she couldn't do anything but take the life you would give her? A I may have said that I would do as I pleased with my money; at New Year's I would get $100 and I would always give Mrs. Smith $50 and mine would go to the doctor, and I would always tell her how much I got, until she commenced to accuse me of giving the rest to the women, and I told her I wouldn't tell her again.

Q Did you also say she would have to take what you gave her? A I did.

Q That statement on your part followed the admission you made, "I did it"? A Yes, I said that and she wouldn't argue any more.

Q She further says that you told her that she was a little pinched warped brained pimp, "You can't earn your own living and have got to take the life I give you"; did you say that? A I don't remember saying it.

Q Did you or did you not? A No, I did not.

Q When Mrs. Smith went to Asbury Park for two weeks while you lived at Boonton, did you give her any money for that purpose? A Yes.

Q How much did you give her? A $22 a week for herself and Audrey, I don't remember the amount.

Q Before she left did you state how long she could stay? A Yes, two weeks.

Q Did you send the check for the $20 a week? A Yes.

Q Did you state at the time why she could not stay longer? A I couldn't afford it; I couldn't go myself.

Q Did you tell her that? A Yes.

Ernest N. Smith, direct.

Q Why couldn't you afford it? A I had too many expenses; I had the house to keep up; I haven't had a vacation in two years.

Q Mrs. Smith testified to an occasion when she and your mother and yourself were at the Boonton station and that you came up to her and in the presence of your mother swore and cursed at her and said she was a liar so everyone around could hear you; did you do that? A No, sir.

By the Court.

Q How frequently in the course of a month or week would these quarrels occur between you? A Almost every day.

Q For how many years? A From the first year we were married until she left.

Q Almost a daily occurrence? A Almost a daily occurrence. Never a day that she didn't accuse me of being intimate with some other woman, and they were black, white, old and any age; it didn't seem to make any difference, just so it was a woman; she would pick out some; she accused me of one in Boonton; Mrs. Smith told me afterwards that she found a dozen whiskey bottles in the cellar, the girl had had, and she came down there one day—her name was Mary—and was going to tear the house upside down; she was drunk at the time.

Q Who was? A This colored servant girl, and she accused me of being intimate with her and committing adultery with her, and the girl heard it and come down there and was going to raise the house, but she couldn't get in.

By Mr. Price.

Q Mrs. Smith testified that one day in the presence of the washwoman you attempted to kick the dog and she spoke to you and told you not to kick that dog, and you said "I will not only kick the dog, but kick you and do worse." A I may have said I would kick the dog, because he was in my way.

Q You say you never told her you would set her crazy so you could put her out of the way? A No.

Q Mrs. Smith has testified to an occasion when she said she was poisoned; was the child Audrey sick on that occasion? A No, she sent the child out to telephone for the doctor, and Mrs. Smith cooked the meal herself.

Ernest N. Smith, direct.

Q How long was Mrs. Smith ill? A I only judge from the doctor's bill, which was $5; he made two calls, one that night and one the next morning.

Q Do you recall on that particular evening whether Mrs. Smith prepared the meal? A Yes, the girl was away and Mrs. Smith prepared the meal; Mrs. Smith was taken sick after the work was done.

Q Do you know what you had for dinner? A I think some canned salmon she had left from lunch at noon; she had some lady friends there that noon.

Q Did you put anything in the food that night? A No, I did not see it until I sat down at the table.

Court. Did you partake of the same food?

Witness. I did.

Q Were you ill? A I was not, neither was the child.

Q Who brought the food on the table? A Mrs. Smith.

Q Did you have a maid then? A The maid was off for the day; the maid was out that day and Mrs. Smith prepared the meal.

Q Mrs. Smith has testified that during the latter part of your married life, that is, just prior to the time of her leaving the Boonton home, that she did not nag at you; can you state whether she did nag at you or not? A All those circumstances that I named there.

Q Did that continue up to the time she left? A Until the time she left; the dish occurrence was Monday morning and she left Wednesday.

Court. You mean the cut glass dish?

Witness. Yes, and when I come home Wednesday night she was gone.

Q She further testified that you frequently stood in front of the window unclothed; is that so? A No.

Q And that you waved to women out of the window? A No.

By the Court.

Q What was the occasion for all of these frequent movings; you say you had nine of them in about ten or twelve years? A Nine in six years.

Ernest N. Smith, direct.

Q Why? A Mrs. Smith wanted to move, I guess; maybe she wore out her welcome in the town where she was living; she would get down on them all and then she moved to another neighborhood.

Q You were agreeable to the moving? A She would go and rent the house and I would go. After she got into Christian Science, most of the people in it lived there, and that is one reason why we moved in South Broad street. She was willing before she left, in the last month or say two or three months, to sell the house in Boonton, with the condition that I would move to another town.

Q Was the moving in any way connected with the charges she brought against you and your relations with the women; was it done with the intention of severing your relations with these women in the different localities? A I can only answer that in this way: when she went to Boonton there were twelve or fifteen friends there whom she had known as a girl, and every one of them she has lost; she has talked about anywhere from eight to ten of them, and she has lost them all.

Q In connection with you? A Yes, accused this and that and the other until—she has talked to every one about me, and as soon as they said "I don't believe that, it is impossible," then she would drop them, until she has dropped them all. I have kept them all and can count maybe twenty or thirty more, and she was jealous of them, and she told me several times she would have me arrested and taken up before Judge Dixon and make a show of me in the town.

Q What would she have you arrested for? A For cursing or these different things she accused me of.

By Mr. Price.

Q Did you ever have intercourse with the Polish maid in Newark? A No, sir.

Q Did you know Florence Branthwaite before she came to Boonton as a servant in your house? A No.

Q Did she come up on the train with you that day when she first came to Boonton? A Not that I know of.

Q Do you know Elizabeth White? A Only as a servant after she came to the house.

Q Was she a servant in your employ? A I didn't know her name until it was mentioned here; I knew it was Elizabeth.

Ernest N. Smith, direct.

Q You did not know her before then? A No.

Q Did you go up on the train with her that day when she first came up? A Not that I know of.

Q Mrs. Smith testified that on one occasion with reference to Elizabeth White, she spoke to you about joining the dancing class and you told her to shut up and keep still and said, "Don't let Elizabeth hear it"; did you make that statement? A No.

Q She further testifies that on one occasion Elizabeth White sat down by the kitchen door at a time when Mrs. Smith and yourself were leaving home, and as you went out you said to her, "Ah, she is playing martyr," and Mrs. Smith replied, "Playing martyr? Who is playing martyr?" and you replied "Elizabeth," and Mrs. Smith said, "That is strange; why should a strange girl play martyr; what do you mean?" and that you said no more. Did any such conversation as that occur? A No, sir.

Q She further testifies that on one occasion with reference to Elizabeth White, that you called her in for dinner and that she stood alongside of you at the dining-room table, and as she put the food on the plate she turned and said, "You know, Ernest," and you stopped and looked at her, and she said "baby won't eat this." And you said, "Who" and she said "Helen." Did any such conversation as that occur between you and Elizabeth White? A No, sir.

Q She further testified that she found you and Elizabeth White close together on several occasions in the kitchen, and that when she came in it seemed as though you were parting; did any such thing as that happen? A No.

Q She further testified that she has frequently seen you hand her money which was not the pay money, not for her services, and that she saw her put it in her stocking; did you ever give her any money other than what she was entitled to for her weekly wage? A I never gave one servant girl we had one dollar over her wages.

Q And that just before Elizabeth White left you came to Mrs. Smith one day and said "For God's sake, get her out of here or she will set me crazy; I will go crazy," and that Mrs. Smith replied that it was a strange thing that a strange girl should have such an effect upon you; did you make any such statement? A No. I never was intimate with any of the

servant girls, and I always told Mrs. Smith that she treated them too well, that was one reason why she didn't get along with them, that she should be more strict with them and not be so intimate with them.

DR. ARTHUR C. DOUGHERTY, sworn for defendant.

Direct examination by Mr. Price.

Q Where do you live? A Newark.

Q What street? A Washington street, 158.

Q Are you a practising physician in this city? A I am.

Q And from what colleges have you graudated? A College of Physicians and Surgeons of New York, Columbia University.

Q How long have you been a practising physician in this state? A Thirty-four years last May.

Q Have you been in active practice all that time? A Yes.

Q Are you acquainted with the petitioner Ella S. Smith? A I am.

Q And her husband, the defendant? A I am.

Q Have you attended Mrs. Smith medically? A I have.

Q When did you first attend her? A I cannot answer that question definitely.

Q Approximately? A From her marriage for six years; I was her family doctor.

Q Did you attend her prior to the marriage? A And before that I was the family physician of her parents—yes, sir.

Q Then you attended her prior to her marriage? A Yes.

Q For how long a time have you known Mrs. Smith? A It is, I think, over twenty-five years.

Q Has Mrs. Smith made complaints to you concerning her husband's infidenity? A Yes.

Q Have those complaints been frequent or otherwise? A Frequent.

Q And extending over a period of how long a time, Doctor, during those years? A After the marriage only.

Q What was the nature of those complaints? A They were all in the line of jealousy of her husband.

Mr. Romine. I submit he should not characterize, but should state what was said.

Court. State as near as you can recall.

Q What did she say to you? A It was always that her husband was intimate—that she suspected him of intimacy and infidelity with other women.

Q Did she mention any specific instances as basis for her statement? A She did, sir.

Q What was that? A On one occasion when she lived on Summer avenue she accused her husband of infidelity with a maid, basing the grounds upon the fact that he and she happened to be at the same time on the back balcony and that they both came away at or about the same time from the back balcony.

Q Did you remonstrate with her concerning her accusation? A I did, sir.

Q What did she reply? A She insisted that her deduction from that circumstance was correct.

Q What did you say to her? A Of course I cannot remember, sir; it is many years ago; but in a general way I didn't believe her and I tried to set her straight; such a thing was ridiculous.

Q But you say she insisted—? A That she was right, and she lost her patience with me, as I remember, because I wouldn't believe her.

Q Do you recall any other accusations? A Not specifically, but generally, yes.

Q Generally along the same line? A Always on the same line, a systematic—to my mind, a delusion of persecution in the sense that her husband was unfaithful.

Mr. Romine. I object.

Court. I sustain the objection.

Q Upon what was your statement based that she was a victim of delusion? A Simply because her statements as to her husband were, to my mind as a doctor, not carried out by the probability of fact, and that it was always of the same character; that is, the character of infidelity with regard—

Court. Are you examining him as an expert as to her mental condition at the time?

Mr. Price. Yes.

Court. If you wish to test his qualification, you may do so.

Dr. Arthur C. Dougherty, cross.

Cross examination by Mr. Romine.

Q You understand, Doctor, that you are here as an expert? A No, sir.

Q You are not testifying as an expert? A Not the testimony that I have given.

Q You don't propose to testify as an expert? A Not unless it has a bearing of importance upon this case; it is not my work, and I am not appearing as an expert.

Court. Then I don't think he should ask for his opinion. I think he should be treated as any other witness and asked to recite whatever other accusations Mrs. Smith made against Mr. Smith. If you wish to go into the other branch, as to her mental condition, you may do so, but I think you will have to qualify him, to show that he is qualified to express an opinion on that particular topic.

By Mr. Price.

Q What has your practice consisted of? A General practice of medicine.

Q Have you had any practice with specific relation to insanity cases? A Yes, in the same sense that every physician as a general practitioner of many years has.

Q Have you had knowledge of cases of paranoia and monomania? A Yes.

Court. You may cross examine.

Cross examination by Mr. Romine.

Q How many times did you treat Mrs. Smith during the six years after her marriage? A I am unable to answer that; it is many years ago.

Q Was it frequent or otherwise? A Very frequent.

Q When you treated her at that time, did you treat her with a view of ascertaining whether she was a person of unsound mind? A No, sir.

Court. Was she suffering from any mental ailment during the time you were treating her?

Witness. No.

Dr. Arthur C. Dougherty, further direct.

Mr. Romine. I submit that he is not qualified to testify as an expert.

Court. I am satisfied he is qualified to express an opinion. I want the facts on which the opinion is based. It will depend on how you frame the question, as to the admissibility of the evidence.

Further direct by Mr. Price.

Q You have stated that Mrs. Smith was a victim of delusions on this subject of infidelity on the part of her husband? A Yes.

Q On what do you base that opinion? A For two reasons; in the first place, her statements always led me to believe that she was deluded, because it was always, in the first place—her statements and her complaints against her husband were always of exactly the same character, but irrespective of the social condition or personal attractiveness of the subject.

Court. Sexual intercourse with someone else, you mean?

Witness. Yes, that was one reason; and my other reason is, because no amount of kindly and friendly opinion that had no ulterior motive to it would persuade her to the contrary, and this one specific statement to me that I remember was only one of many that are vague, but this one, I remember, she based her opinion upon her husband's infidelity with this woman—who, by the way, was the last one in the world personally who would attract any one—was based upon the mere fact that they happened to be on the back stoop at the same time.

Q Then it was the lack of her foundation for the statements that gave rise to this opinion that she was the subject of a delusion? A Yes, sir.

Court. You based your idea that she was suffering from a delusion because of the improbability of the occurrence as it struck your mind; is that right?

Witness. Yes.

Court. Take the incident you have referred to—was it a white or colored maid, in that case?

Witness. As I remember, it was an elderly white woman.

Dr. Arthur C. Dougherty, cross.

Court. You said she was not of an attractive personality?

Witness. Yes.

Court. And it was because of that unattractiveness that the improbability of the charge occurred to you, is that right?

Witness. Yes, sir.

Q Of what did Mrs. Smith complain as to her physical condition? A She was hypochondriacal; that is, she complained of different conditions that did not exist.

Q Name them. A One was that she had her heart disorders; another one was that night after night and repeatedly she went into convulsions and became unconscious.

Q She told you that she did these things? A Yes; she sent for me on several occasions and made that complaint.

Court. Did you ever find her unconscious?

Witness. No, sir.

Q Was there any other complaint? A At any time do you mean?

Q During the time you treated her? A Yes, sir, she thought she had an abdominal tumor.

Q Did she as a matter of fact have an abdominal tumor? A Not that I ever knew of or could find.

Q Did you examine her for that purpose? A I must have done so, for I am sure she didn't have any.

Q Did you examine her to ascertain whether she had heart disease? A Repeatedly.

Q What was your examination? A Careful examination of her heart.

Q What was the result? A I never could find anything wrong with it organically.

Q You say you never found any evidence of these convulsions of which she complained? A I do say so, yes, sir.

Court. When did you last see her, about?

Witness. In the year 1908.

Cross examination by Mr. Romine.

Q Wouldn't the fact that Mrs. Smith refused to be persuaded otherwise on these accusations against her husband lead

you to believe that there was some truth in them? A It might, sir, under certain conditions, but not under that specific condition.

Q The only thing you base your conclusion on is the improbability of the fact that he could have committed adultery with a servant on the balcony? A No, sir, that was not my idea. If I may say—

Q That is not your only basis? A No, sir, that was my idea, sir.

Q Did Mrs. Smith ever say that she had caught her husband committing adultery with a servant girl while they lived at Summer avenue in Woodside? A Not that I recall.

Q If that fact is true, that she did find her husband committing adultery with a household servant and actually caught him in the act of it, would you say then that she had delusions about such matters? A Why certainly not.

Q So that in all these instances, if Mrs. Smith had a reasonable belief in her own mind, that her husband was unfaithful to her and that he did have associations with other women, then she did not have the delusions that you think she did? A If she had foundation for what she said, certainly not.

Q And so far as you know personally, these things may have been true? A So far as her husband's infidelity to her on these numerous occasions, it is possible, but exceedingly improbable.

Q It may be improbable, but so far as you know, it may have been true? A It might have been true, sir.

Q And if these accusations were true, and Mrs. Smith believed them to be true, then there was no delusion on her part? A Not necessarily that, sir, because a delusion is a condition that is not founded upon a fact, but only upon a perspection of a combination of things that may not lead to it at all, but if I may say that the mere fact of a husband having been on the back balcony—

Q I am taking a combination of facts, and say that if those accusations generally—all of them together—were true, then is it not a fact that Mrs. Smith was not suffering from a delusion? A Absolutely, yes.

Q Mrs. Smith did have some inward trouble, didn't she? A No, sir, not so far as I personally knew, or remember, rather.

Q Didn't you suggest to Mr. Smith before the child was born,

that it would be necessary for her to have an operation, or that she should have one for some internal trouble? A Not that I remember, sir.

Q You don't remember that? A No, sir.

Q Did Mrs. Smith complain of pains around her heart? A Yes, sir.

Q Was Mrs. Smith nervous? A Very.

Q And would the fact of these accusations or these things that she saw concerning her husband have a tendency to aggravate her nervous condition? A Of course, yes.

Court. Was there anything to indicate any mental disturbance other than in relation to her husband?

Witness. No, sir, only in the general unreliability as to her general statements.

Court. About his affairs?

Witness. Yes.

Court. About other matters generally?

Witness. No, as to her condition she was hypochondriacal, that is all.

Q So that you have not treated Mrs. Smith since she lived in Newark? A Not since 1908.

Re-direct by Mr. Price.

Q Was Mrs. Smith hysterical or nervous prior to her marriage? A She was always nervous so far as I remember; in fact, I know, yes, sir.

Q During the time you treated her prior to the marriage? A Yes, always a nervous girl.

Re-cross by Mr. Romine.

Q After her marriage was that nervous condition more pronounced? A I think it was.

Mr. Price. I would like to offer in evidence the letter Exhibit D. 1 for identification, from Mrs. Smith, addressed to Elizabeth, meaning Mrs. Canfield.

Mr. Romine. I consent that it go in evidence.

(Marked Exhibit D. 1.)

Simon N. Fleschner, direct.

Mr. Romine. I desire to offer in evidence the testimony of Mary Shepard taken previous to her examination before Mr. Bindseil.

Mr. Price. I am relying on the record of the evidence of Mary Shepard taken before Mr. Bindseil. I thought it was our duty to call her after she recovered from her illness.

Mr. Romine. I offer her first deposition for the purpose of contradicting the testimony she last gave.

I offer the transcript of testimony taken at the time we endeavored to take the testimony of Carrie Scott, who has been mentioned throughout the case.

IN CHANCERY OF NEW JERSEY.

Between

ELLA S. SMITH,

Petitioner,

and

ERNEST N. SMITH,

Defendant.

Transcript of testimony taken before Nicholas W. Bindseil, Master in Chancery of New Jersey, at his office, Prudential Building, Newark, New Jersey, on Monday, June 19th, 1916, at 9 A. M., in the presence of Mr. Elmer W. Romine, for petitioner, and Mr. Harold C. Price for defendant.

SIMON N. FLESCHNER, sworn for petitioner.

Direct examination by Mr. Romine.

Master. I will state on the record that the letter which I produce is the one received by me from the witness Mrs. Elizabeth Canfield and referred to in her testimony.

Q You live where? A 448 Washington street, Newark.

Q What is your occupation? A Court interpreter.

Simon N. Fleschner, direct.

Q What languages do you speak? A Polish, German, Russian, Slavish, Hungarian, Hebrew, Yiddish and all those things.

Q I show you a letter which has been forwarded to Mr. Bindseil by Mrs. Elizabeth Canfield, and which is the letter referred to in her testimony as having been received by her in some manner from a Polish maid who worked for Mrs. Smith while at Perth Amboy, and I ask you in what language that letter is written? A This is written in a gibberish Polish, no decent genuine Polish.

Q Have you interpreted that letter? A I have.

Q Will you give us the interpretation?

Mr. Price. I object on the ground that it does not appear in evidence that this letter was written by a Polish maid in the employ of Mrs. Smith; it is incompetent, immaterial and hearsay.

Mr. Romine. It should be admitted because it corroborates what Mrs. Smith said were the conditions while she lived at Perth Amboy, and also shows that Mrs. Eliazbeth Canfield had a letter in her possession from one of the servants which explained the conduct of Mr. Smith and which was proof for her in this case.

A (Reading.) "Mrs. Anno (or Annie). I cannot speak English, so please tell Mrs. Canfield that Mr. Smith hit in the face for nothing. In the other house (or next house) he has another girl; rises early, coughs in the window and she to him waves her handkerchief; his wife he calls a whore. With matches he burns towards himself; the girl has like signs that this is her. I had to play like a fool. She is towards him good; he towards her like a dog. Jashalstyka Wiaznesyka."

Ernest N. Smith, direct.

Continuation of testimony taken in the above entitled cause, before Nicholas W. Bindseil, Master in Chancery of New Jersey, at the Chancery Chambers, Newark, New Jersey, on Friday, June 23rd, 1916, at 9 A. M., in the presence of Mr. Elmer W. Romine for petitioner, and Mr. Harold C. Price for defendant.

ERNEST N. SMITH, recalled for further

Direct examination by Mr. Price.

Q Mr. Smith, Mrs. Smith has testified that on one occasion she asked you for some money and you said that you didn't have it, and further said, "It is really none of your business, but if you want to know, I will tell you, because I spent too much last night," and she asked "With whom," and you said, "A lady, and it is none of your business who she is." Did you make that remark? A No.

Q Mrs. Smith has sworn that she did not accuse you of infidelity until after the birth of Audrey, or thereabouts; did she or did she not? A She did.

Q And when did those accusations commence? A The first, I testified here, was five years before I was married.

Q After your marriage, how soon? A The first year.

Q And have they continued since that time? A Weekly.

Q She further testifies that you told her that you would flirt with anything in petticoats; did you ever make that remark? A No.

Q She also testifies that she caught you a number of times at the bathroom window without a stitch of clothing on, you leaning right up against the window; did she ever find you in that condition? A No, sir.

Q Did you ever stand in front of the bathroom window unclothed? A No.

Q Or in front of any window in any of your homes? A No.

Q As you would walk down the street with Mrs. Smith, did you flirt with women that passed by? A No.

Q Mrs. Smith testified that when you walked down the street you would wave your hand and wink at women as they passed, is that true? A No.

Q She further testified that you commenced to swear at her in 1906, the year when the child was born; is that true? A No.

Ernest N. Smith, direct.

Q When did you commence to swear at her? A Not until we got to Boonton.

Q Are you a drinking man, Mr. Smith? A No.

Q Do you ever indulge in intoxicants? A I take a drink, yes.

Q What do you drink? A Anything they are drinking.

Q Occasionally or otherwise? A Occasionally.

Q Did you ever use dope? A No.

Q Of any kind? A Of no kind.

Q Did you ever drink to excess? A No, sir, I was never drunk in my life.

Q Mrs. Smith has sworn that you frequently would come in the house and curse and swear and kind of giggle, and then you would say "You accuse me of being drunk," such remark being made before she had said anything to you. Did you ever make that remark? A No.

Q She has further sworn that you stopped kissing her about the time of the birth of Audrey; is that true? A No.

Q When did you stop kissing her? A I don't know when.

Q Did you continue to kiss her after the birth of Audrey? A Yes.

Q And down to recent years? A As far as I remember.

Q She further says that you frequently told her that you cared for another woman and that when you stopped kissing her she would know it? A No.

Q Is that true? A No, I never said it.

Q Up to how recent a period have you had sexual intercourse with your wife? A Boonton.

Q Mrs. Smith has testified that you have not since you were living in Bayonne; is that true?

Mr. Romine. She did not say that.

Q You say you have had intercourse with her at Boonton? A Yes.

Q Do you recall how long ago that was? A No.

Q Mrs. Smith has testified that while living in Newark where the Polish maid was, you frequently would insist upon going in the kitchen for your own coffee and bringing in other things, instead of allowing the maid to wait on the table; is that true? A No.

Ernest N. Smith, direct.

Q She further testifies that while living on Summer avenue you frequently told her that you loved another woman; is that so? A No, sir, I never said it.

Q Are there two ladies who are named Florence Jacobus? A Yes.

Q Did you ever have any improper relations with either of them? A Neither one.

Q Nothing immoral ever existed between you? A Never.

Q Mrs. Smith testified that on two occasions when she said you left her bed, that you stated that you did so because you did not consider her your wife; is that true? A No, sir.

Q With reference to the Polish maid, she says that on the occasion when she testified that the Polish maid put her arms about you, that the maid said to you, "You won't let me be fired," and Mrs. Smith said, "He has got nothing to do with it." Did any such conversation take place? A No.

Q Mrs. Smith said that you several times struck her on the arm, once across the back of the neck, and once across her head, and she testifies, at another time, that you frequently struck her across the head, stating that it was done dozens of times; is that true? A Never; I never struck her but once, and that was in Bayonne.

Q That is the instance to which you have already testified? A Yes, sir, that was the only occasion.

Q She says that you nearly knocked her unconscious at that time in Bayonne, when you admit you slapped her; is that true? A No.

Q Did you strike her severely? A No, just with the back of my fingers.

Q She says that you frequently kicked her in bed; is that true? A No.

Q She says that you frequently while in bed swore at her and said, "Get your G. D. leg away from me." Did you swear like that? A No.

Q She testified that she threw a cup of coffee at you at Woodside, and that you took her by the neck and shook her like you would shake a mouse; is that true? A No, I simply held her hands so she couldn't throw it; that is all.

Q She says that you frequently told her that you wanted another woman; is that true? A No.

Q She says that she has seen you walk the streets of Perth Amboy with some girl, whose identity she did not know; is that true? A Never.

Q She testified that on one occasion she caught you with a woman in the cellar; is that true? A No.

Q And that when she accused you, you said, "None of your G. D. business"? A No, that is not true.

Q She says that you frequently have asked her to get a divorce; is that so? A No, she told me she was going to get one.

Q And that when you made this request, you further said that you loved another woman; is that true? A No.

Q Did you remonstrate with Mrs. Smith regarding the dancing class? A Yes.

Q What did you say to her? A I told her that if she didn't stop these accusations she was making against me, that I would stop the dancing class in the house.

Q Did you ever ask her to do the work of the house? A Yes.

Q Did you ever make any offer to her concerning that? A She always got the maid's money when the maid went on a vacation, and if the maid wasn't there, Mrs. Smith got the money.

Q Did you offer to give her the maid's money if she would discharge the maid and do the maid's work? A Yes, if the maid had two weeks' vacation, my wife got the money herself.

Q Did you ask her to do the maid's work instead of conducting the dancing class? A Yes, I did.

Q She says that she has frequently seen you with women in the cemetery back of your home on Old Boonton road; is that true? A No.

Q Did Mrs. Smith ever accuse you of having handkerchiefs in your pocket which were in a soiled condition and which indicated that yau had had sexual relations with other women? A Yes.

Q Did she ever tell you that she had had these handkerchiefs chemically analyzed? A Yes.

Q And that that was the result of her examination? A Yes.

Q Did you at any time have handkerchiefs in your pocket which bore evidence that you had had sexual relations with other women? A No.

Q Have you since your marriage had sexual intercourse with women other than your wife? A No.

Q I believe you testified that you did not know Elizabeth White until she came to Boonton? A I never saw her until she came there.

Q Then when Mrs. Smith says that she has seen you on the streets of Perth Amboy with Elizabeth White, that is not true? A Untrue.

Q Were you ever in a house on Wright street and did you ever sit in that house with a child on your lap? A No.

Q Did Mrs. Smith ever see you in a house on Wright street? A No.

Q She testifies that she walked along the street and that you looked at her and ducked behind the curtain; is that true? A No.

Q Has Mrs. Smith changed your position at the dining-room table? A Yes.

Q Have those changes been frequent? A If I would allow them to be, they would have been.

Q Where did that take place, in what house? A The last I remember was both houses in Boonton; I think it was one or two houses before that.

Q She has testified that you would sit at the dining-room table and make signals with the servants in the house; is that true? A No.

Q That you would sit at the dining-room table and wave your napkin and wave your hand outside of the window? A No.

Q Mrs. Smith states that you have accused her of being out whoring all night; is that true? A No.

Q Did you ever make such a remark to her? A No.

Q Did you ever pass a glass of jelly to a woman in the cemetery? A No.

Q Did you ever pass anything to any woman in the cemetery back of your house? A No.

Q Did you ever give groceries away to any woman while living in Boonton or anywhere else? A No, sir.

Q Mrs. Smith says that she has frequently told you that she was employing detectives, and that you would reply that

you knew it, and you were too smart for them; is that so? A No.

Q She says that you have frequently said that you would go with whatever woman you pleased; is that so? A No.

Q Did you at any time make signs or signals with Florence Jacobus when she was at your home? A No.

Q And you never had any improper relations with Florence Jacobus? A Never.

Q Did you ever do any of the cooking in the house? A Yes.

Q What did you used to cook? A The whole dinners if Mrs. Smith wasn't there.

Q Has that been done frequently by you? A Yes. She wrote me a letter from Asbury Park that she was coming back and for me to have dinner for her.

Mr. Romine. I object to what was in the letter.

Q Have you frequently cooked the dinner? A Yes.

Q Did you ever put up preserves? A Yes.

Q When was that? A In both houses in Boonton.

Q Mrs. Smith has testified that on one occasion she was talking with Mr. Schwartz of Boonton and a conversation was being had in one of the rooms in her house and that you ran past and up the stairs and cried "Cut it out," at the top of your voice; is that so? A No.

Q Had Mr. Brauer seen you prior to this case being tried? A Yes.

Q Where did you see him? A I stood on the steps of the Scranton Express in Paterson and saw him in the station.

Q Did you meet him by appointment? A No, I just happened to go in the station.

Q Did you talk with him concerning this case? A No.

Q Did you tell him a suit had been started? A I said, "I suppose you have heard the news that Mrs. Smith has left and started a suit," and he said "Yes."

Q Did you discuss with him the accusations which Mrs. Smith had made? A No.

Q Did Mrs. Smith ever accuse you of having immoral relations with your child Audrey? A She accused me of maltreating Audrey, yes.

Q Did J. Herbert Dawson in your presence ever accuse Mrs. Smith of having charged you with having immoral relations with Audrey?

Ernest N. Smith, direct.

Mr. Romine. It does not appear that Mrs. Smith was present.

Master. Was she present?

Witness. Mrs. Smith was present.

Q (Question repeated.) A Yes.

Q What did he say? A One occasion up to his house, we were all there, Mr. Dawson and Mrs. Smith, and this same question came up of her accusing me of these different crimes, and I told him at the time, "She has even accused me of maltreating my own child." He got up then and said, "Did you accuse him of that?" He asked her that question three times and she never said anything; she just stopped there and looked at him.

Q Did Mrs. Smith prevent you from talking to Audrey? A She would never allow the child where I was; if I was in the barn with the chickens or bee-hives, she would come in to watch me, and her mother would come in and take her out. She wouldn't even come down in the cellar with me, unless she went down, or the maid. In the evening, if Audrey came in for me to help her with the school work, she said, "You cannot study your school lessons at night." She wouldn't even let the child in the room with me. The child hasn't kissed me for the last five years. I suppose she wasn't allowed to.

Q Did Mrs. Smith ever exhibit any fear of you? A No.

Q Did you while living at Woodside or any other time, put drugs of any kind in the coffee that Mrs. Smith drank, or in any of her food? A No.

Q How did you come to move from Newark to Perth Amboy? A For Mrs. Smith's throat—the salt water—she said it always benefited her.

Q Did she request that you move to Perth Amboy? A Yes, she said it would benefit her and Audrey's throat.

Q Mrs. Smith testified that she said to you that she would either leave you or that you must move away from Newark to Perth Amboy; did she make that statement? A No.

Q Mrs. Smith says that you frequently told her that you hated her; is that true? A No.

Q Do you recall an occasion when Mrs. Smith accused you of infidelity at a time when the three of you were standing on the stairs together? A Yes, one evening after dinner I went up to the sitting-room—it was in the first house in Boonton, the

house where the hall runs all the way through both down and upstairs; the bathroom is at the end of the hall and the sitting-room is in the front and the stairs in the middle, and I went up to the sitting-room to get my pipe, and as I was coming back, just as I came out of the sitting-room door into the hall, the colored maid was behind the door, about to go up on the next floor to her room, and Mrs. Smith's head appeared, coming from downstairs; she saw the two of us, one at one end and one at the other, standing there, and she immediately called Miss Cassimer and told her that she had caught me in the hall committing adultery with the colored servant.

Q Had you been committing adultery with the colored servant? A I had not.

Q For how long a time have you been earning $2,000 a year? A I cannot state exactly, maybe three to four years.

Q And during that time what has been your custom with regard to the payment of the household expenses? A I always paid the household expenses.

Q Did you give Mrs. Smith an allowance? A Yes, ever since we were married.

Q Up to the time she left? A Yes.

Q How much was that at the time she left? A Six dollars a week.

Q Was that allowance ever cut down? A Except when the war came and I didn't work a week, I wouldn't pay her that week.

Q That was for the week that you didn't work? A Yes.

Q Mrs. Smith has testified that you cut down her allowance a year before the war started; is that true? A No.

Q Outside of the occasion when you didn't work on account of the war, you have given her six dollars a week and paid all the expenses of the house? A Yes.

Q Did you have colored servant maids on Mt. Prospect avenue? A Yes.

Q And Summer avenue, Newark? A Yes.

Q Have you ever treated Mrs. Smith in a cruel manner? A No.

Q Have you ever threatened her with physical violence? A No.

Q Have you ever struck her other than the one occasion when you say you slapped her? A No.

Ernest N. Smith, direct.

Q Have you during the course of your married life done anything to put her in reasonable fear of bodily injury? A No.

Q Mrs. Smith has testified that while living in Perth Amboy you frequently cried and asked her to get a divorce; did you while living in Perth Amboy or any other place ask her to get a divorce? A No.

Q Was Mrs. Smith nervous and hysterical prior to her marriage? A More or less, as far as I can remember.

Q That is during the time that you were acquainted with her? A Yes.

Q Directing your attention to the incident regarding the house at the Old Boonton Road, concerning which both you and Mrs. Smith have testified, Mrs. Smith says that at that time you threw a stone at her and she dodged it; is that so? A No.

Q Directing your attention to the controversy over the money due the washwoman, Mrs. Smith has testified that on that occasion you struck her; is that so? A No.

Q The occasion to which I refer was at the Boonton house? A Yes.

Q Mrs. Smith has testified that one time while putting cartridges in your gun, you threatened to shoot her; yourself and Audrey; is that so? A No.

Q On the occasion to which you and Mrs. Smith have testified concerning the breaking of the cut-glass dish, did you cut Mrs. Smith's neck on that occasion? A Not that I know of.

Q Did you or did you not? A No, the table was between Mrs. Smith and the cut-glass dish and I dropped it on the floor.

Q She says you took a piece of glass and cut her neck with it, is that so? A No.

Q Did you ever have any immoral or improper relations with Elizabeth White? A No.

Q Mrs. Smith has testified that she frequently saw you walking on the streets of Boonton with women whose identity she did not know; is that so? A No.

Q Has Mrs. Smith lost friends since she has been living in Boonton? A Yes.

Q Do you know why she lost them? A Well, part of them she accused of being intimate with me; others she had told these tales about me, of being intimate with colored servant maids and the rest, and at first they would believe the story; then she would tell a larger one, and the third was so large it was almost impossible,

and then they would ask her for proof, and as soon as that happened Mrs. Smith hadn't any proof; it wasn't necessary, she said, to prove it, and as a result of that they never believed the stories she told.

Q As a result of these things she detailed, they ceased friendly relations? A Yes; she lost them; I gained their friendship and gained as many more.

Mr. Price. I offer in evidence the letter heretofore marked Exhibit D 1 for identification, from Mrs. Smith to her sister, Mrs. Canfield.

(Marked Exhibit D 1.)

"Elizabeth

I have just caught a woman in the cellar with Ernest. Now you may as well know that the next time I catch her I intend to shoot. I do not care where.

In haste,
ELLA.

If you care to came up before Mother Smith comes all right. Carrie and I have been watching for her a half hour before the 9.05 train. I gave Ernest time enough to have her nicely in the cellar and I went down he pushed her out and ran behind her. I tell you he is scared instead of cursing me. He is all in a shake and is white as a ghost. I have told him the next time I intend to shoot. She got away from me although I followed right out in the dark yard. ELLA."

Q Do you know a girl named Mary Lindley? A No.

Q Did you ever see that letter marked Exhibit C 10? A No; I never saw it.

Q Have you any idea who that woman is? A I have not.

Q I show you Exhibit C 12 for identification, being a postal card, and also Exhibit C 11, another postal card, one signed Nora and the other signed Delia; did you ever see these postal cards? A No.

Q Have you any idea from whom they came? A No; I never saw them.

Ernest N. Smith, cross.

Cross examination by Mr. Romine.

Q You say that Mrs. Smith charged you with infidelity before you were married? A Yes.

Q And you have also testified that she was invited, together with yourself, to the house of this young lady in East Orange? A Yes.

Q At that time you were not engaged to Mrs. Smith? A No.

Q You had just known her, just about met her? A I don't remember how long.

Q How long had you known this young lady in East Orange prior to the time that you were there on this occasion? A Maybe five months.

Q It may have been longer than that? A Very little; because I hadn't been in the State but a year.

Q Irrespective of the fact that you were not in the State, how long before this time had you known her? A Six months.

Q It may have been longer? A No.

Q You are going to say six months? A I am.

Q On this particular occasion you didn't know Mrs. Smith was going to be there that night, did you? A Yes.

Q You didn't go there with her, did you? A No; I met her there; she and her brother came up there and I met them all at the house.

Q You had been keeping company with this girl, hadn't you? A No; simply going riding on a bicycle with her.

Q You had been going up to the house? A Certainly.

Q So that on this particular occasion you had no knowledge of the fact that Mrs. Smith was coming there until she walked in? A Yes; I think I did.

Q You think? A I will say I did, then.

Q Isn't it a fact that Mrs. Smith did not know that she was going to meet you there that night? A No.

Q And isn't it a fact that Mrs. Smith visited some other girl friend in the vicinity, and that they then took her up to this house? A No.

Q Were you surprised when she came in? A No.

Q Had you asked her to come up there that night? A No.

Q On that occasion do you know whether the young lady took Mrs. Smith upstairs and said to her, "Do you see that child?" A No.

Ernest N. Smith, cross.

Q Do you know whether the young lady in that house got down on her knees upstairs that night and begged Mrs. Smith to give you up? A No.

Q Do you know whether the young lady came to Mrs. Smith afterwards and asked her to give you up? A No.

Q And didn't Mrs. Smith later say to you that if you had anything to do with this girl, or that if you and she were intimate in any way, that there was nothing between you and Mrs. Smith, and you ought to go to her? A No.

Q Didn't she suggest to you that if the young lady wanted you, or if you had any relations with her, that you ought not to keep company with Mrs. Smith? A No.

Q What did she say to you about infidelity? A She accused me of being the father of that child.

Q What did she say? A I don't remember what she said; she accused me of being the father of the child.

Q You don't remember what she said about that? A The exact words, no.

Q Did you continue to see this young lady? A No.

Q What did you do about it? A I dropped them both.

Q How did you come to marry Mrs. Smith if you dropped them both? A Mrs. Smith sent her brother to me, inviting me down again.

Q And notwithstanding this occurrence, you later wooed Mrs. Smith and married her? A She admitted her mistake.

Q I asked you the question, notwithstanding that, you wooed her and married her? A Yes.

Q At the time you married her, did you love her enough to marry her? A Yes.

Q You were very affectionate toward her? A Yes.

Q So that the beginning of your married life was one of bliss and happiness? A Yes.

Q Do you know whether her folks—her brothers or sisters or any of her relatives—approved of this match between you and her?

Mr. Price. I object as immaterial.

Mr. Romine. It shows the attitude of these people now with reference to this situation.

A I didn't know what their attitude was.

Q Did they manifest it in any way that you were welcome to the home? A Always.

Q Did they in any way or manner urge you on in this love affair between you and their sister? A No.

Q They did nothing to prevent these relations, did they? A No.

Q And at the time of your marriage to Mrs. Smith, you knew that she idolized you, didn't you? A Idolized me?

Q Yes. A I think she cared for me.

Q You knew that she worshipped the very ground that you walked on? A No.

Q Didn't she tell you so? A No; she told me that she worshipped the ground her brothers walked on.

Q Didn't she tell you that she worshipped the ground which you walked on? A No.

Q Didn't she repeatedly manifest the fact that she cared for you a great deal? A Yes.

Q You began keeping house at Forest Hill? A Yes.

Q You lived there from 1902 until 1906? A Yes.

Q That is the longest time you ever lived in any one place since you were married? A Yes.

Q During that time, of course, your relations were very pleasant? A We owned the house then.

Q You owned the house? A Yes.

Q And that was your own home? A That is why we stayed so long; we had been trying to sell for two years.

Q You got along all right there? A Yes.

Q When you were first married, were you frank with Mrs. Smith about your business and your employment and things of that kind? A Yes.

Q Your money matters? A Yes.

Q You talked them over between yourselves as man and wife would do? A Yes.

Q And did that continue up until the time you left the Forest Hill house? A I don't remember.

Q When you were first married, of course you kissed you wife good-bye as you would leave in the morning? A As far as I remember; yes.

Q When you would come home in the evening you would kiss her on returning? A Yes.

Ernest N. Smith, cross.

Q At any time during your stay at Forest Hill, during the latter part of your stay there, did you realize that you were treating Mrs. Smith coolly in any way? A No.

Q Were you indifferent toward her? A No.

Q Were you neglectful in your attention toward her? A Not unless she started one of these accusations that she has made.

Q When, in reference to the time that she lived at Forest Hill, did she start any of these accusations? A During the first year.

Q I thought you just told us that during the time you lived at Forest Hill your relations were very pleasant? A Until she started some of these accusations, then the quarrel started.

Q What was the occasion of her speaking about those things? A The ads. she had cut out of the Herald was one occasion of her speaking of them.

Q That didn't happen the first part of your married life? A During the first part of it, as I remember.

Q What do you mean? A The first year.

Q I thought you just told us that the first few years while you lived at Forest Hill your relations were very pleasant? A No.

Q So now you are willing to take that back? A I testified they started in the first year I was there.

Q The first thing Mrs. Smith said to you was, "Why do you treat me so coolly?" A No.

Q Didn't she ask you why you were indifferent toward her? A No.

Q Didn't you neglect to kiss her when you would come home? A No.

Q You didn't go out during those four years to any particular places, did you? A Yes.

Q Go to dances and entertainments and things of that kind? A Yes.

Q Didn't you, at the end of four years, and just before the child was born, say to Mrs. Smith that you had sat in the house for four years and you got tired of it, and now you were going out? A No.

Q While you were at home Mrs. Smith was there too, wasn't she? A Yes.

Ernest N. Smith, cross.

Q Were you willing and agreeable that Mrs. Smith should have a child? A Yes.

Q Didn't you object to it? A No; I made the remark that I thought after the child came that she would be so busy with the child that she would have no time for any of those accusations.

Q Didn't you say at that time that the doctor had told you that she couldn't survive childbirth? A No; I did not.

Q After the child was born matters became worse, didn't they? A Mrs. Smith became worse.

Q The troubles in the house, they became worse? A Mrs. Smith got worse after the child was born than she was before, in her accusations; instead of getting better, she got worse.

Q Do you know whether she had occasion or reason for this? A No more than before; just a new necktie or new shirt or a change of suit would start it off.

Q While we are on this necktie business, how often did you get a new necktie? A I don't know.

Q Isn't it a fact that you only had one necktie in your possession until after Christmas time? A No.

Q Didn't you tell Mrs. Smith that you didn't believe in buying a lot of neckties and socks? A No.

Q So that you won't misconstrue these things, isn't it a fact that all Mrs. Smith said about the neckties was around Christmas time, when you came home with several neckties, and she simply asked you the question whether they had been given to you? A No; she accused me of girls giving them to me.

Q Did Mrs. Smith ask you around Christmas time whether these neckties had been given to you? A No.

Q Around the time that the child was born didn't you go out with men for a good time? A No.

Q You worked at Post & Flagg's then? A Yes.

Q You were late in getting home nights, were you not? A At the end of the month.

Q During the middle of the month do you remember of ever being late? A No.

Q The first part of the month? A The first two days.

Q Didn't you give Mrs. Smith as an excuse the fact that you had stopped to bowl with some of the boys? A We never bowled but once in two or three months.

Q Did you ever give her that as an excuse when you were late? A No.

Q Did you ever tell her that you had stopped to bowl with the boys? A No.

Q What do you mean by saying that you did? A When I went up to bowl Mrs. Smith knew it before I went; she knew I was going up from the office to the bowling match.

Q Isn't it fact that on some of those occasions you didn't come home until eight or nine o'clock and you told her you had stopped to bowl? A No.

Q You did go out nights to bowl? A New York, you mean?

Q Anywhere. A No; the only time I bowled was in Newark.

Q That is anywhere? A On holidays, with Mrs. Smith's brother and brother-in-law; we bowled on holidays, that is all.

Q You did go out to bowl? A On holidays and Saturdays with her relatives.

Q Did you go out at night to bowl? A No.

Q What do you mean that you told her when you were going? A The bowling match was on; I didn't bowl.

Q Didn't they bowl at night time? A Certainly.

Q So that you did go out at night to bowl? A No; to look on.

Q Did anybody suggest to you, any of your companions, that you join this bowling club? A I couldn't bowl good enough; it was the office; the Stock Exchange had a bowling club, each office furnished a team.

Q And you went there to watch a team? A To watch our team, of Post & Flagg, play another team.

Q How long did you stay? A Until the three games were bowled.

Q How late would that be at night? A Ten or eleven o'clock.

Q And you wouldn't get home until twelve o'clock? A Yes.

Q And sometimes later? A Yes, and I went about twice.

Q During these times you lived in Newark did you ever go out to dinner with any men or women? A No.

Q To New York or New Jersey or any place? A When we worked nights the firm furnished our dinner; three or four of us would go around to the restaurant and eat our dinner and go back to work.

Ernest N. Smith, cross.

Q When you didn't work nights, and the firm didn't furnish your dinner, and you didn't go to the bowling matches, did you ever go out with any of the men or any of your friends to have dinner when women were present? A No.

Q Never in your life? A Never in my life.

Q After the child was born, you became indifferent in a way towards your wife, didn't you? A No, sir.

Q Continued to kiss her as you had before? A Yes.

Q You were just as affectionate to her as you had been before? A Yes.

Q Did everything you could for her? A Yes; in fact I took care of the child the first year myself almost entirely.

Q Your business hours were uncertain, were they not? A No, except at the end of the month; that is the only uncertainty.

Q Isn't it a fact that on some of those occasions you would come home at six o'clock for your dinner; on other occasions at eight o'clock, and other times at nine o'clock? A No.

Q Did you always get home at the same hour at night? A I always got home at the same hour at night, except when we had a rush of work, then Mrs. Smith knew I was staying at night until seven o'clock.

Q At the times you had this rush do you recall whether Mrs. Smith asked you what time you were coming home that night? A I always told her.

Q How did you tell her? A You couldn't tell when we would have a rush; only about once in—

Q How did you tell her? A That I would work until seven o'clock, but she said, "I will wait dinner for you," and I said, "All right."

Q Did she wait dinner? A Yes.

Q And had a very good dinner waiting for you? A As far as I know.

Q Do you remember occasions when she asked you what time you were coming home, and you told her "None of your God damn business?" A No.

Q Do you remember an occasion when Father Buckbee was there, when you told her it was none of her God damn business? A He never heard me swear.

Q When he says he heard you swear, he is mistaken? A Yes; Mrs. Smith told him.

Ernest N. Smith, cross.

Q Did you ever tell anybody what Mrs. Smith said to you? A No; only the people who knew it and had been there at the house and heard it.

Q So never in your lifetime did you ever talk with anyone about what Mrs. Smith said to you? A Mrs. Smith did enough talking for the whole family.

Q Did you ever? A No.

Mr. Price. He said he did to certain people—the people that knew about it.

Q Do you remember Abraham Buckbee being at your house? A Yes.

Q Did you ever say in his presence that it was none of her God damn business when you were coming home? A Not that I know of.

Q You don't recall that? A No.

Q Do you ever remember coming home late at night when either Abraham Buckbee or Joseph Buckbee was there, and Mrs. Smith asked you where you had been, and you said it was none of her God damn business? A No.

Q Ever remember an occasion when Joseph Buckbee or Abram Buckbee was at your home, and that you came in, and in a solemn manner sat down at the table and Mrs. Smith looked at you, and you said, "Who the hell are you looking at?" A Yes; I said that was at Boonton.

Q I am asking you now at Newark. A No, this was at Boonton.

Q So at Newark you don't remember about that? A No; not in Newark.

Q Didn't Mrs. Smith say to you on occasions in Newark that you were breaking her heart the way you acted? A She said that; yes, sir.

Q When you lived next to Mrs. Perrine, Mrs. Smith and Mrs. Perrine were good friends? A Seemingly.

Q And as far as you know they are good friends today? A As far as I know.

Q There was no improper conduct between you and Mrs. Perrine, was there? A No.

Q The only thing you did was to talk to her over the fence? A Yes.

Ernest N. Smith, cross.

Q Mrs. Perrine had a habit of whispering to people when she talked to them, didn't she? A Not that I know of; never to me.

Q Didn't she, when she talked to most every one, talk to them in a whisper? A No.

Q Wasn't that her general way of speaking? A No.

Q And didn't Mrs. Smith remark that she was a peculiar woman, because she always whispered when she talked to people? A No; I never heard of it.

Q Wasn't that all that Mrs. Smith ever said to you about Mrs. Perrine? A No.

Q Florence Jacobus was a visitor at your home at Forest Hill? A Yes.

Q And she visited there on many occasions when there was no special invitation given her? A Not that I know of.

Q She visited there lots of times when you didn't ask her to come? A I never asked her.

Q She simply came of her own motion? A I suppose Mrs. Smith asked her; I didn't.

Q You would frequently go down to the car with Miss Jacobus at night? A At Mrs. Smith's request; she would ask me to walk down with her.

Q So Mrs. Smith didn't think there were any improper relations between you and her? A Yes; she did that on purpose to put me out with her, so she could say so.

Q That is your supposition? A Yes; exactly.

Q And sometimes you would be gone an hour with her? A Oh, no.

Q And you would come back and Mrs. Smith would ask how it was you were so long? A Oh, no.

Q And didn't you tell her the car was late? A No.

Q You never remember being out with her an hour after you left the house. A No.

Q At Summer avenue, Woodside, you admit there was a quarrel at the breakfast table? A Two on Summer avenue.

Q I don't know which it is—the time you said you grabbed her hands? A Yes.

Q Was that the first or second house? A Second house.

Q The night before, you had had a party, hadn't you? A I don't remember.

Ernest N. Smith, cross.

Q And some of the guests were still in the house in the beds at that time? A I cannot swear to that; I do not remember.

Q And the occasion of this quarrel between you and Mrs. Smith was the fact that she had asked you what time you expected to come home that night? A I don't remember what the quarrel started about; there were so many of them.

Q At any rate, you grabbed her hands? A Yes.

Q You may have done other things? A No.

Q Were you excited? A No.

Q Were you angry? A I suppose so.

Q Were you riled up? A No.

Q Did you raise Cain at that time? A No; I usually held my temper down pretty well.

Q But on that occasion you were angry? A Not that I remember, and more than the usual argument that starts.

Q You may have done other things besides grab her hands? A No.

Q Are you sure about that? A Yes.

Q Isn't it a fact that on that very morning you choked her? A No; I never choked her in my life.

Q You don't remember what the occasion of that quarrel was? A What started it?

Q Yes. A No.

Q At that period you had lost some of your affection for your wife, hadn't you? A No; we had frequent quarrels.

Q You didn't feel the same toward her? A Unless she roused me up with some of her accusations.

Q Generally you didn't feel the same toward her, because of these things? A Oh, yes, just the same.

Q Did you kiss her that morning before you went away? A No, I don't think so; she threw a cup of coffee, so I didn't stop to kiss her.

Q That was after you grabbed her hands? A Yes, after I had let go of her.

Q Isn't it a fact that you hated the sight of her? A Oh, no; if I had, I wouldn't have stayed with her.

Q You stayed with her throughout all this trouble? A Yes.

Q Stayed with her even at Boonton? A Yes.

Q Even after you admitted all these things? A Yes.

Q You say that you did get riled up at times? A Yes.

Ernest N. Smith, cross.

Q In those quarrels that you had, didn't you tell Mrs. Smith that you cared for another woman? A No.

Q Didn't you suggest it? A No.

Q Didn't you intimate it? A No.

Q Did she gather from what you said, that there was another woman? A No.

Q Didn't you tell her that you no longer cared for her? A No.

Q When you got riled up and got mad, didn't you flaunt it in her face? A No.

Q Mrs. Smith was sickly at that time, wasn't she? A Not any more than usual.

Q After the child was born wasn't she quite sickly? A Yes.

Q More so than she had been before? A I don't know as she complained any more than she did before.

Q That is the time you had this Polish Mary working for you in Summer avenue? A Yes.

Q Do you know whether Mrs. Smith drank coffee while she lived there? A No, she was nursing the baby then; I don't know whether she drank coffee or not; I think she gave up coffee while she was nursing the baby.

Q You won't say about that? A No.

Q When you came home, did you help her with the meals, from the kitchen to the dining-room? A With the Polish maid?

Q Yes. A No.

Q You didn't go out in the kitchen? A Certainly, I may have done that.

Q There were times when you got up from the table and would go out to the kitchen and get something and come back again? A No; if I ever did anything, I made myself a cup of coffee, because I couldn't drink the coffee the maid made; I wanted it strong and good; I couldn't go dishwater.

Q Shortly after Mrs. Smith would have her meals, do you know whether she would go to bed? A No.

Q Did you ever go in there to see whether she had fallen asleep or not? A No.

Q Ever help the maid out in the kitchen after the meal was over? A No.

Q Where would you stay after the meal? A In the sitting-room.

Ernest N. Smith, cross.

Q There were occasions when Mrs. Smith would go to bed early? A As far as I know.

Q You would sit there reading your paper or a book? A Yes.

Q During the times that you sat in the sitting-room reading, do you know whether the maid was clearing up the dishes in the kitchen? A No; I suppose she was; that was the usual job.

Q Did the maid ever walk through the sitting-room at night? A No.

Q How would she get out of the house; didn't she have to go through the sitting-room to get out of the house? A No.

Q Did she have to go through the dining-room? A Yes.

Q Were you sitting in the dining-room when she went through? A I don't know whether I was or not—ten years ago.

Q You don't recall any such occasion? A No.

Q You of course deny this accusation about you and the maid in the sitting-room? A Yes.

Q You deny the fact that you said, "My God, here she comes, get out quick"? A I deny it.

Q Do you recall whether Mrs. Smith ever came in the sitting-room after she retired to bed, to say anything to you, or speak to you? A I don't remember it.

Q Didn't Mrs. Smith, on this occasion when she alleges she found you in a compromising position with this maid, go on terribly about it? A No.

Q She did go on terribly about this woman? A Oh, yes.

Q This maid was discharged, wasn't she? A Yes.

Q And she didn't want to go, did she? A I don't know.

Q What did she say about going? A The maids never told me when they would go.

Q Were you not present when she discharged her? A No, not when she discharged her maids.

Q That particular Mary? A No, I was not present when she was discharged.

Q You said she sat at the window and watched for you to come home, and then go and get your meals ready? A Yes.

Q On this day following the accusation when Mrs. Smith said she caught you with the maid, do you remember that she sat at the window and then went and got your meal ready? A I didn't know of the accusation; how could I know the next day?

Q The accusation which Mrs. Smith speaks about.

Mr. Price. He didn't know anything about it.

A I never heard of that until I came in here. How would I know about the next day.

Q Of course, it wouldn't be right for you to admit that. On the next day— A After what?

Q The next day after Mrs. Smith says she accused you of this? A She didn't accuse me of it; she never accused me to my face of that; she told that.

Q You say this particular maid would sit at the window and watch for you? A She said she caught her sitting in the window—I didn't see her.

Q On the day the maid was discharged, do you know whether she sat at the window that night? A I do not.

Q Were you present that night when Mrs. Smith, at the table or after the meal was over, said to the maid that she must go? A No, never heard it.

Q Didn't the maid then and there say in your presence, the remark being directed to you, "You won't let me go, Mr. Smith, will you?" A No, I never heard it.

Q Will you say it never happened? A It never happened.

Q Did she put her arms around you and then say "You won't let me go"? A No.

Q Do you remember anything that this Polish maid said about going or not going? A No.

Q You don't recall anything about the occurrence? A No.

Q Did you prevail upon Mrs. Smith to permit her to stay? A No, I never heard it; she did just as she pleased with her maids; I had nothing to say.

Q Did you espouse the cause of the maid in any way? A No.

Q During this time that the maid was discharged, were you having intercourse with your wife? A Yes.

Q Didn't Mrs. Smith beg of you not to do these things? A No.

Q You moved to Mt. Prospect avenue, Newark, later on? A Yes.

Q How did you come to move there? A Mrs. Smith's request.

Q Weren't you asked to move? A Oh, no. Mrs. Smith might have been asked to move; I didn't know anything about it; I always paid my rent.

Ernest N. Smith, cross.

Q You don't know whether Mrs. Smith was asked to move on account of your actions or not? A She wanted to move there; it was a steamheated flat.

Q When Mrs. Smith would ask you for money at Mt. Prospect avenue, you twitted her of nagging you? A No; I always gave her money every week as I received it Saturday.

Q At the time of those quarrels, do you recall pinching her? A No, I didn't pinch her.

Q So that the scar she has on her arm today didn't come from you? A No.

Q You never pinched her there at all? A No.

Q You don't know whether she went over to show that to Mrs. Sandusky at the time it happened or not? A No, I didn't know it ever happened.

Q Did you ever tell her that her people had told you to do this? A No.

Q You did testify that her brother said "Give her a good licking"? A Yes, but I didn't say her people, I said her brother.

Q Did you ever tell her that? A I don't remember whether I ever mentioned that to her or not.

Q If he told you that, you probably mentioned it to her? A It is not probable at all; I wouldn't mention it necessarily.

Q At the time you got riled up on some of those occasions, you may have told her that? A No, she thought a great deal of her brother; there was no use of my telling that.

Q At the time you admit striking the child for the purpose of correcting it, do you recall the circumstances of what happened then? A No, I don't remember why.

Q Let me help you out; wasn't it the fact that you and Audrey were playing and that—you admit that Audrey was easily excited? A No, I don't admit that.

Q She was easily excited? A Not that I know of, no more than any other child.

Q You and Audrey were playing, and didn't she in her excitement or anxiety in the play, throw a glass of water on you? A Oh, no.

Q You say that didn't occur? A No.

Q But yet you cannot tell us what the circumstances were? A When I corrected the child?

Ernest N. Smith, cross.

Q Yes. A Why, no; I may correct her fifty times.

Q Didn't you strike her across the head, and Mrs. Smith got up and said "That is not the proper way to correct the child"? A No, I simply slapped her.

Q Didn't Mrs. Smith remonstrate with you in a way— A She always remonstrated with me whenever I corrected Audrey.

Q And on this particular occasion she remonstrated with you, didn't she? A I suppose so.

Q Did you lose your temper? A No.

Q Did you get riled up? A No.

Q Did you curse and swear? A No.

Q Did you take hold of Mrs. Smith? A Not that I know of.

Q You don't recall about that? A No.

Q You say that Mrs. Smith was taken sick while in Mt. Prospect avenue; do you know what was the matter with her? A When she went for the operation?

Q Yes. A I think it was said it was appendicitis.

Q She had hemorrhages, did she not? A Not that I know of.

Q Mrs. Smith was in a very critical condition and she asked you to notify her people and you refused? A Oh, no.

Q Wasn't it a fact that you didn't notify her people until she was near at death's door? A No.

Q Didn't her sister remonstrate with her when she came there, as to why you hadn't called a physician? A No.

Q Didn't her sister call in a physician? A Not that I know of. Mrs. Smith always had a physician before she went to bed.

Q Didn't Mrs. Smith's sister call in Dr. Husk? A I never heard the name in my life.

Q Or Hughes? A Never heard of him.

Q Didn't she call in a physician? A I don't know; not that I know of. Mrs. Smith always called her own physicians.

Q You told Mrs. Smith there was nothing the matter with her, didn't you? A Not there, not that I know of; Mrs. Canfield told me—

Q Just before Mrs. Smith went to the hospital, do you recall having a talk with her about women? A No.

Q She discussed the question with you? A I don't understand your question; that woman question would come up every week; as far as discussing with her, it was always coming up.

Ernest N. Smith, cross.

Q But on this particular occasion? A No. I don't know the particular occasion, that she discussed the woman question with me.

Q Didn't you just before she went to the hospital confess to her that you loved another? A No.

Q And didn't Mrs. Smith cry about it? A No.

Q And didn't you say to Mrs. Smith the very night before she went to the hospital—ask her to try and win you back? A No.

Q You didn't say that? A No, I didn't say that.

Q Why do you smile about it? A Because the thing is so ridiculous, that is why I smile; you asked me eighteen times if I didn't say so, and I keep saying "No."

Q You visited her while at the hospital? A Every night.

Q You would kiss her when you went in? A Yes.

Q And when you left? A Yes.

Q Mrs. Smith was a very sick woman while she was at the hospital? A Yes.

Q And she had very little to say? A Yes, the first week.

Q You were very kind to her while she was at the hospital? A I don't know; I went down to see her; that is all I know about it.

Q You were kind to her? A I went down to the hospital every night.

Q Didn't you tell her during the latter part of her stay at the hospital, when she was able to discuss the matters, that the woman question had stopped; didn't you tell her that your associations had stopped? A I hadn't any association to tell her to stop.

Q Didn't you tell her then that your associations with women had stopped? A No, because I had no associations, so how could I tell her they stopped.

Q You said when you went down on one occasion, she spoke about your having a new necktie? A Yes.

Q What did that have to do with women? A She accused me of being out with them again.

Q What did she say? A "You have been out with women again today."

Q Is that all she said? A I didn't give her time to say anything more; I picked up my hat and started for the door.

Q You didn't like to have her refer to it? A No, I did not.

Ernest N. Smith, cross.

Q After she came back from the hospital, you and she took up Christian Science? A I didn't.

Q Didn't you go to the Christian Science Church regularly? A No.

Q You went often? A I read the book simply to say that I had read it, because I heard it discussed and I didn't want to show ignorance of it, so I sat down and read it.

Q You were interested? A Yes, I liked to go down and hear them.

Q There were times that Mrs. Smith didn't go, and you did go to the church? A I never went to the church when we were in Mt. Prospect avenue.

Q At any place in Newark? A Yes, once or twice I went when she didn't want to go in the morning and I went up.

Q At the time this Christian Science was taken up, didn't you tell Mrs. Smith that you proposed to do different? A Oh, no.

Q And didn't you tell Mrs. Smith that there would be no more of your going with women? A No.

Q Didn't you tell her that you agreed to lead a good, straight, clean life? A No.

Q And didn't Mrs. Smith within two weeks after that time when you first took up Christian Science, find you with a woman out in the street? A No.

Q She mentioned the fact to you, didn't she? A No.

Q These Christian Science treatments didn't help you? A Help who?

Q You. A No, I didn't take any, that I knew of; Mrs. Smith gave them to me, absent.

Q They didn't help you? A No.

Q The fact that you attended the church and the service didn't help you? A For what?

Q Anything. A I enjoyed myself going there to listen to the services.

Q You went there for the purpose of enjoyment? A Yes.

Q From there you moved to South Broad street? A Yes.

Q Why did you make this change? A I think Mrs. Smith wanted to move on account of the Christian Scientists being down there, most of them that she knew.

Q Wasn't it a fact that it was suggested by these Christian Science women to both you and Mrs. Smith, that you should

move to South Broad street and be nearer the church? A I don't remember that; that may have been it; maybe she did say that, but I don't remember hearing it. She wanted to move, and we moved; that is all I know.

Q Emma Knell lived at South Broad street? A Mrs. Knell was the janitress—her husband was.

Q She lived at South Broad street at the house where you moved? A Yes.

Q Mrs. Smith was quite sick down there? A No more than any of the other places.

Q She required the attention of a physician? A She always had them; we had four in Newark while we were there.

Q But she was in poor health while she lived in South Broad street? A Not any more than usual, always the same.

Q It was more so than when you were first married? A No, she always had a physician, even when we were first married.

Q Isn't it a fact that she would 'phone to your office when you lived in South Broad street and find you were not there? A No.

Q You would come home late at night while you lived at South Broad street? A At the end of the month.

Q And first of the month? A And first of the month; I have been doing that for ten or twelve years.

Q Anything she tried to do at South Broad street didn't seem to please you? A Just the same as usual; I was pleased with anything she did, except this continual nagging; I wasn't pleased with that.

Q You did a lot of loud talking down there? A No.

Q Didn't you quarrel so that Mrs. Emma Knell could hear you? A Not that I know of.

Q Didn't you go out in the yard on one occasion and ask Mrs. Emma Knell what she knew about you? A No.

Q And didn't Mrs. Emma Knell turn around and say that she knew enough about you? A No.

Q You never had such a conversation? A Not that I remember of.

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

Q Do you recall later having a talk with Mrs. Emma Knell in the hall about Mrs. Smith? A No.

Ernest N. Smith, cross.

Q Didn't you in that conversation say to Mrs. Emma Knell that Mrs. Smith lied to her, and that Mrs. Smith was crazy? A No, not that I know of.

Q And didn't Mrs. Emma Knell say, "No, she is not, she is a very sick woman; she is a good noble woman," and didn't you finally admit it? A No.

Q You never had such a conversation? A No.

Q And don't recall it? A No.

Q John Knell, the husband of Mrs. Knell, also lived at the same house, didn't he? A Yes.

Q Didn't he threaten to have you arrested because of your conduct in the house? A No.

Q Didn't he tell you that he would do so? A No.

Q Did you ever have any conversation with him? A No, just "Good morning," that is all.

Q Was that the house where the four girls were? A Yes.

Q You had known some of those girls before you came to Newark? A Not that I know of, no, sir.

Q You don't recall whether you knew them or not? A I never spoke to any of them while there, so I didn't recognize them.

Q Isn't it a fact that your conduct became such that you were ordered out? A No, I thought we would have to pay two months' extra rent; they wouldn.t allow us to move when we went to the seashore.

Q Weren't complaints made to Mrs. Smith about the way you carried on with those girls? A No.

Q And didn't Mrs. Smith come to you and say that she would give you a chance to either move away from that place or she would leave you? A No.

Q Did she ever tell you that she would leave you while you lived there? A Never.

Q At any rate, you got busy and moved to Perth Amboy? A Mrs. Smith wanted to move there.

Q You got busy and moved? A No.

Q You did move, didn't you? A We moved.

Q Matters became worse at Perth Amboy, didn't they? A I don't know as you call them any worse; they didn't get any better; never got better after we left Forest Hill.

Q You didn't try to make them any better, did you? A I had nothing to do.

Ernest N. Smith, cross.

Q Nothing to do but keep on with it? A I hadn't done anything from the beginning.

Q You never did anything? A No, I have been accused of all these crimes, but there was never any proof.

Q You are a perfect angel? A Well, I don't think I will go to heaven today; maybe tomorrow.

Q Mrs. Smith complained to you about her life and the way you treated her while at Perth Amboy? A Always complained, from Forest Hill right straight along, every house.

Q Did you try to make things more pleasant for her? A There was nothing for me to try to do.

Q Did you try to relieve her mind of these accusations? A How could I, when I didn't do anything?

Q Did you do anything to apprise her to the contrary? A I said, "Who told you? Bring me the people and let me talk to them." She said, "I don't have to; the time is not ripe yet."

Q Did she tell you that, or did Mrs. Canfield tell you that? A Mrs. Smith; she always said "It is not time yet; when the time comes I will bring the woman and the child and face you."

Q Did she tell you that at Perth Amboy? A In two or three places.

Q (Last question repeated.) A Yes, in Perth Amboy, if you want to specify.

Q What other place? A In Newark.

Q She never told you that at Boonton? A In Boonton.

Q Why do you say that she only told you that in two places? A I didn't say in two places; wherever she went; she always told me the same thing "When the time comes, then I will bring my proof and prove those things."

Q While you were at Perth Amboy did you do anything to annoy her? A Not that I know of.

Q Do you know whether you had a maid down there who wrote a letter to Mrs. Canfield? A No, I don't know anything about it; I never heard of the letter until it was spoken of here.

Q Did you have a girl acquaintance next door that you were waving to? A No.

Q You didn't get up in the morning and cough? A No.

Q And this girl across the way waved a handkerchief to you? A No.

Q Notwithstanding the fact that the letter as interpreted, written by the maid, says you did that? A No, I never did.

Ernest N. Smith, cross.

Q Did you hit Mrs. Smith in the face while you lived there? A No.

Q Did you call her a whore while you lived there? A No.

Q Notwithstanding the fact that the maid wrote a letter and says you did do that? A Yes; I say I did not.

Q Did you wave any matches at the window? A No.

Q What was your treatment of Mrs. Smith while you lived at Perth Amboy? A The same as usual; when she wasn't accusing me of these crimes, my treatment was pleasant; when she started these accusations, we would have a quarrel.

Q You complained about your meals, didn't you? A No.

Q Didn't Mrs. Smith put her arms around your neck while you lived at Perth Amboy and try to kiss you? A Not that I remember of.

Q Was there ever an occasion when she tried to be affectionate towards you and you disputed her right to do so? A Only at the time at the Bayonne station when I refused to kiss her; that is the only time I remember of.

Q Try to recall if you didn't push her away while at Perth Amboy, when she tried to kiss you? A No, I don't remember it at all.

Q You didn't feel the same towards your wife while you lived at Perth Amboy as you did when you first married her? A No, I couldn't, because she kept these things up, and I thought she was wrong in continually doing so, without bringing any proof and giving me a chance to defend myself; naturally I wouldn't feel as pleasant toward her.

Q Mrs. Smith told you that she heard these things about you? A Yes, she would say "Someone told me"; I said, "Bring the people here," and she told me, "No, it is not necessary; it is so."

Q She always told you that on occasions she saw for herself? A Yes.

Q You occupied the same bed with her at Perth Amboy? A Yes, as far as I remember, we did.

Q You didn't treat her the same then as you did when you were first married? A The first week or first day; you are saying when I was first married; do you mean in the Forest Hill house?

Q The first part of your married life. A How many years?

Ernest N. Smith, cross.

Q We will say the first year. A No, because the accusations came faster as we went on than they did the first year; she had more women to talk about and accuse me of.

Q So that while you lived at Perth Amboy and occupied the same bed with her, your attitude was one of indifference while occupying the bed? A Just the same as in Newark, South Broad street and Mt. Prospect avenue.

Q Mrs. Smith testified that you took her in your arms and slept with her when you were first married? A I don't remember.

Q How did you act toward her at Perth Amboy? A I don't remember; I was too tired to bother much.

Q When she came near you in the bed you pushed her away? A No, I don't know as I pushed her away.

Q Told her to "get to hell on her own side"? A No.

Q Did you ever speak of divorce in Perth Amboy? A No.

Q Ever suggest it? A No, I never suggested it to her.

Q Did you ever talk about your troubles or your associations with women while you were in bed and cry about it? A No.

Q Ever say you wished she would leave you? A No.

Q Ever beg her to get a divorce? A No.

Q While Mrs. Smith lived at Perth Amboy her heart was weak? A Not that I know of.

Q She complained about her heart? A No, her doctor said it was all right.

Q Dr. Cottrell has testified here that she did complain about her heart? A No, he told me that he went there just to get the money.

Q Didn't he testify that she did complain about her heart? A I wouldn't swear to that.

Q Mrs. Smith was getting extremely nervous while you were at Perth Amboy? A Not that I know of, any more than any other places.

Q Wasn't it more so than the first year of your married life? A No.

Q Didn't she have nervous spells and become unconscious after these spells—quarrels? A No, in fact she seemed to be better after the spells; it roused her up more.

Q You say you tried to make things pleasant for her? A The same as anyone would.

Ernest N. Smith, cross.

Q Yet she twitted you of going to the ball game with other women? A Yes.

Q You never thought enough of her to take her with you? A She wasn't interested.

Q You never asked her to go? A It was only up a block—

Q You never asked her? A I don't remember.

Q Did you ever visit Sewaren while you were at Perth Amboy? A I think we both went up there with Audrey in the trolley.

Q So you had visited Sewaren? A Yes.

Q How many times, do you know? A I don't remember how many times.

Q Did you ever go there alone? A No.

Q You don't recall about that? A No.

Q Ever meet a girl called Maude, living in Smith street? A No.

Q Do you know of a girl in Sewaren? A No.

Q Do you know anyone living in Sewarren? A No.

Q Did you know of her at the time you lived in Perth Amboy? A No.

Q Isn't it a fact that Mrs. Smith came to Sewaren one day and caught you with Maude, who lived on Smith street? A No.

Q Isn't it a fact you came home and took your oath on a Bible that you loved this girl? A No.

Q And didn't you cry and beg Mrs. Smith to leave you? A No.

Q Didn't you offer to pay her $15 a week if she would go? A No.

Q And when she refused didn't you threaten to have her put in an insane asylum? A No.

Q Didn't you make endeavors while at Perth Amboy to have Mrs. Smith adjudged insane? A No.

Q Didn't you go to a doctor for the purpose of ascertaining whether or not she was crazy? A I asked Dr. Cottrell her condition.

Q Didn't you go to Dr. Ramsey? A No, never saw him.

Q Didn't you suggest to this doctor that she might be insane or crazy? A No, he suggested that.

Q And you immediately took it up? A No.

Q Did you encourage the suggestion in any way? A No.

Ernest N. Smith, cross.

Q Did you ever say that you thought she was crazy? A I said I thought she was, after she had a fixed idea on one subject, and on that one subject she was.

Q Do you know whether Dr. Davis at Bayonne told Mrs. Smith that you were morally incompetent? A No, I do not know it.

Q You had a talk with Dr. Davis? A No, I never saw him that I remember of; that is another doctor that I didn't know we had.

Q Do you know who your doctor was in Bayonne? A No, I don't know, only we had one in Bayonne.

Q When those things came up in the house, wouldn't you go out and say to people, "Mrs. Smith has had another crazy spell? A I never talked to people about my family affairs.

Q When you lived at Perth Amboy didn't Mrs. Smith ask you for money on one occasion, and wasn't that the same night you slapped her upstairs? A No, I never slapped her in Perth Amboy.

Q Where did you? A In Bayonne.

Q In Bayonne isn't it a fact the night she asked you for money you slapped her? A No, she accused me of waving matches out of the window.

Q In Bayonne, wasn't the occasion when she went upstairs and went in the bathroom, and when she came out you barred her way, and didn't you then say "You think you are smart, asking me for money so the neighbors were hearing it"? A When I came out of the bathroom with the burnt match, I had been looking for something, when it started.

Q Mrs. Smith had struck the match to light the gas? A I struck one to get something.

Q Didn't she strike one on the same occasion? A I don't remember that.

Q Didn't you go outside after that occasion and say on the front porch to the neighbors, or to the people next door, "She has had another one of her crazy spells"? A No.

Q And didn't the man next door say to Mrs. Smith, "You ought to have gone and gotten a policeman and had him arrested"? A No.

Q You were fond of other women? A Not that I know of; I never had other women.

Ernest N. Smith, cross.

Q You admire other women? A The same as any man would admire a pretty girl if he passes her on the street and saw her.

Q You were pleased to be in their company? A Not that I know of, any more pleased than anyone else.

Q When you were out in their company you seemed to enjoy yourself? A Yes.

Q You knew that Mrs. Smith had accused you of improper relations with women? A Yes.

Q Isn't it a fact that you would go with other women to aggravate her or tantalize her? A No.

Q Isn't it a fact that you would prompt other people to tell her of occasions when you had been with other women, for the purpose of riling her up? A No.

Q Nevertheless, you went out as you pleased? A No, only to work.

Q Never did anything else but go to work? A That is all.

Q All the time you lived in Perth Amboy you never went out for any social engagement? A We have no social engagements in Perth Amboy.

Q Did you yourself go out? A No.

Q Did you ever go out on occasions where there would be women? A No.

Q Men and women? A No.

Q Go to entertainments? A Alone—Mrs. Smith and I went out to the theatre; I don't say that, but alone I didn't go out.

Q Did you ever go with any of your friends to any social engagements? A No.

Q Or any parties? A No.

Q Ever take dinner anywhere? A No.

Q You moved from Perth Amboy to Bayonne? A Yes.

Q How did you come to move? A I think Mrs. Smith wanted to move again and I wanted to stay near the water, so I said "We will go up and see if we can find a place in Bayonne."

Q Did Mrs. Smith go with you? A No, I got off the train at 33rd street, coming from the office, on Saturday afternoon, stopped off there and looked around, and while there I met Mrs. Smith on the street with some other lady; they were looking around for the same thing; they were on the same street.

Q They were surprised to see you there? A No doubt of it; I dropped off the train at 33rd street to look for a house.

Q You were supposed to be in New York? A No, I was on my way home.

Q You were surprised to see them there? A Yes, I didn't expect to see them.

Q They were surprised to see you there? A No doubt.

Q Why did you say that Mrs. Smith tried to commit suicide on two or three occasions? A Two occasions, she locked herself in the bedroom and turned on the gas; that is all I could figure out she was trying to do.

Q What had you done to her to cause it? A One of those quarrels; that would be the original start of it.

Q So that it followed one of those quarrels? A It may have; I don't remember the circumstances.

Q Isn't it a fact that when you got in the room you found Mrs. Smith crying? A No, the gas was turned on.

Q What would she be doing there? A Standing there in the room or sitting down in the chair or bed.

Q Would she have her head in her hands? A No, she had Audrey in her arms.

Q Did she show any appearance of having cried? A No.

Q You are sure that the gas was turned on? A I turned it off.

Q You say while you lived at Perth Amboy you raised Cain; what did you raise Cain about? A Did I say that? I said I raised Cain in Boonton; I don't remember saying it in Bayonne.

Q While at Perth Amboy why did you say you raised Cain? A I don't think I did.

Q Can't you give us any occasion when you did? A No, I don't remember any occasion, except one of those quarrels, and I wasn't any worse then than before.

Q Were you worse then than after? A No, I was better there; Boonton is the only time I cursed when I had quarrels.

Q The second house in Perth Amboy you said something about an actress? A I never saw the actress; never spoke to her.

Q She was a neighbor there? A In the flat underneath ours.

Q You acted neighborly toward her? A No, never spoke to her.

Q Didn't you go down there to see her on occasions? A No.

Ernest N. Smith, cross.

Q Didn't she tell Mrs. Smith that if her husband found her out he would kill you? A What she told Mrs. Smith I don't know. Mrs. Smith never told me that.

Q While at Bayonne did you light matches as you would go in the bathroom? A Oh, no.

Q Did you have gas there? A Yes.

Q You had to light a match to light the gas? A At night, yes; I thought you meant all the time.

Q At night? A If I wanted something in the bathroom and couldn't see, I would light the gas.

Q How would you blow out the matches? A The same as anyone, either blow them out or give them a quick snap and throw them down.

Q At the bathroom in Bayonne what kind of curtains were up at the window? A I don't remember; I suppose a curtain that pulled down and two side ones; that is what we usually had; Mrs. Smith always had double ones.

Q You said you took the lower curtain and tore it down or threw it up over the window? A In the second Boonton house; you are down in Bayonne now?

Q Yes. A That was in the Boonton house.

Q What did you do with reference to the curtains? A Nothing in Bayonne. There was not plenty of light in Bayonne without disturbing the curtains; I would have to run it up to the top.

Q You wouldn't have to disturb the lower curtains? A No; I would light the gas there to shave with; it was a dark bathroom.

Q You did raise and lower the curtain? A Yes, had to in every house.

Q During those times did Mrs. Smith say anything to you about signalling with the curtains? A Has always.

Q You knew she accused you of it? A I had to shave; I had to work.

Q Wasn't that bathroom light enough to shave without taking the curtains down or putting the curtain up? A No, not unless you put the curtain up; in fact, I would light the gas some morning to shave with.

Q Didn't you do this to tantalize her? A No.

Q You knew it aggravated her? A I had to shave to go to business.

Q Nevertheless you continued to do it? A The same as I continued to sit in the same place as I did, because Mrs. Smith wanted to put my back to the window because there was a house next door; irrespective of what Mrs. Smith might say, I had to shave and go to work.

Q Did you ever come home late at night at Bayonne and demand your dinner? A No. I didn't care when dinner was ready; I never kicked on the time; the only time I kicked on dinner, it was too early; I wanted to go out in the yard and work until dark and have dinner afterwards; Mrs. Smith wouldn't have it that way.

Q Mrs. Smith wanted to know what time you wanted dinner, didn't she? A Yes, she would figure out the first train that I could get in on, and figure down to the last moment, five minutes to walk over, and if it took six minutes to walk over, there was a quarrel, I had stopped to meet a woman.

Q There were lots of times when you were hours late? A No.

Q Or half hour? A No, only fifteen minutes.

Q There were times when you were out of the way on the time you had given her? A Fifteen or twenty minutes.

Q It may be more? A No, not unless I had to work, and she knew about it.

Q You say there were times when you were detained, that you didn't get home at the time you said you would? A No, I said there were occasions when we would work nights, but Mrs. Smith usually knew about them.

Q But sometimes she didn't? A I think she always knew about them.

Q What is your best recollection? A I can give a reason, if you want it.

Q (Last question repeated.) A She always knew about it when I was to work.

Q The reason she knew was because she asked you about it? A No, I would tell her about it, and I would say, "I may be late home tonight"; I would have to prove that to her, and the way to prove it was to take the newspaper and show her the number of shares that were done that day; and if they ran over the front page, and I would show her a break or bull movement in Wall street, then she would believe it. I had to prove each one.

Ernest N. Smith, cross.

Q On those occasions before you went to the office in the morning did Mrs. Smith ask you what time you were coming home at night? A I always came at the same time.

Q Why do you say you always came the same time, when you just a moment ago said you were later sometimes than others? A She would know that; I just told you that if she saw the break in Wall street she would know I would be late.

Q She wouldn't know that you would be late until you come home? A I would be late tomorrow night, but not late today—the day after the break came.

Q You couldn't tell her what time you would be home at night? A Oh, yes.

Q There might be contingencies? A Yes, twice in the three hundred and sixty-five days.

Q Did you ever talk about going out with other women while you lived at Bayonne? A Not that I know of, unless she accused me of it.

Q Did you ever say at Bayonne that you would do as you pleased? A No.

Q Ever tell Mrs. Smith at Bayonne that she would have to stand it, and that her family wouldn't do anything? A I started all that up in Boonton.

Q Didn't you start some of it before you got to Boonton? A No.

Q You don't recall about that? A No, sir.

Q You left her bed while at Boonton? A No, I don't remember that; she accused me of it here, but that was the first I heard of it. She left my bed and went to German Valley for three months.

Q Before that time hadn't you left her bed? A No, we were sleeping together and had the same room.

Q You are sure about that? A Yes.

Q Didn't you tell her on those occasions, that you left her bed for two years so that she could get a divorce? A No.

Q And didn't she say that she didn't think anybody could get a divorce on such grounds? A No, I never said so.

Q Maids left frequently, didn't they? A We had one pretty near every month.

Q And some of the maids left because they couldn't stand your language and your actions? A Not that I know of; they never told me so.

Ernest N. Smith, cross.

Q But you did know of that? A No, that is a surprise to me.

Q When you struck Mrs. Smith in the upper hall, there wasn't any discussion about women, was there? A Oh, yes; I lit a match in the bathroom and she accused me of waving to the two girls who lived across the street.

Q Wasn't it Mrs. Smith who lit the match and when she had her back turned you struck her? A No.

Q Did the little girl scream? A I wouldn't say whether she did or not.

Q Didn't you tell Mrs. Smith that you would do worse than that? A No.

Q Were you riled up that night? A Yes, being accused of the crime of waving matches to women across the lots.

Q You say you had lighted a match that night? A In the bathroom; I was looking for something—I don't remember what it was.

Q Were you looking for any woman in the bathroom? A No, I never saw any woman in the bathroom.

Q Did Mrs. Smith do dressmaking while she lived at Bayonne? A I don't remember her doing it there.

Q You don't know that she went to New York to buy materials for dressmaking? A No.

Q Were you ever in a department store while in New York? A Yes, I was in one one time.

Q Did you see Mrs. Smith there that day? A No, I haven't been with Mrs. Smith; I was never in with her; I had no occasion to.

Q Were you ever there when you saw Mrs. Smith, when you had been to work and that Mrs. Smith came over from Bayonne? A And then saw her in the department store when I was there? Oh, no.

Q Do you know whether she ever saw you there? A I was never there, so she couldn't see me.

Q You don't recall about that? A I was never in there.

Q Were you ever there with a woman when Mrs. Smith saw you? A No.

Q On a working day? A No, I worked in the office, I didn't have time to run up in the department stores.

Ernest N. Smith, cross.

Q When you came home that night didn't your wife tell you that she saw you in a department store in New York? A And did she accuse me of it?

Q In a department store with a woman? A Two or three years later, she said she saw me in a department store, but not the same night.

Q Not while you lived at Bayonne she didn't accuse you of it? A No, I don't remember about that.

Q Do you remember saying that she couldn't help herself, that her sisters wouldn't have her, and her brothers wouldn't talk to her, and she couldn't do anything but stand it? A No, that was all said up in Boonton afterwards.

Q Did you tell her she would have to stand it? A I said she couldn't go back to her folks, because they wouldn't have her; I told her in front of her father.

Q Mrs. Smith was in poor health and went up to German Valley? A She had to have a vacation she said; the rest of her family was having one and she had to have one.

Q Mrs. Smith was nervous? A Not any more than usual.

Q She was in poor health? A No more than usual, she said so.

Q The girl was sick? A Oh, no.

Q Wasn't sick at all? A No, she said she was sick after she got to German Valley, but not before.

Q You didn't want her to go to German Valley? A I couldn't afford it.

Q And you objected? A Yes, I couldn't afford it.

Q You were not very kindly toward her? A I gave her the money; maybe I didn't give her enough.

Q At the railroad station you didn't kiss her? A No, I said, "Play your game." She didn't care whether I had two meals a day or not.

Q What do you mean? A Go right along, play as we were playing; she was going off for her own pleasure; she didn't care whether I had to get one or two meals; I had to cook my meals.

Q What do you mean by "playing the game"? A If you had a bunch of cards you would lay them on the table and play them as they lay.

Q You said at the railroad station you told her to "play her game"? A "You don't care for me, you don't want to

kiss me; why show off before the rest of the people that you are affectionate toward me, when you are not."

Q You say you had been affectionate toward her? A We had just had a quarrel about this vacation business.

Q And that is the reason why you didn't care to kiss her? A No, she had been saying she had to have a vacation, that she didn't care whether I got any vacation, I couldn't go.

Q Why didn't you want to kiss her on that occasion? A I told you why, because I didn't feel like kissing.

Q That was because you were provoked on account of her going away? A No, we had had a quarrel about it.

Q Mrs. Smith tried to kiss you then and there? A Yes.

Q And you refused? A Yes.

Q On your way to the station you cursed and swore all the way down the street, didn't you? A No.

Q Didn't you get riled up because she wanted to go? A No.

Q You had had a quarrel about this thing? A Several of them.

Q And didn't Mrs. Smith leave you and go ahead, and stopped in the store because of your cursing and swearing? A No, I don't remember that.

Q Did you talk loud on your way to the station? A No, I wasn't in favor of airing all my troubles out in the street before all the neighbors; I usually kept my mouth shut.

Q Did you do it? A I did not.

Q Do you remember what you said? A I do not; I don't remember that I said anything.

Q You may have said it, but you don't remember it? A No, I didn't say it then; put it that way. I didn't curse going to the station, when she was going to German Valley.

Q You did grab the child up and sling it up on the steps? A I did not; I picked the child up and set it up on the steps as far as I could reach.

Q Why didn't you take the child in the car? A Because those trains don't stay there long, those short trains.

Q Isn't it usual and customary for a man, when his wife and family are going away, to help them in the train? A I did. I set her up and the conductor was right at the top of the steps to take hold of her.

Q The child did fall? A She stumbled on the next step, she didn't fall.

Ernest N. Smith, cross.

Q Do you know whether that stumbling was because of the way you set her up on the steps? A No, I set her up and held her until she took hold of the rail; I couldn't reach up to the next step, I was standing on the platform; it was about two feet high where I was standing.

Q You let the child go up alone? A The next step, yes.

Q That upset Mrs. Smith? A She said it did; I didn't know it.

Q And the fact that you refused to permit her to kiss you upset her, too? A Oh, no, she didn't care about that.

Q How do you know she didn't? A Because of her attitude to me before and afterwards.

Q Didn't Mrs. Smith feel badly on going away? A No, she never felt badly.

Q Wasn't Mrs. Smith sincere in her affections toward you? A I don't see how she could be after accusing me of all the crimes she did.

Q Didn't she try to win you back? A I wouldn't say so, no, sir, when she accused me at least two or three times every week of a new crime and of the old ones thrown in as good measure.

Q She tried to do what was right by you, didn't she? A I don't think she did, because if she did, she would have brought her proof and showed it to me; she said, "I have got proof." I said, "Bring it and face me." She said, "No, the time isn't ripe."

Q She tried to kiss you and you refused? A I admitted that twice.

Q How long was Mrs. Smith away? A I don't know, up until October or November, I cannot say just how long she was away; I cannot say; I didn't figure out how long it was.

Q Several weeks, wasn't it? A Oh, yes.

Q Did you write her any letters while she was up there? A I would write and send her a check, "Enclosed find check for so much," and then I wrote the letters to Audrey.

Q Is that one of the letters you wrote while she was up there, Exhibit C. 1? A Yes, I would simply tear that off my pad, write "Enclosed find check for so much," and put it in an envelope and go out in the hall and throw it down the chute; that is all I had time for.

Q Why didn't you say "My dear Ella"? A I didn't have time to write anything more than that.

Q Would that have taken any more time? A It may have.

Q How much longer? A I don't know.

Q You never wrote her any affectionate letters? A I wrote to the child and she read those.

Q How do you know that? A Because the child couldn't read them and Mrs. Smith had to read them for her.

Q How do you know that she read them; you are only supposing that? A Very well, then I suppose that she read the child's letters.

Q Mrs. Smith wrote you letters while there? A I think twice in the three or four months.

Q Nevertheless, you didn't find time in all the period that she was up there to write her any affectionate letters? A Yes.

Q Then your attitude was one of indifference, wasn't it? A Not any more than hers.

Q She wrote you some letters? A Twice, I think.

Q But you didn't write her any at all? A No, I sent her money for her letters; I paid her for the letters.

Q And that is all you did? A Yes, I paid her for sending the two letters.

Q What do you mean? A I sent the money and she wrote the letters twice while she was up there.

Q She told you how she and the child were getting along? A Yes.

Q She addressed you in an affectionate way? A I don't remember how the letters were addressed.

Q Nevertheless you didn't see fit to find time to write her any letters addressing her in an affectionate way? A I didn't have time; I wrote to the child; wasn't that sufficient?

Q I asked you why you didn't write to her? A Because I wrote to the child; that is all.

Q You addressed the letters to the child? A I did; it would please her to get the letters.

Q You could have written Mrs. Smith if you desired? A Oh, certainly, if I had taken the time to do it, but I didn't have the time to do it.

Q You didn't work day and night? A No, I wasn't going to sit up nights writing letters and I had my own meals to cook besides.

Ernest N. Smith, cross.

Q Isn't it a fact that Mrs. Smith was going to leave you because of your treatment toward her? A Not that I know of; she was always talking about—I will say that in another way; I have heard Audrey cry for some little thing, and her mother would say, "Don't you cry, you know that you and your mother have got to go away and live together, so you have got to get accustomed to these things alone."

Q Was that the occasion of quarrels? A No, Audrey would want to go to the moving picture, I would say "No, you have been sufficient," and she would cry because she couldn't go the second time, and her mother said, "You have got to be a little lady, because we are going to leave your father."

Q Didn't you learn while Mrs. Smith was at German Valley that her condition of health was much better and that she had decided to leave you on account of your treatment toward her? A Oh, Mrs. Smith's health?

Q Yes. A No.

Q Mrs. Canfield told you that Mrs. Smith had told her that, or written her to that effect? A No.

Q Did you prevail upon Mrs. Smith to return? A No.

Q Did you ever ask Mrs. Canfield to request her to return? A No, never mentioned it to her.

Q Never had any talk with Mrs. Canfield about Mrs. Smith returning? A No.

Q Mrs. Smith did finally come home, didn't she? A Yes.

Q During the time that Mrs. Smith was away did you have anyone call at your house or stay with you? A No.

Q Did any one have a key to the front door? A No.

Q Do you know whether upon Mrs. Smith's return to the home at Bayonne after being at German Valley, that in the evening before you arrived a woman came to the front door, opened the door and came in, and then saw her and immediately left? A No.

Q Had any woman called to see you while you were at Bayonne? A No.

Q Did Mrs. Smith's sister tell you that you should treat Mrs. Smith with more respect? A No.

Q Did anyone talk to you about your attitude toward Mrs. Smith after she returned from German Valley? A No.

Q Did anyone speak to you about your attitude toward Mrs. Smith, before she returned from German Valley? A No.

Q Were you kind to Mrs. Smith when she returned from German Valley? A Yes.

Q And for a time you were affectionate toward her? A Mrs. Smith had forgotten—she hadn't mentioned any of these crimes.

Q For a time? A For a time the home was very pleasant.

Q Then you moved from Bayonne to Boonton? A Yes.

Q You were asked to give up the house at Bayonne? A Yes.

Q Do you remember an occasion before actually moving to Boonton when you told Mrs. Smith about getting on the train at Hoboken? A Yes.

Q And at that time you were going to visit the Dawson's at Boonton? A Yes.

Q Had you any previous arrangement to meet anyone at Hoboken? A No.

Q Had anyone made any arrangement for you to meet anyone at Hoboken or New York? A No.

Q You did come into the Hoboken station with a wman, didn't you? A Met them right in the station and walked half way through it.

Q You were quite surprised to find that Mrs. Smith was sitting in the station? A Oh, no; I walked right over to her when I saw her.

Q You were very nervous about the affair? A I was afraid that she would start something if she saw me tip my hat.

Q Was this woman at your office in New York? A Not that I know of; I hadn't seen her from the time I left East Orange to that day; that was six or seven years.

Q You don't know whether Mrs. Smith saw her at the lobby of your office or not? A I cannot tell what Mrs. Smith saw.

Q Didn't you tell Mrs. Smith, when she got on the train that it was none of her God damn business who this woman was? A No; I said it was none of her business, because I knew she would start something if I did.

Q How long had you known this woman you met that day? A When I first came down from Rochester to New Jersey.

Q Ever been out with her? A No; she had two sisters, three or four of us went over there.

Q So you had been to her home? A Yes; three or four of us called.

Ernest N. Smith, cross.

Q While you lived at Boonton, isn't it a fact that Mrs. Smith would call up your office and find you were not there? A How can I tell you that?

Q Isn't it a fact? A How do I know if she called up the office and the boy said, "He is in the other room," or he would say, "I don't see him." I have seen the same thing happen in the office; one of the fellow's wives would call up, some one would look around the room, and he was in the next room; he wouldn't bother to call him.

Q Were you ever in the next room? A Yes, back and forth to the bookkeepers and the front room.

Q Did you ever meet any women in the next room? A Oh, no.

Q After you moved to Boonton, at Washington street, you got along fairly well? A No; it started in the first month.

Q What time of the year did you move to Washington street? A It was my birthday, January seventh or eighth.

Q And you didn't go out to parties and to entertainments when you first moved to Boonton? A Yes.

Q Your life was very pleasant and happy? A I said so, the first month.

Q Didn't that continue until May? A No.

Q Didn't that continue throughout the winter months? A No.

Q What was the first thing she started in on? A I don't remember the first woman, there were so many of them.

Q So you don't remember very much what she said while at Boonton?

Mr. Price. He didn't say it.

Q At Washington street? A I don't remember the first woman.

Q You cannot recall incidents? A Yes; do you want me to recall one?

Q No. You came back to her bed in Washington street in Boonton? A I hadn't left it.

Q Do you suppose it is possible you did do it and didn't know it? A Then I hadn't left it; I will say it that way.

Q When spring opened you began working in the garden? A Yes.

Q It was annoying to you to have Mrs. Smith come out in the yard? A Oh, no.

Ernest N. Smith, cross.

Q Did you curse at her and tell her to get to hell back into the house? A No.

Q Didn't you on one occasion, while at Washington street, Boonton, while working in the yard, call to her and tell her to get to hell in the house, that she was not your wife, but only your housekeeper, and only a poor one at that? A I didn't do that.

Q Did you say that? A I did not.

Q You said you did swear and curse at her? A In the house.

Q Did you ever go outside and then get riled up and let it go? A No.

Q Anna Cassimer came to live at Boonton while you lived at Washington street? A Yes.

Q Did you know Elizabeth White at that time? A No.

Q Did you know a woman by some other name who afterwards came to Boonton and gave her name as Elizabeth White? A You mean, did I know Elizabeth White by some other name; is that the question?

Q Yes. A I did not; I never saw her until she came there to work for us.

Q Did you ever meet down at the coal yards or lumber yards a blonde woman? A No.

Q While at Washington street? A No.

Q Do you know whether Mrs. Smith ever saw you down there with such a woman? A She couldn't, when I didn't meet any.

Q You said that Mrs. Smith would stay away all night and leave Annie Cassimer in the house? A One night.

Q And you got suspicious? A Yes.

Q What did you get suspicious about? A That Mrs. Smith was outside watching the house and that the best thing I could do was to get out of the house and not stay in the house with Miss Cassimer.

Q You were not taking any chances? A I was not taking any chances of Mrs. Smith spying and making up a story, so I got out of the house alone.

Q Would she have any more proof if she had stayed outside? A There was nothing for her to see; as soon as dinner was over I got up and went out, but I thought it was strange to

leave me in there with as good a girl as she said Miss Cassimer was and the crimes she said I committed; it seemed strange she would leave me there.

Q Mrs. Smith had no suspicions between you and Miss Cassimer? A She accused me almost of attacking people.

Q She hadn't accused you of anything with Miss Cassimer? A No.

Q Why were you so suspicious about this thing? A It seemed strange that she would leave me in the house alone with an unmarried girl after accusing me of all the crimes she did—bigamy and adultery.

Q You came back that night and slept in the house? A Sure I did.

Q Did Mrs. Smith give dancing lessons while at Washington street? A Yes.

Q Where would you stay during that time? A I usually went out.

Q When you usually didn't go out? A Then I always went out; I didn't stay for the dances at all.

Q Did you remain upstairs reading? A I always went out when she had the dances there; if I came home before it was over, it was only for five or ten minutes, when they would go out.

Q Did you ever stay upstairs in the sitting-room? A No; I walked uptown and saw Mr. Dawson and sat up there in his shop.

Q You were a great friend of Mr. Dawson's? A Yes; he was Mrs. Smith's friend; she introduced me to him.

Q Do you know where Miss Cassimer would stay while the dancing lessons were going on? A I wasn't there, so don't know.

Q Did you and Miss Cassimer ever sit in the sitting-room? A Not that I know of.

Q Your sitting-room was upstairs? A Yes.

Q You don't know whether you were ever in there or not? A No.

Q Do you recall Mrs. Smith coming upstairs one night while the dancing lessons were going on, and finding Miss Cassimer coming out of the sitting-room? A I do not.

Q You don't remember that? A It didn't happen.

Ernest N. Smith, cross.

Q Did Mrs. Smith find you in the room? A It didn't happen.

Q Didn't Mrs. Smith find you in the sitting-room, and weren't you putting on your vest and buttoning up your trousers? A No.

Q And hadn't Miss Cassimer just previously gone out of the room? A No, never.

Q Mary Shepard worked for you at that time, and she left very suddenly, didn't she? A Yes; Mrs. Smith commenced to accuse Mary of crimes with me.

Q Didn't she say that the reason she left was because there was going to be some trouble between Mr. Smith and Miss Cassimer? A No; I never heard that.

Q When those accusations were made against you, did you try to palm it off and say that Mrs. Smith had a crazy spell? A No; I said, "Bring the proof."

Q Did you ever tell her she was crazy? A No; I said, "Prove one single item where I was wrong;" she would say, "It is not time yet; the time isn't ripe."

Q Didn't you say you could do what you pleased in your own home, and that she didn't have any other proof but herself? A No; I knew that she didn't have any other proof of these crimes but herself, because she never brought any.

Q When Elizabeth White came to work for you did you finally tell Mrs. Smith or ask her to discharge her? A No.

Q Did you ever say that she was playing martyr? A No.

Q Did you ever give her any money that she put in her stocking? A No.

Q Didn't Elizabeth White one time at the table say, "Ern, you know babe won't eat that?" A No.

Q And didn't you look up? A No; you would only have to look at her once and you would know that she didn't.

Q Carrie Scott came to work for you, didn't she? A Yes.

Q And on one Sunday you struck Mrs. Smith with a brush, didn't you? A I never struck Mrs. Smith with a brush.

Q You attempted to? A No.

Q You had a commotion about some one burning up the Sunday papers? A No; I don't remember it at all.

Q You don't remember that Carrie Scott interfered? A No; she never interfered in any of our quarrels.

Ernest N. Smith, cross.

Q Isn't it a fact that she left because of your conduct and your attitude? A No.

Q While at Washington street did you ever come in the house and go directly to the cellar? A No.

Q Did Mrs. Smith ever come down in the cellar when you were down there? A When I had little chickens she came down; I suppose she was down there several times.

Q Didn't you come up and tell the Dawsons that Mrs. Smith had a crazy spell, and that she said she saw you and some woman down in the cellar? A No; I never heard that story until I got in this room.

Q You heard it when you saw the papers? A What papers?

Q The petition in this case? A Reading that over—I read it.

Q Then you knew about it before you came into court? A I don't think that was in the petition.

Q As a matter of fact, you have gone over this thing carefully in your mind? A What?

Q The whole story. A I had to, didn't I?

Q And you have revolved it over in your mind and you have given your best explanation of what has happened? A No; I am giving the truth.

Q You are here testifying in defense of yourself? A Yes; I am telling the truth, the plain unadulterated truth.

Q You haven't told one solitary single thing that is off color? A Not one thing.

Q Mrs. Smith complained about the food being given away? A Yes.

Q You cursed and swore at her about money matters? A No; I gave her all the money I could afford to give her. I would take her own bills and she would tell me how much she had to spend.

Q Didn't Mrs. Smith earn extra money by giving dancing lessons? A Yes; and I paid out money for the doctor's bills to pay up for the dancing lessons. Every dance she had she was sick afterwards.

Q Are you sure the money you paid out for Mrs. Smith was because of the dancing, or your conduct or attitude toward her? A It was always after two or three weeks of dancing.

Ernest N. Smith, cross.

Q Would it happen after these quarrels? A Oh, no; she was better after those.

Q Mrs. Smith had pleurisy while she lived at Washington street? A I don't know.

Q She was sick? A They tell me she has these things—I don't know—the doctor said so.

Q You knew that she had it? A Yes.

Q And she had a nurse? A Yes.

Q You didn't pay much attention to what she had, did you? A I was doing the cooking for herself and the nurse and looking after the house.

Q You didn't pay any attention to her in this sickness? A I was doing the cooking.

Q You didn't go near her? A Yes.

Q Were you as affectionate toward her as you were the first year you were married? A No; about the fifth year; not as the first year.

Q Then you moved to Old Boonton Road? A Yes.

Q You bought that place? A Yes.

Q That is down near the cemetery? A Yes.

Q You have a barn there? A Yes.

Q And the barn is up against the cemetery? A Yes.

Q There is nothing to prevent anyone in that house from seeing the other houses in the immediate vicinity? A No.

Q If you are upstairs and look out of a window you can see houses on the other street? A Yes.

Q Mrs. Smith was taken sick down there, wasn't she? A I don't remember—a sick spell.

Q Before she went to the hospital wasn't she sick in bed a long time? A I don't know whether it was before or after that she said she had a miscarriage; she told me that; she said the doctor said so.

Q Did you tell her at the time she had that miscarriage that it wasn't yours? A No; I didn't accuse her of that.

Q Mrs. Smith was very fond of children, wasn't she? A No; Mrs. Smith said she would never have any more children.

Q Didn't she tell you that she wanted other children? A No; she said she wouldn't have them, and would cause herself not to have them if she got pregnant.

Ernest N. Smith, cross.

Q Mrs. Smith did have to go to the hospital? A She said she did.

Q She said she did what? A Have to go to the hospital.

Q Didn't Dr. Peck advise it? A She said so; he didn't advise me.

Q You didn't take any interest in the matter, did you? A Because I began to get suspicious; the doctors told me there was nothing the matter with her and they came down until they were ashamed to come any more.

Q So therefore you didn't take any interest in the matter, because— A No.

Q She did have an operation? A Yes; she was always wanting them.

Q And she was in a very critical condition? A Yes.

Q You objected to her going to the hospital? A Yes.

Q You opposed it? A Yes.

Q And you refused to kiss her good-bye when she went? A I wasn't there when she went.

Q The morning that she went you were there? A She didn't go until after I had left; I didn't refuse that morning.

Q You didn't kiss her good-bye? A I didn't know she was going.

Q Didn't she tell you that she was going that day, and you sneered at her? A No; when I came home she was gone.

Q You didn't visit her at the hospital? A No.

Q How long was she there? A Two weeks.

Q Didn't write her any letters? A No.

Q Do you know whether Mrs. Smith grieved about your attitude and actions toward her at the time she left? A I do not.

Q Did she ever tell you about it? A No.

Q When she came back from the hospital you then realized that she had had an operation? A I knew it before .

Q You knew that she had been in a critical condition, and therefore you got busy and took care of her? A I had to.

Q Nobody else there to do it? A The maid, that was all.

Q You wrapped the bandages? A Yes.

Q You were kind to her? A Yes.

Q You brought flowers into her room? A Yes.

Q Carried her up and down stairs? A Yes.

Ernest N. Smith, cross.

Q When did you discontinue that? A As soon as she got able to get up and see me she immediately picked out another woman across the street and started out.

Q You refused to carry her outdoors? A No; for a couple of weeks I did it.

Q Didn't you tell her she was able to walk? A No.

Q Didn't you pinch Mrs. Smith while you lived at Old Boonton Road? A No.

Q Didn't you pinch her arm until it was black and blue? A No.

Q Didn't Carrie Scott, when she worked there, find you with a woman in the barn? A No, sir; never saw me with a woman; none of them did; never had one.

Q Didn't Carrie Scott see you go out to the barn, and find a woman crawling from the barn out to the cemetery? A She did not.

Q Why did you stay out around the barn and garden so late at night? A One reason was to get out of the house—keep away.

Q So that things were unpleasant in the house, and therefore you hung out around the barn? A Yes, making chicken coops and bee hives.

Q Didn't Elsie Starkman lock you in the chicken coop with a woman one time? A No.

Q How late would you stay out around the yard at night? A Until dark.

Q Did you stay as late as ten o'clock? A No.

Q Was there at any time an occasion when you stayed out as late as that? A Not that I know of. I was always in the house long before that.

Q You stayed out until after dark? A No; I wanted to have dinner after dark, so I could work in the garden until dark. She said she had to have her dinner at five o'clock.

Q After dinner at night did you ever go out around the place? A No; not unless there was something to do.

Q Did you ever say you forgot to lock the door in the barn, and go out and stay for an hour? A No.

Q You didn't try at Old Boonton Road to make things pleasant? A Yes, the same as I had always done; I played the game right up.

Ernest N. Smith, cross.

Q You were still playing the game? A I gave everything that was coming; I was playing fair.

Q Do you think you played fair when you went out riding with Mr. Schwartz? A I do.

Q And leave Mrs. Smith behind? A I do.

Q Never asked Mrs. Smith to go with you? A I did.

Q You knew Mrs. Smith grieved about it? A No.

Q You knew she complained about being left alone? A As soon as I was out of the house a young man called there and she had dinner out on the side porch with him; that is all I know.

Q How do you know that? A I was told that afterwards.

Q That is something some one told you? A One of the maids told me that; that is all I know; but the day I went with Mr. Schwartz, I had been working that week—

Q Don't volunteer. You went out riding with Mr. Schwartz? A Yes.

Q You went on many occasions with him? A Three occasions.

Q You went on one occasion with Mr. Schwartz when there was another woman in the car? A Mr. Schwartz's wife.

Q Outside of his wife? A Oh, no; Mr. Doress's wife, when there were two women in the car.

Q At any time did you go out riding with Mr. Schwartz when there was no one in the car except Mr. Schwartz and his wife and another woman? A Besides this one I just told you about?

Q Yes. A No; that was the only one.

Q Were you acquainted with any girls at Butler, New Jersey? A Butler, Pennsylvania.

Q Are you acquainted with any girls there? A Yes; my two sisters.

Q Anyone else? A No.

Q Ever been to Butler, New Jersey? A Only to go there on the car.

Q What kind of a car? A An automobile.

Q With whom? A I think, Mr. Dawson.

Q Ever go with Mr. Schwartz up there? A Yes, the only trip we went to Sparta, we went through Butler, one Sunday afternoon.

Q Did you have any chicken dinners there? A No.

Ernest N. Smith, cross.

Q Ever have any chicken suppers there? A I never stopped in Butler.

Q I show you two postal cards, one marked Exhibit C. 11 and one C. 12 and ask you if you had anyone write those postal cards. A Those are the same I saw before?

Q Yes. A No.

Q Did you ever have anyone write them for you? A No; there are many slips.

Q Do you remember an occasion when Elsie Starkman was there when you had a quarrel about paying the washwoman? A Yes.

Q Did Mrs. Smith say at that time that if you would strike her again she would cut you with a knife? A No; I admitted I was wrong and paid the washwoman myself.

Q Her father was there at that time? A I think he came in the house after she picked up the knife.

Q These repeated quarrels would have a tendency to make Mrs. Smith more nervous? A I don't think so; I think they had the opposite effect.

Q You are not sure what effect they had? A I never examined her like a doctor would.

Q If the doctor said that these spells or quarrels would have a tendency to affect her in that way, then of course you give way to the doctor's opinion? A I would have my own opinin, to, after they had talked to me.

Q But you wouldn't dispute the doctor's opinion, would you? A Oh, no; not when they would say that.

Q You had a gun in the house? A Yes; I went hunting every fall after I got to Boonton.

Q Ever handle it around the house? A No, except one morning I wanted to shoot a rat in the yard, and it was in her closet.

Q Did you ever handle a gun in the house? A No.

Q Did you ever clean it around the house? A No; I cleaned it in the barn.

Q Then you took it from the house to the barn to clean it? A After I was through hunting, the same day, and then I didn't take it out again until the next time.

Q On this occasion of the bulb, that happened in the sitting-room? A No, in the hall.

Ernest N. Smith, cross.

Q I am talking about when it first started. A It started in the hall.

Q Where was Mrs. Smith's father? A Coming out; he had been in the other room, and stayed there all night.

Q So when the thing started he came out of his room? A Yes.

Q Isn't it a fact that you had been downstairs that morning? A No; I had only come out of my room; her father wasn't dressed yet.

Q Was the little girl there? A Yes; in her room, with her mother; they had the same room.

Q So the mother was dressing her at the time? A I don't know about that.

Q The little girl was with the mother? A Yes.

Q And then you started in about the bulb. A No; she did.

Q Did you carry the thing on? A No; I simply held her hands, that was all, and let go when her father spoke to me and said, "Stop," and I went downstairs.

Q That is all that happened? A Just as I told it the other day.

Q Was Mrs. Smith sick while Florence Branthwaite was at the house? A She may have been; I don't remember the time; she was sick on occasions.

Q On one occasion when Florence Branthwaite was there, do you know whether Florence Branthwaite wanted you to notify her people? A No; I never heard of that.

Q You didn't refuse? A No.

Q When Mrs. Smith was taken sick at this time you didn't think it amounted to anything? A No; it was—

Q You thought it was a whole lot of nonsense? A It was gas pressing on her heart; that was what caused it.

Q You didn't think it necessary to call for a physician? A No; she had to move around to get the gas to move—a sort of a malarial attack.

Q Do you remember I—Decker coming in the house when you had a quarrel with Mrs. Smith? A Yes.

Q Did you have your hand up to strike her? A No; it was only talk.

Q Did you make any motion toward Mrs. Smith? A No.

Ernest N. Smith, cross.

Q Do you remember a talk about your putting up the clothesline when—Decker came in? A It was taking down the clothesline; she ordered me to go take it down; I told her I would when I got damn good and ready.

Q You know Mrs. Smith wrote to her people about you? A How would I know; they never showed me any letters.

Q Did they ever make known to you the fact? A No.

Q Did you ever go down and tell your side of the story to them? A No.

Q How was it that your brother told you to give her a licking, if you never talked to him about it? A She had been talking to him and accusing me of these things, and he told me that afterwards.

Q And then you told him how it happened? A I don't remember; it is so long ago.

Q You didn't give your opinion? A No; I didn't have to; he didn't believe it.

Q And therefore it wasn't necessary? A It was too ridiculous to believe.

Q Do you mean to tell me that all the years of your married life you didn't have any talk with Elizabeth Canfield or Lott Buckbee or any of her relatives about the accusations she made? A Mrs. Smith was there when we had them.

Q But when Mrs. Smith was not there? A No.

Q You never went down and told your version of the matter? A I didn't have to tell my version; she told it all.

Q Didn't you go down there and try to explain to him how it happened? A No; I didn't have to.

Q Did you ever meet the boys in New York and tell them your side of the story? A No.

Q They never asked you about it? A No.

Q Did you ever suggest or tell them that you thought she was crazy, or had delusions, or imagined anything? A No.

Q Did you ever tell Mrs. Smith that they would take your word against hers any day? A I may have said that, I don't remember; I said so many of those little things.

Q Have you ever talked with Mr. Dunn, Mrs. Smith's uncle? A No; I never saw him except in my own house.

Q Recently, have you talked to him about the case? A No.

Ernest N. Smith, cross.

Q Did you ask him to come and testify? A No; my attorneys attended to all that; I gave them the addresses and they looked after the rest of it.

Q Did you write him a letter or suggest anything that he might say about the case? A No.

Q Did you talk with Reverend Depue about the case? A No.

Q How did you know that he knew anything about it? A I knew Mrs. Smith had sent for him on a dozen occasions and told him these stories.

Q And hadn't Mrs. Smith tried to influence you to go to his church? A No.

Q Never suggested that it would be a good thing for you to do? A No.

Q Didn't Reverend Depue come down there for the purpose of trying to get you in the Bible class, and didn't Mrs. Smith urge you to go? A No.

Q Have you ever talked to Albert Husk about this case? A No.

Q Haven't you been in his store almost nightly the last three months? A They don't keep open nightly, to begin with.

Q Or daily? A No.

Q Do you trade with him? A Yes.

Q Didn't you tell him that your reputation was ruined in Boonton; that you were going to try to redeem it, and asked him to come and testify in the case? A No.

Q Haven't you talked with him, or said something to him about the case? A No; Mrs. Smith talked to him and told him all about it.

Q And you haven't said a word to Albert Husk in the last three months? A No; except as you would say, "You have heard the news that Mrs. Smith had left?" I didn't put it in the papers, you know.

Q Did you go and say, "Have you heard the news; she has brought a case?" A No; my attorneys attended to all that.

Q Before your attorneys attended to it, did you say anything? A Yes.

Q Did you go in his store? A Yes.

Q How often have you been in his store during the last three months? A Once a week.

Q How long would you stay? A From fifteen to twenty minutes to half an hour.

Ernest N. Smith, cross.

Q Just talk about matters in general? A I would pay my bills and walk uptown and pay the rest of the bills, and come down and maybe stop in there and see him again.

Q And stand and talk? A Yes; the same as you would in any country grocery store. Maybe smoke a pipe while there.

Q Did you ever tell him what she accused you of in this petition? A No.

Q You have talked with Mr. and Mrs. Dawson a great deal? A They have talked for fifteen years.

Q During the last year have you been up to their house a great deal? A No.

Q Have you been there some time? A Once or twice.

Q How long did you stay? A Fifteen to twenty minutes.

Q What did you talk about, about this case? A No; unless I went there to ask if I could telephone.

Q Stayed twenty minutes that time? A Yes.

Q Talking about things in general? A No; I was telephoning.

Q It took you twenty minutes to telephone? A Yes.

Q Did you make known to the Dawsons about her leaving? A Oh, no; they knew it before I did.

Q How do you know they knew it? A She went in the morning, and I didn't come home until six o'clock.

Q How do you know that the Dawsons knew it? A I don't know; they knew it before I did.

Q How do you know they knew it? A The furniture went up through the town and everyone knew it was Smiths' furniture, and they said, "There goes Smiths' furniture."

Q Did she take a brass band and advertise it? A No; she had two vans.

Q You are supposing that all this took place? A Yes.

Q Of course you went over these accusations and this petition with the Dawsons? A No.

Q You asked them to come and testify? A No.

Q They are friends of yours? A Yes.

Q They are two of the friends that you say Mrs. Smith lost and you gained? A Yes.

Q While you were at Boonton did you ever admit in the presence of Mr. and Mrs. Dawson that while Mrs. Smith was at

German Valley you had been out to dinner with some woman? A No, sir.

Q Is Mary Shepard still in your employ? A No.

Q You are looking after her?? A No; her husband is.

Q You have endeavored to look after her in some ways? A No.

Q You sent fruit over there to her? A No.

Q So when Mary Shepard says you did she is mistaken?

Mr. Price. She said his father and mother sent it over.

A My mother went over to call on her and took over—

Q Did you know that it was being sent from your home? A Mother said she took over a dozen eggs when she was sick in bed.

Q You paid her way down here to Newark? A She was subpoenaed; she was paid that way.

Q This Mrs. Tompkins, the washwoman, you have been to see her about the matter? A No; not until I saw her in this room.

Q You gave her money in Newark? A No.

Q You have been to see Florence Branthwaite before she testified? A No.

Q Didn't you give her money? A No.

Q Didn't you on the fourth of April, when this case was first tried, give her money in the lobby of this building? A No.

Q Sure about that? A Certainly, I am sure of it.

Q Do you remember an occasion when Mr. Schwartz came to the house and stood by the window talking to Mrs. Smith—that is the occasion when they say that you went upstairs and said "Cut it out," and you say you didn't say it? A No.

Q What did you say when yeu went up? A I didn't say anything; I stood there talking; I went upstairs after something.

Q Did you mumble? A No; when I say anything I say it so you can hear it.

Q When you came down you said it so they could hear it? A No.

Q Did you say anything when you came down? A No.

Q Didn't you say you hated her? A No.

Q And didn't Mrs. Smith say, "Why should you talk like that simply because I am here talking to Mr. Schwartz?" A No; I didn't say so.

Q Was anything said between you and her, any quarrel ensue on that occasion? A No.

Q Do you remember what was said? A No.

Q Isn't it a fact that while you lived down in Old Boonton Road, as time went on, you ignored your wife? A No; I didn't ignore her.

Q Didn't you pass her on the street without even speaking to her? A No.

Q Didn't you come down on the train from Boonton to New York without saying a word to her, or sitting in the same car with her? A I would get on the train and look around and she would sit in the back part of the car; she was following me. If your wife got in the train and got half-way behind, you would suppose she was watching.

Q Why didn't you go to her? A If she couldn't tell me she was coming down, I wouldn't go back and sit with her.

Q Didn't you know she was coming, but you wouldn't walk with her? A No; I walk too fast; she went out, I didn't know she was going on the train.

Q Didn't you see her in the station and curse and damn her? A No; I kept all that in the house; I didn't curse on the streets.

Q You have been drinking of late years? A No; I wouldn't call it drinking.

Q You have to some extent? A I go in and take a drink if some one asks me.

Q You take anything they drink? A Yes.

Q I don't mean to say you were intoxicated or drunk, but you have had several drinks on some occasions? A Not more than two.

Q Did that have any effect upon you? A No.

Q Not that you saw? A Not that I felt.

Q You didn't feel gay or joyous, nothing like that? A No.

Q You knew that Mrs. Smith at times had detectives watching you? A Mrs. Smith said so.

Q Didn't you tell her you were too slick for them? A No.

Q You never bragged about your cleverness? A I said, "There is nothing for them to find; go ahead."

Q Didn't you tell her you would go with so many God damn women that she wouldn't know which was the right one? A No.

Ernest N. Smith, cross.

Q While Mrs. Tompkins was at the house did you tell Mrs. Smith that you would smash her God damn face and set her crazy? A No.

Q You did swear at her while in Boonton? A Yes.

Q About these friends of Mrs. Smith's; you say she had lost all her friends; what do you mean? A They are afraid to come down to the house to visit us any more for fear of what she would say.

Q How do you know that? A Well, they don't come; they all dropped her.

Q Is that the reason you think she has lost them, because they don't come down? A Yes; we will say that way.

Q Mrs. Smith has a lot of girl friends that she knew while she lived in Newark, who are still keeping up correspondence with her? A Not that I know of.

Q You don't know that recently Mrs. Smith has received letters from girls that she knew in Newark? A No; how would I know it?

Q You say she has lost all her girl friends? A In Boonton; I specified Boonton.

Q Just in Boonton? A I said she had lost her friends she had in Boonton when she moved there.

Q That is the only place she lost her friends? A No; she lost friends after she accused these girls. All these girls, the Jacobus girls and the rest of them, didn't she lose them?

Q Do you know whether Mrs. Wrench was a friend of hers? A No.

Q Do you know whether Mrs. Cocker was a friend of hers? A No.

Q Do you know whether Ella Mayo was a friend of hers? A Yes.

Q Do you know whether she has been receiving letters from her sympathizing with her in this trouble? A No.

Q You don't know whether she has lost her or not? A No.

Q Do you know Nettie Fielder? A No.

Q Do you know Mrs. Pryor? A Yes; I remember that name.

Q You don't know whether she has written her letters? A No; but I think Mrs. Pryor has also left her husband.

Q Do you know Mrs. Laura Rockafeller? A Yes.

Q Do you know Mrs. Edwards, of Bayonne; do you know whether they are still friends of hers? A I specified in Boonton.

Q You said other places? A She lost both of the Jacobus girls.

Q You say she accused you of being intimate with Mrs. Perrine? A Mrs. Perrine never knew; she didn't tell Mrs. Perrine.

Q Do you know whether Mrs. Colemorgan is a friend? A No.

Q Do you know whether she is consulting her in this trouble? A No; she didn't know her when she went to Boonton.

Q Do you know Mrs. Hirsch in Boonton? A No; I have only heard her say that Mrs. Hirsch belonged to the same Christian Science church.

Q Name for me, if you can, the friends that you say she had in Boonton that she doesn't have today? A Mr. and Mrs. Dawson, Mr. and Mrs. Clyde Tillotson and Charles Tillotson and his sister, Mr. and Mrs. DeHart, Mr. and Mrs. Albert Husk; I was going to say Mr. and Mrs. Blauers—that is only hearsay, that she had a quarrel with them—where she was boarding.

Q Is that all? A That is all I can remember; they were in the card club.

Q How do you know that they are not friends of hers today? A Some told me; some dropped her and haven't been to see her.

Q The only reason you know is that they haven't come down to the house? A Yes; naturally.

Q When Mrs. Smith was taken sick on account of eating fish, did you prepare the fish that night? A No; I said that that is what they had; I suppose it was the canned salmon that we had.

Q You don't know what it was? A Of course not; I ate the same thing.

Q Do you know why Dr. Arbuckle should make the remark that "This time you have escaped; this world is too wide for you to stand anything like this?" A I didn't hear him make it; I was there.

Q If the doctor testifies that he doesn't remember saying it, and Mrs. Smith said he did say it, and you were not present at the time he made that remark— A Did he say I wasn't present?

Ernest N. Smith, cross.

Q Yes; I ask you why he should make such a remark? A If I wasn't present, how would I know; if you say I wasn't present, I got your word for that.

Q Irrespective of whether you were present or not, do you know why he should make such a remark; was there anything you had done? A No.

Q Shortly before Mrs. Smith left she asked you to get a pail of coal, and that was the occasion of your telling her you would get it when you got God damn good and ready? A She ordered me to get it.

Q What do you mean? A "You take that coal pail and go down in the cellar and fill it now, you took it out to the barn."

Q Wasn't that the second time she had asked you to do that? A No; about the third time; she ordered me twice to do it.

Q You considered that ordering you to do it? A I surely did.

Q You told her, in answer to that, you would do it when you got "God damn good and ready?" A No; when I got "damn good and ready;" she put in the "God."

Q You say that you went into the dining-room after that occurrence and then she came in after you? A I went in the dining-room and shut the door.

Q Mary Shepard was there, wasn't she? A Where?

Q At that occurrence? A In the kitchen.

Q If Mary Shepard said it occurred in the kitchen, then are you mistaken, or is Mary Shepard mistaken? A What occurred in the kitchen?

Q This occurrence. A It was in both rooms; this talk about the coal pail was in the kitchen, and then I went in the dining-room.

Q Then you came back? A No.

Q Where did you wipe this mush all over her face and grab this towel and put it around her neck? A That was in the dining-room.

Q If Mary Shepard says that that happened in the kitchen, and Mrs. Smith says it happened in the kitchen, and you say it happened in the dining-room, who is right? A I am.

Mr. Price. Mary Shepard didn't say it happened in the kitchen.

Ernest N. Smith, cross.

Q You don't know whether you scratched her neck or not, do you? A Not intentionally; it could have been done while I was wiping the mush on her face.

Q You were riled up at that time? A No; that is the funny part of it; I was very calm and cool; after I sat down at the table I didn't get riled up; I took it more as a joke, when I was wiping the mush on her face.

Q But you didn't take it as a joke when you grabbed this dish and broke it? A Yes, I was very cool when I did that; I simply picked it up and dropped it on the floor.

Q If you were cool and had thought the matter over, you wouldn't have done such a thing? A I told Mrs. Smith, I said, "You broke a dish, now I broke one; it is your turn next, take your choice; I will break as long as you will."

Q You were satisfied to continue the argument? A Yes; if she started it I would continue as long as she did.

Q You said repeatedly that you have admitted to her that you have been out with other women? A I said, "You say I was out; have it your way; now what are you going to do about it?"

Q Why was it necessary for you to admit it? A Because when I admitted it, she stopped.

Q You didn't have to start this thing? A She started it.

Q It wasn't necessary for you to say a word in response to what she said? A Yes; only I didn't want to stay there and listen to her talk for an hour.

Q Do you suppose she would have talked for an hour? A Yes.

Q You sat by and let her do it? A No; about the second hour I would come in.

Q She would talk continuously during that hour? A Yes.

Q And the only way to break this thing up was to finally admit it? A I found that was the easiest way to break the argument up, "Yes, you say I did it, I did it."

Q That is your explanation of when she says that you told her you were out with other women? A Yes.

Q Didn't Mrs. Smith go on terribly about your conduct? A No; she looked for these things to accuse me of, to start a quarrel.

Q That is your idea? A That is what you asked for.

Ernest N. Smith, cross.

Q I am trying to find out what you think about it; you say you were never in the bathroom stark naked; is that so? A No, standing at the window.

Q I asked you if you were ever stripped? A I always took all my clothes off when I took a bath.

Q When did you find out that Mrs. Smith left? A When I came home that Wednesday evening.

Q Did you make any endeavors to find out where she was? A Oh, no.

Q Did you inquire after she had left? A No.

Q Did you ever try to find out. A No.

Q Did you ever induce her to return? A No.

Q Ever go to her? A No.

Q Ever write her any letters? A No.

Q You were perfectly satisfied that she should be away? A She went away herself.

Q But you were satisfied to let her go? A I don't know how to answer that.

Q You did nothing to induce her to come back? A Was I supposed to do something?

Q You did nothing yet? A No.

Q Did you have in your mind anything about being satisfied that she should remain away? A No; I took it as it came.

Q Therefore, you affection for her at that time ended? A Yes; you might put it that way.

Q You didn't have any such affection for her as you had when you were first married? A I supposed when she went hers was ended; we were both satisfied.

Q Do you know that she left because of your terrible treatment? A No.

Q Didn't she tell you that she was going to leave you? A No; she told Audrey for two or three years that she would go.

Q Shortly before she left, didn't she threaten to have you arrested because of your cruel treatment toward her? A No; she was trying to get me to do something and get me arrested and make a show of me in the town; she threatened to arrest me a dozen times.

Q What did you think she left for when she left? A Because I broke the dish, I suppose.

Ernest N. Smith, cross.

Q And you never have made any endeavors to have her come back? A I didn't suppose I was supposed to.

Q You didn't want to, did you? A I am immaterial.

Q What do you mean? A If she wants to stay away that way it was up to her; if she goes off I wouldn't run and ask her to come back.

Q You were satisfied that she could go, in other words? A Yes.

Q Didn't you tell her that you would carry the bluff just as far as you could, and then you would skip out? A No.

Q You say she told you she was going to get a divorce while you lived down in the vicinity of Bayonne or Perth Amboy; why did she tell you that? A She told me when her brother had brought her the money to get the divorce she would produce the evidence.

Q Did she tell you why she wanted to get a divorce? A No, she didn't say why—on account of the crimes she had accused me of; she wouldn't name any particular crime; there were so many of them, I suppose she had a choice which one to select.

Q About these handkerchiefs—in what condition were they? A Mrs. Smith had them; I didn't see them.

Q They were your handkerchiefs? A The ones the washwoman talked about were the ones I had used in the garden; they would have paint and dirt on them and the washwoman kicked about them.

Q So the washwoman kicked about the handkerchiefs? A Yes, the dirt and paint I put on them.

Q Didn't she say they were so dirty that no woman would wash them? A I admit, yes, that there was paint on them; should I have thrown them away? But I put them up at the landing.

Q Were there any you carried around in your pocket that they complained about? A No.

Q You never carried handkerchiefs? A Yes, but not the kind they complained about; do you suppose I would keep that in my pocket?

Q You did carry handkerchiefs around with you? A Yes.

Q Then the handkerchiefs that Mrs. Smith complained about were not the handkerchiefs you carried around in your pocket? A Yes.

Ernest N. Smith, cross.

Q What did she say was the matter with them? A I would go downstairs and bring down a clean handkerchief—two, one for my clothes and one for my overcoat; I could reach in my overcoat pocket in the hall and take the handkerchief out and throw it up on the stair landing and put the clean one in the overcoat pocket, but the one from my coat I would throw down; it was more because the handkerchief lay there, that she picked it up, than anything else she complained of.

Q Didn't the washwoman complain to you? A No.

Q You knew that she complained? A No, not until Mrs. Smith said so.

Q Why do you say that the washwoman complained about the handkerchiefs? A Because I know I had some with paint and dirt on—I had been working in the garden—and Mrs. Smith said they complained.

Q That is with reference to those handerkerchiefs? A Yes.

Q You don't know to what handkerchiefs the washwoman directed her objection? A No, there may have been some others which Mrs. Smith had.

Q What were the circumstances about this Wright street house? A I never heard of it; the only thing I heard, Mrs. Smith told me that Audrey had taken her around to a house where Audrey said I took her.

Q Didn't you come home and something was said about the Wright street house and didn't you say "You think you are God damn slick"? A No.

Q You say that she talked in her sleep; how do you know that? A Because I was awake.

Q Didn't you go to bed to sleep? A Yes.

Q Didn't you go to sleep? A Not directly.

Q How long after Mrs. Smith went to sleep would she talk in her sleep? A I cannot tell, from the time it was dark.

Q Would it be early in the morning, middle of the night or when? A No, the first part of the night, before midnight.

Q So you didn't go right off to sleep? A No; I don't today.

Q Anything to worry about? A No, business at the office; at the time you are through, you are pretty tired.

Q Do you ever get worked up over anything? A Unless Mrs. Smith would start a quarrel about these women.

Q And you would get worked up because you figured in the quarrel? A Yes.

Ernest N. Smith, cross.

Q Do you know why Mrs. Smith would never allow the child to be with you? A She had accused me of maltreating the child.

Q Do you know what kind of a place they keep at 61 North Sixth street? A No.

Q Do you know where the street is? A 61 North Sixth street, Newark?

Q North Sixth street, Newark. A No, I would have to hunt it up.

Q Have you ever been on that street? A Not that I know of; I may have passed through it.

Q Ever received any letters from anyone living on that street? A No.

Q You say that while you were living at Newark Mrs. Smith accused you of having some girl around the corner? A We were in four places in Newark.

Q You have testified here that while you lived at some place in Newark, Mrs. Smith accused you of having some woman around the corner? A Across the street, I think I said; I don't think I said "around the corner." I don't recall where that was.

Q Did Mrs. Smith ever tell you that you had a girl around the corner while you lived at Newark? A No.

Q Mrs. Smith went to Asbury Park, didn't she? A Yes.

Q Was it at Forest Hill where Mrs. Smith said you had a girl around the corner? A I don't remember of any, no, sir.

Q While you lived at Old Boonton road, Mrs. Smith went to Asbury Park, didn't she? A Yes.

Q While she was down there did you write her any letters? A I sent money; I don't know if I wrote anything in the letters.

Q Did you object to her going to Asbury Park? A I said I couldn't afford to send her, and at last I told her I would pay her so much.

Q Were you willing that she should go? A After I told her I would give her so much, I said I couldn't afford a vacation.

Q Is this one of the letters, Exhibit C. 3, which you sent while she was at Asbury Park? A Yes, I suppose they went there.

Ernest N. Smith, re-direct.

Q Why didn't you address Mrs. Smith in your letter? A I was addressing the check.

Q Why didn't you address her? A No reason at all; in a hurry.

Q The same hurry you were in years before? A Yes.

Q So that every time you wrote Mrs. Smith you were always in a hurry? A At those two places.

Q How long did she remain down at Asbury Park? A Two weeks.

Q During all that time you didn't take any time yourself to write her any letters? A No.

Re-direct by Mr. Price.

Q You testified that on one occasion in Boonton when you came home at night and Mrs. Smith looked at you, you said "Who in hell are you looking at?" What, if anything, caused that remark? A That was the time at the table one Saturday morning, you mean?

Q I have in mind when Mrs. Smith would look at you when you came home at night. A She would look me over, at half-past twelve or one at night, and say "You dirty drunken bum," simply from the looks of me; she would look me up and down and say that.

Q Did you make that remark? A No, that happened in the day time at the table.

Q What occasioned that? A When her father and uncle were there, she looked me over, and looked me over with that sneering smile, when she found my necktie crooked, and I made that remark.

Q You testified that when Mrs. Smith came back from German Valley to Bayonne, for a short time things were more pleasant? A Yes.

Q What was the reason for that? A She hadn't started these accusations against me yet; she had forgotten about them for the time being, being away three months, and it was pleasanter, naturally.

Q For what purpose did you desire to see Mr. Brauer prior to the hearing of this case? A When Mrs. Smith came back from German Valley—she went up there in November, and told me what good hunting there was in German Valley and Hackettstown; Mr. Brauer told me at the station that he had

bought a farm in Hackettstown; I thought it would be a good chance to get a couple of days on Mr. Brauer's farm to go hunting; I asked when he was coming down and he said Saturday morning on the 7:10, and I said, "I will see you," and he talked about the farm and told me what the hunting was up there.

Q Does your satisfaction with Mrs. Smith's staying away arise from the fact that your home was unhappy, or does it not? A It was unhappy.

Q Is that the reason you are satisfied if she stays away? A Yes.

MARGARET BRAUER, sworn for defendant.

Direct examination by Mr. Price.

Q Where do you live? A Hackettstown, New Jersey; just outside of Hackettstown.

Q Do you know Mrs. Ella S. Smith? A I do.

Q Do you know her husband, Ernest N. Smith? A Yes.

Q How long have you known them? A About ten or eleven years approximately; possibly not more than nine.

Q When did you first become acquainted with them? A 780 Summer avenue, Newark; we lived in the same house with them downstairs and they lived up.

Q Have you heard Mrs. Smith make complaints concerning her husband's infidelity? A Yes.

Q What were those complaints, if you recall? A She told me at the time when we lived in the house with them that Mr. Smith was acting improperly with a Polish maid that they had, and that he made motions to her in the glass of the buffet in the dining-room, and that the girl went down the cellar to see him; and then again, after that, that he had gone down in the boat with Mr. Brauer, on his motor boat, and had met girls down there.

Q Did she make complaints about the time when they were building the motor boat in the cellar? A Yes, that was when Mr. Brauer was building the boat in the cellar, and Mr. Smith went down to help him, and I went up there in her apartment to sit with her and sew, and that was when the girl would go down, as I supposed she went down with the garbage and things to throw out; she said the girl went down to see Mr. Smith.

Q Did you ever remonstrate with her concerning this? A No, I didn't remonstrate with her; I thought that the least said, the sooner it would be ended.

Q Did you ever take her to task for reflecting on your husband? A Yes; when she said Mr. Smith and my husband met girls when they had the boat.

Q What did you say? A I said she could say what she liked about her husband, but she couldn't talk about mine.

Q Did she make any reply? A None that I recall; I wasn't angry; I simply didn't want her to talk about Mr. Brauer.

Q You continued to visit them after that? A Yes.

Q Why did you do that? A So far as my personal feeling for Mrs. Smith was concerned, it was perfectly friendly, and Mr. Brauer and Mr. Smith were good friends, and Mr. Brauer liked to go and see him.

Q Did you put credence in her stories? A Absolutely none.

ZELLA M. DAWSON, sworn for defendant.

Direct examination by Mr. Price.

Q Did you ever have occasion to observe how Mr. Smith treated Audrey, the child? A Yes, I have.

Q How did he treat her? A I should say he treated her very well; as well as any father I have ever seen could treat a child.

Q Have you seen him take care of her? A I have.

Q In what way? A I have seen him doctor her and give her medicine, and put her to bed.

Q Have you seen him take care of her and treat her, as you say, very well since they have been living in Boonton? A I have.

Q In what way? A I have seen him put on her nightgown and take her upstairs and put her to bed.

Q When Mrs. Smith came to Boonton, did you warn her and tell her that she should not continue making these statements which she had made prior to the time of coming to Boonton? A I told her that those tales about Mr. Smith—not to tell the Boonton people; I pleaded with her not to tell the Boonton people.

Q Did Mrs. Smith make friends when she first came to Boonton? A Yes, several.

Q Has she lost those friends or does she still retain them? A No, she has lost them.

Q Lost practically all of them, or not? A All that were friends of mine, all that I know that she had made.

Q Can you name some of them? A Yes, if you would like to have them.

Q I wish you would. I refer to friends that she had when she first came to Boonton. A There is Mrs. Husk and Mrs. Tillotson, Mrs. Stambrough, Mrs. Locker, Miss Minnie Tillotson, Mrs. Solomon; I cannot recall any more.

Q Do you know why she lost those friends? A Only what they told me.

Mr. Romine. I object.

A (Continuing.) They told me that they were afraid they would be accused the same as all the rest of her friends, and they didn't want to be accused of being intimate with Mr. Smith.

Cross examination by Mr. Romine.

Q You didn't want Boonton people to know of the accusations that Mrs. Smith had made against her husband at other places? A I didn't want them to know the accusations that she had made to me.

Q (Last question repeated.) A No, I did not.

Q Mrs. Smith always treated Audrey as a mother should treat a child? A Yes.

Q These people that you mentioned who you say were friends of Mrs. Smith, were they also your friends? A That is how Mrs. Smith came to meet them.

Q Of course Mrs. Smith made other friends which you don't know anything about? A She may have; I don't know anything about the last two years.

ELLA S. SMITH, petitioner, recalled in rebuttal.

Direct examination by Mr. Romine.

Q Mr. Smith says that you charged him with improper relations with the child Audrey? A I have.

Q What are the circumstances of that? A Simply that I caught him handling Audrey—smoothing her in a way that I didn't think was proper to act with a child.

Ella S. Smith, cross.

Q On what part of her body, near her private parts? A Yes; I went in and found him doing it.

Q Did you later refuse or any time after that refuse to permit the child to be with Mr. Smith alone? A I did not, never.

Q Mr. Smith says that in the presence of Annie Cassimer you accused him of being intimate with the colored servant up in the hall; did you do that? A I never did; there was never anything said in front of Miss Cassimer; things were very pleasant while she was there.

Q Mr. Smith says that every time he had a new necktie on, or changed his clothes, you would charge him with being out with other women, or going with other women; did you do that? A I didn't.

Q Mr. Smith has also said that you would cut the personals out of the paper and charge him with having dates with women whose initials were connected with those personals; did you cut them out? A I did not.

Q Did you accuse him of putting them in the paper? A No, I accused him of reading them.

Q That is all you did about that? A That is all I did.

Q Did you ever light any matches and wave them at the window? A No, I have not.

Q Did you ever go out on the front porch and whistle to anyone? A No.

Q Did you ever turn the lights on and off? A No.

Q Did you ever tell Mr. Smith that if you became pregnant you would cause a miscarriage? A Never.

Q On any occasion when Mr. Smith would go out in the hall and turn out the lights, would you shortly after that time go out and click the lights two or three times? A No.

Cross examination by Mr. Price.

Q Why did you object to Mr. Smith reading the personals in the papers? A Because he told me that he had communications with them.

Q What did you say to him? A I told him that was no way for a man to treat his wife.

Q What did he say? A I don't know what answer he made now.

Helen L. Dean, direct.

Q Did Herbert Dawson ever ask you if you had accused Mr. Smith of maltreating his child? A I think Mr. Smith brought such a subject up at Mr. Dawson's house.

Q (Last question repeated.) A I think he did.

Q Did you reply to that? A I don't think I made any answer.

Q Why not? A Because I considered it was none of his business.

Q Is that your best answer to that question? A Yes.

Q You say you have seen Mr. Smith handling his child Audrey in a way in which he should not? A I have.

Q That he had his hands upon her private parts? A Yes.

Q Did you complain to him about that? A I did.

Q And yet you suffered him to go to any part of the house he wanted to with the child and you made no complaint about that? A I didn't say that.

Q What did you say? A I never kept the child from Mr. Smith.

Q Notwithstanding the fact that you say that you had seen Mr. Smith put his hands upon the private parts of your child Audrey, you still permitted him to go to the cellar with her, or her to go where he was? A In front of me, when I was there.

Q The question was whether you allowed Audrey to go where you were not? A No, she did not go where I wasn't.

Q She never went to any part of the house where you were not present, with her father? A Only to take a walk or in the sitting-room where the doors would be open.

Q Audrey and Mr. Smith were never in any part of the house together when you were not present? A I don't think so; they may have on occasions when I have been to the store, something like that.

HELEN L. DEAN, sworn in rebuttal for petitioner.

Direct examination by Mr. Romine.

Q On the day of the first trial—I think it was April 4th—did you see Mr. Smith and Florence Branthwaite in the lobby of the building here? A It was inside that I saw them, right here.

Ernest N. Smith, direct.

Q Downstairs? A Right in this room; they were standing beside the seats, about where Mr. Buckbee is. (Referring to benches in the court room.)

Q Was that after the trial of the case? A Yes.

Q Did you see him give Miss Branthwaite anything? A I saw him give her some money.

Cross examination by Mr. Price.

Q Are you friendly with Mrs. Smith? A Yes.

Q How long have you known her? A About a year.

Q Where were you standing when you saw this money given? A About five feet from him.

Q How much was given? A I don't know.

Q Weren't you able to see? A I was able to see, but I don't know; I wasn't paying any particular attention to.

Q It didn't interest you enough? A No.

Q You saw money passed, but you don't know how much it was? A I wasn't interested; I supposed it was the proper thing to do; I know nothing about legal affairs.

Q Was it in coin or bills? A I don't remember.

Q You haven't the least recollection? A I haven't the slightest recollection.

Q Yet you say you saw the money passed? A I did.

Q You say that you saw money passed by Mr. Smith to Miss Branthwaite, but you do not now recall in what denomination the money was? A I do not.

Q You don't know whether it was bills or coin? A I do not remember.

Mr. Romine. That is all.

ERNEST N. SMITH, defendant, recalled in sur-rebuttal.

Direct examination by Mr. Price.

Q Your wife has just testified that she has frequently seen you put your hands on Audrey in a way in which you should not, and she specifies the manner in which you did it, in that you put your hands on her private part? A Never; never in my life.

Q Did you ever maltreat her in any way? A I never did; I thought too much of her.

New Jersey State Library

IN CHANCERY OF NEW JERSEY.

Between

ELLA S. SMITH,

Petitioner,

and

ERNEST N. SMITH,

Defendant.

Transcript of testimony taken before Nicholas W. Bindseil, a Master in Chancery of New Jersey, at Shenandoah, Pennsylvania, on Friday, June 23, 1916, in the presence of Mr. Elmer W. Romine for petitioner, and Mr. Harold C. Price for defendant.

ANNA CASSIMER, sworn on behalf of defendant.

Direct examination by Mr. Price.

Q Miss Cassimer, where do you live? A 211 East Lloyd street, Shenandoah, Pennsylvania.

Q In what business are you engaged? A School teacher.

Q Did you ever teach in the town of Boonton, Morris county, New Jersey? A Yes, I did.

Q And while there where did you board? A I boarded with Mrs. Ernest Smith.

Q Do you know her first name? A Ella.

Q On what street were they living? A Washington street.

Q How did you come to go to Boonton? A I went—well, by the efforts of Mrs. Smith; she secured the school for me, and she was anxious to have me as a companion.

Q Where did you first meet her? A She met me at German Valley, at Vescilur's.

Q German Valley is in Morris County? A Yes, Morris County.

Q Did Mrs. Smith state to you before you came to Boonton that she was having an unhappy life with her husband? A She did, many times.

Q And did she state what the trouble was? A Yes, she did.

Anna Cassimer, direct.

Q What did she say about her husband? A She said her husband was very mean to her, and that he supported other women.

Q Did she accuse him of infidelity? A Yes, she did.

Q Did she ask you to act as a sort of a spy on her husband when you came to Boonton? A That was her real reason, I believe.

Q What did she say to you? A She didn't say anything like that in the beginning; she was clever enough to get me there without arousing my suspicions in the matter; but while I was with her, she said, "Now, remember, I want you to watch everything carefully, because, in case I get a divorce, I want you as my witness."

Q And she told you all of those things about her husband before you came to Boonton? A Yes, she told me many many things.

Q Mrs. Smith has testified that on one occasion, while living on Washington street in Boonton, she came in a room one night in her home, and as she came near to the door, she saw you run out and go into the bathroom, and that you were crying, and that she looked into the sitting-room and saw Mr. Smith buttoning up his trousers; were you ever in a room with Mr. Smith with his trousers unbuttoned? A Never.

Q Did you ever run out of the sitting-room into the bathroom crying? A I never ran out of any room on any occasion.

Q Did Mrs. Smith ever stand in the sitting-room door and see you run out of the sitting-room into the bathroom crying? A No.

Q Did you ever have sexual intercourse with Ernest Smith, the defendant? A Never.

Q Did you ever have any improper relations with him? A Never.

Q What complaints did Mrs. Smith make about her husband after you came to Boonton or before? A How do you mean?

Q You say she complained of infidelity on the part of her husband? What would she complain about; what would she say? A Flirting with other women or meeting them in New York.

Q She accused him of meeting women in New York? A Yes.

Q Did she ever accuse him of signalling to women? A Yes, with the curtain and with the electric light.

Q Along those lines, do you recall any other instances on which she based her complaint? A Frequently she told me that she found various colored hairs on his coat, on his shoulder.

Q What did she say that indicated? A She thought it always indicated that he was with a woman having the color of hair which was found on his shoulder, on his coat.

Q Do you recall any other complaints which she made of that nature? A No, I do not.

Q Mrs. Smith says that you left as the result of this occurrence which she testified to and which I have just detailed to you, about finding you in the room with Mr. Smith; will you tell us why you left her home? A I left for home because it was Christmas vacation; my school was closed; I always went home for Christmas.

Q Did you return after you went home? A I left my trunk, intending to return, and when I came home mother said I was so thin she didn't want me to go back and starve to death.

Q Were you ill? A I was suffering from hemorrhoids, but Mrs. Smith knew that.

Q Were you in a weakened condition? A I was weakened from not having enough to eat.

Q Didn't she give you enough to eat? A No.

Q When was that? A During the whole time I was there.

Q Did you take your lunches to school? A Yes.

Q Was it the lunch that was insufficient? A Yes.

Q Did Mrs. Smith ever say anything further to you about having you keep an eye on her husband? A I don't recall; but she asked me many times about the same thing, and she frequently repeated the stories and same accusations; I really cannot recall.

Q Can you recall any more of those stories; you testified about the incident about the hair and adjusting the shades; did she make any other complaints that you recall? A No, I do not recall them just now.

Q Were her complaints frequent? A Oh, yes, very frequent.

Q Did you remonstrate with her? A I did, frequently.

Q What did you say? A While in German Valley I told Mrs. Smith that if I were she, I wouldn't live with a man that could be as wicked as she claimed her husband to be, and I

advised her then to get a divorce, and she said she hadn't the money; it required money to get a divorce, and she would get it just as soon as her father died.

Q When you remonstrated with her about these complaints which she was making, what did she say? A About the complaints?

Q Yes; for instance, when she said, "I found hairs on my husband's coat," and that he signalled to women, and you remonstrated with her about that, what would she say? A I told her she was very foolish to believe those things; she was very firm in her belief; no one could change her beliefs; no matter what argument I gave, she was firm, and she believed that it was true.

Witness. I would like to state that knowing what Mrs. Smith thought of Mr. Smith, I was afraid to speak to Mr. Smith except in her presence; when I sat in the library with Mr. Smith, I never spoke one word, for fear that she might spy around and misconstrue my innocent conversation.

Q That was because of these complaints which she made about other women? A Yes.

Q Did you on one occasion ask permission from her to speak with her husband? A On two or three occasions at the table, I asked Mrs. Smith if I might speak to her husband about stocks and bonds which I had to teach in school and I didn't understand well, that he may explain it; she gave me permission; it was in her presence that I spoke to him. We never carried on any lengthy conversation except in her presence.

Cross examination by Mr. Romine.

Q Do you know what Mrs. Smith's condition of health was while she was at German Valley? A No, I do not exactly understand; she was weak, of course, but I don't understand just what it was.

Q You didn't know just what was the matter with her? A No.

Q Would you say she was sickly? A I really don't know.

Q Was her condition of health poor? A I think it was; she was worried more than anything.

Anna Cassimer, cross.

Q Seemed to be worried? A Something seemed to be preying on her mind.

Q Did she seem to be nervous? A Yes.

Q You said she was weak; how did she manifest that? A After walking a little distance she was always tired out; she wanted to sit down somewhere.

Q Any little thing that she did seemed to tire her out? A Yes.

Q Was the little girl sick? A That was before I knew Mrs. Smith.

Q Was the little girl sick when she came to German Valley? A No, not in German Valley; the little girl has just recovered.

Q Had you known Mr. Smith at the time you were at German Valley? A No.

Q That was the first time you ever met Mrs. Smith? A The first time.

Q In those conversations did she tell you that she had been to New York herself and seen him with other women? A No, she didn't.

Q Did she ever mention the fact that she had seen Mr. Smith in a department store with another woman? A Not to me.

Q Did she ever tell you in any of those talks with you, that she had personally seen him with women anywhere? A I don't recall; I don't think she did.

Q You say that she accused him of being with other women? A Yes.

Q Did she mention any particular things that had come to her knowledge? A She said he had supported some woman in New York for a number of years, and he had two children with her.

Q Did she say anything else about any of the women, particularly about his having improper relations with them? A She said so much I cannot recall; she repeated it so many times.

Q It seemed to worry her, do you think? A Yes, very much.

Q Mrs. Smith took quite a liking to you at German Valley? A She did.

Q And you had just graduated from Normal School, had you? A I was teaching at the time.

Anna Cassimer, cross.

Q And did you and Mrs. Smith have a talk about Mrs. Smith's trying to use her influence and get you a position somewhere? A Yes.

Q And did she tell you that she thought she could? A Yes.

Q At that time her home was in Bayonne, wasn't it? A Yes.

Q And then when she returned to Bayonne did you learn that she moved to Boonton? A She wrote me that she was in Boonton.

Q And did she then tell you that she thought there was an opening in Boonton? A She did.

Q And you went down and secured the position? A I did.

Q Do you know whether Mrs. Smith gave dancing lessons at Boonton? A Yes, she did.

Q And was that during the time you were there? A Yes, it was.

Q How many nights a week did she give the dancing lessons? A I don't recall.

Q Was it more than once a week, do you know? A She had a children's class on Saturdays, and I think it was either once or twice—I don't remember—

Q The grown up people came in the evening, did they? A Yes.

Q And of course, you didn't partake in any of the dancing? A I wasn't as graceful, I suppose Mrs. Smith thought.

Q But you didn't take any part in any of the dancing? A No, I didn't.

Q And you spoke about sitting in the library; do you mean the sitting-room upstairs? A Yes.

Q That is what they call the library? A Yes; I sat in my own room each evening; right after supper I went directly to my own room, where I did my school work or any writing or studying I had to do, but it was Mrs. Smith's suggestion that I sit in the sitting-room, in order to save the electric light bill.

Q You did your own private work in your room? A Yes.

Q And then after that was finished you would sit in the sitting-room to read or anything of that kind? A Yes, and during those times—

Q If Mr. Smith sat there, you had very little to say to him? A I never talked to him when he was there alone.

Q When you were there in the room— A With Mrs. Smith, then we carried on a conversation.

Q When the dancing classes were downstairs and you and Mr. Smith sat in the sitting-room, then you say you didn't have any conversation with him? A No.

Q Would Mr. Smith say anything to you or just mention any little thing as he sat there? A He never did, frequently the little girl came in, then he talked to the girl, or I would talk to the girl, but we read our magazines or whatever we had to do.

Q But you never carried on any lengthy conversation with him? A Never.

Q You may have said a word back and forth? A No, I don't think we did that; we were very stiff.

Q On these occasions when you and Mr. Smith would be in the sitting-room reading your magazines or papers, of course Mrs. Smith would be busy with the dancing class downstairs? A Yes.

Q Do you remember any occasion when Mrs. Smith happened to come upstairs when you would be going in or out of the sitting-room? A I do not.

Q That is, you cannot recall any occasion when you either went out— A No, not any particular occasion; I don't recall any occasion.

Q I just wanted to ask you if, at any time when Mrs. Smith may have come upstairs for anything— A She did at times, she came upstairs to see how the little girl was, but not when I was going out of the room.

Q I don't mean going in or out of the room on your part for any particular purpose, but did she ever come upstairs when you were going in or out of the sitting-room? A No.

Q You don't recall that? A No.

Q Do you ever recall going out of the sitting-room to your room or any of the other rooms upstairs when Mrs. Smith would be upstairs, after having come from downstairs? A I don't recall.

Q Can't you recall an occasion the night before you left, when Mrs. Smith came upstairs and you came out of the sitting-room? A The night before I left—I thought of that—I can tell you exactly what happened. I was preparing to come home, packing my trunk; it took me the entire evening to pack my trunk; I wasn't in the sitting-room at all; they had a servant

girl whose name was Carrie, at the time, and she slept on the third floor, directly above my room. I heard several times pounding on the floor above, but I paid no attention to it, I thought perhaps she was doing something up there, and then sometime after nine o'clock, Mrs. Smith came into my room and she said "Did you hear that pounding?" I said "Yes, I heard it, that must be Carrie upstairs; I believe she is ill, let us go up and see." So there wasn't any light up there and Mrs. Smith got a lamp and we went up. We found Carrie crying in bed, she was sobbing, and the little girl was crying with her—that is, Carrie had a daughter, and Mrs. Smith said, "Why Carrie, what is the matter with you?" And she said, "Oh, Mrs. Smith, there are burglars in the house," and Mrs. Smith said, "Burglars?" She said, "Yes, I heard them open the bureau drawers downstairs," and she said, "you were all out of the house, and I heard them ransack the whole house, and I thought they were coming up to me." Then Mrs. Smith told her that we hadn't been out that evening at all, that I was making the noise downstairs, because I was packing my trunk, so Carrie calmed down and went to sleep.

Q Then did you go downstairs and continue your packing? A I came down, yes, and continued packing until late in the evening.

Q And did Mrs. Smith have a dancing class that night? A No.

Q Are you sure about that? A I am positive.

Q The night before that did she have a dancing class? A I don't know.

Q The day that you left, Mrs. Smith didn't know that you were going that day, did she? A Yes, she did; I told her that I was going, two days before that—several days before that; she knew I was going.

Q Where was Mr. Smith the night that this was going on? A I don't know where he was; he frequently went out; he may have been in the sitting-room.

Q Do you remember an occasion shortly before you left their home, when there was a dancing class downstairs and Mrs. Smith happened to come upstairs and you came out of the sitting-room? A I don't remember.

Q Were there any occasions when you came out of any of the rooms upstairs and went to the bathroom and you were crying?

Anna Cassimer, re-direct.

A I never cried in Mrs. Smith's house; I had no reason to cry.

Q You say that you didn't take your trunk with you, but when you came home you were sick? A Yes, I was sick.

Q You never went back to Boonton? A No, mother wouldn't let me go; I intended going back.

Q How long were you sick? A Well, if I must tell you just exactly what it was, I had hemorrhoids; I suffered from them.

Q But you are teaching school again now? A Yes.

Q How long was it after you came home before you took a position again? A Not until May.

Q The following May? A Yes.

Q Did you go to any hospital? A No.

Q Have a physician? A Yes, a little treatment.

Q Have any operation? A No.

Q Of course, you don't know whether any of the charges that Mrs. Smith made against her husband were true or not? A No, I do not, except one; she had visited her aunt in Newark, I believe, and on coming home she rushed to me and told me that her auntie advised her not to trust me, because I may be one of those women with whom Mr. Smith had associated with in New York. Then I said, "Why, Mrs. Smith, you know I have never been in New York." Well, she said, "In a case like that man, I cannot trust anybody." After that I had no faith in Mrs. Smith.

Q Did you ever complain to Mrs. Smith that your lunches were insufficient? A Yes.

Q Did she ever do anything to increase your lunches? A Once or twice after that, and it was neglected again.

Q You advised her while you were at German Valley that if Mr. Smith treated her as she said he did, and was that kind of a man, that she ought to get a divorce? A Yes.

Re-direct by Mr. Price.

Q Where does your mother live? A The same address as mine, 211 East Lloyd street, Shenandoah, Pennsylvania.

Q That was the place where you came home after your Christmas vacation? A No, we lived then on Centre street, Shenandoah.

Q Do you recall what year you were in Boonton? A 1912.

Q How long were you there? A I was there—I think school opened in September—until the Christmas vacation.

Anna Cassimer, re-cross.

Q Directing your attention to this accusation that Mrs. Smith made against you, and which she had learned from her aunt, did she say why she thought that it was you? A Because her aunt described a girl very much like me, to be the one that he went with in New York.

Q Did she say how she described her? A Yes, she said she was a teacher and her first name was Anna, and she was tall and had light hair.

Q And that, Mrs. Smith said, convinced her that you were the person who her aunt mentioned? A Yes.

Q Directing your attention to the signals which Mrs. Smith said that Mr. Smith made by adjusting the shades and turning on the light, did she make those accusations after Mr. Smith would enter a dark room and turn on the light? A Immediately after. She frequently called me into the bedroom after Mr. Smith left in the morning and pointed out a certain window down the street, telling me that the shade was in a certain position, asking me if I couldn't see any woman's figure at the window, but I never saw anything.

Q Did you ever see Mr. Smith signal to anybody? A I never did.

Q Did you ever see him have any improper relations with any woman while they lived at Boonton? A No.

Re-cross examination by Mr. Romine.

Q Would he go to the window at any time and raise or lower the shade? A I never watched Mr. Smith; I really don't know.

Q But so far as you know— A Mrs. Smith said he did that.

Q Did you ever on any occasion see him go and lower the shade or raise it? A No.

Q Did you ever see him turn on the light? A In the evening, of course, in the dining-room, that was his evening duty, as soon as he would turn the light on, he would put the shades right down.

Q So you have seen him go to the window and lower the shade in the evening? A Yes.

Q And turn on the light? A Yes.

Q Would the light at any time, either downstairs or upstairs, click on and off, and then he would turn it again? A No.

Anna Cassimer, re-cross.

Q On any of those occasions when he was lighting the lights in any part of the house, would they light more than once before they remained lighted? A I don't remember, I don't know.

Q Have you heard from Mr. Smith during the last year? A I never corresponded with Mr. Smith.

Q I didn't mean have you heard from him—has he written you? A Never.

Q He didn't write you any letters and tell you that he would like to have you as a witness in this case? A No.

Q He never wrote you or informed you that a petition had been filed in which Mrs. Smith had alleged certain things? A No.

Q Did any one come to see you about the case before tonight? A I knew that I was a witness on the case about—

Q How long ago did you know that? A Two weeks ago.

Q Did you know it before that time? A No.

Q Have you been teaching school in Shenandoah or somewhere? A In Shenandoah.

Q Mr. and Mrs. Smith both knew that you lived in Shenandoah? A I think so.

Q You are quite sure that Mr. Smith has never written you about the case? A Never.

Q Did he ever come out here to see you about the case? A No.

Q But some one did come and see you for him? A Some one informed me that I was wanted as a witness.

Q And they talked the matter over with you? A Yes.

Mr. Price. I was the person who came to see you, was I not?

Witness. Yes.

Elizabeth L. Canfield, direct.

IN CHANCERY OF NEW JERSEY.

Between

ELLA S. SMITH,

Petitioner,

and

ERNEST N. SMITH,

Defendant.

Continuation of testimony taken in the above entitled cause before Nicholas W. Bindseil, a Special Master in Chancery, at his office. Prudential Building, Newark, New Jersey, on Saturday, July 8th, 1916, at 9 A. M. in the presence of Mr. Elmer W. Romine for petitioner, and Mr. Harold C. Price, for defendant.

ELIZABETH LORENZ CANFIELD, sworn on behalf of defendant.

Direct examination by Mr. Price.

Q Where do you live? A 108 Greenwood avenue, East Orange.

Q You know Ella S. Smith, the petitioner in this case? A Yes.

Q How long have you known her? A I have known her fourteen years, but I have never known her well until about six years ago—in 1909-1910.

Q Where were you living at that time? A 1166 Broad street, Newark; I just met her socially at her sister's house.

Q Where was she living at that time? A Corner of Mt. Prospect avenue and Verona avenue, Newark.

Q In what profession are you engaged? A Christian Science Practitioner.

Q Were you such Christian Science practitioner when you first became well acquainted with Mrs. Smith? A Yes.

Q Did you give Mrs. Smith treatment? A Yes.

Q Did Mrs. Smith make complaints to you concerning her husband's infidelity? A Yes.

Q Will you state what the nature of those complaints were? A That he was intimate with several of their servant girls, with

a woman across the street in a Mt. Prospect avenue home, and with some one in the Broad street house to which they moved, with an unknown woman whom he met at lunch time in New York, with some one whom he met at Hill street, Newark, not mentioning any names in any case.

Q Do you recall any other complaints? A After a visit at a house of a lady whom I knew only as "Zella" in Boonton, she accused her husband of intimacy with the husband of this lady.

Q Did she say anything about this Zella woman's husband? A Yes.

Q What did she say about him? A That he also was unfaithful to his wife. She had never believed that he wasn't.

Q What did Mrs. Smith say in relation to the woman on Hill street, Newark? A Simply that her husband met her there on the nights when he claimed to be working in the office.

Q Did you ask Mrs. Smith to give you proof of that fact? A I did.

Q What was the result of that? A She said that she couldn't find the house, because she was led to it, and wouldn't know the number.

Q Did you make any reply to that? A That it made the story sound rather untrue.

Q Did Mrs. Smith ever make any complaints to you concerning her child, Audrey? A Yes.

Q What was that complaint? A That the janitor in the house on Broad street had attempted to assault her.

Q How old was the child at that time? A I should judge four years old—three or four.

Q Did she ever accuse Audrey of mistreating herself? A Yes.

Q What did she say about that? A That she had used an instrument called a "comforter" to do so.

Q To do what? A To abuse herself.

Q Did Mrs. Smith ever make any complaint to you about her husband signaling to women through the window? A Yes.

Q What did she say about that? A She said that he exposed himself standing at the window, with a strong light behind him.

Q Did you remonstrate with her concerning that? A I tried to show her, by going to the window, that that could not be done; the signaling was to the third floor.

Elizabeth L. Canfield, cross.

Q Was there any view to be obtained from that window? A I felt that I had given her sufficient proof that no such view could be obtained.

Q Was there any obstruction at that window? A No; only the airshaft was very narrow there, and besides, what I tried to show her, that no individual action could be shown; it was simply general particular outlines.

Q Did she say that she was convinced? A She said that she was sure there must have been some light or something of that sort.

Q Did Mrs. Smith ever accuse her husband of staying over in New York late at night when he was supposed to be at the office? A Yes.

Q What did she say about that? A Also that he met some one and that he didn't have to work every night when he claimed to work, and he met people occasionally.

Q Did you ever phone to him to ascertain if that was true? A I phoned just once when Audrey was not well.

Q Did your phone message follow a complaint made by Mrs. Smith that her husband was out with a woman that evening? A Not directly; it had been a general complaint, and that was one of the few evenings when I was there at that time, and it struck me to call him up.

Q Did you phone to his office? A Yes.

Q Was he there? A Yes.

Q What did Mrs. Smith say about that? A That he might have been there for a little while, because this was ten or half-past ten, and there was a good deal of time between five o'clock and ten o'clock, and also after eleven o'clock and half-past twelve.

Q The ten o'clock you speak of, was that in the evening? A Yes.

Cross examination by Mr. Romine.

Q Who asked you to come here and testify? A My sister-in-law, Mrs. Canfield.

Q That is Mrs. Smith's sister? A Yes.

Q Have you talked with Mr Smith about this? A I have never seen Mr. Smith from 1910 until today, as far as I recall; I may have met him on the street, but not to speak to him.

Q So Mrs. Canfield is the one that talked to you? A Mrs. Canfield asked me would I be willing to testify in this case.

Q Did you tell her what you would testify to? A Absolutely not; we were just a moment at the sick bed of her daughter, and we didn't talk about the matter because the daughter was not to be excited.

Q Mr. Smith hasn't talked to you about the case at all? A Absolutely not.

Q Are you friendly toward Mr. Smith?

Witness. Can I say more than one word in regard to that?

Master. Answer "yes" or "no."

Witness. I cannot answer "yes" or "no;" it wouldn't be true; I am perfectly indifferent, because I—

Q Did Mrs. Canfield ever tell you anything as to what Mrs. Smith told her about her husband? A Yes.

Q So far as you know personally, the accusations that she made may have been true? A Except that my common sense—

Q Outside of your common sense, so far as you know, Mrs. Smith may have been justified in what she said? A No; because I had proof of several things that there wasn't any justification.

Q These accusations of infidelity that she made against her husband, how did you know whether they were true or not? A Some I saw were not true because of the way in which she accused people, even when we were with her.

Q That is your opinion about it? A It is as good an any body else's.

Q Outside of that, so far as you know, these things may have been true? A I cannot say that.

Q You don't know whether they were true or not? A As little as I would feel that they would be true about you or anyone else.

Q So therefore you are not willing to believe that they are true? A I cannot believe—I am willing to believe they were true, if I had the proper evidence that they were true.

Q So far as you know, then, Mrs. Smith may have had proof that they were true? A Yes.

Ernest N. Smith, cross.

Q In your talk with Mrs. Smith she believed those things to be true? A Some; and some she was willing to be shown that they might not be so.

Q But there were some things that Mrs. Smith believed were true? A So she said.

Q And so far as you know, some of those things may have been true; so far as you personally know, they may have been true? A Yes.

Q *(By Mr. Price.)* Did Mrs. Smith ever accuse your husband of infidelity? A Yes.

ERNEST N. SMITH recalled for further

Cross examination by Mr. Romine.

Q Mr. Smith, were you ever at a hotel in Jersey City with either of the Florence Jacobuses? A No.

Q Were you ever registered at a hotel where you and either of the Florence Jacobuses had a room? A No; neither in Jersey City or aywhere else.

Q Do you kow whether a detective on behalf of Mrs. Smith found at a hotel in Jersey City or any other place. at Hoboken or Newark, with either of the Florence Jacobuses? A Never, any place.

Q Do you recall when Florence Jacobus was engaged to be married—I don't know which one, but either of them? A I don't know for certain; I heard that she was.

Q With reference to the time that you heard that, do you recall whether you came home one evening and began talking about your affection for either of the Florence Jacobuses? A I never did.

Q That is, while you were living at Newark? A No, or at any other place.

Q Do you recall whether after you went to bed on any night around the time that you learned that one of the Florence Jacobuses was engaged, that you talked or moaned about Florence all night long? A No.

Q Do you recall whether Mrs. Smith had to send for a physician on account of your condition and your having talked about Florence Jacobus? A No.

Q (*By Mr. Price.*) You say you do not recall that such a thing happened? A It never happened.

ELMER W. ROMINE, sworn for petitioner, testified as follows:

I made investigations at the Cosgrove Detective Agency in Newark to ascertain whether they could find any of their records pertaining to the Smith case, and whether they knew the detectives that made the investigations for Mrs. Smith, and they could give me no information about it and couldn't find any records. I interviewed Martin Schwartz, who was a friend of Mrs. Smith's, and a lawyer in Newark to whom she went with some of her troubles, and he gave me the name of a detective on Lafayette street—I think it was the name of Gulsher—but we could not locate him and have been unable to locate any of the detectives who made the investigations for Mrs. Smith and reported to her.

Mr. Price. I object to this evidence as immaterial and as having no binding effect upon Mr. Smith, the defendant, and as being hearsay.

Mr. Romine. This evidence is offered for the purpose of showing that the petitioner has exercised every effort to produce witnesses who could testify as to Mr. Smith's relations with other women.

It is agreed between counsel that the evidence is closed, with the exception of calling Mrs. Smith in rebuttal to deny statements made by Ernest N. Smith and his witnesses.

Mr. Price. If any new evidence is produced we are to have an opportunity to meet it.

The parties hereto being desirous of closing the case at this time, and Mrs. Smith being unable to appear as a witness in sur-rebuttal, it is stipulated by and between the parties hereto that if Ella S. Smith, petitioner, was produced and sworn, she would deny conversations with various witnesses in the following particulars:

That she did not talk with Dr. Warren concerning her husband's handkerchiefs; that she did not talk with J. Herbert Dawson regarding her husband's flirting with other women, and J. Herbert Dawson did not tell her he wanted proof and was willing to go to New York; that she never made any complaints in the Dawson home regarding her husband and the personals in the papers; that she never told Zella Dawson her husband was flirting with two girls

on the trolley car; that Mrs. Zella Dawson never warned her about making further accusations against her husband at Boonton; that she always provided proper food and meals for Annie Cassimer and that no complaints were made to her; that Annie Cassimer was not afraid to speak to Mr. Smith, and frequently carried on conversations with him at the house; that the night before Annie Cassimer left there was no pounding on the floor; that Mrs. Smith did not go to the third floor with Annie Cassimer and have a talk with Carrie Scott; that Annie Cassimer left very suddenly, without giving any notice; that Mr. Smith never said at the railroad station in Bayonne when Mrs. Smith was going to German Valley, "Play your game, you don't want to kiss me;" that she never accused him of having a girl in the tower while living on Washington street, in Boonton; that she never told Mr. Smith he was getting absent treatment from the Christian Science healer; that she never threw the coffee at Mr. Smith while they lived at Woodside or any other place; that she never put pins in the curtains or pulled the curtains down in the evening when there was plenty of light outdoors so that Mr. Smith could not see out; that she never came out into the hall at Old Boonton Road with the bulb in her hand and accused Mr. Smith of breaking it; that she never had a young man call at the house to have lunch with her or stay with her while Mr. Smith went riding with Schwartz; that she was never unfaithful to Mr. Smith, and there were never any improper relations on her part with anyone.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } *ss:*

I HEREBY CERTIFY that the foregoing testimony taken before me on May 19th, 1916, June 16, 19 and 23rd, 1916, at Newark, New Jersey, and on June 23rd, 1916, at Shenandoah, Pennsylvania, and on July 8th, 1916, at Newark, was taken in the presence of counsel as therein specified; that it was stipulated and agreed by and between the counsel for the respective parties that the testimony of the witnesses should be taken down by me in shorthand afterwards reduced to typewriting, the signatures of the witnesses to their said testimony being waived, and I further

Nellie H. Blowers, direct.

certify that the foregoing testimony taken on the dates specified is a true and correct transcript of my shorthand notes of the testimony of the witnesses given before me.

NICHOLAS W. BINDSEIL,
Special Master in Chancery.

Dated July 11h, 1916.

IN CHANCERY OF NEW JERSEY.

Between

ELLA S. SMITH,

Petitioner,

and

ERNEST N. SMITH,

Defendant.

Transcript of testimony taken on behalf of defendant in the above entitled cause, on cross petition and counterclaim, before Nicholas W. Bindseil, one of the Special Masters in Chancery of New Jersey, pursuant to an order of the Honorable John E. Foster, Vice Chancellor, dated July 2nd, 1917, at the District Court Room, Morristown, New Jersey, on Wednesday, July 11th, 1917, at 10 A. M.

APPEARANCES:

Mr. Harold A. Price, representing King & Vogt, for defendant.

Mr. Elmer Romine, for petitioner.

It is stipulated and agreed by and between the counsel for the respective parties that the testimony may be taken stenographically by the Master, and signatures of witnesses waived.

NELLIE H. BLOWERS, sworn for defendant.

Direct examination by Mr. Price.

Q Where do you live, Mrs. Blowers? A 503 Lathrop avenue, Boonton, New Jersey.

Q Do you know Ella S. Smith? A Yes.

Nellie H. Blowers, direct.

Q She is the wife of whom? A Ernest N. Smith.

Q Do you know him? A Yes.

Q Where did they live? A They lived on Old Boonton Road; that is, when she came with me.

Q Is Old Boonton Road near Boonton also? A Yes.

Q Approximately, when did she come to your house? A I think it was March or April, I am not sure, 1916.

Q And what room did she occupy in your house? A Front room.

Q What floor. A Second.

Q Did she have one room? A One room.

Q How long did she stay at your home? A Nine weeks.

Q Did she come directly from the home she had been formerly occupying in Old Boonton Road to your place? A Yes.

Q Do you know whether that was the time she left her husband or not? A Yes.

Q It was? A Yes.

Q Do you know William H. Lyons, of Morristown? A I do.

Q Will you describe his appearance? A He has a short mustache, very dark complexion, bald headed, dark eyes.

Q Is he a slightly built man? A No; heavy set man.

Q Do you know whether he was acting for Mrs. Smith in any way at this time? A I think he was trying to do all he could for her interest, that is, through her attorney.

Q Was he employed in her case, do you know? A Yes; through Mr. Romine.

Q While Mrs. Smith lived at your home did he come to see her —did Mr. Lyons come to see her? A Yes.

Q Were those visits frequent or otherwise? A Not very often.

Q Did you ever hear Mrs. Smith phone to him? A Yes.

Q Following these phone calls would he come? A Frequently.

Q After his visits has Mrs. Smith ever gone away with him? A Yes; that is, just short walks, up the street, but they would be gone probably fifteen or twenty minutes.

Q And then would return? A Yes.

Q When Mr. Lyons would come to the house, where would he go? A Well, sometimes on the porch, sometimes up in the den, the sitting-room.

Nellie H. Blowers, cross.

Q The den is upstairs? A Yes.

Q Mrs. Smith was there with him? A Yes.

Q Has Mrs. Smith ever made any remark to you concerning Mr. Lyons? A In what way?

Q Has she ever in any way indicated manifestations of affection for him? A Well, if he ever was free, she would win him as her husband.

Q Has she told you that? A Yes.

Q Did she say what she meant by "free?" A If his wife died; that she was an invalid.

Q That she then would win him as her husband? A That she would win him as her husband.

Q Did she ever say whether or not she liked him? A Yes; she would say or insinuate that she thought a great deal of him; that is what she said, but I don't think he did.

Cross examination by Mr. Romine.

Q When Mrs. Smith came to your home was she in poor health? A She claimed to be.

Q And she was quite nervous, wasn't she? A Yes; she was nervous.

Q And the least little thing that she heard about Mr. Smith or anything in relation to his actions seemed to upset her, didn't it? A It would if you would allow her to be that way or let her think that she would.

Q She was easily upset over Mr. Smith's actions or what she may have heard about him? A Yes.

Q And while at your place did she ever say that she thought any one was watching her or any detective or any one was around there? A Oh, yes.

Q Did she ever mention to you the fact that she thought Mr. Smith was trying to get the little girl away from her by having men watch for the little girl? A No.

Q And at the time that she phoned Mr. Lyons, those were occasions when she seemed to be quite upset about something that had taken place with relation to Mr. Smith? A No; I think just when the notion struck her to call up she would do it.

Q She wanted to have some one to confide in about what she had seen or what she thought was going on? A Yes; what she thought was going on.

Bessie C. Atkins, direct.

Q And Mr. Lyons was the investigator in her case, was he? A Yes.

Q And had been employed to look up the evidence and also Mrs. Smith consulted him with regard to the men that she supposed were detectives watching her? A Yes.

Q Mr. Lyons' visits at the house, as you saw them, were purely on the business of her case? A Yes.

Q Can you tell me whether Mrs. Smith was the kind of a person that if she thought anyone was doing anything for her with respect to her contentions regarding detectives or any one else watching her, whether she would put a great deal of confidence in him?

Mr. Price. I object, on the ground that the question calls for a conclusion.

A I think she would.

Re-direct examination by Mr. Price.

Q Mr. Lyons was a married man? A So they said.

Q So who said? A He and she both.

Q Who? A Mr. Lyons and Mrs. Smith.

BESSIE C. ATKINS, sworn for defendant.

Direct examination by Mr. Price.

Q Where do you live, Mrs. Atkins? A 14½ Linden street, Morristown.

Q Do you own the house where you live? A No.

Q By whom is it owned? A Mrs. Priestman.

Q Do you know her first name? A Mrs. Harriet Priestman.

Q Linden street is in Morristown? A Yes.

Q Do you know Mrs. Ella Smith? A I know who she is.

Q Did she ever live near to you? A In the other side of the house.

Q This house of which you have spoken is on Linden street? A Yes.

Q That is a double house? A Yes.

Q When was that? A Really, I don't know the date.

Q Approximately; was it last year? A No; not last summer; the summer before, wasn't it? Yes, it must have been last summer, because the people came in in December.

Bessie C. Atkins, direct.

Q Do you know what months it was? A I know she was there in July.

Q Approximately, how long did she live at that house? A Really, I don't know; it was two or three months.

Q Do you know William H. Lyons, of Morristown? A By sight.

Q Will you describe him? A A thick, short, dark man, dark hair.

Q How old, about? A I don't know.

Q Have you ever seen Mr. Lyons come to the house that Mrs. Smith occupied on Linden street? A Yes.

Q Frequently or otherwise? A Quite often.

Q What time would he come? A Any time through the day; come in the morning, come in the afternoon and come in the evening.

Q Have you seen him there at night? A Yes.

Q How late? A I have seen him there up until ten o'clock.

Q Have you seen him there early mornings? A Yes.

Q How early? A Between seven and eight.

Q Was Mrs. Smith away during the week prior to July 4, 1916? A Yes.

Q When did she return? A The fourth night.

Q The night of the fourth? A I suppose; she was there the next morning.

Mr. Romine. Not what you suppose.

Q When did you see her? A I saw her the next morning after July fourth.

Q Did she say where she had been? A She said she had been to New York and Coney Island.

Q Have you seen Lyons there at meal times? A Yes.

Q Which meals? A I don't know; he has been there breakfast, dinner and supper.

Q Did you ever speak with Mrs. Smith about Lyons? A No.

Q Did Mrs. Smith ever tell you why Lyons was there? A She said he was a detective guarding her.

Q During the two weeks or so following the Fourth of July was Lyons there more frequently than before or not? A He seemed to be there more frequently.

Bessie C. Atkins, cross—re-direct—re-cross.

Cross examination by Mr. Romine.

Q Do you know who composed Mrs. Smith's family while she lived at Linden street? A Her father and her daughter and herself.

Q And her father was there on the occasions when Mr. Lyons was there? A Usually .

Q Of course you never paid particular attention as to the times when Mr. Lyons was there; your testimony is of a general character; you know he went there and left? A Yes.

Q But you don't remember particular days or anything like that? A No.

Q You never had any meals at Mrs. Smith's house when Lyons was there? A I never was in her house.

Q So you don't know whether he had any meals there or not, do you? A No; I cannot prove that he did; I know the man was in the house.

Q Did Mrs. Smith ever tell you that she had been annoyed by men whom she thought were detectives around the house? A Simply that she said that Lyons was protecting her from people she thought were around the house.

Q Did she tell you that on the occasions when Mr. Lyons came there, that she had sent for him because she suspected some one was watching the house and annoying her who she thought were detectives? A No; she never said anything about that.

Q But did she say that she had Mr. Lyons there to protect her. A Yes.

Re-direct examination by Mr. Price.

Q Have you known Mr. Lyons to be in the house at a time when the father was not there? A I have known the father to go out after he came.

Q After Lyons came? A Yes.

Re-cross examination by Mr. Romine.

Q How long would the father stay out, do you know? A No; I really don't know.

Q He may have come right back, but you don't recollect? A I didn't pay any attention; I knew he went out; I would see him go out.

Q How many times can you recall that the father went out when Lyons came? A Two or three times that I know of.

Harriett K. Priestman, direct.

Q You don't know how soon the father came back? A No, sir.

HARRIET K. PRIESTMAN, sworn for defendant.

Direct examination by Mr. Price.

Q Where do you live? A 12 Linden street, Morristown, New Jersey.

Q Do you own the house adjoining 12 Linden street? A Yes.

Q What kind of a house is it? A A double house.

Q Do you know Mrs. Ella S. Smith? A Yes.

Q When did you first become acquainted with her? A June, 1916.

Q How did you become acquainted with her? A She rented the house of us.

Q That is the double house? A Yes.

Q One portion of it? A Yes; next to our own house.

Q What kind of a house was that, how many stories? A Two.

Q Did she rent both floors? A One side.

Q You know William H. Lyons, of Morristown? A Yes, sir.

Q How long did Mrs. Smith remain in your house there? A Two months and a week.

Q When did she first come to the house? A I think it was in May, to look at the house.

Q When did she start occupying it? A The first of June, 1916.

Q Do you know William H. Lyons? A Yes.

Q Was he a visitor at the house during her stay there? A Yes.

Q Were his visits frequent or otherwise? A Quite frequent.

Q When have you seen him there, with relation to what time of the day? A Morning, noon and night.

Q Did you ever speak to Mrs. Smith about Lyons? A Yes; she has spoken to me.

Q What has she said about him? A That he was there guarding her from people prowling around the house.

Q Did she say she was a married woman? A Yes.

Hyman Fine, direct.

Cross examination by Mr. Romine.

Q Of course you didn't take particular notice of the days that Mr. Lyons was there; you just simply know that as a general thing he was there quite frequently? A Yes, sir.

Q And Mrs. Smith told you that he was there to protect them? A Yes, sir.

Q Did she tell you that she had been annoyed by men who she thought were detectives? A Yes, sir.

Q Did she ever tell you that she was afraid that Mr. Smith was trying to get the little girl? A No.

Q And that these men were there for the purpose of taking the girl? A No; she didn't say that.

Q Did she ever say anything about being afraid that the girl would be taken away from her? A Yes, sir.

Q Did she ever give that as one of the reasons why Mr. Lyons was there? A No, sir.

Q Her father lived there with her at the same time? A Yes, sir.

Re-direct examination by Mr. Price.

Q Will you describe Mr. Lyons? A He is stout, black hair, dark complexion.

Q Have a mustache? A Mustache.

HYMAN FINE, sworn for defendant.

Direct examination by Mr. Price.

Q Where do you live? A Morristown, New Jersey.

Q Whereabouts? A 65 Speedwell avenue.

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

Q When did you first become acquainted with her? A I think in September, 1915.

Q Were you living at 65 Speedwell avenue then? A Yes.

Q What kind of a building is 65 Speedwell avenue? A Three-story building.

Q Do you conduct a store there? A Yes.

Q Which floor? A Right on the ground floor.

Q What kind of rooms are above it? A Six rooms.

Q In the second and third floor? A Yes.

Hyman Fine, direct.

Q Did Mrs. Smith ever occupy those rooms? A On the third floor.

Q Who rented them from you? A The first thing was Mrs. Smith come around and she seen in the paper I had some rooms to let and she wanted to look at them, and then afterwards I asked if she got any reference, she said she come from Boonton, and I didn't want to let her in, and she said, "I know Lyons," and then Mr. Lyons come up to see me and he—

Mr. Romine. I object to what Mr. Lyons said as not binding on Mrs. Smith.

Q Who rented the rooms from you? A Mrs. Smith.

Q When was it that she rented them? A I think it is in September.

Q What year? A 1915.

Q How long did she stay there? A Nine months, about nine or ten; she went out in May, 1916.

Q What kind of rooms were they that she had? A She had a kitchen, dining-room, bedroom, a small bedroom, and bathroom.

Q Do you know William H. Lyons? A Yes, sir.

Q Will you describe him? A A tall fellow, dark complexion, mustache, about 40 or 45 years old.

Q While Mrs. Smith lived there did he come to see her A Yes.

Q Many times or not? A Mostly every night.

Q What time during the evenings would he come? A He always come around before supper and stayed to supper there and sometimes he would go away at ten, half-past ten or eleven o'clock.

Q Did he ever come during the day time? A Sometimes she used to make dinner for him.

Q And would these visits which he made extend over the whole time she was there? A Yes, the whole time.

Q How is entrance to the apartment gained which she occupied? A The front door, the front hall door.

Q Was there a common stairway? A Yes.

Q Used both by you and by— A Both by us and by her.

Q Which floor did you live on, the second floor? A The second floor.

Q Did Mrs. Smith ever ask Mrs. Fine, in your presence, whether she could have the door locked or not? A Yes, sir.

Hyman Fine, direct.

Q What did she say about that? A She don't want strangers to look in and everybody coming in the house while Mr. Lyons was there; she always complained he is making papers for her.

Q Did she say she wanted the door locked when he was there? A Yes.

Q Did Mrs. Fine consent to that? A No.

Q Which door did Mrs. Smith want locked? A The front hall door.

Q Did you ever find it locked? A Yes, sir.

Q At times when you hadn't locked it? A When I didn't expect it to be locked and it was locked.

Q Do you know whether Mrs. Fine had locked it? A No, she wouldn't.

Mr. Romine. Do you know? Yes or no?

Witness. No.

Q How do you know that she did not lock it? A Because she never would lock the door at six or seven o'clock.

Mr. Romine. I object to that as a conclusion.

Q Why not? A It is our place to go in; we wouldn't lock the door at six o'clock or seven o'clock in the evening with a night key.

Q This door of which you have spoken, that could be locked from either the inside or outside? A It could be locked from the inside.

Q And the occasions of which you have spoken are that you found it locked? A Yes.

Q Did you unlock it? A Yes, and anyone who had a key could get in from the outside.

Q On occasions when Lyons would be there, would the little girl be out in the street or in the house? A Mostly out in the street.

Q Do you know what the little girl's name was? A I forget her name.

Q About how old was she? A About ten, nine or ten.

Q Did Mr. Lyons' visit to the house continue up to the time that Mrs. Smith left? A Yes, sir.

Q Have you ever seen Mrs. Smith call to him when he was on the street? A Yes, sir.

Hyman Fine, cross.

Q What would she say? A She would just motion to him or call him, sometimes "I would like to see him."

Q Did she ever wave to him? A Yes.

Q How? A With her hand when she used to see him.

Q Did she ever talk with you about Mr. Lyons? A I don't know if she was talking to me; I can't remember.

Cross examination by Mr. Romine.

Q What kind of business do you conduct in this store? A Clothing and suits.

Q How late do you keep open at night? A Nine o'clock.

Q You are the man in charge of the store, and you are attending to your own business? A Yes.

Q You are not outside to see who goes in the door and who goes out, are you? A Sometimes I am outside.

Q And sometimes when you happened to be out there, then you saw Lyons come in or go out of the door? A Oh, yes, I saw him many times go in and out.

Q You cannot swear that he was there every night, can you? A Pretty near every night.

Q You didn't see him every time he went in? A Oh, we could hear him upstairs; when I come up at nine o'clock we would hear him.

Q You heard someone upstairs? A Yes.

Q And your conclusion was it was Lyons? A Yes, I used to see him go out.

Q Did you stand by the front door for the purpose of seeing who went in and out? A No, when it is ten o'clock—I got my bedroom just right on the stairway, and when I used to go to bed, I just saw Mr. Lyons go downstairs.

Q You would see him go downstairs? A Yes.

Q Is there a light in the hall? A A small light.

Q Was your door closed or open? A Just a little open, enough to air it.

Q You mean to tell us you saw Lyons go down those stairs? A Yes.

Q Isn't it a fact that a whole lot of this is your conclusion that Lyons was there most every night? A Why would it be a conclusion if I saw him?

Q I ask you? A I saw him.

Hyman Fine, cross.

Q You didn't see him every night? A Not every night, but mostly.

Q And when you heard some noise upstairs you concluded that Lyons was up there? A I heard him talk; I knew his voice.

Q You mean to say that from the room upstairs or any room upstairs, you on the second floor could distinguish whose voice it was? A Oh, I know Mr. Lyons' voice, and you could hear it plainly.

Q You mean to say they talked loud enough so you could hear what they said? A No, I didn't say I could hear, but I heard his voice.

Q Don't you know as a matter of fact that the father has been there on many a night? A Her father come down in February.

Q And he stayed with her, didn't he? A He stayed there sometimes occasionally and then go away.

Q When you heard a man's voice upstairs you concluded that Lyons was there, didn't you? A Oh, no, I heard Lyons.

Q You didn't see him go in every time? A I did.

Q Every time that Lyons went in to Mrs. Smith's apartment, do you now swear that you saw him go in? A I wouldn't say every time, but I saw him most every time.

Q How many times did you actually see him go into her apartment? A In a week?

Q During the time that she was there? A About 100, maybe 200.

Q Are you guessing at it? A Oh, no; I didn't count it, but he used to come every night pretty near.

Q How do you know that he came every night? A I used to see him come in.

Q You are willing to swear that you saw Lyons go in every night? A I don't say every night, but occasionally, pretty near every night.

Q Occasionally you saw him go in? A Yes.

Q And occasionally you saw him go out? A Yes.

Q You knew that he was a detective working up Mrs. Smith's case, didn't you? A She used to say he is a guardian, some kind of a guardian.

Q You knew that Mrs. Smith had a suit in the courts regarding separation or divorce from her husband? A Yes.

Hyman Fine, cross.

Q You also knew that Mr. Lyons was the man who was looking after her interests as a detective? A That is what she used to say.

Q You never had supper with Mrs. Smith? A No.

Q Then how do you know that Lyons had supper with her? A She used to come down and tell us plainly, "Oh, I had a grand supper for Mr. Lyons."

Q She had a grand supper for Mr. Lyons? A That is what she said.

Q How many times did she tell you that? A A good many times.

Q Are you giving us the truth about this thing or are you just simply talking at random? A No, nothing but the truth.

Q You didn't put these things down, did you? A I don't say how many times, but she told me a good many times.

Q And you are just simply trusting to your recollection? A But she told us.

Q And some of these things may be simply a guess on your part? A Oh, no, no guessing about it.

Q And yet you cannot tell us how many times Lyons was there? A No, it is too long a time, she was eight or nine months in my place.

Q Didn't Mrs. Smith tell you that the reason she wanted this door locked was because there were men who were watching her or following her and trying to get into her apartment? A No.

Q Didn't she tell you that there were detectives whom she thought Mr. Smith had sent up there for the purpose of watching her? A She used to tell us right in the beginning, but afterwards she didn't.

Q In the first part she told you that there were detectives watching her? A Yes, she mentioned it.

Q And didn't she tell you that she was afraid that Mr. Smith was trying to get the little girl away from her? A In the beginning.

Q And she wanted to have that door locked because she was afraid, wasn't she? A No.

Q Didn't she tell you that on one occasion she was frightened by finding a strange man on the stairway? A I don't remember it.

Hyman Fine, cross.

Q At any rate, she was frightened and was afraid that someone might get into her apartments and she desired to have the door locked? A No.

Q Are you sure about it or can't you remember? A Oh, I am sure about it.

Q Do you remember exactly why she wanted to have the door locked? A She wouldn't say it is on account of Lyons, but we know pretty near.

Q Your idea is and your suspicion is that it was on account of Lyons being there? A It is too early in the evening, from seven o'clock.

Q Do you mean to say that your suspicions were that she wanted to have the door locked because of Lyons being there, is that your idea about it? A I guess so.

Q If you thought there was anything like that, did you object to Lyons coming there? A I didn't care for his coming too much in my place.

Q Did you ever tell him not to come there? A No, it is not my business.

Q Did you ever tell her not to have him come there? A No, it wasn't my business, but I didn't like it.

Q And yet you knew that he was coming there because he was her detective? A I didn't know.

Q They told you that? A She always used to tell me he is making the papers.

Q He was going over reports? A No, he is making papers, she told me.

Q Is that exactly what she said, or is that what you recall? A No, that is what she said.

Q What do you mean by "making papers"? A That is what she said, "Mr. Lyons is here and he is making my papers."

Q Papers for what? A I don't know.

Q And you were perfectly satisfied with that explanation, were you? A I couldn't help it.

Q You didn't make any row about it when she told you that, did you? A I made her move on account of that, you might as well say.

Q Isn't it a fact that the reason you made her move was because outside influences were brought to bear to cause her to move? A Because of this and the other, too; I didn't like Lyons coming there so much.

Hyman Fine, cross.

Q And yet you never objected to his coming there, to him; you never told him not to come? A No, I couldn't object to him.

Q These outside influences were brought about through Mr. Smith, weren't they? A I guess not; I never saw Mr. Smith.

Q Didn't Mr. Smith's attorneys come there and request you to have her move? A I never seen them.

Q You didn't talk to Mr. Vogt about this matter? A No, sir.

Q Didn't you talk to Mr. Vogt there before Mrs. Smith moved out, in front of your store one day? A About business, my business.

Q Wasn't your talk then with regard to Mrs. Smith's moving? A Nothing at all; we was talking about business; Vogt is my lawyer, and I was talking business.

Q Did you ever discuss with Mr. Vogt about Mrs. Smith living there? A Nothing at all.

Q Did he ever talk with you about it? A Nothing at all.

Q Did anybody from Mr. Vogt's office ever talk to you about it? A Nothing at all.

Q You didn't like Lyons coming there; you knew Mr. Vogt was the lawyer for Mr. Smith, didn't you? A Not exactly; I don't think I did know it.

Q Are you sure about it? A I wouldn't swear to it.

Q You had a sort of a sneaky feeling that he was Mr. Smith's lawyer? A No.

Q Then why do you hesitate? A I don't hesitate.

Q You say you don't exactly know whether he was or not? A I didn't know it.

Q Are you sure you didn't know it? A Maybe towards the last.

Q Towards the last you found it out? A Yes.

Q You say that the little girl was out playing in the street when Lyons was up there; how do you know that Lyons was up there when you saw the little girl out in the street? A She used to be in the street.

Q And the fact that she was in the street leads you to believe Lyons was there? A No, I saw him go up.

Q Every time you saw the girl in the street you saw him go up? A No, not every time; when Lyons was upstairs I would notice the girl coming downstairs.

Hyman Fine, re-direct.

Q Did you ever see the little girl out in the street as late as ten o'clock at night? A I wouldn't swear to that.

Q So that when you said that Lyons stayed there as late as ten o'clock at night, then you are mistaken about the little girl being outdoors when Lyons was there, aren't you? A No, I know the girl—I never saw her go up but she was outside all the time.

Q You never took particular notice where the girl was when Lyons was up there? A She was playing outside.

Q She was playing outside all the time Lyons was up there? A Pretty near.

Q You never made any note of it? A No.

Q This is just simply your recollection of it? A What I saw.

Q You may be mistaken about it, but you think you are right? A I don't think I am mistaken; any person is liable to make a mistake.

Q And when you found the front door locked you don't know who locked it? A No.

Re-direct examination by Mr. Price.

Q Mr. Romine during the last of his questioning spoke about you occasionally seeing Mr. Lyons go up there; you first said that you many times saw him go there; which is right? A Oh, yes, many times.

Q Taking the period from the time she came there to the time she left, would he be there nearly every night or not? A Pretty near every night; maybe he will miss a night, but mostly every night.

Q In relation to the locking of the door, did not Mrs. Smith say to you that she would like to have the door locked when Mr. Lyons was there? A I wouldn't swear to that, but she asked me to lock the door, because Mr. Lyons is making the papers and she don't want to be annoyed.

Continuation of testimony in the foregoing cause before Nicholas W. Bindseil, a Special Master of Chancery of New Jersey, at his office, Prudential Building, Newark, New Jersey, on Saturday, July 14th, 1917, at 10 A. M., in the presence of Mr. Harold A. Price for defendant and Mr. Elmer Romine for petitioner.

DR. ALBERT VANDERVEER SIMMONS, sworn for defendant.

Direct examination by Mr. Price.

Q Where do you live, Doctor? A 23 Headley terrace, Irvington, New Jersey.

Q What is your profession? A Physician.

Q How long have you been practicing? A Ten years.

Q In September, 1916, were you living in Headley terrace? A Yes.

Q At that time did you become acquainted with Mrs. Ella Smith? A Smith or Sutphen by name.

Q When did you first become acquainted with Mrs. Smith, or Sutphen? A On or about the ninth of September.

Q How did you become acquainted with her? A She came to me—at the time of the paralysis epidemic, when we were compelled to give certificates, she came to me to have a certificate written for her child, saying that she wanted to go out of town, and that she was doing some special work and it was necessary to take her child with her.

Q Did you give her the certificate? A I did.

Q Were you subsequently called to the house where she was living? A I was.

Q Where was that? A 44 North 43rd street, Irvington.

Q At that time did you know whether her name was Sutphen or Smith? A I knew her by Sutphen only.

Q How did you come to know her by that name? A She said over the 'phone at the time she summoned me—

Mr. Romine. I object to any conversation over the 'phone, because he hasn't qualified that statement as to whether it was Mrs. Smith in this case, or who it was.

A She said that she was Mrs. Sutphen, but she wanted me to call at Mrs. Smith's at 44 North 43rd street, and that was the first that I knew that she went under the name of Smith.

Q Did you go to 44 North 43rd street? A I did.

Q Did she say anything later about the difference between the name of Sutphen or Smith? A As I recollect, she said the first time I saw her at the office that she went under the name of Sutphen in Irvington, but that her name was Smith.

Dr. Albert V. Simmons, direct.

Q I show you a small photograph and ask you if that is a photograph of the woman whom you knew as Mrs. Sutphen first and later as Mrs. Smith? A To the best of my knowledge it is.

Mr. Price. I would like to have the photograph marked for identification.

(Marked Exhibit A for identification.)

Q When you were called at the house 44 North 43rd street, did you meet Mrs. Smith? A I did.

Q And is that the woman shown in the photograph? A It was.

Q And was that the same woman who had previously called at your office, under the name of Sutphen? A It was.

Q When you called to the house at 44 North 43rd street, what did you do? A I was called to attend to Mr. Lyons.

Q By whom was he introduced to you as such? A Mrs. Smith.

Q What did she say when she introduced you? A She introduced me to Mr. Lyons and said she wanted to make me acquainted with Mr. Lyons.

Q Did she give any explanation of his presence there? A Not at that moment.

Q Did she at that time say anything about whether she was married or not? A She did not.

Q Where were they living, with relation to what part of the house at 44 North 43rd street?

Mr. Romine. I object unless you mean where Mrs. Smith was living, because we don't admit Mr. Lyons and Mrs. Smith were living together.

Q Where was Mrs. Smith at that time in 44 North 43rd street; what part of the house did they occupy? A In the dining-room; she led me in from the hall into the dining-room, directly into the dining-room.

Q What floor? A Second floor.

Q What room was Mr. Lyons in when you came there? A On the first occasion, front room.

Q Was there a bed in there? A No.

Q What did you treat him for? A A boil, or furuncle, on the chin, on the right side below the corner of the lip.

Q Did you call later to see him? A I called on October first and second, 1916.

Q For what purpose? A To treat Mr. Lyons.

Q On either of those occasions where was he? A I would have to explain that in the day time when I went there I found him in the front room; I was called in the evening of the thirtieth of September, between eight and nine o'clock, and found him in bed in the back bedroom.

Q Was he clothed? A He had a bathrobe on.

Q Did Mrs. Smith assist you in treating him? A Yes, she produced a pan with which I boiled a candle for hypodermic administration and morphine.

Q On the occasion of October first when you say you visited the house, was that in the day time or evening? A Both; I made three visits that day.

Q Will you describe where Mr. Lyons was and where Mrs. Smith was on those visits? A Morning and afternoon Mr. Lyons was in the front room, where I dressed the wound; when I went to the bathroom to wash my hands he walked back and forward between the front room and kitchen; Mrs. Smith accompanied me to the bathroom and handed me a fresh towel. In the evening I found him in bed again; at which time I administered an injection of morphine.

Q Do you recall whether he was suitably clothed in a bathrobe at the time he was in bed on the second occasion? A The same, as I remember.

Q Did Mrs. Smith assist you at any of these times? A Yes, she was there in the kitchen, bathroom and bedroom.

Q Did Mrs. Smith at any of those times make an explanation to you as to her presence there or the presence of Mr. Lyons? A On the morning of October first, when in the bathroom, Mrs. Smith explained that Mr. Lyons was a state detective, and that she was assisting him in his cases; I think that is all the information she volunteered at that time.

Q At any subsequent occasion did she volunteer any further information? A No, she didn't.

Q Was Mrs. Smith's father, Mr. Buckbee, there on the first occasion when you called there? A September 30th I was first called to see Mr. Lyons, and October first I met Mr. Buckbee.

Q Is that the gentleman who is sitting next to Mr. Romine? A I rather think it is, although I cannot be absolutely positive.

Frederica Neu, direct.

Cross examination by Mr. Romine.

Q Did you know that Mrs. Smith's middle name was Sutphen? A No, sir.

Q Did Mrs. Smith ever tell you that the reason she was using the Sutphen was because she had been annoyed by detectives, who she thought were watching her on behalf of Mr. Smith? A She did not.

Q Do you know how many bedrooms Mrs. Smith had there? A Two.

Q Didn't she have three? A I didn't see three, unless she had one on the third floor.

Q She may have had three but you only know of two? A Yes.

Re-direct examination by Mr. Price.

Q These visits in the evening, what time in the evening were they? A Between eight and nine o'clock; after eight o'clock.

Q And this house at 44 North 43rd street, in what place is that; is that in Irvington? A Yes, that is Irvington.

FREDERICA NEU, sworn for defendant.

Direct examination by Mr. Price.

Q Where do you live? A Corner Mapes avenue and Mapes place, 15 Mapes place.

Q Where is that? A In the Weequahic section, Newark.

Q Are you in business? A Not now.

Q Were you in business in the latter part of 1916? A Yes.

Q Where was your business located? A 1418 Springfield avenue.

Q Springfield avenue where? A Irvington, New Jersey.

Q During the summer of 1916 did you become acquainted with a Mrs. Ella Smith? A Yes.

Q Where was she living at the time you became acquainted with her? A At North 43rd street, Irvington.

Q How did you become acquainted with her? A She came into the store and bought some goods.

Q Was anyone with her? A No.

Q At any subsequent time was anyone with her when you saw her? A She came in one time and they had some cream.

Frederica Neu, direct.

Q Who did? A Mr. Lyons and Mrs. Smith.

Q Was Mr. Lyons introduced to you? A No, he was not.

Q How did you know his name was Lyons? A He told me his name was Lyons.

Q Was Mrs. Smith present? A No, he was alone.

Mr. Romine. I object to it.

Q Was Mrs. Smith ever in company with a man whom you knew as Mr. Lyons, in your store? A I said before they were together and ate a plate of cream.

Q What sort of a looking man was Mr. Lyons? A Tall and stout.

Q What was his complexion, dark or light? A I think his hair was dark; he had a little mustache.

Q What kind of a store did you keep? A Confectionery, tobacco and toys.

Q Did Mrs. Smith say anything about whether she was married or not? A I don't remember.

Q Did she at any time say whether she was instituting proceedings for divorce against her husband? A Yes, she said that.

Q Did she at any time tell you whether Mr. Lyons was staying at her house or not?

Mr. Romine. I object to that as leading.

Q Did she ever at any time say anything to you about Mr. Lyons? A No, I don't remember.

Q Did Mrs. Smith have a child? A Yes.

Q Do you know what its name was? A Audrey.

Q Was that child ever left in Irvington at any time when Mrs. Smith was away, to your knowledge? A Yes.

Q Where? A At 1418 Springfield avenue, Irvington, New Jersey.

Q With whom? A With Mrs. Dorner.

Q Did Mrs. Smith say where she was going? A No.

Q Did she say why she left the child there?

Mr. Romine. I object unless you were present.

Q Did Mrs. Smith say to you— A She said she was going away on a case.

Q Did she say she was going away with anybody? A No.

Frederica Neu, cross.

Q How long did the child Audrey stay at Mrs. Dorner's? A I cannot remember how long it was. It was no longer than a week, I know that.

Q Did Mrs. Smith ever tell you what business Mr. Lyons was in? A She said he was a detective.

Q Did she say where he was staying? A Morristown.

Q Did she say what business she was engaged in? A She said she was a helper in the detective work.

Q Did she say whom she helped? A Yes.

Q Whom? A She said she helped Mr. Lyons.

Cross examination by Mr. Romine.

Q At the time when Mrs. Smith left this little girl at Mrs. Dorner's house was when she went out to do some detective work? A That is what I understood.

IN CHANCERY OF NEW JERSEY.

Between

ELLA S. SMITH,

Petitioner,

and

ERNEST N. SMITH,

Defendant.

DEPOSITIONS of witnesses taken in the above entitled cause on behalf of defendant, pursuant to notice, before Nicholas W. Bindseil, Special Master in Chancery, at the office of Avery & Whiting, No. 5 Nassau street, New York City, New York, on Saturday, May 18th, 1918, at 9:30 A. M.

Appearances:

Mr. Harold A. Price, representing King & Vogt, for defendant, cross-petitioner.

Mr. Elmer W. Romine for petitioner, cross-defendant.

It is stipulated and agreed by and between the counsel for the respective parties, that the depositions of the witnesses may be taken stenographically by the Master and afterwards reduced

to typewriting, the signatures of the witnesses to their said depositions being waived.

LAURA ROBERTA ARKENAU, sworn for cross-petitioner.

Direct examination by Mr. Price.

Q Where do you live, Mrs. Arkenau? A At Oriole Hotel.

Q Where is that? A Foot of Tilyou's Walk.

Q And whereabouts is that, in what place? A Coney Island.

Q New York? A New York.

Q How long have you been there? A Thirteen years.

Q Do you live at the hotel? A I do during the summer months.

Q By whom is that hotel conducted? A By my brother-in-law.

Q Are you associated with him in it? A No, just hired there.

Q You are hired there? A Yes.

Q What particular work do you do? A Attending to the bathing and hotel, that is all.

Q Do you have charge of hiring the rooms to people that come? A Yes, I take care of the registering book and office.

Q Where is this hotel located, with reference to the ocean; is it near it or not? A It is right on the ocean.

Q How large a hotel is it, in height? A I really cannot tell you that.

Q How many stories? A Just the one story.

Q About how long is it? A It is about 115 feet.

Q How many rooms have you in the hotel for persons to come there to stay? A Twelve.

Q Are they numbered? A Yes, we have thirteen altogether and I occupy one myself.

Q On June 29, 1916, did a man and woman come to your place whom you knew as Mr. and Mrs. Edwards? A Yes, they did.

Q What time of the day did they arrive? A About 3:25.

Q In the morning or when? A In the afternoon.

Q Had you seen this man whom you say you knew as Mr. Edwards before this time? A Yes.

Laura Roberta Arkenau, direct.

Q About how long before? A A couple of years I guess it was.

Q Where had you seen him then? A He called at our place and got acquainted with a few people in the bar is all I knew him from.

Q And on the former occasion had he been alone or accompanied by someone? A He had a young boy with him and he introduced him as his nephew.

Q When he came on June 29, 1916, he was accompanied by a woman, you say? A Yes, his wife; he introduced her as his wife; that is all I know about it.

Q When did he introduce her as his wife? A When he arrived. We had known him before and we didn't know whether he was married or single.

Q What sort of a looking gentleman is Mr. Edwards? A A stout dark gentleman, grayish hair.

Q What sort of a looking woman was the woman who was with him? A She was a tall thin woman and she wore glasses.

Q You say you had charge of the registry of the hotel at that time, had charge of the books? A Yes.

Q I show you a book and ask you if you recognize that book? A Yes, surely.

Q What is that book? A That is a hotel register.

Q For what hotel? A Oriole Hotel.

Q At Tilyou's Wharf? A Yes.

Q And this is the same hotel of which you have just spoken? A Yes.

Q Between what periods does this book cover? A It covers 1908.

Q From 1908 up to when? A 1917; we got a new book in the middle of last year—1916.

Q Does it go through 1916? A Yes, it goes through 1916.

Q Do you find in there a registration on June 29, 1916? A Yes.

Q I direct your attention to the third registration from the bottom of the page and ask you if you were present when that was made? A Yes, I was.

Q Who made that registration? A Mr. Edwards himself.

Q And how was it signed? A "June 29 Wm. N. Edwards & wife, Summit, N. J. 14 3:25 P. M. July 4, 12 A. M."

Laura Roberta Arkenau, direct.

Q You say you were present when this registration was made? A Yes.

Q And made by whom? A By Mr. Edwards.

Q How long did this Mr. and Mrs. Edwards stay at the hotel? A They stayed from the 29th of June on until the fourth of July.

Q What year? A 1916.

Q And is that noted in this book? A Yes.

Q On this same page to which you have heretofore referred? A Yes.

Q During the time they were there what room did they occupy? A Number 14.

Q Is that indicated in the book? A Yes.

Q And you say this is the book which you have charge of at the hotel? A Yes.

Q And is that the book which shows the arrival and departure of guests at the hotel? A Yes.

Q I show you a photograph and ask you if you recognize that? A Yes, I do.

Q By what name did you know the man whose face appears in the photograph? A Mr. Edwards.

Q By what did you know his first name? A I never knew his first name; I always addressed him as Mr. Edwards.

Q Did he indicate his first name in the book? A Yes, "Wm." here in the book.

Mr. Price. I offer in evidence the photograph identified by the witness as the photograph of Mr. Edwards.

(Marked Exhibit P. 1.)

Q I show you a small photo contained in an envelope which is marked Exhibit A, July 14, 1917, N. W. Bindseil, and the envelope with N. W. B., the Special Master's name, on it, and I ask you if you recognize that photo? A Yes, I do.

Q And by what name did you know that woman? A Mrs. Edwards.

Q Was that the woman that was with the Mr. Edwards whom you have spoken of and whose photograph you have just identified? A Yes, sir, it was.

Q How long did these two people whose photographs you have identified remain at the hotel? A From June 29 until July 4th.

Laura Roberta Arkenau, direct.

Q During all that time did they or did they not occupy the same room? A Just one night—room 14 had been previously engaged, and I had to move them over for one night to room 15; that was July 3rd.

Q Where is room 14 with reference to the ocean front of the hotel? A On the righthand side of the hotel.

Q Facing the ocean? A Yes, both rooms face the ocean, 15 and 14.

Q Is there a hall between? A Yes.

Q How do you know that during the period from June 29 to July 4 they were occupying this room? A How do I know?

Q Yes; did you see them there? A Why, certainly.

Q How often? A They used to eat there and go away during the day and take a bath and come back again.

Q Where did they stay at night? A They stayed upstairs in the hotel.

Q What room? A Room 14.

Q Did Mr. Edwards as you knew him, or Mrs. Edwards, as you knew her, say what business Mr. Edwards was engaged in? A Mr. Edwards said he was a detective and working in the detective business; that is all I ever heard him say, and she used to help him.

Q Did she say so? A Yes, sir.

Q Do you recall an occasion in the latter part of 1916 or early part of 1917 when I was at your house with a man called Mr. Edwards? A Yes.

Q And was that the same man who was at the hotel with a woman whom you knew as Mrs. Edwards? A Yes.

Q Who had charge of the chamber work in the house? A Mamie Rossi.

Q What were her duties? A Chamber work, and when she got through upstairs she used to help in the office.

Q What is the first name of your brother-in-law who keeps the hotel? A Louis.

Q And his last name? A Arkenau.

Q The same as yours? A Yes.

Mr. Price. I ask to have the page of the register which has been identified by the witness, and which is marked "Season 1916 Hotel Register," and on which page appears the name "Wm. N. Edwards & wife, Summit, N. J.,

Laura Roberta Arkenau, cross.

June 29, Room 14, Time of Arrival 3.25 P. M., Time of Departure July 4, 12 A. M.", marked for identification.

(Marked Exhibit P. 2 for identification.)

Q Will you give us the location on this page of the name of "Wm. H. Edwards & wife" with reference to the number of names from the bottom in which it appears? A It is the third line from the bottom.

Mr. Price. I would like to have the Special Master remove that page from the registry book which he has just marked.

Master. Have you (addressing witness) any objection to removing this page, if it is returned to you at a future time?

Witness. No, I don't think he would have any objection.

Mr. Price. And upon its removal I offer it in evidence.

(Page referred to, removed by the Master, marked Exhibit P. 2.)

Cross examination by Mr. Romine.

Q Where is your brother-in-law? A He is expecting to go away in a couple of days; he hasn't been down there for the last two weeks, and his brother is running the business this year.

Q Was your brother-in-law at the hotel when you claim this registration was made? A Somewhere around the hotel, yes, sir; he lived right there.

Q Had he been conducting the hotel ever since? A Yes, sir, until this year.

Q Have you worked for your brother-in-law at the hotel ever since June 29, 1916? A I have.

Q You say that you had charge of the bathing at the hotel? A Yes.

Q Did you attend to that in the afternoons? A I attended all day to that—to renting rooms and attending to the office.

Q When you say you attended to the bathing, is that some pavilion disconnected with the hotel? A Yes, it is right connected with the hotel.

Laura Roberta Arkenau, cross.

Q How far away from the office is it? A I should judge about fifteen feet.

Q That is down near the ocean, isn't it? A The hotel entrance is right near my office.

Q It is in a separate room, is it not? A Yes, separate room.

Q And is your office at a point lower than that where they get into the main office? A Yes.

Q And how much lower is that? A I just cannot say that; it is on the first floor.

Q It is on the first floor below the main office? A Yes.

Q So that anyone coming into the main part of the building when you were down in your office, you couldn't see them from there, could you? A No, not exactly going in and out.

Q And your duties required you to be down in your part of the office to attend to the bathing, did it not? A Yes.

Q Did your brother-in-law have charge of the office, the main office? A We haven't any main office; when there is any rooms to be rented, they always call me and I attended to the rooms; of course, we don't have much transient trade; we have two and three weeks at a time; the rooms are rented that way.

Q Where is this registration book kept? A We kept that upstairs.

Q Does anyone attend to the registration besides yourself? A My brother-in-law at times.

Q And anyone else? A No.

Q About June 29 you were quite busy in the afternoon were you not with your own affairs? A Yes.

Q Do you mean to say that you recall the name Wm. N. Edwards being written in your presence? A I do, that is my signature there, June 29.

Q What do you mean? A I put the dates there, the time of arrival and the time of departure.

Q You put this date June 29 here? A Yes.

Q Opposite the name Wm. N. Edwards? A Yes.

Q Did you put June 29 opposite the name Fredericks and wife? A Yes, sir, I did.

Q Who wrote the name H. Fredericks and wife; did you write that? A No, I did not.

Q How about the number of the room down opposite Edwards & wife? A I did that myself.

Laura Roberta Arkenau, cross.

Q Do you know what pen was used to write the name; the same pen that you used to put the date down? A I just don't know; the same pen most likely; you couldn't use two at one time.

Q How did you happen to witness the signature of Wm. N. Edwards? A I was there when he signed, of course.

Q How did you happen to be there; can you tell us? A Because my brother-in-law had called me at the time the room was to be engaged.

Q Your brother-in-law was in the office at that time? A What office, the bathing office?

Q No, the office where the people came in to register? A No, he was in the corner, in his barroom.

Q Where was the man that wanted to register, in the barroom? A He had been in there, yes.

Q Where was the woman? A When my brother called me upstairs I took the register book with me and they registered upstairs in the room.

Q In the main office or in the bedroom? A In the bedroom; we haven't any office there.

Q Was this registration made in the bedroom? A Yes.

Q How many beds were there in this room? A Only one bed.

Q Any other couch or anything there? A No.

Q Do you witness many signatures of people who register there? A I do, quite a few of them.

Q Are you able to recognize all the people that register there? A Yes, they have come there from one year to the other, as a rule.

Q They are all old timers? A Yes.

Q Can you tell us what kind of a looking person H. Fredericks was? A Yes, I can, a tall thin man.

Q Was he an old timer? A Yes.

Q Did you witness the signature of "James Jones, Barton, & wife," under date of June 24? A Yes, that is my writing there.

Q Do you know what kind of a looking man he was? A No, I haven't got quite that good a memory.

Q Did you witness the signature of "Anthony Powell"? A No, that isn't my writing; that is my brother-in-law's.

Laura Roberta Arkenau, cross.

Q Did you witness any other signatures on that page? A Mr. Jones and Mr. George Silver's.

Q This Mr. George Silver, do you recall what kind of a looking man he was? A Yes, he was a short gentleman.

Q Did he have a black mustache? A No, smooth face.

Q Gray hair? A No, a young man.

Q Was he an old timer? A No.

Q Referring to the other page of the ledger sheet, the other side, any names that you witnessed there? A Very very few on that page, Mr. and Mrs. Wenger from Albany.

Q Do you recall what kind of a looking man he was? A A stout gentleman.

Q Did he have a mustache? A No.

Q Wear glasses? A No.

Q Gray hair? A No.

Q What kind of a suit did he have on? A I don't remember that.

Q Do you know what kind of a suit this man that you call Edwards had on? A I just don't remember that either.

Q Do you know what kind of a hat he had on? A He always wore a Panama straw hat while he was there.

Q Do you know what kind of shoes he had on? A I don't remember that.

Q Any other signatures that you witnessed on that page? A Ward and wife, Newark, New Jersey.

Q Do you remember what kind of a man he was? A A short stout man.

Q Most of these men that you recall were short, stout men, weren't they? A Yes.

Q Did he have a mustache or was he smooth shaven? A Smooth shaven.

Q Do you know what kind of a suit he had on? A No.

Q You say that this man Edwards had been at your place before? A Yes, he had been there before.

Q How many years before? A About 1914, I should judge.

Q Will you refer to your registration book and see if you can locate any registration by a man by the name of Edwards, in 1914? A I don't remember whether he stopped there or not, but I know he had a young boy with him and went bathing.

Q I thought you testified that, on direct examination? A He stopped there several times over night.

Laura Roberta Arkenau, cross.

Q And if he stopped there, he would have registered? A Certainly; I didn't always attend to him when he came.

Q Will you refer to the year 1914 and see if you can find any registration by William N. Edwards? A No, but I find a Charles Edwards and wife, October 5.

Q And the registration gives the residence as Summit, New Jersey? A Yes.

Q But that is not the same Edwards? A I wasn't there at the same time of that registration there; I left the hotel before that time.

Q And that is in the year 1914? A Yes.

Q In going through the hotel registry book, in the year 1914 particularly, I find there are places at the foot of the pages where it is not filled out right to the bottom; how does that happen? A Because it gets so crowded on the own page and looks so nasty; they were not so strict then with the books as they are now.

Q In going through the book, in various places I see that there are spaces at the bottom of the page where other names could have been written, but they are not filled out; do you know how that happened? A I just don't know.

Q Do you have any objection to this book being offered in evidence and being returned to you? A I would like to take the book back home with me and ask my brother-in-law about that part of it; it doesn't belong to me; they expect the registry books to be down there.

Mr. Romine. I would like to have this book retained for use by the Court.

Master. I have no power to take possession of the book without the consent of the witness.

Mr. Romine. I object to the sheet Exhibit P. 2 being offered in evidence and admitted in evidence without the whole book being offered, because I think the Court ought to see the condition in which this hotel register is made up.

Witness. I wouldn't care to leave the book.

Mr. Price. I have no objection to the book going in evidence, except the witness has expressed a desire to secure her brother's consent.

Mr. Price. Are you under subpoena here?

Laura Roberta Arkenau, re-direct.

Witness. Yes.

Mr. Price. And have produced this book pursuant to subpoena?

Witness. I received a subpoena demanding me to bring that book, but I didn't get the consent, because he wasn't there.

Q I see under Season 1914, under date September 14, the name of Charles Edwards and wife, of Summit, appearing again, having room 14? A As I told you, I am not there at that time.

Q You don't know whether that is the same Edwards or not? A No, I do not.

Q On September 18, under Season 1914, the name Charles Edwards and wife, Summit, N. J., appears again, having room 14; do you know whether that is the same Edwards or not? A No, I do not. I leave there, as a rule, at the end of August, when the bathing is over.

Mr. Price. I will offer the entire hotel book in evidence.

(Marked Exhibit P. 2.)

Re-direct examination by Mr. Price.

Q Would you be willing at a future time, when the Court needs this book, and upon my request, to produce this book which you say is the property of your brother-in-law—either produce it yourself or send someone with the book to Newark? A Yes, with his consent, I would.

Q That is, your brother-in-law's consent? A Yes.

Q When these parties went away on July 4—I think you said it was—who paid their hotel bill? A Mr. Edwards settled that at the bar with Mr. Arkenau.

Q Do you know how much it was? A I just don't remember; I think it was two dollars a night. That is what we usually charge.

Mr. Romine. Did you see him settle it, or did your brother-in-law tell you that?

Witness. He settled with him; he told me that.

Mr. Romine. Your brother-in-law told you that?

Laura Roberta Arkenau, re-cross.

Witness. Yes.

Mr. Romine. I move that it be stricken out.

Q Were you present at the time? A No.

Re-cross examination by Mr. Romine.

Q When this man was there before that you knew was Edwards, he had no woman with him then, did he? A No.

Q On no other occasion that you can recall, prior to this time, did this man Edwards have a woman with him? A Not that I can recall.

Q Nevertheless you always knew him as Mr. Edwards? A Yes.

Q How many times do you recall yourself that he was there before June 29? A I just cannot recall now; I should think about twice, to my knowledge. He has been down there and hasn't stopped there.

Q How did you happen to become so well acquainted with Mr. Edwards before this? A He was a gentleman that always made himself friendly.

Q Did he go bathing before June 29? A Yes.

Q You said there were thirteen rooms in the hotel? A Yes.

Q How do you get room 14? A There is a misprint of numbers on the door; we have no room 13; my brother-in-law was kind of superstitious and he skipped that number thirteen.

Q So that he actually put a number fourteen on? A Yes. We have a linen room runs from number one.

Q How much did you see of this man Edwards and this woman while there? A While they were in bathing, I used to have a chat once in a while in front of the office.

Q You merely supposed they occupied that room, because they went in the room when they registered, is that the idea? A Well, naturally I thought they did.

Q Of course, as a matter of fact you didn't occupy the room with them? A Sure not.

Mr. Price. Did you ever go in there?

Witness. I have served them with a drink in there, that is all; they called for a bathing suit and I handed them a bathing suit.

Laura Roberta Arkenau, re-cross.

Q So all you saw of the man Edwards and wife was when they passed through to get a bathing suit, or in and out of the hotel? A Yes, unless they stopped and spoke to me.

Q When were you first questioned with regard to this registration of June 29th by any one? A I was only questioned here when you were down last, Mr. Price; I don't remember just what day it was.

Mr. Price. If you don't recall—

Witness. I don't recall just the time.

Q Was that this year or last year? A Last year.

Q Do you recall what time last year? A No, I don't, I think it was in January sometime; I am not quite sure.

Q That is January, 1917, or January, 1918? A January, 1917.

Q Did you make known at that time your information such as you have given here? A Yes.

Q Has this picture which has been marked Exhibit P. 1 today ever been shown to you before? A Yes; he was present at the time I made that affidavit, with Mr. Price.

Q Who was present when you made the affidavit? A Mr. Edwards.

Q And when was that? A That was at the time in January, 1917, I should judge it was January, I am not quite sure.

Q And this man whom you knew as Edwards and whose photograph you have identified here, he was with Mr. Price? A He was.

Q Was anything said by him at the time you made an affidavit? A He just asked me if I remember the time him and his wife stopped there, and I said yes, and asked if I was willing to sign an affidavit to that effect, and I said, yes.

Q Who said that? A Mr. Edwards.

Q Before June 29 had you known this man Edwards as a detective? A Yes, only from what he said himself.

Q He told you he was a detective before that? A In fact, he told my brother-in-law first.

Q Look at that picture again and study it for a few minutes, and I won't ask you any question until you look at it. Be very careful and remember before I ask you this question that you are on your oath and you are to testify to the truth. (Witness looks at photograph.) Do you swear on your oath that that

picture represents the man whom you say signed "Wm. N. Edwards" on June 29, 1916? Think it over before you answer. A I do, I swear.

Master. Everything you say here is under oath; you understand it?

Witness. Yes.

Q Do you know Ernest N. Smith? A No, I do not.

Q That is the man who is bringing this counter-claim against his wife. A No, I have never seen him.

Q During the time that this man Edwards and his wife stayed at the hotel, do you know whether at any time during those four days there was a separation of rooms? A A separation of rooms?

Q Yes. A No, not to my knowledge.

Q Did you see the woman at the time that this signature under June 29, of Wm. N. Edwards, was put on the registration book? A Yes, I did.

Q What was the woman's condition? A In what way do you mean condition?

Q Did she have anything to say? A No, I had just got acquainted with her; he introduced her as his wife, and I showed them to their room and that is all.

Q Do you recall whether this woman was in a dazed condition? A No, I don't.

Q Do you know whether she realized where she was? A No, I didn't take that much interest at that time.

Q Do you know how she was dressed? A I don't just exactly recall; I think she used to dress mostly in shirt waist and skirt.

Q Do you know whether she carried anything, any bag or baggage? A I don't remember any more.

Re-direct examination by Mr. Price.

Q Did you dance with her when she was at the hotel? A I went to Steeple Chase with them one evening.

Q Did she dance? A Just her and I had two dances together.

Q Did she say anything about whether she had been dancing or not before? A She said she used to give dancing lessons.

Mary Rossi, direct.

Q Did either of them bring any baggage? A They had baggage, but I cannot remember who had it.

Q What kind of baggage was it? A Just traveling bag, I don't just remember who carried it.

Q Where did they get their meals while they were there? A Sometimes at our place and sometimes they were away; I really cannot state all that; they mostly ate their breakfast there.

MARY ROSSI, sworn for cross-petitioner.

Direct examination by Mr. Price.

Q Where do you live? A 2750 West Seventeenth street, Coney Island.

Q How long have you lived there? A Just a year.

Q You are now married? A Yes.

Q How long have you been married? A About seven years.

Q Were you ever employed at a hotel in Coney Island? A Yes.

Q Whose hotel? A The Oriole Hotel.

Q By whom is that operated? A Mr. Arkenau.

Q Do you know what his first name is? A Louis.

Q Do you know Mrs. Laura Arkenau, the previous witness on the stand? A Yes.

Q Is she at the hotel? A Yes.

Q What relation is she to the proprietor? A Sister-in-law.

Q Were you employed at the hotel in the year 1916? A Yes, sir.

Q In what capacity? A Cleaning the rooms.

Q Do you know whether Mr. and Mrs. Edwards were there from June 29th to July 4th? A Yes, sir.

Q Was that about the time they were there? A Yes, sir.

Q I show you a photograph, marked Exhibit P 1, today, and ask you if you recognize the person whose face is there shown? A Yes, sir.

Q And by what name did you know the person in that photograph? A Mr. Edwards.

Q Did you know his first name as he gave it to you? A No, sir.

Q I show you a small photo, marked Exhibit A, July 14, 1917, N. W. Bindseil, and ask you if you recognize the person whose face is there shown? A Yes.

Mary Rossi, cross.

Q And by what name did you know that woman? A Mrs. Edwards.

Q When did you first see her? A When she took the room there, I saw her going in and out of the room, that is all.

Q By whom was she accompanied when she took the room? A Her husband.

Q Is her husband's picture contained in Exhibit P 1, as you knew him? A Yes; I just forget his face.

Q Do you recognize that as being his? A I think it is.

Q Is it your best recollection that it is or not? A Yes; I guess it is.

Q How long did they stay there, as far as you know or recall? A I think it was a week, wasn't it?

Q What is your recollection? A Just about a week.

Q What room did they occupy while there? A Fourteen.

Q What did you do regarding that room, if anything? A Just cleaned it.

Q Did you ever see them together? A Yes.

Q In the room? A Yes.

Q How often? A I saw them one day in the room, that was all.

Q This room 14 of which you have spoken? A Yes.

Q Did they have baggage when they came there? A I don't know; I didn't see them coming.

Q Did you see any baggage while they were there? A Yes; I think she had a little bag with her.

Q I show you another photograph, somewhat old-fashioned, and ask you if you recognize the person whose face is shown there? A Yes.

Q By what name did you know that person? A Mrs. Edwards.

Q Is this the same person whose face you have identified in Exhibit A? A Yes.

Q Did these people have their meals at the hotel while there? A I didn't see them when they were eating.

Q Where did you see them while there? A I saw them going in and out.

Cross examination by Mr. Romine.

Q You didn't take particular notice of these people any more than you did any others? A No.

Mary Rossi, cross.

Q Has any one talked to you about testifying in this case? A No.

Q Hasn't Mr. Price or Mrs. Arkenau talked with you? A No, sir.

Q How did you happen to come here? A A man come and give me the paper.

Q Didn't some one go over the facts with you? A Only that man just told me to come here, that is all; he gave me the paper, and until I asked Mrs. Arkenau I didn't know what it was.

Q How did you happen to remember the room? A Because I used to clean it.

Q Do you remember all the rooms that you cleaned for all the people in all the years? A No.

Q How did you happen to remember this particular one? A Because I used to talk to the lady once in a while.

Q Isn't it a matter of fact that when you talked with Mrs. Arkenau, the last witness, that she told you what this was about, and refreshed your memory; didn't she tell you the room that these people occupied? A No, I remember it myself, because when she come she changed her room to 15, and I helped her in with her clothes and she says when her husband comes he will tip me.

Q Were they occupying room 14 and 15 at the same time? A I think it was a couple of days after.

Q Did the man occupy 14 and the woman 15? A No; they were both in the one room.

Q Are you sure about that? A Yes.

Q How many beds are there in room 15? A One.

Q How many beds in room 14? A One.

Q All the rooms have only one bed? A Unless they bring children, and then we put a cot up for them.

Q You are quite sure about this photograph of the man here, are you? A I didn't see him so very much, only going in and out.

Q Therefore, you are not positively sure about that, are you? A Yes, sir.

Q That is, you mean you are not positively sure? A Yes.

Q You cannot tell us how he was dressed, or anything of that kind? A No, sir.

Maggie Reilly, direct.

Q Can you tell me how the woman was dressed? A I know she used to put a white waist and skirt on and wore eye glasses.

Q Have you referred to the hotel register to see what room this was since you received this subpoena? A I don't know what you mean.

Q Have you looked at the hotel registry book since you received the subpoena? A No; I haven't anything to do with that.

Q Did you come over with Mrs. Arkenau today? A Yes.

Q You mean to say that you received this subpoena and you haven't talked with her about this case at all? A No; I just asked Mrs. Arkenau what it was about, and that is all, and she didn't say.

Q Did she tell you what it was about? A She said to go over and tell what you know, that is all.

Q Did she tell you what she was going to say? A No, sir.

Q Never said a word to you about what she was going to say? A No, sir.

Q How many times did you see her after you received the subpoena? A Mrs. Arkenau?

Q Yes. A Just once.

Q You came all the way from Coney Island here this morning with her? A Yes.

Q And you never said a word about this case coming up? A No.

Q You saw very little of these people called Mr. and Mrs. Edwards? A Yes, sir.

MAGGIE REILLY, sworn for cross-petitioner.

Direct examination by Mr. Price.

Q Where do you live? A 747 Tenth avenue, New York City, Manhattan.

Q Are you married? A Yes.

Q How long have you lived there? A Thirty years.

Q In the summer of 1916 where were you? A Coney Island.

Q Do you know where the Oriole Hotel, on Tilyou's Walk, is located? A Yes.

Q Where, with reference to that hotel, were you? A Right opposite; I had a little candy stand there.

Maggie Reilly, cross.

Q Which you operated or ran? A Yes.

Q I show you a photograph, marked Exhibit P 1, today, and ask you if you ever saw the person whose face is shown there before? A Yes.

Q And by what name did you know the man whose face is there shown? A Mr. Edwards.

Q Where was he when you saw him? A At the Oriole Hotel.

Q This hotel of which you have spoken? A Yes.

Q I show you another photograph, which is marked Exhibit A, July 14, 1917, N. W. Bindseil, and ask you if you recognize the person whose face is there shown? A Yes, I do.

Q And where was she when you saw her? A With her husband, Mr. Edwards.

Q By Mr. Edwards, you mean the person whose photo you have just identified? A Yes.

Q Did you ever see them at your place? A They bought candy off me; that is how he introduced her to me, as his wife.

Q What did he say in introducing her? A "This is my wife, Mrs. Reilly."

Q What did she say? A "How do you do," all I can think of.

Q About how long were they at the Oriole Hotel? A That I cannot say.

Q Approximately? A A few days, from all I can think of.

Q This was in what year; last year, 1917? A I know it was in the summer time.

Q I show you another photograph, marked Exhibit P 3, somewhat old-fashioned, and ask you if you recognize the person whose face is there shown? A I recognize the face but not the style.

Q You recognize the face as the face of whom? A Mrs. Edwards, as he introduced her.

Cross examination by Mr. Romine.

Q Had you known Mr. Edwards before this time you mentioned? A Yes.

Q How long had you known him? A I saw him frequently coming to the Oriole Hotel; my husband and I and him used to have refreshments together and drink at the bar.

Q How many times before? A It might be twice.

Q You only knew him by sight, is that the idea? A That was all.

Q So that without ever having had a conversation—you never had any conversation with him before this time, did you? A What do you mean?

Q You never had any talk with him? A No.

Q So that without ever having talked with him before, or known him other than by seeing him there on previous occasions, he simply walked up to your place and bought some candy and introduced this woman as his wife? A Yes.

MARY ROSSI, recalled for further

Direct examination by Mr. Price.

Q You spoke of cleaning the rooms; what was your capacity in which you were employed there; what did they call you? A Chambermaid, I guess.

Q Did you clean the room Mr. and Mrs. Edwards occupied while they were there in 1916? A Yes.

Q Did you make the beds in the morning? A Yes.

Q During this period when they were there had or had not the bed been occupied? A It was mussed and I made it up; is that what you mean?

Q Yes. A Yes.

Q You made the beds in the morning? A Yes.

Q Did you make this bed in the mornings? A Yes.

Q And it had apparently been occupied when you made it? A Yes.

Cross examination by Mr. Romine.

Q You didn't know how many people occupied it, did you? A No, sir.

Q You never saw anybody in the bed? A No, sir.

Q So that you don't know whether both Mr. and Mrs. Edwards occupied it or not? A No, sir.

IN CHANCERY OF NEW JERSEY.

Between

ELLA S. SMITH,

Petitioner,

and

ERNEST N. SMITH,

Defendant.

Continuation of testimony taken in the above entitled cause, pursuant to Notice, before Nicholas W. Bindseil, Special Master in Chancery, at his office, Prudential Building, Newark, New Jersey, on Friday, June 28th, 1918, at twelve o'clock noon, in the presence of Mr. Carl Vogt for defendant-cross-petitioner and Mr. Elmer W. Romine for petitioner-cross-defendant.

HAROLD A. PRICE, sworn for defendant-cross-petitioner,

Direct examination by Mr. Vogt.

Q In the case now pending in the Court of Chancery, wherein Ella S. Smith is petitioner and Ernest N. Smith is defendant, and in which this testimony is being taken, Messrs. King & Vogt represent whom? A The defendant, Ernest N. Smith.

Q And they have represented the defendant ever since the original proceeding in this case was instituted? A That is right.

Q And during all that time you have been connected with the firm of King & Vogt? A I have.

Q And in charge of this particular cause? A I have been, in conjunction with yourself.

Q Pending the trial of this case before Vice-Chancellor Foster or subsequent thereto, did you ascertain any facts relating to the action of the petitioner, or did you obtain from any person or persons information relating to her actions, which information differed materially from any that had been obtained prior to the trial of this case? A Just about at the completion of the testimony in the suit brought by Mrs. Smith—

Mr. Romine. I object to this; I think he should answer that yes or no.

Harold A. Price, direct.

Q What information did you obtain, and from whom did you obtain it?

Mr. Romine. I object to this testimony unless it has to do with something that the witness saw himself with relation to Mrs. Smith—anything he might testify to now in answer to that question would seem to be testimony which would be hearsay, or something which was obtained from some third person, and I object to it.

A Just about at the time of the completion of the taking of the testimony in Mrs. Smith's case against her husband, I heard from a Mrs. Decker in Boonton that William H. Lyons, of Morristown, a man who had been doing detective work for Mrs. Smith, had gone to her home and made statements to her. Mrs. Decker told me that she would—

Mr. Romine. I object to this particular statement of the witness, because it now appears clearly to be information that he obtained from some other person, and that petitioner does not appear to have been present at the time—that is, Mrs. Smith doesn't appear to have been present at the time, and is certainly irrelevant, hearsay and improper.

Mr. Vogt. Of course, conversations I will not go into.

A (Continuing.) I went to Mrs. Decker's home in Boonton and was informed by her that Mr. Lyons had been there and had told her a long story, which she related to me. The facts disclosed in that story, which she said had been told to her by Mr. Lyons, and in the presence of a Mrs. Peer, of Boonton, were such that it appeared to me that if they were true Mrs. Smith, the petitioner, should not succeed in her suit then pending before the Vice-Chancellor. Our firm made investigation of the facts disclosed by Mrs. Decker and Mrs. Peer, and the result of that was that we filed a cross-petition asking for an absolute divorce on the ground of adultery, and naming William H. Lyons as the co-respondent.

Q Did the information that you obtained from Mrs. Peer and Mrs. Decker relate to action between the petitioner in this suit and Lyons. A They did.

Q What, if anything did you do about confirming their story from any other person? A I went to Boonton and interviewed

Mrs. Nellie Blowers, and it was there that Mrs. Smith had lived for a period during the pendency of her suit. I interviewed Hyman Fine, a man living in Morristown, and I interviewed Dr. Albert V. Simmons, of Newark, who lived near Irvington, and I interviewed a woman named Laura Arkenau, who at that time resided in Brooklyn, and Mr. Louis Arkenau, who was living at Coney Island, and I also saw William H. Lyons, the man mentioned before, and our office also in this connection interviewed Mrs. Priestman and Mrs. Atkins.

Q Were these persons that you have just mentioned, and particularly Lyons, interviewed prior to the filing of the cross petition? A I think most of them were.

Q Was Lyons? A I would have to refresh my recollection by the filing date of the petition; I am very sure that he was.

Q Will you state how you came to interview Lyons? A By reason of the statement made to me by Mrs. Decker or Mrs. Peer that Lyons' story—

Mr. Romine. I object to any conversation or statement by this witness as to what this Mrs. Decker may have told him—any specific statement, because it would be hearsay.

A (Continuing.) I will withdraw that and state this: I interviewed Mr. Lyons for the purpose of finding out more particularly the details of the statement which I had learned he had told Mrs. Decker and Mrs. Peer.

Q Did you obtain a statement from Mr. Lyons? A I did, on the fourteenth day of December, 1916.

Q Is the statement in writing? A Yes.

Q And under his affidavit? A Yes.

Q Have you that statement? A I have. (Producing same.)

Mr. Vogt. I offer that in evidence.

Mr. Romine. I object to it on the ground that Mr. Lyons is not a party to this suit and must necessarily be hearsay—any evidence in the nature of a statement or declaration by some third party, and such a statement offered in evidence now is immaterial and irrelevant, and illegal and improper.

(Marked Exhibit P. 10, 6-28-18.)

Harold A. Price, direct.

Q What next did you do, Mr. Price? A I took steps to look up and investigate more thoroughly the story detailed to me by Mr. Lyons.

Q What steps did you take? A I inquired from him in detail the location of a hotel in Coney Island where he had stated certain acts took place, as I learned.

Mr. Romine. I object to any conversation that this witness now states he had with Mr. Lyon, because it is highly improper and in the nature of hearsay, and Mr. Lyons is not produced as a witness on their behalf, and anything he may have told him is certainly not proper evidence in this case.

Mr. Vogt. We are willing to have that objection apply to anything which may be in the nature of hearsay evidence.

Mr. Romine. Or any statement which this witness may now make that some one told him something or gave him some information.

A (Continuing.) I went to Coney Island, and prior to going saw William H. Lyons and told him—

Q Don't give the conversation; tell us what you did. A As a result of my conversation with Mr. Lyons, he and I went to Coney Island, to the Oriole Hotel, on Tilyou's Walk, where he was known by the name of Edwards.

Mr. Romine. I object to that; that certainly is a conclusion.

A (Continuing.) I was there shown the register of the hotel and saw a registration there on June 29th, 1916, of William H. Edwards and wife.

Q Is that the registration which has already been offered in evidence? A That is. I learned from the hotel man, Louis Arkenau, that the gentleman who had registered as William H. Edwards and wife—

Mr. Romine. My objection goes to this testimony.

A (Continuing.) —was the William H. Lyons who accompanied me, and who was there greeted by Mr. Arkenau as Mr. Edwards. I went, I think, on the same day to Brooklyn, to see Mrs. Laura Arkenau.

Harold A. Price, direct.

Q Did Mr. Lyons accompany you? A At my request he did—and we saw her at her Brooklyn home—I think it is on 55th or 56th street, Brooklyn—and secured from her her affidavit. Her address was—I have now refreshed my recollection—553 56th street, Brooklyn.

Q How did she greet Mr. Lyons, if at all? A She also greeted him as Mr. Edwards, and referred to the occasion in June, 1916, when Mr. Edwards, as she knew him, was at the hotel at Coney Island, the hotel being the one I have previously referred to, which was kept by Louis Arkenau, her brother-in-law.

Q Known as the Oriole Hotel? A That is correct.

Q This statement that you obtained from Mrs. Arkenau, was that in writing? A It was.

Q Under her oath? A It was.

Q Have you that? A I have. (Producing same.)

Mr. Vogt. I offer that in evidence.

Mr. Romine. I object to it because the witness has already testified in this case, and the affidavit is inadmissible to prove the case and has no legal effect here, and immaterial, improper and irrelevant.

(Marked Exhibit P 11, 6-28-18.)

Q Did you interview any one else in Mr. Lyons' presence? A No, I think not.

Q Do you know William H. Lyons? A I knew him by sight and name, just to say "How do you do?" to him at this time; that is the only way I know him now.

Q And at the time you knew him in that manner where did he live? A I think he lived on Sussex avenue, Morristown.

Q How long have you known that he was William H. Lyons? A At that time?

Q Yes. A I imagine about two or three or four years.

Q And it was William H. Lyons to whom you have referred in your testimony that accompanied you in August, 1916, to Coney Island, when you interviewed Mr. and Mrs. Arkenau? A That is correct.

Q Do you know where Lyons is now? A I do not.

Q Have you made any effort to locate him? A We have, ever since the taking of testimony in Morristown of the witnesses which have heretofore testified in this case, such as Mrs. Blowers, Mr. Fine, Mrs. Priestman and Mrs. Atkins.

Harold A. Price, direct.

Q What effort have you made or caused to be made for the purpose of ascertaining his present whereabouts? A I have employed a man who has endeavored to locate him at places where he had previously been seen. He has made—

Mr. Romine. I object to what information has been given to this witness by some other man. The witness can testify for himself, and this witness cannot state something that comes to him in another manner.

A (Continuing.) I have employed and directed this man to whom I have referred to endeavor to locate Lyons, and at my specific direction he has made numerous trips to Newark—

Mr. Romine. I object to this, because it must certainly be hearsay.

A (Continuing.) —to Irvington and to Perth Amboy. This period of employment of this man for this purpose has been off and on ever since the taking of the testimony in Morristown, and I should roughly judge that at my direction he has made trips for the purpose of endeavoring to locate him—

Mr. Romine. I object as a conclusion.

A (Continuing.) —locate the witness Lyons, on at least fifteen to twenty different occasions.

Q Notwithstanding the effort made to ascertain Mr. Lyons' whereabouts, you have been unable to do so? A Yes, I was unable to locate him.

Q Has Mr. Lyons at any time indicated his willingness or unwillingness to testify in this matter on behalf of this defendant? A He has stated that he would be—

Mr. Romine. I object to what he stated.

A (Continuing.) —willing to testify to the conditions under which he and Mrs. Smith were together, on account of the liking he had for the child, Audrey, whom he thought should not be in Mrs. Smith's custody. That was the statement made to me when he first came to the office, and he expressly asked that that be put in the affidavit which he signed.

Q The man you referred to as having made the investigation for the purpose of endeavoring to ascertain Mr. Lyons'

present whereabouts is also employed by King & Vogt for the purpose of investigating various other matters that arise in connection with their business? A Yes, sir.

Q Have you made an endeavor to subpoena Mr. Arkenau for the purpose of examining him in New York State? A We have.

Q And you have been successful in that endeavor? A We have not, up to the present time.

Q You obtained a written statement under Mr. Arkenau's oath in this matter? A I did, on the fourteenth day of December, 1916.

Q Is this it that you now present? A It is.

Mr. Vogt. I offer that in evidence.

Mr. Romine. I object to it for the same reason that I have objected to the other testimony, and particularly the affidavit.

(Marked Exhibit P 12, 6-28-18.)

Cross examination by Mr. Romine.

Q Do you know whether Mr. Lyons was ever served with any papers in this proceeding? A Subpoena or anything of that kind?

Q Was there ever a petition served on him or anything of that sort? A So far as our firm is concerned?

Q Yes. A A petition in the divorce case?

Q Was this petition ever served on him and he cited to answer? A Not to my knowledge. It may have been done and I may have forgotten it, but I don't remember it.

Q When prior to December 14, when this affidavit was made, did you consult with Mr. Lyons about this case? A I think that was the only day I consulted him, the day I got the affidavit, one evening at the office.

Q Did he come to your office at your solicitation? A I went to his house and he was away and then I went back to his house again, and he was there, and I asked him to come down to the office that evening.

Q Had you received any word from Mr. Lyons directly or indirectly with reference to his attitude in this matter before you went to see him? A I had received indirectly from Mrs.

Decker and Mrs. Peer a statement of what the conditions had been between him and Mrs. Smith, as related from him to them.

Q And you had received that information from them when, in reference to December? A I should say about the early part of December, possibly a week or so before I secured an affidavit from Mr. Lyons.

Q Didn't you already testify that you had received this information from Mrs. Decker before you filed your cross petition? A Yes, I think that is correct.

Q And in an affidavit that you filed heretofore in this matter didn't it appear that you had made these investigations in October and November? A So far as Mrs. Decker and Mrs. Peer is concerned?

Q With reference to filing the cross petition, didn't your petition and affidavit at that time state that you had made the investigations in October and November? A I think my affidavit at that time stated that I had received word in November from Mr. Smith that there was a lady living in Boonton named Mrs. Decker or Mrs. Peer—I have forgotten which one I went to—to whom William H. Lyons had gone, and it may have been in November—the month of November when I was there to see her, or the latter part; it was not until December that I secured the affidavit from Mr. Lyons.

Q Had you any intimation before November as to Mr. Lyons' attitude with reference to the defendant Smith in this case? A I didn't know that he ever took any particular attitude toward the defendant Smith.

Q You learned in December that his attitude was one that he would testify, didn't you? A I learned when he made the affidavit that he would state the same story that he had told Mrs. Decker voluntarily and Mrs. Peer.

Q Had you any intimation in October or November as to Mr. Lyons' attitude with respect to his testifying? A From him?

Q From anybody. A No, except that Mrs. Decker said that he had told the story voluntarily as to his living with Mrs. Smith.

Q How long after the case of the petitioner on the original suit was submitted was it that you had any information with

regard to Mr. Lyons in this case? A You mean in relation to the present cross petition?

Q Yes. A I didn't learn that Mr. Lyons had been guilty of any improper acts at all, or that Mrs. Smith had with him, until the information I received about the middle of November from Mrs. Decker and Mrs. Peer.

Q You were in constant touch with these people directly or indirectly after the case was submitted, were you not? A With what people?

Q Mr. Lyons and Mrs. Smith. A I don't know that I ever spoke to Mr. Lyons hardly about this case up to the time that I secured his affidavit from him.

Q Wasn't your office in touch with him, so as to know where Mrs. Smith lived from time to time? A No more than I think I one time knew that she was living in Boonton, I didn't know where, and I think at one time I knew that she was living in Morristown, I thought at Mt. Kemble avenue, but we made no endeavor at all to trace her movements in any way.

Q Do you know whether any one from your office kept in touch with the movements of Mrs. Smith? A Not to my knowledge, and I and Mr. Vogt were associated in the conduct of the case and would have known if it had been.

Q Were you in constant communication with your client, Mr. Smith, after the original case was submitted and up until December, when Mr. Lyons made the affidavit? A No; I think I first heard from Mr. Smith—of course, we wrote letters back and forth about various matters—but in relation to this particular matter, I think the first I heard from Mr. Smith was about the fifth of November, 1916, when he told me about Mrs. Decker and Mrs. Peer and Mr. Lyons' being there.

Q Then in the course of your investigations did you learn whether Mr. Lyons had communicated this information to Mr. Smith after you interviewed Mrs. Decker? A I am very sure that he had not, because the information came to me from Mr. Smith, who had been told by Mrs. Decker or Mrs. Peer, I don't know which.

Q You don't know whether Mr. Lyons had been in constant touch with Mr. Smith during the progress of this case or not? A I am very sure he had not.

Q That is your opinion about the matter? A Yes.

Harold A. Price, cross.

Q You don't know that Mr. Lyons was constantly calling up Mr. Smith and advising him as to the whereabouts of his wife and her conduct, do you? A I have no such knowledge as to that.

Q Did you know that Mr. Lyons offered to furnish evidence to Mr. Smith for a certain sum of money? A No, sir.

Q Before you actually requested Mr. Lyons to call at your office, did you discuss the matter with Mr. Smith or he with you? A I think not; I think that the first that Mr. Smith learned of this matter was after we had secured an affidavit from Mr. Lyons, and we requested Mr. Smith to come to the office, to show him the evidence we had secured, and secured his authority to file a cross petition, which I think was either the first or second day after I had secured Mr. Lyons' affidavit.

Q You said that Mr. Smith advised you of the fact that Mrs. Decker could give you some information with regard to Mr. Lyons; is that right? A No, that is not quite it. Mr. Smith told me that, I think Mrs. Peer had informed him that Mr. Lyons had been there and told a story, which he related to me, and it was pursuant to that information that I went to see Mrs. Peer.

Q And was the story that Mr. Smith told you that Mrs. Peer, or some other woman, had told him that Lyons had told them, substantially the same as what Lyons told you when you interviewed Lyons at your office? A Yes, sir. I want to say that I think that Mrs. Peer was the woman whom I went initially to see, and Mrs. Decker came in the house while we were there.

Harold A. Price, cross.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss:*

I HEREBY CERTIFY that the foregoing testimony was taken, pursuant to an order dated July 2, 1917, made by the Honorable John E. Foster, Vice Chancellor, before me as Special Master, at the various times and places specified therein, in the presence of Mr. Harold A. Price, representing King & Vogt, and Mr. Carl Vogt, for defendant, and Mr. Elmer W. Romine for petitioner; that it was stipulated and agreed by and between the counsel for the respective parties that the testimony of the various witnesses should be taken stenographically by me and afterwards reduced to typewriting, the signatures of the witnesses to their said testimony being waived; and I further certify that the foregoing is a true and correct transcript of my shorthand notes of the testimony given by the witnesses before me.

NICHOLAS W. BINDSEIL,
Special Master in Chancery of New Jersey.

IN CHANCERY OF NEW JERSEY.

Between

ELLA S. SMITH,

Petitioner,

and

ERNEST N. SMITH,

Defendant.

Continuation of testimony taken in the above entitled cause, by consent, before Nicholas W. Bindseil, Special Master in Chancery, at the office of Messrs. King & Vogt, Morristown, New Jersey, on Thursday, September 12th, 1918, at 4 P. M., in the presence of Robert H. Schenck, Esq., representing King & Vogt, for defendant-cross petitioner, and Elmer W. Romine, Esq., for petitioner-cross defendant.

ERNEST N. SMITH, defendant-cross petitioner, sworn.

Direct examination by Mr. Schenck.

Q You are the Ernest N. Smith named as one of the parties in this proceeding? A I am.

Q I show you a photograph marked Exhibit A, July 14, 1917, and ask you if you recognize the person whose photograph that is? A Yes, that is Mrs. Ella S. Smith.

Q And that is the other party in these proceedings? A Yes, my wife.

Q I show you another photograph, marked Exhibit P. 3, May 18, 1918, and ask you if you recognize the persons whose photograph that is? A This is the same person as the other, Mrs. Ella S. Smith.

Cross examination by Mr. Romine.

Q Do you know when this smaller photograph was taken which is marked Exhibit A and dated July 14, 1917? A No.

Q You don't know how long ago that was taken? A No, I do not.

Q Several years ago, at least, isn't it? A I cannot say.

J. Boyd Headley, direct—cross.

Q You don't consider that to be a recent photograph, do you? A I think it was taken after the larger one, Exhibit P 3; that is as near as I can come to it.

Q How long have you and Mrs. Smith been separated? A Three years last April.

Q And this smaller photograph was evidently taken before that time? A Yes.

Q And this larger photograph, marked Exhibit P. 3, was taken probably fifteen years ago, wasn't it? A Yes, I should think it was—between ten and fifteen, any way.

J. BOYD HEADLEY, sworn for defendant-cross petitioner.

Direct examination by Mr. Schenck.

Q Where do you live? A Morristown.

Q And for how long? A About forty years.

Q I show you photograph marked Exhibit P 1, dated May 18, 1918, and ask you if you know the person whose photograph that is? A Yes.

Q Who is that person? A William Lyons.

Q Where have you known him? A I have known him for years.

Q How many years, approximately? A Fifteen years.

Cross examination by Mr. Romine.

Q Ever see anybody that looked like him before? A No; I have seen people similar to him.

Q Resemble him, I mean. A Yes.

Q (*By Mr. Schenck.*) His name is William H. Lyons? A Yes.

Continuation of testimony taken in the foregoing cause, by consent, before Nicholas W. Bindseil, a Special Master in Chancery, at his office, Prudential Building, Newark, New Jersey, on Saturday, January 4th, 1919, at 10:30 A. M., in the presence of Elmer W. Romine, Esq., for petitioner-cross defendant, and Harold A. Price, for defendant-cross petitioner.

Elmer W. Romine, direct.

ELMER W. ROMINE, being duly sworn according to law, on behalf of petitioner, on his oath testifies as follows:

I am the solicitor for Ella Smith in this case, and some time in 1915 she consulted me about her domestic affairs—I don't just remember the date, but it was some time before March—and I had Mr. William H. Lyons, who had been doing some investigating for me in other cases, go over and interview Mrs. Smith at her home in Boonton, and under my direction Mr. Lyons frequently was sent to the home of Mrs. Smith for the purpose of obtaining information from her in following out certain investigations. Sometimes I would accompany Mr. Lyons, and after Mrs. Smith left the home of her husband and went to live at Mrs. Blowers' house in Boonton I frequently had occasion to request Mr. Lyons to go to the Blowers house to see Mrs. Smith and ascertain from her some facts in connection with further investigations that I considered it necessary to make in connection with Mrs. Smith's case. On some occasions I went with Mr. Lyons to the Blowers house to see and talk with Mrs. Smith; on some occasions Mrs. Smith and Lyons would meet at my office and go over certain matters. When Mrs. Smith came to Morristown to live on Mt. Kemble avenue I frequently had occasion to request Mr. Lyons to see her about some matters connected with her case, and I also suggested to Mrs. Smith and Mr. Lyons that in the course of his investigations it became necessary for him to see Mrs. Smith it might be better to arrange to see her at my office or at some other place than where she was boarding, as there seemed to be a great many people around the boarding house, and we did not want outsiders to ascertain anything about Mrs. Smith's affairs.

When Mrs. Smith went to live at the Fine house on Speedwell avenue, she complained to me that several attempts had been made, as she thought, to get possession of the child, and that she had been annoyed, and I suggested that Mr. Lyons see her and follow out any clues that he may have. Quite frequently I suggested to Mr. Lyons that he interview Mrs. Smith while she lived at this house. I had occasion to go to the house several times in the evening when I arranged to go over with Mrs. Smith some facts regarding her case, in preparing for the hearing, and I never saw Mr. Lyons there on the evenings that I visited the house. I think it was at about this time that Mrs. Smith's

father arranged to have Mr. Lyons either employed or engaged in some way to protect Mrs. Smith from any annoyances or attempts to get possession of the child, and they entered into some sort of an arrangement.

While Mrs. Smith lived at Collinsville, on several occasions I went over there with Mr. Lyons to go over matters which had been investigated and to give instructions for Mr. Lyons with regard to watching the house. On some occasions, under my instructions, Mr. Lyons remained at the house. Mrs. Smith's father was there a great part of the time.

When Mrs. Smith moved to Irvington it was after consulting with me about moving there, with the idea of getting away from any possible annoyances. I believe Mrs. Smith decided to go under another name, so that she could, if possible, get away from the influences which she thought her husband was trying to bring about in getting the child.

Some time in the latter part of 1916—I think it was October or November—after the case was submitted, I don't know whether a decision had been rendered then or not, but Mr. Lyons came up to my office in Morristown one morning very much excited. He said that he understood Mrs. Smith had told something about him, and he wanted to know if I knew anything about it, and I told him, "No, I heard nothing about it; it was news to me." He said he wanted to have it distinctly understood that he had had no improper relations with Mrs. Smith, and that he was going to protect his family, and if they wanted to start anything he would give them all they wanted. He said they had not paid him for the balance of his services, which amounted to some sixty or seventy dollars, and he said that he understood that Mrs. Smith several years before had had an affair at Asbury Park, and he was going to call up Mr. Smith. He said he might just as well work for Smith, because he had the money and plenty of it.

We have made an endeavor to locate Mr. Lyons, but have been unsuccessful.

Q. (*By Mr. Price.*) What did Lyons say were the accusations that Mrs. Smith had made against him? A I must try and think what he did say now exactly. I cannot tell you his exact words, but it was to the effect that he understood that Mrs. Smith had told her father of some relations between them or something, which he said were not true. Now, he didn't

come out point-blank and tell me exactly, but in substance that was what he was driving at.

Q (*By Mr. Price.*) Did you, when Mrs. Smith was living with Mrs. Priestman on Linden street, ever go to Mrs. Smith's home there for the purpose of taking Lyons away with you, on the occasion of some evening when he was up there? A There was one occasion when Lyons had been there watching the house —some one had tried to get in the house, or something—and by arrangement I went over there at a certain time and talked with Mrs. Smith, all of which was in accordance with our plans, and Mr. Lyons came away with me.

Q (*By Mr. Price.*) Was that the only time? A That was the only occasion that I recall, when he had been there on duty, under instructions, and I took him away. There were other occasions when I had taken him over there for a short time and we discussed matters, but that is the only real occasion that I remember he had been on duty and I took him away.

I might state this at the end, that Mrs. Smith is not now living in the State of New Jersey and is not readily available as a witness, and therefore not produced. Her testimony will not be given unless the Court orders it, and so far as the case stands now, on behalf of Mrs. Smith, we do not care to offer any further testimony on the case as presented on the counter claim.

TESTIMONY CLOSED.

(The case will be argued on February 3, 1919.)

Exhibits.

EXHIBIT A.

Exhibit A—June 16, 1916. N. W. Bindseil, Special Master in Chancery of N. J.

Envelope—Post marked Boonton, N. J., Oct. 31, 1914. Addressed to Mr. Lott E. Buckbee, #45 State Street, Newark, New Jersey.

EXHIBIT A. 1.

Exhibit A—June 16, 1916. N. W. Bindseil, Special Master in Chancery of N. J.

Letter—Dated Friday, 3 P. M.

Mr dear Lott.

I am going to leave Ernest as quickly as things can be arranged. I am in constant fear of that man and will not stand any longer such a life and the dirt right under my nose. Yesterday is the first I have been outside my doors since my return to Boonton from Asbury. I went at 3 P. M., took Audrey and got back at 6:20 P. M. to a minute to find E. had gotten in the window and was in his room but not *alone* as their shadows showed on the curtain. Whoever it was got out on the roof and down a ladder to the ground. Ernest was frighted and started to curse. There is not a night in the week that he gets home until 6:20 P. M. How he came to be home so early last night I can well imagine. I asked him who he let out of my home. All he did was to curse and say none of my business. Then he turned on me and said "He did not care, that I had my orders from my Brother & Sister to stay right where I was and I had to take this sort of a life and just suck his little asshole. He had my people so they would take his word any day against mine, &c. Such dreadful talk Audrey had a terriable spell with her heart and I got faint as well. Since I have been trying to do my duty by him and trying to help him by not keeping a girl I have taken more than any decent pure woman would take. Wed. night he came in so ugly and when I told him to behave himself he said he would give me a sum of money each week and I could get out of here. Now you boys can make him do the right thing by Audrey & I or I should have Ernest arested and made to do what is right. He owns stocks and this house (Which we have a client for). So he is likely to sell and that money must come to A. & I. I am not sleeping nights but am

Exhibits.

under a constant strain for Ernest would stop at nothing to gain his point. But I did make him cry last night when I told him Some day he would stop and think and would realize the good woman he failed to appreciate when he had her. I know I am doing the right thing to leave him and I do believe if I take my stand right now instead of condoning his faults (as my lawyer says I do by putting up with such rot) he will come to his senses and be a better man. He may even come back to us and be different. But he has lost his respect for the wife who will take all I have. One of the things he said Was our home life was just as bad at 45 State St. before I was married. There was rot enough in our family. If you boys will not do anything Very well. Then E. can have all in the house and I shall take a position as Housekeeper with Audrey until I can save enough for a home. No trying to check Ernest and smooth things over will do for such a bad man. Your only course is to let him see or believe you are standing by me. He is a coward. If he dared to do the things to a man he has done to me he would not be alive.

Lovingly,

ELLA.

I tell you again I am afraid to be here alone with him. I was rather protected when I had a maid.

EXHIBIT C. 2.

N. W. B.

Letter—Dated Newark, N. J., Feb. 14, 07.

Dear Edward.

Just a few lines to let you know that I am feeling fine.

Eddie don't you care for me any more if not I wish you would tell me, because my heart is broke. Do you remember the other night when you were sitting on mother's lap, Singing that pretty song and making eyes with me, now you know that I love you, Don't you think so. I know you are a married man, but still, we can love and spoon, in the parlor Friend you know we get plenty of pints when you come down to see me, and you go home to your wife and sleep well.

Eddie my birthday was yesterday and I thought I would see you but I got left.

Exhibits.

Say Eddie, you feeder H. D. is a pretty good looking fellow from what I hear, give me a knock down to him Dear Eddie. Your own wife to me that you were a Hell of a good guy, bald headed, nosey but in at other people business, when not wanted.

Say Dear wait till we get married and you can buy me a motor car, diamond ring and lots of other things, and I know you have lots of money and I am going to pull your leg for you.

I remains Yours

Faith, Hope, and Charity.

The little girl around the corner.

EXHIBIT C. 3.

N. W. B.

Letter—Dated Aug. 10/14.

Enclosed find check $23.00, $17.00 and $6.

ERNEST.

EXHIBIT C. 11.

N. W. B.

Postcard—Post marked Butler, N. J., Sept. 18, 1914. Addressed to Mr. Ernest Smith, Boonton, New Jersey.

Hello Ernest.

How have you been all this time. Oh! how we do miss you this Summer. No more parties or chicken suppers. Why not come to see us sometime.

NORA.

EXHIBIT C. 12.

N. W. B.

Postcard—Post marked Butler, N. J., Sept. 18, 1914. Addressed to Mr. Ernest Smith, Boonton, New Jersey.

Hello Kid.

Where have you been keeping yourself all Summer. We were so disappointed in coming back and finding all our old chums had left. It seems so dreary here. No more of those good suppers at the barn. Make a call sometime.

DELIA.

Exhibits.

PETITIONER'S EXHIBIT.

(Not marked.)
(Translated.)

Mrs. Anno or Annie:

I cannot speak English, so please tell Mrs. Canfield that Mr. Smith hit in the face for nothing, in the other house (or next house). He has another girl. Rises early, coughs in the window and she to him. Waves her handkerchief. His wife he calls a whore; with matches he burns towards himself; the girl has like signs, that this is her. I had to play like a fool; she is towards him good, and he towards her like a dog.

Exhibits.

EXHIBIT P. 2—MAY 18, 1918.

SEASON 1910.
HOTEL REGISTER.

Money, Jewels and other Valuable Packages must be placed in the Safe in the Office, otherwise the Hotel will not be responsible for any loss.

Date	Name	Residence	Room	Time of Arrival	Time of Departure
April 16—	Louis Baltiz and wife,	Brooklyn	14-15	10:15 P. M.	April 17 11 A. M.
May 20—	G. W. Ward and wife		15 wife	6:20 P. M.	May 21 9 A. M.
May 29—	Louis Baltiz and wife,	Brooklyn	12-14	8:50 P. M.	June 1st 7 A. M.
June 1—	Anthony Ponell and wife		15	3:30 P. M.	8 P. M.
June 3—	Mrs. William Rambriglet and nephew		6	9:10 P. M.	June 4th 2 P. M.
June 5—	Geel Schreiner and Mrs.		6	11:30 P. M.	
June 9—	Apargan M. Willus		4	3:30 P. M.	June 10th 11 A. M.
June 10—	Mrs.-Mr. Addison, child,	Passaic	12	4:10 P. M.	June 12th 11:20 A. M.
June 11—	M. Miller and wife,	Jersey City	6	4:45 P. M.	June 12th 10 A. M.
June 11—	Louis Baltiz and wife,	Brooklyn	15-11	9:30 P. M.	June 12th 7 A. M.
June 14—	George Silver, N. Y. and Mrs. Lillian Silver		15	3:35 P. M.	June 26th 1:55 P. M.
June 24—	James Jones, and wife,	Boston	14	6:10 P. M.	June 25th 1 P. M.
June 24—	Arthur Lyman and wife		10	11:05 P. M.	June 25th 3:20 P. M.
June 29—	Wm. N. Edward & wife,	Summit, N. J.	14	3:25 P. M.	July 4th 12 A. M.
June 29—	H. Frederick and wife Harold Frederick		12 10	4:10 P. M.	9 A. M.

Ella S. Smith, Petr.,
and
Ernest N. Smith, Deft.,
Ex. P. 2, iden. May 18, 1918, N. W. B.,
Special Master.

IN CHANCERY OF NEW JERSEY.

Between

ELLA S. SMITH,
Petitioner and Cross-Defendant,

and

ERNEST N. SMITH,
Defendant and Cross-Petitioner.

CONTINUATION of testimony taken in the above entitled cause, by consent, before Nicholas W. Bindseil, a Special Master in Chancery of New Jersey, at the office of Messrs. King & Vogt, Morristown, New Jersey, on Monday, February 10th, 1919, at 7:45 P. M. in the presence of Mr. Carl Vogt and Mr. Harold A. Price, of King & Vogt, for defendant and cross petitioner, and Mr. Elmer W. Romine, for petitioner and cross defendant.

It is stipulated and agreed by and between the counsel for the respective parties that the testimony may be taken stenographically by the Master and afterwards reduced to typewriting, the signing of the testimony being waived.

HAROLD A. PRICE, heretofore sworn, recalled for further

Direct examination by Mr. Vogt.

Q You are a member of the law firm of King & Vogt, solicitors of the defendant, Ernest N. Smith, in this case? A I am.

Q And you are acquainted with Mr. William H. Lyons, who has been mentioned in the testimony? A I am.

Q Will you state, please, whether any promises of any kind or any payment of money or promise of anything of value was ever made to William H. Lyons for the affidavit which he made in this case, and which has been introduced in evidence? A There has not by me, nor any other member of the firm, to my knowledge.

Q Did Mr. Lyons ask you to pay him any money or to give him anything of value for making such affidavit? A He did not.

Q Have you paid Mr. Lyons any money for anything that he may have done in this case? A I have not.

Harold A. Price, cross.

Q Do you intend to pay him anything for what he has done? A I do not.

Q Will you state, Mr. Price, how you came to get in touch with Mr. Lyons and how he came to make the affidavit which he did and which has been marked in evidence by us? A I received a telephone call one day from Mr. Smith, our client, in which he told me of a visit of Mr. Lyons to a Mrs. Peer, in Boonton, to whom Mr. Lyons had made certain statements. I went to Boonton and saw Mrs. Peer and Mrs. Decker together, and they related to me in detail the story which had been told to them by Lyons, which covered actions of Lyons while with Mrs. Smith. I returned to Morristown and got in communication with Mr. Lyons and asked him to come down to the office, and at this office I told him that I had seen Mrs. Peer, had heard from her the story that he had told her and Mrs. Decker, and that I wanted to know whether the story he had told her and Mrs. Decker was true; he said it was, and I asked him if he would be willing to make an affidavit covering the facts generally that he had told Mrs. Peer and Mrs. Decker; he said he would, and he did so.

Q What, if anything, was said by Mr. Lyons as to his willingness to testify in this case and support the statements which he had made in his affidavit? A If I recollect correctly, he said he would be willing to testify as to his actions with Mrs. Smith, except that he didn't want to testify as to any act of adultery in New Jersey.

Q He didn't want to testify in New Jersey? A That is, he didn't want to testify in New Jersey.

Q Was the story set forth by Mr. Lyons in his affidavit which we put in evidence substantially the story which Mrs. Peer had related to you? A It was, Mrs. Peer and Mrs. Decker together.

Cross examination by Mr. Romine.

Q Was this affidavit that Mr. Lyons made up for the purpose of making application for the custody of the child primarily? A No.

Q What did his attitude seem to be toward Mrs. Smith at the time he made the affidavit? A I don't know as I can exactly say; I gathered from what he told me, that there had been some altercation between him and Mrs. Smith.

Ernest N. Smith, direct.

Q And that he was not on friendly relations with her at that time? A I should say that that was so, although he didn't say anything to me about it.

Q In one part of your testimony I think you stated that he accompanied you to some place in Coney Island? A That is right.

Q Did you pay his expenses for going down there? A I recall paying a tube fare or subway fare from Manhattan to Coney Island; I forget whether I paid the fare from Morristown to Hoboken or not; I am not sure about that. The tube fare I refer to was ten cents, I think, and ten cents coming back.

Q Mr. Lyons in giving this affidavit didn't want to involve himself in any wrongdoing, did he? A I don't know.

Q You stated he didn't want to testify, didn't you? A He said he didn't want to testify in New Jersey as to acts of adultery between him and Mrs. Smith.

Q And in the affidavit he made no mention of any act of adultery, did he? A If I recollect correctly, not specifically, no.

Q Don't you recall that Mr. Lyons didn't want to make any statement that would involve him or his family? A No, he didn't say anything about that, except as I have stated about the testimony in New Jersey.

Q Was the affidavit prepared by you the same night that he called to see you at the office? A Yes, I know it was.

Q (*By Mr. Vogt.*) The affidavit was written out on the typewriter by you? A Yes.

ERNEST N. SMITH, heretofore sworn, recalled for further

Direct examination by Mr. Vogt.

Q You are the defendant and cross-petitioner in this case, Mr. Smith? A I am.

Q Do you know William H. Lyons, whose name has appeared in this testimony? A No, I don't know him, only as I saw him in the court room.

Q The court room at Newark in the trial of this case? A Yes, that is the only time I have ever seen him.

Q Would you know him if you saw him now? A I don't know, only from that photograph here I recognize him; I don't know that I would recognize him if I saw him in the street.

Q Did you ever have any communication with him about

this case? A He called me up once on the telephone and wanted to make a date with me to see him, and I told him I was going to eat in a restaurant, I was working that night, at seven o'clock, and I would see him there, and a half hour later—he called me up about four o'clock; about half-past four he called up and said he couldn't meet me at all, and from the way he was talking over the phone I think he was drinking; that is the way his voice sounded to me; that is the only communication I have ever had with him.

Q He called you up at your New York office? A Yes.

Q Have you ever paid him any money for any service that he has rendered in this case? A None whatever.

Q Have you ever promised to pay him anything? A None whatever.

Q Have you ever given him anything of value other than money? A I have not.

Q Do you eve intend to pay him anything? A I do not.

Q Did you ever ask him to represent you in this matter or tell you anything that he might know about the case? A No, I never talked to him.

Cross examination by Mr. Romine.

Q You say you never talked to him; you mean outside of talking to him on the telephone? A Just that couple of minutes on the telephone is the only time I ever spoke to him.

Q Did he say when he called you up what he wanted to talk to you about? A No, he didn't; he said "I want to see you and talk to you"; I told him go and see my lawyer; "No," he said, "I want to see you," and I said, "I will be in a restaurant at seven o'clock tonight eating and while I am eating my dinner you can talk to me."

Q How did you happen to say to see your lawyers; had he spoken about anything with reference to the case? A No, I supposed he wanted to see me about the case, and I simply said, "Go and see them; if you want to see anyone, why, talk to them."

Q Did he mention that he wanted to say anything about Mrs. Smith? A No, he simply remarked, "I would like to see you." Oh, yes, I do remember now, he said that Mrs. Smith was going west and if I wanted to get the child, I would have

to get her soon; that is the way he spoke; he said, "I want to talk to you." He said she was going west and he wanted to know if I knew it, and I said, "No, I knew nothing about it."

CARL VOGT, sworn according to law, on his oath says:

Direct examination by Mr. Price.

Q You are a member of the law firm of King & Vogt, solicitors for Mr. Smith, the defendant? A I am.

Q Do you know William H. Lyons? A I do.

Q At any time in the matter of this Smith case have you ever offered to pay him any money for any services he might have rendered? A I have not.

Q Did you make any promise to pay him any money? A I have not.

Q Or have you paid him any? A I have not.

Q Do you expect to pay him anything for any services he may have rendered in the matter? A I do not.

No cross examination.

Opinion.

Submitted March 3rd, 1919. Decided March 15th, 1919.

Filed March 20, 1919.

Mr. Elmer W. Romine for petitioner and cross-defendant.

Messrs. King & Vogt and Mr. Harold A. Price for defendant and cross-petitioner.

FOSTER, *V. C.*

About October 25th, 1916, conclusions were filed by me in this cause in which a decree was advised in favor of petitioner on the ground of extreme cruelty. Thereafter, in December, 1916, defendant presented his petition in which he alleged that he had learned since the hearing of the case, that during its pendency petitioner had been guilty of improper conduct with one William H. Lyons, and thereupon the entry of the decree in petitioner's favor was stayed, and leave was granted to defendant to file a cross petition for divorce on the ground of adultery alleged to have been committed by the petitioner with one William H. Lyons, at various places and at various times between April

20th, 1915, and July 4, 1916; and the case was re-opened and evidence submitted in support of the allegations of the cross petition. The petitioner offered no evidence and her counsel informs me that about the time the case was re-opened, she became broken in health and friends provided money for her to go to Kansas City, and she has written that for the first time in years she is happy with her child and that her mind is at rest and that she will have nothing more to do with this case.

In support of his charge defendant has filed several affidavits, including one of William H. Lyons. These affidavits were taken without notice to Mrs. Smith or her counsel, and I am at a loss to understand why they were filed or are relied upon in any way, and I have ignored them in my consideration of the case.

From the evidence offered, it appears that while the case of the petitioner against the defendant was pending and being heard, she and her counsel employed a detective named William H. Lyons to obtain evidence against her husband and to protect her and her little girl, as she feared that her husband would attempt to take the child from her. Lyons called on her at her home frequently, sometimes daily, both in the day time and at night, and she told several of her neighbors that he was a detective whom she had employed, and who was preparing papers for her; that she was assisting him in his detective work and that she and her father, who lived with her during part of this time, had employed him as a guardian for herself and child.

Sometimes Lyons would be accompanied by Mr. Romine, petitioner's counsel, and sometimes the latter would call on petitioner and take Lyons away with him, and while these visits were being made, Mrs. Smith is said to have told one of her neighbors that she thought a great deal of Lyons and would marry him if he were not married. While petitioner was living at Irvington with her father and child, under the name of Sutphen (which it is claimed is her maiden name which she assumed for the purpose of concealing her whereabouts from her husband), Dr. Simmons treated Lyons at her home for a boil on his chin; on two occasions, between eight and nine o'clock at night, he found Lyons in bed, clothed in a bathrobe, and that Mrs. Smith told him her name was Smith, and that Lyons was a state detective whom she was assisting in his cases; and he was introduced by petitioner to her father.

Opinion of Vice-Chancellor.

Petitioner was away from her home in Morristown for several days prior to and including July 4, 1916, and she told one of her neighbors that she had spent the time in New York and Coney Island, and it appears that on June 29, 1916, a man and woman engaged a room at the Oriole Hotel, Coney Island; they are said to have registered as "Wm. N. Edwards and wife, Summit, N. J.," at about 3:25 P. .M. and to have been assigned to room No. 14, and that they remained at this hotel until noon of July 4th. The registration was made by Mr. Edwards, and the woman who had charge of the registry and office states that the hotel had either thirteen or fourteen bedrooms, that it was located on the beach and that she also attended to the bath houses; that she knew Mr. Edwards because about two years before, in 1914, he had called at the hotel and got acquainted with a few people in the hotel, and that he then had his young nephew with him; that on his arrival he introduced the woman with him as his wife; and from photographs she identified Mrs. Smith as the woman, and Mr. Lyons as the man.

The registry book also shows that on September 14, 1914, Charles Edwards and wife of Summit were assigned to room No. 14, and again on September 18, 1914, to room No. 14, and that on October 5, 1914, Charles Edwards and wife of Summit registered again, but the woman in charge of the registry did not know if this were the same Edwards who registered in 1916 and was assigned to room No. 14.

This witness was interviewed by Edwards and one of Mr. Smith's attorneys in January, 1917, and she was shown the photograph of a woman whom she identified as Mrs. Edwards, and who it is claimed was Mrs. Smith; and Edwards then asked her if she remembered the time that he and his wife had stopped at the hotel, and when she replied she did, he asked her to sign an affidavit to that effect, which she did.

The chambermaid who had charge of room No. 14 identified Edwards and the woman who accompanied him from photographs of Lyons and Mrs. Smith, although she states she forgets his appearance, and the best of her recollection is that she guesses the photograph of Lyons shown her is that of the man Edwards; she saw them in the room the day they arrived, and saw them go in and out. Mrs. Reilly, who had a candy stand opposite the hotel, states that in the summer time, she does not state the year, Mr. Edwards introduced a woman to her as his wife,

when they bought some candy from her. She recognizes Lyons and Mrs. Smith's photographs as Mr. and Mrs. Edwards. She had seen Edwards twice before this occasion, possibly in 1914, when they had refreshments and drinks at the bar with her husband, but never had any conversation with him.

It further appears that about the conclusion of the former hearing Lyons telephoned Mr. Smith asking for an interview and informed him that Mrs. Smith was about to leave the state with her child.

It also appears that Lyons became angry over stories which he claimed Mrs. Smith was circulating about him and declared he was going to help Mr. Smith, because he had money, and Mrs. Smith was still indebted to him for what he had done for her in the case. Lyons is said to be a fugitive from justice, and counsel on neither side have been able to locate him.

This summary of the proof offered to establish the allegations of the cross petition shows an entire absence of direct evidence of the offenses charged, and it is subject to this criticism: If Lyons was the man who registered at the hotel as Edwards in 1916 and was the same man who was at the hotel with his nephew, a small boy, in 1914, no reason is offered to explain why he assumed the name of Edwards in 1914 when unaccompanied by a woman. One of the photographs of Mrs. Smith, whom the housekeeper, chambermaid and Mrs. Reilly identify as Mrs. Edwards, was taken, Mr. Smith states, about ten or fifteen years before, and admittedly is not a good representation of her at the present time; and yet none of these witnesses testifying in May, 1918, have the slightest doubt of the identity of the woman whom they saw only for a few brief minutes, and in the most casual way, nearly two years before, and they are unable to recall any detail of her dress or appearance, or baggage, and only surmise that Edwards and the woman with him actually occupied the same bedroom.

The entry of the registry was written by the man; whether it was done in the presence of the woman does not appear; the registry sheet shows that the expression "& wife" was not written on the same line with the name "Wm. N. Edwards" and the address "Summit, N. J.," but was interlined between the name "Edwards" and the words "Summit." Why was this interlineation necessary? Had Lyons, as Edwards, forgotten that he was accompanied to the hotel by a woman? The name

"Wm. N. Edwards" and the place "Summit, N. J., are written in a large bold hand and were apparently written at the same time; the expression "& wife" is written in much smaller letters and it was so inconspicuous that it was overlooked by me when I first examined this page of the register.

It is hardly reasonable to suppose that Lyons, as Edwards, had forgotten the woman he is said to have brought to the hotel, or that he did not consider it necessary to register her; he had sufficient space on the line on which he wrote his fictitious name and address to have entered the fact that a woman passing as his wife was with him; that he failed to register her except as an afterthought, causes me to suspect that the thought of having a pretended wife with him was very much of an afterthought; in fact, so long after, that I believe the interlineation was not written by Lyons until after he had his quarrel with Mrs. Smith. This was easily possible, as the hotel people were apparently on very friendly terms with the supposed Edwards, and knew that he was a detective; the registry book was very loosely kept and no safeguards were apparently provided that would prevent Lyons from interlining the expression "& wife" at any time and on any page of the register. It is also significant that the parties who registered as Edwards and wife of Summit on three occasions in 1914, should be assigned to room No. 14, which Lyons and Mrs. Smith, as Edwards and wife, are said to have occupied in 1916, and little, if any, weight can be attached to Mrs. Reilly's testimony or her identification of Mrs. Smith as the woman Edwards introduced to her as his wife.

Where an offense of this kind is sought to be established by other than direct evidence, the rule is well settled that the circumstances relied on to prove adultery must show both an inclination and an opportunity to commit the offense. The only evidence offered to show such an inclination on the part of Mrs. Smith is the fact that Lyons was a frequent visitor at her home, and that she seemed, to some of her neighbors, to think a great deal of him, and that she told one of these neighbors that if she could, she would marry Lyons if he were free, and not married.

Lyons' visits to Mrs. Smith are explained by the testimony of her counsel who employed him and by her frequent statements to her neighbors that he was guarding the little girl so the father could not kidnap her. The alleged remark to her neigh-

Decree.

bor about marrying Lyons is not explained, but as I saw Mrs. Smith upon the stand and observed her in the court room at the former hearing, she impressed me as a nervous, high strung, temperamental woman, anxious for sympathy, and keenly appreciative of any kindness shown her, and she did not impress me as a woman of immoral tendencies or inclinations.

There are, without doubt, certain suspicious circumstances in the case, but mere suspicion is not sufficient to justify a decree. The proof is not convincing that Mrs. Smith ever had the inclination or the opportunity to commit adultery with Lyons, or that she was ever at Coney Island with him, and his conduct and his failure to appear and testify, together with the questionable hotel registry and the unsatisfactory identification of the parties from their photographs, made the case too doubtful, and with such doubts in mind, I do not feel justified in branding this woman as an adulteress.

I will therefore advise that the cross petition be dismissed and that a decree be granted to the petitioner on her petition for cruelty.

Decree.

Filed April 16th, 1919.

This cause coming on to be heard in the presence of Elmer W. Romine, of counsel with the petitioner, and Messrs. King & Vogt, of counsel with the defendant, on petition, answer and oral proofs taken in open court, and before Nicholas W. Bindseil, Special Master, 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 Fourteenth day of May, A. D. one thousand nine hundred and two, and that the defendant has been guilty of extreme cruelty towards the petitioner so as to render it unsafe and improper under existing circumstances for her to cohabit with him or to be under his dominion and control and that at the time the cause of action for divorce therefor arose, the said Ella S. Smith and Ernest N. Smith were bona fide residents of this State and that they have continued so to be down to the time of the commencement of

Decree.

this action, and it further appearing that jurisdiction therein has been acquired by personal service of process upon the defendant within this State; and it appearing to the Court that the defendant has not sustained the truth of the allegations of his cross-petition and is not entitled to the relief therein prayed for:

It is thereupon, on this Fifteenth day of April, A. D. 1919, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, 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 the petitioner, Ella S. Smith, and the defendant, Ernest N. Smith, be separated from bed and board forever; provided that in case of a reconciliation at any time hereafter the parties may apply for a revocation or suspension of this decree, and it is hereby declared to be the duty of the parties to live chastely during the separation and that the re-marriage of either party in the lifetime of the other will be criminal and an act void in the law.

And it is further ordered, adjudged and decreed that the question of the custody of the child be reserved for the further order of the Court.

And it is further ordered, adjudged and decreed that defendant pay to the petitioner or her solicitor the costs of this suit to be taxed, and also a counsel fee of six hundred dollars, in full for all services and disbursements, and that she have execution therefor, according to the practice of this court.

And it is further ordered, adjudged and decreed that the defendant, Ernest N. Smith, do pay to the petitioner, Ella S. Smith, or to her solicitor, Elmer W. Romine, the annual sum of Seven Hundred and Eighty Dollars, payable in equal monthly installments, that is to say, that within ten days after service of a copy of this decree upon him, or his solicitors, the defendant, Ernest N. Smith, do pay to the petitioner, or her solicitor, the sum of $65.00 as and for an allowance for the current month of April and that the said defendant do pay to the petitioner or her solicitor the sum of $65.00 on or before the fifteenth day of each and every month thereafter, and until the further order of the Court.

Decree.

And it is further ordered, adjudged and decreed that a copy of this decree be served forthwith upon the defendant or his solicitors, and upon his default to pay the said sum or sums herein mentioned when the same shall fall due according to this decree, that the petitioner be at liberty to apply to this Court to award and issue process of sequestration, or for such other process or order as this Court may, under the circumstances, deem equitable and just, and as may be consistent with the power and authority of this Court.

And it is further ordered, adjudged and decreed that the counter-claim or cross-petition of defendant be dismissed.

E. R. WALKER,
C.

Respectfully advised,

JOHN E. FOSTER, *V. C.*

A true copy.

JESSE R. SALMON,
Clerk.

Service of decree, taxed costs ack'd April 24, 1919.

KING & VOGT.

Notice of Appeal.

Filed May 16, 1919.

To Elmer W. Romine, Solicitor of Petitioner, Ella S. Smith.

TAKE NOTICE, that the defendant, Ernest N. Smith, appeals to the New Jersey Court of Errors and Appeals from the decree entered in the Court of Chancery on the 15th day of April, 1919, and from each and every part thereof.

KING & VOGT,
Solicitors for Appellant-Defendant, Ernest N. Smith.

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

CARL V. VOGT,
Of Counsel.

Petition of Appeal.

Filed May 21, 1919.

New Jersey Court of Errors and Appeals

Between	*On Petition for Divorce and on Counterclaim for Divorce.*
ELLA S. SMITH, *Respondent-Petitioner,*	
and	*On Appeal from the Court of Chancery.*
ERNEST N. SMITH, *Appellant-Defendant.*	*Petition of Appeal.*

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

The petition of Ernest N. Smith, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of New Jersey, bearing date the 15th day of April, 1919, wherein the said Ella S. Smith was petitioner and the said Ernest N. Smith was defendant in this respect to wit: that the said decree adjudges that the defendant has been guilty of extreme cruelty towards the petitioner so as to render it unsafe and improper for her to cohabit with him or to be under his dominion and control, and that therefore petitioner was entitled to a divorce from bed and board of defendant and that she was entitled to a counsel fee of $600 in full for all services and disbursements and that defendant pay petitioner alimony of $780 per year until the further order of the Court, and in and by which it was further adjudged and decreed that the counterclaim or cross petition of defendant praying for an absolute divorce on the ground of adultery be dismissed.

And your petitioner hereby appeals from the said decree of the Chancellor and from each and every part thereof upon the following grounds:

Petition of Appeal.

1. That the same is erroneous in that the weight of evidence was opposed to the decree of the Chancellor adjudging that defendant had been guilty of extreme cruelty toward petitioner and that she was therefore entitled to be divorced from his bed and board.

2. That the same is erroneous in that petitioner was not entitled to a divorce from the bed and board of defendant and was therefore not entitled to counsel fees or permanent alimony as awarded by the decree of the Chancellor.

3. That said decree is erroneous in that there was no evidence warranting the finding of the Court of Chancery that defendant had been guilty of extreme cruelty to petitioner and that she was therefore entitled to a divorce from the bed and board of defendant.

4. That the said decree is erroneous in that it adjudges that petitioner was not guilty of adultery and that the cross petition or counterclaim of defendant filed for an absolute divorce on that ground should be dismissed.

5. Because said decree was for divers other reasons illegal and erroneous.

Your petitioner therefore prays that the said decree be reversed, set aside and for nothing holden, and that your petitioner may have such further relief in the premises as to your Honorable Court may seem meet.

KING & VOGT,
Solicitors for Appellant.

CARL V. VOGT,
Of Counsel.

Answer to Petition of Appeal.

Filed.

The answer of the respondent to the petition of the appellant:

The respondent admits it to be true that a certain final decree was on the fifteenth day of April, A. D. 1919, made and entered in the Court of Chancery, as in the petition of appeal is stated; but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that said decree as to the matters complained of by the appellant in his petition of appeal is agreeable to law and equity and she prays that the same may be affirmed in the particulars aforesaid with costs to be adjudged to this respondent.

ELMER W. ROMINE,
Solicitor for and of Counsel with Respondent.

58 JUN.T. 1919

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

ELLA S. SMITH,
Respondent-Petitioner,

vs.

ERNEST N. SMITH,
Appellant-Defendant.

On Petition for Divorce and Counterclaim.

On Appeal from Chancery.

BRIEF OF RESPONDENT-PETITIONER.

The defendant appeals from a decree entered on April 16th, 1919, in favor of petitioner wherein a limited divorce was granted on the ground of extreme cruelty and the counterclaim of defendant, praying for divorce on the ground of adultery, was dismissed.

Respondent filed her petition on May 3rd, 1915, alleging cruelty, and after hearings, wherein defendant urged that petitioner's complaints were the product of illusions and upon extensive arguments, on brief, the learned Vice-Chancellor filed an opinion (12) which is in part as follows:

> "Petitioner's proofs show an almost uninterrupted course of cruel and brutal treatment of her, by the defendant, for over ten years; these proofs show that the defendant has repeatedly struck, kicked, pinched and choked her; that he frequently cursed and abused her and called her vile names, and accused her of being unfaithful; that he threatened to kill her and drive her crazy; that he threatened to do her bodily injury with a revolver which he kept in his room; that he attempted to push an electric light bulb down her throat; that he taunted her about his relations with other women, that this treatment was at times of almost daily occurrences, and frequently caused petitioner to become so ill that she required the attention of physicians; that defendant manifested no affection for her, and that they have not cohabited for over a year prior to the date she left him, that the immediate cause for her leaving was an assault he made on her, cutting her neck with a glass dish."

Defendant asked leave to stay entry of the decree, alleging, on information, that petitioner, Ella S. Smith, had been guilty of adultery, with William H. Lyons (her investigator and de-

tective), since the commencement of her suit. Various allegations were laid between April 20th 1915, and July 4th, 1916, but attempt only was made in the proof with relation to the charge at Tilyou's Walk, Coney Island.

Testimony was taken at intervals for a period of nearly two years and the case finally submitted, on argument, whereupon the learned Vice-Chancellor filed his conclusions declaring that there was insufficient proof to sustain the charge and reaffirming the entry of decree in favor of petitioner.

Statement.

A chronology of the life of these parties after the marriage at Newark in 1902 has been compiled in argument by counsel for defendant, in his brief, and is also to some extent set forth in petition filed by Mrs. Smith (1) so that there is little need for repetition here.

Counsel for defendant enumerates with particularity the many complaints petitioner has made, throughout the case, against defendant with respect to the cruelty charge and acclaims that they are denied by defendant and are without corroboration and at the same time expresses the thought that petitioner was jealous and obsessed with an insane delusion. Just how counsel arrives at this conclusion is unaccounted for by the evidence except that it has been passed along as defendant's pretense or attempted excuse for his beastly conduct.

It requires but little reference to discover from the evidence the conduct exhibited by defendant toward petitioner which was slowly wrecking her in mind and body, which was gradually sapping her strength and vitality and but little effort need be expended to reap from the testimony the many corroborating facts and admissions of defendant.

Considering the length of the record I shall in as brief a way as possible, refer to the evidence which justifies the decree for cruelty, under the following divisions:

(1) Defendant lost affection for petitioner and associated with other women.

(2) Petitioner was cursed at, abused and cruelly treated by defendant, causing an impairment of her health.

ARGUMENT.

I.

Defendant lost affection for petitioner and associated with other women.

Appellant sets out references to accusations made by petitioner against defendant as to his association with women and argues the improbability of such, and that petitioner imagined improper motives and actions, thus producing herself a state of mind wherein she made unwarranted charges, provoking the abuse received from defendant. Defendant supposed a lot of things (343-368-390, l. 44).

More than half the accusations mentioned in the brief were taken from evidence given by defendant's witnesses who claimed conversations with petitioner, some of the things Mrs Smith denied ever having mentioned. *Not one of the witnesses knew whether any of the occurrences had actually taken place,* much less to assert they were provocative of the abuse administered by defendant.

In order to discredit the force of petitioner's evidence, it was urged that her relatives disbelieved her, that friends and neighbors testified against her, and defendant being a man of refinement and position, working every day, was incapable of committing the wrongs detailed.

Full discussion will follow as to the attitude of Mrs. Smith's relatives.

Others who testified were two or three close intimate friends of defendant, and an examination of their evidence clearly indicates they were endeavoring to misconstrue everything petitioner might ever have done or said and that their interest was solely to help defendant if possible. See particularly the evidence of Bauer (236-238) and Dunn (229).

On the other hand Mrs. Smith lost no friends but gained many. It was she who had the benefit of the neighbors' testimony, those who knew of the wrongs committed.

Lastly, culture and refinement are only outward appearances. Behind it all may be the black, vile, vicious, malignant, hateful spirit which often impels mankind to spurn a good woman's love and to wreak many abuses uncalled for. In the light of the convicting evidence against defendant these arguments advanced are indeed fallacious.

It is not contended every accusation is supported by corroboration. No claim was or is made that defendant was legally proven guilty of adultery. It is insisted, however, that many principal occurrences, showing defendant's relations with women, are corroborated to such an extent that when petitioner says she saw acts bespeaking defendant's flirtations and infidelity, they are not mere delusions.

After the child Audrey was born in 1906, Mrs. Smith observed that her husband was treating her coolly. She knew as only a wife can appreciate and know that something was wrong, and to support her convictions that he was associating with other women she found a letter in his pocket in the early part of 1907, which letter was produced and marked in evidence (Exhibit C. 2—476-b). The letter was signed, "Faith Hope and Charity" "The little girl around the Corner," and the letter reads as follows:

> Dear Edward,
>
> Just a few lines to let you know that I am feeling fine.
>
> Eddie don't you care for me any more if not I wish you would tell me, because my heart is broke. Do you remember the other night when you were sitting on mother's lap, Singing that pretty song and making eyes with me, now you know that I love you, Don't you think so. I know you are a married man, but still we can love and spoon, in the parlor. Friend you know we get plenty of pints when you come down to see me, and you go home to your wife and sleep well.
>
> Eddie my birthday was yesterday and I thought I would see you but I got left.
>
> Say Eddie, you feeder H. D. is a pretty good looking fellow from what I hear, give me a knock down to him Dear Eddie. Your own wife to me that you were a Hell of a good guy, bald headed, nosey but in at other people business, when not wanted.
>
> Say Dear wait till we get married and you can buy me a motor car, diamond ring and lots of other things, and I know you have lots of money and I am going to pull your leg for you.

Another corroborated incident is found in the letter from the Polish maid who worked for petitioner at Perth Amboy. This letter was written to Mrs. Canfield as Mrs. Smith was desirous of proving to her relatives the kind of a man Smith was. The letter was marked in evidence (476-d) and when translated reads in this connection in part as follows:

> "In the other house (or next house) he (meaning Mr. Smith) has another girl. Rises early, coughs in the window

> and she at him. Waves her handkerchief, with matches he burns toward himself (no doubt meaning he waves a lighted match at window as a signal), the girl has like signs that this is her."

In this blunt statement there is much that has weight in sustaining what Mrs. Smith says about her husband signalling to girls and flirting with them. It at least has the effect of excluding the idea, chargeable to Mrs. Smith, of an imaginable delusion, which counsel for defendant so deftly advances throughout the brief.

Petitioner detailed many instances when she herself found defendant with women. At New York apartment store (73), in Bayonne, Sewaren, at a house on Wright street (248), at railroad station (76), in her cellar at Boonton (334), undue familiarity with Miss Cassimer (80), found him in a compromising position with a maid servant at Woodside (66), how the maid appealed to defendant when discharged (67). The incident of Elizabeth White coming to work in Boonton with a child (111), and her having seen this woman with Smith before, her affectionate remarks to him and this woman intimating Smith had a child elsewhere and many other revolting and disgraceful scenes; finding woman's comb in his room (99), and handkerchiefs which the wash-woman refused to handle. In part these are corroborated.

Both Abram Buckbee and petitioner's father state (48-55, l. 28) Smith said *he would go with any woman he pleased,* that Mrs. Smith couldn't stop it that her folks would not stand by her, and she would have to take it.

Defendant himself admitted he went out with women at Newark (359) and at Boonton (390), that he would go with any woman he pleased (113-119).

So the story of defendant's intimacy with other women is not a myth, a dream or supposition, but there is proof that he was leading such a life, and it cannot be said the impressions which were naturally created in petitioner, the effect it had upon her mind as his wife are insane delusions.

In further support of her proof in this regard there were other letters received from women, some of which became mislaid, one in particular from Mary Zindle of Newark was intercepted, never having reached defendant and for that reason the Court would not admit same in evidence (97), but Mrs. Smith had something to back up her assertions. For instance, while

at Boonton two postal cards were delivered by mail addressed to Ernest N. Smith (274) (Exhibit C. 11 and C. 12, 476-a), all dated September 18th, 1914, post marked Butler, N. J., one signed Norah with a greeting, "Hello Ernest" and asking where he had been and how they missed him; another signed "Delia," with a greeting, "Hello Kid," inquiring where he had been, referring, that there had been no more of those good suppers at the barn. "Make a call some time."

The father, Joseph Buckbee, testified while he visited the parties at Boonton there was much signalling going on by Mr. Smith. On one occasion when they were upstairs there were three distinct knocks given and Mr. Smith excused himself, claiming that the shutter was banging (47, ll. 32 to 44). *Mr. Smith was out of the house some time.* Another occasion there was some scratching noises and Mr. Smith pretended the dog was out (48, ll. 1 to 18).

There are only two conclusions from the evidence thus referred to and that is, defendant either did have association and improper relations with women, signalled and flirted with them, with such a motive in view, or he did these things for the purpose of tantalizing and annoying Mrs. Smith. In either event it so affected Mrs. Smith's condition of health, in conjunction with the abuse, that she was compelled to leave him and it also demonstrated that he had no affection for her.

After finding the first letter and the incident in relation to the servant girl at Woodside, Mrs. Smith testified between sobs on the trial (67, l. 30):

> "I used to feel as if I would go crazy. I was alone and had no one to stand by me and see these things but myself. *My heart would get aching so and I cannot tell how I would feel so terrible. I wouldn't know what to do. I was sick and had a young baby. I couldn't do anything.*"

As the Vice-Chancellor said in the opinion (13, l. 33):

> "She was obliged to live with him; she had no place to go; she was without money and was sickly and unable to earn a living for herself and child."

Mrs. Smith's condition of health became affected to such an extent that she was compelled to go away. Her sister admits this (217) as well as Abraham Buckbee (53), corroborating the circumstances. She went to German Valley for several weeks. Petitioner said when she was leaving (74, l. 10), that she felt bad on going, thought she might not come back and she tried to kiss defendant but he repulsed her. Smith admits he refused

to kiss her (365). *While at German Valley Mrs. Smith received no letters from defendant except one* (96, Exhibit C. 3), dated August 10, 1914, as follows:

"Enclosed find check $23.00-$17.00 and $6.00.

Ernest."

No address, no words of affection shown, never a word of comfort or an expression from him to cheer her sad life. Defendant said he was too busy with his work to write her. There was apparently no place for his wife in his affections. *They were probably with the woman who stole silently to his room at nights, and who had a key to the front door and who was found by Mrs. Smith on her return* (270).

Mrs. Smith became much improved in health at German Valley and decided that she would not go back to defendant on account of his cruelty (75), but she was induced by her sister, Mrs. Canfield, to go back to the home (218, ll. 30 and 44) as defendant promised to do better.

Mrs. Smith was quite ill at Boonton, defendant refused to take her to the hospital and admits he refused to kiss her goodbye. He said he did not think there was anything the matter with her (317). Dr. Peck, however, advised the operation (152, l. 42). Mrs. Smith says she remembers sobbing her heart out at her sister's that day because of defendant's attitude toward her (87, l. 2). An operation was performed at the hospital in Newark and during the weeks she was there defendant did not call to see her once or write a letter (377). *Thus he demonstrated clearly his lack of regard for his wife.*

He would go out on Sundays with a pal of his at Boonton by the name of Schwartz (94). *They would take other women but leave Mrs. Smith at home.* Smith admits this (379); Mary Sheppard confirms the statement; Schwartz confesses other women with them (221) and as a general rule they didn't ask Mrs. Smith to go (222). She spoke with Mr. Schwartz on a Monday following one of the Sunday trips (95, l. 33) and defendant saw them, rushed downstairs and hollered to Schwartz "cut it out." Although defendant denies such a statement, Florence Brantwaithe, servant in the house, says that such a remark was made (41, l. 19), and at the breakfast table without any provocation or cause said to his wife (96, l. 5), *"I hate you. I hate you."* He also said, "God damn it, I would give anything to get rid of you." Mrs. Smith said she couldn't understand why he should get like this because Mr. Schwartz spoke to her at the window. Florence Brantwaithe does not

recall what followed. She could tell much if she desired. Probably Smith had some influence with her as he was seen by Mrs. Dean giving her money after the hearing at Newark (401).

It would seem, however, that defendant was afraid Schwartz might say something which would involve him with women. Defendant was always trying to cover his tracks and if Mrs. Smith ever found him doing wrong or accused him of his wrong doing he would claim that she was crazy the same as he did at Newark to Mrs. Nell (68, l. 30), *but Mrs. Nell told him that his wife was a good, noble woman, but that she was sick* (35, l. 35). He found out that Mrs. Nell knew something of his conduct, but she refused to talk to him except to say, "I heard enough about you," and closed the door on him (36, l. 1). What she knew could not be given in evidence because it came from her husband who was deceased (36, l. 12).

Abram Buckbee, her uncle, states that when he came to the house he found there was not much affection on the part of Mr. Smith (56).

From these short references to the testimony, corroborated as it is, there is sufficient to show a hatred and dislike for petitioner, by her husband, and his indifference was no doubt due and attributable to his association with other women. It is explanatory of his hatred, the occasions for his profane and opproprious language and the abuse to which petitioner suffered. Abram Buckbee says he was at the house in Newark when Mrs. Smith offered to kiss her husband and he would not permit her (56).

II.

Petitioner was cursed at, abused and cruelly treated by defendant, causing an impairment of her health.

Contemporaneous with defendant's apparent indifference toward his wife came the use of violent and indecent language.

He began gradually by saying little mean things that cut, then fault finding (107, l. 34); his meals were either too hot or too cold (53). He took sudden turns. He began to dislike his home, wish he never married (143), things grew repulsive and annoying to him, he disliked to hear his wife's voice, the sight of her raised his wrath. He was ready and willing to denounce her character, say anything, curse and swear, all

because of the growing hatred urged on by a dual life or attraction elsewhere which had gained his affections.

At Woodside Mrs. Smith asked him when she should have dinner and he replied, "None of your God damn business." Then followed the striking. One morning he came up to petitioner, was angry for some unknown cause, put both his hands around her neck, shook her head (65, l. 20). Defendant admitted having a tussle but says all he did was to hold her hands (301); says Mrs. Smith's brother told him to give her beating (302, l. 25; 308, l. 23).

While at Mt. Prospect avenue he would pinch her arm and slap her (68, l. 10). Joseph Buckbee, petitioner's father, said Mr. Smith would come in late at night, when she would ask him a simple question he would say (44, l. 2), "It is none of your God damn business." Smith admits coming in late at night (352-340). The witness said on another occasion he would damn her and curse and swear at her. And the question was asked, "What would she say to him?" and the witness said (44, l. 16), "*She would say nothing, she would look as though* she could sink through the floor." Said Smith called her a "God damn bitch" (44, l. 18).

The testimony of Abraham R. Buckbee clearly shows the attitude of Mr. Smith toward his wife (54, l. 23). If she asked him a simple question he replied, "None of your God damn business."

The witness said that Mrs. Smith did not quarrel with her husband, but that nearly every time he went there defendant was quarreling with his wife (52, l. 25).

Abraham Buckbee says that while Mrs. Smith was in Newark she was in poor health, nervous and had heart trouble and that he stayed with her when Mr. Smith was away. *Although not a physician, he knew it resulted from defendant's treatment* (53, l. 32). The witness also said (52), that on one occasion when Mr. Smith was cursing at his wife, she said, "*Ernest, if you keep on that way you will drive me crazy,*" and he said, "*That is what I mean to do and get clear of you.*"

Mr. Buckbee said that many times Mrs. Smith would be sick in bed and defendant would be finding fault with her (53).

While at Newark Mrs. Smith said it was a repetition every day of cursing; that defendant threatened to set her crazy, that he did not care for her but another.

Mrs. Smith stated her husband began to call her a whore and other vile names. It is not always possible to get corroborative evidence of misconduct and abuse in the home, because the parties are somewhat secluded, but fortunately in the letter from the Polish girl heretofore mentioned there is something about defendant's conduct and in the translation it reads as follows (423, l. 30; Exhibit, p. 476-d):

> "Mr. Smith hit in the face for nothing. *His wife he calls a whore.* SHE IS TOWARDS HIM GOOD; *and he towards her like a dog.*" (Italics and caps ours.)

A very humble expression, but nevertheless remarkably characteristic of the defendant's disposition. Mrs. Canfield having received the letter had some proof and opportunity to stand up in behalf of her sister, had she so desired.

During these days of abusive treatment and cursing, Mrs. Smith said (71):

> "I can't describe how my heart would feel. Sometimes it would feel as if it was just a big heavy stone and at times I cried from morning until night over Mr. Smith's actions. I was extremely nervous after these spells."

The defendant pretended that his wife was insane and he wanted to have her so adjudged and Dr. Cortrell refused and said in his opinion he didn't see anything that would indicate insanity.

The doctor explaining Mrs. Smith's condition said (157, l. 22):

> "You would go down there and she acted as if she had been in some trouble, hysterical spell like, the heart was beating very rapidly, and she would probably tell you some little trouble she had and might work up in this way, and if you gave her something to quiet her nerves she would be all right until the next time you would call."

Smith admits striking his wife at Perth Amboy (291, l. 10), and there is the incident of the horseshoe nail placed where Mrs. Smith would step on it (69-70). Of course, there is no direct evidence of who put the nail there, but if Mr. Smith was desirous of getting the wife out of the way, as Abram Buckbee testified he said he did, and if he was anxious to have her adjudged insane as Dr. Cortrell said, it is only reasonable to believe that he would do almost anything to accomplish his purpose.

He had called his wife all the vile names he could think of; had classed her as a whore, he defiled her character, and as

was said in the case of *Black* v. *Black,* 30 N. J. Eq., at page 221:

> "Any husband whose sense of decency and justice is so completely destroyed as to be able, deliberately, to set on foot, a scheme to fasten upon his wife a false charge of adultery is, in my estimation, capable of doing anything, a cruel heart can desire, or a brutal mind invent, and any woman whose life must be spent in the seclusion of his home and whose person is subject to his power occupies a position of such constant and extreme danger as to have a right to the protection of the law whenever she demands it."

So we are not surprised if Mr. Smith were the individual who deliberately set on foot the scheme to poison his wife while they were living at Old Boonton Road. There is no doubt but that Mrs. Smith suffered from poisoning (158). Mrs. Smith says the doctor told her (269, l. 42), *"This time you have escaped. The world is too wide for you to stand anything like this."*

The doctor does not remember the remark and he would hardly be expected to although *he does not deny it was made* (159, l. 14). The circumstances surrounding this occasion are quite important. The defendant refused to call a physician until finally some of the neighbors were notified (100).

When Mrs. Smith was leaving for German Valley she said her husband struck her when she attempted to kiss him and that he threw the child on the car steps (74). *Mr. Smith admits that he quarreled with his wife on this occasion and admits that he refused to kiss his wife* (365-366). He also says the little girl fell on the steps because he did not hold her (366, l. 40).

Mrs. Smith was so upset because of his behaviour that she cried all the way on the train (74, l. 18).

Her sister, Mrs. Canfield (217) and Abram Buckbee (53, l. 35) and others noted a remarkable change in her condition after she had a rest at German Valley, and Mrs. Smith said she felt much better (75, l. 4) so that it was then demonstrated that the defendant's conduct did have an affect upon her health.

Mrs. Smith said after they had moved to Boonton, defendant took a change and reverted into his ugly spells again. While living at Washington street he called petitioner (79, l. 24) "A God damn bitch," said she was not his wife.

Mr. Smith admits he said words to this effect (360-372). The father of Mrs. Smith frequently heard him pass this re-

mark (47, l. 12) and it would naturally upset Mrs. Smith having such flaunted in her face in the presence of neighbors.

On another occasion defendant flew into a rage over Sunday papers and attempted to throw a book at her (81), but the maid, Carrie Scott, interfered. The testimony of Carrie Scott or Scherer could not be taken, but it was admitted by defendant's counsel (33) that if produced she would testify to this act and that she stood between them. The defendant himself admits that he had an argument with his wife at this time. Mrs. Smith said that she was in constant fear of her husband, if she asked him an ordinary question he would curse and swear.

The father, Joseph Buckbee, said (47) Mr. Smith, while they were living at Boonton, when at the table would call his wife a "God damn bastard bitch," without any reason; said her folks would not have her home, just had to take it. *Smith admits this* (365, l. 14).

Abraham Buckbee says that when Mr. Smith cursed and swore at his wife and called her a "God damn bastard bitch" she would make no reply, but would sit and look at him and then he would say, "What the hell are you looking at now?" Smith admits this (342). He says her health was not good, that it kept getting worse. *She worried over these things and was nervous.*

Mrs. Smith says of her condition on this occasion (83, l. 29):

> *"I was terribly nervous and sick."*

Mr. Smith threatened to shoot Mrs. Smith, himself and little girl (83-99). Defendant admits he had a gun and one time was putting in cartridges (380, l. 36).

In the case of *Close* v. *Close,* 25 Eq., page 526, Van Syckle, *J.,* in rendering the opinion of the Court of Errors and Appeals (at page 527), says:

> "The injury may be either to the safety of the person or to the health of the aggrieved party, and it is not necessary that it be actually inflicted; it is sufficient if it be reasonably apprehended. Nor can any rigid rule be prescribed to define the extent of the violence, actual or apprehended, which will justify judicial interference.
>
> "Slight abuse of the person, accompanied by opprobrious language, which would imperil the health of a refined and delicate wife, might be endured with comparative unconcern by one of a less sensitive nature."

See the further opinion on pages 528 and 529.

Defendant admits in the evidence and brief that Mrs. Smith was in delicate health at the time of the marriage. Dr. Dougherty says her condition grew worse (322) and was, no doubt, caused by the defendant's abuse (322, l. 12).

Mrs. Tompkins, the washwoman, says that she heard Mr. Smith say that he would set his wife crazy (58, l. 30), and that he would go to jail for two years if he could smash her face. The witness also said she heard the defendant say he hated Mrs. Smith (59, l. 1), and that Mrs. Smith often had sick spells (58, l. 44), after these remarks and occurrences. This witness was reluctant to give evidence, and undoubtedly held back many things, as she was still working for Mr. Smith after petitioner left.

When Mrs. Smith's people came to visit her, she said Mr. Smith was "perfectly lovely," and after the folks went away he would start in and curse her for no reason whatever (84).

He was a typical Dr. Jekyl and Mr. Hyde.

He didn't want the world to know of his conduct and abuse to his wife, as he always posed as a clean, honorable man. No doubt, it was hard for Mrs. Smith's people to believe these things when they found him so congenial. *Yet they were unwilling to come unexpected to see for themselves.* They didn't want to be shown that he was so inhuman, so cruel and hateful (214, l. 34; 174, l. 20; 166). After all, Mrs. Smith's brother knew that her life was a miserable and unhappy one. Lott E. Buckbee admitted having received a letter from Mrs. Smith in which she complained of her husband's attitude, said she couldn't stand it, would have to leave, which letter was producel (174) and marked Exhibit A. 1. (476-a). He said he knew that her life was a miserable one on account of defendant's abuse (174, l. 38).

Mrs. Canfield, Mrs. Smith's sister, knew of these troubles; knew that it was Mr. Smith's fault. *She said that Mrs. Smith grieved and cried to her many times about defendant's conduct* (215, l. 38), and Mrs. Canfield admitted that Mrs. Smith's condition of health would be much better if she would leave and separate from him (219).

In the case of *Costell* v. *Costell,* 69 Eq., page 218, there is dictum of the Court that if a husband has lost his affection for his wife and conceived a hatred for her, there is little probability that his feelings will ever soften and their further association might be dangerous, and for that reason a divorce for extreme cruelty should be granted.

Mrs. Smith details other occurrences at Washington street, Boonton, wherein the defendant called her a whore and a bitch and a dirty bastard; said that it was a continual occurrence. This is admitted by defendant in the stipulated evidence of Carrie Scherer (33). On these occasions petitioner said as to its effect (84, l. 36):

> "I cannot describe it. *I got so that I couldn't cry;* it seemed as if I was turned to stone."

She said that she was unable to attend to her household duties *and very, very frequently confined to her bed* (84, l. 40, and had to have the attention of a physician; that Dr. Peck treated her on occasions such as this (85).

The physician said when asked about her general condition (152, l. 18):

> *"My impression was that she was in a highly nervous condition."*

The doctor further said that her home troubles would produce these nervous conditions (154, l. 30). In fact, Dr. Warren and Dr. Dougherty, physicians produced by the defendant, admitted Mrs. Smith's condition would be caused and accelerated by these abuses and troubles (177, l. 20; 332). *Defendant confessed Mrs. Smith's spells and sickness were due to his quarreling* (380).

When Mrs. Smith returned from the hospital in Newark and after being up and around her husband began finding fault, complaining, cursing and swearing (88), and there were a series of abuses, and she said that he would pinch her arm and that she would immediately go and show it to Mrs. Sandusky (89), her next door neighbor. Mrs. Sandusky says of the incident (62, l. 38):

> "She showed me the arm and I said 'what is the matter.' *It was all black and blue."*

Mrs. Sandusky also said of Mrs. Smith's condition that she called at her house two or three times a week and "that *she looked bad at that time"* and that *"she was nervous"* (63).

At the present time Mrs. Smith has a black and blue raised lump or growth on her arm where Mr. Smith repeatedly pinched her (89).

The most serious of all abuses, outside of the last occurrence, is that with relation to the bulb incident. Miss Brantwaithe worked for the parties at the time (39). Mrs. Smith's father was staying there (45), and the washwoman was downstairs (57). Miss Brantwaithe states that Mr. Smith had been down-

stairs in the morning; *that Mrs. Smith had not come down as yet* (38).

The parties at this time were occupying separate rooms. Mrs. Smith says that she went into the sitting-room, and as it was a dull morning she turned on the electric light (91). Then she says (92, l. 12):

> "He (meaning Mr. Smith) came racing upstairs and came directly over to me. It was done too quickly. He undid the bulb and took my right hand and twisted the finger with one hand and with the other he took the electric light bulb and he said, 'here damn you, swallow this, you dirty bitch.' "

Mrs. Smith said her father came in from the next room and told her husband he must be crazy, for him to stop. *She says she had to kick him to make him let go.* That he dropped the bulb, went over to her desk and upset everything in the desk, took her Bible and prayer book and hid them in the lining of the couch, took her comb and brush and stuck them in the coal bin (92, l. 30).

None of the witnesses can account for this scene. Mr. Smith admits that it took place (381). It may have been that when Mrs. Smith turned on the electric light it was a signal which Mr. Smith had not intended for the young lady who lived in the neighborhood. The father, Joseph Buckbee, corroborates what Mrs. Smith said in this regard, and both Florence Brantwaithe and the washwoman saw Mrs. Smith's condition (39). It is a fair example of the traits of ugliness and spells which Mr. Smith had exhibited toward his wife. *Mrs. Smith says that she cried and was sick in bed after this abuse.* The father, Joseph Buckbee, says that Mrs. Smith wilted, and corroborates the fact that she was sick for several days after the occurrence (45, l. 32).

Mrs. Smith had not provoked her husband in any way on this morning. She had not accused him of being with women. In fact, she had said nothing to him.

It was held in the case of *Boyle* v. *Boyle,* 75 Eq., page 293:

> "Isolated and infrequent acts of cruelty by a husband to his wife, culminating in physical violence of a dangerous character, accompanied by abusive words and a disavowal of any affection for her, are sufficient grounds of divorce from bed and board."

Inez Decker, the little girl who played with Audrey, came to the Smith house one day and heard him swear (59, l. 32), calling the petitioner a "God damn bitch" and telling her she was a

"damn fool" and several other things the witness could not recall. Inez Decker emphatically says that on these occasions Mrs. Smith said *"nothing whatever to her husband"* (60). The Decker girl also said that on another occasion when she went over to the Smith house she found Mr. Smith in the act of striking his wife (60). She saw his hand up (61). Mrs. Smith asked her husband to take down the clothes line and he quarreled and cursed her about it. Thus, in this incident we have nothing which bears out the contention of the defendant that the abuse resulted from accusations about women.

Mrs. Smith says her husband quarreled with her about paying the washwoman (90). That Elsie Starkman worked there at the time; that her husband struck her and she picked up a carving knife to defend herself (91, l. 10). Her father, Joseph Buckbee, was out in the yard and heard Mrs. Smith say *that if defendant struck her again she would use the knife* (45, l. 40).

Mr. Smith in his evidence admits this occurrence and states that he was in the wrong (380, l. 18).

There is no proof that Mrs. Smith on the occasion just detailed had done anything toward her husband nor had she accused him of any wrongdoing, but it is demonstrative of the ugly disposition of the man Smith, and Mrs. Smith could not go on suffering these indignities and abuses, and as a result of an attack upon her when she was very weak and sickly, recoving from the poison, she left in April, 1915.

Mrs. Smith details what happened as the cause of her leaving (101):

> "I hadn't been down stairs but a short time from that illness (meaning the illness from poison). My maid got a pail of coal and Mr. Smith took it out to the barn for his fire out there. I was afraid he would forget to get another pail and I said, 'Ernest get another pail of coal because Mary is too old to carry up two pails like that, one on top the other,' and he paid no attention to me and I thought he didn't hear me and I turned to him again, and I said, 'Ernest, don't forget to get another pail of coal'; then he turned on me and we had a terrible row."

The petitioner further said:

> "He called me a dirty whore and bitch and a dirty bastard. He said, 'You have just got up for a fuss this morning, that is all that ails you. You damn dirty bitch, you, you dirty whore.' I got so excited and worked up over his continual calling me such names as that, I got up—I was pretty nearly crazy—I got up and took a cup and threw it

at him, and I took mush and threw it at him; I would have thrown anything at him I had in my hand that morning."

In *Graecen* v. *Graecen,* 2 Eq., page 459, the Chancellor, in rendering the opinion (at page 463), says:

"It is hardly to be supposed that a woman can receive every indignity at the hands of her husband and never show resentment. It is human nature and even if at times her conduct might afford some extenuation of her husband's conduct *it can never justify it.*"

Every woman cherishes her honor. Mrs. Smith had stood his abuse for years, he had struck her, slapped her, pinched her, neglected her, cursed her, threatened her life and done everything to tantalize and annoy her. Now he was attacking her character and she could not stand it. *In addition he choked her with a shawl and scratched her neck* either with his finger nails or a dish. Smith admits this occurrence, says he swore and may have cut her neck (390-391, l. 44).

In the testimony of Mary Shepherd, we find many conflicting statements. She was the colored maid servant at the house at that time. But she admits Mr. Smith told his wife to go to hell and mind her damn business and that he said, "I will bring it up when I am damn ready" (191), and she says that Mr. Smith had a hold of the end of the shawl and that he was very close to Mrs. Smith. She showed Mr. Lyons, the detective, a part of the dish which cut Mrs. Smith's neck. This witness also testified that Mr. Smith cursed and swore at his wife (194) and that she told Mrs. Smith she would not live with such a man (192, l. 44).

Mrs. Smith said of this occurrence (102, l. 20):

"I was all upset and nervous and I was pretty nearly beside myself."

She says she left three days later because of his cruelty, that she couldn't stand it any longer (103, l. 9).

In the case of *James* v. *James,* 34 Atl., page 1089, it was held:

"That a legal separation and maintenance will be decreed a wife where there has been actual violence used toward her by her husband and it may be reasonably apprehended from such acts and the character and disposition of the parties, that it will occur again should the wife return."

See *Weigel* v. *Weigel,* 60 N. J. Eq., page 322, at page 31 (citing cases).

Mrs. Smith, in completing her testimony, states that since leaving Mr. Smith she has not required the services of a physi-

cian, that she has taken care of her child, and on page 105, l. 22, she said:

> *"I am capable of getting up at half-past five every morning and getting my work done and taking care of my little girl, cooking my meals, getting them prepared for dinner at night and going to work."*

She further says:

> *"I am not nervous, not like I was, not by any means.* I AM NOT SICK."

Mrs. Dean, who has been a friend to Mrs. Smith since she left her husband, testified that she had known Mrs. Smith about a year (150, l. 12), and that when she first met her she said (150, l. 30):

> "She was very sorrowful and that she carried a load of care."

And the question was asked by the Court:

> "You mean she was worried?
>
> *Witness.* Yes."

When asked how her condition of health compared with the time when she first saw her, the witness said:

> *"I think she is happier and stronger."*

The Court (151, l. 2):

> "Has she improved in health?"

And the witness said:

> "She has been doing her own housework and taking care of her child and she has been clerking in stores, and a very successful clerk."

Mrs. Nell says (37) that Mrs. Smith looks much better, after living away from Smith than she did when in Newark. Then she was very sickly in the six weeks preceding the hearing, she said petitioner was "very much better" in health.

The evidence shows conclusively that for years prior to Mrs. Smith's leaving her husband she developed a condition of extreme nervousness because of these abuses. She at first had trouble with her heart. She cried a great deal over her trouble and the way in which Mr. Smith treated her. She required the attention of physicians. She would be sick in bed for days, at a time and unable to attend to her household duties owing to the manner in which Mr. Smith treated her on various occasions. Her uncle says that it was brought about because of her husband's actions. The father testifies she was sick for days at a time after Ernest

Smith quarreled with her or abused her. Florence Brantwaithe said she was compelled to call up Mrs. Smith's people. The little girl Inez Decker, tells of an affair between Ernest Smith and his wife where Mr. Smith attempted to or did strike her. She was in constant fear of the man all the time. She never knew how he was coming home, whether in good humor or otherwise. There was nothing she could do that would please or satisfy him because he had lost his love and affection for her. He had told her to get out. He didn't want to have anything more to do with her, and naturally he didn't care how he talked or what he said, and admits calling her almost everything she testifies to while living at Boonton. All the physicians state that these home troubles would have a tendency to accelerate Mrs. Smith's nervous condition. She could not properly attend to her duties, and therefore her life was miserable and her only salvation was to leave him. Since leaving him and after recuperating she has been getting along much better than ever before and everyone speaks of her improved condition, *so that it is for the best that these parties live apart.* It is not only best but essential and necessary that they do so for the safety of Mrs. Smith's health.

Mr. Smith, from his testimony, was apparently satisfied that his wife leave him. On page 397 he states he made no effort to locate her.

He never induced her to return or wrote any letters and that he had no affection for her. At page 391, l. 42, Smith gave this testimony:

"Q What did you think she left for when she left?
A *Because I broke the dish, I suppose.*
Q *You were satisfied that she could go in other words?*
A *Yes.*"

In the case of *Close* v. *Close, supra,* at page 532, the Court said:

> "The defendant has inflicted upon the complainant such repeated injury, and shown toward her such an abiding rancor and hatred, without, up to this time giving any assurance that his conduct would be reformed, that I am satisfied the cohabitation cannot be resumed without peril to the safety to Mrs. Close and think that the interposition of this court is justified and necessary, and that a divorce from bed and board for life, should be decreed."

This statement authorized by the Court of Appeals, not only fits the circumstances of the Smith case, but sums up the matter in a few words.

It is therefore respectfully submitted that there has been shown a condition of affairs which constitute extreme cruelty and that the indignities and abuses have been to a considerable extent corroborated by admissions of the defendant and of various witnesses on behalf of the petitioner and that one need only refer in conclusion of the Vice-Chancellor in this case wherein he said (p. 13, l. 32):

> "The proofs satisfy me that petitioner has suffered extreme cruelty both by bodily injury and from assaults committed on her by the defendant, as well as severe mental suffering caused by the profane, abusive, opprobrious language and names addressed to her.
>
> "From his treatment of her and his threats, petitioner was justified when she left him in fearing him and in fearing a continuance of the cruelty she had suffered.
>
> "A decree will be advised in favor of the petitioner."

THERE WAS NO CONDONATION

Counsel argues in the brief that if defendant was guilty of cruelty, the acts were condoned; but it appears that although the parties were living in the same house they had not been cohabiting for nearly two years and Mrs. Smith had threatened to leave him two years before and at various other times threatened to have him arrested, showing that she did not condone the offenses. *Smith admits they did not have intercourse during the time mentioned.*

As the Vice-Chancellor stated (13, l. 30):

> "I do not find as defendant contends that if he had been guilty of all petitioner charged him with that she has condoned his offenses by continuing to live with him. There is nothing in the case to indicate that petitioner had forgotten or forgiven his treatment of her."

Then the opinion follows as heretofore stated that she had no place to go and had to stay with defendant.

Had Mrs. Smith left when the abuses first commenced defendant would have argued that there was no reason to believe that they would continue as the petitioner's health had not become affected. She left when there was nothing else for her to do, when her life and health was ruined and the decree in this respect should be affirmed.

In conclusion of point (B) defendant cites the case of *Pitts* v. *Pitts,* reported in 82 Law, 635, as being a conclusive decision controlling in the present case. It is admitted that if the defendant proved that the accusations of petitioner were false and that they were the direct provocation for the abuses that the

case would be applicable but the defendant is the only witness in the case upon the points in issue and while he has produced a number of witnesses to testify what Mrs. Smith said to them about him on the question of infidelity, it does not corroborate him in any particular because they were not present in the home at the time these occurences took place, and their evidence does not prove the abusive treatment to have been the result of a false accusation. See *Cook* v. *Cook,* 11 Eq., 195 at 198.

As a matter of fact defendant was proven to have been guilty in many of the instances related.

In the Pitts case there were only two isolated acts of abuse while here it was continuous both as to striking and words spoken.

With respect to the Duvale case cited there is a wide distinction. In the present case, the petitioner has shown, by corroborating proof and admissions, of the defendant, that he did have associations with other women, so that whatever she may have said was not the product of an insane delusion or imagination, but was the truth and her testimony cannot therefore be discredited, in view of the circumstances.

In the Duvale case there was no one produced on behalf of the petitioner to substantiate in any particular, the allegations alleged, whereas in the present case there is positive proof, circumstances, letters and other evidence to warrant the contentions of the petitioner.

The defendant says that Mrs. Smith provoked the cruelty and yet they fail to point, in the brief, to a single instance where petitioner provoked the cruelty complained of.

As to the counterclaim of defendant Ernest N. Smith for divorce on the ground of adultery.

The appellant sets forth in the brief references to testimony that Lyons was a married man, that he was frequently in conference with Mrs. Smith and at her home, that she told neighbors Lyons was a detective doing work for her on her case and guarding her little girl; that he has never taken his meals at her house; that Mrs. Smith when living at Irvington was there under the name of Sutphen and that Mr. Lyons frequently visited the house there and was on one occasion treated for a carbuncle by Dr. Simmons.

In concluding these statements, counsel says that having shown this long period of intimacy there was therefore an inclination sufficient to conclude that an act of adultery had been committed at Coney Island.

There is absolutely nothing in this evidence from which there could even be inferred inclination or any improper motives.

In the first place Lyons was employed to investigate the facts pertaining to the original case (474). He was frequently obliged to visit Mrs. Smith at the Blowers' house in Boonton and at the Fine apartment in Morristown and at Linden street. He was requested to do so by counsel for Mrs. Smith. On many of the occasions Mrs. Smith's father was at the home (425, l. 2; 427, l. 22), both in Morristown and Newark (438, l. 42); there had been an attempt to kidnap the child Audrey and Mrs. Smith's father specially employed Mr. Lyons to guard the home (475), the child and Mrs. Smith. Therefore, Mr. Lyons was acting in a professional capacity; that was his business and he had a right to be at the home. She assumed the name Sutphen to conceal her whereabouts and avoid annoyances from her husband (475).

It is a well settled principle of law that to establish adultery by circumstantial proof, there must be:

(1) *Proof of inclination or a criminal desire;*

(2) *And proof of an opportunity to commit the act.*

The two must concur in order that guilt be presumed.

Inclination is shown by any evidence that the affections are debauched, as stolen interviews, strong expressions of attachment, or a clandestine correspondence, seeking opportunities to be alone. Inclination may also be inferred from the possession of obscene books and pictures.

In the evidence on behalf of the appellant in connection with his counter-claim there is not a scintilla of testimony showing any of these conditions from which it could be inferred that Mrs. Smith had any desire to do wrong or that there was any intimacy on her part whereby she was ready to give up her virtue and self respect.

It is true that Mrs. Smith made the remark that she thought a good deal of Mr. Lyons, but it must be remembered that he was doing a great deal for her cause and Mrs. Blowers, who made the statement, admitted that Mrs. Smith was the kind of a person who was sentimental and if she thought anyone was

doing for her she had a very strong expression of good will for them (423, l. 12).

The law of the case is settled in the following decisions:

Berckman v. *Berckman,* 16 Eq., 143.
Black v. *Black,* 30 Eq., page 228.
Brown v. *Brown,* 63 Eq., page 348.

From a resume of the evidence and application of this law I do not find that the legal requirements have been fulfilled.

The conclusions of the Vice-Chancellor in dismissing the counterclaim are in part as follows (482):

> "From the evidence offered, it appears that while the case of the petitioner against the defendant was pending and being heard, she and her counsel employed a detective named William H. Lyons to obtain evidence against her husband and to protect her and her little girl, as she feared that her husband would attempt to take the child from her. Lyons called on her at her home frequently, sometimes daily, both in the daytime and at night and she told several of her neighbors that he was a detective whom she had employed, and who was preparing papers for her; that she was assisting him in his detective work and that she and her father, who lived with her during part of this time, had employed him as a guardian for herself and child.
>
> "Sometimes Lyons would be accompanied by Mr. Romine, petitioner's counsel, and sometimes the latter would call on petitioner and take Lyons away with him, and while these visits were being made, Mrs. Smith is said to have told one of her neighbors that she thought a great deal of Lyons and would marry him if he were not married. While petitioner was living at Irvington with her father and child, under the name of Sutphen (which it is claimed is her maiden name which she assumed for the purpose of concealing her whereabouts from her husband), Dr. Simmons treated Lyons at her home for a boil on his chin; on two occasions, between eight and nine o'clock at night, he found Lyons in bed, clothed in a bath robe, and that Mrs. Smith told him her name was Smith, and that Lyons was a state detective whom she was assisting in his cases; and he was introduced by petitioner to her father.
>
> "Petitioner was away from her home in Morristown for several days prior to and including July 4th, 1916, and she told one of her neighbors that she had spent the time in New York and Coney Island, and it appears that on June 29th, 1916, a man and woman engaged a room at the Oriole Hotel, Coney Island; they are said to have registered 'Wm. N. Edwards and wife, Summit, N. J.,' at about 3.25 P. M. and to have been assigned to room No. 14, and

that they remained at this hotel until noon of July 4th. The registration was made by Mr. Edwards, and the woman who had charge of the registry and office states that the hotel had either thirteen or fourteen bed rooms, that it was located on the beach, and that she also attended to the bath houses; that she knew Mr. Edwards because about two years before, in 1914, he had called at the hotel and got acquainted with a few people in the hotel, and that he then had his young nephew with him; that on his arrival he introduced the woman with him as his wife; and from photographs she identified Mrs. Smith as the woman, and Mr. Lyons as the man.

"The registry book also shows that on September 14th, 1914, Charles Edwards and wife of Summit were assigned to Room 14 and again on September 18th, 1914, to room No. 24, and that on October 5th, 1914, Charles Edwards and wife of Summit registered again, but the woman in charge of the registry did not know if this were the same Edwards who registered in 1916 and was assigned to room No. 14.

"This witness was interviewed by Edwards and one of Mr. Smith's attorneys in January, 1917, and she was shown the photograph of a woman whom she identified as Mrs. Edwards, and who it is claimed was Mrs. Smith; and Edwards then asked her if she remembered the time that he and his wife had stopped at the hotel, and when she replied she did, he asked her to sign an affidavit to that effect, which she did.

"The chambermaid who had charge of room No. 14 identified Edwards and the woman who accompanied him from photograph of Lyons and Mrs. Smith, although she states she forgets his appearance, and the best of her recollection is that she guesses the photograph of Lyons shown her is that of the man Edwards; she saw them in the room the day they arrived, and saw them go in and out. Mrs. Reilly, who had a candy stand opposite the hotel, states that in the summertime, she does not state the year, Mr. Edwards introduced a woman to her as his wife when they bought some candy from her. She recognizes Lyons and Mrs. Smith's photograph as Mr. and Mrs. Edwards. She had seen Edwards twice before this occasion, possibly in 1914, when they had refreshments and drinks at the bar with her husband, but never had any conversation with him.

"It further appears that about the conclusion of the former hearing Lyons telephoned Mr. Smith asking for an interview and informed him that Mrs. Smith was about to leave the state with her child.

"It also appears that Lyons became angry over stories which he claimed Mrs. Smith was circulating about him and declared he was going to help Mr. Smith, because he

had money, and Mrs. Smith was still indebted to him for what he had done for her in the case. Lyons is said to be a fugitive from justice, and counsel on neither side have been able to locate him.

"*This summary of the proof offered to establish allegations of the cross-petition shows an entire absence of direct evidence of the offenses charged, and it is subject to this criticism;* if Lyons was the man who registered at the hotel as Edwards in 1916 and was the same man who was at the hotel with his nephew, a small boy, in 1914, no reason is offered to explain why he assumed the name of Edwards in 1914, when unaccompanied by a woman. One of the photographs of Mrs. Smith, whom the housekeeper, chambermaid and Mrs. Reilly identified as Mrs. Edwards, was taken, Mr. Smith states, about ten or fifteen years before, and admittedly is not a good representation of her at the present time; and yet none of these witnesses testifying in May, 1918, have the slightest doubt of the identity of the woman whom they saw only for a brief few minutes, and in the most casual way, nearly two years before, and they are unable to recall any detail of her dress or appearances, or baggage, and only surmise that Edwards and the woman with him actually occupied the same bed room.

"*The entry of the registry was written by the man;* whether it was done in the presence of the woman does not appear; *the registry sheet shows that the expression 'and wife' was not written on the same line with the name 'Wm. N. Edwards' and the address 'Summit, N. J.', but was interlined between the name 'Edwards'' and the words 'Summit'.* Why was this interlineation necessary? Had Lyons, as Edwards, forgotten that he was accompanied to the hotel by a woman? The name 'Wm. N. Edwards' and the place 'Summit, N. J.', are written in a large bold hand and were apparently written at the same time; the expression 'and wife' is written in much smaller letters and it was so inconspicuous that it was overlooked by me when I first examined this page of the register.

"It is hardly reasonable to suppose that Lyons, as Edwards, had forgotten the woman he is said to have brought to the hotel or that he did not consider it necessary to register her; he had sufficient space on the line on which he wrote his fictitious name and address to have entered the fact that a woman passing as his wife was with him; *that he failed to register her except as an afterthought, causes me to suspect that the thought of having a pretended wife with him was very much of an afterthought; in fact, so long after, that I believe the interlineation was not written by Lyons until after he had his quarrel with Mrs. Smith.* This was easily possible, as the hotel people were apparently on very friendly terms with the supposed Edwards, and knew, that he was a detective; *the registry*

book was very loosely kept and no safeguard were apparently provided that would prevent Lyons from interlining the expression 'and wife', at any time and on any page of the register. It is also significant that the parties who registered as Edwards and wife of Summit, on three occasions in 1914, should be assigned to room No. 14, which Lyons and Mrs. Smith, as Edwards and wife, are said to have occupied in 1916, *and little, if any weight can be attached to Mrs. Reilly's testimony or her indentification of Mrs. Smith as the woman Edwards introduced to her as his wife.*

"Where an offense of this kind is sought to be established by other than direct evidence, the rule is well settled that the circumstances relied on to prove adultery must show both an inclination and an opportunity to commit the offense. The only evidence offered to show such an inclination on the part of Mrs. Smith is the fact that Lyons was a frequent visitor at her home, and that she seemed, to some of her neighbors, to think a great deal of him, and that she told one of these neighbors that if she could, she would marry Lyons if he were free, and not married.

"Lyons' visits to Mrs. Smith are explained by the testimony of her counsel who employed him and by her frequent statements to her neighbors that he was guarding the little girl so the father could not kidnap her. *The alleged remark to her neighbor about marrying Lyons is not explained, but as I saw Mrs. Smith upon the stand and observed her in the court room at the former hearing, she impressed me as a nervous, high strung, temperamental woman, anxious for sympathy and keenly appreciative of any kindness shown her, and she did not impress me as a woman of immoral tendencies or inclinations.*

"There are, without doubt, certain suspicious circumstances in the case, *but mere suspicion is not sufficient to justify a decree. The proof is not convincing that Mrs. Smith ever had the inclination or the opportunity to commit adultery with Lyons,* or that she was ever at Coney Island with him, and his conduct and his failure to appear and testify, together with the questionable hotel registry and the unsatisfactory identification of the parties from their photographs. made the case too doubtful, and with such doubts in mind, I do not feel justified in branding this woman as an adultress.

"I will therefore advise that the cross-petitioner be dismissed and that a decree be granted to the petitioner on her petition for cruelty."

(Italics ours.)

From this opinion it will be observed that the Vice-Chancellor weighed carefully every bit of evidence and interprets its force as applied to the defendant's claim against the peti-

tioner. It is almost unnecessary to add anything to what the Vice-Chancellor said, but I will refer to some of the important evidence sustaining his conclusions.

The witness Laura Arkenau insists that she had known this man Edwards before (442); that he had been there on other occasions unaccompanied by a woman (452), but on one occasion he had with him his nephew (442). As the Court said, after two years elapsed and she had seen many faces and her recollection of these parties were vague, she recognized them as being the photographs of the man and woman who came to the house in 1916 and who were known to her as Mr. and Mrs. Edwards. This witness did not pay any particular attention to the woman, didn't know how she was dressed (454) and hadn't seen her before. This shows the extent to which the witness was willing to testify. She did not know whether they had any luggage (455).

It is, of course, natural that if Lyons was going to the hotel with Mrs. Smith that he would go under an assumed name, *but why should Lyons if he was the individual referred to by the witness have gone to this hotel on previous occasions unaccompanied by a woman and assumed the name Edwards?* This seems to be the greatest obstacle in her testimony. The witness Laura Arkenau produced a book which she said did not belong to her and yet when asked by counsel for defendant for leave to tear out the page, she freely consented (446), but when it developed on cross examination that on three prior occasions a man by the name of Edwards from Summit had registered with his wife at the hotel and on each occasion had been assigned to room No. 14 (451) and when attention was called to the similarity of the handwriting in which this registry appeared on the sheet in question as compared with other registries of Edwards and request was made that the book be marked in evidence, *she promptly refused* (450).

It does not appear that the registration in question was made in the presence of the woman who accompanied Edwards.

On cross examination this witness frankly admits that she does not know whether the man and woman occupied the room or not (452, ll. 38 and 40); **she does not know anything about their intimate relations** (453). It can readily be observed that the story of this witness is tainted with suspicion, unreliable and incredible.

The maid, Mary Rossi, admitted that she is not positive in identifying the photographs (457), and **she says she does not**

know whether the man and woman occupied the room or not (460, l. 38), *she did not pay any attention to them* (456, l. 44). None of the witnesses or people saw anything between the man and woman whom they say was Edwards. Nothing of an affectionate nature and no caresses or manifestations.

Another peculiar coincidence, as stated by the Court, in the testimony of Maggie Reilly. She identified the photographs of Lyons and Mrs. Smith as being those of the man and woman she saw at the hotel (459), *yet she never saw the woman before and on the occasion in question only for a second,* and after two years elapsed identified an old photograph. *She only saw the man Edwards once, never had a conversation with him.* She says that the man Edwards walked up to her and without an introduction told her that the woman with him was his wife (459-460, l. 12). *This is the most ridiculous assertion ever made.* If Lyons and Mrs. Smith were at the hotel they would not want to advertise the fact and would certainly not want to go to a stranger and make such a remark.

It was said in the case of *Black* v. *Black,* 30 Eq., page 228, that

> "A wife will never suffer her person to be debauched until her affections are corrupted."

Now, if Mrs. Smith went to this hotel with the intent of submitting herself in an adulterous relation with Mr. Lyons, *when did she suffer her person to be debauched?* Out of the mass of the evidence, out of the life of the woman and all the places she lived, all her alleged relations and meetings with this man Lyons, with all defendant's dragnets and assistance from Lyons, *where is there anything that would indicate any indecent familiarity or personal freedom?* **They found none. There is absolutely none shown by the evidence.**

In this case and in any case there must be proof, we cannot guess away the honor and virtue of a woman. We cannot find legal conclusions or inferences or imaginations of what might have happened.

As was held in the case of *Williams* v. *Williams,* 85 Atlantic Reporter, page 611:

> "It is an inflexible rule in this state that a divorce will not be granted upon the uncorroborated testimony of a party to the suit; and this applies not only to the case for divorce but to every necessary element in the proof."

Proof of opportunity alone is not sufficient.
See *Farrow* v. *Farrow,* 70 Eq., page 777.
Graham v. *Graham,* 50 Eq., page 704.

There is absolutely no evidence that Mrs. Smith and Mr. Lyons, if they were the ones at Coney Island, occupied the room. **Nobody saw them there.** As a matter of legal evidence to be considered in the case of this kind *we cannot guess they stayed there together.* We cannot suppose it unless the evidence fastens the parties in the room. **There is no such evidence.**

The situation may well call for an explanation on the part of the petitioner, but it appears that being wrecked in health she went to Kansas with friends where she is now staying, and her rights are being fully protected. *There was no evidence of guilt which required her testimony.* They do not produce Lyons as a witness and from the proofs it cannot be said that there is a clear convicting charge made out. At the most it is a mere inference or supposition.

It was decided in *Furst* v. *Furst,* 85 Eq. (576):

> "That while it is true that defendant has laid herself open to the gravest suspicions, *the proofs do not warrant the concluson that she actually surrendered her virtue.*"

It may be well argued, as the Court intimates, that Lyons might have staged and framed the whole thing at Coney Island because he had been discharged from his services in guarding petitioner and child. The various signatures of Edwards and wife are certainly suspicious in view of the similarity of the handwriting *and the Court points out that the words "& wife" seem to have been added afterwards.* **Lyons made a statement in the office of petitioner's counsel that he had never done any wrong with Mrs. Smith** (475 l. 28). He called defendant on the 'phone stating that he wanted to see him. Mr. Smith admits that he made an appointment with Lyons (480). *Lyons' statement that he was going on Mr. Smith's side as it was better to work for Smith as he had the money;* and Lyons going to Coney Island paying his own expense (479), indicates that he was prompted by a spiteful and vindicative spirit. Mr. Price obtained from Lyons the same impression.

It is respectfully submitted in view of the evidence and the decision of the learned Vice-Chancellor that the decree dismissing defendant's counter-claim should be sustained.

Reference is made to a statement that if petitioner had been adjudged guilty of adultery and defendant would be barred from

a decree as he is guilty of cruelty. In view of the fact that the decree in favor of petitioner should be sustained, there is no need for argument on this point, except to refer the Court to the cases which would control such a situation.

Adams v. *Adams,* 17 Eq., page 324.
Reading v. *Reading,* 5 Atl., page 721.
Rapp v. *Rapp,* 67 Eq., 236, at 237.

See also the statement of *V. C.* Stevens in deciding the case of *Servert* v. *Servert,* 85 Atl., page 230, at page 235—(3).

ELMER W. ROMINE,
Attorney for and Counsel with
Respondent-Petitioner.

58 JUN.T. 1919

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between ELLA S. SMITH, *Respondent-Petitioner,* *and* ERNEST N. SMITH, *Appellant-Defendant.*	*On Petition for Limited Divorce.* *On Counter-claim for Absolute Divorce.*

BRIEF ON BEHALF OF APPELLANT-DEFENDANT.

Appellant seeks by this appeal the review of the decree of the Court of Chancery granting a limited divorce to respondent and denying an absolute divorce to appellant.

Respondent, in the year 1915, instituted a suit for divorce from bed and board against appellant, charging that he had been guilty of extreme cruelty, which made it unsafe for her to be with him. This case was tried before Vice-Chancellor Foster, and on October 25th, 1916, he filed conclusions sustaining the respondent (page 12). Prior to the entry of the decree in favor of respondent appellant learned that she had been guilty of acts which in his opinion would entitle him to an absolute divorce on the ground of adultery. He presented a petition to the Court praying that the entry of the decree in favor of his wife might be withheld until such time as he could produce proof to sustain the allegations of his petition and also for leave to file a counter-claim for absolute divorce. This privilege was accorded him and testimony was taken in support of the counter-claim then filed. Appellant contends:

1. That there was no evidence to legally warrant a decree in favor of respondent granting her a divorce from bed and board on the ground of cruelty.

2. That the evidence was sufficient to warrant a decree in favor of appellant awarding him an absolute divorce on the ground of adultery.

FACTS WITH REFERENCE TO RESPONDENT'S SUIT FOR LIMITED DIVORCE.

Appellant and respondent were married in 1902 (p. 64, l. 22). They first resided at Forest Hill, Newark, N. J. (p. 64, l. 31), where their only child, Audrey, was born in 1906 (p. 106, l. 34). In 1906 they moved to 746 Summer avenue (Woodside), Newark (p. 64, l. 33). In 1908 they moved to Dr. Warren's flat on Mount Prospect avenue, Newark (p. 67, l. 39). From Mount Prospect avenue they moved to South Broad street, Newark (1909 and 1910), (p. 68, l. 19). In 1910 they moved to Perth Amboy, N. J., where they lived first on Kearney avenue and second at 320 High street (p. 69, l. 10). From Perth Amboy to Bayonne, where they resided in 1911 and 1912 (p. 71, l. 23). In January, 1912, they moved to Washington street, Boonton, and resided there about a year (p. 77, l. 39). In 1912, moved to Old Boonton road, Boonton, where they resided until 1915, when Mrs. Smith left appellant (p. 86, l. 1). Respondent's petition charged appellant with adultery with a household servant in 1908 at Newark and the general charge that he had been intimate with other women (p. 1). In her testimony, however, she made many charges of adultery, none of which were corroborated and all of which were denied by appellant. The Vice-Chancellor specifically found that the charges of adultery against appellant were without foundation (p. 13, l. 27). There were many allegations of cruelty in the petition and equally many in respondent's testimony. These allegations were positively denied by appellant, and there was no corroboration of any of them.

Respondent in her testimony made the following accusation of cruelty against appellant:

1. Smith started treating her coolly in 1905 at Forest Hill (p. 64, l. 40) and stopped kissing her (p. 107, l. 22; p. 119, l. 39), and loving her (p. 107, l. 31), and found fault with everything she did (p. 107, l. 31). Smith denies this (p. 302, l. 11).
2. At Woodside he treated her ugly (p. 65, l. 1). Smith denies this (p. 302, l. 11).
3. Swore at her at Woodside at breakfast table (p. 65, l. 9). Smith denies this (p. 302, l. 11).
4. Shook her head, put both hands around her neck and shook her head (p. 65, l. 19). She says this was at Summer avenue, and the first time he struck

her. Smith denies this (p. 285, l. 21). She threw hot coffee on him (p. 285, l. 27).

5. At Woodside told her he cared for another woman (p. 65, l. 33). Smith denies this (p. 302, l. 34).
6. Husband was in a compromising position with Polish maid (p. 66, l. 26). Smith denies this (p. 301, l. 33, &c.; p. 314, l. 35).
7. Maid put her arms around Smith (p. 67, l. 17). Smith denies this (p. 302, l. 7).
8. At Mount Prospect avenue Smith was ugly to her (p. 67, l. 42). Smith denies this (p. 302, l. 11).
9. Always cursed her (p. 67, l. 45). Smith denies this (p. 302, l. 16).
10. Smith frequently hit her at Mount Prospect avenue and pinched her and slapped her (p. 68, l. 10). Always hit with his hand (p. 68, l. 11). Smith denies this (p. 302, l. 16).
11. Struck her and swore at her when she interfered with him striking child (p. 68, l. 23). Smith denies this (p. 302, l. 28).
12. Cursed and swore at her every day, said he would set her crazy or kill her, that he did not care for her, but did care for another woman (p. 68, l. 35). Smith denies this (p. 301, l. 30; p. 302, l. 35; p. 308, l. 4).
13. At Perth Amboy, cursed at her; Smith said she had no right to kiss him (p. 69, l. 21), and only one woman had the right to kiss him, and she was not the one (p. 69, l. 21). Smith denies this (p. 302, l. 36).
14. Found a horseshoe nail in the floor at Perth Amboy, claiming that Smith placed it there (p. 69, l. 41). Smith denies any knowledge of this (p. 302, l. 41).
15. At Perth Amboy, in bed, kicked her until she was black and blue (p. 70, l. 29); kicked her at Boonton (p. 303, l. 5), struck her dozens of times (p. 130, l. 19). Smith denies this (p. 303, l. 4).
16. Asked her to get a divorce (p. 71, l. 40). Smith denies this (p. 303, l. 6).

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17. Smith stayed out until eight o'clock at Bayonne and was ugly to her. Said he would go out with any woman he pleased (p. 71, l. 27). Smith denies this (p. 303, l. 17).
18. At Bayonne asked her to get a divorce and left her bed (p. 71, l. 35). Smith denies this (p. 303, l. 24).
19. Threw coffee grounds all over floor (p. 72, l. 27). Smith denies this (p. 303, l. 31).
20. Struck her at Bayonne (p. 72, l. 12), on back of neck (p. 72, l. 27). Smith explains this (pp. 472, 494, 495, 537, 595).
21. He swore at her (p. 72, l. 31). Smith denies this, he never swore at her until they moved to Boonton, and then only when provoked by her accusations (p. 303, l. 45).
22. Saw Smith in department store in New York with a woman (p. 73, l. 9). Smith denies this (p. 304, l. 12).
23. Smith said she had to stand what he gave her (p. 73, l. 19). Smith explains this (p. 304, l. 14).
24. Cursed and swore at her on way to train, would not let her kiss him and swore at her and slung Audrey on the train (p. 74, l. 14). Smith denies this (p. 291, l. 42; p. 292, l. 7).
25. Smith was in Hoboken Station accompanied by a woman (p. 76, l. 31). Asked him who it was (p. 76, l. 39). Smith explains this (p. 304, l. 40).
26. Smith swore at her and would not tell her who the woman was (p. 76, l. 44). Smith explains this (p. 304, l. 40).
27. Smith was ugly in Bayonne (p. 77, l. 24), said he would kill her or set her crazy (p. 77, l. 26). Smith denies this (p. 305, l. 30).
28. Found a letter in his pockets at Forest Hill (p. 78, l. 44). Smith denies this (p. 305, l. 45).
29. Swore at her at Boonton (p. 79, l. 22), said she was not his wife (p. 79, l. 24). Smith denies this (p. 306, l. 15).
30. Annie Cassimer ran out of sitting room at Boonton crying and Smith was buttoning up his pants

(p. 80, l. 26). Smith denies this (p. 306, l. 21). Annie Cassimer denies this also (p. 403, l. 21).

31. Always cursed her (p. 81, l. 7). Smith swears that he did not curse at her until they moved to Boonton and then only when provoked by her unwarranted accusations (p. 303, l. 45; p. 293, l. 11; p. 292, l. 17).

32. At Boonton swore at her and threw a stone at her (p. 81, l. 26). Smith denies this (p. 293, l. 33).

33. Started to throw a book at her (p. 81, l. 38), but did not do so. Smith denies this (p. 306, l. 33).

34. At Boonton, Smith took a woman in the cellar (p. 82, l. 21), woman repeatedly came in the house (p. 82, l. 41). Smith denies this (p. 306, l. 34).

35. Smith passed things out to woman, that is, groceries, etc. (p. 82, l. 44). Smith explains this (p. 307, l. 6), denies that he gave them to woman (p. 329, l. 42).

36. Cursed and swore at her (p. 84, l. 27; p. 83, l. 12). Smith denies this (p. 292, l. 18; p. 325, l. 42; p. 326, l. 4). He says quarrels followed the accusations petitioner made (p. 292, l. 18). After moving to Boonton, Smith says he cursed when she accused him of revolting crimes (p. 293, l. 11; p. 292, l. 17), and Mrs. Smith would curse him (p. 293, l. 14).

37. Said he would set her crazy or kill her (p. 83, l. 22). Smith denies this (p. 312, l. 39; p. 305, l. 30).

38. Said he would shoot Audrey and her and himself (p. 83, l. 26; p. 99, l. 9). Smith denies this (p. 308, l. 8; p. 333, l. 24).

39 Said she was not his wife, only his housekeeper, said he had other women and swore at her (p. 84, l. 23). Smith denies this (p. 306, l. 16).

40. Day in and day out, year in and year out cursed at her (p. 84, l. 29). Smith admits he cursed after moving to Boonton, and when provoked by petitioner's unwarranted accusations (p. 292, l. 17; p. 293, l. 11).

41. When she was sick, he cursed her (p. 85, l. 22). Smith denies this (p. 308, l. 26).

48. Smith slurred at her when she went to hospital (p. 86, l. 41). Smith denies this (p. 308, l. 26).
49. Was cool to her after she came back from hospital (p. 87, l. 24). Smith denies this (p. 308, l. 26), and testifies that she commenced her accusations again (p. 378, l. 5).
50. Swore at her day in and day out, complained of her cooking, called her lazy and used vile language (p. 88, l. 18). Smith states he never swore except when provoked by her unwarranted accusations (p. 292, l. 17; p. 293, l. 11).
51. Accused him of being in cellar with a woman (p. 334, l. 19). Smith denies this (p. 328, l. 7).
52. Struck her and pinched her arm (p. 88, l. 23). Smith denies this (p. 308, l. 35).
53. Black and blue mark on arm (p. 89, l. 27). Smith denies this (p. 308, l. 35; p. 348, l. 13).
54. Cursed and swore and said she lied and swore at her (p. 98, l. 21). Smith denies this (p. 312, l. 7).
55. Put electric light bulb down her throat and swore at her (p. 92, l. 16). Smith denies this (p. 309, l. 43).
56. Frequently Smith went out in auto with Schwartz, but would not take her (p. 93, l. 40). Smith explains this (p. 310, l. 32). Schwartz explains this (p. 219, l. 43).
57. She said she never had money to go off and have a good time, and that when she asked Smith for money he swore (p. 94, l. 28). Smith denies this (p. 307, l. 16; p. 311, l. 12).
58. Smith said "cut it out" at top of his lungs (p. 95, l. 41). Smith denies that he said "cut it out" (p. 330, l. 23). Schwartz also denies it (p. 220, l. 20).
59. Cursed and swore at her because she talked to Schwartz (p. 96, l. 10). Smith denies this (p. 385, l. 31).
60. Smith said he hated her and swore at her and wanted to get rid of her (p. 96, l. 9). Smith denies this (p. 385, l. 43 and p. 386, l. 5).

61. Ignored her on the train (p. 98, l. 11). Smith denies this (p. 386, l. 13).

62. Cursed and swore at her at Boonton Station (p. 98, l. 21). Smith denies this (p. 312, l. 8).

63. Smith kicked dog and said he would kick her, too (p. 98, l. 33), and swore at her (p. 98, l. 35). Smith denies this (p. 312, l. 33); the wash woman, Sara Tompkins, who was present, also denies this (p. 59, l. 12).

64. Found woman's comb in his room (p. 99, l. 43). Smith denies any knowledge of this (p. 306, l. 9).

65. She and Audrey and the dog were sick (p. 101, l. 6). Smith denies that Audrey was sick. He had nothing to do with Mrs. Smith's illness (p. 313, l. 15). Dr. Arbuckle also explains this (p. 158, l. 26).

66. Swore at her and she threw a cup at him and threw mush over him (p. 102, l. 5). Smith explains this (p. 301, l. 20). Mary Shepard explains this (p. 131, l. 29).

67. He cut her neck with a piece of glass (p. 102, l. 17). Smith denies this (p. 301, l. 25; p. 390, l. 5; p. 333, l. 31). Mary Shepherd denies this also (p. 191, l. 37; p. 192, l. 9; p. 201, l. 29).

68. She has caught him with other women (p. 103, l. 15). Smith denies this (p. 315, l. 45; p. 301, l. 4; p. 328, l. 8; p. 283, l. 44; p. 358, l. 44).

69. Smith stood in front of window without a stitch on (p. 104, l. 24; p. 115, l. 8). Smith denies this (p. 313, l. 37; p. 325, l. 30).

70 He waved out of a bathroom window unclothed (p. 104, l. 34; p. 115, l. 7). Smith denies this (p. 325, l. 30; p. 313, l. 39).

71. He swore at her (p. 104, l. 43). Smith testified he never swore until he moved to Boonton, and then only when she made unwarranted charges of infidelity (p. 292, l. 17; p. 293, l. 11).

72. Smith told her to shut up. Smith denies this (P. 315, l 10).

73. Smith said maid, Elizabeth White, was playing martyr (p. 110, l. 26). Smith denies this (p. 315, l. 13).
74. She found Smith and Elizabeth White close together in the kitchen (p. 111, l. 23). Smith denies this (p. 315, l. 27).
75. Maid, Elizabeth White, spoke to Smith about baby (p. 111, l. 10). Smith denies this (p. 315, l. 21).
76. Smith gave maid, Elizabeth White, money (p. 111, l. 27). Smith denies this (p. 315, l. 35).
77. Smith said maid would set him crazy (p. 111, l. 33). Smith denies this (p. 315, l. 39).
78. Said he went out to dinner with a lady and could not give her money (p. 112, l. 42). Smith denies this (p. 325, l. 12).
79. Flirted with anything in petticoats (p. 114, l. 37). Smith denies this (p. 325, l. 29).
80. Waved his hand and winked to people in street (p. 116, l. 45). Smith denies this (p. 326, l. 37).
81. Thought he was under influence of liquor (p. 119, l. 5). Smith denies this (p. 326, l. 7).
82. Smith has not kissed her since 1906 (p. 119, l. 9). Smith denies this (p. 326, l. 22).
83. Smith told me that when he cared for another woman he would stop kissing me and I would always know it (p. 119, l. 42). Smith denies this (p. 326, l. 29).
84. First left her bed in Bayonne (p. 120, l. 12).
85. Came back to her bed in Boonton (p. 120, l. 20), on Old Boonton road (p. 120, l. 22). Smith had intercourse with her in Boonton (p. 120, l. 41; p. 326, l. 37).
86. Said he did not consider her his wife (p. 84, l. 23). Smith denies this (p. 327, l. 13).
87. Said frequently he cared for another woman (p. 65, l. 32). Smith denies this (p. 327, l. 44).
88. Found soiled handkerchiefs in his coat, indicating sexual excesses (p. 246, l. 46). Smith denies this (p. 329, l. 5).

89. Smith frequently signalled women by gas light (p. 242, l. 31), and by lighting matches (p. 242, l. 37; p. 244, l. 7). Smith denies this (p. 361, l. 8 and 38; p. 290, l. 31; p. 313, l. 38).

90. Had Dawson put paper on window to cover it (p. 243, l. 6), to prevent indignities (p. 243, l. 21). Smith denies he had been guilty of any indignities (p. 325, l. 30; p. 313, l. 39).

91. Smith signalled to guest upstairs by water faucets (p. 244, l. 33). Smith denies this (P. 288, l. 5).

92. Signalled to women by putting curtains up (p. 244, l. 28). Smith denies this (p. 361, l. 38; p. 294, l. 12).

93. Saw him with woman in Boonton Cemetery (p. 245, l. 41). Smith denies this (p. 328, l. 34; p. 378, l. 19).

94. Smith had a child in Jersey City (p. 247, l. 19), involving Elizabeth White, the maid (p. 247, l. 33). Smith denies this (p. 333, l. 34). He did not know Elizabeth White before she became a maid in their Boonton home (p. 329, l. 10), was never intimate with any friends or servant girls (p. 378, l. 16). Never had intercourse with a woman other than his wife since their marriage (p. 329, l. 8).

95. Saw Elizabeth White in Bayonne and Boonton (p. 248, l. 35). Smith denies this (p. 329, l. 12).

96. Saw Smith in Wright street house in Newark with child on his lap (p. 248, l. 37), and Smith swore when he came home. Smith denies this (p. 329, l. 16).

97. Smith signalled from dining room table (p. 251, l. 31), waving napkin (p. 252, l. 4). Smith denies this (p. 329, l. 32).

98. Smith was intimate with music teacher (p. 253, l. 42). Mrs. Smith retracted that charge (p. 254, l. 32). Smith denies intimacy (p. 330, l. 11). Mrs. Canfield, Mrs. Smith's sister, took Florence Jacobus, the music teacher, before Mrs. Smith and the the latter retracted the charge (p. 254, l. 32; p. 285, l. 18). Lott Buckbee, Mrs. Smith's brother, was also present (p. 285, l. 16).

99. Took hairs off Smith's clothing and charged him with being with women (p. 259, l. 12), and put them in a paper (p. 259, l. 24). Maid, Mary Shepherd, said Mrs. Smith put them in a vase (p. 191, l. 16).

100. She accused him of infidelity with her personal friends (p. 260, l. 20). Smith denies any infidelity (p. 329, l. 8).

101. Smith signalled to maids at table with his fingers (p. 264, ll. 11 and 25). Smith denies this (p. 329, l. 29).

102. Threatened to have him arrested (p. 266, l. 44).

103. Woman had a key to Bayonne house (p. 270, l. 26). Smith was not home (p. 270, l. 28).

104. Smith cursed and said she was damn smart in the Wright street house (p. 272, l. 42). Smith denies this (p. 330, l. 5).

105. Smith said he was too smart for her detectives. (p. 273, l. 11). Smith denies this (p. 273, l. 11; p. 320, l. 44; p. 329, l. 43).

106. Mrs. Smith got two postal cards (p. 274, l. 10). Smith denies any knowledge of them (p. 334, l. 34).

107. Says Smith loved Florence Jacobus (p. 275, l. 9). Smith denies this (p. 327, l. 10; p. 330, l. 9).

108. Smith had improper relations with Audrey, his child (p. 330, l. 40). Smith denies this (p. 401, l. 38).

ARGUMENT.

Appellant claims:

(A) That respondent's charges of cruelty are denied by appellant and other witnesses and, with the exception of one isolated incident, are absolutely uncorroborated.

(B) Respondent's unwarranted accusations against appellant of revolting crimes were provocative of any cruelty of which she complains.

(C) Respondent condoned any offense of which she complains by thereafter co-habiting with appellant.

A

The respondent's charges of cruelty are denied by appellant and other witnesses and, with the exception of one isolated incident, are absolutely uncorroborated.

EACH AND EVERY BASIS FOR RESPONDENT'S CAUSE OF SUIT MUST BE PROVED AND CORROBORATED.

IT IS AN INFLEXIBLE RULE THAT A DIVORCE IN NEW JERSEY IS NOT GRANTED UPON THE UNCORROBORATED ADMISSIONS OR TESTIMONY OF A PARTY TO THE SUIT.

Garcin v. *Garcin,* 62 Eq., 189.
Fischer v. *Fischer,* 18 N. J. Eq., 300.
Woodworth v. *Woodworth,* 6 C. E. Green, 251.
Palmer v. *Palmer,* 7 C. E. Green, 88.
Tate v. *Tate,* 11 C. E. Gr., 55.
Doughty v. *Doughty,* 5 Stew. Eq., 32b.
Sandford v. *Sandford,* 5 Stew. Eq., 420.
Franz v. *Franz,* 5 Stew. Eq., 483.
McShane v. *McShane,* 18 Stew. Eq., 341.
Herold v. *Herold,* 2 Dick., 210.
Weigel v. *Weigel,* 15 Dick., 322.
Moak v. *Moak,* 48 Atl., 394.
Kloman v. *Kloman,* 62 Eq., 153.

"Extreme cruelty," as used in the statute, is such as endangers the safety of the person, or the health of the aggrieved party.

Smith v. *Smith,* 40 Eq., 566-594.
Taylor v. *Taylor,* 73 Eq., 745.

Gross physical abuse, as assaults, beatings, woundings, &c., is evidence of extreme cruelty.

Graecen v. *Graecen,* 3 Eq., 459.

Malicious attacks upon the wife's honor, coupled with slight violence, actually inflicted or reasonably apprehended, may constitute cruelty.

Spencer v. *Spencer,* 74 Eq., 786.
Thomas v. *Thomas,* 20 Eq., 97.
Black v. *Black,* 30 Eq., 215.

No proof has been adduced of any attacks upon the petitioner's honor. Nor is there any legal proof of any other matter or thing which the courts have held to be extreme cruelty, such as giving the wife a venereal disease, *Cook* v. *Cook,* 32 Eq., 475, or the husband's associations with abandoned women, *Cook* v. *Cook* (*supra*), or his gross abuse of marital rights, *English* v. *English,*

27 Eq., 71, reversed, p. 579, and the like. No case has been decided that we can find where mean words, however coarse or abusive or threatening, have impaired the wife's health or endangered her safety.

Arrowsmith v. *Arrowsmith,* 71 Atl., 702.

Respondent furnished no legal proof of such extreme cruelty as entitled her to relief.

The weight of the testimony is against respondent. Out of all the friends whom she said she had, she produced as witnesses none who visited her during her married life. Nor does she produce any of the numerous detectives that she had on Smith's train since 1909 (p. 135, l. 14; p. 254, l. 41; p. 255, l. 11). Had her charges against her husband been true, the detectives could readily have confirmed her suspicions and corroborated her story. Out of the numerous maids employed by her she produces two, Emma Knell (p. 34) and Florence Branthwait (p. 37), who do not testify in her favor. Defendant produces one servant, the old colored lady, Mary Shepherd, who testifies against petitioner (p. 189). This witness particularly denies Mrs. Smith's version of the trouble over the pail of coal (p. 191, l. 29). Of petitioner's family, who, she testifies, frequently visited her, she produced her father and uncle, but neither one testified to acts of cruelty, except her father's version of the electric light bulb incident, *which is the only corroboration offered by respondent of any of the cruelty of which she complains,* and in this case her version of the incident was denied by appellant.

She produced Helen L. Dean, a Christian Science healer, who says that Mrs. Smith's health has improved since she first became acquainted with petitioner about a year ago and after she had left Smith. Petitioner did not attempt to call Mrs. Perrine, who, petitioner claims, knew of Smith's wrong doings and helped to spy on him (p. 273, l. 36).

Mrs. Sandusky knows nothing except that Mrs. Smith had a black and blue mark on her arm (p. 62, l. 41). Petitioner had numerous doctors, but only produced two, Dr. Peck, of Boonton (p. 152), and Dr. Cottrell, of Perth Amboy (p. 154). Neither of them supported or in any way corroborated petitioner's story. Dr. Peck stated that he was frequently requested by Mrs. Smith to come to her home and that he did not do so because he did not think she needed medical attention (p. 154, l. 31). Dr. Cottrell stated that if the stories told by Mrs. Smith respecting her

husband's infidelity were not true she was insane, but he knew nothing as to their truth (p. 155, l. 41).

The witnesses produced by Mrs. Smith, in every instance, were persons of standing and respectability. Dr. Arbuckle, of Boonton, instead of corroborating Mrs. Smith testimony, denied that what she said was so (p. 58, l. 27; p. 159, l. 4). He supported Smith's story of the petitioner's illness in March, 1915 (p. 158, l. 12).

Mr. Canfield, Mrs. Smith's brother-in-law, testified against her (p. 160), as did her own brother, Lott Buckbee (p. 168), and her uncle, Mr. Dunn (p. 224). Each of these gentlemen related in detail the revolting accusations made by respondent against appellant. They remonstrated with petitioner and requested her to produce proof, but her reply was always that it was not yet time (p. 162, l. 30; p. 169, l. 43). Dr. Warren, in whose flat on Mount Prospect avenue, they lived, did not corroborate her story (p. 174). Her friend, Mrs. Dawson, testified against her (p. 177). J. Herbert Dawson, who had been acquainted with her for twenty years, was a witness for appellant (p. 182). Each of these witnesses remonstrated with petitioner, who would reply that she had had proof, which would be produced at the proper time (p. 162, l. 30; p. 169, l. 43; p. 180, l. 11; p. 184, l. 33). Dr. Depue, her pastor, was against her (p. 187). Her own sister, Mrs. E. F. Canfield, who Mrs. Smith said lied (p. 258, l. 5), told a story widely at variance with that related by the petitioner (p. 205). She frequently asked petitioner for proof of her allegations. Her reply was the same as above stated (p. 210, l. 41). Mr. Schwartz, her neighbor in Boonton, contradicted her testimony (p. 219, l. 43, &c.). Mr. Husk, the merchant in Boonton, testified against petitioner (p. 222). Her former neighbor, Ernest Brauer, against whom she made accusations similar to those made against her husband (p. 397, l. 8), testified for appellant (p. 232). Mrs. Brauer did likewise (p. 396). Both of these witnesses remonstrated with petitioner (p. 235, ll. 5 and 16), but without avail.

Dr. Dougherty, who was her family physician, and who treated Mrs. Smith for years, did not believe her and said she labored under a delusion respecting her husband's infidelity (p. 319, l. 12). He further stated that her complaints of organic trouble had no foundation (p. 320, l. 11).

Anna Cassimer, the school teacher, who lived with the Smiths in Boonton, flatly contradicts Mrs. Smith's testimony (p. 402,

&c.). Particularly is it significant that, in addition to denying acts of intimacy with defendant (p. 403, ll. 21, &c), Miss Cassimer recalls specifically occurrences just prior to the time when she left the Smith home, which are entirely at variance with Mrs. Smith's testimony (p. 404, l. 17). See Mrs. Smith's testimony (p. 81, l. 15). Miss Cassimer was so afraid that Mrs. Smith would accuse her of intimacy with defendant that she never spoke to Mr. Smith unless petitioner was present (p. 405, l. 20), and on several occasions she asked Mrs. Smith for permission to speak to her husband (p. 405, l. 31). Petitioner at one time accused Miss Cassimer of intimacy with defendant (p. 410, l. 20). This accusation was based on the fact that petitioner's aunt had stated to Mrs. Smith that defendant went with a woman to New York who was a school teacher, whose first name was Anna and who was tall and had light hair (p. 410, l. 20; p. 411, l. 5). This description left no doubt in Mrs. Smith's mind that Miss Cassimer was the woman referred to.

Mrs. Elizabeth L. Canfield, a sister-in-law of the other Elizabeth Canfield, the Christian Science healer, to whom Mrs. Smith went for treatment, put no credence in her stories (p. 414, l. 25; p. 416, l. 26).

When witnesses of this caliber testify against the petitioner there must be a reason for it. The reason seems to be that Mrs. Smith deluded herself with the idea that her husband was unfaithful and cruel. She reached such a state that her suspicious mind was in a condition to seize upon the slightest figment of fact to prove the truth of her suspicions. Without the least warrant or foundation, in fact, she told whomsoever she saw tales that were so inherently improbable they could not be believed; tales so coarse and vulgar that anyone who knew Smith's character put no credence in them. She accused anyone and everyone, whether they were her friends, neighbors or servant girls, irrespective of their age or color, and whether she knew them or not, until the reputation of no one with whom she came in contact was safe. She has lost her friends because of these accusations (p. 314, l. 18). She would not and did not, even when asked, produce any proof of her charges (p. 314, l. 24), and when confronted with those whom she accused, or with evidence rendering her stories improbable, retracted her statement, or else said that conditions were such that she was unable to produce proof (p. 162, l. 30; p. 374, l. 22). No one believed her stories, least of all her immediate family. She says she has no corrob-

oration because her witnesses are dead and gone (p. 278, l. 9) and because the things happened when no one else was present (p. 277, l. 24). But knowing that Carrie Scott was a most important witness (p. 278, l. 17), she did not, when taking her deposition, put in the most important part about the woman in the Boonton cellar (p. 33).

Having testified to this long list of abuses respondent furnished corroboration of only one incident. Her father, Joseph R. Buckbee, testified, with reference to the electric light bulb incident, that appellant had the bulb in his hand and was endeavoring to put it down Mrs. Smith's throat. No witness testified that Smith touched Mrs. Smith with the bulb. This incident is explained by appellant who said Mrs. Smith attempted to throw it at him and he grabbed her wrists and turned the bulb toward her face (p. 310, l. 8), which fact is not denied by Mrs. Smith or her father. Audrey was present at the time, but although in the custody of her mother she was not produced as a witness. The father admittedly was not present until the end of the quarrel (p. 310, l. 12; p. 92, l. 5; p. 45, l. 13; p. 381, l. 1).

Respondent also charged appellant with having struck her on her neck at Bayonne in 1911 (p. 72, l. 27). Appellant testified that he slapped her with the back of his hand (p. 290, l. 42; p. 291, l. 4). He states that this was the only time he ever struck her and it happened *five years* before she left him. His anger at that time was provoked by her unwarranted accusation on that he was signalling to woman with a match (p. 291, l. 4). *Respondent produced no one to corroborate her story of the quarrel.*

In addition to the lack of corroboration of Mrs. Smith's testimony and to the numerous instances where her denials of accusations are repudiated or discredited by other witnesses, we wish to call the attention of the Court to the following instances where the proof is clear that Mrs. Smith was inaccurate and inconsistent in her testimony.

Respondent stated that Dr. Arbuckle had told her referring to an occasion when she was ill, "This time you have escaped; the world is too wise to stand anything like this" (p. 269, l. 42).

Dr. Arbuckle has no recollection of such a statement (p. 159, l. 5). Such a statement was not made according to defendant.

2. Respondent stated that she made no complaints of infidelity against her husband until after the birth of Audrey (p. 113, l. 19). This is denied by Zella Dawson (p. 177, l. 39); Lott E. Buckbee (p. 168, l. 44); Milton Canfield (p. 161, l. 5);

J. Herbert Dawson (p. 184, l. 27); Elizabeth F. Canfield (p. 206, l. 14; Ernest Smith (p. 281, l. 38).

3. Respondent testified that James M. Schwartz never asked her to go riding with him and his wife (p. 261, l. 18).

This is denied by Schwartz, who said he asked her and she refused (p. 219, l. 42; p. 220, l. 6). (Ernest Smith, p. 310, l. 32.)

4. Mrs. Smith denies that Zella Dawson warned her not to continue making accusations against Mr. Smith after they came to Boonton (P. 243, l. 40).

Zella Dawson testified she did tell her to stop such talk (p. 180, l. 7). (P. 397, l. 37)

5. Respondent denied that she had even accused Mrs. Perrine, a neighbor, an elderly woman at Forest Hill, of being intimate with defendant (p. 273, l. 30).

That she had done so appears from the following testimony: "a neighbor" (Lott E. Buckbee, p. 169, l. 10); ["a neighbor" (who was Mrs. Perrine, p. 206, l. 29) Elizabeth Canfield] (Mrs. Perrine, a neighbor, p. 161, l. 10). Milton Canfield.

6. She testified that when living at Perth Amboy she nursed her baby (p. 240, l. 16). Later when her attention was called to the fact that the child was four years old she admitted she was mistaken (p. 240, l. 26).

7. On direct examination she testified that she caught defendant with the Polish maid in the dining room (p. 66, l. 23). On cross examination she stated it was in the sitting-room (p. 121, l. 15) and expressly denied that she had ever said the incident occurred in the dining-room (p. 121, l. 8).

8. She stated on direct examination that she had found defendant handling Audrey improperly, but that she never refusd to permit the child to be with defendant alone (P. 399, l. 7). On cross examination she was asked "You still permit him (Mr. Smith) to go to the cellar with her, or her to go where he was?" Answer: "In front of me, when I was there." Question: "The question was whether you allowed Audrey to go where you were not." Answer: "No, she did *not go* where I wasn't." (P. 400, l. 26)

9. On direct examination respondent testified that she called Mr. Smith everything she could think of; on cross examination she stated that all she said was that he was a liar and unfaithful to her (p. 114, l. 25).

10. After relating that she had caught defendant in a compromising position with the Polish maid respondent testified that she waited for a few days before she discharged the maid (p. 123, l. 29; p. 125, l. 32); that she did not discharge her sooner because respondent was too ill (p. 125, l. 43). She then admitted that her health was not improved when she dismissed the maid (p. 126, l. 4).

11. Respondent swore that she never owned a revolver and never threatened to shoot any woman she caught with Mr. Smith (p. 121, l. 31). She then admitted that she had written a letter to that effect to her sister (p. 131, l. 38).

12. Respondent swore that she never attempted to kill herself and Audrey; that she did do so is testified by defendant.

On page 275 respondent testified to having found anonymous letters under her door. What these letters were about or from whom they came does not appear, for the letters were not offered, because Mrs. Smith testified they had disappeared. Such letters, if in fact they ever existed, and there is no corroboration that they did, are not binding upon the defendant, who had no knowledge of them.

On page 476 (d) is a translation of a letter offered by respondent purporting to have been written by a maid. This letter was objected to by appellant's solicitors, but, as the testimony was taken at that time before Mr. Bindseil, as Master, it was taken subject to the objection. Who wrote this letter does not appear. Smith had no knowledge of it and it clearly is not admissible against him. The person who wrote it was not called as a witness and the letter is identified in no way whatsoever. It is purely hearsay.

On page 324 Mr. Romine, the solicitor of respondent, testified before the Master, over defendant's objection. This evidence is purely hearsay and is clearly incompetent. Respondent offered it evidently to explain why she did not produce the detectives and lawyers as witnesses, but she did not take the legal way of doing it. The fact that she did not produce her detectives as witnesses is almost conclusive evidence that they could find nothing against her husband, search as they would.

On page 274, over the objection of defendant, two postal cards were admitted for what they were worth (Ex. C. 11 and Ex. C. 12, p. 476 (c)). It does not appear who wrote them and Smith never saw them or knew anything about them (p. 334, l. 38). They were

clearly incompetent and do not bind him in any way or help to prove plaintiff's case.

On page 230 a letter, written by Mrs. Smith to her brother, was offered in evidence over defendant's objection, but, as the testimony was then being taken before the Master, the letter was set forth in full. It is clearly incompetent and is a self-serving declaration. However, a reading of the letter shows that Mrs. Smith is not quite the perfect lady she testified she was (Ex. A. 1, p. 476 (a)).

On page 70 a brand new horseshoe nail was admitted in evidence. What bearing this has on the case we are at a loss to know. Smith is not connected with it in any way and it certainly is no evidence of cruelty on his part.

On page 100 a comb is admitted in evidence for plaintiff. Where it came from or whose it was does not appear. Smith denies any knowledge of it (p. 306, l. 9), and it certainly is not binding on Smith. Mrs. Smith might have put it there herself.

On page 79, Ex. C. 2 is admitted. This was a letter Mrs. Smith claimed she took from the defendant's pocket. Smith had no knowledge of it (p. 305, l. 43). Without bringing more testimony regarding it, Mrs. Smith's case is not strengthened in any particular.

It is improbable that petitioner could have been continually abused by defendant and defendant guilty of repeated acts of adultery for fourteen or fifteen years, during which time they were living together, without some one knowing something about such abuse and licentiousness. She was of a jealous disposition, believed what she wished to believe, and what she was in a mood for accepting as true.

The defendant is a man of retirement, employed for many years in a position of responsibility by brokerage firms in New York City (p. 280, l. 29). He has had steady employment (p. 280, l. 42; p. 281, l. 10), and has been faithful to his trusts, commuting to New York from his various homes, leaving early in the morning and returning early or late at night, as his work kept him (p. 281, l. 26). He has not missed a day in his work (p. 281, l. 15) and has always provided for his wife as his means would permit (p. 375, l. 35). He bought a house in Forest Hill and the last house in Boonton (p. 280, l. 28), which evinces an intention on his part, to do his duty by his family. It is hardly to be conceived that, if the charges his wife was continually making had the least foundation in fact, he would have

put in his wife's hands a weapon to be used against him, for he must have known that sooner or later she would be forced to leave him and obtain separate support from the very property he was buying for her happiness.

Her family offered her money to get a divorce if she would prove her charges, and at the time of the hearing were paying the rent for the house she lives in (p. 267, l. 37), while she was trying to separate herself from her husband. Her own family was in a better position to judge of the married life of Smith and his wife than anyone else, and they have found in Smith's favor. Mrs. Smith complains that defendant would not send her money to stay longer than two weeks at Asbury Park (p. 97, l. 8). Smith says he could not afford it (p. 311, l. 43), that he was not able to take a vacation himself (p. 311, l. 43). He sent her $22.00 for each week she was at the seashore (p. 311, l. 37). This complaint of Mrs. Smith is not an allegation of cruelty but it does show her disposition. No doubt money matters have been a source of continual trouble between them, but the fault lies wholly with the petitioner. She was never satisfied, and wanted more than her husband could give. She did not co-operate as a wife should. Her repeated complaint was that he was giving money to other women. She persisted in this charge, even though her brother, Lott Buckbee, showed her conclusively, that Mr. Smith's salary was exhausted by expenses (p. 170, l. 29). When petitioner and defendant were first married he was receiving $800 per year (p. 281, l. 8). His salary at the time of the hearing was $2,000 (p. 281, l. 9). During the early part of the married life of petitioner and defendant, Mr. Smith gave his wife ten dollars a week for small household expenses (p. 108, l. 35), four dollars per week for her personal use (p. 108, l. 38; p. 112, l. 27). Later, as defendant's salary increased, Mrs. Smith's personal allowance was raised to $6.00 per week (p. 108, l. 38; p. 112, l. 4; p. 332, l. 25), and he paid the bulk of the household expenses (p. 332, l. 21; p. 332, l. 34). Appellant paid the rent (p. 108, l. 43), the doctor's bills, the maids (p. 109, l. 5) and the washwomen (p. 108, l. 43). For the last three or four years, instead of giving respondent the ten dollars per week for household expenses, appellant has kept up her personal allowance, and paid all the household expenses himself (p. 332, l. 36). In addition he had to pay his carfare, his lunches in New York, the taxes on the real estate he owned, insurance, interest on mortgage and all other bills. After all these payments there would be little left. On New Years when he re-

ceived a present of $100 he would give her $50 (p. 311, l. 17), which she does not deny. Defendant offered to pay the wages the maids were receiving to Mrs. Smith if she would do the work, but she refused (p. 328, l. 35). She taught dancing classes instead (p. 328, l. 32; p. 375, l. 42).

Though Mrs. Smith testifies that she has contemplated bringing an action for divorce for several years, and she knew that she had grounds for a divorce, she made no effort to do so until the commencement of the present action. If she suffered the abuses and indignities of which she complained for the past ten years it seems strange that she did not institute action before, and the fact that she did not is strong evidence that she had no grounds therefor. On many occasions when she claims her husband was guilty of indecent acts, she made no complaint. She says that she continued to live with him because she could not help herself (p. 147, l. 26; p. 148, l. 11). She made no effort to live with her father in Newark (p. 147, l. 12). She states that she was not in as good a position to start suit several years ago as she was in 1915, as her health was too poor (p. 147, l. 34). She then admitted that her health was just about the same in April, 1915, when she left, as it had been before (p. 147, l. 35). This admission being inconsistent with her former statement, she then fell back on the reason that she originally had no place to go (p. 147, l. 40), but confessed that she had made no effort to find a friend to go to (p. 148, l. 9), as she did when she finally left in 1915. She knew that her husband could always be made to provide legal fees for her. Petitioner admitted that her relatives repeatedly asked her to substantiate her stories by proof (p. 148, l. 13) and that she made no effort to do so (p. 148, l. 35; p. 148, l. 16). Carrie Scott, who Mrs. Smith says, was a witness to acts of indecency on the part of Smith, was alive at that time, but petitioner never took her to her relatives to prove her story (p. 148, l. 17). She admitted that never during the course of her married life did she make the slightest endeavor to satisfy her family that what she said about her husband was true (p. 148, l. 35). She frequently threatened to have him arrested (p. 266, l. 44). She testified that she did not carry her threat into execution because of her child (p. 267, l. 11), and because of the fear of notoriety (p. 267, l. 12), and then admitted that there would not be as much notoriety as there is in this case (p. 267, l. 25).

This testimony of Mrs. Smith shows the improbability of her story. She lived for thirteen years with a man who, if guilty of the crimes of which she accused him, was worse than a beast. Yet no effort was made by her to prove her story to her relatives, though admittedly witnesses she said knew about such occurrences were then alive and available. She continued to live with her husband, when, from her own statement, she could have left him as well at one time as another.

Respondent claims that her health became impaired by reason of defendant's acts. This condition was caused, according to her story, by defendant's acts of infidelity. She produces no corroboration of such infidelity, and, therefore, there is no foundation for her statement that her health was impaired thereby. She further stated that when defendant cursed her she became ill. If defendant's witnesses are to be believed, this cursing followed repeated unwarranted accusations against him made by her. He testifies that hardly a day passed that she didn't accuse him of being intimate with some other woman (p. 312, l. 19); that she charged him *with bigamy, infidelity, adultery and sodomy, that he was a drunkard, a dope fiend, and an attempted murderer* (p. 292, l. 17). Having produced her illness by her own acts, defendant is not responsible. She produces no legal evidence to show that defendant, at any time, did anything to put her in reasonable fear of bodily injury or that he inflicted bodily injury except the Bayonne occurrence of years ago and the incident regarding the cut glass dish (which ocurred just before she left, and which she states, was the reason she left, her version of which is denied by the only other witness present, Mary Shepherd, the colored maid (p. 192, l. 9). Her story regarding both of these incidents is uncorroborated. No doctors are produced by her to swear that during the time she lived with defendant, she was dangerously ill and that, since she left him, her health has improved. She told Mary Shepherd the day she left that she was able to make her own living (p. 192, l. 20). Nor is it reasonable to believe that, if her allegations were true, she would continue to live with her husband all these years, submitting to what she said she had to endure. The mere fact that she did continue to live with him is strong evidence that her husband is not the brute she would have the Court believe. The defendant's demeanor on the stand, his willingness to tell all he knew, his readiness to admit when he

was in the wrong and his appearance and character, as testified to by disinterested witnesses who knew him, his steady employment and his evident desire to establish permanent homes, by purchase, all show that he did not and could not do what the respondent has charged him with. Respondent's ill health was not caused by defendant's acts, but is due to the fact that she has never had robust health, has always been more or less sickly, is of a nervous temperament, and has magnified her troubles. The parties undoubtedly have not lived together harmoniously. They had troubles over money matters, when the husband was doing all he could; over her unjust, unfounded and unwarranted accusations, which her husband justly resented. But the wife cannot and, from the testimony, does not lay the burden of such wrongs at her husband's door. He has suffered what most men would not have endured and even her own family has found her in the wrong. The story of their married life is not pleasant reading, but when analyzed the fault lies with her, and whatever Smith has done in a fit of anger and after continued goading, she has brought upon herself.

B

Respondent's unwarranted accusations against appellant were provocative of any cruelty of which she complains.

Petitioner *admits* that *during the married* life of petitioner and defendant she *repeatedly accused* him of the following acts. (Reference is also made to evidence corroborative of the fact that these accusations were made.)

1. Flirting with women (p. 116, l. 40).
2. Waving to them through the window (p. 252, l. 4).
3. Being with women in New York. (Anna Cassimer, p. 403, l. 44).
4. Signalling to women when he would light the gas in the house. This accusation was made at Boonton, Perth Amboy, and Broad street (p. 242, l. 31).
5. Signalling to women when he lit a match (p. 242, l. 37; p. 244, l. 7).
6. Signalling to women living in an upper apartment in the Broad street house by turning on

the water faucet in the bathroom (p. 244, l. 33). (Ernest Smith, p. 288, l. 5.)

7. Accused him of what petitioner terms, undignified, unmanly actions with other women.
8. Signalling to women by raising the shades at the windows of their home and while at table (p. 251, l. 29).
9. Having women in the cemetery at Boonton (p. 245, l. 35).
10. Having soiled handkerchiefs in his pocket, her accusation from her testimony being they bore evidence of sexual excesses (p. 246, l. 35; p. 247, l. 4). (Albert Husk, p. 223, l. 13.)
11. At Bayonne and Boonton would take hairs from defendant's coat and tell him that that was proof he had been with a woman (p. 259, l. 11; p. 260, l. 4). (Anna Cassimer, p. 404, l. 7.) (Albert Husk, p. 223, l. 4.) These hairs according to petitioner were always of same color and same length. She preserved them (p. 259, l. 19). She kept them in a vase. (Mary Shepherd.)
12. Infidelity with two of her personal friends (p. 260, l. 21).
13. Signalling to servants across the dining-room table (p. 264, l. 25). These signals would be made by laying one, two or three fingers across his face. These accusations were made at every place where petitioner and defendant lived except Perth Amboy and Bayonne. One of these was a colored girl (p. 264, l. 24; p. 264, l. 10; p. 265, l. 34; p. 266, l. 4).
14. Committing adultery with a woman in the cellar at Boonton.
15. Accused him of having something to do with a woman in Jersey City; accused him of having a wife and child in Jersey City. (Eliz. F. Canfield, p. 209, l. 5.)
16. Being intimate with a music teacher (p. 253, l. 41). (Elizabeth F. Canfield, p. 207, l. 42.)

From the testimony of *appellant* it appears that the following *accusations* were made by respondent against her husband during their married life. Reference is made in the margin to the places where the parties resided at the time the accusations were made. Reference is also made to the testimony of appellant's witnesses corroborative of his testimony that petitioner continually accused appellant of indecent acts.

1. Prior to the marriage of petitioner and defendant that he had a child by a woman in East Orange (p. 282, l. 8).
2. That he was intimate with a Mrs. Perrine, a neighbor. This woman was 65 years of age (p. 282, l. 24). (Milton Canfield, p. 161, l. 11.) (Lott E. Buckbee, p. 169, l. 10.) (Elizabeth F. Canfield, p. 206, l. 29.)
3. Flirted with servant girls in the trolley (Zella Dawson). (Elizabeth F. Canfield, p. 206, l. 15.)
4. Signalling to Florence Jacobus across the dining-room table and making dates with her. Signalling to a friend across the dining-room table. (Elizabeth F. Canfield, p. 206, l. 39.)
5. Signalling to servants.
6. That petitioner had received anonymous letters reflecting on the character of her husband. (Milton Canfield, p. 161, l. 39.) (Elizabeth F. Canfield, p. 207, l. 10.)
7. When defendant changed his necktie or his clothes it was an indication that he was going to meet a woman (p. 286, l. 36; p. 283, l. 21; p. 283, l. 3).
8. That he communicated with women through personals in the Herald (p. 283, l. 17). (Zella M. Dawson, p. 179, l. 11.) (J. Herbert Dawson, p. 184, l. 43.) (Elizabeth Canfield.)
9. Intimate with the servant girls (p. 283, l. 40). (Elizabeth F. Canfield, p. 210, l. 26; p. 209, l. 12.) With a woman across the street (Elizabeth Canfield).
10. Leaving his office early for the purpose of meeting two girls. (Elizabeth F. Canfield, p. 210, l. 10.)

11. Meeting the servant girl in the cellar at a time when Mr. Brauer and defendant were building a boat (p. 284, l. 14). (Margaret Brauer, p. 396, l. 30.) Committing adultery. (Ernest Brauer, p. 233, l. 26.) Woodside 1st house
12. That Mr. Brauer and defendant took women out in the boat (p. 284, l. 34). (Margaret Brauer.)
13. That he committed adultery with the Polish maid in Newark (Margaret Brauer, p. 396, l. 33); that he made signals to her in the glass of the buffet in the dining-room. (Margaret Brauer, p. 396, l. 34.)
14. That he was intimate with Florence Jacobus (p. 285, l. 10).
15. Petitioner accused defendant of infidelity, naming a maid in their employ in their house on Summer avenue. (Dr. Dougherty, p. 317, l. 10.) The basis of this accusation was that defendant and the maid happened to be at the same time on the back balcony.
16. That he went to the cellar with the colored servant girl and met her at the ice box (p. 285, l. 30). That he had intercourse with her. (Ernest Brauer, p. 234, l. 35.) She caused the ice box on the stairs to be moved so that her opportunity for observation might be widened (p. 285, l. 34). She was suspicious of her husband's actions with the servant girl. (Milton Canfield, p. 161, l. 24.)
17. That he was flirting with a girl across the street (p. 286, l. 20). She had Mr. Dawson put window phaning across the bathroom window to prevent this signalling (p. 286, l. 27). (Herbert Dawson, p. 183, l. 36; p. 184, l. 7.) Woodside 2nd house
18. When he visited her at the hospital if he wore a new necktie she accused him of being out with some woman (p. 286, l. 37).
19. That he met four girls who lived in the same apartment building (p. 287, l. 36). That he was intimate with a girl in the house. (Lott E. Buckbee, p. 169, l. 36.) (Elizabeth L. Canfield.) South Broad St.

20. Intimate with a woman in Hill street, Newark, and with a woman whom he met at lunch in New York. (Elizabeth L. Canfield, p. 414, l. 5.)
21. That the janitor in the South Broad street house had attempted to assault his child, Audrey. (Elizabeth L. Canfield, p. 414, l. 9.)
22. That he signalled to them when he turned on the faucet in the bathroom.
23. That he received letters at the office. This accusation was admittedly based on a statement made made by a Christian Science healer who later confessed that she had lied when she made the statement.
24. That he had another woman and child (p. 288, l. 19). That he made signs to this woman (p. 288, l. 22).
25. That he was intimate with a woman who lived two blocks from their home (p. 288, l. 25).
26. That he was giving dishes to women. She stated that she locked her china closet to prevent this (p. 289, l. 33.) (Zella M. Dawson, p. 179, l. 21.) (J. Herbert Dawson, p. 184, l. 16.)
27. That he was intimate with an actress who lived in the same building. That engagements were made with her through the medium of piano music (p. 290, l. 6).
28. That he was supporting a woman whom he had brought from South Broad street, Newark; that he was giving her groceries (p. 290, l. 12). (Albert Husk, p. 222, l. 41.)
29. That he lit matches in the bathroom, thereby making signals to two girls who lived in the next block back of their home (p. 290, l. 32). Same way if he lit his cigar (p. 290, l. 36).
30. That he met women when he went to the ball game on Sunday (p. 291, l. 17).
31. That he was intimate with a woman sixty years old, a neighbor. If defendant gave her plants from his garden, the accusations would follow (p. 292, l. 27).

32. That he made signals out of the bathroom window to a woman in a tower a quarter of a mile from their residence (p. 292, l. 37). (Lott E. Buckbee, p. 171, l. 4.)
33. That he was intimate with a woman who lived two blocks from their home and one who lived opposite to them (p. 292, l. 40). Petitioner accused defendant of meeting these women in New York (p. 293, l. 6).
34. That he changed the electric light in the bathroom in order that he might make signals (p. 294, l. 10). That he made signals with the light. (Anna Cassimer, p. 404, l. 4.)
35. That when defendant threw the lace curtain up over the pole at the bathroom window in order that he might have more light, it was evidence that he was signalling to women (p. 294, l. 11). (Anna Cassimer, p. 404, l. 4.)
36. When he switched on the electric lights he was accused of signalling to women by making a "click" with the button (p. 294, l. 30).
37. That he met women in the cemetery (p. 294, l. 45). Petitioner nailed the gate at the entrance to the cemetery to prevent defendant from meeting women there (p. 295, l. 8).
38. That he was letting women in his bedroom, entrance being gained by the bedroom window. She nailed the windows in his bedroom to prevent entrance by women. Also nailed the windows in the barn. That he brought women into the house (p. 295, l. 12). (Elizabeth Canfield.)
39. That on one occasion the covers on the bed in which he had been sleeping were only slightly disordered, she accused him of being away that night (p. 295, l. 31).
40. If defendant's bathrobe was thrown across the foot of the bed then she said that he had put it on during the night, crawled out through the window and met some woman in the cemetery (p. 295, l. 39).
41. That he gave the door key to some woman so she could get in at night (p. 296, l. 4).

42. When defendant arrived home late from work she would accuse him of being out with women (p. 296, l. 14). (Elizabeth Canfield.)

43. She would go out in the porch and whistle for two or three minutes to see if anyone would answer (p. 296, l. 18). These accusations would continue until two or three o'clock in the morning (p. 296, l. 21). Would continue making these accusations after they had retired (p. 296, l. 21).

44. Petitioner found a comb in defendant's room one morning, showed it to him and said "Do you want better proof?" (p. 296, l. 33).

45. Petitioner would say to Audrey, "Your papa is going out to see some woman; he is going to see his lady friends" (p. 297, l. 40). "You have to be a little lady because we are going to leave your father."

46. That defendant stole groceries and gave them to women (Albert Husk). That he gave fruit away (p. 298, l. 21). On one occasion she saw an empty fruit can on the porch and said that one of his whores had left it there (p. 298, l. 26). It appeared that this can had been left by the grocer (p. 298, l. 36). Even this proof did not convince her (p. 298, l. 41). She carried the canned fruit from the cellar to the attic, stating that she did so to prevent defendant from giving it to women (p. 299, l. 7).

47. Petitioner would put pins in the window curtain, so she could tell whether defendant moved them or not (p. 299, l. 20). If at night when they were eating dinner defendant rolled the curtain at the window so as to admit more light petitioner would pull the curtain down and turn on the electric light, stating that defendant was signalling to a woman when he put the curtain up (p. 299, l. 22).

48. She frequently changed defendant's seat at the table (p. 299, l. 29).

49. That defendant had had improper relations with Albert Husk (p. 299, l. 40).

50. A similar accusation involving J. Herbert Dawson (p. 300, l. 11).
51. Petitioner threatened to shoot defendant (p. 300, l. 23).
52. That he was with a woman in a department store, in New York.
53. Respondent accused defendant of maltreating his own child. When questioned by J. Herbert Dawson as to this accusation she made no reply. She admits this.
54. That he committed adultery with a colored servant in Boonton. On one occasion such accusation was based on the fact that defendant and the colored maid happened to be in the hall at the same time.
55. That he flirted with other women and met them in New York. (Anna Cassimer, p. 403, l. 41.)
56. Accused Anna Cassimer of being intimate with Mr. Smith in New York, basing such accusation on a statement made by petitioner's aunt. (Anna Cassimer, p. 410, l. 23.)
57. That he had a woman upstairs and in the cellar (Mary Shepherd).
58. Petitioner made repeated complaints concerning defendant's infidelity. (Dr. Dougherty, p. 317, l. 29.)

58a. That he had handkerchiefs in his pocket which were in a soiled condition and which bore evidence of sexual excesses. (Dr. William H. Warren, p. 175, l. 24.) Petitioner told defendant that she had had them chemically analyzed.

59. That he was intimate with servant girls, irrespective of their color. (Milton Canfield, p. 161, l. 24; Lott E. Buckbee, p. 171, l. 12; p. 170, l. 17; p. 170, l. 19.)
60. That she had received anonymous letters reflecting on the character of her husband. (Milton Canfield, p. 161, l. 39; Elizabeth F. Canfield, p. 207, l. 10).
61. That Zella Dawson had been with defendant. (Zella Dawson, p. 179, l. 26.)

62. Repeated accusations of a general nature were made by petitioner; for instance, that he was flirting with other women, running with other women, guilty of improper conduct with them, &c. (J. Herbert Dawson, p. 186, l. 15; Dr. Frank E. Depue; Mary Shepherd, p. 190, l. 38; Elizabeth F. Canfield, p. 206, l. 24; Henry A. Dunn.)
63. That a woman had followed appellant from Perth Amboy to Boonton and that she followed him wherever he moved. (J. Herbert Dawson, p. 183, l. 24).
64. Accused him of signalling to neighbors. (Elizabeth Canfield.)
65. Accused him of going with a girl whose photograph was on a table in their home. (Henry A. Dunn, p. 225, l. 4.)
66. Accused him of kissing girl on train. (Ernest Brauer, p. 234, l. 39.)
67. That he was in love with a girl who was a music teacher. (Elizabeth Canfield.)
68. That defendant exposed himself at the windows of his home. (Elizabeth L. Canfield, p. 414, l. 40.)
69. That he stayed in New York at night. (Elizabeth L. Canfield, p. 415, l. 15.)

Not a single accusation has the slightest foundation in fact, and respondent produced *no corroboration* of them whatever.

LAW.

In the case of *Pittis* v. *Pittis* (Court of Errors and Appeals), 82 N. J. E., 635, the Court referred to the early case of *English* v. *English*, 27 N. J. E., 599, where it was held that, in a suit by a wife for divorce on the ground of the extreme cruelty of her husband, the decree of final separation in such cases was made mainly as a protection against future probable acts of cruelty.

> "In the light of that principle," said Vredenburgh, *J.*, writing the opinion for the Court of Errors and Appeals in Pittis *v.* Pittis (*supra*), "where the court can see from the circumstances under which the violence to the wife has occurred that it is fairly attributable to the sudden, but natural, anger of the husband under the impulse of his momentary irritation (on occasions when he has been

> goaded to the act by her accusations against him of a revolting crime of which he was innocent), a decree for permanent separation to secure the wife's protection, would seem to be unwarranted, for the reason that the husband's conduct in such regard depends *upon a provocation resting entirely within the voluntary control of his wife.*"

The specific acts of cruelty in the Pittis case were that the defendant struck his wife at least twice; that he used offensive language toward her; that he frequently told her to go home to her people, and that he would not live with her. He admitted he struck the petitioner once. This occurred in an automobile on a trip to Westfield. The act on the part of the defendant on that occasion followed an accusation by the petitioner that the defendant had had criminal relations with his sister.

The Pittis case is exactly in line with the facts of the case at bar, save that from the evidence in the present case the appellant had still greater provocation than did the defendant in the former suit.

In the case of *Duvale* v. *Duvale,* 34 Atl., 888, the bill was filed by the wife to procure a *decree a mensa et thoro* on the ground of the alleged extreme cruelty of her husband. The specific acts of cruelty were somewhat similar to those testified to by respondent in the case at bar. See 34 Atl., at p. 888. The defense in that case was that even if the wounds exhibited by the wife were inflicted by the husband, yet her conduct toward him, so cruel and irritating, it provoked his counter-cruelty. The Court, after relating in detail the accusations made by the petitioner concerning one woman, said:

> "There is not in the testimony a single circumstance *to show that there was the slightest foundation for the notion she entertained.* The ground of complaint stated in the bill was not the adultery of the defendant, but his cruelty. So in the trial of the present cause the defense was put forward that this notion of hers that her husband was guilty of profligate conduct, was so baseless that it must have been the product of an insane mind; that therefore her charges of cruelty should be regarded as the offspring of the same disordered fancy. Now the force of this line of defence could have been entirely dissipated at once by showing that what the complainant stated to be true was true, or by showing that there was exhibited in his conduct something which would reasonably have led her to believe it to be true. *The testimony of no person was produced to show the existence of a single circumstance from which such a belief could have been rationally evolved.*"

The case is *directly* in point with the present case, and upon its authority the petitioner is not entitled to relief.

C.

Respondent condoned any acts of cruelty with which she charged appellant.

Respondent is presumed to have condoned the alleged offense of extreme cruelty and adultery by co-habitation.

Burton v. *Burton,* 52 N. J. E., 215.
Chadwick v. *Chadwick,* 52 N. J. E., 539.

In *Weigel* v. *Weigel,* 63 N. J. E., 680, the Vice-Chancellor said that by continuing the co-habitation the wife throws doubt upon the extremeness of the cruelty. The respondent continued to live with appellant long after the time she alleges the most serious acts of cruelty occurred and admits she had intercourse with him on at least one occasion (p. 120, l. 41). The parties had sexual intercourse in the last house they lived in at Boonton. Mrs. Smith had a miscarriage there (p. 270, l. 7).

FACTS AS TO THE COUNTER-CLAIM OF PLAINTIFF FOR AN ABSOLUTE DIVORCE IN HIS FAVOR.

Appellant in his counter-claim charges respondent with having committed adultery with William H. Lyons. Lyons was a detective employed by respondent's solicitor to make investigation for use in this case. Appellant's proof shows that Lyons was intimate with the respondent at the various places where she had resided since leaving her husband's home and that there were frequent manifestations of affection between them. Meetings with each other alone in Mrs. Smith's apartment and that in Irvington, N. J., Lyons was actually living in the apartment of Mrs. Smith. Lyons was a married man. Mrs. Smith told Nellie Blowers that if he (Lyons) ever was freed she would win him as a husband, and that she thought a great deal of him (p. 422, l. 13). While Mrs. Smith was living on Linden street, Morristown, N. J., in 1916, Lyons was at the house many times. Mrs. Atkins and Mrs. Priestman saw him there mornings, afternoons and evenings (p. 424, l. 17; p. 426, l. 38). Lyons has been seen there as late as ten o'clock at night and as early as seven o'clock in the morning (p. 424, l. 22); has had meals with Mrs. Smith (p. 424, l. 36). Mrs. Smith explained to these witnesses that Lyons'

frequent visits to her were because he was a detective guarding her (p. 424, l. 39) from people travelling around the house (p. 426, l. 42).

Mrs. Smith rented rooms from Hyman Fine on Speedwell avenue, Morristown, for nine months next preceding May, 1916. Fine testified that during that entire time Lyons came to see Mrs. Smith there most every night, staying as late as eleven o'clock (p. 428, l. 26); that Mrs. Smith asked if she could have the entrance to the hallway locked while Lyons was there (p. 428, l. 44; p. 429, l. 34); that on the occasion of Lyons' visits she was alone and the child, Audrey, would be out in the street (p. 429, l. 37). That her father did not come there until February (p. 431, l. 17). He has seen Mrs. Smith wave her hand to Lyons as he was going by on the street (p. 430, l. 4). Mrs. Smith told Mr. Fine that Lyons was a guardian for her (p. 431, l. 42). She has frequently told Fine that she and Lyons had supper in her room (p. 432, l. 10). She further told Fine that Lyons came to her because he was making papers (p. 433, l. 34). Fine testified that he made her move because of Lyons' repeated visits there (p. 433, l. 39).

After leaving Morristown, Mrs. Smith in September, 1916, moved to Irvington, N. J., where she resided at 44 North 43rd street in a room on the second floor of the house at that number. On the 9th day of September, 1916, she went to Dr. Albert Simmons, a physician residing at 23 Headley Terrace, Irvington (p. 436, l. 9). She came for the purpose of securing a certificate issued during the epidemic of infantile paralysis (p. 436, l. 19). At that time she told Dr. Simmons that her name was Mrs. Sutphen; that she wanted him to call at Mrs. Smith's home, at 44 North 43rd street. When he arrived at the house she said that she went under the name of Sutphen in Irvington, but that her name was Smith (p. 436, l. 42). Dr. Simmons identified Exhibit A, a photograph of Mrs. Smith, as the photograph of the woman whom he had thus met. He later called at the house at her request (p. 437, l. 11), being summoned there to attend to Lyons (p. 437, l. 18). Lyons was introduced to Dr. Simmons by Mrs. Smith as Mr. Lyons (p. 437, l. 22). She made no explanation of his presence there, nor did she state whether she was married (p. 437, l. 26). Dr. Simmons treated Mr. Lyons for a slight ailment (p. 437, l. 44). He called again to treat Mr. Lyons on October 1st and 2nd, 1916, at Mrs. Smith's apartment (p. 438, l. 94), making three calls on October 1st (p. 438, l. 19). On these last visits in the evening he found him in the back bed-

room in the bed (p. 438, l. 12), clothed only in a bathrobe. Mrs. Smith assisted the doctor in treating Lyons (p. 438, l. 14). On the morning of October 1st Mrs. Smith volunteered the information to Dr. Simmons that Lyons was a state detective and that she was assisting him in his cases (p. 438, l. 35). The later visits by Dr. Simmons were in the evening (p. 439, l. 20). Mr. Buckbee, Mrs. Smith's father, was not there at first (p. 438, l. 41).

Mrs. Smith while living in Irvington told Mrs. Frederica Neu that she was assisting Lyons in detective work (p. 441, l. 11).

Having shown this long period of intimacy between Lyons and Mrs. Smith, defendant produced three witnesses, who testified that from June 29th to July 4th, 1916, inclusive, Mrs. Smith stayed together at a hotel at Coney Island with Lyons. Mrs. Atkins, the witness heretofore referred to, testified that Mrs. Smith admitted to her that she had been to Coney Island for a few days before July 4th; that she returned the evening of July 4th (p. 424, l. 33).

Laura Arkenau, the sister-in-law of the proprietor of the Oriole Hotel, at Tilyou's Walk, Coney Island (p. 442, l. 38), says that on June 29th, 1916, in the afternoon, a man and woman came to the hotel the man registering for them as William N. Edwards and wife (p. 442, l. 39; p. 443, l. 44). She knew the man as Mr. Edwards previous to this time. On this occasion he introduced the woman who accompanied him as Mrs. Edwards (p. 443, l. 14). The witness described the man and woman by physical characteristics which identified them (p. 443, l. 19). She produced the hotel register, and the Master before whom the testimony was being taken, by consent of counsel, tore from the book the page on which the registration in question was made (p. 443, l. 26. Ex. P. 2, p. 476, (e)). She was present when the registration was made by Mr. Edwards (p. 443, l. 44; p. 444, l. 4). Their time of arrival and departure was noted in the book (p. 444, l. 9). She identified a photograph of the man she had known as Edwards (p. 453, l. 41). This photograph was marked as an exhibit on behalf of the defendant and later on the testimony of J. Boyd Headley identified it as a photograph of William H. Lyons (p. 473, l. 21). She also identified a photograph of Mrs. Smith (p. 444, l. 33). This photograph she testified was the photograph of the woman who had accompanied the man she knew as Edwards and who had been introduced as Mrs. Edwards (p. 444, l. 39). This photograph was a comparatively recent photograph and a very good

likeness of Mrs. Smith. Another photograph (Ex. P. 3) was a somewhat older picture (p. 459, l. 31).

She further testified that during the time they were there they first occupied room No. 14 and later room No. 15 (p. 445, l. 4; p. 445, l. 14; p. 445, l. 21). Mrs. Smith told Mrs. Arkenau that "Edwards" was a detective. She further identified Edwards as being the same person who came to her house in the latter part of 1916 accompanied by one of the counsel of defendant (p. 445, l. 28). This person was subsequently identified as being William H. Lyons (p. 465, l. 5).

Mrs. "Edwards" stated to Mrs. Arkenau that she used to give dancing lessons (p. 445, l. 44).

Mary Rossi, a maid employed in the Oriole Hotel (p. 445, l. 21), states that persons known to her as Mr. and Mrs. Edwards were there from June 29th to July 4th, 1916 (p. 445, l. 33). She identified Exhibit P. 1, being the photograph of Mr. Lyons, as the photograph of the person she had known as Edwards (p. 455, l. 36). She identified Mrs. Smith's photograph, Exhibit A, as the person she had known as Mrs. Edwards (p. 455, l. 43; p. 456, l. 4). She states that during their stay at the hotel they both occupied room No. 14 (p. 456, l. 19), in which there was only one bed (p. 457, l. 34), ~~after having been~~ and were in room 15 one day (p. 457, l. 24); that when the maid helped Mrs. "Edwards" to change her clothes from room 14 to room 15, Mrs. "Edwards" said her husband would tip her (p. 457, l. 24).

Maggie Reilly, who conducted a small candy store near the Oriole Hotel (p. 458, l. 44), identified the photograph of Lyons and Mrs. Smith as those of persons she had known as Mr. and Mrs. Edwards (p. 459, l. 6; p. 459, l. 13). She states that "Edwards introduced Mrs. Edwards as his wife"; that they stayed at the Oriole Hotel for a few days (p. 459, l. 18).

ARGUMENT.

It is the contention of the defendant that the evidence referred to conclusively shows the *inclination* and *opportunity* requisite to the successful maintenance of an action for divorce on the ground of adultery. The attention of the Court is directed to the acts of the respondent and her intimacy with Lyons and manifestations of affection for him and her desire for clandestine meetings with him. The situation in which Dr. Simmons found Lyons at Mrs. Smith's Irvington apartment is almost conclusive

of the meretricious relation existing between these parties. Their occupancy of the room at the hotel at Coney Island is beyond controversy.

But beyond all this, one of the most significant facts showing conclusively the guilt of the respondent is that, although she was fully apprised of the testimony of these witnesses, *she has offered no evidence to dispute them. Her failure to controvert these facts is proof of her guilt. Fuller* v. *Fuller,* 41 N. J. E., 198. Her counsel stated that Mrs. Smith did not care to offer any testimony on the case as presented on the counter-claim (p. 476, l. 26).

The respondent urged in the Court of Chancery that, because the Court had filed an opinion finding appellant guilty of cruelty, no decree could run in his favor on his counter-claim. Appellant, on this appeal, charges, *first,* that the facts do not warrant a decree of limited divorce in favor of respondent on the grounds of cruelty; *second,* that the facts warrant a decree for absolute divorce in favor of appellant on the ground of adultery; and *third,* that if the Court should find evidence sustaining the charge of cruelty on the part of the appellant, still appellant is entitled to his decree for absolute divorce. *Rapp* v. *Rapp,* 67 N. J. E., 236. *Fuller* v. *Fuller* (*supra*).

Respondent claimed in the court below that cruel conduct on the part of the appellant was indirectly responsible for the alleged acts of adultery on her part. This has no support. Respondent left defendant's home voluntarily and the acts which form the basis of appellant's counter-claim were commenced after she left his home and took place during the very time she was before the Court asking for it relief. *Her conduct amounts to a fraud upon the Court and is such that had the evidence of her guilt been obtainable at the time of the trial of her suit for limited divorce there should have been no decision in her favor.*

Plaintiff respectfully submits that the decree in the Court of Chancery should be set aside.

KING & VOGT,
Solicitors for and of Counsel with Appellant.