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New Jersey Court of Errors and Appeals

Between WILLIAM R. ROSS, *Petitioner-Respondent,* *and* ELEANOR ROSS, *Defendant-Appellant.*	*Appeal from Chancery.* *On Petition for Divorce.*

Brief for Defendant-Appellant.

Statement of Facts.

The appeal in this case brings up a decree of divorce granted to William R. Ross against Eleanor Ross for adultery alleged to have been committed on two occasions with one William Skow. Ross and his wife were married in February, 1907, in New York City. He was a motorman, she was a housemaid. They lived in Brooklyn together up to the summer of 1909 when the defendant instituted suit against the petitioner in the New York Supreme Court, Queens County, to procure a limited divorce and made application for and was awarded alimony *pendente lite* at the rate of $4.00 per week (p. 165). The petitioner upon being served with the order for alimony came to New Jersey without telling his wife and has been here ever since (p. 22, l. 20). He is a motorman, and since 1909 has been employed by Public Service Corporation at Jersey City. A girl was born to them on July 29, 1908.

The petitioner testified that several months after this birth, a police officer in Brooklyn told him that his wife had been arrested for being drunk upon the street. He had never seen her

drink up to that time. He tried to see her while she was locked up, but could not. The police judge made him promise to take care of her; the police then telephoned to the station house to let her go after she had been locked up all night, and she came home (p. 16). He asked her why she had been arrested and she said she was picked up, but that she was not drunk. Ten days later he was again informed that she was locked up for being drunk. This time he told the officer that *it was the second time and he did not think it was any use bothering and he did not go to get her out.* She came home next day (p. 17). The child at that time was with petitioner's aunt, Margaret Ross. After that defendant was arrested a third time and petitioner told judge it was third offense and asked him to put her away or do something that would break her drinking habit (p. 18). The judge put her in the house of the Good Shepherd where she remained five months. She was released in April, 1909. After that petitioner and defendant lived together about a month. She drank deeply and there were bottles containing liquor hidden about the house. He had brought the baby to her when she came out of the home, he now took it back to his aunt and took his meals there and would go to visit his wife, but she would always be drunk. He again swore out a warrant and she was again taken to jail where she was kept for ten days before she had a hearing; when her hearing came on she had a lawyer and she was discharged. Then this lawyer went after him for support which resulted in the order herein before referred to and his leaving the state. He did not again see his wife until the summer of 1911 when he accidentally met her at a picnic in New York, spoke to her, went home with her to his sister's home; slept with her that

night and the next morning came back to New Jersey. At that time he said nothing to her about living together and did not ask her to come to New Jersey (p. 23). After that he would meet his wife once in a while at his aunts house where the baby was—on occasions when she was visiting her child and again he visited her when she was in a hospital after an accident when he did not expect her to live (p. 24). He would also hear from his aunt from time to time of the different places where she was working as a maid. In September, 1915, he invited his wife to come and live with him and they took rooms at 299 Monmouth street, Jersey City, on October 1st, 1915, where they lived together until December 10th, 1915. She remained sober for two weeks until Tuesday, which was pay day, when he gave her money and that night when he came home from work about midnight, she was seated at the table and appeared drunk, although he smelled no liquor on her that night. On the following Tuesday night upon returning from work he found her in bed with the child, both were half dressed. Then he took the child back to its aunt in Brooklyn. One morning after that he saw his wife in a saloon drinking whiskey. She had asked him for fifty cents which he gave her and had then followed her to the saloon (p. 29). On December 10, 1915, he came home and found the results of a fire. She had taken the oil cloth off the floor and put it in the stove (p. 30). For every seven days he was paid a little over $20; every nine days he gave her $21; later he cut her down, but still gave her money during the week—50 cents, and 75 cents and a quarter (p. 39). Prior to December 10, 1915, Mrs. Skow, the janitress, told him about a man around the house (p. 30). Shortly after December 10th, 1915, he had his wife arrested for being

drunk and attempted arson; she was committed to the Hudson County jail for three months after a hearing. After she had been arrested, Mrs. Skow told him his wife was having illicit relations *with a man*; that she saw the man going in and heard him going from the kitchen of his flat to the bedroom with her. She then, also told him *about her son, William, having relations with his wife* and William Skow told him about having relations with his wife. On December 19th, 1915, he took William Skow and his friend, Peterson, to the Hudson County jail where his wife was.

I asked her (p. 32) how much money she got off William Skow and she at first said "No" and I said, "Yes you did," and she said "No" and I said, "Yes you did," and she said: "How do you know?" And I said, "I was told so," and she said "I got 50 cents *for* one time and a quarter *another time.*" I said, "What did you give him for this money?" and she said, "Nothing," and I said, "Yes you did;" and she said, "No, I did not;" so I called in William Skow and I asked him if he was lying to me, or who was lying to me, and he said: "Ross, I am not lying to you," so finally she said: "I let Skow have the best of me twice." Mr. Peter Peterson was there at that time. She wanted to kiss me, and I did not want to let her, *and the keeper ran in between us and put her back* in the kitchen again and she wanted to ask me to take her out afterwards. *She was drinking at the time.* After that she stayed in jail until December 23rd. When shortly before the child was born he came home one day and found her lying on the floor. He cannot say she then was under influence of liquor. She could hardly speak and claimed to have heart trouble (p. 34). When he married his wife, she had considerable money and was working out (p. 35). He never

paid any alimony in the proceedings his wife brought (p. 36), and did not contribute towards her support after leaving her in Brooklyn until they lived together again in October, 1915.

William Skow swore: I had illicit intercourse with this woman. I was down chopping wood one Sunday morning and Mrs. Ross came down and she asked me for 10 cents, and I pushed her away, and told her not to bother me, and then I goes up and goes over to the other woodshed and she comes in after me, and she throws her arms around me and she asked me again for the ten cents and I said "No," and she kept on pleading and wanted me to be sure that I will come down this afternoon, and she lifted up her clothes and I gave her A QUARTER THAT AFTERNOON. She came down, and she laid on the burlap in the woodshed and I had connections with her (p. 88). Then the Sunday following I was down there again chopping wood and she came down and she asked me for money *and I gave her a half-dollar*, and she *came down in the afternoon* the same as the first. This was two weeks before she was arrested. I went to the county jail with Mr. Ross and Mr. Peterson and heard a conversation between Ross and his wife. He asked her who was lying, and she denied it at first, and then I came from the back and she said she got money off me twice. She said I had the best of her twice.

I believe my mother had suspicions and told Mr. Ross to call and see me, and he came and asked me *if I knew anything, and I saw the woman carrying on putting the house on fire, and I thought it was no more than my duty to see the man right. I told him that day and he asked me to come up to the county jail with Mr. Peterson* (p. 89). I am twenty-nine years old, a teamster working for Burns Brothers, but now

out of work. *I had never known Mr. Ross to speak to until the day he came to me on the Sunday he asked me to go with him.* Up to that time I had only bid him the time of day (p. 90, ll. 20-40). *I knew Mrs. Ross only by getting acquainted with her in the cellar. Never talked to her before first, or after second occurrence.* I had intercourse in the afternoon of both Sundays (p. 92). On the first occasion I was down there chopping wood and this woman, *to whom I had never talked,* came down and talked to me. *She said, give me ten cents. I told her no to go away. She stayed there, however. I went to the other woodshed—she was blocking me* (p. 93). *Well, then she asked me again for ten cents and I told her no, and she then put her arms around my neck and she says, now please give it to me. I did not have ten cents, I had a quarter, and she threw her arms around me, and then to make it good she threw her arms around my neck and lifted up her clothes. I did not ask her to do that and up to that time she hadn't asked me about sexual intercourse* (p. 97), *and without any knowledge on my part as to what was going to happen, she suddenly lifts up her clothes after she had the quarter. After she had the quarter she lifted up her clothes and says, "Here, put your hand on it to prove."*

This was in the morning around 11 o'clock and after I had put my hand upon it and paid her a quarter she went out and got whatever she wanted, her liquor. I did not have intercourse with her then—she said her husband was home. She was partly intoxicated. When she showed me her private parts and I put my hands on them I wanted to have intercourse with her, but I did not do it (p. 97, l. 40) *until the afternoon. She was not staggering when I spoke to her in the morn-*

ing, but I know she was intoxicated. I could smell it on her; she had quite considerable liquor into her, and she told me she would come down that afternoon and I went down in the afternoon and she was there, and she was more intoxicated than in the morning. She came down to keep her promise even though she had more liquor. Before that day I had seen this woman going in and out of the halls, but had never spoken to her (p. 98). *In the afternoon, I was in the woodshed. I did not call her and she came in—she did not call me. She went straight into the woodshed next to the one I was in, belonging to one of the vacant apartments. There was burlap there; she laid down on the burlap a couple of second after I came in. I said nothing to her; she said "Come on," that's all, and then she lay down and we had sexual intercourse* (p. 99). *We remained in the woodshed about five minutes—just long enough to have intercourse and then we got up and separated and didn't say a thing.* I went up first. *And that happened once more on the Sunday following. On that day I was down chopping wood in the morning. I expected her to come down; she came, and asked me for a dime again, and I told her I did not have a dime, but gave her a half-dollar, and she says to me, "It will be all right," she would be down in the afternoon; she kept her word before and she would keep it again. That is all that happened; nothing was said of an endearing nature* (p. 100, ll. 1-40); *she did not call me sweetheart or anything like that, or use any love terms, and I gave her the fifty cents.*

She was arrested Saturday night and next morning Ross came to me. I think my mother had spoken to him about what was going on down stairs; she could hear us talking; we were talking

loud enough so that anybody could hear us (p. 103, l. 40). *I had not said anything to my mother about the matter.* I had told my brother after I was down there with her. He is 26 years old. On this Sunday Ross meets me on the step coming in and told me of his trouble and asked me what I knew about it; he was in talking with my mother and I was just coming in as he went out. He told me his trouble (p. 104, ll. 1-40), and said, *"You have had intercourse with my wife," and I said yes. Then I told him he needn't ask me any more. I told him I had intercourse with her twice. I had never talked with that man before and I told him "Yes, I am the man who has been having intercourse with your wife. I do not understand that I committed a crime against the laws of New Jersey and I do not know that I am liable to criminal punishment for what I have testified to here. No, sir, I don't see where, because I gave her money, seventy-five cents all told; that makes me immune from punishment"* (p. 105). *I don't know that I can be sent to jail for having had intercourse with a married woman. If I knew it, I would not have said anything and would not have told this story whether it is true or false. If that is the case, I would not have told anything. I would not have gone on the stand at all* (p. 106).

Magnus Peterson swore: I have known Ross about four years. I am a master boatman on the Hudson River. I know Mrs. Ross only by sight. On December 19th, 1915, I saw her in Hudson County jail. I went there with Mr. Ross and a young man named Skow. When we got in the jail his wife came into the anti-room and he said: "I have my friend, Captain Peterson, with me," and I shook hands with her. Then he said to her: "Have you received any money from JOHN

Skow?'' And she said ''No.'' And he called Skow in and he said: ''Are you lying about my wife?'' and Skow said''No.'' Then she looked at him for a moment, and she put both hands on his shoulders and she said: ''He got the best of me twice; will you forgive me and give me a kiss,'' and he put up his hands, and said, ''No,'' and she said: ''Will you try to get me out of here,'' and he said: ''I will try; *that is all*'' (p. 41, ll. 1-40). During the fours years I have known Ross, I have always been quite friendly with him (p. 42).

Christina Skow. I know Mr. Ross and his wife. I was janitress in the house they lived in. I did not know them before they moved there. I saw a man other than the husband around the apartment of Mrs. Ross. He was tall, inclined to be slender, dressed in black and wore Oxford ties and derby hat, if I am not mistaken. I saw him there in the afternoon, something like 4 o'clock (p. 44, ll. 30-40). I saw him one day especially in her kitchen and in the hall. He stayed about one-half hour. Mr. Ross was not home. Her door was a tiny crack open, and I opened my door to go down to the cellar for wood and coal for the morning; it was pretty dark in there, and I heard her say to him: ''You seem to be very much afraid of my husband'' and he said, ''Yes, I am,'' and she said ''Why'' and he said, ''Now you are bad friends with him, but when you get good friends with him you might tell him;'' and she said: ''No. Come on,'' and at that the door was closed and the shade was pulled further down. About half an hour after I heard him come out and I said to myself, ''If you think you are going to bring liquor into her I am not going to stand for it,''because *I thought at that time that Mr. Ross was too good a man to have a woman carrying on this way, so I watched for him,* and

he came back and I followed him and said: "Where are you going?" And he said, "None of your business," and I said: "If you are going to take liquor to that poor unfortunate, you shall not," and I said: "If you don't get out, I will get an officer" and he went out (p. 45, ll. 1-40). He was carrying a bottle of liquor. I could see it plainly in his coat pocket. On other days, I saw that man go by, he always watched her window and when he would see me he would go by.

My apartment was on one side and Mrs. Ross' apartment was on the other side of the hall. The empty cellar was underneath. There were partitions in the cellar; one for each of the eight apartments. I often heard Mrs. Ross in the cellar. I knew her voice. I know that on these occasions *some one* was with her because it is not likely that one woman will talk to herself alone. I heard her talking to somebody (p. 46, ll. 1-40). One time I heard her say distinctly: "Yes, yes, come on." I heard her many times down there. I could be abed about ten o'clock at night and I could hear her under me. I could tell where they were. I could hear the voice right underneath my bed. I examined the place right underneath my bed. I found burlap and all dirty wash spread out. It was flattened down. This was around Thanksgiving. I think it was before. I have a son, William Skow. He lived with me in November and December, 1915 (p. 47). I told Mr. Ross about the occurrences *with the man* I have described and *told him about the bed in the cellar.* I did *not* speak to Mrs. Ross about it. I had very little dealings with that woman. *I never received any information from my son about his relations with Mrs. Ross. I never saw him with Mrs. Ross* (p. 48). *I did not tell Mr. Ross anything about my son in this matter, because I did not know it. I*

told him the best thing he could do was to find out. I thought he ought to find out about it because I did not like to live on the floor with a woman like that; *I had three big boys, and I was afraid she would lead them into bad life. While Mr. Ross was living there he came in to see me, not a lot of times; once in a while when he could go to work he would come in and say, "What do you think of that," and he could say she would smash and break up all the dishes, it was natural that he should speak to the next door (neighbor).* When he came in the door was always open (p. 50).

The defendant denied the acts of adultery charged against her and denied knowing William Skow excepting that she knew that Mrs. Skow had three grown sons who lived with her.

The defendant denied the confession alleged to have been made by her at the jail and said that the interview wound up in quarrel between herself and her husband; that her husband and his party was ordered from the jail by the warden. The warden corroborated her story as to ordering the party from the jail (p. 149).

The defendant further showed that before marriage she had accumulated from her earnings as a housemaid about $4,000.00 and that she lost this while living with her husband in Brooklyn by investing it in a house which she had purchased for herself and her husband.

The defendant further showed that after her husband left her in Brooklyn in 1911 she was steadily employed as a maid until September, 1915, during all of which time her husband did not support her (p. 59).

The hearings in the case began March 14th, 1917; at that time she was and had been in the employ of a Mr. Wood since July, 1916. He

testified for her as to her sobriety, good habits and trustworthiness (p. 53).

Defendant denied that she was the drunkard her husband painted her, although she admitted that she had taken liquor. She testified that her first arrest occurred shortly after she gave birth to her child, when she was not well and fell on the street (p. 55) and that upon the other occasions her husband had her arrested and incarcerated, claiming she was drunk (p. 56); that at that time he wanted to get the house she had purchased away from her (p. 57) and that he beat her until her body was black (p. 58).

One Henry F. Zimmer, a butcher with whom Mrs. Ross dealt during the whole period while living in Brooklyn, testified to her general sobriety, cleanliness and ability to take care of her affairs (pp. 150-151).

A. Darmstadt, the lawyer from Brooklyn, who instituted the proceedings against Ross for the defendant, said Mrs. Ross had been coming to his office about 30 days before signing her affidavit in that proceeding and during that time he saw her twice with her eyes discolored in a condition which would indicate to him she had been beaten up (p. 116).

Defendant further swore her husband had told her that he had only taken her back to get a divorce from her (p. 60), and Freda Rath, who had known Ross for 8 years, swore that she met him after he took his wife back and that he said to her then in explaining the presence of his wife, "I have not been living with my wife, she drinks, and if she drinks again, I will not have her long on my hands" (p. 52).

From the testimony of Mrs. Ross and of another tenant in the house it would appear that

Mr. Ross was in the habit of visiting Mrs. Skow and discussing his wife with her, that Mrs. Ross and Mrs. Skow had come to blows in the hall of the house, that Mr. Ross had interfered on the side of Mrs. Skow "and took his wife by the throat and by the hair and dragged her back to her own kitchen" (p. 85). This witness also swore she never saw Mrs. Ross intoxicated, although she lived at the Monmouth street house during all the time Mrs. Ross was there (p. 85) and that she did not know Mrs. Ross to have been intoxicated at the time of the fire (p. 86).

Argument.

The petitioner failed to establish the alleged adultery upon which the decree is founded.

The law requires that adultery be established not merely by a preponderance of the evidence, but beyond a reasonable doubt.

Berckman v. Berckman, 17 N. J. E. 453.

The petitioner attempts to meet the burden of proof by the alleged confession of the defendant and the confession of the alleged paramour.

A defendant's confession of guilt in a divorce case is not such evidence as by the law of the state will support a decree.

Howard v. *Howard,* 77 N. J. E. 186.

Such confession, to be evidence, must be corroborated as to the *fact* or *facts confessed* and not as to the confession being made.

Kloman v. *Kloman,* 62 N. J. E. 153, 156.
Garret v. *Garret,* 86 N. J. E. 293, p. 295.

While the testimony of the alleged paramour may be considered in determining the fact of

the adultery, it is liable to grave suspicion and should be acted upon only with extreme caution, and ordinarily, unless it is corroborated, it is not sufficient to establish guilt.

Letts v. *Letts,* 79 N. J. E. 630, p. 639.

In *Garret* v. *Garret, supra,* it was held (p. 295) that since a divorce cannot be granted upon the uncorroborated testimony of the husband as to his wife's guilt, nor upon her uncorroborated confession of that guilt, it follows necessarily that the uncorroborated testimony, *plus* the uncorroborated confession, amount to no more than each standing alone, and are not legal evidence. By analogy it would seem, that—unless the confession of the alleged paramour in this case impresses the Court so thoroughly as to require no corroboration,—since the uncorroborated testimony of the paramour cannot lead to a decree, and the uncorroborated confession cannot lead to a decree, the uncorroborated testimony *plus* the uncorroborated confession standing alone, amount to no more than each standing alone, and are not legal evidence sufficient to support the decree.

The primary question then is, does the case disclose corroboration of Skow's story, and if it does not should it be accepted without corroboration?

There were no witnesses to the occurrences which William Skow details, and there is no corroboration unless it is found in the testimony of Mrs. Skow.

Mrs. Skow *heard* the defendant in the cellar many times, *heard* her talking to men in the cellar, but never saw her go into the cellar with men. She knew her son was down there at that time and *then she kind of surmised* (p. 107).

William Skow did not tell his mother that he had intercourse with Mrs. Ross, *and she did not tell Mr. Ross that he had intercourse with her,* although she knew it from her other son (p. 108) and told him about the alleged occurrences *with the other man.* But again she also says "She did not tell Ross anything about her son in this matter, *because she did not know it*" (p. 48).

The flat inconsistency between the two stories told by her first at p. 48 and then at p. 108 shows that no reliance can be placed upon the witness.

Larison v. *Larison,* 20 N. J. E. 100.

Besides Mrs. Skow was certainly prejudiced against defendant and bore her ill will as will appear from reading her testimony and the testimony of Maria Flood (p. 84).

Of course the statements alleged to have been made to her either by William Skow or her other boy are not evidential. It is only her testimony that she *heard* Mrs. Ross talking in the cellar to men and heard her talking there at a time when she knew her son to be there which is evidential. Even if the Court desired to believe this story it would not amount to corroboration of the alleged acts of adultery. It would merely show that Mrs. Ross was in the cellar at a time when William Skow was there and at a time when it was not unnatural for both to be there. The presence of Mrs. Ross in the cellar at the time William Skow was there is consistent with her innocence. We therefore submit that Skow's testimony was not corroborated.

The story of the alleged paramour is denied by the defendant and is improbable in its nature.

Skow did not know Mrs. Ross until the Sunday upon which the first intercourse is supposed to have taken place.

The first act of intercourse occurred at her suggestion, apparently *to obtain money.* She obtained the money *in the morning;* she was then *intoxicated;* she promised *to return in the afternoon for the sole purpose of co-habiting with Skow.* She allowed Skow to touch her private parts in the morning. This act made him desire to have intercourse with her. He had the opportunity and the inclination. He knew she wanted the money, yet he allows her to go from him upon her promise to return that afternoon. He believed in her promise. She kept her promise and came back in the afternoon solely to have sexual intercourse and the act takes place without any words of familiarity, without words of love or passion and without the least token of affection or caress given. It takes place in a few moments and then the parties part. And the second occurrence took place in the same way.

Paraphrasing *Letts* v. *Letts, supra,* at p. 635.

"The story told by Skow is so contrary to the natural order of things and so contrary to the natural operation and manifestation of the human passions and feelings upon such an occasion in which Skow claims to have been an actor that it may be regarded as a highly improbable one. To entitle it to belief it should receive *convincing* corroboration.

Then again he told the witness Spitz a different story as to the money he paid the number of times he had the intercourse (p. 121, ll. 1-10) and the time of the day when he had the intercourse (p. 120, ll. 30-40).

So also his testimony shows that he was ready to gratify his passion with a poor drunkard who did not want him or his love, but merely sought to earn from him money with which to gratify another vice. Truly, only a depraved and degraded nature could find enjoyment in sexual intercourse under the conditions and in the surroundings which he describes.

Again he testified under the belief that he was immune from punishment for his act *since he had paid for his pleasure* and he says he would not have so testified if he had thought himself liable to punishment therefor.

Then also it should be remembered that while the husband charged his wife with being a drunkard, the evidence is that she was a good woman when not living with him, that she earned her own living, that the husband had not supported her for years and evidently did not love her, and was ready to get rid of her if we are willing to believe the defendant and the testimony of Mrs. Rath (p. 51).

The confession relied upon is denied and the story of the defendant that the interview in which she is alleged to have confessed broke up in a quarrel, as the result of which Ross was put out, is supported by the testimony of the warden of the jail (p. 148). Besides it is not corroborated as to the facts confessed as required by the cases.

We respectfully submit that the decree brought up should be reversed.

June Term, 1918.

Respectfully submitted,

J. EMIL WALSCHEID,
Of Counsel with Defendant-Appellant.

New Jersey Court of Errors and Appeals

Between WILLIAM R. ROSS, *Petitioner-Respondent,* and ELEANOR J. ROSS, *Defendant-Appellant.*	On Petition for Divorce. On Appeal from the Court of Chancery.

BRIEF FOR RESPONDENT.

This is an appeal from a decree of the Court of Chancery. A decree for divorce was advised by Vice Chancellor Lewis in favor of respondent on the ground of adultery.

Statement of the Case.

The parties to this suit were married February 27th, 1907. They lived in Brooklyn from that date until August 16th, 1909, when the respondent moved to Jersey City. While in Brooklyn, the respondent was employed as a motorman and laborer and since coming to Jersey City he has been employed as a motorman by Public Service Railway Company. They lived together in various places in Brooklyn until the respondent came to New Jersey. On July 29th, 1908, a child was born to them. Shortly after the child was born the appellant commenced to drink and became an habitual drunkard. The appellant was arrested on several occasions for being drunk and the respondent obtained her release but finally she was

sent to the House of the Good Shepherd in Brooklyn. After the respondent obtained her discharge from the House of the Good Shepherd, the appellant was arrested again for being drunk and upon being discharged brought suit in Brooklyn against her husband for separate maintenance. Being unsuccessful in his attempt to reform his wife, the respondent came to New Jersey and they lived apart from August 1909 until September 1915. During this time they met at the home of the respondent's aunt where their little girl was boarding, at an Orangemen's Picnic in New York, at the appellant's aunts in New York and at Bellevue Hospital where the respondent went to see the appellant on one occasion when she was treated there for injuries arising from being run over by an automobile. In September 1915, the respondent wrote his wife to meet him in Jersey City and asked her to go to housekeeping. The arrangements were completed and they took an apartment at No. 299 Monmouth Street, Jersey City, where they lived from September 1915 until December 1915. The appellant abstained from drink for a short time and then resumed her habits which she continued until December 10th, when she set fire to the apartment. The respondent had her arrested on the charge of being an habitual drunkard and she was convicted in the Second Criminal Court of Jersey City and sentenced to the County Jail for ninety days. While the parties lived at No. 299 Monmouth Street, the offense was committed which is the foundation for the decree.

The Vice Chancellor found from the evidence that the appellant was guilty of adultery and advised a decree in favor of the respondent.

The question involved is:

Was the evidence sufficient to sustain the charge of adultery?

ARGUMENT.

POINT I.

The habits of the appellant show an inclination to commit the offense.

(a) *The proof is overwhelming that the appellant was an habitual drunkard.*

In September or October 1908, she was picked up in the street in Brooklyn for being drunk (Case, pp. 15, 16 and 17). About a week or ten days afterwards, she was arrested again (Case, p. 17, lines 20-35). In the latter part of 1908 she was locked up for being drunk and the Court committed her to the House of the Good Shepherd where she was kept until April 1909, when the respondent took her out (Case, p. 18, lines 17-41; p. 19, lines 1-16). In about a month she was drunk again. Her husband, her brother and her aunt tried to help her (Case, p. 19, lines 34-40; p. 20, p. 73, lines 39-40). She was arrested on the complaint of her husband and taken by an officer and her brother to the Long Island Jail. The respondent appeared the next morning and she was so much under the influence of liquor that the Court laid the case over for ten days (Case, p. 21, lines 1-32). In an affidavit in the suit for separate maintenance in New York, made by the appellant's brother, he says that she is a hopeless and an habitual drunkard and a danger and menace to the life of her child. Her habits as to drink continued after she came to Jersey City in the Fall of 1915. On one occasion her husband gave her fifty cents and she went direct to a saloon to buy whiskey (Case, p. 29, lines 28-40; p. 30, lines 1-10). She kept her little girl, seven years of age, out till twelve or one o'clock at night and came home under the influence of liquor (Case, p. 28; pp. 74, 75). The appellant admitted that she com-

menced to drink while living at No. 299 Monmouth Street (Case, p. 76, line 2) and that she went into saloons and bought liquor at least twice a week (Case, p. 77, lines 22-25; p. 63, lines 14-20) and that she might have a drink or two a day (Case, p. 61, line 20).

(b) *The proof is convincing that the appellant associated improperly with men in the cellar and in her apartment.*

It is true that the evidence on this point rests largely on the testimony of Mrs. Skow, but her testimony was not discredited and the appellant's denial is of little value, as will be hereinafter pointed out. On one occasion when respondent was at work, Mrs. Skow says a man was in the apartment and she heard Mrs. Ross say to him: "You seem to be very much afraid of my husband" and he said: "Yes, I am" and she said: "Why?" and he said: "Now you are bad friends with him but when you get good friends with him you might tell him" and she said: "No, come on". By that the door was closed and the shade was pulled down further (Case, p. 45, lines 20-25). This man went out then and came back with a bottle of liquor in his coat pocket and was often seen go by the apartment and watched Mrs. Ross' windows (Case, p. 45, line 40; p. 46, lines 1-8). Mrs. Skow says also that she heard Mrs. Ross in the basement many times and that on one occasion at 10 o'clock at night, she heard her say distinctly, "Yes, yes, come on" (Case, p. 47). Mrs. Ross attempts to explain the first occasion by the inference that the man who called at the apartment was an insurance agent, but denies that she heard Mrs. Skow tell him not to go into the house again or that she was present when Mrs. Skow chased him out of the hallway (Case, p. 80, lines 1-11). Mrs. Skow says that the insurance agent was not the man she saw in the building (Case, p. 125, lines 28-32).

The appellant's denial of facts proved beyond question and her vindictive attitude toward her husband impair the weight of her testimony and made her denial of the essential facts of little evidential value.

The habits of the appellant as to drink are proved beyond question. Yet she denied these habits in the face of overwhelming testimony, including the affidavit of her brother which she calls a frame up, but finally admits that she would take a little nip once or twice a day (Case, p. 61, line 20). On one occasion when she was about to take a drink of whiskey in a saloon she said she went to the saloon for change (Case, p. 29, lines 29-40; p. 30, lines 1-9). When her husband, in good faith (Case, p. 38, lines 37-41), asked her to return to go to housekeeping, she accused him of setting a trap for her (Case, p. 76, lines 7-27). She accuses her husband of always being drunk and of going into fifteen saloons on the day that they were hunting for rooms, in face of the fact that he has been in his present employment as a motorman for seven years and has not lost a day's work (except from sickness) in thirteen years. When asked whether she fell on her husband's shoulder and wept at the County Jail, she replied (Case, p. 70, lines 10-20), "No, sir, I would want to weep for something more than that (indicating her husband)." She admitted borrowing money from one of the Skow boys, but says she does not know one from the other and would not recognize William Skow if she met him on the street (Case, p. 122, lines 17-27).

She neglected her house. Her husband bought things to eat and she was asked by the Court: "Q. Did you cook them? A. Sometimes I did, most times I did not" (Case, p. 62, lines 28-30). She pawned household furniture and her child's bracelet and even her wedding ring (Case, p. 31, lines 6-24). She was so lacking in morals that

she pawned her child's bracelet to obtain money to buy drink. Her marriage vows rested so lightly upon her that she pawned her wedding ring.

We submit that this evidence shows an inclination to commit the offense charged against her.

POINT II.

The evidence is sufficient to prove adultery.

Two kinds of evidence were offered:

(1) *Admissions by appellant.*

Christina Skow, who occupied the apartment across the hall from the Ross apartment, had informed respondent that his wife was continually in the cellar and that she was with men (Case, p. 110, lines 17-25). William Skow, the corespondent, had told his brother that he had intercourse with the appellant (Case, p. 104, lines 8-10) and that his brother told his mother (Case, p. 108, lines 20-22). After the appellant had been arrested and convicted in the Second Criminal Court on the charge of being an habitual drunkard, the appellant asked Mrs. Skow whether she knew anything about his wife and Mrs. Skow told him to ask her son, William (Case, p. 110, lines 20-30). Respondent went to the Skow home on December 19th, 1915, and met William Skow on the stoop (Case, p. 113, lines 7-9). He told Skow his trouble and asked him whether he had intercourse with his wife and Skow told him he had (Case, p. 89, lines 38-40). "Q. Did you tell him at that time? A. I told him that day, and he asked me to come up to the County Jail with Peterson." The respondent went at once with Skow and Magnus Peterson to the County Jail and saw his wife in the presence of Skow and a man named Peterson.

The respondent's account of this interview is as follows: (Case, p. 32, lines 39-20; p. 33, lines

1-20) "Q. Tell the Court what you said and what she said and what the others said. A. I asked her how much money she got off William Skow, and she at first said, 'No;' and I said, 'Yes, you did,' and she said 'No,' and I said, Yes, you did,' and she said, 'How do you know?' and I said, 'I was told so,' and she said, 'I got 50 cents for one time and a quarter another time;' and I said, 'What did you give him for this money?' and she said 'Nothing,' and I said, 'Yes, you did;'" and she said, 'No, I did not;' so I called in William Skow. Q. Where was he? A. He was sitting out in the little hall, and I called him in, and he stayed back of me, and I asked him if he was lying to me, or who was lying to me, and he said, 'Ross, I am not lying to you;' so finally she said, 'I let Skow have the best of me twice.' Q. Who was there at that time? A. Mr. Peterson."

Peterson's account of the confession is as follows: (Case, p. 41, lines 28-41) A. * * * "I shook hands with her; then, as far as I can recollect, he said to her, 'Have you received any money from John Skow?' and she said 'No;' and he said, 'Did you have anything to do with John Skow?' and she said 'No;' and he called Skow in and he said, 'Are you lying about my wife?' and Skow said, 'No;' and then she looked at him for a moment, and she put both hands on his shoulders, and she said, 'He got the best of me twice; will you forgive me and give me a kiss,' and he put up his hands, and said, 'No;' and she said, 'Will you try to get me out of here?' and he said, 'I will try;' that is all."

Skow's account of the interview is as follows: (Case, p. 89, lines 14-29) "Q. Subsequent to that time did you go to the County Jail with Mr. Ross and with anybody else? A. Yes, sir, Mr. Peterson. Q. And did you hear a conversation there between Mr. Ross and his wife, as to what had happened between you and Mrs. Ross? A. Yes,

sir, he went to the Warden and got the Warden's permission to see his wife, and the Warden asked him who he was, and he told him he was Mr. Ross, and the Warden went out and got Mrs. Ross down from the kitchen and Mrs. Ross came down, and he asked her who was lying, and she denied it at first, and then I came from the bench and she said she got money off of me twice. Q. Did she say what she got the money off of you for? A. She said I had the best of her twice."

The appellant admits the fact of the interview and that she borrowed money from Skow. Her account is as follows: (Case, p. 69, lines 21-23) "A. * * * 'I don't want to see him;' and he said, 'You had better go to see him;' and Ross came up there to find out the truth, he said—the truth of what—bringing these men with him to ask me if I had anything to do with him. Q. And you said what? A. I said I did not; and he asked me if I got money from him, and I said, 'Yes, I did, and sent it back.' Q. Who gave you money? A. Skow gave it to me in two fifty cent pieces; I want to borrow some from his mother and he was inside and heard what I had to say and I wanted to go to New York." (See also Case, p. 81, lines 20-40.)

She denies that she admitted her intimacy with Skow (Case, p. 69, lines 37-40) "By the Court: Q. Which Skow was that; can you identify him? A. I don't know. Q. Did you say to your husband on this occasion, 'Yes, he got the better of me twice?' A. No, sir I did not."

The confession is corroborated as to the facts confessed (Point II, infra) and we submit is admissable to aid other evidence.

We do not rely upon this confession alone to prove the charge of adultery, but it is admissible as evidence to aid other proofs.

Summerbell vs. *Summerbell,* 37 N. J. Eq. 603.

Kloman vs. *Kloman,* 62 N. J. Eq. 153.

The circumstances under which the confession was made exclude all suspicion of any collusion between the parties to the suit or that it was obtained under duress or for the purpose of evidence.

On being informed by the corespondent of his wife's infidelity, the respondent immediately went with him to confront the appellant with the charge and to ascertain the truth. This was the natural thing to do.

(2) *Testimony of corespondent.*

William Skow, the corespondent, testified that he had intercourse with the appellant on two occasions. The first occasion was the Sunday after Thanksgiving 1915, which was November 28th, and the second occasion was the following Sunday, which was December 5th, 1915. The offenses were committed in a vacant wood shed in the cellar of No. 299 Monmouth Street, Jersey City. Skow described the first occasion, as follows: (Case, p. 88, lines 24-39) "Q. Will you describe to the Court just when it was and where it was, and under what circumstances it took place? A. Well, I was down chopping wood one Sunday morning and Mrs. Ross came down while I was chopping wood, and she asked me for 10 cents, and I pushed her away and told her not to bother me; and then I goes up and goes over to the other woodshed and she comes in after me, and she threw her arms around me and she asked me again for ten cents, and I said 'No,' and she kept on pleading and wanted me to be sure that I will come down this afternoon, and she lifted up her clothes and I gave her a quarter that afternoon. She came down, and she laid on the burlap in the woodshed, and I had connections with her."

He describes the second occasion as follows: (Case p. 88, line 40; p. 89, lines 1-7) "Q. Was there any other occasion when you did that? A. Then the Sunday following I was down there

again chopping wood and she came down and she asked me for money, and I gave her a half dollar, and she came down in the afternoon the same as the first."

A rigid cross examination of this witness failed to shake his story. The witness was under subpoena and his reasons for disclosing to the respondent his relations with the appellant are best described in his own language : (Case, p. 89, lines 35-38) "A. * * * and I saw the woman carrying on putting the house on fire, and I thought it was no more than my duty to see the man right."

When asked on cross examination whether he would have told this story if he had known that he could be sent to jail for his act and whether he would have told this story, if he had known that, his reply was that he would not have told anything and that he wouldn't have gone on the stand at all for they would not have known anything about it (Case, p. 106, lines 1-20). The testimony of this witness stands unimpeached. He is a creditable witness and his story is worthy of belief.

The testimony of the corespondent was corroborated.

The corespondent testified that the offense took place on burlap in the wood shed (Case, p. 88, line 38). Christina Skow says that she found burlap and other dirty trash spread out there which was flattened down (Case, p. 47, lines 17-22). The respondent also saw the burlap there (Case, p. 113, line 3).

Mrs. Skow testified that she knew her son, William, was down there (in the basement) with Mrs. Ross at that time. She heard their voices (Case, p. 107, lines 15-18). William Skow says that when he came into the basement, Mrs. Ross said, "Come on." (Case, p. 99, lines 20-23). Mrs. Skow says that on one occasion she heard

Mrs. Ross, who was down in the basement, use this language (Case, p. 47, lines 3-4).

An attempt was made to prove that a voice in the basement could not be heard in Mrs. Skow's apartment. This attempt failed. Both Joseph Conway and Henry Spitz on cross examination admitted that they could hear a murmur (Case, p. 130, line 34; p. 131, lines 36-37; p. 137, lines 13-15). Their evidence corroborated the testimony of Mrs. Skow that she could hear voices in the cellar.

We submit that if the corespondent's testimony requires corroboration, that it is corroborated by these facts which tend to establish the charge of adultery.

Letts vs. *Letts,* 79 N. J. Eq. 631

The case of *Garrett* vs. *Garrett,* 86 N. J. E 293, is not in point. In that case neither the petitioner's testimony nor the confession of the wife was corroborated and there was no direct testimony, as in the instant case, of infidelity of the defendant.

It is submitted that the evidence is sufficient to prove adultery and that the decree should be affirmed.

Respectfully submitted,

QUEEN & STOUT,
Solicitors of Petitioner-Respondent.

JOHN W. QUEEN,
Of Counsel.

June Term, 1918.

IN CHANCERY OF NEW JERSEY.

Between
WILLIAM R. ROSS,
Petitioner,

and

ELEANOR ROSS,
Defendant.

On Petition for Divorce.

MEMORANDUM.

MESSRS. QUEEN & STOUT, for the Petitioner.
J. EMIL WALSCHEID, ESQ., for the Defendant.

LEWIS, V. C.:

The petitioner in this case has presented evidence that convinces me that he is entitled to a decree for divorce against his wife.

The parties were married on February 27th, 1907. He was a motorman and she was employed as a domestic. Their residence was in Brooklyn until the summer of 1907, when the petitioner came to live in this State. One child, born July 29th, 1908, was the fruit of the union, and at the time of this hearing is being cared for by Mrs. Margaret Ross, an aunt of the petitioner, all expenses in connection with the same being paid by the petitioner. Shortly after the birth of the child, troubles arose in the household owing to the use by the defendant of intoxicating liquors. She was arrested at times, and the petitioner procured her release, but, finally, she was sent to the House of Good Shepard in Brooklyn. From this institution she was also discharged through the intercession of the petitioner, but she was again

arrested. Upon her release on this occasion, she brought suit in Brooklyn against her husband for separate maintenance. It was then that the petitioner took up his residence in New Jersey, and they lived apart from August, 1909, to September, 1915. The petitioner then wrote to his wife asking her to come to New Jersey, and they met and made arrangements, the result of which was the taking of an apartment at No. 299 Monmouth Street, Jersey City. At this address they lived together from September, 1915, until December, 1915. The defendant for a short time abstained from the use of intoxicants and then resumed her habits, which she continued until December 10th, and on this date the testimony discloses that she set fire to her apartment and was arrested on a charge of drunkenness. After a hearing she was convicted in the Second Criminal Court of Jersey City and sentenced to the county jail for ninety days. A consideration of the conduct, habits and disposition of the defendant leads one unhesitatingly to the conclusion that her morals were such that she might commit the offense charged against her under the circumstances as related by the corespondent, William Skow. Her solicitor contended that the views expressed and the rules laid down in the case of *Letts* vs. *Letts*, 79 N. J. Equity, 630, should be applied, but, as I indicated at the time, I think the evidence in this case reveals an entirely different situation. The vulgarity of the story told herein does not necessarily lead a reasonable person to regard it as entirely improbable. The corespondent stands unimpeached. There is nothing before me to indicate that his testimony was not given in the interests of justice. His story must be received with great caution and scanned carefully. This was done, and a searching cross-examination failed to shake it. It has corroboration from other lips, and one observing the corespondent and these wit-

nesses must have been impressed with the fact that they were ingenuous and relating a truthful account of the defendant's relations with Skow. He says that he had intercourse with her on two occasions. These offenses were committed on November 28th, 1915, and the second on December 5th, 1915. They took place in a woodshed in the cellar of No. 299 Monmouth Street, Jersey City. Skow's evidence as to the first occasion is as follows:—

> Q. Will you describe to the Court just when it was and where it was and under what circumstances it took place? A. Well, I was down chopping wood one Sunday morning and Mrs. Ross came down while I was chopping wood and she asked me for ten cents and I pushed her away and told her not to bother me and then I goes up and goes over to the other woodshed and she comes in after me and she threw her arms around me and she asked me again for ten cents and I said no, and she kept on pleading and wanted me to be sure that I will come down this afternoon, and she lifted up her clothing and I gave her a quarter that afternoon. She came down and she laid on the burlap in the woodshed and I had connections with her.

His evidence relative to the second occasion is as follows:—

> Q. Was there any other occasion when you did that? A. Then the Sunday following, I was down there again chopping and she came down and she asked me for money and I gave her a half dollar and she came down in the afternoon the same as the first.

Mrs. Christina Skow, the mother of the corespondent, who lived during the events described by her son at the same address as the Ross family,

testified that she heard the voices of her son and Mrs. Ross in the cellar. She knew they were down there. Skow says that one of the expressions used by the defendant when in the basement was "come on". His mother says that on one occasion she heard Mrs. Ross, who was down in the basement, use these words. The effort made to prove that it was impossible to hear a voice in the basement from the Skow apartment failed.

After the arrest and conviction of the defendant in the Second Criminal Court of Jersey City, Ross asked Mrs. Skow if she knew anything about his wife and Mrs. Skow told him to ask her son William. Mrs. Skow had previously informed Ross, whose apartments were opposite hers, that his wife was continually in the cellar and that she was with men. Ross talked to Skow, the corespondent, and the latter told him that he had had intercourse with Mrs. Ross. Upon examination, he gave as his reason for disclosing to the petitioner his relations with the defendant, that he felt it his duty to see Ross right, as his wife was carrying on and had set fire to the house. It was quite apparent that Skow and Ross were unsophisticated. After hearing the corespondent's story, the petitioner went with Skow, the corespondent, and Magnus Peterson to the county jail and confronted his wife there. Peterson, according to the testimony, appears to have accompanied Ross as a friend. A confession as to the commission of the offenses is related by the three. Ross's account is as follows:—

> Q. Tell the Court what you said and what she said and what the others said. A. I asked her how much money she got off William Skow, and she at first said, "No;" and I said, "Yes, you did," and she said "No," and I said, "Yes, you did," and she said, "How do you know?" and I said, "I was told so," and she said, "I got 50 cents for

one time and a quarter another time;" and I said, "What did you give him for his money?" and she said "Nothing," and I said, "Yes, you did;" and she said, "No, I did not;" so I called in William Skow.

Q. Where was he? A. He was sitting out in the little hall, and I called him in, and he stayed back of me, and I asked him if he was lying to me, or who was lying to me, and he said, "Ross, I am not lying to you;" so finally she said, "I let Skow have the best of me twice."

Q. Who was there at that time? A. Mr. Peterson.

Peterson and Skow both corroborated petitioner as to the admission of the defendant when confronted by Skow.

Mrs. Ross denies her intimacy with Skow. She admitted having borrowed money from him, but entered a denial of the story of the offenses in the cellar of the Monmouth Street home. Of course, this confession could not alone be relied upon to support a decree for divorce, but it gives corroboration to the story related by the corespondent and the other witnesses of the petitioner. Skow, as above stated, appears to be unshaken in his testimony, and, aside from his improper conduct with defendant, there is nothing affecting his character shown; so the situation is not as in *Clare* vs. *Clare*, 19 N. J. Equity, 37. The story as told by Skow accords with the defendant's proved habits and character. (*Adams* v. *Adams*, 17 N. J. Equity, 325).

I think the requirements for divorce so comprehensively set forth in the case of *Berckman* v. *Berckman*, 17 N. J. Equity, 453, are met by the testimony offered in this case.

I shall, in accordance with the views above expressed, advise a Decree Nisi for the petitioner.

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Notice of Appeal.

(Filed Dec. 20, 1917)

In Chancery of New Jersey

Between

WILLIAM R. ROSS,
Petitioner,

and

ELEANOR J. ROSS,
Defendant.

On Petition for Divorce.

To Messrs. Queen & Stout, solicitors of and of counsel with petitioner.

Gentlemen:

The defendant, Eleanor J. Ross, hereby appeals from the decree *nisi* and every part thereof made by this court in the above entitled cause on the 10th day of December, 1917, to the Court of Errors and Appeals in the last resort in all causes.

Dated, December 17th, 1917.

J. EMIL WALSCHEID,
Solicitor of and Of Counsel with Defendant.

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

J. EMIL WALSCHEID,
Solicitor of and Of Counsel with Defendant.

(Service acknowledged Dec. 18th, 1917.)

Petition of Appeal.

(Filed January 14th, 1918.)

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

The humble petition of Eleanor J. Ross, the appellant in the above stated cause, respectfully shows, that your petitioner finds herself aggrieved by a decree *nisi* made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 15th day of December in the year 1917, wherein William R. Ross was petitioner and the said Eleanor J. Ross was defendant in this respect, to wit, that the decree adjudges that "the said defendant has been guilty of the adultery charged against her on the 28th day of November, 1915 and the 5th day of December, 1915, in the said petition, and that at the time the cause of action for divorce therefor arose the said William R. Ross and Eleanor J. Ross were bona fide residents of this state, and that the said William R. Ross and Eleanor J. Ross have continued so to be down to the time of the commencement of this action; that the said William R. Ross and the said Eleanor J. Ross be divorced from the bonds of matrimony for the cause aforesaid, and the parties and each of them be freed and discharged from the obligations thereof unless sufficient cause be shown to the court why this decree should not be made absolute within six months from the date hereof."

And your petitioner humbly appeals from the whole and every part of the decree of the Chancellor which decrees as aforesaid upon the ground that said decree is erroneous, for that under the law and the evidence submitted the court should have adjudged that the defendant was not guilty of adultery as charged against her in the petitioner's petition for divorce in said cause.

And your petitioner humbly appeals from the said decree may be in the particular aforesaid reversed and set aside and for nothing holden and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

J. EMIL WALSCHEID.
Solicitor for Appellant.

Answer to Petition of Appeal.

(Filed January 18th, 1918.)

The Answer of the above named respondent to the petition of appeal of the above named defendant.

This respondent not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that a decree was, on the 15th day of December, 1917, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the decree is agreeable to equity and he prays that the same may be affirmed with costs to be adjudged to this respondent.

QUEEN & STOUT,
Solicitors for and Of Counsel with Appellee.

Petition for Divorce.

(Filed Dec. 23, 1915.)

In Chancery of New Jersey.

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

The petition of William R. Ross, of the City of Jersey City, in the County of Hudson and State of New Jersey, respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to his present wife, Elenor J. Ross, the defendant in this suit, on the 27th day of February, 1907, by a Minister of the Gospel, at the Borough of Bronx, in the City and State of New York.

2. Defendant, since her marriage to your petitioner and in the evening of the 15th, 24th, 25th and 26th days of November, 1915, and on other days in said month of November, 1915, committed adultery with a person whose name is not known to petitioner, at No. 299 Monmouth Street, in the City of Jersey City, in the County of Hudson and State of New Jersey. The said person was of middle age, about six feet in height, weighed about one hundred and fifty pounds, had dark hair, a smooth face, and wore a black suit, oxford ties and a derby hat.

3. Defendant, since her marriage to your petitioner and on the 28th day of November and the 5th day of December, 1915, and on other days in said months of November and December, 1915, committed adultery with William Skow, at No. 299 Monmouth Street, in the City of Jersey City, in the County of Hudson and State of New Jersey.

4. 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 Jersey City, in the County of Hudson.

5. One child was born of the marriage aforesaid; to wit, Marjorie Louise, seven years of age, who is in the custody of your petitioner.

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

And your petitioner will ever pray, etc.

QUEEN & STOUT,
Solicitors of Petitioner.

STATE OF NEW JERSEY,
COUNTY OF HUDSON, } ss.

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

WILLIAM R. ROSS.

Sworn and subscribed to before me
at Jersey City, this 22nd day of
December, A. D. 1915.

RIPLEY WATSON,
Master in Chancery
of the State of New Jersey.

Answer.

(Filed June 23rd, 1916)

The answer of Eleanor J. Ross, defendant, to the petition of William R. Ross, petitioner.

1. This defendant says her name is "Eleanor J. Ross" and not "Elenor J. Ross" as stated in the petition.

2. This defendant admits it to be true that petitioner and defendant were married as in said petition is alleged.

3. This defendant denies that since her said marriage, and in the evening of the 15th, 24th, 25th and 26th days of November, 1915, or on other days in said month of November, 1915, she committed adultery with a person of middle age, about six feet in height, weighing about one hundred and fifty pounds, of dark hair, a smooth face, and wearing a black suit, oxford ties and a derby hat, at No. 299 Monmouth Street, in the City of Jersey City, in the County of Hudson and State of New Jersey, as in said petition is alleged, or that on the 28th day of November and the 5th day of December, 1915, or on other days in said months of November and December, 1915, she committed adultery with William Skow, at No. 299 Monmouth Street, in the City of Jersey City, in the County of Hudson and State of New Jersey, as in said petition is alleged, or that she committed adultery with said persons or with any other person, at any other time or place, but to the contrary, this defendant says that she has ever faithfully observed her obligations as the wife of the petitioner.

4. This defendants admits it to be true that the petitioner and this defendant were bona fide residents of the State of New Jersey when this sup-

posed cause of action arose as alleged in the petition, and that this defendant has ever since continued to be a bona fide resident of this State down to the time of the commencement of this action excepting from December 23, 1915, to February 23, 1916, when she resided in the City, County and State of New York, but whether the petitioner has ever since said supposed cause of action arose, continued to be a bona fide resident of this State, as alleged in said petition, this defendant is without information and neither admits nor denies the same.

5. This defendant admits it to be true that one child was born of the marriage aforesaid, whose name and age is stated in the petition but denies that said child is in the custody of the petitioner and says that she has assisted from her own exertions in the maintenance and clothing of said child for a long time prior to the time said alleged cause of action arose, and since that time, and that the petitioner is unfit to have the custody of said child and that the welfare of said child requires that this defenadnt should have the custody, care and control of said child.

This defendant prays to be hence dismissed, with her reasonable costs and charges in that behalf most wrongfully sustained.

ELEANOR J. ROSS,
Defendant.

J. W. & E. A. DeYOE,
Solicitors and of Counsel with Defendant.

Order of Reference.

(Filed November 18th, 1916.)

Notice of this application being waived by the Solicitors of defendant;

It is on this 17th day of November, 1916, on motion of Queen & Stout, Solicitors of petitioner, by Edwin R. Walker, Chancellor, ORDERED that the above stated cause be referred to Hon. Vivian M. Lewis, one of the Vice Chancellors, to hear the same for the Chancellor and to report thereon to him, and advise what order or decree should be made therein.

E. R. WALKER,
C.

Memorandum of Conclusions.

(Filed December 10th, 1917)

John Wahl Queen, Esq., for the petitioner.
J. Emil Walscheid, Esq., for the defendant.
V. C. Lewis:

A further consideration of the testimony offered in this cause leads me to the conclusion that Ross is entitled to a decree against his wife. The circumstantial evidence alone before the Court shows proof of inclination, and that the opportunity was not lacking to commit the offence. The testimony offered by the correspondent has great probative force. The character of this witness stands unimpeached, and there is no reason shown for his course in telling the story save in the interest of fairness and justice. Of course, the evidence of the *particeps crimins* when offered to sustain the charge, is to be received with great caution and scanned carefully. This was done in the Ross case, and the story related is in accord with the other testimony produced. It is true that the situation and circumstances surrounding the commission of the act were somewhat unusual, but can it not be said that they were such as to lead one to the conclusion that the offence had been committed?

Decree Misi.

(Filed December 15th, 1917)

This cause coming on to be heard in the presence of Queen & Stout, of counsel with the petitioner, and E. A. DeYoe and J. Emil Walscheid, of counsel with the defendant, on petition, answer, and oral proofs taken in open court; whereupon, and upon duly considering the said pleadings and proofs, and hearing and considering arguments of counsel; from all of which it now appears satisfactorily to the Chancellor, that the petitioner and the defendant were lawfully joined in the bonds of matrimony on or about the 27th day of February, 1907, and that the defendant has been guilty of the adultery charged against her on the 28th day of November, 1915, and the 5th day of December, 1915, in the said petition, and that at the time the cause of action for divorce therefor arose, the said William R. Ross and Elenor J. Ross were bona fide residents of this State, and that the said William R. Ross and Elenor J. Ross have continued so to be down to the time of the commencement of this action, and it further appearing that jurisdiction herein has been acquired by personal service of process upon the defendant within this State, as well as by the appearance and answer of the defendant;

It is thereupon, on this 15th day of December, 1917, by his Honor Edwin R. Walker, Chancellor of the State of New Jersey, Ordered, Adjudged and Decreed, and the said Chancellor, by virtue of the power and authority of this Court, and of the Acts of the Legislature in such case made and provided, doth hereby Order, Adjudge and Decree that the said petitioner, William R. Ross, and the said defendant, Elenor J. Ross, be divorced from the bond of matrimony for the cause aforesaid, and the said parties, and each of them, be freed

and discharged from the obligations thereof, unless sufficient cause be shown to the Court why this decree should not be made absolute, within six months from the date hereof.

E. R. WALKER,
C.

Respectfully advised
Vivian M. Lewis.

Testimony

Transcript of testimony taken in the above-entitled cause, at the Chancery Chambers, Jersey City, New Jersey, on the fourteenth day of March, Nineteen hundred and seventeen, before Hon. Vivian M. Lewis, Vice-Chancellor.

Appearances:
Queen & Stout, Esqs., for the Petitioner;
J. W. & E. A. De Yoe, Esqs., for the Defendant.

William R. Ross, sworn in his own behalf, testified as follows:

Direct Examination by Mr. Queen:

Q. Are you the petitioner in this cause? A. Yes, sir.

Q. What is your full name? A. William R. Ross.

Q. Where do you live? A. 109 Brown Place.

Q. What is your business? A. Motorman for the Public Service.

Q. How long have you been a motorman for the Public Service? A. Seven years last August.

Q. Where have you been working? A. On Jackson Avenue, from Greenville to Hoboken and Jersey City.

Q. Where have you lived during that time? A. In Jersey City.

Q. Whereabouts do you live now? A. In Greenville.

Q. How long have you lived there? A. I have lived there for a year the 17th of this month.

Q. Where did you live before that? A. In York Street and on Henderson Street, and on Grand Street a while.

Q. During the seven years you have been employed by the Public Service you have lived in Jersey City? A. Yes, sir; I also lived on Monmouth Street for a while.

Q. When were you married? A. In February, 1907.

Q. Where? A. In New York, in the Bronx, by a Presbyterian Minister.

Q. What is the name of your wife? A. Eleanor Ross.

Q. How long did you live together? A. We went to housekeeping May 26, 1907.

Q. Where did you go to housekeeping? A. In Brooklyn.

Q. Whereabouts in Brooklyn? A. 143 Cooper Street.

Q. Now, how long did you live in Brooklyn A. I lived there from 1907 to 1909.

Q. Up to the time when you moved to Jersey City? A. Yes, sir.

Q. And during that time, or during part of that time, did you live with your wife? A. Yes, sir.

Q. Now, have you any children? A. One.

Q. What is the name? A. Marjorie Louise.

Q. When was she born? A. July 29, 1908.

Q. And where is the child now? A. Right here in Court.

Q. Where does the child live? A. With my aunt, in Brooklyn—Margaret Ross.

Q. Is she here in Court? A. Yes, sir, she lives at 1708 Broadway.

Q. Where did you live at the time the child was born? A. 208 Covert Street.

Q. Now, shortly after the child was born, what happened with respect to your wife's habits of sobriety or insobriety; tell the Court just what information came to you, and then what you did as a result of that information. A. An officer came and notified me that she was locked up.

Q. By reason of that information, did you go to any place to find her? A. I went to the Ralph Avenue station house in Brooklyn.

Q. Did you find your wife there? A. No, sir, they told me she was not there, but that she was transferred to the Gates Avenue station.

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

Q. Did you find her there? A. The officer at the desk would not let me see her.

Q. How do you know she was there? A. I heard her speaking, and I said, "Can't I see her?" and he said, "No, she is drunk."

Q. When was this? A. This was around the latter part of September or October, 1908.

Q. Day time or night time? A. Well, it was in the evening when we got notified.

Q. Did you tell the officer that she was your wife? A. He asked me.

Q. Did you tell him she was your wife? A. Yes, sir.

Q. Didn't you go into the cell and see her? A. No, sir, the officer behind the desk said, "You cannot see her," but the officer told me she was there and he said, "I am come to notify you that your wife is at the Ralph Avenue Station house, and"—

Q. Did you ever see her drunk before? A. No, sir that was the first time.

Q. When was it? A. In the latter end of September.

Q. In what year? A. 1908.

By the Court:

Q. Did you know of her being drunk before that; had you seen her drink? A. Not very much.

Q. You take a drink, I suppose, yourself? A. Yes, sir, but not to get drunk.

Q. But you have taken a drink with her? A. I had a glass of beer several times for dinner.

Further Direct:

Q. When did you next see her. How long did you stay at the station house that night? A. About ten minutes.

Q. Did you go back the next morning? A. I went down to the Gates Avenue Court House the next morning.

Q. Did you see your wife there? A. No, sir, the judge had left there and went to the East New York Court House.

Q. Where did you go? A. He sent a man with me to get her out.

Q. Do you mean to say they moved the woman from Ralph Avenue Station house? A. Yes, sir, they moved her up to Gates Avenue Station house, and there is a court attached to that station.

Q. Now, you went to what station the next morning, after having made inquiries the night before? A. To Gates Avenue.

Q. Did you find your wife there? A. No, sir.

Q. Did you find her there? A. No, sir.

Q. What information did you get in regard to her? A. They told me I would have to go to East New York and see the Judge there, and so I went there and I saw the Judge there.

Q. Did you see your wife? A. No, sir, not there.

Q. What information did you get in regard to her? A. Well, he made me swear that I would take her out and see about her and get her home, and I did so.

Q. What did you do then; did you go after her anywhere? A. No, sir. They telephoned to the station house to let her go, that it was all right, that I had seen the Judge.

Q. Then what did you do in regard to it? A. Well, she came home then.

Q. That night she came home, did she? A. Yes, sir.

Q. What did you say to her then? A. I said it was a fine way to carry on.

By the Court:

Q. What did she say? A. I don't know, I don't remember what she said; she often cut me off so short and told me to mind my own business.

Q. What did you say to her? A. There was not any use saying anything; it was the first offence, and I let it pass.

Q. What did she say? A. Nothing.

Q. You never talked about it? A. I asked her what happened, and she said that she got picked up, but she said she was not drunk.

Q. Where did she say she got picked up? A. She did not say.

Further Direct:

Q. Did the officer who first came to notify you tell you that? A. No, sir, he did not tell me what street she was picked up on.

Q. What next happened with regard to habits of this nature? A. She had been locked up again.

Q. How soon afterwards? A. A week or ten days or two weeks.

Q. How did you find that out? A. An officer came to the car barn again to tell me that she was locked up, and I told him this was the second time, and I did not think it was any use in bothering.

Q. Did you go to any place that time? A. No, sir.

Q. What next did you hear about her? A. The next day when I came home she was home.

Q. Did you know whether or not she had been home during that night? A. No, sir, she was not home during that night.

Q. Where was the child during this time? A. With my aunt.

Q. Your aunt Margaret Ross? A. Yes, sir.

Q. When your wife came back on this occasion, what did you say to her? A. I said it was fine the

way she was carrying on, and I asked her if she was going to keep this up, and she said it was none of my business.

Q. Did you ask her who got her out? A. I don't remember that I asked her that; I don't think I did.

Q. Did you tell your wife what the officer had come and told you on this occasion? A. Yes, sir, I asked her where she was, and she said it was none of my business; so I said, "I know where you were, because an officer notified me that you were locked up," and she said nothing to that; she had been washing some clothes when I came in, and she went on with that.

Q. What was the next occasion of this nature? A. The next occasion she was locked up again for being drunk.

Q. In what district of the City of Brooklyn? A. Meseroll Street was the court she was taken to that time.

Q. How did you find that out? A. I was notified by an officer.

Q. Did you then go to court? A. Yes, sir, I appeared in court then.

Q. That night or the next day? A. The next morning.

Q. Did you see your wife? A. Yes, sir.

Q. And did you have a trial? A. Yes, sir, I asked the Judge, I said, "This is the third offence," and I asked him if he could not do something for me to put her away or do something that would break her off this drinking habit; so he asked me what our religion was, and I told him that we were both Protestants, and he said to the matron, "Go and look up and see if there is a Protestant institution," and she said "No," that there was not any. And he said the only thing to do was to put her in the hands of the "Good Shepherd" for six months.

Q. Do you know whether or not she was put in the house of the "Good Shepherd?" A. Yes, sir, because I went up to see her.

Q. Where is the house of the "Good Shepherd" where she was at that time? A. It was off Rockaway Avenue.

Q. How often did you go there? A. I went there on three or four different occasions.

Q. How long did your wife stay there? A. After five months and two weeks I took her out of there.

Q. You took her out yourself? A. Yes, sir.

Q. Do you remember when it was that you took her out? A. In the month of April, 1909.

Q. Where was your child during this time? A. With my aunt.

Q. Where did you live during this time? A. With my aunt; I boarded there.

Q. Referring to the same aunt that your child was with? A. Yes, sir.

Q. Where did you take your wife after she had been in the "House of the Good Shepherd?" A. We took up rooms at 593 Irving Avenue.

Q. At once? A. No, sir, two weeks after I took her out; I had her for two weeks at my aunt's.

Q. Then you took rooms at 593 Irving Avenue? A. Yes, sir.

Q. Did you take the baby with you? A. Yes, sir.

Q. How long did you live there? A. That did not last quite a month.

Q. What were her habits then? A. She drank deeply; I came home one night and there were no clothes on the baby, and I had to dress her myself, and my wife was in bed drunk and not able to move.

Q. Did you see any bottles which contained strong drink around the house? A. Yes, sir, I saw

several bottles; some of them were half empty; she had hidden them.

Q. Did this continue all the time from the first time you have spoken about your wife's being arrested down to this time? A. Yes, sir.

Q. Seeing bottles in the house? A. Yes, sir; I found them hidden behind the bathtub in the bathroom.

Q. Now, then, after being a month in the Irving Avenue place, what happened? A. Well, I took the baby back to my aunt; I saw there was nothing else to be done; my wife was not fit to take care of the baby, and I notified her aunts, Mrs. Johnson, and Miss Graham.

Q. Where do they live? A. Miss Graham lived in Greenpoint then, but she is living in the Bronx now.

Q. You said you took the baby back to your aunt's, Mrs. Ross' house? A. Yes, sir.

Q. What did you do? A. Well, I used to go and get my meals at the aunt's and go in and see my wife, and every time I went in there she would be drunk.

Q. How long did that continue? A. Seven or eight days.

Q. Do you know whether her brother or any of her relatives came at that time? A. Her brother came and spent three or four days and tried to keep her right before she would be dispossessed.

Q. How often did you go there? A. Some days twice, some days three times.

Q. I did not ask you what your employment was when you were in Brooklyn? A. Motorman, part of the time was a motorman; before that I worked as a laboring man in the shops.

Q. Do you know whether your wife's aunts, Mrs. Johnson and Miss Graham, came to the Irving Avenue house during this eight days? A. Mrs. Johnson did.

Q. Do you know where your wife went after the end of the eight days that she lived at the Irving Avenue house? A. Her brother went out to the Flushing, Long Island court to swear out a warrant to have her taken out of the house, and the Judge asked him if she had a husband, and he said "Yes," and he said "You will have to send her husband here;" so I went to the court and swore out a warrant, and the next morning—

Q. Was she arrested? A. Yes, sir, an officer came, and her brother, and they took her to the Long Island Jail, and I appeared there the next morning.

Q. Did you see your wife? A. Yes, sir.

Q. What was done at that time? A. Well, the Judge looked at her, and she was so much under the influence of liquor that he laid the case over for ten days.

Q. Where was your wife during those ten days? A. In the Long Island Jail.

Q. After the ten days, what happened? A. I appeared in court after the ten days, and she had a lawyer then, and I saw her and this lawyer come in and walked up the left-hand side of the court house, and the officer went and spoke to the Judge, and then he went back and sat by the side of her, and then he called it.

Q. What was the result of it? A. I don't know what he said to the Judge there—

Q. What was the result of it? A. He dismissed the case and told us to go home.

Q. Then what next happened, so far as your relations were concerned? A. Then her lawyer looked after me for support for her, so I went to a lawyer to take the case, and the case was tried on affidavits, and he told me that the Court—

Q. Never mind that; was there any order served on you to pay for her support? A. Yes, sir, her

lawyer served papers on me to pay $4.00 a week and so much costs.

Q. And what did you do? A. I took the papers down and showed them to my lawyer.

Q. Shortly after that, did you stay in Brooklyn? A. I came to New Jersey.

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

By the Court:

Q. Did you tell your wife when you came to New Jersey? A. No, sir.

Further Direct:

Q. When was that? A.In August, 1909, that I came to New Jersey—on the 16th of August.

Q. Now, after that, when next did you see your wife? A. I recollect it was in 1911, up in Manhattan Casino Park.

Q. Where is that? A. 155th Street, New York.

Q. What was she doing there? A. Well, there was a picnic, an Orangemen's picnic, and she was there.

Q. And you went there, too? A. Yes, sir.

Q. And you found your wife there? A. Yes, sir.

Q. Now, where was the child during these years? A. With my aunt in Brooklyn.

Q. Did you go to your aunt's in Brooklyn? A. Yes, sir, I went there occasionally to see the child.

By the Court:

Q. Did you speak to your wife when you saw her at the picnic? A. Yes, sir.

Q. What happened with respect to you and your wife at that time? A. This friend of mine he wanted to make it up between her and me then.

Q. What did you do? A. We had a talk, and I went home with her that night.

Q. Where did she live? A. I don't remember whether it was on the East side or not.

Q. But it was somewhere in New York? A. Yes, sir.

Q. Very far away? A. Well, not so very far.

Q. You walked from the Manhattan Casino Park? A. No, sir, we took the train down town.

Further Direct:

Q. I think we had better have it a little more fully just who tried to bring about your reconciliation. A. His name was Matt Kennedy.

Q. Now, just tell us how you came together, you and your wife, on that occasion? A. Well, we met there, and he came along and he said, "Why don't you and your wife make up this little dispute between you, and don't be living like this;" and I said, "It is not my fault;" I said "I would be satisfied if she did what was right."

Q. Did you go over to her then? A. Well, I went home with her that night.

Q. And that commenced at the Manhattan Casino Park among the Orangemen; what did you do— A. This friend took me to where she was sitting, and he wanted to make things right again.

Q. You stayed there and spent the evening? A. Yes, sir.

Q. Then you stayed with her that night? A. Yes, sir.

By the Court:

Q. Then you went home with her? A. Yes, sir.

Q. You slept that night with her, I suppose? A. Yes, sir.

Q. That was when? A. July, 1911.

Q. What happened the next morning? A. Well, I got up and came back to New Jersey and went to work.

Q. What conversation did you have with your wife; what did you say about living together; did you ask her to come over? A. No, sir.

Q. When did you next see your wife after that? A. I don't remember whether I met her in my aunt's on some occasions; I think I did meet her on some occasions at my aunt's, when I went over to see the baby.

Q. I am referring to what you have related to me as the Bellevue Hospital incident; when was that? A. That was in the latter end of July or around the first week of August of the same year, 1911.

Q. Do you know whether that is the next time you saw your wife after you met her at the Manhattan Casino Park and took her home? A. Yes, sir, I reckon it was.

Q. But you may have seen her at her house? A. No, sir, at my house.

Q. Why did you go to the Bellevue Hospital? A. Because her sister notified me, sent me a letter that she was there pretty badly hurted and did not know whether she would live or not, and I went there and found my wife there, and she was in a pretty bad condition in appearance, and she told me she had got run over by an automobile.

Q. How long was she in the hospital? A. She came out of there after being there seven or eight days; she came out before they took the plaster of Paris off, her sister told me.

Q. When did you next see your wife after this occasion when you saw her in the hospital? A. I saw her in her sister's house.

Q. When? A. A few days or a week later.

Q. Did you go to her sister's house? A. Yes, sir.

Q. What for? A. The sister wrote and asked me to go over and see her.

Q. See whom? A. My wife—saying that she had come out of the hospital.

Q. And what happened then? A. I went over

and saw her, and her sister told me that my wife had been going out and bringing in half pints of whiskey.

The Court: Strike that out.

Q. Was your wife present when her sister told you this? A. I don't think she was right beside us at that time, but she was there in the next room or so, but I don't know that she heard it.

Q. Now, did you talk to your wife after that? A. Yes, sir.

Q. On that occasion? A. I told her it was a shame to be carrying on like that, and it was a shame to be throwing bottles out of the windows, as she was doing, and disgracing her sister, and she said it was none of my business.

Q. Then when did you next see her after that; this was in August, I understand, 1911? A. Yes, sir.

Q. When next did you see her? A. Well, it might be a year or a year and a half later—I met her at my aunt's in Brooklyn.

Q. How did you come to see her then? A. We happened to meet there together.

Q. This was at your aunt's in Brooklyn? A. Yes, sir.

Q. What brought you there at that time, was it the bracelet which had been sent to you for the little girl, is that what brought you to your aunt's at that time? A. No, sir, that was another occasion.

Q. What about this bracelet that your wife sent you that you took to the little girl; did you send her a letter? A. Yes, sir, I sent her an answer that I had got it and delivered it.

Q. State very briefly up to 1915 whether you saw your wife and when and where you saw her, or whether you heard about her, state very briefly. A. Well, I heard from my aunt; she used to go

there and tell the aunt the different places she was living, but I had not met her from then until I wrote and asked her to come and meet me one day.

Q. Your little child was at your aunt's, Mrs. Ross', during all this time? A. Yes, sir.

Q. And you were taking care of the child then? A. Yes, sir.

Q. Now, in December, 1915, what happened? A. Well, I wrote to her and asked her if she would come and meet me.

Q. Where? A. Over on Henderson Street at the Hudson tube entrance.

Q. You had ascertained her address from your aunt? A. Yes, sir, and she wrote and told me that she was coming in from New York in a week or ten days; if that would be all right, to write and let her know, and I wrote and said, "Yes," that would be all right. And then she wrote again to me saying that the family she was living with was named Vale, and she said they were taking back their colored help which they had out in Orange sometime before, and that she was not going to put in the remainder of her month, so she would be in on such a day if I wanted to meet her on that day, and I replied to that letter and she met me.

Q. And what was the purpose of that meeting on your part? A. Well, I wanted to know if she was going to housekeeping again.

Q. Did you go housekeeping? A. Yes, sir, we went to a friend's house and talked it over; I lived at 180 Grand Street at that time.

Q. Whereabouts did you go to talk it over? A. 239 Henderson Street, a family by the name of Hawthorne that I had boarded with, an old Irish couple.

Q. Where did you stay over night? A. We just made arrangements, she said we should go house-

keeping, and I told her to meet me the next morning and we would go and look for rooms.

Q. Where was your wife that night? A. She stayed in New York with some friends of hers, she said.

Q. The next morning did you go and select rooms? A. Yes, sir.

Q. About when did you do that? A. About the 25th of Septermer of 1915.

Q. Where were the rooms? A. 299 Monmouth Street.

Q. Was there any question discussed between your wife and you as to whether the little girl was to go with you? A. Yes, sir, she wanted the child right away, and I asked her if she would not leave it in Brooklyn and not take it from school right away until I saw whether she was giving up these drinking habits, and then she consented that she would go to housekeeping without the baby.

Q. How long was it before the little baby was brought over? A. We rented them from the first of October, and that was the 28th of September that we moved in, as far as I recollect, and on the 17th of October I took the baby over.

Q. You brought her over from Brooklyn over to New Jersey? A. Yes, sir.

Q. No, then, how long did you live in these rooms at 299 Monmouth Street with your wife? A. From the 28th of September or the first of October, until the 10th of December, 1915.

Q. Now, during that time what were her habits as to sobriety? A. She kept very sober for the first two weeks until I took the child over, and I took it over on the 17th of October, on the Sunday afternoon, and on Tuesday, that was pay day, and I gave her some of my salary, and she went out on Tuesday afternoon after she got my dinner, and she took the little girl along, and I understood they went to New York.

Q. What were your hours at work, Mr. Ross? A. Well, I went to work between 11 and 12; I left the house between 10 and 10:15 in the morning.

Q. What time did you get back for dinner? A. Around three o'clock in the afternoon.

Q. What time did you leave the house then? A. I had about an hour in the house.

Q. Then you went out on another run? A. I went out to finish up then.

Q. What time did you get in? A. From 4:40 to 12:38, I think it was, or 12:35.

Q. In the morning? A. Yes, sir, it was one o'clock when I used to get home.

Q. How did you know that of this occasion when your wife was away and went to New York? A. The baby told me she had her over in New York in a place where some woman had two little girls, and she said they then went to the Bronx to her aunt's.

Q. Did you find your wife home after you got back? A. Yes, sir, she was sitting with her head on the table, and the baby was sitting on her knee; that was a 1:05 in the morning. The baby's hat was on the floor, and her hat was on the floor.

Q. Do you know what her condition was? A. She appeared to me to be drunk, and I asked her what was the matter that she did not have the child in bed, and she said they were not long in, and I said "You should have her in bed anyhow."

Q. Did you or did you not smell liquor on her? A. I did not smell liquor on her that night; I did not go close enough to her to smell it; I took the baby and undressed her and put her to bed, and on the following Tuesday night the same performance went on; she went to New York and came home between 11 and 12.

Q. Do you know what her condition was when you came home that night? A. Well, she was lying in bed with her clothes on.

Q. Where was the child? A. The child was in bed, only half dressed.

Q. Did you talk to your wife about her condition? A. Yes, sir; I asked her if that was the way she was going to treat the child; that that was a fine example to set her child, and she said it was none of my business.

Q. Did you talk to her about her drinking? A. Yes, sir, I said "You kept sober until you got the child, and now this is the way you are carrying on, drinking every pay day when you get the money;" I said, "This is awful, I wanted you to leave the child in Brooklyn and you would not do it."

Q. How long did this keep up? A. Well, I took the child back then.

Q. When was that? A. I took her back on the 28th of October, 1915; I took the child down to the boarding-house where I had been boarding, and she took her out in the afternoon to take her to Brooklyn, and when I came back to the house she had it in bed and was lying in bed alongside of it, and the next morning I got up and took her to Brooklyn, on the 28th.

Q. Did you ever see your wife in a saloon in that neighborhood? A. Yes, sir.

Q. Tell us about that? A. I don't remember the day and date of that, but it was between nine and ten in the morning, it was before I went to work, and she asked me for 50 cents; that was after I took the child away; I gave her the 50 cents and she put a shawl on her shoulders and she walked down the street, and I walked on the opposite side of the street, and she crossed over and went in the saloon at the side door, and I went in right after her, and she had the money in her hand, and I said, "Now, I've caught you in the saloon dead to rights," and she said "I came in

to get change;'' and the bartender was pushing out a drink of whiskey, but she had not got it in her hands yet.

Q. Before whom was the drink of whiskey? A. The bartender was just filling it up; she was standing in the side door right at the end of the bar.

Q. Now, what was the incident about the fire in the house? A. Well, I came home, and I expected my dinner to be ready, but there was no dinner; that had happened several times, so I came home this day——

Q. Tell us quickly what you found; did you find the results of a fire? A. I found the results of a fire.

Q. What was it? A. She took the oilcloth up off the floor and put it in the stove.

Q. When was this? A. This was on the 10th of December.

Q. Did it cause a bad blaze? A. Yes, sir.

Q. Did it injure anything? A. Yes, sir.

Q. Now, then, before this time had you on any occasion found any man around the house? A. Yes, sir.

Q. I am speaking now before the 10th of December? A. Yes, sir.

Q. And from whom did you receive the information? A. Mrs. Skow told me.

Q. Who was she? A. The janitor who lived next door.

Q. In the same apartment house? A. Yes, sir, on the same floor, on the left hand.

Q. And then after the 10th of December, or about that time, what did you do with respect to your wife? A. Why, when I came home and found the house in the condition that it was in, I said, ''My God, what have you been doing now?'' and she said ''None of your business;'' and I said,

"I will have to see what I can do; this is terrible, trying to set the house on fire," and she said it was none of my business.

Q. Do you know whether your wife pawned any of the things which were in the house? A. Yes, sir, I had seen several pawn tickets.

Q. What finally became of those pawn tickets? A. Well, two of the articles I took out; that was the child's bracelet, and carving knife and fork; and a tablecloth was also wrapped around them.

Q. What were the other articles that were pawned? A. Some spoons, a quilt, hairbrushes, and I don't remember what the other two were.

Q. Do you remember anything about a wedding ring? A. Yes, sir, her wedding ring, three dollars she got on that.

Q. What became of these pawn tickets? A. I took them down to you, and you sent them to her.

Q. You know that you took them to me, and I informed you that I sent them to her? A. Yes, sir.

Q. Pending the suit? A. Yes, sir.

By the Court:

Q. What did you find out about adultery? A. (No answer).

Further Direct:

Q. Shortly after the 10th of December, did you have your wife arrested? A. Yes, sir, I swore out a warrant for her for being drunk and trying to set the house on fire, and we had a trial before Judge O'Brien at the Second Police Court, and he gave her three months in the Hudson County Jail.

Q. Now, after you had her arrested, did Mrs. Skow then tell you, or did anyone tell you about a man having illicit relations with your wife? A. Yes, sir.

Q. Who was it? A. Mrs. Skow told me so, and that she saw this man going in and heard him going into the bedroom out of the kitchen with her.

Mr. DeYoe: I object to that.

Q. After the 10th of December, did anyone else tell you; did anyone else tell you about these relations with your wife? A. William Skow told me.

Q. And who first told you about William Skow's relations with your wife?

Mr. DeYoe: Objected to as leading.

The Court: Objection overruled.

A. Mrs. Skow.

Q. What relation is Mrs. Skow to William Skow? A. He is her son.

Q. Did William Skow live in the apartment house with his mother during that time? A. Yes, sir.

Q. Now, you were about to tell about going to the Hudson County Jail with somebody; now, when was it? A. That was on the 19th of December.

Q. Of what year? A. 1915.

Q. What day of the week was it? A. On Sunday afternoon, around one o'clock.

Q. Who went with you? A. William Skow and Peter Petersen.

Q. Now, tell us in your own language, Mr. Ross, just what happened. A. Well, I went in to see her, and when I first went there, it was 12 o'clock.

Q. Did you get in at 12? A. No, sir, I was told to come back at one o'clock, and then I went in.

Q. Did you see your wife? A. Yes, sir, she came out of the kitchen.

Q. Tell the Court what you said and what she said and what the others said. A. I asked her

how much money she got off William Skow, and she at first said, "No;" and I said "Yes, you did," and she said "No," and I said, "Yes, you did," and she said "How do you know?" and I said, "I was told so." and she said "I got 50 cents for one time and a quarter another time;" I said, "What did you give him for this money?" and she said "Nothing;" and I said, "Yes, you did;" and she said, "No, I did not;" so I called in William Show.

Q. Where was he? A. He was sitting out in the little hall, and I called him in, and he stayed back of me, and I asked him if he was lying to me, or who was lying to me, and he said, "Ross, I am not lying to you;" so finally she said, "I let Show have the best of me twice."

Q. Who was there at that time? A. Mr. Peter Peterson.

By the Court:

Q. Is he here? A. Yes, sir.

Further Direct:

Q. So far as you recall, was that all that was said at that time; did you go away or what happened? A. She wanted to kiss me, and I did not want to let her, and the keeper ran in between us and put her back in the kitchen again, and she wanted to ask me to take her out afterwards.

Q. Was she drinking at the time? A. Yes, sir.

Q. Did she show the influence of drink? A. That is what Judge O'Brien put her away for, that and setting the house afire.

Q. How long did she stay in jail that time? A. Well, I understood she got out on the 23rd; she wrote to some party in New Jersey, the 23rd of December, she wrote to some party in New Jersey, and they wrote to Judge O'Brien to pardon her on probation.

Q. When was it you were at the County Jail, what date? A. On the 19th of December, and also I went back on the 21st of December.

Cross-examination by Mr. De Yoe:

Q. Mr. Ross, you said you lived with your wife happily up to the time the child was born? A. I don't understand that.

Q. You say you lived happily with your wife until the child was born? A. Yes, sir, we did; we did not do anything until after the child was born; I only saw her once, and I could not say whether she was under the influence of drink then—I came in and saw her lying under the front room table where she had rolled off the couch, but I could not say then that she was under the influence of liquor, I could not say whether she was or not.

Q. Did she take any drugs? A. I don't know, but I picked her up, and I was all put out and all nervous, and I said, "What is the matter?" and she could hardly speak, and she said she had heart trouble.

Q. When was that? A. That was in the latter end of the year. September or October, 1907.

Q. That was just before the child was born? A. It was before the child was born.

Q. Just a month or so? A. It was three or four months; it was in the fall of the year, and the child was not born until July, 1908, and this was in the fall of the year 1907, as far as I can remember.

Q. Now, what was that incident then that you speak of? A. I came home and found her lying under the front room table, a little table in the front room, but I could not say she was drunk.

Q. You have often been lying on the floor in your own house, haven't you? A. In bed.

Q. And out of bed? A. Not that I know of; I lie on a couch or a bed.

Q. At the time you were married did your wife have any money? A. Yes, sir, she had some money.

Q. How much did she have? A. I don't know how much she had.

Q. Considerable? A. Yes, sir.

Q. And shortly after you were married you were taken sick? A. Yes, sir.

Q. Quite seriously? A. I had pleuro-pneumonia; I was sick seven weeks.

Q. And then after that do you remember a month you were not able to work? A. Yes, sir, I went to break in as a motorman.

Q. Whose money was used to furnish the house? A. I gave her $90.00 to buy furniture with, and she bought the furniture for $35.00 in the house she was living in in New York City.

Q. When you married her she was working out, wasn't she? A. Yes, sir.

Q. She had no home except the place where she was working? A. That was her home.

Q. She owned no furniture there, and there was no furniture there that she could buy? A. This furniture—this old lady died before we were married, and she was left in charge of the house.

Q. Who paid the doctor's bills for your sickness? A. I got $10.00 a week from two lodges.

Q. Who paid for the nurse? A. There were no nurses.

Q. She devotedly nursed you during that time of your sickness? A. Yes, sir.

The Court: What difference does it make?

Q. At the time of your wife's sickness, who paid the bills? A. I did.

Q. She did not use her money to pay for it; did she have a nurse at that time? A. No, sir, I had my aunt and the woman downstairs took care of

her; my aunt was there right along until she got better.

Q. Did the doctor tell you that there should be a nurse? A. He asked me if I was going to get a nurse, and I said "Yes," and he said "How about your aunt?" and I said, "I don't know if she understands the business;" so the lady downstairs said that she did, and between the two of them it was not necessary for me to pay a nurse; I was willing to get a nurse, but as long as he said the woman downstairs and my aunt could take care of her, it was all right.

Q. Did you ever see your wife's bank books? A. No, sir, I did not have them in my hand, but she told me she had quite some money.

Q. Didn't you tell her from time to time, that she must use that money to live off? A. No, sir, I did not; I was well able to earn a living for her and I.

Q. Isn't it a fact that ever since that money was spent, then you wanted to get rid of her? A. No, sir, nothing of the kind.

Q. Isn't it a fact that the very first incident of drunkenness that you speak of, that you told the policeman on the corner to make a charge against her? A. No, sir, I did not.

Q. Didn't you tell him if he would go in, he would find her of a highly excitable nervous disposition, and then to make a charge of drunkenness against her? A. No, sir, I did not do that.

Q. Did you ever pay any alimony in those proceedings that your wife brought against you? A. No, sir.

Mr. De Yoe: There is an exemplified copy of those proceedings; I would like to have that admitted, your Honor.

Mr. Queen: How are they material?

The Court: They are material; I think I will allow them.

Q. You knew in September, 1915, that this case would come to trial soon, didn't you? A. How would I know anything about it?

Q. Didn't your lawyer notify you that it would come to trial in October—I mean this New York case, the case your wife started against you in New York State? A. That was not in 1915.

Mr. Queen: He is referring to the proceeding in New York.

The Court: This alimony matter just before you came to New Jersey?

Q. (Question read.) A. Yes, sir.

Further Cross:

Q. As soon as you heard of that you sent for her, didn't you? A. No, sir, I did not; that was before I came to New Jersey, wasn't it?

Q. No, that was after you were here in New Jersey. A. You mean in September, 1915, when I wrote and asked her to come and live with me when I knew this would come to trial in October? How would I know anything about that; I thought we could live happily.

Q. The first incident that you speak of when your wife, as you state, was arrested, without any solicitation on your part, for drunkenness, were you surprised at that time? A. In Brooklyn?

Q. Yes. Were you surprised to find out she was arrested? A. Yes, sir.

Q. Tell us to what extent you drink. A. I take a glass of beer once in a while.

Q. Every now and then you get intoxicated, don't you? A. I do not, nothing of the kind; I have never lost a day's work in 13 years that I have been in this country; the car barn will tell you that.

Q. What time do you get through working

nights? A. At 12:35 at the present time, and I don't go home drunk to the boarding house either; I drink a glass of beer and sometimes I drink a glass of gin, at times, at night, and I don't have a second drink either unless I meet a friend once in a while.

Q. Now, the first incident when she was arrested, when she was taken to the Gates Avenue Police Station, you went the next morning to see if you could get her out? A. Not in the morning; I went as soon as I got through the morning part of the work, between 11 and 12 o'clock I got down there, and the Judge had gone up to East New York, so they chased up there and then for me, and I went up to get her.

Q. When she went home with you what did you say to her? A. I said, "Is that the way you are going to carry on;" I said, "That is an awful affair."

Q. What did you say to her folks; did you send word to her folks complaining? A. I don't recall that I did send word to her folks about it.

Q. Now, the second instance, where was she taken that time? A. The officer notified me from the Ralph Avenue Police Station, so I said to him that I was not going to go down and take her out this time, I said "Let her get out herself;" I said that it was the second offence.

Q. Don't you think it was proper for you at that time (question withdrawn). What did you do to urge your wife to do better? A. I asked her if she would not give it up, I said that that was no way to live, going out and getting drunk, I said, "Anyone knows that will never keep a home."

Q. How did it come about that you sent for your wife in September, 1915? A. Well, I got tired of boarding, and I thought I would ask her to go to housekeeping, and I would give her another home and see if she would be all right.

Q. Isn't it a fact that you brought her here just purposely to get a divorce from her? A. No, sir, I did not bring her over here on purpose to get a divorce.

Q. Didn't you ever tell your wife that you brought her to New Jersey just so you could have her in your own hands and get a divorce from her? A. No, sir.

Q. Didn't you say that one week after you had her here? A. No, sir, I did not say anything of the kind.

Q. During the month of November, what money did you give her to run the house on? A. $10.00 a week, and every two, or three days I gave her a dollar or so after pay day, and it was money, money all the time.

Q. How much did you make a week? A. For the seven days I drew a little over $20.00 a week; every nine days I gave her $21.00, and the ninth or the tenth night she would take $1.85 out of my pocket, which made $22.85; so I said "How is the rent and the gas bill to be paid"? I said, "I have got to hold money for the rent and also for the gas bill; then I cut her down, and did not give her so much, and I did not carry it in my pocket, because if I did it would go out of my pocket, and I cut her down and still gave her money during the week, 50 cents and 75 cents and a quarter; then when she brought in the stove, she absolutely refused to cook for me in the end; when I came home several days there was no dinner ready, and I said, "This is fine."

MAGNUS PETERSEN, sworn in behalf of the Petitioner, testified as follows:

Direct Examination by Mr. Queen:

Q. Where do you live? A. 236 Henderson Street up to December 20th, but I moved across the street, and I don't remember the number.

Q. Mr. Petersen, just answer my questions. How long have you known Mr. Ross? A. About four years.

Q. What is your business? A. I am a boatman, master of a boat.

Q. Whereabouts? A. On the Hudson River.

Q. Do you know Mrs. Ross? A. Only by sight.

Q. When did you first come to know her by sight? A. On the 28th of November, I think it was on a Sunday.

Q. How did you come to know her? A. I met Mr. Ross that morning in front of my home, 236 Henderson Street, and we were pretty well acquainted, and I said, "Have a smoke?" and he said, "No, thank you," and I said, "Have a drink," and he said, "I don't mind;" and we went and had one, and then we came out, and I said, "Come in and have a cigar," and we had a cigar in a store, and then he said, "I have to go to work, I have not much time;" and I said, "Where do you live," and he said "On Monmouth Street," and I said, "I will walk with you;" and I went with him to Mr. Ross' home, and I saw Mrs. Ross there, and she was in bed.

Q. What did Mr. Ross say and what did she say? A. He called her by name, and he said, "This is Captain Petersen, my friend," and she turned her head and she had a handkerchief tied around her hair; that was around two o'clock, I suppose.

Q. Do you know whether or not she was

dressed? A. Yes, sir, she was dressed, fully dressed.

Q. How do you know that? A. He pulled the comforter from her, and he said, "You are drunk again;" and I said, "Come on, let us go out."

Q. When did you see her next? A. On the 19th of December.

Q. Where? A. In the Hudson County Jail.

Q. Whom did you go there with that day? A. Mr. Ross.

Q. Anyone else? A. Yes, sir.

Q. Who? A. A young man named Skow.

Q. Tell the Court in your own way, after you got inside just what happened. A. We went to the jail and we were refused admittance; the warden said, "It is the dinner hour, and we won't admit anyone;" the warden said, "What do you want?" and Mr. Ross said, "I want to see my wife," and the warden said to me, "What do you want?" and I said, "I am a friend of this gentleman;" and he asked Mr. Skow, "What do you want?" and he said, "I am a friend too;" and Mr. Ross went in; and his wife came out into an ante-room, and I stayed back; he saw his wife, and I kept back; and he said, "I have my friend, Captain Petersen, with me;" and I shook hands with her; then, as far as I can recollect, he said to her, "Have you received any money from John Skow?" and she said, "No;" and he said, "Did you have anything to do with John Skow?" and she said "No;" and he called Skow in and he said, "Are you lying about my wife?" and Skow said, "No;" then she looked at him for a moment, and she put both hands on his shoulders, and she said, "He got the best of me twice;" will you forgive me and give me a kiss," and he put up his hands, and said, "No;" and she said, "Will you try to get me out of here?" and he said, "I will try;" that is all.

Cross-examination by Mr. De Yoe:

Q. You have been a friend of Mr. Ross for how long? A. About four years.

Q. Always been quite friendly together. A. Yes, sir.

Q. The incident that you mentioned when you were at his home when you saw her in bed, she might have been just sick at that time, as far as you know? A. I don't know. I could not tell; the lady had a handkerchief tied around her forehead, and I could not tell.

Mrs. Margaret Ross, sworn in behalf of the Petitioner, testified as follows:

Direct Examination by Mr. Queen:

Q. Where do you live? A. 1708 Broadway, Brooklyn.

Q. You have had the custody of this little girl, have you? A. Yes, sir, since she was three months old, off and on.

Q. Who pays for the support of the little girl? A. Her father.

Q. Does the mother ever come to see her. A. Yes, sir.

Q. How often? A. Quite often, she used to come.

Q. How often does she come now? A. She has been over almost every other Sunday for the last few months.

Q. Have you ever seen her under the influence of liquor? A. Yes, sir.

The Court: You don't need to go into that.

Cross-Examination by Mr. De Yoe:

Q. How often does Mrs. Ross come to see the child? A. Quite often.

Q. She brings things to her? A. Yes, sir.

The Court: Oh, yes, she loves her child.

Mrs. Christiana Skow, sworn in behalf of the Petitioner, testified as follows:

Direct Examination by Mr. Queen:

Q. Where do you live now? A. 403 York Street.

Q. Where did you live during the months of September, October and the rest of the fall and early part of the winter of 1915? A. 299 Monmouth Street.

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

Q. This man here (indicating the petitioner)? A. Yes, sir.

Q. You know Mrs. Ross also? A. Yes, sir.

Q. What position did you have in the apartment house at that time? A. Janitress.

Q. Had you known Mr. Ross before he came to live there? A. No, sir.

Q. Had you known Mrs. Ross before she came there? A. No, sir.

Q. Will you tell us briefly what you saw with respect to her habits of drink during that time? A. Well, it was not long after she moved in until I saw that she was an habitual drunkard; I heard her come in at all hours of the night with the child, and the women had to help her in, in bed, and put the kid in bed.

Q. Did you ever see liquors brought in the house? A. Yes, sir.

Q. By whom? A. By herself.

The Court: She has seen it; I don't think I would dwell too long on that; I presume Mr. De Yoe is not pressing that point very much.

Q. Did you see any of the results of a fire in the house during the early part of December, 1915? A. Yes, sir.

Q. Tell us about that? A. Well, one day, around 12 or 1 o'clock, my kitchen got full of smoke, and I opened up, and there was the hall full of smoke, and I was frightened, and I went out and knocked on Mrs. Ross' door, and it would not open, and I looked in the keyhole, and it was full of smoke, and I ran over to and I asked one of the clerks to 'phone and he said I should go out and find a policeman and a chief fireman came in.

Q. What was the condition then? A. He got the door open, he knocked it open, and the kitchen was in a terrible condition; she had a big piece of oilcloth flaming on top of the range.

Q. You know what Mrs. Ross' condition was at that time? A. She was in a terribly bewildered condition.

Q. Did you get near her? I went in behind the fireman.

Q. Did you talk to her? A. No, sir.

Q. Now, Mrs. Skow, did you see any man around the house—the apartment of Mr. Ross—during these months, other than her husband? A. Yes, sir, a stranger.

Q. What did the stranger look like? A. He was a tall man inclined to be slender, dressed in black, and he wore Oxford ties; he wore a Derby hat, if I am not mistaken.

Q. When did you see him there? It was in the afternoon, something like four o'clock.

Q. How often did you see him? A. I saw him one day especially.

Q. Where did you see him? A. In her kitchen.

Q. Anywhere else? A. Yes, sir, I saw him out in the hall.

Q. How long did he stay there? A. He stayed there about half an hour.

Q. Was Mr. Ross home at that time? A. No, sir, he was working.

Q. Will you tell us what you saw when you saw him in the kitchen, and then what you heard her say, and what did you hear him say, and where they went? A. Yes, sir, I will; her door was tiny crack open, and I opened my door to go down the cellar for wood and coal for the morning, and the shade in her kitchen was pulled down; it was pretty dark in there, and I heard her say to him, "You seem to be very much afraid of my husband;" and he said, "Yes, I am;" and she said, "Why?" and he said, "Now you are bad friends with him, but when you get good friends with him you might tell him;" and she said, "No, come on," and by that the door was closed and the shade was pulled further down.

Q. Did you see the man after that? A. About half an hour after that I heard him go out, and I said to myself, "If you think he is going to bring liquor in to her I am not going to stand for it," because I thought at that time that Mr. Ross was too good a man to have a woman carrying on this way, so I watched for him, and he came back and I followed him and said, "Where are you going?" and he said, "None of your business;" and I said, "If you are going to take liquor to that poor unfortunate, you shall not," and I said, "If you don't get out, I will get an officer," and he went out.

Q. Was he carrying anything? A. Yes, sir,

he had a bottle of liquor; I could see it plainly in his coat pocket.

Q. Did you see that man around any other days? A. I often saw him go by; he always watched her window, and when he would see me he would go by.

Q. Now, Mrs. Skow, I understand your apartment is on one side of the hall and Mr. Ross' apartment was on the other side of the hall on the first floor? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. What was underneath, in the cellar. A. Empty cellars.

Q. How were they partitioned off? A. They were partitioned off like any other cellar.

Q. What was there—and for what; were there ranges there? A. No, sir.

Q. Were the coal bins there? A. No, sir.

Q. No coal bins at all? A. No, sir, just a big empty cellar.

Q. What was the cellar used for? A. There was no people in the whole house but one family and I—two rather, one on the top floor.

Q. Were there any partitions in the cellar? A. A. Yes, sir.

Q. What were those for? A. To divide one cellar from another.

Q. So that each tenant had a separate partition? A. Yes, sir.

Q. Now, did you ever hear Mrs. Ross down in the cellar? A. I often heard her.

Q. How did you know it was she? A. I knew her voice.

Q. Was there anyone with her? A. Yes, sir.

Q. How do you know there was anyone with her? A. Well, it is not likely that one woman will talk to herself alone.

Q. Did you hear her talking to somebody? A. Yes, sir.

Q. Could you hear what she said? A. One time I heard her say distinctly, "Yes, yes, come on."

Q. On how many occasions did this occur? A. I heard her many times down there.

Q. Do you know where she was at that time? A. Yes, sir.

Q. In this compartment of the cellar? A. Yes, sir.

Q. How do you know that? A. Because I could lie in my bed, this was about ten o'clock at night, and I could hear her right under me.

Q. How could you tell where they were? A. Well, I could hear the voice right underneath my bed.

Q. Did you examine the place that was right underneath your bed? A. Yes, sir.

Q. What did you find there? A. I found burlap and all such dirty trash spread out.

Q. What was its condition. A. It was flattened down.

Q. During what months were these occasions that you are now describing? A. Well, you must excuse me,; I did not keep the date, but it was around the holidays, around Thanksgiving, I guess it was; I think it was before.

Q. How many days before? A. Well, I would not say; I did not take any date.

Q. Do you know the name of the man whose description you have given and whom you saw in the house on this occasion that you have described? A. No, sir.

Q. Did you know it at that time? A. No, sir.

Q. Have you learned it since? A. No, sir.

Q. Have you a son named William Skow? A. Yes, sir.

Q. Did he live with you in November and December, 1916? A. Yes, sir.

Q. Is he here to-day? A. No, sir, he is sick.

Mr. Queen: I had him subpeonaed yesterday, and Mrs. Skow at once came to my office to inform me that he was sick; I knew that he was sick, and I told her she would have to get some certificate as to whether or not he could be here to-day.

The Court: All right, he cannot be here.

Q. Where was your son employed at his last employment? A. Burns Brothers' Coal Company.

Q. He had an accident there? A. Yes, sir.

Q. And he has been sick since that time? A. Yes, sir.

Q. When was that accident? A. The 10th of November, 1916, a little over four months ago.

Q. Did you inform Mr. Ross of these occurrences of the man that you have described as being in the house? A. Yes, sir, and I told him about the bed in the cellar, whatever you call it.

By the Court:

Q. Did you speak to Mrs. Ross about it? A. No, sir, I did not speak to her about it; in fact, I had very little dealings with that woman.

Q. Did you ever receive any information from your son about his relations with Mrs. Ross? A. No, sir.

Q. Did you ever see him with Mrs. Ross? A. No, sir, I certainly did not, but I will say this much, that one day her husband came home from work, and that morning he had brought a lot of groceries in, and I saw the woman carrying some of the groceries in the ash barrel, and that made me angry, and when he came home after dinner, him and her had a spat, and I opened my front room door and looked out, because the scuffling in the hall was terrible, and she was

pulling and dragging him, and she said to me, "Go on in, you dirty bitch;" and I said to her, "Well, Mrs. Ross, I am no such a thing, I am no whore, the way you are, because you go down the cellar with that man," and that was the only speaking I had with her.

Q. How old are you? A. I was 60 on Monday. Ross any information about your son in this

Q. I don't know whether you understood my question when I asked you whether you gave Mr. matter? A. No, sir, because I did not know it.

Q. Did you or did you not tell Mr. Ross that he had better ask your son about the matter? A. Well, I told him the best thing he could do was to find out.

Q. And what made you think he ought to find out about it? A. I did not like to live on the floor with a woman like that; I had three big boys, and I was afraid she would lead them into a bad life.

The Court: Strike that out.

Cross-Examination by Mr. De Yoe:

Q. Shortly after Mr. and Mrs. Ross came to live in your house, you had some trouble with Mrs. Ross, didn't you? A. No, sir, I did not.

Q. Some trouble about going up and down the stairs? A. No, sir.

Q. When was the first trouble you had with her? A. I had none.

Q. Never? A. No, sir.

Q. Were you friendly with her. A. Well, I was not friendly with her, but outside of the day that she called me a bitch in the hall—

Q. When was that? A. That was the day that she was fighting her husband in the hall, and I looked out and she told me to go on in, and she called me a "dirty"—

Q. Do you recall the incident when Mr. Ross

was in your apartment and when Mrs. Ross came to your door and hammered on your door and asked for her husband and you first refused to allow her to come in, and then when the door was opened, her husband came out and choked her? A. No, sir, the door was never closed even.

Q. Wasn't it quite common for Mr. Ross during all the time they were living there to visit and spend a lot of time at your place? A. No, sir, not a lot of time.

Q. How often would he come to see you? A. Once in a while when he would go to work he would come in and say, "What do you think of that?" and he would say she would smash and break up all the dishes; it was natural that he would speak to the next door—

Q. That happened shortly after they came to live there? A. No, sir, it did not.

Q. When did that first happen, that you and Mrs. Ross. had words? A. We never had any argument outside of what I have told you.

Q. Did Mrs. Ross like to have her husband come in and see you and talk over their affairs, and talk about the family troubles? A. He would come in, but the door was open.

Q. Did Mrs. Ross complain about her husband's attentions to you? A. No sir, there were no attentions to me.

Mr. De Yoe: The questions is, the interference by this lady with the Ross household, your Honor.

Q. Did you know Mr. Spitz? A. He has been in my house once.

Q. Did you ever admit to him that you did not know anything whatever about this? A. No, sir, because he did not mention anything about the case; he only asked me did I know anything about

her, and I said "No, sir," and neither did I, because I was not in.

Q. Do you remember an incident when a bed was hipped from Brooklyn to Mr. or Mrs. Ross, and when you paid for the expressage on the bed? A. I surely did not pay for any expressage.

Q. You never remember any such incident? A. No, sir, I never paid for it.

Re-direct examination by Mr. Queen:

Q. Did he give you any money to pay for the expressage? A. I know I did not pay it.

The Court: I shall have to take up another matter now.

RECESS.

AFTER RECESS.

Mr. Queen: With the exception of one witness, William Skow, who has been subpoenaed, and who is not here because of sickness, we rest.

MRS. FREDA RATH, sworn in behalf of the Defendant, testified as follows:

Direct examination by Mr. De Yoe:

Q. Mrs. Rath, you are acquainted with Mr. Ross and Mrs. Ross? A. Yes, sir.

Q. When did you first meet Mr. Ross? A. When I was left a widow, almost eight years ago; he boarded in a house where I served evening papers; he boarded there.

Q. In September, 1915, did you meet him at any time in September, 1915? A. Well, I met him one day, and I said "What are you doing here?" and he said, "I am living here;" he said, "I am living next door;" I said, "Are you married?" and he said, "Yes;" and I said "I did not know you were married, and he said, "I have not been living with my wife," and he said "She drinks, and if she drinks again, I will not have her long on my hands."

Q. When was that? A. I could not tell you the day or the date of the month.

Q. Where did that conversation take place? A. At the corner of where I lived.

Q. Where do you live? A. On Monmouth Street, near York.

Q. That is near 229? A. Yes, sir.

Q. He said he was living in that vicinity with his wife. A. Yes, sir.

Cross-examination by Mr. Queen:

Q. You saw Mrs. Ross and her child around there, didn't you? A. Yes, sir, she used to come in the store to buy candy.

Q. Did you see her around late at night? A. No, sir, I am never out at night.

Q. Did you ever go upstairs with her into her apartment? A. Once.

Q. And light the gas for her. A. No, sir.

Q. What did you go for? A. The little child was crying; she was afraid to go home in the dark; the mother was coaxing her, and to pacify her, when the child asked me to go I went with her, that is all I know.

Q. You were subpoenaed here this morning by me? A. Yes, sir.

Q. On the question of drink? A. Anyone that is in the store can see lots of people.

EVERITT WOOD, sworn in behalf of the Defendant, testified as follows:

Direct examination by Mr. De Yoe:

Q. You reside in Hoboken? A. In Weehawken.

Q. And at present you employ Mrs. Ross as a servant? A. Yes, sir.

Q. How long has she been in your employ? A. Since July 12th last year, 1916.

Q. Have you at any time ever noticed any signs of intoxication of Mrs. Ross? A. No, sir, absolutely never.

Q. Her habits are good, as far as you know about them? A. Yes, sir.

Q. Does she conduct herself well? A. Yes, sir, she is trustworthy in every regard.

Cross-examination by Mr. Queen:

Q. Since July, 1916? A. Yes, sir.

RECESS TO 2 P. M.

MRS. ELENOR J. ROSS, sworn in her own behalf, testified as follows:

Direct examination by Mr. De Yoe:

Q. Mrs. Ross, where were you working when you were married? A. 37 West 72nd Street, with a family named Hendricks.

Q. How long had you been working for that family? A. For seven years—and in the employ of the estate for five months.

Q. At that time had you any savings, at the time you were married? A. Yes, sir, I had.

Q. What was the extent of it? A. About $4,000.

Q. Where did you get that from? A. I earned it and saved it.

Q. How much did you have? A. About $4,000.

Q. I understand that during the month of May you started to housekeeping? A. Yes, sir.

Q. Who furnished the house? A. I partly furnished it with my own money, and $100.00 that my aunt gave me, and he claims he gave me $90.00, but to tell the truth, I don't know; he gave me something in small amounts.

Q. The child was born during the year 1908? A. Yes, sir, in July, 1908.

Q. You and your husband got on very nicely during that period? A. Yes, sir.

Q. Was your husband sick? A. Yes, sir, he was sick before the child was born; he was sick in 1907; I judge he was sick five or six weeks.

Q. Seriously? A. Yes, sir.

Q. Did you nurse him? A. Yes, sir.

Q. Had your husband saved any money? A. All the savings he had he kept in the bank; he did not give me any of it only what he earned from the time we were married until we went housekeeping.

Q. Who paid the expenses of his sickness? A. I did; I had to draw money out of my own bank account.

Q. What became of the rest of the money you had? A. I put it in a house, 208 Covert Street.

Q. Do you still own it? A. No, sir, the mortgage was foreclosed when my husband put me in the "House of the Good Shepherd."

Q. Your husband testified this morning as to an incident when you were arrested and taken to the Gates Avenue Police Station in Brooklyn? A. That is no wonder from the kind of care I got when my child was not two months old.

Q. Were you drinking at that time? A. No, sir.

Q. How did you come to be taken to the police station? A. I got on the sidewalk with the child in my arms.

Q. Go back to the incident of the birth of the child; what was the treatment of your husband to you at that time? A. The doctor wanted another doctor, and my husband did not want another doctor.

Q. Did you have a nurse? A. No, sir, I did not have a nurse; he wanted me to have a nurse for at least four days, the doctor did, and Mrs. Ross and my husband objected; I was under the chloroform, but afterwards I found it all out.

Q. How long were you sick from the time the child was born until the time when you had recovered your health? A. It was more than two months before I was back to my regular health.

Q. At the end of two months how was it? A. At the end of two months it was not so very good either.

Q. Now go to the incident of the Gates Avenue Police Court matter; now state the incident in connection with that. A. I was arrested and taken there, and my husband was notified, and he got a bondsman to bail me out, and we went to Court the next morning; the child was taken from me and taken to Ashland Place to a home there.

Q. What were you arrested for? A. They claimed I was drunk, but I was not, because I had not had anything to drink.

By the Court:

Q. What did they arrest you for? A. Because I fell on the sidewalk.

Further direct:

Q. Your husband gave two other incidents of the times you were arrested; the next was when you were locked up for ten days; what were you in for then? A. Those three incidents; first, he swore out a warrant and had me put in the

"House of the Good Shepherd" for six months; then he took me out again and then started housekeeping again, and from that time until he locked me up in the Flushing Court again, he accused me every day of being drunk.

Q. Now, when you were arrested that time, when your husband recites it was, at the time you were put in jail for ten days, did he appear against you? A. Yes, sir.

Q. That was the second incident when you were arrested? A. That is the third.

Q. How about the second incident? A. The second incident he took me before Magistrate O'Reilly in Brooklyn.

Q. What happened the second time? A. When I was in jail for ten days I got a lawyer and the Judge asked my husband what he wanted done with me, and he said he wanted me put in a cell for one year. My lawyer had my bank books in his possession.

By the Court:

Q. Your brother said that he visited you at the "House of the Good Shepherd" several times? A. He visited me three times during the time I was there.

Q. He said you promised to abstain from alcoholic liquors; did you promise your brother you would not drink any more? A. Yes, sir.

Further direct:

Q. Do you drink? A. No, sir, I do not.

Q. To what extent did you drink at that time? A. I did drink some.

Q. Just state the effect liquor has on you. A. It goes straight to my head, and I get excited.

Q. Do you drink to excess? A. No, sir, I don't drink to excess.

By the Court:

Q. Well, you did drink to excess at that time, didn't you? A. He wanted to get the house away from me.

Q. What happened to your house? A. He put me in the "House of the Good Shepherd," and took me out again and put me in the Flushing Court; then he went and told the tenants they would have to pay him the rent or get out, and they got out.

Q. Where is your brother? A. He works for Charlie Scribner.

Q. Your brother says you are a danger and a menace to the life of your child; did you ever see that affidavit? A. I never saw it.

The Court: He seems to be sorry to make the affidavit, loath to make it.

Mr. De Yoe: The affidavit is not correct.

The Court: You think the brother has sworn to false statements?

Mr. De Yoe: Yes, sir.

Further direct:

Q. After your husband left you, or rather, at the time of the Flushing Police Court incident that you have referred to, you started a suit for support, I understand. A. Yes, sir.

Q. And where was your husband living then? A. In Brooklyn; from the 12th of June until some time in August when the alimony was granted to me, he went to New Jersey, so that he would not have to give me any.

Q. In the year 1911, your husband testified about an Orangemen's picnic in the city? A. I met my husband at his aunt's in Brooklyn after that—the following March, 1910.

Q. On what occasion did you meet him there? A. Accidentally; the child had the measles, and he came there while I was there.

Q. What transpired between you at that time? A. Nothing.

Q. Did he ask you to come back and live with him? A. No, sir.

Q. Then take up the incident of the picnic. A. I went with my sister and brother-in-law; my sister is in Ireland at the present time.

Q. You went with both of them? A. Yes, sir.

Q. You stayed with him that night? A. Yes, sir, I did.

Q. When was that? A. 1911.

Q. Did you make any arrangement to live with him then? A. No, sir.

Q. Did he ask you to? A. No, sir, he did not.

Q. What was his treatment of you during the time you lived in Brooklyn after the child was born? A. His treatment was not as good as before.

Q. What was it? A. He was always complaining.

Q. Did he whip you with his hands? A. Yes, sir, he did.

Q. With a stick? A. No, sir, with his hands on my face and body.

Q. Did he ever beat you? A. Yes, sir, he left me as black as the shoes on my feet; that was before he put me in the Flushing County Jail, and he sent in a doctor to see me, to see whether I was dead or alive; he beat me about ten o'clock in the morning; he came home from work and said I did not know how to dress my child or take care of her, and that I was drunk, he said. He beat me so that I lay in bed for a whole day.

Q. Did he come home that night? A. No, sir.

Q. The next afternoon around two o'clock the doctor came to see you? A. Yes, sir.

Q. Who was that doctor? A. Dr. McCannon.

By the Court:

Q. Is he here as a witness? A. No, sir.

Further direct:

Q. After the Flushing Police Court incident, what did you do? A. I started back to work.

Q. For whom did you work? A. I worked for Mrs. Strong Seltalkit; I worked for her for eleven months, and I left her and I took a place with a man named Goodyon, an architect.

Q. How long did you work for them? A. Six weeks; they were going to Halifax on a hunting trip, and they did not want me any longer—

Q. Who was your next employer? A. I went to Morristown, New Jersey, to a family named Whitman, and they were going to Thousand Islands for the summer; I did not like to go so far, and I gave that up.

Q. Who next? A. I got another one at 77th Street, a doctor's family; I lived there a year and nine months.

Q. And the next? A. I got another place in Larchmont, New York, a family named Dreyfus, on 85th Street, New York.

Q. Just continue. A. Then I went to the Vale's from there.

Q. And who next after the Vale's? A. That is my last place.

Q. What has been the character of your employment, household service? A. Yes, sir, household service.

Q. Until the suit was started, did your husband in any way contribute to your support? A. Not a cent.

Q. Take the summer of 1915; how was it that you went back to live with your husband? A. My husband found out I was living in the State of New Jersey, and when I had been there two years,

he figured I would have him held up for support for what he owed me in the State of New York; that is what he told me, and that he only brought me back to get a divorce from me; that is what he told me himself.

Q. He states that he wrote to you and invited you to come to meet him in New Jersey?

A. Yes, sir.

Q. Is that true? A. Yes, sir.

Q. Then you met him? A. Yes, sir.

Q. Where did you meet him? A. On the corner of Henderson Street.

Q. How did he approach you when you met him? A. He said was I long waiting, and I said "No, I was not," and I asked him what he wanted; and he said, come on down to a friend of his, and he wanted to ask me something, so I had a postal card from an employment agency in New York to be there at ten o'clock, and he said, "You have plenty of time;" so I went with him, and he asked me in the presence of four witnesses to go back housekeeping with him.

Q. What was your answer; just give the conversation. A. I consented to go back, with the understanding that the child should be brought home.

Q. And he promised that? A. He said he would not bring the child home, and I said I wanted her home and I kept at him until he brought her home, and when he brought her home, which was on a Sunday, it was more like a funeral than anything else.

Q. What happened the next day after you met him there? A. He took the day off, and we went off to look for rooms; I was supposed to be down at 180 Grand Street, to go up with him to look for rooms at ten o'clock.

Q. And you met him? A. Yes, sir.

Q. Where did you meet him? A. Where he was boarding—at Mrs. Clemmens.

Q. How long were you out looking for rooms? A. We went out to look for rooms at 10.30, and we came back to the house for dinner around three o'clock, and then we went out again and were out until six o'clock. We got the rooms between the hours of three and six.

Q. Who furnished the rooms? A. There was practically no furniture to put in—

Q. Where was the furniture stored? A. His aunt had it in her rooms, and my brother had it in his, only with the exception of a bed that he bought, and I bought some bedding for it, and I had a trunk full of things in my hands that I shipped over—

Q. When you came to New Jersey in September, did you use liquor to any excess? A. I did not.

Q. To what extent did you use it? A. Well, I might have one drink or two a day, but that would be a little nip out of a glass; I did not take a whole lot of it.

Q. The day you were looking for rooms, did you have any that day? A. No, sir, but he did; he went into 15 saloons that day, and he had a pint of beer to drink before he went out.

Q. How much did he drink in the saloons? A. I don't know.

Q. Did you go in the saloons with him? A. No, sir.

Q. Was he walking steady? No, sir, he could stagger along pretty well, though.

Q. Did he go to work the next day? A. Yes, sir.

Q. He started housekeeping then at that place? A. Yes, sir.

Q. How did you get along with your husband after you started then; tell the Court the

manner of your life there. A. He started in to figure down everything that I should not spend as much money as I did in Brooklyn; I brought some things, coffee and stuff, from New York, and when I came to his money to spend it, he did not want me to spend so much, and all the money he gave me was $22.75; and he claimed that he gave me $21.00 in one week.

Q. Your husband testified that you were arrested on December 15, 1915, at the Monmouth Street home there? A. I was arrested on the 12th of December and sentenced on the 13th.

Q. How much money did you state that your husband gave you between September and December, while you were housekeeping? A. That is the amount of money he gave me, $22.75.

Q. Your husband states that he gave you anything from six to ten dollars a week? A. No, sir, he did not.

Q. How could you keep the house— A. He went out and did his own shopping.

Q. He bought the goods? A. Yes, sir, such as they were.

By the Court:

Q. Did you cook them? A. Sometimes I did, most times I did not.

Further direct:

Q. During the month of October how did you get along with him? A. All right, until my own money ran out.

Q. How much did you put in the house; how much of that $4,000 did you put in that house? A. I don't remember that.

By the Court:

Q. Did you put in $3,500 of it? A. No, sir.

Q. How much did you put in? A. That I cannot tell you.

Q. Well, he worked all the time you were married to him, every day of his life? A. He did not.

Q. When didn't he work—when he was sick once? A. Yes, sir, and he took days off, too.

Q. He always was employed, except when he was sick? A. Yes, sir, but he took a day off when he felt like it.

Further direct:

Q. It has been stated that you went out to saloons and bought liquor; is that true? A. I did, yes, sir.

Q. How often did you go? A. Maybe a couple of times a week.

Q. You were arrested on the 12th of December; Mrs. Skow states that there was a great deal of smoke in your room. A. Yes, sir.

Q. Just explain to the Court that incident? A. Well, my husband came home in the morning, at 4.30 in the morning, and I said to him, "It is a wonder you would not bring me in a birthday present," and he gave me the greatest laying-out that anyone could give anyone, and so I picked the old oilcloth off the floor and put in in the stove by pieces.

Q. Why did you burn that up? A. I simply burned it up because I would not put it down in the cellar for fear that Mrs. Skow would get it.

By the Court:

Q. Was your husband very attentive to Mrs. Skow? A. Yes, sir, he went in twice a day.

Q. Did you ever see them affectionate towards each other? A. No, sir.

Further direct:

Q. At that time, in December, did you plan to leave? A. I certainly did.

Q. Why? A. Because I saw I could not get along with him when he was not going to give me money to run my house.

Q. Did the attentions of Mrs. Skow to your husband annoy you? A. Yes, sir, that and everything else; my husband put her in my place.

Q. How did your husband treat you; was he affectionate towards you? A. No, sir, every morning he would tell me he would put me where my shoes would get dry before very long, and he had the advice of his counsel to put me there long ago.

Q. What did he mean? A. That was to put me in Snake Hill.

Q. When did your husband bring your child home? A. Around the 17th of October.

Q. How long did the child stay? A. She was home about two weeks and two days; she was all right for the first week and contented as she could be; he wanted to take her back on the following Sunday, which he did.

By the Court:

Q. Is this Mrs. Skow a widow? A. She is a divorced woman.

Q. Is her husband alive? A. I believe he is, I don't know.

Q. How old is this son of hers? A. That I don't know.

Q. What is the son's name who is the co-respondent? A. William Skow; that is a frame-up on me; the whole thing is a frame-up from beginning to end.

Q. How old is this William Skow? A. I don't know anything about it.

Q. From his appearance— A. I don't know him from the other two boys.

Q. You don't know one son from the other? A. I do not.

Further direct:

Q. Did you have trouble with your husband about taking the child away? A. Yes, sir.

Q. Well, why did he take her away, for what reason, did he tell you? A. She was not contented, and she would not go to school for me in the mornings, but I would get her up to get her dressed, and she did not want me to dress her, and she did not want to go school, and I could not make any hand of her after the first week, and he took her back to Mrs. Clemmens, and I followed and brought her back; they have her framed-up not to call me anything but "Cousin Nell;" he told the child not to call me "Mother"—

Q. In your presence? A. Yes, sir, that she should call me "Cousin Nell," what the other children called me.

Q. When was that? A. Right after he brought her home in September; the child would not call me "Mother;" she would say. "You give me this;" and his aunt taught her the very same thing.

Q. Now, while the child was there, was there any other incident that you know of that your husband did to put the child against you; if so, mention it. A. I don't know of anything else, because I never heard him put her up to anything except not to call me "Mother."

Q. Your husband's hours of employment were what? A. My husband left the house at 9.45, and he came back at 2.40.

Q. He came back at three in the afternoon? A. Yes, sir.

Q. Then he went out again? A. Yes, sir, at 3.30, and came back at two o'clock the next morning.

Q. What were his hours? A. He got through at his car at 12.02.

Q. During the evening, what would you do? A. Sometimes I stayed at home, and more times I went away to New York.

Q. What did you do in New York? A. Just went over to see friends over there, to see if I could not find a job for the evenings.

Q. Mrs. Skow mentions an incident when you hammered on her door? A. Yes, sir, I did.

Q. When did that happen? A. That happened somewheres around the first part of December.

Q. What time of day was it? A. It was in the afternoon, about three o'clock.

Q. How did you come to do that? A. Because my husband went in there.

Q. How do you know that? A. Because I saw him go in there, and he was in there about fifteen minutes.

Q. What caused you to knock on the door? A. I heard them talking about me; I heard him telling her that he was going to have me arrested, and he was going to have me put in Snake Hill, and he was going to get a divorce and get rid of me, because, he said, I was an habitual drunkard, and I knocked on the door, and she came out and slapped me in the face and called me a "Son of a bitch," and then my husband choked me.

Q. How severely did he choke you? A. He left the tracks of his fingers on my throat.

Q. Where did he go then? A. I don't know anything about that.

Q. That was in the latter part of November? A. Yes, sir.

Q. What were your relations with Mrs. Skow?

A. My relations with Mrs. Skow were not very much at all.

Q. Were you friendly with her? A. At first off, until she started to call me bad names, but I did not answer her.

The Court: She says that her husband put Mrs. Skow in her place.

Mr. De Yoe: She does not mean that, the witness does not think there was any wrong relations between them, but that Mrs. Skow was prying into their affairs.

The Court: I understand.

The Witness: I had a whole lot to be jealous of; I think when a man goes to a neighbor to converse on his household affairs, I don't think it is right.

By the Court:

Q. You do not think there was anything improper in their relations? A. No, sir.

Further direct:

Q. Mrs. Skow was just prying into your affairs? A. Yes, sir.

Q. And from the time of that incident you and Mrs. Skow were not friendly? A. I never spoke to her.

Q. Did Mrs. Skow do anything to you after that time, or say anything? A. She was putting in wood one morning in the cellar, and my husband was going out, and he went down to her and she said to him something under her breath, and I opened the cellar door and listened, and she said to him, "You keep on, and I will make a bed in the cellar, and you bring in your lawyer, and let him see where she has been with other men;" right down in the cellar at the foot of the stairs that was; and he went straight out the cellarway to the street.

Q. Who was this dark-haired man that she talked about? A. He is an insurance collector that came to collect insurance for him; he did come in and he would not wait for Mr. Ross; and he came there frequently for insurance; he came there about four times and I did not have the money for the insurance, and he sat down there on a chair by the door.

Q. How often did he come there? A. I think he must have been there four times; when he came to us my husband was not out of bed, and I took him in the front room and paid the insurance then; and then when I did not have the insurance, he came back the second time to meet him, he would not leave him the money.

By the Court:

Q. What do you say about these charges of your intimacy with Mr. Skow? A. That is a frame-up too; there is no truth to it.

Further direct:

Q. Has any other man but this insurance agent called at your house unless they came with your husband? A. His brother Henry came in one Sunday afternoon.

Q. It is charged, Mrs. Ross, that you committed adultery while you were living there in Jersey City on the 15th, the 24th, the 25th and 26th days of November, and at other places in the month of November, with a person about six feet in height, weighing 150 pounds, dark hair, smooth face, middle aged, black suit, Oxford ties and Derby hat? A. Nothing of the kind.

Q. Did you commit adultery with any man? A. No, sir.

Q. In Jersey City or any other place? A. No, sir, nowhere; that is what I am fighting for, my character.

Q. This William Skow, who is he? A. He is the son of this woman.

Q. Have you ever been down in the cellar with him? A. Never; I went down the cellar once to break a piece of wood and Mrs. Skow followed me to see what I was going to do.

Q. The incident when you were arrested here in Jersey City, where Mr. Ross and Captain Petersen, this gentleman here, (indicating) do you remember him coming to the jail there? A. Yes, sir, I remember all about it.

Q. Repeat the conversation, every word that you said. A. I wrote to my husband and asked him to send me up a black suit that I had; instead of that he came up with a piece of paper in his hand and handed it to the warden, and the warden came in the kitchen to me and said my husband was there with two other men; and I said to him, "I don't want to see him;" and he said "You had better go to see him;" and Ross came up there to find out the truth, he said—the truth of what—bringing these men with him to ask me if I had anything to do with him.

Q. And you said what? A. I said I did not; and he asked me if I got money from him, and I said, "Yes, I did, and I sent it back."

Q. Who gave you money? A. Skow gave it to me in two fifty cent pieces; I wanted to borrow some from his mother and he was inside and heard what I had to say, and I wanted to go to New York.

By the Court:

Q. Which Skow was that; can you identify him? A. I don't know.

Q. Did you say to your husband on this occasion, "Yes, he got the better of me twice?" A. No, sir, I did not.

Q. Did you say to him—what did you say to your husband when you fell on his shoulder? A. I asked him to take me out, and he said "I will take you out if you will tell the truth." He had as much notion of taking me out as he had of flying.

Q. Did you fall on his shoulder? A. No, sir.

Q. Did you weep? A. No, sir, I would want to weep for something different than that (indicating).

Q. Would you weep about being in jail? A. Yes, sir.

Further direct:

Q. Your child has been living where? A. With his aunt; I have not been giving her as much during the last two years as I did before; I send her a dollar or so once in a while.

The Court: It is not her duty to support the child; that is the father's duty, so you are not to be blamed for not supporting her.

Cross-examination by Mr. Queen:

Q. What day of the week was it when you were arrested here in Jersey City? A. The 12th of December.

Q. What day of the week was it? A. On Sunday.

Q. And what time of the day? A. Seven o'clock in the evening.

Q. Where were you during that day? A. I was in New York on 66th Street.

Q. When did you go there? A. I went there Saturday afternoon.

Q. When was it that your husband, about ten o'clock in the morning of a certain day, beat you so that you had to lie in bed all day? A. He did not beat me so that I lay in bed, not in Jersey City.

Q. When was it that he did beat you? A. It must have been around the 29th of May.

Q. What year? A. In 1909.

Q. Where were you living then? A. On Irving Avenue.

Q. What did he beat you with? A. With his hand and kicked me with his feet; the woman across the hall heard it.

Q. Did you call her in? A. No, sir, I did not.

Q. That is the only time that he ever beat you? A. Oh, yes, he beat me before.

Q. But not since that time? A. No, sir.

Q. How long was it that you were saving your money, which you said was about $4,000? A. 14 years.

Q. Where did you have the money? A. I had it in a savings bank.

Q. What savings bank? A. The Seamans Savings Bank in the Bowery, New York.

Q. Have you drawn it all out? A. Yes, sir.

Q. When did you draw it all out? A. I drew the last of it out in 1912, I think.

Q. And how much of it did you put in the mortgage on the Brooklyn property? A. That I cannot tell you.

Q. Give us the best of your recollection, please, was it $3,000? A. No, sir, I don't think I did.

Q. $2,000? A. Yes, sir, more than $2,000.

Q. What sort of a house was it that you put this money in? A. A two-family house.

Q. At what rate of interest? A. 5 per cent.

Q. And who got the interest on the mortgage? A. Schwartz.

Q. You mean Mr. Schwartz collected it? A. Yes, sir, he was the one we bought the house from, and he collected the money as the mortgage came due.

Q. Let me understand; I first got the impres-

sion that you loaned the money on bond and mortgage. A. No, sir.

Q. And then afterwards you said something about foreclosing it; what did you do, did you buy a house? A. We bought a house, on bond and mortgage, paying a share and expecting to pay the rest.

Q. You bought a house and did not get a deed for it. A. No, sir, we got a deed for it.

Q. You mean that the house was covered by a mortgage upon which you had to pay so much? A. Yes, sir.

Q. How often? A. Every three months.

Q. You did not pay the installments. A. No, sir.

Q. And then the mortgage was foreclosed? A. Yes, sir.

Q. And you lost the house? A. Yes, sir.

Q. What did you do with the rest of the money? A. Spent it fighting at law.

Q. With whom? A. With my husband here.

Q. In this State? A. No, sir.

Q. You did not commence to fight over here until sometime in January, 1916, did you? A. He commenced to fight with me on the 22nd day, he had the papers served on me.

Q. What you spent you spent in New York or Brooklyn? A. Yes, sir, both New York and Brooklyn.

Q. You say the child was with you when you were arrested on the sidewalk, for falling on the sidewalk? A. Yes, sir.

Q. What time of day was it? A. About 7:30 in the evening.

Q. What caused you to fall? A. That I don't know, but I know I did not have any drink in.

Q. What effect did you say taking drink had on you? A. It makes me nervous and goes to my head.

Q. On this occasion had any liquor gone to your head? A. No, sir.

Q. The court has already examined you practically upon this affidavit of your brother; but why did you promise your brother that you would reform if you did not need reformation? A. Well, he was kind of down on me for spending my money as I did spend it; they did not want me to spend the money in that way.

Q. What did he have to do with your money? It wasn't his? A. I know that.

Q. What did he have to do with it? A. Every family have their own say.

Q. Is not the reason, Mrs. Ross, that you think your brother was down on you, that he made this affidavit? A. Yes, sir, he is down on me for spending my money as I did.

Q. And that is the reason he made this affidavit? A. Yes, sir, putting it in that house, it was not worth half the money, let alone the whole of it.

By the Court:

Q. But he would not make an affidavit like that attacking your character? A. It was a frame-up.

Q. Where is your brother? A. I have not seen him for over a year.

Q. You can bring him over. A. (No answer).

Further Cross:

Q. Do you remember when you were in the Irving Street house for about a week? A. I do, I was there two weeks.

Q. Your husband came back and forth, didn't he? A. He came in one night around ten o'clock, and he said, "Oh, you are still living, are you?"—but he did not come in every day.

Q. Your brother came there too, didn't he? A. Yes, sir, and my aunts came too.

Q. They all tried to do something for you, didn't they? A. My face was black; I was not able to be seen on the street.

Q. They came to see you because you were not well, you were in ill health? A. No, sir, I was not in ill health.

Q. What was the matter with you? A. I was ill from the beating he gave me.

Q. That is the time when he beat you? A. Yes, sir, and when I went to go back to housekeeping with him, they wanted to have nothing more to do with me, and I have practically not gone to see them since then.

Q. During the time you were here in New Jersey, the child was with you part of the time? A. Yes, sir, she was.

Q. And on two or three occasions you took the child to New York? A. Yes, sir, I did.

Q. In the afternoon? A. I took her to New York after her father went to work, and we told him we were going.

Q. After he went to work, after three o'clock? A. Yes, sir.

Q. What time did you get back? A. At the time I got out of my house it was five o'clock; by the time I got to 66th Street it was around 6:30; we stayed there for three-quarters of an hour, and then I went to see my aunts, and we did not leave there until after ten o'clock.

Q. Now, on the way home? A. On the way home we went straight down to Courtlandt Street and came down on a Third Avenue train and walked over to Fulton Street.

Q. Did you call at any saloons? A. No, sir.

Q. Did you go in any saloons on the way from the ferry up to Monmouth Street? A. No, sir.

Q. Did you go up in the trolley? A. Yes, sir.

Q. Do you recall sitting by the table with your

head on the table and your hat on the floor when your husband got home on one of those occasions? A. He found me with my head on the table on one occasion only, and I had reasons for that.

Q. What was the reason you had your head on the table? A. My aunt gave me a calling down for going back housekeeping, because she said that Ross was putting this up on me to get a divorce, and I saw then the hole I was in; I had been sick for a whole year before, and I had spent all the money I was earning, in fact, I was not meeting my expenses.

Q. On that occasion what time was it when your husband got in the house? A. We did not get home until one o'clock.

Q. And your husband came in when? A. He came in very soon after.

Q. After you put the child to bed? A. No, sir, she was on my knee; I put her to bed after.

By the Court:

Q. The child is very fond of her father, isn't she? A. She appears to be; she is teached nothing else.

Further Cross:

Q. Now, whom did your husband tell, as you say, that he brought you back so that he could get a divorce from you? A. He told it to my own face.

Q. When was that? A. I don't know just the date.

Q. How long after you had been back home? A. I was not back two weeks.

Q. Was that the exact language he used to you? A. Yes, sir, he said he would see me where my feet would get dry, and then he would get a divorce from me, and he would be free from me forever.

Q. At that time you had commenced to drink, hadn't you? A. That started me to.

Q. You had commenced to drink before that time, hadn't you? A. No, sir, I don't think I had.

Q. Now, who were the four people before whom your husband asked you to go back to housekeeping? A. I have not got their names; I know one of them, that was Tom Clement, and Tom Clement't uncle, and the other two I don't know who they were, they were some relations of the family.

Q. Where were they? A. They were in 239 Henderson Street.

Q. Could they hear what he said? A. Certainly, they were in the one room, sitting like four jurymen; he had them specially there for the purpose.

Q. How do you know that? A. I know it; they would not be there if he had not had it all planned and made up.

Q. How do you know that he had them there for that purpose? A. They were all laughing at the trap set for me.

Q. If you saw that a trap was laid for you, why did you walk into the trap? A. Because I was foolish.

Q. Now, did you actually count the 15 saloons that your husband went into on the occasion that he was hunting for the rooms? A. I certainly did.

Q. You counted them? A. I certainly did.

Q. Where was the first one? A. I could not tell you that; I could pick them all out, though.

Q. Where was the second? A. I don't know, I was not acquainted.

Q. Where was any one of them? A. Some of them were on Montgomery Street.

Q. What part of Montgomery Street? A. I could not tell you.

Q. Did you go in with him? A. No, sir.

Q. Did he invite you to go in with him? A. No, sir.

Q. How do you know what he took to drink when he went inside, or whether he took anything? A. He said he was going in for a drink.

Q. And there were exactly 15? A. Yes, sir.

Q. Not 14? A. No, sir.

Q. Just 15? A. Yes, sir.

Q. No wonder it took so long to find rooms, is that right? A. And then he will stand up and say he does not drink.

By the Court:

Q. He said he took a glass once in a while? A. How is it he came home to me drunk every morning he came home, and he knows it, too, and he cannot deny it; I was not in bed when he came home all the time.

Q. Where were you? A. I was watching him come up the sidewalk out of the window; I never undressed until he came home, neither in Brooklyn nor here.

Q. You only went in saloons and bought liquor twice a week? A. Yes, sir.

Q. How do you recall that it was twice a week and not three or four or five times? A. I know just how much I took.

The Court: Let us get down to the main facts.

Q. Now, Mrs. Ross, do you know the name of this dark haired man who you say was an insurance agent? A. I do not.

By the Court:

Q. What company did he work for? A. I really don't know; I did not take that much interest in it.

By Mr. De Yoe:

Q. All you know of this is, that he was the only

man that has been there? A. That is all.

Q. Was his hair dark? A. Yes, sir.

Further Cross:

Q. How often did he come there? A. Just four times.

Q. Did he come once a week or once a month or how often? A. He came twice in one week to get the money.

Q. Did he ever come when Mr. Ross was at home, except on one occasion when you said he was in bed? A. No, sir, he did not.

Q. And do you recall the occasion just before Thanksgiving when he came there for money? A. I don't know that he was there around Thanksgiving.

Q. But he might have been there before Thanksgiving? A. He might have been.

Q. Do you remember on one occasion when he was in the kitchen? A. Certainly he went into the kitchen.

Q. And as I understand the layout of the rooms, there is a hall that runs from the kitchen into the bedroom? A. No, sir.

Q. And how is that? A. It runs straight to the door, and there is a door shuts off three bedrooms on the front.

Q. How do you go from the kitchen to get into the bedrooms? A. You have to open that door.

Q. Now, was that door opened that day? A. Yes, sir.

Q. You could see from Mrs. Skow's apartment through the glass, after the door was shut, through the glass door? A. Yes, sir, you can.

Q. When anyone went past the glass door to go into the bedroom? A. Yes, sir, and the shade as you go through the kitchen, you can see it.

Q. And you can also hear voices? A. Yes, sir.

Q. Now, on that occasion do you remember saying to this man, whoever he was,—having a conversation about your husband—and his saying that you might make up with your husband and then you would tell him? A. No, sir, I did not.

Q. Was there any conversation of that kind? A. There was no conversation, any more than I said I did not have the money, and I wanted him to wait until my husband came in, and he said "No," he did not have the time; my husband would not leave the money.

Q. Do you remember on that occasion that this person was in the rooms for half an hour, that he went out and came back again? A. No man ever went out to bring me liquor.

Q. And when he came back he had some drink with him? A. The man never was in my house as much as ten minutes.

Q. You think this person referred to as a dark-haired man was an insurance agent? A. That is who he is, that is the man; he is of slight build, dark: he is of medium height.

Q. What kind of clothes did he wear? A. Dark clothes.

Q. What sort of hat did he wear? A. A Derby hat.

Q. Was he smooth faced? A. That I don't know.

Q. You don't know? A. No, sir, I do not; I could not swear whether he had a moustache or had not.

Q. How about the rest of his face, was that smooth, or did he have whiskers? A. No, sir, he had no whiskers. He is a man about 35 years of age.

Q. Was he about six feet tall? A. No, sir, he is not a very tall man.

Q. About how much did he weigh? A. I don't know.

By the Court:

Q. Was there ever a tall man in there? A. No, sir.

Q. No other man but this man? A. No, sir.

Q. Were you present on any occasion when Mrs. Skow told him not to go into the house again? A. No, sir.

Q. Or when she chased him out of the hallway? A. That I did not see.

Q. Did these young men work, the Skow boys? A. The mother told me one day that they did work, but I don't know.

Further Cross:

Q. What occasion did you have to go down the cellar of that house? A. What occasion would any tenant have to go down the cellar? I had to go down and put my garbage in the ash cans, and with my ashes.

Q. Did you ever see Willie Skow down there? A. No, sir, and no other man.

Q. Which one of the apartments in the cellar did you use? A. The first one on the right hand side as you come in from the street, right underneath my own floor, and Mrs. Skow's is on the left; each side of the houses has their own row of coal bins.

Q. What was in the compartment on Mrs. Skow's side? A. That I don't know.

Q. How do you know which one she had? A. Mrs. Skow?

Q. Yes. A. I don't know what Mrs. Skow occupied.

Q. Why did you say that she was the one on the opposite side from yours? A. That is supposed to be hers.

Q. Did you ever see what was in it? A. I never did.

Q. You could hear her from that position in the cellar up into your apartment if anyone was talking out loud down there, could you not? A. Well, I don't know that you could; I suppose you could if you wanted to hear it.

Q. Now, when your husband, Mr. Petersen and Willie Skow came up to the Court House that day, you did tell him that you had gotten money from Willie Skow? A. I certainly admit that to-day.

Q. And didn't your husband ask you what you gave Willie for it? A. He did, yes, sir.

Q. And then you first said you did not give him anything? A. I say to-day I did not give him anything, but I returned the money to him with the first dollar I earned in New York City.

Q. What you borrowed? A. Yes, sir.

Q. Did you borrow money in New York? A. Yes, sir, I had to borrow it to buy things.

Q. It is a fact, isn't it, that Mr. Petersen and your husband were the first persons that you saw on this occasion at the County Jail? A. Yes, sir, they are.

Q. And then they asked Willie Skow to come in? A. Yes, sir.

Q. And then your husband said, "I want to know who is lying, you or my wife; is not that so? A. He said that to Willie Skow, that is so.

Q. And then Willie said, "I am not lying;" is not that so? A. No, sir, he said "Did you give my wife money?" and he said "Yes;" he said to me then, "Did you get that money from Willie Skow?" and I said, "Yes, I did, in two parts."

Q. Then he asked Willie what for? A. Yes, sir.

Q. And he asked him who was lying about it? A. Yes, sir, he did.

Q. And then you turned and said, "Yes, I got money from him twice, and he got the best of me twice?" A. I certainly said nothing of the kind.

Q. What did you say about his getting the best of you? A. I did not say anything about it; Ross raised his voice and the warden ordered him out, and he came back on Tuesday with you.

Q. That was the following Tuesday? A. Yes, sir.

Q. That is because you wanted your husband to get you out of jail? A. He said if I would tell the truth he would get me out of jail, and he had no more intentions of getting me out than he had of flying.

Q. And I came up that Tuesday inquiring whether or not you ought to get out of jail, and I told you so? A. You did not tell me anything of the kind; I asked you if you were going to take me out, and you said you would see about it, didn't you?

Q. Yes. A. I had a letter from Shorthills, New Jersey, from Mr. Vale.

Q. He was a former employer of yours? A. Yes, sir.

Q. You had that letter and you showed it to me? A. Yes, sir, received that morning.

Q. I said I would see about it? A. Yes, sir.

Q. Then subsequently you were let out and put in the hands of the probation officer? A. Yes, sir, I was.

Q. And you were ordered by the probation officer to report to the probation office? A. Yes, sir.

Q. And you did not do it? A. Yes, sir, I did, I wrote to them.

Q. You did not come back there, you reported by letter? A. Yes, sir.

Q. But you did not come back there? A. I went to Jersey to live soon after.

Q. It was after the occasion that I was there that you were put in the hands of the probation officer? A. I was taken out on Wednesday at 11 o'clock.

Q. You say you stayed at home more than you went to New York; that you came over here in September to live; you went to see friends over there? A. I did.

Q. And to try to see if you could find a job for the evenings? A. Yes, sir.

Q. What kind of a job? A. Anything that I could get; taking care of a cloak room or anything that I could get.

Q. Did you get a job? A. No, sir.

Q. Where did you go besides to your aunt's house? A. I went up to 125th Street, to friends of mine up there.

Q. Who were they? A. A party that makes my hats for me.

Q. What is the name? A. Margaret Walsh.

Q. Now, who was present when Mrs. Skow slapped you in the face? A. Mrs. Flood.

Q. And who was present when your husband choked you? A. Mrs. Flood.

Q. Now, where were you when you heard Mrs. Skow say "You keep on, I will make a bed in the cellar, and you bring in a lawyer;" where were you? A. At the head of the cellar stairs; she was putting in wood and my husband was going to work, and I saw where he went and I wanted to find out what they said.

Q. Wasn't that the occasion when she told your husband that she had heard of your being in the cellar with a man? A. I did not hear that.

Q. And that was the occasion, wasn't it, when she spoke, of a bed being made in one of the compartments of the cellar? A. Yes, sir.

Q. You never put any burlap down in the cellar? A. No, sir, I did not; my furnishings in Jersey City were very little.

New Jersey State Library

MRS. MARIA FLOOD, sworn in behalf of the defendant, testified as follows:

Direct Examination by Mr. De Yoe:

Q. Where do you live? A. 357 York Street.

Q. Do you know both the parties to this suit? A. Yes, sir.

Q. How long have you known them? A. I was living at 299 Monmouth Street before they moved in—only a short while when Mrs. Ross moved in—I was living at 299 Monmouth Street, and Mrs. Ross moved there.

Q. Mrs. Ross stated that Mrs. Skow slapped her in the face; did you hear the testimony? A. Yes, sir.

Q. And that her husband choked her? A. Yes, sir.

Q. During the fall of the year 1915? A. Yes, sir.

Q. Did you see that? A. Yes, sir; I lived on one flight of stairs up over Mrs. Skow, on the left hand side of the apartment, and I was going out to that store; I was half-way down the stairs; the stairway goes straight out; you can see out on the street from the front stairs—when Mrs. Ross was standing at Mrs. Skow's parlor door, and she was knocking on the door, and she said, "My husband is in here;" I stood on the stairs where I was, half-way down the stairs; I could see as plain as anything what was going on; Mrs. Ross knocked at Mrs. Skow's parlor door, and she knocked the second time, and then Mrs. Skow slapped her in the face against Mrs. Ross' door; the two parlor doors were opposite each other.

Q. Did you hear any words? A. She called Mrs. Ross a drunken W—— you know what I mean; I don't want to explain that.

Q. A drunken whore, was it? A. Yes, sir.

Q. Did Mrs. Ross call her anything? A. No, sir, Mrs. Ross made no answer, and I said, "Mrs. Skow, that is a false accusation, because that woman is not drunk now, and then this Mr. Ross rushed out of Mrs. Skow's parlor and took his wife by the throat and by the hair, and in my presence he dragged her back to her own kitchen door.

Q. Did you ever see anything else? A. No, sir, that is all I have seen.

Q. Have you ever seen Mrs. Ross intoxicated, drunk? A. No, sir.

Q. State the arrangement of the cellar under that house? A. You come down the front stairs to the hall——

Q. Never mind, I will withdraw that question. Which side of the house did you live on, over Mrs. Skow's or over Mrs. Ross? A. Over Mrs. Skow.

Q. And the coal bins are in the cellar? A. Yes, sir.

Q. And your coal bin would be under you? A. Upon my side of the house——

Q. And the coal bin of Mr. Ross would be where? A. Under Mr. Ross.

Cross Examination by Mr. Queen:

Q. I did not understand whether you said that Mrs. Skow slapped Mrs. Ross or whether she slapped her right back against the door? A. She slapped her with her two hands in the face, this way (indicating), back against the door.

Q. Back against her own door? A. Yes, sir.

Q. At that time where was Mr. Ross? A. In Mrs. Skow's parlor.

Q. Did you rush down and separate them? A. No, sir, I did not leave the stairs.

Q. Why didn't you? A. Because I did not want to interfere with them; it was none of my business I thought.

Q. Did you stand right still? A. Yes, sir.

Q. Didn't you say, "Stop that?" A. Yes, sir, I said to Mrs. Skow that it was a shame to make such an accusation as that, when I did not think the woman was drunk.

Q. How soon was it before Mr. Ross rushed out? A. On the impulse of the woman he was right out and went between Mrs. Skow and Mrs. Ross.

Q. You knew that Mrs. Ross during that time was drinking heavily, didn't you? A. No, sir, I did not.

Q. You remember the day of the fire? A. Yes, sir.

Q. Were you living there at that time? A. Yes, sir.

Q. I think you said that you only lived there a short time, and that was the first part of the time that Mrs. Ross came there? A. No, sir, I said I was living there before Mrs. Ross moved in there, and I lived there until after Mr. Ross moved too.

Q. And at the time of the fire you know that Mrs. Ross was under the influence of liquor, don't you? A. No, sir.

Q. And you heard that in that house, it was a matter of common information that Mrs. Ross was drinking heavily?

Mr. DeYoe: Objected to as immaterial.

The Court: It is not only immaterial, but it is improper.

Mr. DeYoe: That is our case with this exception, that there will be an adjournment for further testimony.

The Court: The only thing before the Court is the confession; there is no positive evidence of adultery except this confession, and that has to be received with the greatest of caution.

Mr. Queen: I intend to offer corroboration,

and the corroboration is by the witness I am going to call, who is under subpoena today.

The Court: Mr. Skow will come here and tell us what he knows, I suppose; otherwise, I don't think there is anything in the case at all. I shall give you another opportunity, certainly; I suppose you would not take more than half an hour.

Mr. Queen: I will offer these papers that have been already offered but have not been marked. "Exhibit P 1" is the case of Elenor J. Ross, Plaintiff, vs. William R. Ross, Defendant, in the New York Supreme Court, Queens County.

Marked "Exhibit P 1." (Affidavits).

Adjourned to March 28, 1917.

Transcript of the stenographic report of the testimony of William Skow, taken at the Chancery Chambers in Jersey City, on Monday, May 28, 1917, at 3:15 in the afternoon, before His Honor VIVIAN M, LEWIS, Vice-Chancellor.

Present:

JOHN W. QUEEN, Esq.
For the Petitioner,

J. EMIL WALSCHEID, Esq.,
For the Defendant.

WILLIAM SKOW, sworn on behalf of the petitioner, testified as follows:

Direct Examination by Mr. Queen:

Q. Mr. Skow, where do you live? A. 129 Bright street.

Q. Where did you live in September, October, November, and December of 1915? A. 299 Monmouth street.

Q. And are you the son of Mrs. Skow you see sitting on the bench back there? A. Yes, sir.

Q. Did you live there during those months with your mother? A. Yes, sir.

Q. Are you married? A. No, sir.

Q. Are you the William Skow who was under subpoena at a former hearing and who did not appear because of illness? A. Yes, sir.

Q. Are you under subpoena here to-day? A. Yes, sir.

Q. Do you know Mr. Ross sitting here at my right? A. Yes, sir.

Q. And do you know Mrs. Ross who sits at the other table? A. Yes, sir.

Q. Mr. Skow, during the early part of December and the latter part of November, 1915, did you or did you not have illicit intercourse with this woman, Mrs. Ross? A. Yes, sir.

Q. Will you describe to the Court just when it was and where it was, and under what circumstances it took place? A. Well, I was down chopping wood one Sunday morning and Mrs. Ross came down while I was chopping wood, and she asked me for 10 cents, and I pushed her away and told her not to bother me; and then I goes up and goes over to the other woodshed and she comes in after me, and she threw her arms around me and she asked me again for the ten cents, and I said "no", and she kept on pleading and wanted me to be sure that I will come down this afternoon, and she lifted up her clothes and I gave her a quarter that afternoon. She came down, and she laid on the burlap in the woodshed, and I had connections with her.

Q. Was there any other occasion when you did

that? A. Then the Sunday following I was down there again chopping wood and she came down and she asked me for money, and I gave her a half dollar, and she came down in the afternoon the same as the first.

Q. Do you know about when it was that this took place? A. Two weeks before she was arrested.

Q. And do you know about when that was? A. Once I think it was the Sunday following Thanksgiving and the Sunday after.

Q. Subsequent to that time did you go to the County Jail with Mr. Ross and with anybody else? A. Yes, sir, Mr. Peterson.

Q. And did you hear a conversation there between Mr. Ross and his wife, as to what had happened between you and Mrs. Ross? A. Yes, sir, he went to the Warden and got the Warden's permission to see his wife, and the Warden asked him who he was, and he told him he was Mr. Ross, and the Warden went out and got Mrs. Ross down from the kitchen and Mrs. Ross came down, and he asked her who was lying, and she denied it at first, and then I came from the bench and she said she got money off of me twice.

Q. Did she say what she got the money off of you for? A. She said I had the best of her twice.

Q. When did you first communicate that fact to Mr. Ross? A. Well, I believe my mother had suspicion and told Mr. Ross to call and see me, and that Sunday that she was locked up he came to me on Sunday morning and asked me if I knew anything, and I saw the woman carrying on putting the house on fire, and I thought it was no more than my duty to see the man right.

Q. Did you tell him at that time? A. I told him that day, and he asked me to come up to the County Jail with Mr. Peterson.

Q. And that was the very day you went with Mr. Ross and Mr. Peterson up to the County Jail? A. Yes, sir.

Cross Examination by Mr. Walscheid:

Q. How old are you? A. Twenty-nine.

Q. What do you do? A. Teamster.

Q. Whom do you work for? A. Burns Brothers.

Q. And are you working now? A. No, sir.

Q. When did you work last? A. When did I work last? I broke my knee in November and I haven't worked a day since.

Q. Have you worked since that time? A. No, sir.

Q. Prior to that time where did you work? A. Burns Brothers every day.

Q. How long have you been working for Burns Bros.? A. Close onto three years; I wouldn't say exactly.

Q. Don't you know? A. I don't know just the exact time I was working there, but I was working for Burns when Mrs. Ross was living in the house.

Q. Where did you work for Burns Bros.? A. In the Jersey City yard, Jersey avenue.

Q. You are not married? A. No, sir.

Q. How long have you known Mr. Ross? A. I have never known him to speak to him until the day he came to me.

Q. And when was that? A. That Sunday when Mr. Ross asked me to go up with him.

Q. That is the first time? A. I saw him, but never knew him.

Q. You lived in the house with him? A. Yes, sir.

Q. And had never talked to him? A. Just bid him the time of day.

Q. And never had been out with him? A. No, sir.

Q. Never have gone out to take a drink with him? A. No, sir.

Q. Do you drink? A. No, sir, very seldom that I do drink.

Q. Then you do drink? A. No, sir, I do very seldom.

Q. What do you call drinking? A. What I call drinking is to go out and get paralyzed.

Q. You don't get paralyzed? A. No, sir.

Q. Why not? A. I am not built that way.

Q. What's the matter with your build, haven't you got the capacity? A. I am not fitted for that kind; I am too weak a fellow.

Q. You have drunk it? A. Yes, sir.

Q. And you have discovered that you can't drink as much as others? A. And I don't try it any more.

Q. How much did you earn at Burns Bros.? A. $16 a week.

Q. And you are not making any money now? A. No, sir, just getting half pay off the insurance company for breaking my knee last November first.

Q. When did you get your last pay? A. That is when they stopped me, when I broke it.

Q. When did you get your last pay? A. I believe January 21st was the last.

Q. From January 21st on you have done nothing for a living? A. No, sir.

Q. Do you live with your mother? A. Yes, sir.

Q. And your father? A. No, sir.

Q. Is your father dead? A. No, isr.

Q. Where is your father? A. He is living, but they are not living together.

Q. You and your mother are living together? A. Yes, sir, and two brothers.

Q. Who is supporting you now? A. Myself.

Q. How are you doing it? A. On my money that I have saved.

Q. Have you a bank account? A. No, sir, no bank account. I took it out of the bank and I have it home in the house.

Q. How much did you have in the bank? A. $700.

Q. What bank did you have $700 in? A. Beehive.

Q. In your own name? A. Yes, sir.

Q. Where is that? A. Down Washington street next to the Park.

Q. And that was there in your own name? A. Yes, sir.

Q. Now, you knew Mrs. Ross, did you? A. Only by getting acquainted down in the cellar.

Q. And this particular Sunday was the first day that you got acquainted with her? A. Yes, sir.

Q. Never talked to her before? A. No, sir.

Q. And you never talked to her again after this second occurrence? A. Because she was locked up.

Q. I didn't ask you the reason why, but you didn't do it? A. No, sir.

Q. What you want us to understand is, that on two successive Sundays you had sexual intercourse with this woman? A. Yes, sir.

Q. And what time of the day was it? A. In the afternoon.

Q. On a Sunday? A. Yes, sir.

Q. And where? In the woodshed.

Q. In the same place on each occasion? A. Yes, sir.

Q. Whose woodshed? A. Vacant woodshed, I believe. There was only three families living in the house.

Q. Whose woodshed was it? A. Next to ours, empty.

Q. Whose woodshed was that? A. Lembeck & Betz.

Q. You mean they own the building? A. Yes.

Q. On this first occasion you were down there chopping wood on Sunday morning? A. Yes, sir.

Q. And this woman, with whom you had never talked before, came down and talked to you? A. Yes, sir.

Q. What did she say to you? A. She asked me for 10 cents.

Q. Just tell me the words she said. A. That is all; she just asked me for 10 cents.

Q. She said "Give me 10 cents"? A. Yes, sir.

Q. And you were chopping wood? A. Yes, sir.

Q. What did you say? A. I told her no, to go away.

Q. What did she then say? A. She didn't answer anything at the present time.

Q. She asked you for 10 cents?—don't look at that man—and you refused it and she walked away? A. No, she didn't walk away, she stayed there.

Q. Did you go away? A. No, sir.

Q. Did she remain silent? A. Until I got up to go in the other woodshed.

Q. What were you going in the other woodshed for? A. To get rid of her.

Q. Did she follow you? A. She was blocking me off.

Q. How was she blocking you off? A. I was standing there chopping wood on the threshold of the door.

Q. And where was she standing? A. Right up close to me.

Q. In the hall or in the woodshed? A. In the doorway.

Q. And you had been chopping wood in that doorway when she arrived there? A. Yes, sir.

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

Q. How wide is that doorway? A. About as wide as from there here (indicating).

Q. About two feet or three feet wide? A. As wide as this place here.

Q. And you were standing in that doorway chopping wood? A. Yes.

Q. And she came down behind you? A. Yes.

Q. Into the general part of the cellar? A. Yes, sir.

Q. And you hadn't left your position, had you? A. No, sir, I was standing there.

Q. You were standing there chopping wood? A. Yes, sir.

Q. And she asked you for 10 cents? A. Yes.

Q. And you said "no"? A. I said "no".

Q. And during all that time you were chopping wood in the doorway? A. Yes.

Q. How, then, did this woman come into the woodshed as you say she did? A. She was standing.

Q. Was there another door to the woodshed? A. No, only one door.

Q. A moment ago you said that this woman was in the woodshed. A. In the woodshed, across the way.

Q. Now let's keep her there for a minute. How far is that woodshed across the way from the woodshed in which you were chopping wood? A. About four foot.

Q. Then she wasn't crowding or interfering with you? A. She was.

Q. How? A. She was standing there.

Q. You said she was standing in the woodshed across the way. A. No, this is the first woodshed; she was standing close to me.

Q. How many woodsheds are there? A. I believe it is a six tenant flat.

Q. How many woodsheds are there down there? A. Eight woodsheds, four on each side.

Q. And is there a cellar door leading out into the yard? A. Yes.

Q. That was open, wasn't it? A. I don't remember.

Q. On what street is this? A. Lorrimer street.

Q. How does that run, north and south or east and west? A. North and south.

Q. On which side is this building? A. On the west side.

Q. In which of the woodsheds were you? A. I was on the north side, in this north woodshed.

Q. On the north side of the building? A. Yes, sir.

Q. The one farthest or nearest the rear of the building? A. No, sir, right across the way. The woodsheds run this way, east and west.

Q. They run across the building? A. Yes, sir.

Q. And how big is the outer way between the two woodsheds? A. About four feet wide. (Witness indicating distance.)

Q. You testified before that when this woman came down and after she was talking to you she was on the inside of the woodshed, in the door of which you were cutting wood; is that right? A. She was standing there.

Q. Is that right? A. Yes, sir.

Q. Was she on the inside? A. She was standing right in the doorway.

Q. Of the door of the woodshed in which you were cutting? A. Yes, sir.

Q. Sure of that? A. Yes.

Q. How did she get in there? A. Well, she walked in.

Q. But she hadn't passed you? A. Yes—she couldn't pass me because it was stacked full of wood there.

Q. And that woodshed was full of wood? A. Yes, sir.

Q. Then you say you did what? A. I told her to go away, and I shoved her away, and she went over to the other woodshed.

Q. Before, you said she came down and asked you for 10 cents, and that you passed her 10 cents —this strange woman—and then she stood still and didn't say any more. A. She didn't say any more for a second. She said, "please give me 10 cents", and then I told her to go way, and she wouldn't go away, and I politely shoved her and she went over in the other woodshed.

Q. What was there in the other woodshed? A. That was coal.

Q. How large is that other woodshed? A. I guess it is about eight foot in diameter.

Q. Eight feet each way? A. Yes.

Q. And that coal was on the floor of that shed? A. In a little bin built for that.

Q. And the bin was within the shed? A. Yes, sir.

Q. Was there any wood in there? A. Yes.

Q. What happened in there? A. Well, then she asked me again, and I told her no, and she then put her arms around my neck and she says, "now please give it to me". I didn't have the ten cents, I had a quarter, and she threw her arms around me.

Q. That is just the way it happened? A. That is how it happened.

Q. You are giving us the conversation and everything just the way it occurred? A. Just the way it occurred, yes.

Q. So that she asked you for 10 cents? A. Yes, sir.

Q. And you gave her a quarter? A. Yes, sir, and then to make it good she threw her arms around my neck and lifted up her clothes.

Q. You didn't ask her to do that? A. No, sir.

Q. And up to that time she hadn't asked you anything about sexual intercourse, had she? A. No, sir.

Q. Without any knowledge on your part as to what was going to happen, she suddenly lifts up her clothes? A. Yes.

Q. After she had the quarter? A. Yes.

Q. After that she lifted up her clothes? A. Yes.

Q. What did she mean by lifting up her clothes? A. She says "Here, put your hand on it, to prove

Q. What did you do? A. I done it.

Q. You haven't told that before, have you? A. No, you didn't ask me that.

Q. Weren't you asked to tell exactly what she did and what you did? A. Yes, I done it.

Q. And you and she were in the woodshed alone at that time? A. Yes.

Q. What time of the day was this? A. In the morning.

Q. What time in the morning? A. I believe around 11 o'clock.

Q. And having put your hand upon it, and having paid her a quarter, what next did she do? A. Went out and got whatever she wanted, her liquor.

Q. Why didn't you have sexual intercourse with her then and there? A. She said her husband was home.

Q. She was full of liquor? A. She was partly intoxicated.

Q. She showed you her private parts and let you put your hands on it? A. Yes, sir.

Q. And you were in the woodshed? A. Yes, sir.

Q. And you were all alone? A. Yes, sir.

Q. Did you want to have sexual intercourse with her? A. Not first off.

Q. When you put your hands on her private parts you did? A. Yes, sir.

Q. And then you mean to say, that having this intoxicated woman in the woodshed all alone, with your hands on her private parts, with the opportunity to have sexual intercourse with her, you didn't do it? A. No, sir.

Q. That is so? A. No, sir, only in the afternoon.

Q. And then you waited? A. Yes, sir.

Q. Was she staggering when she spoke to you in the morning? A. No, sir.

Q. How do you know she was intoxicated? A. Because I could smell it on her.

Q. You could smell that she was rummed up? A. Not completely rummed up, no, but she had quite considerable liquor into her.

Q. And then did you make an appointment with her? A. She told me she would come down that afternoon.

Q. And did you go down? A. Yes.

Q. And she was there? A. Yes.

Q. This woman who was intoxicated in the morning? A. She was partly so.

Q. She was partly intoxicated in the morning? A. She was more then.

Q. So that she was drunk in the morning and more drunk in the afternoon when she came down in that woodshed to meet you? A. Yes, sir.

Q. She came down to keep her promise, even though she had more liquor? A. Yes, sir.

Q. Now you are sure this was the first day you had seen this woman? A. I had seen her going in and out of the halls, but had never spoken to her.

Q. And then she came down where you were waiting for her? A. I was down in the woodshed, yes.

Q. Which woodshed? A. One of our own woodsheds.

Q. The woodshed that belonged to your particular apartment? A. Yes, sir.

Q. And did you have a bed in there? A. No, sir.

Q. Nothing at all? A. No, sir.

Q. Was the door of the woodshed closed? A. No, sir.

Q. Did you call her as she came in? A. No, sir.

Q. Did she call you? A. No, went right into the woodshed.

Q. In your woodshed? A. No, sir, next to it.

Q. Whose was that? A. Belonging to one of the vacant apartments.

Q. What did you do? A. There was burlap there.

Q. What did she do? A. Laid down on the burlap.

Q. Immediately? A. Not right away; a couple of seconds afterwards.

Q. Were you in this room when she lay down on the burlap or was she lying there when you came in? A. No, sir, not when I came in.

Q. What did you say to her when you came in, anything?.

Q. What did she say to you when you came in? A. She says, "Come on".

Q. Is that all? A. Yes, sir.

Q. She just said "Come on"? A. Yes, sir.

Q. And then she lay down? A. Yes.

Q. And then you had sexual intercourse with her? A. Yes, sir.

Q. Nobody saw you? A. No, sir.

Q. Otherwise you wouldn't have done it? A. (The witness does not anwser.)

Q. You wouldn't have done it before anybody? A. No, sir.

Q. The cellar door was open then? A. Yes.

Q. Anybody could walk in? A. No fear, because the street door was bolted.

Q. The cellar door was open, then? A. No, sir, it was always bolted. We kept it bolted from the inside.

Q. But the door was open from upstairs where she came down? A. Yes, sir.

Q. How long after your noon-day meal was it

that you did this? A. Late in the afternoon I believe it was, around three or four o'clock.

Q. When did you eat your meals? A. Around 12 o'clock.

Q. How long did you remain in this woodshed with her? A. About five minutes.

Q. Just long enough to have sexual intercourse with her? A. Yes, sir.

Q. And you then got up, and she got up, and you separated? A. Yes.

Q. And didn't say a thing? A. No, sir.

Q. Who went up first? A. I did.

Q. And you went into your house, as you call it? A. Yes.

Q. What floor did you live on? A. First floor.

Q. Is that the floor on the street level? A. Yes, sir.

Q. Where did the Rosses live? A. They lived on the right side going in.

Q. On the same floor? A. Yes, sir.

Q. Immediately opposite you? A. Yes, sir.

Q. And you made no date with her? A. No, sir.

Q. And then that happened once more? A. Yes, sir.

Q. On the next Sunday? A. Yes.

Q. Well, when you went down to chop wood the next Sunday did you go down expecting to have company? A. Well, I expected her to come down, and she came down and asked me for a dime again, and I told her I didn't have a dime, but I gave her a half dollar, and she says to me "it will be all right" and she would be down in the afternoon; she kept her word before and she would keep it again.

Q. And that is all that happened? A. Yes, sir.

Q. Did she pull up her clothes? A. No, sir, not the second time.

Q. Nothing was said to you of an endearing nature? A. No, sir.

Q. Did she call you sweetheart, or anything of that kind? A. No, sir.

Q. Use any love terms? A. No, sir.

Q. And you gave her the 50 cents? A. Yes, sir.

Q. And she gave you that fifty cents back? A. No, sir, she did not.

Q. Haven't you said that she gave you the 50 cents back? A. No, sir.

Q. Sure? A. I am as sure as I am sitting here.

Q. Were you visited on March 13, 1917, at 11 o'clock in the morning by anybody? A. I wouldn't say for the date; I know Mr. Spitz was up there.

Q. And you gave him a statement of what occurred? A. I told him just what happened.

Q. And he wrote it down while you were at the table? A. I wasn't at the table; I was sitting on the couch.

Q. But he was sitting at the table writing? A. Yes, sir.

Q. And he wrote what you said? A. Yes, sir.

Q. And didn't you say that you gave her 10 cents? A. I told him she wanted 10 cents.

Q. Didn't you say to Mr. Spitz that you gave her 10 cents and not a quarter? A. No, sir.

Q. And didn't you say on the second occasion you gave her 50 cents, but that she paid it back to you? A. No, sir.

Q. There was just one week in between these two occurrences? A. Sunday following.

Q. One Sunday, and then the Sunday immediately next following? A. Yes, sir.

Q. And do you remember what Sunday that was in relation to Thanksgiving day of 1915? A. Well, I just really couldn't remember the date. I believe it was on Sunday following Thanksgiving.

Q. Was that the first or second time? A. That was the first time.

Q. The Sunday after Thanksgiving was the first time? A. Yes.

Q. So that the first time you had intercourse with this woman was in the month of December, 1915? A. Yes, sir.

Q. Sure of that? A. I am positive.

Q. The last Thursday in November is always Thanksgiving day, and in 1915 the last Thursday in November fell upon November 25th; now, what you want us to understand is, that on the Sunday subsequent to that you had intercourse with her for the first time? A. After Thanksgiving.

Q. That would make it Sunday, November 28? A. Probably around that date.

Q. And then you say you had intercourse with her again on December 5th, the Sunday following; is that right? A. Yes, sir.

Q. Now, when was she arrested? A. I couldn't tell you when she was arrested.

Q. You said something about her being arrested. A. Yes, that was that Sunday, I believe, when Mr. Ross came to me.

Q. How long after the second time was it that Mr. Ross came to you? Was it that same Sunday that you had the intercourse? A. When she was arrested.

Q. That must have been the next following Sunday; was it the next following Sunday? A. That she was arrested?

Q. That he came to you? A. I couldn't tell you what Sunday it was.

Q. You were looking for her the next Sunday, weren't you? You thought you would get some more? A. No, sir.

Q. Why didn't you expect any more? A. Because I didn't want anything more to do with her.

Q. Why? A. Because I didn't like the woman.

Q. You had had intercourse with her on two succeeding Sundays? A. I know I did, but I couldn't see my way clear to giving her money all the time.

Q. You had given her a lot of money. Now, she was arrested on the 12th day of December, 1915, wasn't she? A. I couldn't tell you what day she was arrested on.

Q. You had intercourse with her on the 5th of December? A. I believe it was on the 5th.

Q. Sunday after Thanksgiving day and the Sunday after that; that is the 5th of December? A. Yes.

Q. And on the day on which she was arrested you had a talk with Mr. Ross? A. I was talking with Ross the day she was arrested. It was the following Sunday, I believe it was, when he came to see me.

Q. Well, she was arrested on a Sunday? A. She was up in the jail.

Q. She was arrested on a Sunday morning, wasn't she? A. I think she was arrested on a Saturday night.

Q. And the next day Ross came to see you, didn't he? A. On a Sunday morning.

Q. Immediately after her arrest he came to see you, didn't he? A. I wouldn't swear to that.

Q. Why not? A. Because I'm not sure it was the following day; I am sure she was in jail a couple of days.

Q. What was the first thing he said to you? A. I think my mother had spoken to him of what was going on downstairs.

Q. Nobody had been downstairs on this second occasion? A. Well, she could hear us talking.

Q. Nobody had been down there? A. No, sir.

Q. And you weren't talking loud down there? A. Talking loud enough so that anybody could hear us.

Q. Did you talk as we are talking? A. Yes.

Q. No louder? A. No, sir.

Q. That house is built like any other house? A. Thin flooring.

Q. And had you said anything to your mother? A. No, sir.

Q. You hadn't told your mother that you had had intercourse with this woman? A. No, sir.

Q. Sure of that? A. Yes.

Q. And you hadn't told anybody else? A. I told my brother about it, yes.

Q. And when did you tell your brother about it? A. I told him afterwards, after I was down there with her.

Q. After you were down there with your brother? A. No, with Mrs. Ross.

Q. How old is your brother? A. 26 years old.

Q. And you are how old? A. 29.

Q. Is he married? A. No, sir.

Q. He isn't married either? A. No, sir.

Q. And then on this Sunday, on this day, Ross comes into you, does he? A. He didn't come in to me; he met me.

Q. Where did he meet you? A. On the step.

Q. By appointment? A. No, sir, coming along to come in.

Q. What did he say to you? A. He came to me and told me his trouble.

Q. What did he say to you? A. He asked me what did I know about it.

Q. Is that all? A. Yes.

Q. He didn't say "What do you know about it," because that wouldn't give you any information. A. He was in talking with mother.

Q. Were you in there, too? A. No, I was just coming in as he was coming out.

Q. And he met you on the steps? A. Yes.

Q. And he asked you what you knew about it? A. He told me his trouble, and I told him.

Q. Did you tell him right then and there? A. He asked me what I knew about it.

Q. He asked you whether you had intercourse with her? A. Yes, sir.

Q. He said, "You have had intercourse with my wife?" A. Yes.

Q. He didn't ask you whether you had had intercourse with her? A. No, sir.

Q. He asked you whether you were down in the cellar with her? A. Yes.

Q. What did you say to that? A. I told him yes.

Q. Did he ask you anything more? A. Then I told him he didn't need to ask any more.

Q. You up and told him that you had had intercourse with his wife twice? A. Yes.

Q. Weren't you afraid he was going to knock you down? A. No, I wasn't afraid, because I knew what kind of life she was living, and I found out her history in the jail.

Q. When did you discover that? A. He told me out on the stoop.

Q. Do you recollect ever talking with that man before? A. No, sir.

Q. Hadn't discovered his wife's history before that? A. No, sir.

Q. And then you immediately told him, "Yes, I am the man who has been having intercourse with your wife"? A. Yes, sir.

Q. Do you understand that you have committed a crime against the laws of the State of New Jersey? A. No, sir, I don't.

Q. Do you know that you are liable to criminal punishment for what you have testified here? A. No, sir, I don't see where, because I gave her money.

Q. Because you gave her money; so that you think because you gave her 10 cents or a quarter— A. Seventy-five cents all told.

Q. —that that makes you immune from punishment? A. Yes, sir.

Q. You don't know that you can be sent to

jail for having had intercourse with a married woman? A. Not that I know of.

Q. Would that make any difference in your story if you did know it? A. Well, if I knew it I wouldn't have said anything.

Q. And you wouldn't have told this story if you knew that, would you? A. No, sir.

Q. Whether it was true or false, you wouldn't have told it? A. No, if that was the case I wouldn't have told anything.

Q. Under those circumctances you would have gone on the stand and said "I didn't have intercourse with her"? A. I wouldn't have gone on the stand at all.

Q. Oh, yes, you would, if you had been called. A. For they would not have known anything about it.

Q. Under those circumstances they wouldn't have known it, no matter whether you slept with a woman every night in the week; isn't that so? A. Yes, sir.

Continuation of the taking of testimony in the above-entitled cause, at the Chancery Chambers, Jersey City, New Jersey, on the thirty-first day of May, 1917, before Hon. Vivian M. Lewis, Vice-Chancellor.

Appearances as before noted, and in addition, Mr. Emil Walscheid appeared for the defendant.

Mrs. Christina Skow, being recalled, testified as follows:

Direct Examination by Mr. Queen:

Q. Do you remember calling the attention of Mr. Ross to the fact that—suggesting that he should inquire from your son, who testified here,

in regard to what went on in the basement of the house where you lived, in the fall of 1915? A. Yes, sir.

Q. And why did you do that? A. Because I had suspicions of her.

Q. What caused your suspicions? A. Because I had heard her down there many, many times; I have heard men talking to her down there in the cellar.

Q. Did you know the men? A. No, sir.

Q. Did you see her go in there with the men? A. No, sir, but I heard her go down there.

Q. Do you know whether or not one of the men who was down there was your son William? A. I knew he was down there at that time.

Q. With her? A. I heard their voices, and then I kind of surmised.

Q. Do you know when it was that you called Mr. Ross's attention to that? A. I cannot remember the date.

Cross Examination by Mr. Walscheid:

Q. How old are you? A. Going on 61.

Q. Are you a widow? A. Yes, sir.

Q. You have been divorced? A. Yes, sir.

Q. And your husband divorced you? Yes, sir.

Q. Where did he divorce you? A. In this State.

Q. In the State of New Jersey? A. Yes, sir.

Q. How long since he divorced you? A. Ten or eleven years ago.

Q. For what did he divorce you? A. I could not stand his abuse any more, and I left him.

Q. He did not sue you because you left him? A. Yes, sir, he got a divorce against me for desertion.

Q. Isn't it a fact that he got a divorce against you because of your familiarity with other men? A. He did not.

Q. Are you sure that it was on the ground of desertion? A. Yes, sir, I am sure.

Q. And your son lives with you, doesn't he? A. Yes, sir.

Q. He did not tell you that he had any intercourse with Mrs. Ross, did he? A. No, sir, not at that time.

Q. And nobody else had told you, had they; you just had your suspicions? A. I did not tell Mr. Ross that he had intercourse with her.

Q. Nobody had come to you and had said to you that William had had sexual intercourse with Mrs. Ross in that cellar, had they? A. I decline to answer that question.

The Court: Answer the question.

A. Yes, sir, they did.

Q. And who was it; was it William? A. No, sir.

Q. Was it Mrs. Ross? A. No, sir, it was my other boy.

Q. And he had told you? A. Yes, sir.

Q. Then it was not because of what you had heard in the cellar; it was because of what your son had told you? A. It was because of what I had heard in the cellar.

Q. You and Mrs. Ross had been living on opposite sides of this cellar for two months? A. Yes, sir.

Q. And in the beginning, Mrs. Ross used to come in and visit you? A. Yes, sir.

Q. And sometimes you would lend her money in the beginning? A. Yes, sir, but she did not pay me back the money.

Q. How much does she owe you now? A. She owes me an average of 10 cents.

Q. For how long a period of time? A. A long time.

Q. How many of these 10 cents does she owe you? A. She only owes me 10 cents.

Q. And she did not pay that back? A. No, sir.

Q. And Mr. Ross would come in frequently? A. No, sir.

Q. On these visits by Mr. Ross to your apartment, your family was there? A. Yes, sir.

Q. And your son William was there? A. Sometimes.

Q. And your son William would talk to Mr. Ross, wouldn't he? A. No, sir.

Q. He would sit there and see him there? A. He was seldom in my room.

Q. Who? A. Mr. Ross.

Q. And once in a while your whole family would be there, wouldn't they? A. Yes, sir.

Q. And William would be there? A. Well, he was not there.

Q. Your son William knew Mr. Ross, didn't he? A. No, sir.

Q. Didn't he, William, see him in your apartments? A. No, sir.

Q. How do you know he did not? A. Because he was not home.

Q. Did you tell him about Mr. Ross' family troubles? A. I did not know it then.

Q. When did you first discover the family troubles? A. I did not know it then.

Q. When did you first discover the family troubles? A. I knew that long before Mr. Ross ever spoke to me about it.

Q. When did he first speak to you about it? A. I don't remember the date.

Q. How did you happen to talk to him on that day about that subject? A. He asked me if I could give him any information about his wife.

Q. What did he say? A. He came home from work, and I was sweeping the sidewalk, and I said, "Mr. Ross, I wish you would go down the cellar and look in that cellar next to mine;" and I said,

"Go down and see;" and he went down, and he came up, and I said, "What did you see?" and he said, "There is a lot of burlap on the floor, and there was something in the shape of a pillow."

Q. So that on the day on which you spoke to him about this subject, you were the person that opened up the subject of conversation; is that right? A. He had suspicions before that.

Q. Answer my question; did he start to talk, or did you? A. I told him to go down and look at the cellar.

Q. Was that the first that was said between you? A. I don't remember; I think he asked me the day before.

Q. And what had he asked you? A. He asked me did I know anything about his wife, and I said, "Yes, she is continually in the cellar."

Q. And he asked you whether you knew anything about his wife? A. Yes, sir.

Q. All you told him then was, that she was continually in the cellar? A. Yes, sir.

Q. And that is all? A. And I told him that she was with men.

Q. On the day before you did not tell him anything about your son, did you? A. No, sir.

Q. Then the day following you did tell him about your son? A. Well, I told him to go and ask Willy.

Q. Well, you knew on the day before, as you put it, all that you knew at the time when you told him to go and ask Billy, didn't you? A. I don't think I did.

Q. Nothing that had happened in the interval of that one day? A. I did not keep tab of the dates.

Q. You heard your son testify? A. Yes, sir.

Q. And you heard him say that he went there for the first time on the Sunday following Thanksgiving Day? A. Yes, sir.

Q. And you know that, too? A. Yes, sir.

Q. And that he then went there a second time on the Sunday following, which was December 5, 1915? A. Yes, sir.

Q. And you know that he said that he told Mr. Ross this on the Sunday following after that? A. Yes, sir.

Q. Now, that is the day, on that same Sunday, that is the day on which you told Mr. Ross? A. I don't know; I don't remember.

Q. Did you tell it to him on the same day that he spoke to your son? A. No, sir, I don't remember it at all; I guess it was two days before. My son was by no means the only man that was in the cellar with her.

Q. I did not ask you to tell about that; I am just asking you to try and fix the time when you told Mr. Ross in relation to the Sunday that they went up to the jail; you know the day they went to the jail? A. Yes, sir, but I don't remember the date.

Q. On the day that they went up to the jail, is that the day that you told Mr. Ross? A. No, sir.

Q. How long before did you tell Mr. Ross? A. I could not say.

Q. Was it a day? A. I don't remember.

Q. Was it a week? A. I could not tell you.

Q. You have had lots of quarrels with Mrs. Ross, haven't you? A. No, sir, indeed, I have not.

Q. She has had quarrels with you? A. No, sir, very few.

Q. You had a quarrel with her a few days before she moved? A. No, sir.

Q. When did you have the quarrels with her? A. I had no quarrels with her.

Q. What did you mean by saying you had several quarrels with her? A. We had a few words, that was all.

Q. Now, you met Mr. Spitz subsequent to the beginning of this case? A. Yes, sir.

Q. And you made a statement to him? A. No, sir.

Q. Didn't he sit at your table and take down what you said? A. No, sir, I did not say anything; he said she must be a terrible woman, and I said "Yes;" and he said "Yes, but I have had worse than her."

Q. You did not tell him that you did not know anything about the affair between your son and Mrs. Ross? A. No, sir.

Q. Or anything about that at all? A. No, sir.

Q. Nothing at all? A. No, sir.

WILLIAM R. ROSS, the petitioner, being recalled, testified as follows:

Direct Examination by Mr. Queen:

Q. Do you recall when it was that Mrs. Skow first brought to your attention the conduct of her son, William Skow, in connection with your wife, which he has testified to here? A. Sometime during the week after she was locked up; I don't know exactly the day.

Q. Then when did you see him and talk to him about it? A. Well, I asked Mrs. Skow when I could see him, and she said that I could see him between one and two o'clock when he came in for dinner; I said I was working and could not see him at that time; she said I could see him on Sunday morning, and so I saw him on the Sunday morning that I went to the County Jail—that was December 19th.

Q. Did you go down the cellar to examine the condition of one of the coal sheds? A. Yes, sir,

and I saw the burlap there, and an old coat rolled up in the shape of a pillow.

Cross Examination by Mr. Walscheid:

Q. It was on December 19th that you first spoke to young Skow about this? A. Yes, sir.

Q. Where was it? A. Out on the stoop.

Q. That was the day that you went up to the jail?

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

Q. That was the 19th? A. Yes, sir.

Q. That was the day that you claim your wife confessed? A. Yes, sir.

Q. Do you remember who let you in to see her in the jail? A. No, sir, I did not know the gentleman's name.

Q. Do you remember the warden in charge? A. Yes, sir; I did not ask his name.

Q. You and Skow and Peterson went up to see Mrs. Ross then? A. Yes, sir.

Q. And did you say you had a conversation in which she confessed? A. I went in and asked the keeper if I could see her.

Q. Then you had a conversation with your wife in which you say that she told you that she had been guilty with Skow? A. That is what she confessed.

Q. Now, isn't it a fact that that particular conversation wound up in a quarrel between you and your wife? A. No, sir, she wanted to kiss me and I refused to let her.

Q. Isn't it a fact that you were talking loud and she was talking loud? A. Not so very loud.

Q. In quarrelsome tones? A. Loud enough to be heard in the next room.

Q. Isn't it a fact that the warden came out of the room next door to you and told you to stop talking? A. No, sir, he pushed her into the kitchen.

Q. Isn't it a fact, that as a result of that conversation, or rather, as a result of what there took place between you and your wife, that the warden came in and told you to get out? A. No, sir, he did not.

Q. And that he put you out? A. No, sir.

Q. All three of you? A. No, sir, he put her in the kitchen.

Q. And he put you out? A. No, sir.

Q. He took her away from you? A. He put her in the kitchen.

Q. Why was that? A. That I don't know—

Q. Well, he came in and separated her from you? A. Because she wanted to kiss me, and I would not let her.

Q. And could he hear that? A. Who?

Q. The warden. A. He was only two feet from us; he was in the room with us at the time.

Mr. Queen: That is the petitioner's case.

PETITIONER RESTS.

DEFENCE.

JOSEPH DUGGAN, sworn in behalf of the Defendant, testified as follows:

Direct Examination by Mr. Walscheid:

Q. Where do you live? A. 236½ First Street, Jersey City.

Q. What is your business? A. I am in the insurance business, I work for the Home Insurance Company.

Q. How long have you been in that business? A. for 12 years.

Q. Do you know Mrs. Skow? A. No, sir.

Q. Do you know this lady here (indicating Mrs. Skow)? A. Yes, sir, that is Mrs. Skow; I saw her the first day of this trial.

Q. You don't remember seeing her on any other occasion? A. No, sir.

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

Q. How long have you known her? A. I knew her since last fall; I collected in her house for ten weeks.

Q. In Monmouth Street? A. Yes, sir.

Q. Collected insurance then? A. Yes, sir.

Q. For what company? A. The Prudential Company.

Q. Have you the books or papers with you? A. No, sir; the family moved to Greenville, and I transferred the business down there.

Q. Did you originally write the business? A. The policy of Mr. Ross was originally on the books, but I insured Mrs. Ross while she was living in Monmouth Street.

Q. And you collected on both those policies? A. Yes, sir.

Q. During that time did you go into her apartment? A. Yes, sir.

Q. During that time did you ever have any sexual intercourse with her? A. No, sir, positively not.

No Cross-examination.

Anthony Darmstadt, sworn in behalf of the Defendant, testified as follows:

Direct Examination by Mr. Walscheid:

Q. What is your profession? A. I am an attor-

ney and counsellor at law of the State of New York.

Q. Do you know Mrs. Ross, the defendant in this case? A. Yes, sir, she is a client of mine.

Q. You have also met Mr. Ross, the petitioner? A. Yes, sir.

Q. You were the attorney for Mrs. Ross in the proceedings which have been certified to in this Court by this record identified by the marking "Exhibit P 1," were you not? A. Yes, sir.

Q. You were Mrs. Ross' attorney? A. Yes, sir.

Q. Now, when that proceeding was instituted, do you remember the physical appearance of Mrs. Ross? A. Not exactly at that time, but previous to that time I noticed it.

Q. How long had you acted as her adviser before bringing this suit? A. Well, I don't recall just how long, it was not very long; (examines "Exhibit P 1"); it was just about that time, July 29, 1909, that is the date of the affidavit.

Q. How long prior to that time had she been coming to your office for consultation? A. I should judge somewhere within thirty days previous to that.

Q. And in those thirty days, did you ever see her in a condition which would indicate to you that she had been beaten up? A. Most assuredly.

Q. How often, if you remember? A. I should judge on two occasions.

By the Court:

Q. What was her appearance? A. I did not notice anything but her facial appearance, and her eyes were very much discolored, both of them.

Q. On both of these occasions? A. Yes, sir, if my memory serves me right, yes.

Further Direct:

Q. Such discoloration as you would expect if

she had been struck a blow in the face? A. Yes, sir.

Mr. Queen: Objected to.

The Court: Strike that out.

Mr. Walscheid: I agree that it shall go out.

Q. Of course, you don't know where this discoloration came from? A. She told me.

Q. She at that time told you that it had been produced by her husband?

Mr. Queen: Objected to.

The Court: Objection sustained.

Q. What is the status of this proceeding indicated by the record "Exhibit P 1," at the present time?

Mr. Queen: Objected to as immaterial and irrelevant in this case.

Q. Was the action concluded? A. No, sir, by reason of the fact that the defendant Ross, after he had been served with the notice of motion for alimony and counsel fee, departed from the State of New York and came to New Jersey.

Q. You could not find him? A. No, sir.

No cross-examination.

Mrs. Agnes Clements, sworn in behalf of the Defendant, testified as follows:

Direct Examination by Mr. Walscheid:

Q. You are related to Mr. Ross? A. No, sir.

Q. Are you here under subpoena? A. Yes, sir.

Q. Were do you live? A. 171 Fourth Street, Jersey City.

Q. How long have you known Mr. Ross? A. About eight years.

Q. And has he visited your home? A. He boarded with me.

Q. When did he cease boarding with you? A. About a year ago, I guess.

Q. Do you know a girl named Lizzie Porter? A. Yes, sir.

Q. Did she board with you? A. No, sir, but her brother did.

Q. And did Lizzie Porter go out with Mr. Ross? A. Not that I saw.

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

Q. Did you ever tell Lizzie Porter not to come to your house? A. No, sir.

Mr. Queen: Objected to as incompetent, irrelevant and immaterial.

The Court: I will hold the question.

Q. Did you ever tell Lizzie Porter not to come to your house because her going out with Mr. Ross was creating talk and was not doing your boarding house any good? A. No, sir.

Q. Or any words to that effect? A. No, sir.

Q. Nothing like that? A. No, sir.

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

Q. You do know that Lizzie Porter knew Mr. Ross? A. I don't know, sir.

No cross-examination.

Mr. Queen: I think my motion now should prevail to have that stricken out.

The Court: It is rather in your favor as it stands now; I should think, probably, you would let it stand.

Mr. Queen: I will not insist on my motion until later, if it should come up again.

MRS. MARGARET ROSS, recalled.

Direct Examination by Mr. Walscheid:

Q. You live in Brooklyn? A. Yes, sir.

Q. And where in Brooklyn? A. Broadway, 1708 Broadway.

Q. And the little child lives with you? A. Yes, sir.

Q. And how long has the child lived with you? A. Ever since she was three months old, except when they took her away a couple of times.

Q. Mr. Ross often visited you? A. Yes, sir.

Q. Do you know Lizzie Porter? A. I met her once.

Q. Where did you meet her? A. Up the Hudson.

Q. And whom did you meet her with? A. Mr. Ross.

Q. Your nephew? A. Yes, sir.

Q. Where did you go up the Hudson? A. To Bear Mountain.

Q. Who went? A. Mr. Ross, my children and his baby, and myself, and Lizzie Porter; she was in the party too.

Q. Is that the only time you saw Lizzie Porter? A. I think so, that is the only time.

Q. Isn't it a fact that she has come to your house with your nephew? A. I don't know.

Q. Isn't it a fact that Lizzie Porter did visit you at your home? A. Not that I remember.

Q. Isn't it a fact that she visited you with your nephew? A. Not that I remember; I saw her that once, I know.

Q. Who introduced her to you? A. My nephew.

Q. And did he ever say to you that Lizzie Porter was going to be the child's second mother? A. No, sir.

Q. Nor anything like that? A. No, sir.

No cross-examination.

Mr. Walscheid: That is all.

REBUTTAL:

MR. HENRY SPITZ being duly sworn, testified as follows:

Direct Examination by Mr. Walscheid:

Q. Since the institution of this suit, have you visited the home of Mrs. Skow? A. Yes, sir.

Q. When was that? A. On the 13th of March.

Q. Did you make any notes at the time of that visit? A. Yes, sir.

Q. Are these your notes? A. Yes, sir.

Q. Whom did you find present at that time? A. I found Mr. William Skow on the sofa with his knee bandaged up.

Q. Was Mrs. Skow there too? A. No, sir.

Q. Did you have a talk with Mr. William Skow at that time A. I told him that I came from the court with subpoenas, and wanted to know what he knew about the case or Mrs. Ross; and he then told me that Sundays would be the only time that he went down to the cellar to chop wood, and Mrs. Ross would ask for the price of a drink, and he gave her ten cents; I asked whether anything happened that day, and he said "No, sir." The following Sunday he would go down again to chop wood and Mrs. Ross would come down again and ask for the price of a drink, and he had no change, and he gave her fifty cents, and she said, "Don't you want anything for that, put your hand on it;" and she said, "Come down tonight and I will give you something——"

Q. You are sure he said "night?" A. Yes, sir.

Q. Proceed? A. She came down that night, and she pulled him into the woodshed where there was a canvas on the cellar floor, and that he then had intercourse with her, he said.

Q. How many times did he say that he had

sexual intercourse with her? A. Only on the second Sunday.

Q. So that he told you that he had sexual intercourse with her but once? A. Yes, sir.

Q. And he told you he did not have sexual intercourse with her the first time? A. That is right.

Q. How much did he say he had given her the first time? A. 10 cents.

Q. And what did he say had happened about the fifty cents; did he say anything about getting that back or anything like that? A. No, sir.

Q. Is there anything else that he told you that you remember? A. I asked him whether anyone saw him go down, or go up, and he said no one saw him go down, and he went out the rear door, and out to the street.

Q. On which occasion did he say that he did that? A. On the second occasion; I asked him also if Mrs. Ross did not borrow any money from him, and he said, "Oh, yes, but she paid me that back."

Q. On that same day did you have any talk with Mrs. Skow? A. At the end of the conversation with Mr. Skow, Mrs. Skow came out of the front room into the kitchen.

Q. What did she say? A. I asked her what she knew about Mrs. Ross and her son; and she said she knew nothing about those two, but she knew that she was a drunkard, and that the insurance man used to come around, and she was thick with him, and he used to stay there quite a while, and he never got any money because she spent it for rum, and she set the house on fire one time when she was under the influence of liquor.

Q. Are you sure she said that she knew nothing about anything that happened between Mrs. Ross and her son? A. That she knew absolutely nothing, because I was ready to put it down if she knew anything.

Mr. Henry Spits, for Defendant—Cross
Mrs. E. J. Ross, (Recalled) for Defendant—Direct
Mrs. M. Ross, (Recalled) for Defendant—Direct

Cross-examination by Mr. Queen:

Q. You are a detective? A. I am a State detective.

Q. What did you go to see Mr. Skow for? A. To see what evidence I could get.

Q. In whose behalf? A. In the defendant's behalf.

Mrs. Elenor J. Ross, recalled.

Direct Examination by Mr. Walscheid:

Q. Do you know William Skow? A. I don't know any of the Skow boys; I borrowed one dollar from one of them; I don't know one from the other, but I borrowed two fifty-cent pieces from one of them, in the main hall, and I sent the dollar back in the month of January, a one dollar bill.

Q. Do you know William Skow? A. I don't pick out one from the other.

Q. This young man in the back of the room here? A. I don't recognize him; I would not know him if I met him on the street.

Q. Did you ever have any sexual intercourse with him? A. I never did.

Q. Or with any of the other Skow boys? A. No, sir, nor with anyone else.

Mrs. Margaret Ross recalled.

Direct Examination by Mr. Walscheid:

Q. You have seen Mr. Darmstadt before? A. Yes, sir.

Q. And you saw him in court in Brooklyn before Judge Aspinwall? A. Yes, sir.

Q. Do you remember the occasion of seeing him there? A. Yes, sir.

Q. In some proceeding instituted against you for the possession of the child? A. Yes, sir.

Q. On the first day that you appeared with the child? A. No, sir, I did not have the child the first time, not that I remember.

Q. Then you appeared on the second day? A. Yes, sir.

Q. In between that time you saw Mr. Ross, didn't you? A. Not to my knowledge.

Q. A writ of habeas corpus had been served on you to give up this child? A. Yes, sir.

Q. You produced the child? A. Yes, sir.

Q. You did produce the child? A. I did not produce it.

Q. Did your nephew Ross at that time, or at any other time before, say to you that he was going to get rid of his wife? A. No, sir, he never said that to me.

Q. Did you say that to Mr. Darmstadt? A. No, sir, I did not say that to him.

Q. Didn't you, on this occasion of this writ of habeas corpus coming up, after you had produced the child the first day, and had obtained an adjournment for one day, return to court without the child and say that Mr. Ross had said to you that he was going to get rid of his wife? A. No, sir, I did not say it.

ANTHONY DARMSTADT recalled.

Direct Examination by Mr. Walscheid:

Q. Did you have a conversation with Mrs. Ross at the hearing before Judge Aspinwall in Brooklyn? A. Yes, sir, I had a conversation with her

the day before she appeared before Judge Aspinwall, when I served her with a writ of habeas corpus to produce the child, but it was merely formal, and told her to have the child before Mr. Justice Aspinwall the next morning at the Kings County Court House; she appeared there, and, if my recollection serves me right, the child was with her on that day; I am quite sure, however, that on the return day of the writ she appeared before Mr. Justice Aspinwall with the child; I have seen the child, and I am quite sure the child was with her on that day; she stated to Justice Aspinwall that she was not ready and she wanted to have an adjournment, and Justice Aspinwall adjourned the matter over one day; in the meantime, I saw Mrs. Ross, the lady there (indicating the aunt, Mrs. Margaret Ross) in the corridor of the court house, and she told me then that she was going to be there the next day, but that Mrs. Ross, the defendant here, would never get the child; that Mr. Ross was going to get rid of her because she was a bum; that is the expression she used. On the following day when the matter came up before Justice Aspinwall, Mrs. Ross again appeared, but she was there without the child, and he said to her "Madam, where is the child?" and she said, "She has been taken away from me." Justice Aspinwall then said to me, "If you want to have this woman punished for contempt, I will punish her."

By Mr. Queen:

Q. Was this said in the presence of Mrs. Ross? A. Yes, sir; I did not want to do that, so that is where the matter stood, so far as that proceeding was concerned.

No Cross-examination.

William Skow, (Recalled) for Defendant—Direct
Mrs. C. Skow, (Recalled) for Petitioner—Direct

WILLIAM SKOW recalled.

Direct Examination by Mr. Walscheid:

Q. Are you here under subpoena to-day? A. No, sir, not to-day.

By Mr. Queen:

Q. You were directed by the court to return here? A. Yes, sir.

Further Direct:

You have testified? A. Yes, sir.

Cross Examination by Mr. Queen:

Q. Did you tell Mr. Spitz, who was on the witness stand, that nothing happened between you and Mrs. Ross on the first day that you were down in the cellar? A. No, sir, I never told him that.

MRS. CHRISTINA SKOW recalled.

Direct Examination by Mr. Queen:

Q. Mrs. Skow, did you see Mr. Duggan, the man who was on the witness stand just now? A. I saw him here, yes, sir.

Q. Is that the insurance man that you saw there in the building? A. No, sir, positively no.

Cross Examination by Mr. Walscheid:

Q. How do you know the man that you saw was an insurance man? A. Because I met him in the hall with a bottle of booze for Mrs. Ross.

Q. How do you know that he was the insurance agent? A. I made a mistake—

Q. But you did go on the witness stand and you

did testify that the man was an insurance agent? A. No, sir, I did not.

Q. What did you say about the insurance agent? A. I said nothing about an insurance agent; in my testimony I spoke about a man that I heard speak to her in her kitchen.

BOTH SIDES REST.

Adjourned to June 11, 1917, for argument.

Transcript of testimony taken in the above-entitled cause, at the Chancery Chambers, Jersey City, New Jersey, on the sixteenth and nineteenth days of July, 1917, before Hon. Vivian M. Lewis, Vice-Chancellor.

Appearances:

JOHN W. QUEEN, ESQ., for the Petitioner.
J. EMIL WALSCHEID, ESQ., for the Defendant.

JOSEPH CONWAY, being duly sworn, testified as follows:

Direct Examination by Mr. Walscheid:

Q. Where do you live? A. 324 Park Avenue, Weehawken.

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

Q. Did you go with him on the 9th of June last to 299 Monmouth Street, Jersey City? A. As far as the exact date is concerned, I know it was in the beginning of June, but I don't remember the exact date, but I went to Monmouth Street with him.

Q. Were you there when a picture was taken? A. Yes, sir.

Q. And on that particular day, did you make any experiments with him, "yes" or "no"? A. Yes, sir, I did.

Q. Now, what did you do? A. I went down with Mr. Spitz, and we went upstairs and knocked at the door on the first floor, on the right hand side, and asked the lady there for permission to stand there while one of us went downstairs to talk; I don't remember which of us stood there first, but I stood there one time; yes, I remember now I stood there first.

Q. Where did you stand? A. I stood right where the dining room and kitchen met.

Q. You went into that room? A. Not exactly into the room, but into the hall there, right at the door jamb.

Q. The door was open upstairs? A. No, sir, there is no door leading from this private little hall to this kitchenette.

Q. You were within the apartment? A. Yes, sir.

Q. And you stood at the door jamb between two of the rooms in the apartment? A. Yes, sir.

Q. For what purpose did you stand there? A. To talk to this here lady that was there, to see if Mr. Spitz could hear me downstairs.

Q. At that time were you to talk, or were you to listen? A. I was to talk one time, and he was to come up to talk.

Q. You changed places, did you? A. Yes, sir, he came up twice before I went downstairs.

Q. While you were listening, did you hear his voice? A. No, sir, I did not.

Q. And while you were listening, had he gone down into the cellar? A. I don't know.

Q. Had he left you for the purpose of going down into the cellar? A. Yes, sir.

Q. How long did you stay there waiting to hear Mr. Spitz' voice? A. Say ten minutes at the long-

est, between five and ten minutes, and then I talked to the lady; I said, "It is a shame"—

Q. I want to know whether you could hear Spitz' voice? A. No, sir, I could not.

Q. How long were you trying to listen to his voice? A. About ten minutes.

Q. Then what became of Mr. Spitz? A. Then he came up, and said to me, "Now, you talk, and I will go downstairs and listen." He said he would go downstairs and listen and see if he could hear me talk; he was to listen while I was upstairs.

Q. And then did you talk upstairs? A. Yes, sir; I talked about a hole in the ceiling, and said, "It is a shame the way these flats are going to ruin."

Q. How loud did you talk as compared to how you are talking now? A. I talked a little louder than I am talking now.

Q. You don't know whether Spitz heard you? A. No, sir.

Q. After you had done that, what next did you do? A. Then I went to the cellar.

Q. And did Spitz then go upstairs? A. Yes, sir.

Q. While you were in the cellar and Spitz had gone upstairs, what did you do in the cellar? A. I went down in the cellar and I walked direct to the rear of the cellar, and right under the kitchen; I walked from upstairs; I came down a flight of stairs. Then I thought he wanted me to listen directly under the kitchen, and I went back there and tried to listen, and I could hear a murmuring about directly under the kitchen.

Q. How far back did you go to get to the kitchen, to the real walls of the building? A. No, sir, to the rear end of the woodshed.

Q. How far from the rear wall were you when you were listening and heard the murmur? A. About six feet.

Q. Could you distinguish the words that were spoken? A. No, sir.

Q. Is your hearing good? A. Yes, sir.

Q. Did you go to any other place then to listen? A. Yes, sir, I went up to Mr. Spitz, and I said—

Q. Did you go to any place else to listen? A. Yes, sir, I went to the foot of the stairs coming down into the cellar.

Q. Could you hear any voices then? A. No, sir.

Q. Then, did you speak in the cellar? A. Yes, sir.

Q. For the purpose of letting Mr. Spitz hear above? A. Yes, sir.

Q. Where were you stationed when you first spoke in the cellar? A. I was at the end of the stairs, on the cellar floor.

Q. That is where you stood when you spoke? A. Yes, sir.

Q. How loud did you speak then? A. I hollered "Hey, Henry," about like that (illustrating); I think I did that once or twice.

Cross Examination by Mr. Queen:

Q. When you were upstairs listening, and Mr. Spitz was downstairs listening, you did not hear anything at all? A. No, sir.

Q. You did not know whether Mr. Spitz called to you or not, did you? A. No, sir, I cannot say.

Q. And when you were downstairs calling, you don't know whether Mr. Spitz could hear you when he was upstairs listening, do you? A. I do not.

Q. When was it that you said you could just hear a murmur? A. When I went to the cellar the first time.

Q. You were down in the cellar? A. Yes, sir.

Q. Where? A. Directly under the kitchen, as far as I could figure on the ceiling.

Q. Who then was upstairs? A. Mr. Spitz was upstairs.

Q. And you could hear a murmur of somebody's voice? A. Yes, sir.

Q. Did you recognize the voice as that of Mr. Spitz? A. No, sir, it sounded like that "Um-um-um" (illustrating).

Q. You knew it was the voice of a human being? A. Yes, sir.

Q. You knew he was upstairs then with the janitress? A. The lady that lives in that apartment.

Q. And you were of the opinion that they were in the way between the dining room and the kitchen? A. It is a private hall that runs directly into like a kitchenette.

Q. It is a part of the apartment? A. Yes, sir.

Q. The rear part of the apartment? A. Yes, sir.

Q. And that kitchenette is almost over the place where you stood? A. Well, when I say that, I mean as good as I can judge; the best I can figure.

Q. And you stood in the cellar just back of the stairs, didn't you? A. No, sir, way behind the stairs when I heard the murmur—right at the last woodshed from the front.

Q. Do you mean the front woodshed? A. No, sir, this was the rear woodshed.

Q. The first woodshed going in from the front of the house—this apartment is on what street? A. Monmouth Street.

Q. Monmouth Street runs North and South? A. Same as I am here.

Q. What you understood as the Skow apartment was on the left as you entered the house? A. I don't know what you mean by the Skow apartment.

Q. I mean the apartment that you were in when you listened; that was on the left when you entered the house, wasn't it? A. Yes, sir.

Q. And the apartment you stood in was on the left? A. Yes, sir.

Q. And that was over the apartment that was in the cellar—about over it—I mean the woodshed in the cellar?

Mr. Walscheid: Is not his testimony of the right and left rather vague?

Q. The woodshed that you speak of is right under that apartment which is on the left side? A. Yes, sir, practically under the stairs, in the rear of the stairs.

Q. When you speak of the rear of the stairs, you mean under the stairs that come down from this apartment to the front of the house—to the cellar? A. No, sir, further back than that, because the top of the floors would only bring it down to about the second woodshed—

Q. How far are the bottom of the stairs in front of the first woodshed to the front? A. They come down about even.

Q. Now, when I asked you which woodshed it was, you said the second one, didn't you, or the third one—which did you say? A. I don't remember that question.

Q. I will ask you again; which do you mean by the last woodshed to the front; do you mean the first one as you turn around after you come down those stairs? A. No, sir, the last one; now you are coming in the front of the house now; the stairs come down this way (indicating); now, the last woodshed back—that is the first woodshed from the rear of the cellar; do you understand?

Q. That is where you stood when you heard the murmur? A. Yes, sir.

Q. How many of those woodsheds are there on each side? A. I did not count them; six or eight, I should say.

Q. You heard a murmur there? A. Right under the kitchen I did.

Mr. Walscheid: The photographer's testimony as to what he sees upon the picture when comparing it with the scene, from which he took it is as good, but no better than testimony of any other witness who can make the comparison, and, consequently, both are the best evidence.

Henry Spitz, being recalled, testified as follows:

Direct Examination by Mr. Walscheid:

Q. On June 9th of this year——

Mr. Queen: Before this is opened, I desire to object to the further taking of testimony, and especially to-day; the proofs have been closed in the case some time ago. The matter was set down for argument on other days, and the argument was continued from day to day by consent, because of circumstances of which I need not speak; and now, to-day, when the matter is set down for argument, without notice to me, without an intimation to me on the part of Mr. DeYoe or on the part of Mr. Walscheid, having been here from ten o'clock in the morning until three in the afternoon, all of us together, he now opens, without notice, moves to open without notice, and without an intimation, and offers this further proof; I say that it is not fair dealing.

The Court: Is you client here?

Mr. Queen: No, sir; it was not necessary to have him here for an argument; the parties who live in the house are not here, and while

I have seen the cellar myself, I cannot tell from that photograph whether that is a correct representation of the place or not, and I say that under the circumstances the Court ought not now to exercise its discretion to open the case to take further proofs.

The Court: It will only be done upon terms that you have the opportunity to bring your parties here, and that you be allowed to answer it in any way you desire.

Mr. Queen: Mr. Walscheid should have submitted the photograph to me this morning.

The Court: I will take the testimony; if you desire it, I will hold the matter until Thursday, so that your client can be here.

Q. On June 9th of this year, did you go to the premises 299 Monmouth Street? A. Yes, sir.

Q. Who was with you? A. My son, and the janitor of the premises, and Mr. John Conway.

Q. While you were there did you take a picture of the cellar of those premises? A. I did.

Q. Did you take part in the making of the picture? A. Yes, sir.

Q. Who actually was at the lens? A. My son.

Q. Are you in this picture? A. Yes, sir.

Q. What are you doing in the picture? A. I am holding the lantern at the entrance of Mrs. Ross' bin.

Q. Is that the picture which was then taken? A. Yes, sir.

Q. And is that a correct representation of that cellar, from the point where it was taken?

Mr. Queen: Objected to, and I ask to have it stricken out.

The Court: Strike it out.

Mr. Walscheid: I submit it is legal evidence.

The Court: I will sustain the objection to it.

Mr. Queen: And there is a further objection to it; he did not take the photograph; he did not look through the lens; he is not a photographer.

The Court: I will sustain the objection.

Q. Who took the photograph? A. My son, but I focussed it first.

Q. You looked through the lens? A. Yes, sir, twice.

Q. Is that a correct reproduction of what you saw through the lens? A. Positive—correct.

The Court: Strike that out.

Q. Have you taken photographs before? A. Yes, sir.

Q. How long? A. For the last seven years.

Q. With this particular camera? A. I have two cameras.

Q. Is this your camera that was used on this occasion? A. Both cameras were used.

Q. Is this a correct reproduction of what you saw through the lens? A. Yes, sir.

Q. Is that a correct reproduction of the cellar of this building? A. Yes, sir.

Mr. Walscheid: I offer it in evidence.

Q. How long were you in the cellar? A. Half an hour.

Q. How did you get the light to take it with? A. Flashlight.

Q. Had you taken flashlight pictures before? A. Many of them, yes, sir.

Mr. Walscheid: I offer this picture in evidence.

Mr. Queen: Objected to until I have cross examined the witness.

The Court: All right; proceed.

Henry Spitz, (Recalled) for Defendant—Cross

Cross Examination by Mr. Queen:

Q. What sort of a camera did you have, Mr. Spitz? A. Quite a large camera.

Q. What is the name of it? A. I cannot think of the name of it; I bought it for $25.00 second-hand, and I never paid any attention to the name of it.

Q. When did you buy it? A. Some seven years ago.

Q. You say it is a flashlight camera? A. No, sir, it is a camera for most any use.

Q. Was this cellar where you took it dark? A. Yes, sir.

Q. Was it an instantaneous picture, or one which took time to focus? A. Instantaneous.

Q. An instantaneous picture taken by photograph in a dark cellar without a flashlight? A. With a flashlight.

Q. You said it was not a flashlight? A. No, sir, I did not.

Q. How long have you taken pictures by the photographic method? A. My son and I generally take them together.

Q. How long have you taken pictures by the photographic method? A. I should judge for ten or twelve years, in my opinion.

Q. You did not do all this picture then yourself? A. My son developed it.

Q. When did your son develop it? A. Oh, about the 11th or 12th of June.

Q. And how long after the picture was taken did he develop it? A. Two or three days later.

Q. You did not know anything about this plate from the time that it was taken up until the time of its development and its being put upon this cardboard, did you? A. It has been in my house up to the time it was developed.

Q. You have no knowledge of your own which

of these bins belonged to Mrs. Skow? A. No, sir.

Q. Do you know which apartment Mrs. Skow occupied in November and December, 1916? A. Yes, sir.

Q. How do you know that? A. Mrs. Skow told me.

Q. You don't know excepting what Mrs. Skow told you? A. No, sir; the present janitor there now also told me.

Mr. Queen: I ask that that be stricken out.

The Court: Same course.

Redirect Examination by Mr. Walscheid:

Q. At the head of this stairway leading from the lower up to the main floor, is there a door? A. Yes, sir.

Q. And when you came downstairs was that door closed or open when you came downstairs to make the experiment? A. I closed it.

Q. And you left Mr. Conway in the dining room? A. Yes, sir.

Q. Do you know where that dining room is in relation to the foot of this stairway? A. Yes, sir—you come in here.

Q. No, the Court ruled the picture out. A. As you enter from the hall into Mrs. Skow's rooms, which is on the left-hand side, you pass a hall, I should judge about five or six feet—a hallway, before you come to the dining room—a kitchen, I think.

Q. In relation to the foot of this stairway, is this dining room over the foot of the stairway? A. No, sir.

Q. Is it forward of it or is it to the rear of it? A. To the rear of it.

Q. And how far to the rear of it would it be, how many feet, about—five, ten or fifteen feet? A. Ten feet, and they could not hear me upstairs

—neither the janitor nor Mr. Conway could hear me; they were in Mrs. Skow's room, in the dining room, and they could not hear me there.

Q. And the doors into the Skow apartment, were they closed or open? A. Closed.

Q. After that, did you go upstairs? A. Yes, sir.

Q. Did anyone come downstairs? A. Mr. Conway went downstairs.

Q. What was he supposed to do when he went downstairs? A. To holler as loud as he could.

Q. Did you hear any hollering? A. I just heard a murmur.

Q. Can you give us an indication of how loud that murmur was? A. You could just hear it.

Q. Imitate the strength of the noise. A. I did not understand one word of what Mr. Conway said downstairs.

Q. Can you repeat here the strength of the noise which you heard? A. No, sir, I would not know how.

Recross Examination by Mr. Queen:

Q. Was the door open or closed? A. Which door?

Q. The door leading from the first floor down to the cellar? A. It was closed.

Q. Why do you say that the bin on the left-hand side, as you face the stairs, leading from the first floor to the cellar, was the Skow bin? A. It is on the right-hand side, facing the stairs.

Q. On the right-hand side facing the stairs? A. Yes, sir.

Q. Looking up the stairs, I mean. A. Yes, sir.

Q. Mrs. Skow lived in a left-hand apartment, didn't she? A. She occupied three bins there; the other bins were empty the present janitor told me.

The Court: Strike that out.

Henry Spitz, (Recalled) for Defendant—Redirect

Redirect Examination by Mr. Walscheid:

Q. Now, you went downstairs to the cellar? A. I went downstairs to the cellar.

Mr. Queen: I object, as a further objection, that it is impossible to have this evidence of any value whatever, because this man's voice or Mr. Conway's voice is not in any way like the voice of the parties who were there at that time, in November or December, 1916, and it is impossible to prove from such evidence what might have happened, or whether they could hear voices there at that time.

Further Direct by Mr. Walscheid:

Q. When you went to the cellar, where did you go? A. I stood about here.

Q. In relation to the foot of the stairway, where did you go? A. I stood between the stairway and Mrs. Skow's bin.

Q. And in relation to the foot of the stairway, where is the bin which you know as Mrs. Skow's bin? A. Right at the foot of the stairway.

Q. Was Mrs. Skow there? A. No, sir.

Q. Did you see her about at all? A. She is not living there.

Mr. Queen: I object on the ground that there is no evidence in the case that the offence charged took place in Mrs. Skow's bin.

Mr. Walscheid: It is the bin which we hope to identify as the bin which she used.

Q. The bin which you have spoken of as Mrs. Skow's bin is immediately at the foot of the stairway? A. Yes, sir.

Q. And behind that and towards the rear, and on the same side, is where you understood the Ross bin was? A. Yes, sir.

Q. Now, then, is the Ross bin towards the rear—
A. Yes, sir.

Q. Behind the so-called Skow bin? A. Yes, sir.

Q. Is it the next bin behind? A. The following bin behind.

Q. Now, you say you stood between the foot of the stairs and the Skow bin, and what did you see? A. I was speaking very loud; in fact, I was hollering.

Q. How loud were you speaking; give us an idea. A. "Do you hear me talk?" (illustrating).

Q. As loud as that? A. Yes, sir.

Mr. Walscheid: Mark this photograph for identification.

Photograph marked "Exhibit W1 for identification."

Q. Did you on the 9th day of June last examine the flooring and its thickness? A. I did.

Q. And how heavy is the flooring? A. 5/8 yellow pine.

Mr. Queen: Objected to as immaterial.

Q. Did you at that time notice the arrangement of the bins in the cellar when you took the photograph? A. Yes, sir.

Q. And can you describe the arrangement of the bins?

Mr. Queen: Same objection unless they follow it up.

A. Just a square box, about 8 by 8, on a dirt floor, not concrete.

Q. And did they go to the ceiling, those bins? A. Just like it is on the picture.

Q. (Question read). A. Yes, sir.

Q. Are they solid to the ceiling? A. No, sir.

Q. And how far from the floor are they solid? A. About six feet.

Q. And before that how were they arranged? A. About 1½ feet laths.

Q. And the bins themselves; had they any doors? A. Yes, sir.

Q. How many bins are there in the whole cellar? A. About eight.

Q. In relation to the stairway, are they on either side of the stairway? A. Both sides of the stairway.

Q. Did you, on the 9th day of June last, make any experiments with anyone to ascertain whether or not you could hear voices in the cellar while you or the parties with whom you were making the experiments were on the floor above?

Mr. Queen: The same objection.

A. Yes, sir.

Q. With whom did you make the experiments? A. Mr. Conway.

Q. Is he here? A. Yes, sir.

Q. And of what did those experiments consist?

The Court: I don't think it is necessary to proceed much further on this line.

Mr. Walscheid: I am going to rest on the proof of this photograph by this witness.

The Court: All right.

Mr. Queen: I object to the offer, because there is no proof that this photograph, even though it were properly proved, is a correct presentation of the place at the time when the adultery is alleged to have taken place.

The Court: The objection is well taken; I do not think it is the best evidence. Proper foundation for this is not laid. Who took this photograph? The witness says his son. He can be called. The Court is entitled to the best evidence, particularly in view of the situation of this case. I have given

counsel unusual license in opening the case for the purpose of offering witnesses to impeach witnesses heard at the regular hearing, and must insist on testimony of the best character.

Mr. Walscheid: So that there may be no misunderstanding as to just where we stand, this witness is not in a position to establish the fact that this cellar on the 9th of June was then in the same condition in which it was in November, 1915, and December, 1915; and in order to establish that proof, it is essential that the photograph should be before the court when the witnesses are called who can furnish this proof; so that that does not go to this picture. I am producing the best evidence.

Mr. Simpson handed me this case in support of my contention.

The Court: No, it cannot be, when there is a man that took the photograph that can be produced here.

Mr. Walscheid: A witness who can testify the focus and can look at the photograph and swear that this correctly represents the focus, his testimony is competent and is the best evidence.

The Court: Competent, but not the best evidence.

Mr. Walscheid: Just as good and just as valuable as that of the man who took it.

The Court: I shall rule that you have not produced the best evidence. You must produce the boy.

Recross Examination by Mr. Queen:

Q. You were not with it all the time? A. Yes, sir.

Q. Did you stay with it all the time from the time it was taken up to the time it was put on this board? A. If I was not home, my wife was home.

Q. Do you know what I mean? A. The camera is in my house continuously.

Q. Your son developed it? A. Yes, sir.

Q. You did not develop this one? A. No, sir.

Q. What is your employment? A. I am retired.

Q. You were not with your son all the time when he developed this photograph? A. Yes, sir, I was; we do our own developing.

Q. Did you assist him in developing the photograph? A. No, sir, I watched him.

Q. How do you know that this photograph is a reproduction of the picture—the negative from which the picture is taken in that house? A. I was there when it was taken; I took the camera home with me, and I stayed home at my house until it was developed.

By the Court:

Q. Do you understand the photographic art? A. I got the whole outfit for my son; I am an amateur.

Q. Is your son also an amateur? A. He is a good photographer.

Further Recross:

Q. Where did the camera stand when the photograph was taken; I am speaking with reference to the front or the rear, or where? A. In the front of the cellar.

Q. And this stairway represented on that photograph, where does that come down? A. Going up on the stairway on the left-hand side is Mrs. Skow's room, and on the right-hand side was Mrs. Ross' room.

Mrs. E. Ross, (Recalled) for Defendant—Direct

Q. Looking at the picture from this side up on the first floor of the apartment house—this representing the basement on the right side as you look at the picture was Mr. Ross' apartment, and on the left side as you look at the picture was Mrs. Skow's apartment? A. Yes, sir.

Q. In other words, there was only a floor between Mrs. Skow's apartment—

Mr. Walscheid: I object to the cross examination of this witness as to the contents of this picture; he is making him his own witness at this time.

Mrs. Elenor Ross, being recalled, testified as follows:

Direct Examination by Mr. Walscheid:

Q. I show you a picture on the photograph marked for identification "W-1 id.," and ask you whether this picture is a correct and true represenation of that cellar as of the time when you lived in those premises, i. e., between October and December, 1915? A. Yes, sir.

Mr. Walscheid: I now again offer this picture in evidence.

Mr. Queen: The objection is renewed.

The Court: The objection is sustained.

Mr. Walscheid: I cannot use the picture in further examining this witness then?

The Court: No.

Q. Mrs. Ross, referring to this picture, "Exhibit W-1 for identification," can you, upon that picture, indicate the location of the Skow bin? A. Yes, sir, I can.

The Court: This is not substantially

proved before the Court in such a way as to satisfy the Court that it is a verified photograph of the situation as it stood at the date, and it is not the best evidence. I shall rule the picture out.

Mr. Walscheid: If I produced a photograph of my brother and said "That is a correct likeness of my brother," under your Honor's ruling it would not be evidence.

The Court: If you had laid a proper foundation for the introduction of the photograph—the proper way would be to bring the party here that took it and let him be cross examined. The proper foundation for this is not laid. The witness says his son took this photograph, and he can be called, and the Court is entitled to the best evidence, especially so in view of the situation of this case. Counsel has had unusual license in opening the case for the purpose of offering to impeach witnesses heard at the regular hearing. I must insist on testimony of the best character.

Mr. Walscheid: May I ask for a continuance of this matter, so that I can produce such evidence as your Honor insists upon in regard to the photograph?

Adjourned to Thursday, July 19, 1917.

Thursday, July 19, 1917.

Same appearances as before noted.

ROMAINE H. SPITZ, being duly sworn, testified as follows:

Mr. Walscheid: This is the photographer who took the photograph.

Direct Examination by Mr. Walscheid:

Q. Did you take this photograph? A. Yes, sir.

Q. Marked "Exhibit W-1 for identification?" A. Yes, sir.

Q. Do you remember when you took it? A. The date is on the photograph.

Q. June 9, 1917? A. Yes, sir.

Q. That is when you took it? A. Yes, sir.

Q. Who was with you when you took it? A. My father. I focussed it and he focussed it.

Q. Was it a daylight picture? A. It was a flashlight photograph.

Q. Who pressed the bulb to ignite the powder? A. I did.

Q. Have you taken many pictures? A. Yes, sir, quite a few for the last twelve years.

Q. Have you taken pictures of that size? A. Yes, sir, that is the only size I take.

Q. Do you photograph them for sale or for your own use? A. For both.

Q. You sell them too? A. Yes, sir.

Q. Have you had the same camera for about twelve years? A. Yes, sir.

Q. How old are you? A. 31.

The Court: I will receive the photograph.

Q. Have you the plates for the picture? A. Yes, sir.

Q. Is that the plate? A. Yes, sir.

Mr. Walscheid: I also offer the plate.

The Court: I will receive it.

Q. Now, looking at that picture, there is a light spot in the center of it, back of the stairway; that is a burning lantern, is it? A. Yes, sir.

Q. Who was holding that? A. My father.

The Court: The picture and plate are offered in evidence; they will be admitted.

Picture marked "Exhibit W-1."

Plate marked "Exhibit W-2."

Cross Examination by Mr. Queen:

Q. Where were you standing when you took this photograph? A. Back of this pole; there is a pole right here (indicating).

Q. You were standing in the front part of the basement, were you? A. Yes, sir.

Q. And how far from the stairway which is shown on the front part of this photograph? A. About ten feet away.

Q. How far was the light which you say was represented by that light spot, and which your father was holding, how far was that from your camera? A. About 25 feet.

Q. How near was your father holding that light from the rear of the basement—the back part of the basement—do you know how far he was from the back of the basement? A. On the average from 15 to 20 feet.

Mr. Walscheid: And by the back of the basement you mean the wall behind the light in the center of the picture?

Mr. Queen: Yes.

Q. And this basement has coal bins or wood bins on either side of the center of this picture, hasn't it? A. Yes, sir.

Q. And one of them is represented on the right

by a door, which appears to have a lock on it? A. Yes, sir.

Q. How many were there on the right side, looking at the picture as you look at it now; do you know; how many coal bins or wood bins were there on the right side of this aisle, looking at the picture as you are looking at it now? A. Three.

Q. And how many were there on the left side— and the left side will be back of the stairway which appears in the front of the picture? A. The same number.

The Court: Is the testimony closed

Mr. Walscheid: No, sir; if necessary, I want to prove that the conditions of the basement are the same; also the conditions appertaining to the floor, that they remain the same; also, I want to produce evidence as to the continued sobriety of this woman both before and after the period that she lived with her husband in 1915, from October until December, namely, from 1909 down to date; and then I want to produce the testimony of the warden of the jail as to the occurrence at the time of the alleged confession.

Mr. Queen: As to the first testimony, I will ascertain whether the conditions of the basement and the compartments, and the conditions pertaining to the floor are the same at the time the picture was taken as they were at the time of the alleged occurrences, and if I find they were, then I will notify Mr. Walscheid that he need not produce that proof. I have nothing to say as to the other testimony.

Transcript of testimony taken in the above-entitled cause, at the Chancery Chambers, Jersey City, on the tenth day of September, nineteen hundred and seventeen, before Hon. Vivian M. Lewis, Vice-Chancellor.

Same appearances as before noted.

PATRICK J. SULLIVAN, sworn in rebuttal, testified as follows:

Direct Examination by Mr. Walscheid:

Q. You are the warden of the Hudson County Jail? A. Yes, sir.

Q. How long have you held that position? A. Nine years next November.

Q. Do you remember having confined in the Hudson County Jail one Eleanor J. Ross? A. Yes, sir.

Q. Is this the lady here? A. Yes, sir, that is the lady.

Q. Now, while she was there, do you remember an occurrence in the jail, as the result of which you ordered some people from the jail?

Mr. Queen: Objected to as embodying the answer.

Q. Do you remember an occurrence in the jail—an incident in which she participated? A. Yes, sir.

Q. Tell us in your own way what you remember. A. We come daily in contact with this kind of thing, every day in the week. I remember this occasion. This woman was employed in the kitchen as a helper, and one day, I cannot recall whether it was in the forenoon or the afternoon, but some men came there to see this woman.

Q. How many men? A. Two or three.

By the Court:

Q. Do you see any one of them in the court room here? A. Well, I would not be positive.

Q. Can you generally describe them? A. One man at that time seemed to me to be a stout man, rather tall, with a sort of sandy moustache.

Q. Is he one of the men that was there (indicating the petitioner)? A. I cannot say positively.

Q. Stand up, Mr. Peterson—was he one of the men? A. I cannot say whether he was there or not.

Q. Tell us what transpired. A. My attention was called to the fact that this lady was with some man under the stairs which leads directly to the kitchen; and there were some words, so loud that I walked in from the office, and I ordered the men to leave the institution; and if I remember rightly, I ordered this woman back to her work in the kitchen. They were in the hall of the jail, and, of course, I did not want any clothesline fight, and I ordered those men out. I did not use any bodily force, and they went out peaceably.

Q. Do you remember what the words were that induced you to go in there? A. It was some insulting remark of some kind, I think.

Q. Made by whom? A. It was one of the three men.

Q. Do you remember the nature of the insulting remarks? A. No, sir.

Q. Do you know whether they were addressed to the woman or not? A. That I could not say.

Q. That is all you remember? A. Yes, sir, and then I went to answer the telephone.

Q. Did you see them go out? A. After I came back they were gone.

No cross examination.

HENRY F. ZIMMER, sworn in rebuttal, testified as follows:

Direct Examination by Mr. Walscheid:

Q. Where do you live? A. Woodhaven, Long Island.

Q. Now, do you know Mrs. Ross? A. Yes, sir.

Q. The defendant? A. Yes, sir.

Q. Do you know Mr. Ross, the petitioner? A. Yes, sir.

Q. When did you first know them? A. As customers coming to my butcher shop, in 1907.

Q. Do you know when they were married? A. Yes, sir, they lived on Covert Street, Brooklyn.

Q. How long after you first knew them did Mrs. Ross trade at your place? A. I guess she was just about married then; that was in 1907; I remember that.

Q. After 1907, how long did she continue to trade with you? A. She came in every morning to get her meat; and Mr. Ross would come in and buy meat also.

Q. Do you remember the fact that a child was born to them? A. Yes, sir.

Q. You don't know when that child was born? A. She told me that she had a little money and she bought a house on Covert Street, Brooklyn.

Q. Do you remember about the time when the child was born? A. That is ten years ago.

Q. Subsequent to the time when the child was born, did she continue to trade at your place? A. Yes, sir, she was my customer for two years.

Q. After the child was born, I mean? A. Yes, sir.

Q. For about how long after the child was born did she continue to trade with you? A. It might have been not quite a year.

Q. During that time after the child was born did she come in daily? A. Yes, sir.

Q. Did you see Mrs. Ross daily? A. Yes, sir, and I saw her husband.

Q. During that time after the child was born, when she came in daily, what was her appearance as to cleanliness? A. She came in and was a clean lady and paid her bills.

Q. What was her condition as to her clothes and things? A. I would call her a regulation housekeeper, clean and nice.

Q. How was her hair; how did that look? A. She appeared to me to be a fair housekeeper.

Q. Did you ever deliver meat to them? A. No, sir.

Q. During that time did you talk to her daily? A. Spoke to her about whatever she wanted.

Q. Did you do a cash business with her? A. Yes, sir, she paid her way.

Q. Did you make change with her? A. Yes, sir.

Q. And did she do that properly? A. Perfectly.

Q. Now, during all that time did you ever not anything about her condition which would lead you to infer that she was under the influence of liquor? A. Not while she was in the butcher shop.

Q. Did you ever see her on the streets? A. No sir.

Q. Did you ever see her under the influence of liquor? A. No, sir.

Cross Examination by Mr. Queen:

Q. You were about to say you missed her for a time?

Mr. Walscheid: Nothing of the kind.

A. Yes, sir, that was the time when Mr. Ross took seriously ill.

Q. Then there was a time when she did not come to the butcher shop? A. I only had the lady for about two years as a customer.

Q. During those two years there was a time when she did not come to the butcher shop? A. During the three months that Mr. Ross was sick she did not come to the butcher shop.

Mr. Walscheid: Mr. Queen agrees that the condition of the premises in which the alleged acts of adultery are supposed to have taken place were the same, so far as the physical structure was concerned, as the time when we made our tests and examination, as they were when the supposed acts were supposed to have occurred, and at the time the photograph was taken.

BOTH SIDES REST.

Exhibit P 1.

THE PEOPLE OF THE STATE OF NEW YORK,

By the Grace of God Free and Independent,
To all to whom these presents may come, GREETING:

KNOW YE: That we have inspected the files and records in the office of the Clerk of the County of Queens, the Borough of Queens, in said County, do find a certain Summons & Complaint, Affidavit & Notice of Motion, Affidavit in Opposition to Motion & Order, in the case of Eleanor J. Ross, Plaintiff, against William R. Ross, Defendant, remaining there on file of record in the words and figures following, to wit:

NEW YORK SUPREME COURT,

QUEENS COUNTY.

ELEANOR J. ROSS,
Plaintiff,

vs.

WILLIAM R. ROSS,
Defendant.

STATE OF NEW YORK, }
County of Queens, } ss.:

ELEANOR J. ROSS, being duly sworn, deposes and says that she is the plaintiff in above entitled action brought to procure judgment of limited divorce against above named defendant.

That deponent, since the birth of her child, has

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not been physically strong, suffers from nervous headaches and other maladies, and is otherwise incapacitated from performing manuel labor, but is compelled to labor in order to earn sufficient funds wherewith to sustain life; that deponent before her marriage, by thrift and economy, became possessed of considerable funds deposited to her credit in several banks which the defendant after marriage induced her to part with and deponent is now wholly destitute of the means of supporting herself pending this action or of carrying on the action and defraying the costs and expenses attending the same.

That defendant is a motorman in the employ of the Brooklyn Rapid Transit Railroad Company, receives a salary of not less than Fifteen..... dollars weekly, and has no one dependant on him for support other than deponent and the infant issue of the marriage.

Deponent therefore prays that an order may issue or that the defendant be directed to show cause at a Special Term of this Court, for motions, why an order should not be made directing defendant to pay to plaintiff a reasonable sum as alimony pending the trial and final determination of this action, and such sums as may be necessary to enable deponent to carry on this action and defray the necessary costs and expenses thereof, and for such other and further relief as may seem just and proper.

ELEANOR J. ROSS.

Sworn to before me this
29th day of July, 1909.

GEORGE L. RAPELYE,
Notary Public,
Queens County, N. Y.

Exhibit P-1

STATE OF NEW YORK, }
County of Queens, } ss.:

ELEANOR J. ROSS, being duly sworn, deposes and says that she is the plaintiff in above entitled action and has heard read the foregoing complaint and knows the contents thereof; that the same is true of her own knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters she believes it to be true.

ELEANOR J. ROSS.

Sworn to before me this
29th day of July, 1909.

GEORGE L. RAPELYE,
Notary Public,
Queens County, N. Y.

Exhibit P-1

NEW YORK SUPREME COURT,

QUEENS COUNTY.

ELEANOR J. ROSS,
Plaintiff,

vs.

WILLIAM R. ROSS,
Defendant.

Pease to take notice that upon the summons and complaint in this action and the affidavit of plaintiff, copies of which are hereto annexed, application will be made to this Court at a Special Term thereof, for motions, to be held in and for the County of Queens at the Kings County Court House in the Borough of Brooklyn, City of New York, on the 9th day of August, 1909, at 10.30 o'clock in the forenoon of said day or as soon thereafter as counsel can be heard, for an order directing defendant to pay to plaintiff a reasonable sum as alimony pending the trial and final determination of this action, and such sums as may be necessary to enable plaintiff to carry on this action and defray the necessary costs and expenses thereof, and for such other and further relief as may seem just and proper.

Dated August 2nd, 1909.

Yours, etc.,
ANTHONY DARMSTADT,
Attorney for Plaintiff,
26 Jackson Avenue, New York City,
Borough of Queens.

To WILLIAM R. ROSS,
Defendant.

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NEW YORK SUPREME COURT,

QUEENS COUNTY.

ELEANOR J. ROSS,
Plaintiff,

vs.

WILLIAM R. ROSS,
Defendant.

Summons

To the above named Defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer on the Plaintiff's Attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated July 29th, 1909.

ANTHONY DARMSTADT,
Plaintiff's Attorney.
Office and Post Office Address:
No. 26 Jackson Avenue, New York City,
Borough of Queens.

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NEW YORK SUPREME COURT,

QUEENS COUNTY.

ELEANOR J. ROSS,
Plaintiff,

vs.

WILLIAM R. ROSS,
Defendant.

Plaintiff complaining of the defendant by Anthony Darmstadt, her attorney, respectfully shows to this Court and alleges:

FIRST: That plaintiff and defendant are residents of the State of New York and were such at the time of their marriage in this State on the 27th day of February, 1907, and said marriage contract then entered into is still in force.

SECOND: That defendant has treated plaintiff in a cruel and inhuman manner in that he has subjected plaintiff to degradation, shame and disgrace, neglects and refuses to provide for and has abandoned plaintiff.

THIRD: That the issue of said marriage is Marjorie Graham Ross aged one year.

WHEREFORE, plaintiff demands judgment against defendant separating plaintiff and defendant from bed and board forever; for the custody of her child; for such other and further relief as may seem just and proper, and for the costs and disbursements of this action.

ANTHONY DARMSTADT,
Attorney for Plaintiff,
26 Jackson Avenue, New York City,
Borough of Queens.

Exhibit P-1

NEW YORK SUPREME COURT,

QUEENS COUNTY.

ELEANOR J. ROSS,
Plaintiff,

vs.

WILLIAM R. ROSS,
Defendant.

CITY AND STATE OF NEW YORK,
County of Kings,
Borough of Brooklyn, } ss.:

WILLIAM R. ROSS, being duly sworn, deposes and says: That he is the defendant in the above entitled action; that the defendant was married to the plaintiff on the 27th day of February, 1907, in the City and State of New York, and resided together with his wife, at various addresses in the Borough of Brooklyn, up and until about the 15th day of May, 1909.

Deponent further says that the plaintiff in this action ever since they were married has been a habitual drinker of alcoholic liquors and that deponent has repeatedly found her on returning home from his work, in an intoxicated condition lying on the floor under the influence of liquor. That a child was born to them on the 29th day of July 1908, and that since said date she has been repeatedly and continually under the influence of liquor, and has hardly drawn a sober breath. That she has been repeatedly arrested on charge of intoxication, and deponent has been obliged on various occasions to bail her out, more particu-

larly deponent says she was arrested on the street, in and about the latter part of September, 1908, when the child was but two months old, and was in jail a day and a night, but she was released upon deponent's bail and finally discharged at deponent's request. She was again arrested upon the street in and about the middle of October charged with intoxication and confined in the Station House in the Fifty-fifth Precinct, over night, and as deponent is informed and believes she was discharged upon payment of a fine.

Deponent further says that on or about the middle of November 1909, deponent was residing with the said Eleanor Ross, his wife, at 208 Covert Street, Brooklyn, and that she was continually drunk and under the influence of liquor and that the neighbors complained to the deponent about her condition and conduct and a Mrs. Gerry, residing next door to deponent, told deponent that it was not safe to leave his wife alone in the house as she was continually under the influence of liquor, and deponent was obliged to swear out a warrant for her arrest and Judge O'Reilly, of the Manhattan Court, committed her for six months to the House of Good Shepherd. The deponent prevailed upon by her relatives secured her release in the House of Good Shepherd, and again attempted to live with her, and provide for her in the house which he had furnished at No. 583 Irving Avenue, and there resided until on or about the middle of May, when deponent returned from his work, and found her in an intoxicated condition, unconscious with the infant almost smothered, and her brother attempted for several days to sober her up, and failing in this he called upon deponent and asked deponent to again swear out a warrant and have her committed so that she would not be able to obtain any liquor, and de-

Exhibit P-1

ponent accompanied by her brother, George Graham, went to the Flushing Court, and swore out a warrant for her arrest and she was in such an intoxicated condition before the Court that the Judge refused to hear her plea and sentenced her to jail for ten days before trial.

That deponent then took the child and placed it with his aunt, Mrs. Ross, at No. 147 Cooper Street, Brooklyn. That deponent since the time of his marriage has had her under medical care and attention, and has been obliged to pay out sums of money for her care, and has furnished and provided a good and sufficient home for her.

That deponent owing to her continued use of alcoholic liquors has been unable to continue to reside with her, and that she is a danger and menace to the life of the child and that he has been obliged to pay for the care and support of the child elsewhere.

Deponent further says that he is in the employ of the Brooklyn Rapid Transit Company, as a motorman, and is earning about twelve dollars a week, and it costs him for his own board and the support and maintenance of the child nine dollars a week and that he is obliged to pay for his uniform and over-coats and other neecssary incidental expenses. His salary barely enables him to support himself and the child.

Deponent further says that an action has been brought herein for a separation charging the defendant with cruelty and inhuman treatment and that a verified answer has been served denying such allegations.

WILLIAM R. ROSS.

Sworn to before me this
5th day of August, 1909.

MAX ERDTMANN,
Comm. of Deeds,
for the City of New York.

Exhibit P-1

NEW YORK SUPREME COURT,

QUEENS COUNTY.

ELEANOR J. ROSS,
Plaintiff,

vs.

WILLIAM R. ROSS,
Defendant.

CITY AND STATE OF NEW YORK,
County of Kings, } ss.:
Borough of Brooklyn,

GEORGE GRAHAM, being duly sworn, deposes and says: That he is upwards of twenty-one years of age, and resides at No. 96 Newell Street, Borough of Brooklyn, and that he is the brother of Eleanor J. Ross, the plaintiff herein, and the wife of William R. Ross, in the above entitled action. That he has read the Affidavit of William R. Ross, hereto annexed, and he is familiar with the facts alleged therein, and states upon information and belief that the same are true. That he remembers distinctly that she had been committed to the House of Good Shepherd, by Magistrate O'Rielly, on or about November 1909, and that he visited her on several occasions at the House of Good Shepherd, and upon her promise to amend her ways and to abstain from alcoholic liquors, deponent requested the said William R. Ross, to again take her home and give her another trial. That she did return home as alleged in the Affidavit of William R. Ross, her husband, and that

he continually called at their house thereafter, endeavoring to use his influence in keeping her from liquors, but that it was without avail, and that she had been intoxicated and for the greater part of the time unconscious from the use of liquors, up and until about the 15th day of May 1909, as alleged in the Affidavit of William R. Ross. The said Eleanor J. Ross, the plaintiff, stated to deponent that she was going to leave the house and go to New York, but before she was ready to move she again was in such a condition that deponent could not leave her, and the things could not be removed, so deponent asked her husband, to swear out a warrant for her arrest and that he accompanied her husband, William R. Ross, to the Station House to precure a warrant at the Flushing Court. She was then arrested and deponent assisted the officer in taking her to the Flushing Court, she being in such a condition that she could not walk, and the Magistrate committed her for ten days to the Long Island City Jail before trial. That deponent knows of his own knowledge that while residing with William R. Ross, her husband, she would continually purchase quart bottles of whiskey and would lock herself in the rooms and drink the same.

Deponent states that she is hopeless and a habitual drinker and that she is a danger and menace to the life of the child and is an unfit person to have the custody of the same. That he together with his aunts and relatives have done all within their power and made repeated attempts to render her assistance and take care of her, but have been unable to keep her from liquor. That deponent knows of his own knowledge that her child is now with the aunt of William R. Ross, a Mrs. Ross, at 311 Eldert Street, and has seen

Exhibit P-1

the child there, and it is being well taken care of and has a good home. Deponent further states that he has been with the said Eleanor J. Ross, for a week at a time during her marriage endeavoring to keep her from purchasing liquor and drinking the same, and that she would get away from him and purchase the same, and lock herself in her apartments until she became drunk and unconscious.

GEORGE GRAHAM.

Sworn to before me this,
7th day of August, 1909.

CHARLES T. KUNKEL,
Commissioner of Deeds
for the City of New York.

Exhibit P-1

At a Special Term of the New York Supreme Court held in and for the County of Queens at the Kings County Court House in the Borough of Brooklyn, City of New York, on the 11th day of August, 1909.

PRESENT,

HON. FREDERICK E. CRANE,
Justice.

ELEANOR J. ROSS,
Plaintiff,

vs.

WILLIAM R. ROSS,
Defendant.

On reading and filing a copy of the summons and complaint, affidavit of plaintiff, verified July 29th, 1909, and the notice of motion based thereon dated August 2nd, 1909; the affidavit of William R. Ross, verified August 5th, 1909, and the affidavit of George Graham, verified August 7th, 1909; and after hearing Mr. Anthony Darmstadt, attorney for plaintiff, in favor of, and Messrs. Karutz and Olsen, in opposition to a motion for alimony and counsel fees, and due deliberation having been had,

Now, on motion of plaintiff's attorney, it is,

ORDERED AND ADJUDGED, that defendant pay to plaintiff the sum of Four dollars weekly for her support and maintenance during the pendency of this action and from the commencement thereof, such accrued payments to be made within five days after service of a certified copy of this order on defendant or his attorney, and thereafter each and

every week from the date of this order during the pendency and final determination of this action, all of such payments to be made at the office of plaintiff's attorney. And it is further,

ORDERED AND ADJUDGED, that defendant pay to Anthony Darmstadt, attorney for plaintiff, the sum of Twenty dollars as counsel fees, within ten days after service of a certified copy of this order on defendant or his attorney.

ENTER IN QUEENS COUNTY,

F. E. CRANE,
J. S. C.

Granted
Aug. 11, 1909,
FRANK EHLERS,
Clerk.

All of which we have caused by these Presents to be exemplified, and the Seal of our said Court for said County to be hereunto affixed

WITNESS, HON. ALMET F. JENKS, Presidsiding Justice of our Supreme Court
[SEAL] in and for the Second Judicial Department of said State, this 12th day of March, 1917, and in the 141st year of the Independence of the United States.

ALEX. DUJAT,
Clerk.

Exhibit P-1

I, ALMET F. JENKS, Presiding Justice of the Supreme Court of the State of New York in and for the Second Department thereof, do hereby certify, that Alex. Dujat, whose name is subscribed to the preceding exemplification, is the Clerk of the County of Queens, and Clerk of the Supreme Court in and for said County, and that full faith and credit are due to his official acts.

I FURTHER CERTIFY, that the Seal affixed to said exemplification is the proper Seal of said Court for said County, and that the attestation thereof is in due form of law and by the proper officer.

WITNESS my hand at the Borough of
[SEAL] Queens, this 12th day of March in the year 1917.

ALMET F. JENKS,
Presiding Justice of the Supreme Court of the State of New York in and for the Second Judicial Department.

Exhibit P-1

STATE OF NEW YORK, }
County of Queens, } ss.:

I, ALEX. DUJAT, Clerk of the County of Queens, and also Clerk of the Supreme Court of said County in and for the Second Judicial Department of said State (said Court being a Court of Record), do hereby certify, that Hon. Almet F. Jenks, whose name is subscribed to the foregoing certificate, is Presiding Justice of the Supreme Court of said State in and for the Second Judicial Department, duly elected and sworn, and that the signature of said Justice to said Certificate is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said County and Court, this 12th day of March, in the year 1917.

[SEAL]

ALEX. DUJAT,
Clerk.

Exhibit W-1.

Scows floor 299 Monmouth St. Ross floor



Taken June 9th 1917

Romaine H Spitz
Commercial Photographer