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Notice of Appeal.

(Filed Sept. 28, 1916.)

In Chancery of New Jersey

Between WILLIAM SCHLEMM, *Petitioner,* and LOUISA S. SCHLEMM, *Defendant.*	On Petition for Divorce. Notice of Appeal.

The defendant hereby appeals from the whole and every part of the decree nisi, made in the above-stated cause on the 1st day of May, A. D. 1916, excepting that part thereof directing that the child of the parties to the action be kept within the State of New Jersey and the part directing the petitioner to pay the defendant's solicitor a counsel fee, to the Court of Errors and Appeals, in the last resort in all causes.

Dated, September 25th, 1916.

WELLER & LICHTENSTEIN,
Solicitors for Defendant.

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

JOHN I. WELLER,
ofCounsel with Defendant.

Petition of Appeal.

(Filed Oct. 5, 1916.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between WILLIAM SCHLEMM, *Petitioner-Appellant,* and LOUISA S. SCHLEMM, *Defendant-Respondent.*	On Petition for Divorce. *Petition of Appeal.*

The humble petition of Louisa M. Schlemm, 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 on the first day of May, in the year 1916, wherein William Schlemm was petitioner, and the said Louisa M. Schlemm was defendant and cross-petitioner, i nthis respect, to wit: That the said decree adjudges that "the said defendant has been guilty of the adultery charged against her in the petitioner's petition; that the defendant has not sustained the burden of proof of the material allegations alleged in her cross-petition; that the said William Schlemm and the said Louisa M. Schlemm 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 abso-

lute within six months from the date hereof; and that the cross-petition filed in this cause by the defendant be dismissed; and that the petitioner have the custody, care and educaion of Louisa Marie Schlemm, the infant daughter of the marriage, until the further order of the Court."

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 the 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 that if she had been guilty of adulttry as charged against her in said petition it was by the connivnce of the petitioner, and the petition for divorce should therefore have bten dismissed, and the cross-petition of the defendant should not have been dismissed, but the petitioner should have been adjudged guilty of the adultery therein alleged against him, and an absolute divorce granted to the defendant on said cross-petition.

Your petitioner therefore prays that the said decree may be in the particular aforesaid, reversed, set aside and for nothing holden; and that your petitioner may havt such relief in the premises as to this honorable court shall seem meet.

WELLER & LICHTENSTEIN,
Solicitors for Appellant.

Answer to Petition of Appeal.

(Filed Oct. 28, 1916.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between WILLIAM SCHLEMM, *Petitioner-Appellee,* and LOUISA S. SCHLEMM, *Defendant-Appellant.*	On Petition for Divorce. Answer to Petition of Appeal.

The answer of the above named appellee to the petition of appeal of the above-named appellant:

This appellee, 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 nisi was made in the Court of Chncery of his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 1st day of May, in the year 1914 in a cause for that purpose mentioned in the said petition and as therein stated; but as to the substance and form thereof this appellee prays to refer thereto when the same shall be produced. And this appellee is advised and believes that the said decree is agreeable to equity and prays that the same may be affirmed and made absolute.

J. EMIL WALSHEID,
Solicitor for nd of Counsel with Appellee.

Petition.

(Filed Oct. 29, 1915.)

IN CHANCERY OF NEW JERSEY.

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

The petition of William Schlemm, of the Town of West Hoboken, 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, Louisa M. Vollmer, the defendant in this suit, on the 31st day of January, in the year 1905, at Saint Michael's Roman Catholic Monastery, West Hoboken, New Jersey.

2. Defendant, since her marriage to your petitioner, and on the 24th day of October, 1915, committed adultery with one William Schmidt at a certain dwelling house located at 470 Park Avenue, in the Township of Weehawken, County of Hudson, and State of New Jersey.

3. Petitioner and defendant were bona fide residents of the State of New Jersey when this cause of action arose, the petitioner having always been a resident of this State and the defendant having been a resident of this State from the time of her said marriage to the present time.

4. One child was born of said marriage, to wit, Maria Louisa Schlemm, a daughter, born August 11th, 1907, who is now in the custody of the defendant, who is unfit to have the custody of said child and the welfare of said child requires that she should be removed from the custody of the defendant and restored to that of your petitioner.

5. Your petitioner therefore prays that the marriage between the defendant and your peti-

tioner 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 said child of the marriage; and that he may have such further relief as may be just.

And your petitioner will ever pray, etc.

WILLIAM SCHLEMM,
Petitioner.

J. EMIL WALSCHEID,
Solicitor of Petitioner.

State of New Jersey
County of Hudson } ss.:

William Schlemm, being duly sworn according to law, on his oath deposes and says:

I am the petitioner named in the foregoing petition. Said petition is not made by any collusion between the defendant and me, but in truth and good faith for the causes set forth in the petition.

Sworn and subscribed to before me, this 25th day of October, A. D. 1915.

WILLIAM SCHLEMM.

HENRY VOGLER,
Master in Chancery of New Jersey.

Answer and Cross-Petition.

(Filed Feb. 1, 1916.)

IN CHANCERY OF NEW JERSEY.

Between WILLIAM SCHLEMM, *Petitioner,* and LOUISA S. SCHLEMM, *Defendant.*	On Petition for Divorce. Answer and Cross-Petition.

The answer of Louisa M. Schlemm, defendant, to the petition of William Schlemm, petitioner:

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

2. Defendant denies that since her marriage to petitioner, and on the 24th day of October, 1915, she committee adultery with one William Schmidt, at No. 470 Park Avenue, in the Township of Weehawken, in the County of Hudson and State of New Jersey, as in said petition alleged; or that she committed adultery with said person, or any other person at any time or place, but she says that the said William Schmidt was at her dwelling house at that time, and that his presence there was procured by the connivance of the petitioner.

3. This defendant admits it to be true that the petitioner and this defendant were bona fide residents of the State of New Jersey when the supposed cause of action arose as alleged in the petition and that this defendant has ever since continued to be a bona fide resident of this State

from the time of her marriage down to the present time, residing at the Town of West Hoboken, in the Township of Weehawken, and in the Town of Union.

4. This defendant says that not only one child was born of said marriage, but four children were born; that three of said children are dead, but one child, Louisa Marie Schlemm, who was born on August 10th, 1907, is still living; she says that at the time the petition was drawn the said Louisa Marie Schlemm was in this defendant's custody, but she denies that she is an unfit person to have the custody of said child, and she denies that the welfare of said child requires that she should be removed from the custody of this defendant, and restored to the petitioner. She further alleges that after the petition in this cause was sworn to, the petitioner forcibly took the said child from in front of defendan's home, where she was at play.

And this defendant by way of cross-petition exhibited against the petitioner says:

1. That defendant co-habited with petitioner for about ten years after their marriage.

2. Four children were born of the union between the petitioner and this defendant, three of whom are dead, and one, namely, Louisa Marie Schlemm, now eight years old, is at present in the custody of the petitioner.

3. Pttitioner, since his marriage to this defendant, and in the months of February, March, April, May, June, July, August and September, in the year 1907, committed adultery with one Daisy Hofstetter, at 426 Spring Street, in the Town of West Hoboken, in the County and State aforesaid.

4. The petitioner since his marriage to this defendant, and in the months of January, February, March, April, May, June, July, August and September, 1914, committed adultery with a Mrs. Dort, whose first name is now unknown to this defendant, at No. 310 Traphangen Street, in the Town of West Hoboken, and at other times and places unknown to this defendant.

5. That before the 25th day of November, 1914, while this defendant and the petitioner lived together at No. 374 West Street, in the Town of West Hoboken, the petitioner had been in the habit of remaining out of the house almost every night and until four or five o'clock in the morning, and at one time remained away for two days and two nights without coming home; that on or about said 25th day of November, 1914, this defendant spoke to him about his remaining away from home so much and requested him not to go out of tht house that night, whereupon he flew into a great rage, threw a cup of coffee which he had been drinking, on the table and broke it, and told this dtfendant that if she did not like it she knew where the carpenter had left the door; that this defendant then threw her cup on the table, whereupon he assaulted this defendant by choking her, slapping her across the neck with his flat hand and striking her on the breast with his clenched fist with such severity that her breast afterward became black and blue.

6. That on or about the 9th day of December, 1914, this defendant was nearly five months' pragnant and the petitioner threw $10 on the table and said to her "Here, damn you!" "Go and empty your gut;" that he told her to go to a cer-

tain midwife; that this defendant cried and did not iwshto go, but he compelled her to do so, and she thereafter on or about the 12th day of December, 1914, had a mis-carriage, from which she became very ill for three or four days.

7. That on or about the 20th day of December, 1914, at about ten o'clock at night after this defendant and the petitioner had retired (while they still lived at 374 West Street, in said Town fo West Hoboken), he requested this defendant to sign articles of separation with him, and she refused to do so; that he then proposed to this defendant that she should rent a furnished room in the City of New York; that he would remain where he was and keep the child there where this defendant might visit her and take her out as often as she pleased; that this defendant refused to do so; that he then got out of bed and told this defendant that he was going to leave the house and ge a tdrink; that she tried to dissuade him from going, and tried to hold him back, whereupon he grabbed hold of her and threw htr on the floor.

8. That on or about the 10th day of January, 1915, while this defendant and the petitioner still resided at 374 West Street, in said Town of West Hoboken, she was going from her mother's home to her own home, at about eieven o'clock at night, and had their child with her; that when they passed the saloon of one Multini, at the corner of Spring and Stevens Street, this defendant saw the petitioner's automobile standing in front of the saloon; that her said daughter looked into the saloon and told this defandant that the petitioner was in there drinking; that the petitioner hen

called this defendant into the saloon and said to a man named Heins, "Mr. Heins, this is Mrs. Schlemm;" that he then asked this defendant to sit down and have a glass of wine which she did; that this defendant then started to go home and the said Mr. Heins and Mr. Multini, the proprietor of the saloon, asked this defendant to stay; that the petitioner thne jumped up and called this defendant a "son-of-a-bitch," a "whore," and every vile name that he could think of; that this defendant then grabbed a wine bottle and broke a glass with it, whereupon the petitioner ran across the street and went into another saloon owned by a man named Gessner; that this defendant then told him to come home with her; that he was at that time drinking at the bar with two other men, and he grabbed the three glasses they were drinking from and threw then at this defendant, but missed her; that this defendant then told the said Gessner that he ought to have better sense than to keep the petitioner there; that the petitioner was a young man and that he could see that he was drunk, whereupon the said Gessner shut the door in this defendant's face, and she then broke the glass of the door with her umbrella, after which she went to her home, at 374 West Stret, aforesaid, but did not retire; that at about 3 o'clock in the morning of the next day, the petitioner came to the house; that this defendant was in fear of him, and knowing that he loved their child, she told her to go to the door; that said child opened the door and this defendant heard the petitioner say to her "Tell Mama I will be back in about fifteen minutes;" that thereafter she heard him rummaging on the floor below, and

then saw him going away with his clothing in a bag, since which time he has not lived with her.

9. That the petitioner was in the habit of using intoxicating liquors to excess and came home drunk almost every night; that when he was under the influence of liquor he was very abusive an dwas in the habit of calling this defendant all kinds of vile names, such as "whore," "bitch," "son-of-o-bitch," and other vile and indecent names, in the presence of their child.

10. That thereafter on the 22nd day of January, 1915, the petitioner had articles of separation drawn, and they were executed by this defendant, and the petitioner, giving this defendant the custody of her child and permission to live with such family and families, relatives, friends and other persons as she might see fit, and stipulating therein not to sue her or suffer her to be sued for living separate and apart from him.

11. Defendant and petiioner have been both bona fide residents of the State of New Jersey for the period stated in petitioner's petition, and as admitted in the preceding part of this answer.

12. Defendant's maiden name was Louisa M. Vollmer.

13. Defendant prays that the marriage between this defendant, as cross-petitioner, and the petitioner, as defendant, to the said cross-petitioner, may be dissolved for the cause aforesaid, according to the statute in such case made and provided; that she may be awarded the custody of their said daughter, Louisa Marie Schlemm; that she may be permitted to resume the use of her maiden

name; and that she may have such further and other relief as may be just.

And this defendant will ever pray, etc.

WELLER & LICHTENSTEIN,
Solicitors for Defendant-Cross-Petitioner.

State of New Jersey,
County of Hudson. } ss.

LOUISA M. SCHLEMM, being duly sworn according to law, upon her oath deposes and says that she is the cross-petitioner named in the foregoing cross-petition; and that her said cross-petition is not made by any collusion between her and the petitioner (cross-defendant), but in truth and good faith, for the causes set forth in the cross-petition.

LOUISA M. SCHLEMM.

Sworn and subscribed to before me this 22nd day of November, A. D. 1915.

RICHARD W. GUTHEIL,
Notary Public of New Jersey.

Order to Amend Amended Answer, Etc.

(Filed April 3, 1917.)

IN CHANCERY OF NEW JERSEY.

Between, WILLIAM SCHLEMM, *Petitioner,* and LOUISA M. SCHLEMM, *Defendant.*	On Pet.., Etc. Order to Amend Amended Answer, Etc.

It appearing to the court that at the hearing of the above entitled cause the solicitors of the defendant-cross-petitioner were requested to prepare an order to amend the amended answer and cross-petition filed in said cause by transposing some of the matters set out in the answer to the cross-petition, but that no order was presented to the court at that time; and it further appearing that the cause was tried as if said answer and cross-petition had been amended, and that an amended answer and cross-petition was prepared by the solicitors for the defendant, which said answer and cross-petition is hereto annexed, but that the same was not marked filed;

It is, on this second day of April, 1917, as of the fifteenth day of April, 1916, on motion of Weller & Lichtenstein, solicitors for the defendant, the petitioner consenting thereto, ORDERED that the annexed answer and cross-petition be filed in the place and stead of the amended answer and cross-petition be filed in the place and stead of the

amended answer and cross-petition heretofore filed in the above cause.

Respectfully advised,

M. T. ROSENBERG,
Advisory Master.

EDWIN R. WALKER,
C.

I hereby consent to the making of the above order.

J. EMIL WALSCHEID,
Solicitor for Petitioner.

Amended Answer and Cross-Petition.

(Filed April 3, 1917.)

IN CHANCERY OF NEW JERSEY.

Between, WILLIAM SCHLEMM, *Petitioner,* and LOUISA M. SCHLEMM, *Defendant.*	On Pet., Etc. Amended Answer and Cross-Petition.

The amended answer of Louisa M. Schlemm, defendant, to the petition of Wililam Schlemm, petitioner:

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

2. Defendant denies that since her marriage to petitioner, and on the 24th day of October, 1915, she committed adultery with one William Schmidt, at No. 470 Park Avenue, in the Township of Weehawken, in the County of Hudson and State of New Jersey, as in said petition alleged; or that she committed adultery with said person, or another person, at any time or place, but she says that the said William Schmidt was at her dwelling house at that time, and that his presence there was procured by the connivance of the petitioner.

3. This defendant admits it to be true that the petitioner and this defendant were bona fide residents of the State of New Jersey when the supposed cause of action arose as alleged in the petition and that this defendant has ever since continued to be a bona fide resident of this State from the time of her marriage down to the present time, residing at the Town of West Hoboken, in the Township of Weehawken, and in the Town of Union.

4. This defendant says that not only one child was born of said marriage, but four children were born; that three of said children are dead, but one child, Louise Marie Schlemm, who was born on August 10th, 1907, is still living; she says that at the time the petition was drawn the said Louisa Marie Schlemm was in this defendant's custody, but she denies that she is an unfit person to have the custody of said child, and she denies that the welfare of said child requires that she should be removed from the custody of this defendant, and restored to the petitioner. She further alleges that after the petition in this cause was sworn to,

the petitioner forcibly took the said child from in front of defendant's home, where she was at play.

5. That before the 25th day of November, 1914, while this defendant and the petitioner lived together at No. 374 West Street, in the Town of West Hoboken, the petitioner had been in the habit of remaining out of the house almost every night and until four or five o'clock in the morning, and at one time remained away for two days and two nights without coming home; that on or about said 25th day of November, 1914, this defendant spoke to him about his remaining away from home so much and requested him not to go out of the house that night, whereupon he flew into a great rage, threw a cup of coffee which he had been drinking, on the table and broke it, and told this defendant that if she did not like it she knew where the carpenter had left the door; that this defendant then threw her cup on the table, whereupon he assaulted this defendant by choking her, slapping her across the neck with his flat hand and striking her on the breast with his clenched fist with such severity that her breast afterward became black and blue.

6. That on or about the 9th day of December, 1914, this defendant was nearly five months' pregnant and the petitioner threw $10 on the table and said to her, "Here, damn you!" "Go and empty your gut;" that he told her to go to a certain midwife; that this defendant cried and did not wish to go, but he compelled her to do so, and she thereafter on or about the 12th day of December, 1914, had a mis-carriage from which she became very ill for three or four days.

7. That on or about the 20th day of December, 1914, at about ten o'clock at night after this defendant and the petitioner had retired (while they still lived at 374 West Street, in said Town of West Hoboken), he requested this defendant to sign articles of separation with him, and she refused to do so; that he then proposed to this defendant that she should rent a furnished room in the City of New York; that he would remain where he was and keep the child there where this defendant might visit her and take her out as often as she pleased; that this defendant refused to do so; that he then got out of bed and told this defendant that he was going to leave the house and get a drink; that she tried to dissuade him from going, and tried to hold him back, whereupon he grabbed hold of her and threw her on the floor.

8. That on or about the 10th day of January, 1915, while this defendant and the petitioner still resided at 374 West Street, in said Town of West Hoboken, she was going from her mother's home to her own home, at about eleven o'clock at night, and had their child with her; that when they passed the saloon of one Multini, at the corner of Spring and Stevens Street, this defendant saw the petitioner's automobile standing in front of the saloon; that her said daughter looked into the saloon and told this defendant that the petitioner was in there drinking; that the petitioner then called this defendant into the saloon and said to a man named Heins, "Mr. Heins, this is Mrs. Schlemm;" that he then asked this defendant to sit down and have a glass of wine which she did; that this defendant then started to go home and the said Mr. Heins and Mr. Multini, the proprietor of the saloon,

asked this defendant to stay; that the petitioner then jumped up and called this defendant a "son-of-a-bitch," a "whore," and every vile name that he could think of; that this defendant then grabbed a wine bottle and broke a glass with it, whereupon the petitioner ran across the street and went into another saloon owned by a man named Gessner; that this defendant then told him to come home with her; that he was at that time drinking at the bar with two other men, and he grabbed the three glasses they were drinking from and threw them at this defendant, but missed her; that this defendant then told the said Gessner that he ought to have better sense than to keep the petitioner there; that the petitioner was a young man and that he could see that he was drunk, whereupon the said Gessner shut the door in this defendant's face, and she then broke the glass of the door with her umbrella, after which she went to her home at 374 West Street aforesaid, but did not retire; that at about 3 o'clock in the morning of the next day, the petitioner came to the house; that this defendant was in fear of him, and knowing that he loved their child, she told her to go to the door; that said child opened the door and this defendant heard the petitioner say to her "Tell Mama I will be back in about fifteen minutes;" that thereafter she hear him rummaging on the floor below, and then saw him going away with his clothing in a bag, since which time he has not lived with her.

9. That the petitioner was in the habit of using intoxicating liquors to excess and came home drunk almost every night; that when he was under the influence of liquor he was very abusive and was in the habit of calling this defendant all kinds of vile

names, such as "whore," "bitch," "son-of-a-bitch," and other vile and indecent names, in the presence of their child.

10. That thereafter on the 22nd day of January, 1915, the petitioner had articles of separation drawn, and they were executed by this defendant, and the petitioner, giving this defendant the custody of her child and permission to live with such family and families, relatives, friends and other persons as she might see fit, and stipulating therein not to sue her or suffer her to be sued for living separate and apart from him.

11. Petitioner has been endeavoring to rid himself of this defendant for more than two years and in the month of February, 1914, through himself and his agents, connived to have her commit adultery with one Arthur Gabain; that after that time they separated but in August, 1914, resumed cohabitation as husband and wife.

12. Thereafter and after the articles of separation herein mentioned had been executed by the parties hereto and they had separated, petitioner again, by himself and his agents, connived to have this defendant commit adultery with one William Schmidt and to that end they conspired and confederated themselves together, to have her and the said William Schmidt found in a compromising position.

This defendant therefore prays to be hence dismissed with her reasonable costs and charges.

And this defendant by way of cross-petition exhibited against the petitioner says:

1. That defendant cohabited with petitioner for about ten years after their marriage.

2. Four children were born of the union between the petitioner and this defendant, three of whom are dead and one, namely, Louisa Marie Schlemm, now eight years old, is at present in the custody of the petitioner.

3. Petitioner, since his marriage to this defendant, and in the months of February, March, April, May, June, July, August and September, in the year 1907 committed adultery with one Daisy Hofstetter, at 436 Spring Street, in the Town of West Hoboken, in the County and State aforesaid.

4. The petitioner since his marriage to this defendant, and in the months of January, February, March April, May, June, July, August and September, 1914 committed adultery with a Mrs. Dort, whose first name is now unknown to this defendant, at No. 310 Traphagen Street, in the Town of West Hoboken, and at other times and places unknown to this defendant.

5. Petitioner, since his marriage to this defendant, and in the months of September, October, November and December, 1913, committed adultery with one Lillie Delvey, at No. 426 Spring Street, in the Town of West Hoboken, in the County and State aforesaid.

6. Defendant and petitioner have been both bona fide residents of the State of New Jersey for the period stated in petitioner's petition, and as admitted in the preceding part of this answer.

7. Defendan't maiden name was Louisa M. Vollmer.

8. Defandant prays that the marriage between this defendant as cross-petitioner, and the petitioner, as defendant, to the said cross-petition, may be dissolved for the cause aforesaid, according to

the statute in such case made and provided; that she may be awarded the custody of their said daughter, Louisa Marie Schlemm; that she may be permitted to resume the use of her maiden name; and that she may have such further and other relief as may be just.

And this defendant will ever pray, etc.

WELLER & LICHTENSTEIN,
Solicitors for Petitioner, Cross-Petitioner.

State of New Jersey,
County of Hudson. } ss.

Louisa M. Schlemm being duly sworn, according to law, upon her oath deposes and says that she is the petitioner in the foregoing cross-petition named, and that her said cross-petition is not made by any collusion between her and the petitioner (cross-defendant), but in truth and good faith for the causes set forth in the cross-petition.

LOUISA M. SCHLEMM.

Sworn and subscribed to
before me this 15th day
of April, A. D., 1916.

RICHARD M. GUTHEIL,
Notary Public of New Jersey.

Answer to Cross-Petition.

(Filed February 9, 1916.)

IN CHANCERY OF NEW JERSEY.

Between WILLIAM SCHLEMM, *Petitioner,* and LOUISA S. SCHLEMM, *Defendant.*	On Petition for Divorce. Answer to Cross-Petition.

The answer of William Schlemm, the above-named petitioner, to so much of the answer of Louisa M. Schlemm, the above-named defendant, as is in the nature of a cross-petition:

1. This petitioner, as defendant in said cross-petition, admits it to be true that defendant cohabited with petitioner for about ten years after their marriage.

2. Petitioner denies that four children were born of the union between this petitioner and this defendant. He states that there were only two children born of the union between your petitioner and the defendant, that one died and that one is now living, namely, Louisa Marie Schlemm, now eight years of age.

3. This petitioner denies that since his marriage to this defendant, and in the months of February, March, April, May, June, July, August and September, in the year 1907, committed adultery with one Daisy Hofstetter, at 426 Spring Street, in the Town of West Hoboken, in the County and State aforesaid as in the cross-peti-

tion alleged, or that he committed adultery with said person or any other person at any time or place.

4. The petitioner denies that since his marriage to this defendant, and in the months of January, February, Mary, April, May, June, July, August and September, 1914, committed adultery with a Mrs. Dort, at No. 310 Traphagen Street, in the Town of West Hoboken as in the cross-petition alleged or that he committed adultery with said person or any other person at any time or place.

5. Petitioner denies that since his marriage to the defendant and in the months of September, October, November and December, 1913, he committed adultery with one Lillie Delvey, at 426 Spring Street, in the Town of West Hoboken, in the County and State aforesaid as in the cross-petition alleged or that he committed adultery with said person or any other person at any time or place.

6. This petitioner specifically dtnies each and every allegation of fact contained in paragraph 6, 7, 8, 9 and 10 of said cross-petition.

7. This petitioner admits the truth of the facts alleged in paragraphs 11, 12 and 13 of said cross-petition.

8. And this defendant further answering said cross-petition says that heretofore and on or about the 2nd day of April, A. D. 1914, he had separated himself from defendant and had filed his petition against the said defendant in this Court for divorce on the ground of adultery, alleging that said defendant had committed adultery on the 30th day of March, A. D. 1914, with

one Harry Gabain, at the Amsterdam Hotel, corner of Twenty-fifth Street and Lexington Avenue, in the City of New York, County of New York and State of New York; that said defendant answered said petition denying her guilt; that thereafter and on the 2nd day of August, 1914, your petitioner condoned said act of adultery then committed by defendant with said Harry Gabian and renewed matrimonial cohabitation with her and treated her with conjugal kindness until January 22nd, 1915 when your petitioner separated by agreement and that the said defendant at the time of the renewal of matrimonial cohabitation as foresaid with full knowledge of the supposed acts of adultery in said cross-petition charged to petitioner, did then and there condone the same.

This defendant therefor prays that said cross-petition may be dismissed.

WILLIAM SCHLEMM,
Petitioner and Defendant to Cross-Petition.

Order of Reference.

(Filed February 9, 1916.)

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM SCHLEMM,
Petitioner,

and

LOUISA S. SCHLEMM,
Defendant.

On Petition for Divorce. Order of Reference.

Upon opening this matter to the Court by J. Emil Walscheid, solicitor of the petitioner, and Messrs. Weller & Lichtenstein, solicitors of the defendant, consenting thereto, it is on this 9th day of February, A. D. 1916, ordered that the above cause be and the same hereby is referred to Maximilian T. Rosenberg, Esq., Advisory Master of this Court to hear the same for the Chancellor and to report thereon to him and advise what decree should be made therein.

E. R. WALKER,
C.

We hereby consent to the making and entry of the above order and notice thereof is hereby waived.

WELLER & LICHTENSTEIN,
Solicitors of Defendant.

A true copy.

ROBERT H. McADAMS,
Clerk.

Testimony.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM SCHLEMM,
Petitioner,

and

LOUISA M. SCHLEMM,
Defendant.

} On Petition, &c

Transcript of the shorthand report of the testimony and proceedings taken in the above-stated cause, at the Chancery Chambers in Jersey City, on Thursday, March 9, 1916, at ten o'clock in the forenoon, before His Honor

MAXIMILIAN T. ROSENBERG,
Advisory Master.

Appearances:

J. EMIL WALSCHIED, Esq.,
For the Petitioner,

JOHN I. WELLER, Esq.,
For the Defendant.

THE MASTER (After reading the papers) What are these charges of cruelty?

MR. WELLER: That was put in for the purpose of showing connivance.

THE MASTER: Connivance is a defense; what is the cross-petition for? You have in the fourth paragraph of your cross-petition the charge of adultery on the part of the petitioner, and also in the fifth para-

graph you charge adultery. Now, in the sixth, seventh, eighth and ninth and tenth paragraphs you are charging acts of cruelty. What place have those acts of cruelty in your cross-petition?

MR. WELLER: Well, if I have made an error—I thought that was the proper place to put them.

THE MASTER: What is the object of your pleading them at all?

MR. WELLER: To show connivance.

THE MASTER: Then they really have no place in your cross-petition, but should be a part of your answer.

MR. WELLER: Then I ask leave to amend.

THE MASTER: You needn't do that; you may amend your answer to show connivance, and in alleging connivance you needn't set up the specific circumstances from which I would conclude there was connivance; it would be sufficient to have a general allegation that the petitioner did not procure the adultery. These allegations have really no place in the cross-petition. I will go on with the trial, and you can between you have the proper order made for the amendment of these pleadings. Call your first witness.

FREDERICK SCHOENFELD, sworn on behalf of the petitioner, testifies as follows:

Direct Examination by Mr. Walschied:

Q. Mr. Schoenfeld, where do you live? A. 506 Hudson avenue, Weehawken.

Q. What is your business? A. Furniture.

Q. Are you in business for yourself? A. No, sir.

Q. With whom are you in business? A. Kramer & Company.

Q. And where are they? A. In West Hoboken.

Q. Do you know the complainant in this case? A. Yes, sir.

Q. Mr. William Schlemm? A. Yes, sir.

Q. And do you know his wife, Louisa, M. Schlemm? A. Yes, sir.

Q. How long have you known them? A. Oh, I should judge for the last ten, twelve, or fifteen years.

Q. And do you know where they have lived during that time? A. Yes, sir.

Q. Where have they lived during that time? A. On High Point avenue, on Spring street, and on the corner of West and Smith.

Q. You have known them as living together as man and wife? A. Yes, sir.

Q. Did you visit them at any time? A. No, I won't say that,—outside of visiting Mr. Schlemm in the office. I have never been in the house—yes, I have, too.

Q. On the 24th day of October, 1915, did you go any place with Mr. Schlemm? A. Yes, sir.

Q. Where did you go with him? A. On Park avenue to a building they call the Palace Court.

Q. Park avenue where? A. Weehawken.

Q. In the Township of Weehawken? A. Yes, sir.

Q. What time of the day or night was it you went there? A. I should judge it was around two o'clock in the morning.

Q. Who were with you? A. Mr. Schlemm and a gentleman by the name of Corridon.

Q. And from where did you start to go to this place? A. From Mr. Schlemm's office.

Q. And when you arrived there what did you do?

THE MASTER: Where?

MR. WALSCHIED: At this Palace Court.

A. What did I do?

Q. Yes. A. Well, I stood out in the rear of the building until Mr. Schlemm called me in the room.

Q. You stood in the rear of Palace Court? A. Yes.

Q. At a window? A. Yes.

Q. Had you been placed at that window? A. I went there of my own free will.

Q. Was this window that you have referred to on the ground floor? A. On the ground floor, yes, sir.

Q. Was it open during any part of the proceedings? A. It was opened by Mr. Schlemm.

Q. From the inside? A. From the inside.

Q. And then after it was opened by Mr. Schlemm from the inside what, if anything, did you see on the inside? A. Mr. Schlemm opened the window and he called me to come in and I saw

Mr. Schlemm, Mr. Corridon, Mrs. Schlemm, and a gentleman I think by the name of Schmidt.

Q. Schmidt hadn't gone there with you, had he? A. No, sir.

Q. Did you know this man Schmidt? A. No, sir; this was the first time I had seen him.

Q. When you were called in, into what kind of a place were you called? A. Into a bedroom.

Q. How many bedrooms did you see there? A. Just one.

Q. Was this an apartment house, this Palace Court? A. This was an apartment house, yes, sir.

Q. Can you say how many rooms there were in this apartment? A. I only seen three rooms.

Q. You saw only three rooms? A. Yes.

Q. One of which was a bedroom? A. One of which was a bedroom.

Q. Did you see Mrs. Schlemm there? A. Yes, sir.

Q. How was she dressed? A. In her night-gown.

Q. And nothing else on? A. Nothing else.

Q. How was Mr. Schmidt dressed? A. He had on his undershirt, that's all.

Q. What was the condition of the bed? A. Well, it looked as if it was used.

Q. Anybody else in the apartment beside you and Schlemm and Corridon and Schmidt and Mrs. Schlemm? A. No, sir, not at that time.

Q. Did you hear any conversation after you got into the apartment there? A. Yes, sir.

Q. What did you hear? A. Well, I heard Mrs. Schlemm, after I went outside to get two policemen.

Q. You went out to get two policemen? A. Yes.

Q. And did you bring in two policemen? A. I brought in two policemen, yes, sir.

Q. And you came in with those two policemen? A. Yes.

Q. And then you say you heard some conversation when you came back? A. Yes.

Q. Did you hear any conversation before that? A. Yes, quite a bit, but that conversation was between Mr. Schlemm and Mrs. Schlemm and Mr. Corridon.

Q. What did you hear before you went out to get the policemen? A. Well, Mrs. Schlemm passed the remark: "Well, you have got me again," and he should have said—

Q. Don't say what he should have said; what did you hear him say? A. He says, "Well, I have got you again," and Mrs. Schlemm says, "well, I found a man that I like better than I did you."

Q. You heard that before— A. Before the policemen came in.

Q. Did you hear anything alse before the policemen came in? A. Well, I heard practically a lot of it, but I can't just recall. They were talking among themselves. I stood a little further back in the room, not paying very much attention to that.

Q. And then after you came back with the two policemen what did you hear in the line of conversation by Mrs. Schlemm. A. She started to accuse me and a whole lot of other people.

Q. But that doesn't tell us anything. A. She passed the remark while she was putting on her shoes that all he was after was the little one, and he wasn't going to get the little one because she

could prove that he was not the father of that girl.

Q. Speaking about the child? A. Yes.

Q. You know they have a child? A. Yes, sir; I knew that.

Q. What did he say to that, if anything? A. Mr. Schlemm was in the other room with Mr. Corridon and this gentleman by the name of Schmidt.

Q. She said this to you? A. To I and the two policemen.

Q. Anything else that she said, that you remember? A. Nothing that I can think of just now.

Q. Well, how long did you stay there? A. I should judge we were in there three-quarters to an hour, I should think.

Q. You say Mr. Schlemm and Mr. Corridon were in the other room? A. Yes, sir.

Q. You don't know what took place in there, do you? A. No, I wouldn't know what took place in there.

Cross-Examination by Mr. Weller:

Q. You say you started from Mr. Schlemm's place on Spring street? A. Yes, sir.

Q. What time did you start from there? A. Oh, I should judge around one o'clock or a quarter after one.

Q. How did you happen to be up at that time of night? A. Well, we played cards.

Q. Did you play cards that night? A. Yes, sir.

Q. And whom did you go down with when you

went to Park avenue to Palace Court? A. I went down alone.

Q. Went down all alone? A. Yes, sir.

Q. And you left there about one o'clock to go down there alone? A. Yes, sir.

Q. How did you happen to do that? A. I was told to go down; in fact, I wanted to go down.

Q. Who told you? A. Mr. Schlemm.

Q. What did he say to you? A. Simply said, "Go down and look at the place and watch the place and see if anybody else goes out or in."

Q. Did he tell you what was going on? A. They had an idea.

Q. What did he say that was? A. Somebody in the room with his wife.

Q. How did he know that? A. Why, he must have got information from somewheres; I don't know where he got the information from or how he got it. He got the information; I don't know how he got it.

Q. Tell me now just what he said to you. A. He told me that night—he said, "I think we can get her tonight."

Q. What time was it he told you that? A. I think it was around one o'clock. It wasn't more than ten or fifteen minutes after I left the place.

Q. You had gone there what time that night? A. I should judge around one o'clock.

Q. (*By the Master*) At the time you went to Schlemm's office? A. Oh, that was after ten o'clock at night; I should judge a quarter after ten at night.

Q. And after you got there how soon did he tell you "I think we are going to get her tonight"? A. About one o'clock in the morning.

Q. Didn't tell you before that? A. No, sir.

Q. How did he happen to find out all of a sudden that he was likely to get her that night? A. As much as I know, he got a telephone call, I think.

Q. Whom was that call from? A. I don't know; I haven't the least idea. I was at least fifty feet away from the telephone when it came?

Q. Didn't he tell you from whom it came? A. I don't remember whether he did or not. All he told me, as much as I can remember, is "I think we can get her tonight." ?

Q. Didn't he tell you that Anna Stenek telephoned him? A. I don't know whether he did or not.

Q. Would you say that he did not? A. I wouldn't say that he did or didn't; all he said was that he would get her.

Q. And then he said, "You go ahead down there," did he? A. Yes, sir.

Q. What did he tell you to do when you got down there? A. Just watch the building, that's all, if anybody comes in or goes out.

Q. When was it you were sent to the rear of the building? A. Oh, I should judge around—we stood at that corner I should judge at least three-quarters of an hour; five minutes to two, I should say.

Q. How did you go down there, on foot? A. On foot.

Q. You have known Schlemm, you say, for a long time? A. Yes.

Q. Ten or fifteen years? A. Yes.

Q. And you and he are very friendly? A. Yes, sir.

Q. What time of the night was it that that telephone message came? A. About one o'clock.

Q. You stopped playing cards and started right out? A. I should judge ten or fifteen minutes after.

Q. Do you play cards every night that you go down there? A. Not every night.

Q. You just played this night because you were waiting for something? A. No, Saturday nights we generally play until that time.

Q. Until when? A. One, or half past one.

Q. Now, when you went in the house where did you find Mrs. Schlemm when you went in? A. No, I went down to the corner with Mr. Schlemm.

Q. No, Mrs. Schlemm? A. She was inside in the bedroom.

Q. Was she in the bedroom? A. Yes, sir.

Q. Wasn't she in the front parlor? A. No, sir.

Q. Where was Mr. Schmidt? A. In the bedroom.

Q. Both in the bedroom? A. Positively.

Q. How long was it after Mr. Schlemm had entered that you entered? A. I should figure about five minutes or seven minutes.

Q. Where was it that Mr. Schlemm went to talk with Schmidt? A. In the bedroom.

Q. Was Mrs. Schlemm there then when he went to talk with Schmidt? A. No, she was sitting in the room with the two policemen and I.

Q. In the front room? A. Yes sir.

Q. How long did Mr. Schlemm stay in there talking with Schmidt? A. I should judge about five minutes.

Q. You couldn't hear what they were talking about? A. No.

Q. Was the door shut? A. Half closed, I should say.

Q. Do you know who closed it, or partly closed it? A. I can't say.

Q. Were they in the bedroom when you first came in or did they go in and talk it over afterwards? A. You mean, who was in the bedroom?

Q. Was Schmidt and Mr. Schlemm in that bedroom when you first went in the house? A. Yes, they were in the bed-room.

Q. Could you see them? A. Positively.

Q. Mrs. Schlemm was not in the bedroom? A. She came out of the bedroom.

Q. I thought you said she sat in the parlor with the two policemen? A. I didn't sav anything about the parlor.

Q. Where did she sit? A. Sat on the side of the bed in the bedroom while she was putting on her shoes.

Q. Was she dressed? A. Partly dressed.

Q. What did she have on? A. Had on a dress; just putting it on.

Q. When you came in? A. From the outside she had only a nightgown on.

Q. When did she put on her dress? A. After that.

Q. She put it right on in that room? A. Yes, sir.

Q. Now, you say you came in five or seven minutes after Mr. Schlemm went in? A. I figure that, yes.

Q. That is right, is it? A. About that time, yes, sir.

Q. And when you came in they were all in the bedroom? A. Yes, sir.

Q. And Mrs. Schlemm came out of the bedroom? A. About five or ten minutes after that.

Q. You didn't go into the bedroom? A. Yes.

Q. When you came in, five or seven minutes after Mr. Schlemm went in, then you went into the bedroom? A. Yes, sir.

Q. Who was in the bedroom? A. Mr. Schlemm, Mrs. Schlemm, Mr. Corridon, and Mr. Schmidt.

Q. How did you happen to go out and leave the rest in there? A. When I came in I came in through the window—walked through the window into the next room.

Q. Walked right through into the next room? A. Yes, and stood in the doorway.

Q. Did you stop any length of time in the bedroom? A. Long enough to see who was in the bedroom.

Q. When you got there Mr. Schlemm was there, Mrs. Schlemm was there, Schmidt was there, and Corridon was there? A. Yes.

Q. When was it you went for the policemen? A. I should judge fifteen or twenty minutes after I was in the building.

Q. After you came in what was it that Mrs. Schlemm said? A. Why, she said that she had found somebody that she liked better and he needn't try to get the child because she could prove it wasn't his.

Q. Before that you said she said "he has got me again." A. Yes, she said that.

Q. She said that five minutes after Schlemm went in there? A. I wouldn't say five minutes; shortly after that.

Q. As a matter of fact, didn't Mr. Schlemm tell you she said that? A. No.

Q. Didn't you think it was strange she would say such a thing as that five or seven minutes after Mr. Schlemm went in there and found her there? A. No, she said a whole lot of things in a minute.

Q. (*By the Master*) You said a little while ago she said "he has got me again." A. Mr. Schlemm said, "I have got you again," and she said, "Yes, and I have got somebody I like better."

Q. She never said "You have got me again?" A. No, I didn't mean to say that.

Q. Then Schlemm waited seven minutes before he said "I have got you again?" A. Might be that, yes.

Q. And she said, "I have found somebody I like better than you?" A. Yes.

Q. Do you know whether she had seen Mr. Schmidt before that night or not? A. No.

Q. How long had you known Mr. Schmidt? A. That was the first time I had seen him.

Q. (By the Master) How did you know it was Mr. Schmidt? A. I got that from the man himself, and from the card that he had in his pocket.

Q. What did he say about taking the child? A. What did who say?

Q. Mr. Schlemm. Did he say he was going to take the child? A. He asked where the child was.

Q. What did she say? A. Why, she didn't know.

Q. She said she didn't know? A. Yes, sir, she said she didn't know.

Q. You didn't look through the house to see if the child was there? A. I didn't, no, sir.

Q. About how long did Schmidt stay in this bedroom? A. I should say about five to ten minutes.

Q. Did you hear what Mr. Schlemm said to Schmidt? A. No, sir.

Q. Didn't hear anything that he said to him? A. No.

Q. When Schmidt came out of the bedroom did he come alone or did he come out with Schlemm? A. Came out alone—I don't remember whether he came out alone or not.

Q. Don't remember that? A. I didn't pay much attention to who came out of the room first.

Q. Did you see them in the room where Mrs. Schlemm was after they came out of the bedroom? A. They were in the room together; that is all I remember.

Q. When they came out where Mrs. Schlemm was did you hear any talk between them—between Schmidt and Schlemm? A. No.

Q. Not a word? A. Not then, no.

Q. Did they stand together in the room or apart? A. Why, apart; they wasn't exactly together.

Q. Well now, the policemen came in, and then what happened? A. Only that remark that she passed, saying that she could prove that he was not the father of the child.

Q. Did you go away leaving those policemen sitting in there in the room? A. No, sir, they were in the room right along.

Q. When did you go out of the room? A. We went out of the room together.

Q. Who did? A. All of us; we went out of the room of the apartment together—all of us.

Q. And the place was locked then? A. It couldn't have been locked, because it was an apartment.

Q. You all went out on the street; did Mr. Schlemm have his automobile down there? A. No, sir.

Q. When you got down in the street where did you go? A. I went directly home.

Q. What talk was there when you got down on the street? A. Schmidt, or whatever his name is —Smith, I imagine his name was—he was creating a scene and all this and that, and asked to be protected, so that his mother wouldn't hear about it.

Q. What did you take those policemen there for? A. Because Mrs. Schlemm was firing furniture around the house.

Q. And you took the policemen there to protect her furniture? A. Not to protect her furniture, but the other fellows—not to protect her furniture, but to protect every one of us.

Q. You took the policemen there for protection? A. Yes, sir.

Q. Is it not a fact that you took the policemen there to arrest Mrs. Schlemm? A. I did not, no sir; it was to protect us.

Q. (*By the Master*) Did you call the policemen on your own volition or at the request of somebody else? A. Why, they mentioned about getting a policeman and I didn't do that until afterwards.

Q. Who is "they?" A. Mr. Schlemm and Mr. Corridon. I didn't think it was necessary until they were throwing clocks around.

Q. (By the Master) And then you went out after the policemen on your own motion? A. (The witness did not answer).

Q. You didn't throw any eight-day clocks around?

MR. WALSCHIED: What is the peculiarity about the eight-day clock?

Q. What tlse did she throw around, lounges, or tables, or anything of that sort? A. No; button-hook, or something like that.

Q. You don't call a button-hook furniture, do you? A. No.

Q. Whom did she throw this button-hook at? A. She threw it at Mr. Schlemm.

Q. Then it was to protect Mr. Schlemm that you brought the polimemen there? A. Not only Mr. Schlemm but the rest of us.

Q. Was there anything said about locking her up when you came with the officer? A. Yes, I think there was.

Q. Now just tell us about that. A. All I heard was to lock her up.

Q. Nothing was said about locking up Mr. Schmidt? A. I don't remember that.

Q. Don't you remember anything about that? A. No.

Q. Why, you were there? A. Yes I was there, surely.

Q. Didn't Schlemm say "lock her up and let Schmidt go?" A. I don't remember hearing that.

Q. When you went out of the apartment did Mrs. Schlemm go with you also? A. She went as far as the door.

Q. But she did not go out? A. No.

Q. She stayed there? A. I think so.

Q. Schmidt went out with you people? A. Schmidt went out.

Q. Whom did he walk with when you went out? A. I don't know that he walked with anybody.

Q. Is it not a fact that he walked with Mr. Schlemm? A. I don't remember.

Q. Did he not talk with Mr. Schlemm when they went down the street? A. I don't remember.

Q. What did Schmidt say? A. Just as I said, that he didn't want his mother to get wind of this.

Q. When he said that what did Schlemm say? A. I don't remember what Mr. Schlemm said to that.

Q. That was after they had got down on the street? A. Yes.

Q. The officers didn't arrest anyone? A. We went away before the officers did.

Q. (*By the Master*) Who are "we"? A. Mr. Corridon, Mr. Schmidt and I.

Redirect Examination by Mr. Walschied:

Q. On Saturdays you usually close your business about ten o'clock at night, do you not? A. I generally leave about ten o'clock, yes.

Q. Tell us about Mrs. Schlemm firing things around; when did that happen? A. Why after we got in the room, after we were in the room about five or six or seven minutes, she got hold of a big clock and threw that around.

Q. Whom did she throw that at? A. Mr. Schlemm.

Q. Did you see her strike anybody? A. Yes, she struck Mr. Corridon.

Q. You said something about button-hooks— A. I imagine it was button-hooks or something she took off the dresser.

Q. Whom did she throw that at? A. Mr. Schlemm.

TIM. M. CORRIDON sworn on behalf of the petitioner, testified as follows:

Direct Examination by Mr. Walschied:

Q. Mr. Corridon, where do you reside? A. 45 Sherman Place, Jersey City.

Q. What is your business? A. Detective agency.

Q. You run a detective agency? A. Yes, sir.

Q. Formerly you were a policeman in Hoboken? A. I did special duty.

Q. You were formerly connected with the police department of Hoboken? A. As special officer.

Q. And do you know Mr. Schlemm, the complainant in this case? A. Yes, sir.

Q. And do you know Mrs. Schlemm? A. Only the time I met her at the time of the trouble.

Q. How many times did you meet her? A. Twice.

Q. Where did you meet her the first time? A. Over in the Amsterdam Hotel, in New York.

Q. And who was with her when you met her at the Amsterdam Hotel in New York? A. Mr. Gabain was his name.

Q. Where did you meet them at that time? A. In—I forget the number of the room; it was in the Amsterdam Hotel.

Q. In a bedroom of that hotel? A. Yes.

Q. (*By the Master*) When was that? A. November 30, I think it was.

Q. Do you know the date? A. Just a second; I think I have got it. (Witness refers to memorandum, and continues:) March 30, 1914.

Q. How did you get into that room on that occasion? A. Well, I knocked at the door. At the

start off I knocked three or four times and no answer, and finally I gave the door a good wallop, and they asked me "who is there" and I said "the waiter." "What do you want?" he asked me, and I told him to settle up that bill. "What bill?" "Never mind," I says, "open the door," and so he opened the door, and as soon as he did that I shoved in and Mr. Schlemm was with me.

Q. Anybody else? A. Mr. Lenc, I think, and the proprietor.

Q. How many rooms were there in that apartment? A. One room and a bathroom attached.

Q. How was Mrs. Schlemm dressed when you got into the room? A. Well, she had her dress on.

THE MASTER: How does that get into this case at present?

MR. WELLER: I am not objecting, Your Honor.

THE MASTER: I know you aren't; I am asking for my own information.

MR. WALSCHEID: I suppose, in pursuing the line of evidence properly, it wouldn't come in at this time.

THE MASTER: No, it doesn't. There are papers before me of a previous case between these parties, alleging adultery at the Amsterdam Hotel in 1914; now what happened to that?

MR. WALSCHEID: My answer to this case sets up that there was a condonation, so that I don't think it would properly come in. Under Your Honor's suggestion I will desist examining on that line of testimony at this time.

MR. WELLER: I presume I shall be al-

lowed to cross-examine, so far as he has gone?

THE MASTER: No. Mr. Weller; but I have tht right to strike it out, haven't I?

MR. WELLER: You have, unless it is material to the defense. I won't show now how it is material.

THE MASTER: I don't want to go into a whole lot of unnecessary matters, and inasmuch as it is not material to the case I think I will strike it out.

MR. WELLER: But it is material to the defense, Your Honor.

THE MASTER: Very true; Mr. Walscheid is under no obligations to put in anything that he feels is not in support of his case, and I am under no obligation to hear anything; why should I take up the time. If it is a matter of defense you can produce it when you come to it.

MR. WELLER: Is it not material to show the disposition of the petitioner here?

THE MASTER: You may show that on your side. How far you may cross-examine on these matters is something I shall not determine until it comes up. At present I feel very much inclined to strike out the testimony as to the occurrence in the Amsterdam Hotel.

MR. WELLER: I ask Your Honor not to do it now.

THE MASTER: Very well, but how far I shall allow you to cross-examine I will determine when you get to the cross-examination. Go on.

Q. You didn't know Mrs. Schlemm prior to seeing her at the Amsterdam Hotel? A. No, sir.

Q. Then you didn't see her again until when? A. What date was that? The 15th of October, I guess it was.

Q. Well, don't you know the date? A. Yes, I have got it down. Well, yes, I have it from this.

Q. (*By the Master*) What are you referring to? A. The second time I met her.

Q. What memorandum are you referring to to refresh your memory? I mean, what memorandum have you there from which you are fixing the date? A. This is a memorandum. I have got a poor memory and I can't remember, and so I took it off the book yesterday.

Q. When did you make the emorandum? A. Yesterday I got it in my report.

Q. You have it in your report written out in the office? A. Yes.

Q. But you haven't that with you? A. No.

Q. Do you, from your own memory, know the date when you next saw her? A. Yes, it was on the night of the 9th of October—the 25th, I think it was, Sunday morning, if I am not mistaken.

Q. Of the year 1915? A. Yes, sir.

Q. And where did you then see her? A. Up in this house where she was living, Temple Court, or whatever you call it.

Q. Where was this house? A. On the Boulevard, Bergen avenue, and I forget the name of the street.

Q. Whom did you go there with? A. Mr. Schlemm and this gentleman that was last on the stand here.

Q. Did you go there with him or did you find

him after you got there? A. No, I went there with Mr. Schlemm.

Q. Did you know the gentleman who was last on the stand? A. No, sir, not up to that night.

Q. Did anybody else go up there with you and Mr. Schlemm. A. No.

Q. You two went up alone? A. We two went alone.

Q. What time of the night was it that you went there? A. Well, it must have been about two o'clock.

Q. How did you happen to go there at that time? How did you happen to find Mr. Schlemm or get in communication with him? A. While I was in bed the telephone rang and Mr. Schlemm called me up and said that he wanted me to come right up; he wanted to see me.

Q. Did he tell you what for? A. Not then.

Q. What time did you receive this telephone message? A. Around one o'clock, I should judge.

Q. And then you went up to his place of business? A. Yes.

Q. And found Mr. Schlemm? A. Yes.

Q. And you and he went up to this apartment house? A. Yes, sir.

Q. When you got up there what did you and he do? A. Well, we went right in—

Q. Into where? A. Into the apartment house, and Mr. Schlemm busted in the door—the both of us—put his foot against it and the door went, and of course there was quite a racket inside. Mr. Schlemm said "hold up your hands." I had a flash light, and he ran in the back.

Q. Who ran in back? A. Mr. Schlemm ran in the back of the house where the bedroom was.

Q. How many rooms were there in this apartment? A. I think it was three.

Q. Did you go into that bedroom, too? A. No, not right away. When Mr. Schlemm went in she came to the front and out the door upstairs two flights.

Q. You mean she ran out of the apartment? A. Yes.

Q. How was she dressed? A. In her nightgown, bare feet.

Q. Where did she run from, what room? A. From the bedroom.

Q. Did you go into the room? A. I brought her back. I says, "You had better go down stairs." She came downstairs, and Mr. Schlemm was there, and this man was pleading.

Q. What man? A. I understand his name is Smith.

Q. And where did you find them, in what room? A. In the bedroom.

Q. And how was this man dressed? A. In his undershirt.

Q. Nothing else on? A. Nothing else on that I noticed.

Q. What was the condition of the bed? A. Well, mussed up.

Q. And you say this man was pleading; tell us what he said? A. Well, he was a married man and had an old mother, and it would break his mother's heart and break up his home, and all that.

Q. What would break up the home? A. The notoriety.

Q. What was he pleading for? A. Well, he knew he was in close quarters, I guess.

Q. Do you remember anything else that he was saying? A. He was telling Mr. Schlemm he didn't know the woman was married, and he met her only once before, I believe, and he was an innocent party.

Q. He was telling that to Schlemm? A. Yes, or words to that effect.

Q. Well now, tell us, in your own way, what happened after that in that apartment. A. Well, we got talking there, that is, with Mrs. Schlemm, and she got excited and fired the clock at Mr. Schlemm, and I was standing at the foot of the bed and didn't pay any attention to her and I got a wallop in the nose, and I says, "All right, old girl, I glory in your spunk," and she went to give me another one, and I says, "you behave yourself or you will go to the station house;" and of course Mr. Schlemm says "I will take them down," and when he says that I says "get your clothes on." Naturally I was hot—"get your clothes on and we will take them down."

Q. Who down? A. Schmidt and Mrs. Schlemm.

Q. (*By the Master*) To whom did you say "get your clothes on?" A. To Mrs. Schlemm and Schmidt.

Q. Go on; what next happened? A. Mrs. Schlemm got dressed. She was, of course, keeping us there as long as possible, and made it uncomfortable for everybody.

Q. (*By the Master*) What did she do? A. She was thinking about what Mr. Schlemm said.

Q. No, what did she say. You say she made it comfortable for everyone; what did she do? A. She abused us all.

MR. WELLER: I object, and ask that it be stricken out.

Q. What did she say? A. She says, "I got no use for you" or words to that effect.

Q. Speaking to him? A. To all hands. I could hear her there.

Q. Well, go on. Is that all you remember she said? A. Yes. She passed the remark that she didn't care what he done; to go ahead; he could go as far as he liked.

Q. Anything else that you remember that she said? A. Well, not exactly. I was excited at the time. I didn't pay much attention, because I was pretty hot over the whallop she gave me.

Q. Was your face bloody? A. I had a bloody nose all right; it was scratched there all right.

Q. What happened next? A. Well, she got dressed, and finally this man Schmidt was pleading and pleading—

Q. That doesn't tell us what he was doing. A. He dressed himself.

Q. What was he saying when he was pleading? A. He was pleading.

THE MASTER: "Pleading" doesn't mean anything.

A. To let him go and not to shut him up; he was a man of family. And he says "You are liable to get into the same boat yourself, or any man, that I am in, and of course after awhile I pulled off. I thought to myself—

THE MASTER: No, we don't want to know what you thought; tell us what you did and said.

A. Well, that is about all.

Q. And was that after you had told them both that they were going to be arrested? A. Yes. Then, of course I don't know whether he heard him or not—the man on the stand—I says to him "Get a policeman." Whether he heard me or not I don't know.

Q. You said, "Get a policeman?" A. Yes, because we were making a show outside on account of the way she acted.

Q. And then did the policemen come in? A. They came in, yes.

Q. How long did the policemen stay there? A. I should judge about ten minutes, or something like that.

Q. And during that time was Schmidt dressed? A. Yes, he was already dressed then.

Q. And was Mrs. Schlemm completely dressed? A. Not completely; she didn't have her hat on, I believe.

Q. She wasn't completely dressed? A. No.

Q. After the policemen came in did you hear any conversation or anything she said? A. Yes. As I say, I was excited—

Q. I know you were excited; now tell us whether you remember anything she said after the policemen came in.

THE MASTER: Do you remember anything? Yes or no?

Q. What do you remember? A. She said "Go ahead and arrest me, take me in, you have got me that is all, I will go."

Q. Was anything said about the child? A. Yes, she mentioned about the child, of course.

Q. What did she mention about the child? A. That the child wasn't his; she was going to get the child and he could go as far as he liked.

Q. At any time during the time that you were there was anything said by her about having found a man that she liked better?

MR. WELLER: I object, on the ground as leading.

THE MASTER: I will let him answer.

Q. If you remember. A. Yes, she said she found a man she liked better.

Q. And at what time was it that she said that, with relation to the time that you first entered the apartment? A. That was about—oh, I guess when the excitement was pretty well over.

Cross-Examination by Mr. Weller:

Q. Mr. Corridon, I show you a letter bearing date November 25, 1914, and ask you if that letter is in your handwriting. A. (After examining letter) Yes, sir, that's my handwriting.

Q. I also show you a bill, dated November 5, 1914, and ask you if that is in your handwriting. A. That is in my handwriting.

(The letter and bill are offered and admitted in evidence, and the former is marked Exhibit D-1 and the latter Exhibit D-2.)

Q. Mr. Corridon, you say you were home in bed this night of the 24th? A. Yes, sir.

Q. What time did you get this telephone message? A. Around one o'clock.

Q. Whom did that message come from? A. Mr. Schlemm.

Q. Had you anyone out on the case at that time? A. No, sir.

Q. Do you know Mrs. Stenek? A. No, sir.

Q. Never saw her? A. Not that I know of.

Q. Was she ever at your office? A. No, sir, not that I know of.

Q. You said that you got acquainted with Mrs. Schlemm about the 30th of April, 1914?

THE MASTER: The 30th of March, he said.

A. The 30th of March.

Q. Do you remember Mr. Schlemm telephoning you at that time? A. Yes, sir.

MR. WALSCHIED: I object to that as immaterial.

MR. WELLER: I think it is very material.

MR. WALSCHEID: It may be for the defense.

MR. WELLER: I will make him my own witness.

THE Master: I will let you do that.

Q. When he telephoned for you he told you that his wife would be there on the next car? A. Yes, sir.

Q. Told you how she was dressed? A. Yes, sir.

Q. Told you that she would be with a man and would come down in the Tube? A. Yes, sir.

Q. And from that direction of Mr. Schlemm, you went down in the Tube and followed her to the Amsterdam Hotel? A. Yes.

Q. That is right, is it? A. Yes.

Q. You never had seen Mrs. Schlemm until that time? A. Not that I know of.

Q. You did not know that she was coming to New York that day, did you? A. No, sir.

Q. You had nobody out on the case? A. No, sir. I made a mistake: When we started out I had two men—a man and a boy.

Q. And Mr. Schlemm telephoned you? A. That's right.

Q. Now, when you were called up by Mr. Schlemm that night you went right down to his place?

THE MASTER: You are getting back to October 24th?

MR. WELLER: Yes.

Q. You went down to his place? A. Yes.

Q. Did Mr. Schlemm tell you that he had information that she was out with someone? A. Well, yes—yes.

MR. WALSCHEID: This last time?

MR. WELLER: This last time.

Q. Did he tell you who told him? A. This last time?

Q. Yes. A. No.

Q. Didn't he tell you that he received a telephone message? A. No, sir, didn't tell me anything about the case at all.

THE MASTER: He is asking you now about what occurred on this Saturday night or Sunday morning, last October; now be careful.

A. 1915?

THE MASTER: 1915.

Q. Now, what did he say to you when you got down to his place? A. He says, "we've got her."

Q. Did you ask him how he knew? A. No, sir.

Q. Did you ever see this woman here before (indicating to a woman in the court-room)? A. Not that I know of.

THE COURT: Stand up, madam.

A. (After looking at the woman asked to stand, the witness continues) No, sir, not that I know of.

Q. Will you say that she was not at your office in Hoboken? A. Not that I know of.

Q. You know or you don't know. A. I am pretty certain.

THE MASTER: For the purpose of completing the record, who is the lady referred to.

MR. WELLER: Her name is Anna Stenek.

Q. You had not been working on the case just prior to October 24th? A. No, sir.

Q. Somebody else had been working on the case? A. Looks that way.

Q. Were you down there? A. Somebody must have been; I wasn't.

Q. Do you know whether anyone was or not? A. No, sir, I don't know whether they were or not.

Q. You know Mr. Hansen? A. I do, yes, sir.

Q. Had he been working on the case before that time? A. Not that I know of.

Q. You had just gone down there, then, to Schlemm's place, not knowing what you were going for? A. No, sir.

Q. And you went down to Park avenue—what did he tell you about Park avenue? A. Told me nothing about it at all.

Q. Did he tell you that she lived down there? A. I understood that.

Q. How did you understand that? A. From the way he spoke.

Q. What did he say? A. "I guess we've got her tonight."

Q. That is all he said? A. That is all.

Q. How did you get down there? A. Walked down from his office.

Q. (*By the Court*) Where is his office? A. Spring street.

Q. West Hoboken? A. Yes.

Q. Near what?

MR. WALSCHEID: Near Monastery.

Q. Over a mile further down? A. Somewheres around there.

Q. Before you started down there did you see Mr. Schoenfeld? A. Who is he?

Q. The first witness on the stand. A. No, sir.

Q. You didn't see him at all? A. No, sir.

Q. Just you and Mr. Schlemm went down? A. Yes, sir.

Q. Did you know anyone was in the rear watching the house? A. He told me that when we got there, that there was a man in the rear window.

Q. Then you went and broke in the door? A. Yes, sir.

Q. Did you knock on the door before you broke in? A. No, shoved right in.

Q. And you said someone turned the flash-light on Mrs. Schlemm? A. Yes, I turned the flash-light on as soon as I got in.

Q. And you told her to look out? A. Mr. Schlemm, he hollered, "put up your hands," and ran into the rear bed-room.

Q. Was she in her bedroom when you turned the flash-light on? A. Yes, she was coming from the bedroom.

Q. Where was she? A. In the bedroom with this man supposed to be Schmidt.

Q. Where was she when you turned on this light? A. She was in the bedroom.

Q. She wasn't anywhere near the door? A. No, sir.

Q. You didn't say that to her as soon as you broke in—"hold up your hands, look out"? A. I didn't; Mr. Schlemm did.

Q. As soon as you broke in? A. As soon as we got our bearings; as soon as we found where the bedroom was, when I put the light on.

Q. Now, you have been a detective in Hoboken how long? A. Going on four years.

Q. Do you know Mr. Schmidt? A. No, sir, not that I know of—until that night.

Q. Never knew him at all? A. Not that I know of.

Q. Very prominent man in Hoboken? A. I knew his father, but I didn't know him.

Q. He is a saloon-keeper there? A. I don't know him; I knew his father.

Q. What were those policemen sent for? A. Because Mrs. Schlemm got excited and she was raising mischief there, and she wanted Mr. Schlemm pulled in and Mr. Schlemm wanted Mrs. Schlemm pulled in.

Q. She went out in the front room and put on her clothing? A. Yes; she was putting on her clothing in the bedroom.

Q. Where did she put on her shoes? A. In the bedroom.

Q. She didn't put them on in the front room? A. No, sir.

Q. Was Mrs. Schlemm sitting on the bed? A. Yes.

Q. And putting on her shoes, wasn't she? A. Yes.

Q. Where was Schmidt at that time, lying in the bed? A. No, he was up—started to dress himself.

Q. Did she and Mr. Schmidt come out of the room together? A. No.

Q. Who went out first? A. Mrs. Schlemm.

Q. Did you stay there then? A. No, sir, I followed her out.

Q. Did Mr. Schlemm and Mr. Schmidt stay in there together? A. Yes.

Q. How long did they remain there, about? A. I was in with them about five minutes or so.

Q. After you went out how long did they stay in there? A. We brought her right back when she ran away and went upstairs.

Q. The question is, after you went out of the bedroom, after seeing her in there putting on her shoes, and after Mrs. Schlemm went out, how long did Schlemm and Schmidt stay there together? A. About five minutes or so.

Q. (*By the Master*) Alone in the room? A. No, I was with them.

Q. How long were they alone in the room after you left? A. Oh, they were there two minutes.

Q. Why won't you listen to the question and answer it? A. I am trying to do it, Judge.

Q. Now, you say it was about two minutes that they stayed there after you went out? A. Yes.

Q. Was the door shut? A. No.

Q. Was it shut at all? A. No, sir.

Q. Was it partly shut? A. No, sir.

Q. It wasn't swung to, leaving just a crack? A. No, sir.

Q. Sure of that? A. Yes, sir.

Q. When you first got into the house what was the first thing Mrs. Schlemm said? A. "Well, you've got me."

Q. Was Mr. Schoenfield there at that time? A. No, sir, he wasn't there at that time.

Q. Did she keep right on saying "You have got me; you've got me?" A. No, just once.

Q. That is the way she said that? A. Yes.

Q. You are pretty sure of that? A. I am certain.

Q. After she said "You've got me" where did she go? A. We all stayed there.

Q. That was before Schoenfild had a chance to get into the house? A. Yes.

Q. Did she say anything else to him? A. No.

Q. Not a word? A. Well, she was mumbling to herself; I don't know what she was saying.

Q. But she said nothing else in the bedroom? A. No.

Q. After she got outside what did she say to him? A. Say to whom?

Q. Her husband? A. Well, she said she didn't have any use for him; he could do as he pleased.

Q. Do as he pleased about what? A. Anything; if he wanted to get a divorce—I suppose that is what she meant; I don't know.

Q. Did he say anything about arresting her then? A. Yes, he wanted her arrested.

Q. What did he say? A. "Get your clothes on and come on."

Q. Come on where? A. To the station-house.

Q. What did she say? A. She started to get ready.

Q. Where was Schmidt then? A. He was there.

Q. What did he say? A. He was pleading.

Q. Who hit you on the nose? A. Mrs. Schlemm.

Q. When was that? A. While she was dressing herself.

Q. How did she happen to do that? A. She was sitting on the side of her bed getting her shoes on, and I wasn't paying any attention, and I got it in the nose.

Q. She said "I have found a man that I love better than I love you;" is that what she said? A. That is what I understood her to say.

Q. Were you aware of the fact that they had been separated since the previous January? A. I heard about their being separated, yes, sir.

Q. You say these two bills are in your handwriting? A. Yes.

Q. Whom was that detective work done for? A. Mr. Schlemm.

Q. On whom? A. On his wife.

Q. In 1914? A. Yes.

Q. Then they were living together? A. Yes, sir.

MR. WALSCHEID: I object to that; it isn't material at this time.

THE MASTER: I don't know—

MR. WALSCHEID: It may be very material on the defense, but not on cross-examination.

THE MASTER: I think I will let it stand.

Redirect Examination by Mr. Walscheid:

Q. When you say you went out of the bedroom and left Mr. Schlemm in there, was that the time that Mrs. Schlemm ran upstairs? A. Yes, sir.

Q. And you ran after her and brought her back? A. Yes, sir.

Q. You brought her back into the bedroom? A. Yes, sir.

Q. And you stayed in the bedroom after that? A. Yes, sir.

Q. And the time you were absent from Schlemm was the time that was consumed in going after Mrs. Schlemm? A. Yes.

MR. WELLER: I object as not redirect.

THE MASTER: I think it is proper redirect. Just let me ask a few questions:

Q. (*By the Master*): When you got into the bedroom first where was Mrs. Schlemm? A. In the bedroom.

Q. Where was Schmidt? A. In the bedroom.

Q. Both of them standing there? A. Yes, sir.

Re-Cross-Examination by Mr. Weller:

Q. I thought you said that after you broke in the door—you and Mr. Schlemm—you got a line on the bed-room and held up the flash light? A. Yes, sir.

Q. And told Mrs. Schlemm to hold up her hands? A. No, sir, I didn't say that.

THE MASTER: He said Schlemm said that.

Q. Well, Mr. Schlemm told her to hold up her hand and she ran out of the bedroom and went upstairs? A. It wasn't Mrs. Schlemm; it was the man Schmidt he told to hold up his hands.

Q. And then Mrs. Schlemm ran upstairs? A. Yes, sir.

Q. At that time Schoenfeld wasn't in there at all? A. No, sir.

Q. He came in after you brought this woman downstairs? A. Yes, sir.

Q. Now, you said after you brought this woman downstairs she sat on the bed putting on her shoes? A. Yes, sir.

Q. That is right, is it? A. Yes, sir.

Q. And after that she went out in the other room? A. Yes.

Q. And she left you and Schmidt and Schlemm in the bedroom? A. No, we were all

together; the doors was wide open; there was no secrecy.

Q. Didn't you say on your direct examination that she went out and left you three in there? A. Yes.

Q. And after that you went out and left Schmidt and Schlemm in there together, and they stayed there about two minutes after you went out? A. Not with the doors closed; the doors were open.

Q. Didn't you go out and leave them in there? A. (No answer).

> Q. (*By the Master*): Did you go out of the bedroom and leave Schmidt and Schlemm in there two minutes? A. Not with the door closed.
>
> Q. I am not asking you about the door being open; they were in the bedroom together, were they? A. Yes, sir.

Q. Now give us your best judgment of how long they stayed there. A. About two minutes—a minute or two, because I kept my eye on her; I didn't want her to get away from me.

By Mr. Walscheid:

Q. You say Schlemm ordered Schmidt to hold up his hands? A. Yes, sir.

Q. Did he hold up his hands? A. Yes.

Q. And was he standing with his hands up above his head? A. Yes.

Q. How long was he standing there? A. Oh, about a minute, I suppose.

AUGUST KLASSEN, sworn on behalf of the petitioner, testified as follows:

Direct Examination by Mr. Walscheid:

Q. You are an officer of the Weehawken police force? A. Roundsman.

Q. And on the night of October 24, 1915, were you called to the Palace Court? A. Yes, sir, Patrolman Flood and myself.

Q. That is an apartment house, is it? A. Yes, sir.

Q. Do you know who called you there? A. Mr. Schoenfeld.

Q. Did you know Mr. Schoenfeld before that? A. Yes.

Q. When you got there where did you go? A. Mr. Schoenfeld showed us the way to the apartment, one flight up.

Q. Into an apartment? A. Yes, sir.

Q. And whom did you find in that apartment? A. Mr. Schlemm, Mr. Corridon, who introduced himself—

Q. You didn't know Corridon? A. No, sir.

Q. Did you know Schlemm? A. Yes, sir.

Q. Now when you two officers got in there was there anything said to you about any duty you were to perform? A. I said "What's the trouble, Mr. Schlemm?" He says, I want you to arrest Mrs. Schlemm and this gentleman here," pointing to the man that he introduced as Schmidt later on.

Q. Who introduced him as Mr. Schmidt? A. Mr. Schlemm.

Q. And having said that, what next happened; now tell us in your own way. A. Mr. Schmidt turned to Mr. Schlemm and says: "Is it necessary

to get me mixed up into this? You have got me, I'm guilty, and you've got my address, and you can get me any time you want me." Then Mr. Schmidt and Mr. Schlemm went in the bedroom—

Q. Had they come out of the bedroom? A. No, they were, I think, it was, in the dining-room. So when they went into the bedroom we turned back and Mr. Schoenfeld was standing on the other side of the table and Mrs. Schlemm was buttoning her shoes, and we had a conversation.

Q. Who had? A. Mr. Schoenfeld and Mrs. Schlemm; and so she says, "The only thing he is afteris the child and he won't get the child anyhow, because he is not the father of it; I can prove that." In the meantime Mr. Schlemm, Mr. Schmidt and Mr. Corridon came out of the bedroom, and Mr. Schlemm says, "It is not necessary to make the arrest, officers, but this is Mr. Schmidt; in case I call on you will you know the gentleman?" I says, "I think we do." Mr. Schlemm asked us to step inside for a moment, and he says, "officer, there's the bed; do you think it was disturbed tonight?" "It looks that way; looks as if this man was in it and two persons in it." And in the meantime they were dressed and not necessary for us to stay there. Mr. Schlemm, and Mr. Corridon, and Mr. Schoenfeld started to walk out, and Mr. Schmidt, and Mr. Flood and myself walked out with him.

Q. You walked out with Mr. Schmidt? A. Yes, sir, after they had gone out. We were all together; I think we were in the rear. Mrs. Schlemm stayed there. We walked up Park avenue with Mr. Schmidt, he asking us to stay with him until the car arrived, because he didn't want to come in contact with Mrs. Schlemm any more.

Q. (*By the Master*) He said that to you?
A. Yes.

He asked us to stay with him until the car came going down to Hoboken. We walked as far as Park avenue and Highwood Terrace, and we stood on the corner by the drug store a few minutes when Mrs. Schlemm came again and got in conversation with Schmidt.

Q. Came to where Schmidt was? A. Yes, followed us.

Q. What did she say? A. She didn't say anything.

Q. Whom did she talk to? A. She started to talk to Schmidt.

Q. Did they go away from you to talk? A. No, Mr. Schmidt was standing with us when Mrs. Schlemm came up to him.

Q. Don't you remember what was said? A. Patrolman Flood says, "Now, Mrs. Schlemm, the best thing for you to do is to get a separation and keep this think quiet to save this man here, Mr. Schmidt." She says, I wouldn't because he is after the child and I will not give it to him because he is not the father of it." I said, "Then, Mrs. Schlemm, at the time the child was born I am sure you were good friends; how's that?" "Well" she says, "there was too many of them there," she said. So in a minute the car came and Mr. Schmidt went on the car and I walked east on Highwood Terrace.

Q. That is all that was said? A. That is all that was said in my presence.

Q. Now, when you went out of the door of the apartment you say Mrs. Schlemm remained behind? A. Yes, at that time.

Q. Did she call Mr. Schmidt back then? A. Not that I heard—not in my presence.

Cross-Examination by Mr. Weller:

Q. Mr. Klassen, what time was it that you were called to Park avenue? A. About 2:35 or 2:40.

Q. Where did he find you two officers, together or at the police station? A. No, sir, together. I was roundsman and he was walking with the patrolman.

Q. What did he tell you to go down there for? A. Mr. Schoenfeld hollered "Hurry up, officers, you are wanted inside."

Q. Whereabouts did he meet you? A. Right about at the end of Palace Court—about the end of the building.

Q. You were there together that night? A. We were walking up, yes sir.

Q. From the police station? A. No, sir, I was making my rounds.

Q. Where is your beat? A. I have no beat; I am the roundsman.

Q. And you met this officer and were walking up with him? A. Yes, sir.

Q. Officer Flood? A. Yes, sir.

Q. And just as you got there he said you were wanted inside? A. Yes.

Q. Did he tell you what for? A. We didn't know what it was; we thought it was trouble. We followed him in and he said, "it is right up here."

Q. And you went up on the first floor? A. Yes, sir.

Q. When you got up there was the room lighted? A. Yes, sir.

Q. Who was in that room? A. Mr. Schlemm

and Mrs. Schlemm, and a man named Corridon, and Mr. Schmidt. He was introduced afterwards.

Q. Just those four? A. Yes, sir.

Q. (*By the Master*) How high up was the first story. A. Well, just a few steps up.

Q. Not one flight? A. No, sir, over the basement.

Q. When you got in there were they standing up? A. Standing up, yes.

Q. How long were you in the apartment all together? A. From five to ten minutes.

Q. After you went in Schmidt, Schlemm and Corridon went in the bedroom, did they? A. Yes.

Q. And they swung the door partly shut, didn't they? A. Partly, but I can't say whether it was closed tight or not.

Q. And they stayed in there how long? A. A few minutes, something like one or two minutes.

Q. Five minutes? A. No, sir; they didn't stay there more than two or three minutes.

Q. You couldn't hear what they were talking about? A. No, sir.

Q. After they came out of the bedroom tell us what was said. A. Mr. Schlemm said, "It is not necessary to make the arrest, officers; this is Mr. Schmidt. In case you are called upon will you know this gentleman again?" I said I thought we would.

Q. (*By the Master*) Where did you first see Mrs. Schlemm that night? A. In the dining-room.

Q. How was she dressed? A. Had a skirt and waist on, so far as I could see.

Q. Fully dresesd? A. Yes, sir.

Q. Then you went out together, the four of you, and Mrs. Schlemm stayed in the house? A. Yes, sir.

Q. When you got out on the street did you stop there and talk together? A. No, sir, we went right on with Mr. Schmidt, and Mr. Schlemm and Mr. Corridon walked over towards Union Hill.

Q. You walked from Palace Court over to Highwood Terrace? A. Yes.

Q. How many blocks is that from Palace Court? A. Jefferson street is the first and Palace Court the next.

Q. Schmidt told you he wanted you to protect him from Mrs. Schlemm. A. Yes.

Q. Did he say he was afraid of her? A. He said he didn't like to meet her again.

Q. Didn't you hear him start back and call her? A. No, sir.

Q. Didn't he call her? A. No, sir.

Q. Are you sure of that? A. I didn't hear it.

Q. You were right with Schmidt all the time? A. Yes, sir, I was with him going out.

Q. And you didn't see Mrs. Schlemm until you got up to Highwood Terrace? A. Highwood Terrace, yes, sir.

Q. Now, when she came up there what did you say to her? A. I didn't say anything to her at all first. She stated, "Well, this is a nice evening," or something like that, and Patrolman Flood says, "Now, Mrs. Schlemm, why don't you go the best way about it and save this man on account of his family?" She says, "I wouldn't, because he is after the child, and the child I wouldn't give up, and he is not the father of it anyway."

Q. (*By the Master*) What did she mean by "he is not the father of it?" A. Mr. Schlemm.

Q. Did she say Mr. Schlemm is not the father of the child or Mr. Schmidt? A. Mr. Schlemm is not, because Patrolman Flood says, "Why don't you get a divorce from Mr. Schlemm; that is the best way to save the other man."

Q. Mr. Flood didn't know the other man? A. No, but the other man told us that he was a married man and it would mean a lot of trouble for him.

Q. When he jumped on the car and went away where did Mrs. Schlemm go? A. Before that Mr. Schlemm was with us, and Mrs. Schlemm stood there with Flood and I went to Highwood Terrace.

Q. And left her and Mr. Flood together? A. Yes.

Q. And you don't know where she went? A. No, sir.

Redirect Examination by Mr. Walscheid:

Q. Did either this man whom you knew as Schmidt, or Mrs. Schlemm, tell you that they had been out together that evening?

MR. WELLER: I object to the question. Was this in the presence of Mrs. Schlemm?

THE MASTER: How does that bind Mrs. Schlemm? I will sustain the objection.

ROBERT FLOOD, sworn on behalf of the petitioner, testified as follows:

Direct examination by Mr. Walscheid:

Q. You are an officer of the Weehawken police department? A. Yes, sir.

Q. And you were called to the Palace Court apartment house on October 24th? A. Yes.

Q. About two o'clock in the morning? A. About two o'clock or 2:15.

Q. Whom were you with? A. With Roundmsan Klassen.

Q. Tell us what happened? A. I met him at the corner—Roundsman Klassen—at the corner of Park avenue, and we seen a man standing outside of the Palace Court and I afterwards found out to be Mr. Schoenfeld. I had never known him before and never met him since. He says: "There's trouble inside, gentlemen," and I ran right in, and Roundsman Klassen was behind me, and Schoenfeld came in with us, and after we got in the apartmnet we seen Mr. Schlemm and Mrs. Schlemm, and Mr. Corridon and Mr. Schmdit, or a man by the name of Schmidt. I didn't know him.

Q. Did you know any of the people in there? A. Not a one; never met them before or since.

Q. When you got in there was anything said about making arrest. A. Mr. Schlemm says, "Look at Mr. Schmidt and Mrs. Schlemm," and then Mr. Corridon spoke up, and said something to Mr. Schlemm,—or Mr. Schmidt spoke up first and says, "This is bad enough to be caught in a place—bad enough without being arrested besides;" so he says, "you have got me all right;

I am just the same as any American citizen, I took a chance,'' he says, ''and you've got me all right; you have got my name and I will appear at any time that you call on me.''

Q. Is that all he said? A. That is all Mr. Schmidt said. So the three of them went into the room together.

Q. Was anything said about not arresting him? A. Not until after that. Mr. Schlemm ordered us to arrest them, and he says that he had a good mother and a good wife; ''you have got me right; I am only the same as any other American citizen; I took a chance,'' and so they went into the room together.

Q. Did he tell you not to arrest him? A. Not at that time. Then they went into the room together, and then they came out of the room, and he says, ''there is no occasion for the arrest; I have got his name,'' and he says, ''you gentlemen will know him if you see him?'' and I says ''yes;'' so Mrs. Schlemm took us in the bedroom and showed us the bed.

Q. Did you at that time hear any talk by Mrs. Schlemm? A. Yes, Mrs. Schlemm was busy buttoning her shoes at the time when Mr. Schmidt and Mr. Schlemm and Mr. Corridon was in the bedroom.

Q. What did Mrs. Schlemm say? A. All he wanted was the young one and the young one he wouldn't get, because he wasn't the father of it.

Q. Then you all went out? A. Yes, we all went out together.

Q. What do you mean by ''went out together?'' A. Mr. Corridon and Mr. Schoenfeld and Mr. Schlemm and Roundsman Klassen and myself and Mr. Schmidt.

Q. How did you go out? How were you paired off? A. We wern't paired off; we went out in droves; we didn't know which was ahead or behind.

Q. Did Mrs. Schlemm stay there? A. She came tothe door and called Mr. Schmidt back.

Q. Did Mr. Schmidt go back? A. No, Mr. Schmidt asked Mr. Schlemm if he could go back and he says it didn't make any difference.

Q. What did Schmidt do; did he go back? A. No, he said he wouldn't go back.

Q. And he didn't go back? A. He didn't go back.

Q. And then he walked off? A. Yes, walked right off the sidewalk and stood there waiting for a car.

Q. Did Schoenfeld and Corridon stay there, too? A. About a minute.

Q. Then where did they go? A. They went up towards Franklin street.

Q. Where did you three go? A. Me and Roundsman Klassen and Mr. Schmidt walked up to Park avenue north—

Q. To Highwood Terrace? A. To Highwood Terrace, yes.

Q. Did you stop there? A. We stopped there, I guess, a half an hour.

Q. What happened there? A. We waited, I think it must have been, for the half past two car for Mr. Schmidt. He wanted us to stay. Before the car came Mrs. Schlemm came along.

Q. Did she speak to anybody? A. Yes; I don't know who first.

Q. Did she speak to the three of you? A. She stopped right in front of us and spoke.

Q. What did she say? A. I don't remember what she said.

Q. Did she speak to Schmidt at that time? A. They were talking together.

Q. Was Schmidt and she talking together? A. No, Mr. Schmidt had nothing at all to say, only it was on his mother's account and his wife's that he wanted it kept quiet.

Q. This was up there at the corner? A. Yes, at the corner, after he had spoken.

Q. Now, let us have the entire conversation.

THE MASTER: Tell us all that was said between all of you up there.

MR. WELLER: In the presence of Mrs. Schlemm, of course.

Q. This is conversation that you have referred to at the corner of Highwood Terrace and Park avenue. A. Yes.

Q. And you recollect now that Roundsman Klassen was there, and Schmidt was there, and Mrs. Schlemm was there with you? A. Yes.

Q. Tell us all that was said. A. Well, I will tell you what I can remember. I said to Mrs. Schlemm the only thing to do is to get a divorce and get it in as quiet a way as possible so as to save this man on account of his wife and mother.

Q. What did Schmidt say in that conversation? A. Schmidt didn't say anything then, not a word.

Q. When did he say something? A. He said lots there, but I couldn't think of anything now.

Q. You can't think of anything? A. No.

Q. What did she say? A. She said he wanted the young one. I says "let him have the young one and everything will be all right." "No,"

she said, she wouldn't let the young one go because he wasn't the father of it. Mr. Klassen says, "How old is the young one now?" and I think she said "the child is eight years old." He said, "You were on pretty good terms at that time, weren't you?" and she said "no, there were too many there." I don't know what she meant.

Q. Then you say Schmidt took the car? A. Yes.

Q. Where did Mrs. Schlemm go? A. Went home with the fellow that runs the saloon across the corner.

Q. Did she go into that saloon? A. No, she did not; he came across the street.

Q. Did they talk about what happened? A. I don't know; I wasn't in their company at all.

Cross-Examination by Mr. Weller:

Q. Where do you live? A. 9 Pleasant avenue, Weehawken.

Q. Did you ever live in lower Weehawken? A. Yes.

Q. Up until what time? A. I lived in lower Weehawken before I was married.

Q. What is the last street going south in Weehawken? A. The last street going south?

THE MASTER: Coming this way.

Q. Going towards Hoboken; what is the last street? A. 18th street. Which way do you mean?

MR. WALSCHEID: That depends on where you mean. Do you mean Willow avenue?

MR. WELLER: Yes.

THE MASTER (Addressing the witness) When you are coming this way which is the last street that runs west from the river toward the hill?

A. 19th street, or Baldwin avenue and 18th street.

THE MASTER: Which is the last street in Weehawken?

A. 18th street.

Q. That is three short blocks from 15th street in Hoboken? A. I guess so, yes.

Q. Three short blocks? A. I don't know.

THE MASTER: Whether it is a short block may be a matter of opinion.

Q. It isn't over 200 yards at the very outside, from 18th street to 15th street?

THE MASTER: But, Mr. Weller, that would make those city blocks in Hoboken; they are more than 200 feet.

MR. WALSCHEID: Yes, they are longer than that. I can help you to this extent,—to say that the streets run across Willow avenue, 14th, 15th, 16th and 17th, and the dividing line between Weehawken and Hoboken is between 17th and 18th streets, and 18th street is in Weehawken.

THE MASTER You can prove that fact by a city map.

Q. Now you know Smith's saloon is on the northwest corner of Willow and 15th street? A. I don't know anything about that.

Q. You don't know that? A. No.

Q. And yet you have lived in Weehawken all your life? A. No, about 16 years, I guess.

Q. You know where Carney's flats are. A. No; I used to know them as the Willow Flats when I first came to Hoboken.

Q. You know where they are? A. No.

Q. You know they are Schmidt's? A. No.

Q. If you didn't know Mr. Schmidt, why were you so solicitous about his welfare? A. I have never known him before.

Q. Why did you advise the wife to let her husband get a divorce and let Schmidt out of it? A. Not for Schmidt's sake, but for Schmidt's wife, and it was also Schmidt's mother, because he had a mother, and he told me, he said "it will break my mother's heart." I felt sorry for his mother, not for him or for his wife.

Q. You were sorry for a woman you had never seen? A. Yes.

Q. You advised Mrs. Schlemm to admit all this and let Schmidt out? A. I didn't know how far that advice would go.

THE MASTER: He didn't say that; he advised her to get a divorce.

A. I says, the easiest way is the best way out of it; that is what I said.

MR. WALSCHEID: I rest my affirmative case.

MR. WALSCHEID: I would like to ask Mr. Schoenfeld a question or two before resting my case.

Frederick Schoenfeld—Recalled—for Petitioner —Direct.
Louisa M. Schlemm—for Defendant—Direct.

FREDERICK SCHOENFELD recalled on behalf of the petitioner, testified as follows:

Direct Examination by Mr. Walscheid:

Q. Where does Mr. Schlemm live now? A. On Spring street.

Q. In West Hoboken? A. Yes.

Q. How long has he lived there? A. To my knowledge, he has lived there for the last year and a half—not in that one particular house, but he has lived in West Hoboken as long as I have known him.

Q. How long is that? A. Probably fifteen years.

THE PETITIONER RESTS AFFIRMATIVE CASE.

THE DEFENSE.

(Mrs.) LOUISA M. SCHLEMM sworn in her own behalf, testified as follows:

Direct Examination by Mr. Weller:

Q. Mrs. Schlemm, where are you now living? A. 135 Jefferson street, Union Hill.

Q. With whom do you live there? A. With my mother.

How long have you lived in New Jersey? A. All All my life.

Q. How old are you now? A. Thirty.

Q. When were you married to Mr. Schlemm? A. Just eleven years ago on the 30th of January.

Q. When you were twenty years of age? A. Yes, sir.

Q. Had you ever drunk any liquor of any kind at that time? A. Not when I met him.

Q. Did you afterwards learn to drink liquor? A. I did, about two years after I was married.

Q. How did you learn that? A. By his taking me out.

Q. Where did he take you? A. He took me to a ball for the first one—Odd Fellow's ball, at Imperial Hall on Spring street.

Q. What did you drink there? A. I started off with soda and celery tonic, and then he asked me to have a Manhattan cocktail. I didn't want it, but he says you will like them after you try them; so I tried one, and the next time we had drinks he ordered the drinks himself and didn't ask me what I wanted but just ordered the same drinks.

Q. Was your husband a drinking man at the time you married him? A. He wasn't in the drinking habit.

Q. Before that time he had been? A. Yes.

MR. WALSCHEID: I object to the form of the question as leading.

Q. After that time, how did you and he live together, after you were married? A. Lived good together, happily.

Q. For how long? A. Four or five years—four years, about.

Q. What were his habits after that? A. His habits was going to visit a woman that lived at 426 Spring street.

Q. What was her name? A. Mrs. Hofstetter.

Q. What were his habits as to drink? A. He came home twice or three times a week and some weeks he would come home every night.

Q. How did he act when under the influence of liquor? A. He was in the habit of arguing all the time when he came home and I had to give in to him, and half the time I would have to undress him; he would fall down and he couldn't get up, and one night in particular I had to leave him there until he woke up himself and it was half past three in the morning.

Q. How many children have you had by him? A. Four.

Q. How many of them are living? A. One living.

Q. Did you ever know a woman named Mrs. Dort? A. Yes; not to speak to her, though.

Q. How did you first learn of Mrs. Dort? A. He had a funeral of Mr. Dort in the book, and Mr. Bosetti—

> Q (*By the Master*) What is his business, undertaker? A. Undertaker, yes.

—and Charles Bosetti used to do the collecting, and this one party lived in New York and he said he was going up to 185th street to collect the bill.

Q. Did he tell you who he had buried there? A. Yes, he said a man by the name of Dort, and she didnt pay the bill, and he said "I have got to go up and collect it myself," I says "all right," and whenever he went up there, and he went every two weeks, he never would come home until two, or three, or four in the morning, and he left at half past one, or two, or three in the afternoon.

Q. How long would he keep this up? A. Four

or five times that I know of he went over there. I don't know how often he went over without my knowing it.

Q. Then where did this Dort woman go? A. The woman came to Jersey to live.

Q. Where did she live? A. 370 Traphagen street, West Hoboken.

Q. While she lived in Traphagen street, West Hoboken, did you ever catch him out with her? A. Yes, sir.

Q. Just tell us about that in your own way. A. I was to go to New York shopping one morning. I didn't get my cleaning done and instead of going early in the morning I stayed home. On my way I stopped at his business place, 426 Spring street, and I found the man there and I says, "Where is my husband," and he says, "he is up to the movies." So I went up in the afternoon, and when I sat down and right near me was two people nudging each other, and I saw this woman's coat over on his knee and his arm resting on the back of the chair, and I says "this is a nice place to catch you with a woman." I says, "what is the matter with you?" He says "nothing; this is my wife, Mrs. Dort," and I didn't pay any attention; I looked at the pictures, and all of a sudden I remembered the name Mrs. Dort, and I turned around and said "This is a fine how do you do and you here with another woman to the movies." Then the woman said, "You have got the wrong party; you are mistaken." I says, you are the woman from 185th street, New York," and with that she gets up and walks away and says, "now, remember, you are mistaken." I says, "I don't think I am." I didn't say anything more about

it until we got home, and Mrs. Jennings was there and we began to argue about this and that, and we had such an argument that I tore the vest from his back.

Q. You have since learned other things about the woman, have you not? A. Yes, sir.

Q. Did you know those things when this suit was started? A. No, I didn't know anything until after this second suit was started.

Q. Now, did you ever know a woman named Delvey? A. Yes, sir.

Q. Just tell us who this Delvey woman was. A. Mrs. Delvey was a woman whom I knew when I was a little girl and lived in Highpoint avenue, No. 822.

Q. What was her name then? A. Lillie O'Brien. Before I got Mrs. Jennings she was my wash woman and she came up to my home.

Q. Can you describe her? A. She is very stout woman with red hair.

Q. How old is she now? A. She is now about twenty-six.

Q. Now, you said she did your washing; for how long a period did she do your washing? A. No period, in between, because I did my own washing at that time and when I felt sick she did it for me.

Q. Did you belong to a bowling club at that time? A. No, sir.

Q. Did your husband belong to a bowling club? A. Yes.

Q. How often did he go? A. Once a week, every Thursday night.

Q. What was the general conduct of you and your husband and the other people that were there? A. We were bowling and drinking. We

had supper around half past ten, and then we would bowl over again, and we kept it up, drinking every time all the way through the night.

Q. How did your husband act towards Mrs. Delvey while you were at the bowling club? A. He was very attentive.

MR. WALSCHEID: I object. When was this?

THE MASTER: Can you fix the time?

A. In the year 1912 and 1913.

Q. He was very attentive? A. Yes.

Q. Just describe what you mean by that. A. He kept fooling with her all the while, slapping her on the back, and one night he put his hands down her bust and around her waist.

Q. Where would he slap her? A. All over, wherever he could grab her. Once in a while he would grab hold of her arms and give her a tight squeeze. I says, "Will, there are the boys on the next alley, and they will take notice of how attentive you are to Mrs. Delvey and you don't pay any attention to me whatsoever."

Q. What did he say? A. He said, "Oh, that is only fooling and carrying on; I don't mean that." I said, "You might not mean it, but it looks bad; you should pay just a little attention to me."

Q. Did you ever come home after being out at any place and find her at your place? A. I did.

Q. On how many occasions? A. Three or four.

Q. Where had you been? A. Was out on a Tuesday afternoon; that was in October or September, 1912; I came home at six o'clock at night and I found Mrs. Delvey there, and she said "I should think you would stay home when a person

is coming to see you." I said, "I didn't know you were coming."

Q. Tell us about the other times. A. The other two times was on a Wednesday when I belonged to the Ladies' Club. She was there then when I came home from the club.

Q. Can you tell of any other time? A. Possibly.

Q. Well, at that time, did you know that there had been anything wrong between Mrs. Delvey and your husband? A. No, sir.

Q. When did you learn that there had been? A. Only after these papers were made out for divorce.

MR. WALSCHEID: The second papers?

A. These papers.

Q. Now, you and your husband separated when? A. In 1914.

Q. Did you know a man named Gabian? A. Yes.

Q. How did you get acquainted with him? A. Through Mr. Schlemm.

Q. Where did you meet him? A. In his place of business.

Q. Whose place of business? A. Mr. Gabain's, on the corner of Elm and Spring streets.

Q. What kind of a business has he there? A. A resort.

Q. Did he take you there? A. Yes.

Q. How often? A. Every Thursday night after bowling.

Q. Do you remember just before the 30th of March, 1914, Gabian coming to your house? A. Yes.

Q. Just tell the Court about that. A. The first night that he came to my house was on he 12th of February; it was on Thursday, my bowling night. He came into the bowling alley in an intoxicated condition and he carried things in his pocket which weren't fit for any man to carry in his condition, and he pulled out all these things and Mr. Schlemm took them in his possession. He had a diamond ring and it cost about $800; and he had his money, and Mr. Rodman, one of the owners of the place, wanted him to sleep there. He said, "you stay here tonight; you are too intoxicated to go home," and so they fixed chairs together for him to sleep on, and my husband said, "We will not leave him here; he is too drunk."

Q. In what condition was your husband? A. He was half way intoxicated, but not all the way. So we went home and we took Harry Gabain with us, and after we got him home we put him in the children's room, and he slept in the children's room.

Q. Where did you live at that time? A. 374 West street, West Hoboken.

Q. Go on. A. Then in the morning—they fell down a few times on the way home, and their coats were so dirty that they couldn't put them on in the morning, and I took their coats up to the tailor's; and when Mr. Schlemm went out in the morning they both went out together, and he didn't come home to dinner and didn't come home to supper, and so I went down to the office and I says, "Will, what is keeping you?" He says, "Go right ahead and I will be up after you," and he didn't come up, and he never came along, so I turned back again and saw him

and says, "Aren't you coming home for supper; everything will be cold?" He was coming out of the saloon of Harry Gabian, and he walked as far as Nepivoda's corner on Spring street, and he says, "come on in for a drink," which I refused. I says "come on home instead of having a drink." So I walked up a ways and he didn't come, and I got all the way up and waited just three-quarters of an hour for him and he didn't come. So I went down again, and as I passed Multini's I happened to look in there first, and I saw him drinking, and I went into Multini's and Mr. Schlemm, and Mr. Gabian, Charley Birmingham the other man, and Lily Multini were there and they were drinking, and he says "come on and have one drink and we will go home," and by that time Mrs. Multini came in and we all took two glasses of wine. Then Charley Birmingham wanted to take Gabian home, and Mr. Schlemm refused to let him do so; said "he slept in our house last night and he is welcomed there tonight." So he came home and they ate supper, and Charley Birmingham came in and stayed for supper also.

Q. How long was this before the 30th of March? A. That was on the 12th of February—the 12th and 13th of February. Then they went to bed. He took Harry Gabian up and put him in the children's room again.

THE MASTER: I don't know, Mr. Weller, how material this is.

MR. WELLER: Your Honor, I don't want to disclose my hand now unless I have to do it.

THE MASTER: I don't want you to, but

I want you to eliminate any things that are not material.

Q. Now, in the morning what did your husband do? A. He got up and asked me for a drink of water, and I went and got him a glass of water and handed it to him, and then he says "bring Harry a drink, too." I said "that is not for me to do, to go in while he is in bed; he is in bed." He says, "You take it in yourself." So he goes off to business and leaves Harry Gabain in the house, and he says, "when he gets up fix him some breakfast." I said "all right." I went downstairs and he went out the door of the kitchen to business. I telephoned down to his place of business and I says to Mrs. Jennings, I says, "I haven't done any work and it is Saturday; when you are through with the store come up." She says "all right." She came up to the house, and I was just boiling eggs. She says, "who are you making breakfast for," and I says, "Willie has a friend here by the name of Harry Gabain."

Q. Well, you got his breakfast? A. Yes. He ate it and went out and thanked me for what I had done.

Q. How long had he and your husband been friends at that time? A. They had been friends for ever so long, because the joined the Freemasons together, and went through the Masonic lodge together.

Q. From the 12th of February until the 30th of March was Gabain in your place again? A. No.

Q. On the 30th of March did you go down with Harry Gabain, or did you meet Harry Gabain? A. I met Harry Gabain.

Q. Did you tell anyone that you were going to meet Harry Gabain anywhere? A. No, sir.

Q. Did your husband know from you that you were going to meet Harry Gabain? A. No, sir.

Q. How did you happen to meet Harry Gabain? A. He telephoned. I went out in the afternoon and he rang up four times and Mrs. Jennings answered the 'phone, and the fifth time I had just come in with my sister and she was just answering the 'phone and it was Harry Gabain at the 'phone, and he says "are you going out tonight?" I says "no." "Do you want to know where your husband is going tonight?"

MR. WALSCHEID: Who said this?

A. (Continuing) Harry Gabain. I says, "I do know where he is going; he is going out tonight, tomorrow, and Wednesday night. He told me he is going to a champagne supper in New York, but where he didn't tell me." So he says, "no, he is not going to a champagne supper." I says, "how do you know; he asked you to go along, didn't he?" "No," he says, "he's not going." I says "he told me he was, and he said he asked you to go with him and you refused." Then he said, "I will prove to you he is not going to a champagne supper." I says, "how can you?" He says, "just get dressed and meet me in the Tube and I will show you." I got dressed and jumped on the car and met Mr. Gabain in the Tube.

Q. Did you go over to the Amsterdam Hotel? A. I didn't know what it was until I got there.

Q. You did go there? A. I went there.

Q. What did he tell you about your husband being there?

MR. WALSCHEID: I object to the form of the question.

Q. What did he say to you? A. He says, "Come on and go in here." We went up in the elevator. "You go with me and you will see when he comes in; you will catch him coming in." We were in there just about ten minutes when a knock came to the door, and Mr. Gabain had taken off his collar. I sat there, but my hat was off. My coat and everything was on, and the drinks had just come up a minute before that, and they were standing on the table, and just then these people came into the room, Mr. Schlemm, Mr. Corridon, and Mr. Lenc.

Q. Now, after this time your husband commenced a divorce suit against you? A. Yes.

Q. And you resumed living together? A. Yes.

Q. When did you go back to live together? A. The 22nd of July, 1914.

Q. And how did you and your husband live together after you went back? A. Very unhappily.

Q. What were his habits about coming home nights after you went back? A. He never came home any nights; he came home in the morning always after two, or three, or four.

Q. What condition would he be in when he came home? A. Intoxicated.

Q. Did he ever remain away more than one night? A. He stayed away two nights in succession.

Q. How often? A. Once.

Q. Did you speak to him, or admonish him, about staying away from the house? A. I did.

Q. When was that, as near as you can tell? A.

Sometime near October or November; sometime about that time.

Q. What year? A. 1914.

Q. What did he say and what did you say; tell us all about it. A. I says while we were eating "why don't you stay home in the evening; you are never home," and his reply was "if you don't like it you know where the carpenter left the door."

Q. What else did he do? A. After that he picked up a cup of coffee and threw it at me.

Q. (*By the Master*) What was the date of that? A. I just don't remember the date.

Q. Well, as near as you can fix it. A. Sometime in October—the beginning of October.

Q. (*By Mr. Walscheid*) What year? A. 1914.

Q. Threw his cup of coffee on the table? A. At me me he threw the cup of coffee.

Q. What did you do? A. I picked up my cup and threw it down on the table and it broke.

Q. And then what happened? A. Then he got up and hit me with the flat of his hand on the back of my neck and scratched the white of my eyes.

Q. Did you show that to anybody. A. I did.

Q. To whom? A. Dr. Olpp and my little daughter.

Q. What time of day or night was this? A. That was supper time, between six and seven.

Q. What did he do to you or compel you to do on or about the 9th of December, 1914? A. Wanted me to go and hire a furnished room for myself and the child.

Q. Were you pregnant? A. Yes, I was pregnant.

Q. How long had you been pregnant? A. Five months pregnant—pretty near five months.

Q. And what did he say to you about that? A. Wanted me to do away with it.

Q. What did he say to you? Just tell us all about it. A. He says, "you may as well do away with that; I will never go out with you and I won't treat you as my wife any more," and he says, "here is $10," which he threw at me across the table, and he says "go and empty your gut" and he said curse-words in between it.

Q. What did you say? A. I just sat there and cried; I didn't say anything. And then he went out after that; he had his hat and coat on.

Q. Did you go anywheres on that day or afterwards? A. I went to the doctor that night.

Q. What doctor? A. Dr. Olpp.

Q. What for? A. I told him what Mr. Schlemm wantedto do. He said, "you are a foolish girl; do you want to kill yourself? I wouldn't think of doing anything like that." Then I told him I was going to do it and asked him if anything happened whether he would attend me.

Q. What did he say. A. He said "yes."

Q. Well, did you go then? A. I didn't go until he came home the next day. He says to me, "here is a card; here is a doctor; you will find the telephone number on that of this woman." He said, "call her up and let her know you are coming and she will meet you at the cartrack with a carriage, and then she is to take you right to her house.

Q. What was this woman? A. Midwife.

Q. Did you go there? A. I did.

Q. After that what happened? A. I took sick —very sick.

Q. How long did you remain sick? A. I was in bed four days.

Q. Then what? A. We had to call Dr. Olpp to assist me, and that is the time Mr. Schlemm didn't come home for two days and two nights that he stayed away.

Q. Did he then at that time say anything about articles of separation? A. He did.

MR. WALSCHEID: When?

Q. Just when was that? A. Over the telephone.

Q. Well, when? A. In January.

Q. No, no, but before that. A. Oh, before that?

MR. WALSCHEID: I object to the question as leading.

THE MASTER: Tell us what was said about articles of separation.

A. That I should go to my lawyer's and have letters of separation; he didn't want to live with me, and I says "if any papers are drawn up you will have to do it, I won't."

Q. Had he before that time spoken to you about articles of separation?

THE MASTER: When did he first speak to you about articles of separation, if he ever did.

A. About two weeks before Christmas.

Q. (*By Mr. Walscheid*) What year? A. 1914.

Q. Did he say that personally or over the 'phone? A. He said that over the 'phone.

Q. What did he say to you? A. He says, "I am not coming home any more; you may as well go to the lawyer's and have articles of separation and I will sign them; no use living this way any more," when I went.

Q. Had he ever said anything about your living in New York? A. Yes.

Q. When was that? A. In November.

Q. What was said about that? A. He said I should hire a furnished room in the city and stay over there and he will pay me so much a week.

Q. What did you say to that? A. I said I wouldn't do that.

Q. When he called you up on the 'phone—when was that? A. That was in January.

Q. What did he say? A. He said I should go and have articles of separation drawn up and he would sign them; no use living this way.

Q. And what did you tell him? A. I told him if there was any to be made if they suited me I would sign them, and then he said he couldn't sign them because "they are all in your favor." Those are the words he said over the phone.

Q. Where were you when he called you up on the 'phone? A. In the house at 324 West street.

Q. Now, he had gone away from you before that time? A. Yes.

Q. Tell us about the circumstances of his going away. A. He went to a banquet with Mr. Multini in the afternoon and didn't come home. I was around to my mother's and was coming home with Mrs. Rohr, and I happened to see his car in front of Multini's saloon—

Q. That is, his automobile? A. Yes. I says, I think he is intoxicated again. She looked in and

she spied him, and she says, "yes, he is in there." So, I says "call him" and she called, and he says, "tell her to come in." I said I didn't want to go in, and then he came to the door and says "come on in."

Q. This was at Multini's saloon? A. Yes.

Q. Where? A. At the corner of Stevens and Spring street.

Q. Well, you went in; just tell us about that. A. When I went in there he was in the bar-room and there was a man in there by the name of Heins and Mr. Schlemm said to him "did you meet this woman"—he didn't say my wife—and he says "no." So he says, "This is Mrs. Schlemm this is Mr. Heins." Then after talking a little he said, "you know all I am living for is my little youngster, not for her;" and I went to put on my hat and coat to go home when Mr. Multini says "don't go." So I sat down for a minute, and then Mr. Schlemm started to call me vile names, such as whore, son-of-a-bitch, and all those names, and I said "Will, why don't you weigh your words," and I picked up a wine bottle and it came down on the table and broke the glass, and I ran out of the place and started to go home, and he had gone in Gessner's saloon on the opposite corner, and I went to the side door and heard him call me all kinds of names to Mr. Gessner and Mr. Poletti, and I opened the door and said "Will please weigh your words" and they just had three glasses of beer, and Mr. Gessner came and put me out and I took my umbrella and hit the glass door and broke it, and I went on home.

Q. About what time did he come home? A. Around three o'clock in the morning and rang the

front door bell and I was upstairs with the girl, and he says "Mollie"—

Q. What Molly? A. Mollie Dorr; so I thought I would send Dolly down, because he likes Dolly.

Q. You had her up at that time, three o'clock? A. I did. So she went to the door and he says "where is mamma."

Q. You heard him say that, did you? A. Yes, I did, and he says "tell her I will be back in fifteen minutes." So I still stayed up there, and I heard him down on the main floor. Then I heard a noise like something falling, and Mollie Dorr looked out of the window and seen Mr. Schlemm walking out towards Spring street.

Q. (*By Mr. Walscheid*) You didn't look out? A. No, I didn't.

MR. WALSCHEID: I ask that that be stricken out.

THE MASTER: Yes, strike it out.

Q. You didn't see him? A. No, I didn't see him.

Q. You can't tell what somebody else saw. Did you learn whether he came and got his clothes? A. Yes, I went down and saw his clothes were gone.

Q. Did he ever come back home again? A. Never.

Q. And that was what date? A. The early part of January; the exact date I can't say.

Q. Then it was after that that he telephoned to you about the articles of separation? A. After that, yes.

Q. How did he get the articles of separation signed? A. He sent one of the papers up and I

looked over it and I signed it. It was a carbon sheet and I telephoned back and says, "you only sent one carbon sheet; there are three sheets to any article of separation. He says "all right, send down and I will give them to you," and he sent them all back to me by the little girl. It wasn't my little girl, but a friend's girl. And I then looked them all over and I had the lawyer look them over, and he says" they are all right only I don't think there is enough money for you; you should get more money if he wants to divide with you." So I says, "no, I am satisfied with the money part of it." He says, "All right, you can sign them." I signed the papers in front of Mrs. Whittle in my own house and then we went over to her husband and he signed the papers, and then Mrs. Whittle took the papers back to Mr. Schlemm's office.

Q. When these papers came to you was Mr. Schlemm's name on them? A. Yes.

Q. I show you a paper and ask you if that is a copy of the articles of separation that was given to you? A. That is an exact copy, yes.

MR. WELLER: I offer the paper in evidence. (The same is admitted and marked Exhibit D-3.)

Q. Where were you living at the time those articles of separation were signed? A. 374 West street, West Hoboken.

Q. After they were signed where did you go? A. 320 Park avenue, Weehawken.

Q. How long did you live there, about; you needn't tell exactly. A. About three months.

Q. Then where did you go? A. 486 Park avenue.

Q. And then where? A. Then, to 470 Park avenue.

Q. After that time, that is, between January 22 and October 24 that has been spoken of by the other side, did you and Mr. Schlemm live together? A. No, sir.

Q. Did you have the little girl with you at that time? A. Yes, sir.

Q. When was it you moved to 470 Park avenue? A. The first of August.

Q. That is what they call Palace Court? A. Palace Court, yes.

Q. Do you know Anna Stenek? A. Yes, I do.

Q. Do you see her here? A. Yes, sir.

Q. When did you first meet her, and where, and under what circumstances? A. In the drugstore on the corner of Union street and Bergenline avenue.

Q. Just tell the Court all about that now. A. I was in the habit of calling up Mr. Schlemm every night at six o'clock, and I always called him up from Deidrich's drugstore. As I came in there she was sitting at the table and she looked at me and smiled, and I couldn't get in the booth because there was a man in there and the other booth was out of order; at any rate, the door was closed. So I sat there and waited, and she says "Why, hello, Louisa;" I says "hello, you seem to know me." She says, "You know I am Anna Stenek." I said "I don't know you, no." So, by that time the man came out of the booth and I went in to call. I got through talking to Mr. Schlemm and I came out, and she says, "Who did you call up" and I says

"my better half." She says, "what way are you going?" I said "Up on Bergenline avenue, up towards Jefferson street, home," and she didn't wait for any more telephone calls after that. She walked up as far as Jefferson street and said "why don't you come to visit me sometime?" I says "I don't get time, but if you want to you can come down to visit me" and I told her where I lived. So the next night she came right down to the house with a gentleman friend.

Q. Who was that gentlman friend? A. I don't know; I couldn't remember his name, and he wanted to make arrangements that night to take a trip on the Fall River Line. He wanted me to get a friend if I could or he would get one and go.

Q. Do you see the gentleman in the room here? A. No, I don't.

Q. Is that the gentleman that came with her (indicating to a man in the courtroom and asking him to stand up). A. No.

Q. How long did they remain there that night? A. Until a quarter after eleven.

Q. When did you see her again? A. The next morning she came down to my house at half past nine in the morning.

Q. How long did she stay there? A. Until twelve o'clock noon; then she went home to lunch and came back at one; then she went home to supper and came back at half past seven.

Q. How long did she keep this up? A. Four weeks.

Q. Until what date. A. Until the 24th of October.

Q. On the 23d of October what happened? A.

telephone message came about half past seven at night.

Q. Where were you then? A. In my apartment.

Q. Had she gone home for her supper? A. She had just gone home then.

Q. Go on and tell us about this telephone message. A. That telephone message came and he said he was Jack Forest, and I says I don't know anybody by that name. He says "I will tell you, I am lawyer Stites, from Hoboken, and I am talking for Mr. Schmidt; Mr. Schmidt is right here alongside of me." I said, I don't know the man; how did you get this phone number?" He says from Sam Detoro. I says "what do you want?" "I want to ask you to go out for an automobile ride."

Q. Did you think it was Lawyer Stites at that time? A. No, I thought it was some friends of mine trying to play a joke.

Q. (*By the Master*) Did you know Mr. Stites? A. No.

Q. Had you ever seen Mr. Schmidt before? A. No.

Q. (*By the Master*) Who is this man Detoro? A. He is a friend that goes up to my aunt's. He goes up there to my aunt's place in Keansburg.

Q. (*By Mr. Walscheid*) You met him at Keansburg? A. No, I met him before that time.

(Recess until 2 P. M.)

Q. So you never had seen Mr. Stites or Mr. Schmidt before that time? A. No.

Q. Well, did they come up there? A. Yes.

Q. What time did they get there? A. About twenty minutes to eight.

Q. In the evening? A. In the evening, yes.

Q. And when they came there how did they attract your attention? A. Well, over the 'phone I said have you an automobile with you?'' and he said ''yes.'' I says, ''if you can ride up this way when you get in front of the house blow your horn three times and I will know who it is and will come out.

Q. You say you thought it was somebody fooling? A. Yes, and when I came out it was two strangers.

Q. What did they say to you? A. Mr. Stites got out of the car and told me to get in. I says ''I don't know you.'' He says, it is merely for a little ride for a good time; we would like to have you go along.'' I told him I didn't like to go.

Q. (*By the Master*) How did you know it was Mr. Stites? A. He told me it was Mr. Stites.

And I said, ''my friend is coming at eight o'clock and I will ask her if she wants to go.'' And so the little one came running out and in the meanwhile it was kind of cold standing there, and I says ''if you want to you can step inside awhile until she comes. So Anna Stenek came and I followed her into the bathroom, and I says ''did you meet these two fellows?'' She says ''no.'' I said ''one says he is Mr. Stites and the other one is Mr. Schmidt. I introduced them and she says ''how

do you do." I had asked her in the bathroom if she wanted to go out for an automobile ride and she said she would go. I then says, do you want to go, and she says yes. Then I didn't know what to do with the little one. I couldn't take her to my mother's because my mother and my sister were going to the movies. Then Miss Steneck says, "I will tell you, my mother and sister are going to the night," and I gave her sister 50 cents. Then we drove off.

Q. (*By the Master*) Who is "we?" A. Anna Stenek and I and Mr. Schmidt and Mr. Stites. We got as far as Union street and the Boulevard when the car stopped and Mr. Schmidt came around and says "come on and sit in the front," and I sat in the front seat and Mr. Schmidt drove the car, and Mrs. Stanek and Mr. Stites sat in the back seat. We drove to a place and had drinks there, and we drank nothing but celery tonic with beer in between.

Q. Who paid for those drinks? A. Mr. Schmidt paid and Mr. Stites paid, too.

Q. Go ahead. A. Then all of a sudden Mr. Schmidt saw Detective Spitz, and Anna also seen him and says "Gee whiz, here is Detective Spitz; come on." I I put my coat on and we went off and jumped in the automobile and went right around the corner to a place called the Grand View, and we stopped in there and put nickles in the piano and played music, and we were dancing in there and had some more drinks, celery tonic and beer in between. Then the hotelkeeper came in and asked Mr.

Schmidt if he wanted any rooms upstairs; "I have just two rooms," he says, "I thought you couple wanted rooms because you are in here first," and Mr. Schmidt says "no." So all of us went away from there and came home, and on the way home we had to pass Annie Stenek's house, and I thought we could drop Anna on the way; but they said "no we will take Mrs. Schlemm home first," and they took me home first, and Mr. Schmidt gets out of the car and says "I will wait until you come back for us from Annie Stenek's, and Mr. Stites took Anna Stenek home. So Mr. Stites never came back after Mr. Schmidt.

Q. When you arrived at your house did Mr. Schmidt get out. A. Yes.

Q. What kind of an overcoat did he wear when he got out? A. Light-colored one.

Q. (*By the Master*) What time did he get to your house? A. A few minutes after one in the morning.

Q. What did he say to Stites when he left? A. He said "I will stay here until you come for me."

Q. And then what did he do? A. I walked in and he walked in after me.

Q. No, no, about his coat? A. He put that over his arm.

Q. But what about the heavy coat? A. He had his coat on and the very heavy coat he put on his arm.

Q. Where did he get that? A. Out of the automobile.

Q. What time was it when the house was broken into? A. Well, close around two o'clock; might have been a little after or a little before.

Q. A man named Schoenfeld has testified that you said to your husband "I have found a man that I like better than you," and one of the other witnesses said that you said you had found a man that you loved better than you did Schlemm; is that true? A. No, sir.

Q. What did you say about his not being the father of your child? A. I didn't say anything about his being the father of the child, because he is the father of the child.

Q. Do you remember after they came there your husband took Schmidt in the bedroom? A. Yes.

Q. How long did they stay there? A. About eight minutes in all.

Q. Did they shut the door when they went in? A. Yes sir, they did.

Q. Could you hear what they were talking about? A. No, sir.

Q. Did Schmidt tell you what they were talking about? A. No, sir, I never spoke to Schmidt after that.

Q. After they came out and went out on the street did Schmidt come back and call you? A. No, sir.

Q. Flood and another detective said that up at the corner you said that your husband was not the father of the child; did you say any such thing as that? A. No, sir, I did not.

Q. Did your husband, during the time you lived with him, ever have any loathesome disease? A. Yes, sir.

Q. When? A. Around 1909, I think, or 1910.

Q. Just tell us about that—how you found it out. A. He was in the bathroom cleaning him-

self, and he asked me if I had any cotton, and I asked him what he wanted cotton for, and I walked in the bathroom and gave him the cotton and I seen him cleaning himself with the cotton, and I asked him what was the matter, and he says: "I don't know; I caught something but I don't know where I caught it, and if I could get the son-of-a-bitch that give it to me I would kill him.

MR. WALSCHEID: Is this material?

THE MASTER: I think not. I have not heard any objection.

MR. WALSCHEID: I do object. I think it is going too far. I object as improper and I move to strike out all this testimony with reference to the venereal disease.

THE MASTER: Mr. Weller, how do you justify it?

MR. WELLER: It shows the way they lived together, and it shows the disposition and the habits of the man. Later I am going to introduce evidence of adultery that I think is very material.

THE MASTER: What is it material to? What allegation have you in your answer that makes this evidence at all material?

MR. WELLER: I don't know that he have any allegation. I just found this out one or two days ago. I will ask another question and maybe that will make it more material.

Q. How long had you been married at this time?
A. Oh, about seven years, I guess.

THE MASTER: Now, does that help us?

MR. WELLER: I think so. It tends to show at least that this man committed adultery with somebody and if he did it shows his disposition.

THE MASTER: What do you say, Mr. Walscheid?

MR. WALSCHEID: I don't see how it is material to any allegation contained in his answer or cross-petition. Your Honor will notice that he has filed two answers; he has revised it once and put in additional matter, and his second one is filed with my consent out of time.

THE MASTER: I will have to let him amend his answer again, because the adultery of the defendant is a matter of recrimination as well as a matter of affirmative relief. Of course, if it should turn out that I should find the defendant was guilty of adultery and the petitioner himself was also guilty of adultery there could be no divorce. I suppose I had better let it in. It will be safer to let it in and disregard it if I find it has no bearing than to leave it out at the present time. I shall decline to strike it out. The motion is denied, with leave to Mr. Walscheid to renew it at a later stage of the case.

Q. Now then, on the 24th day of October, had you little Dolly with you? A. Yes, sir.

Q. What happened to Dolly on that day? A. On the 24th?

Q. After that day. A. Oh, after that day—I had her until the 28th, and on the 28th of October, Thursday, Mr. Schlemm and Anna Stenek—

MR. WALSCHEID: Now you didn't see this?

A. I saw Mrs—

THE MASTER: What is this about?

MR. WELLER: I am going to show, Your Honor, that this Anna Stenek—and right here I might ask another question:

Q. Would you have gone out with this man if Anna Stenek had not wanted you to go?

MR. WALSCHEID: I withdraw the objection.

MR. WELLER. Anna Stenek was Mr. Schlemm's agent.

THE MASTER: We don't know that.

MR. WELLER: That is why I want to prove that.

THE MASTER: What do you expect to show?

MR. WELLER: I expect to show that Mrs. Stenek's sister and mother sent two little girls in to play with Mrs. Schlemm's little daughter. That was on the 28th of October—

THE MASTER: You want to show that an attempt was made to take this little girl away from the mother?

MR. WELLER: Yes.

MR. WALSCHEID: I object to the witness testifying to things that she has no personal knowledge of.

THE MASTER: Tell us what happened that you yourself saw on the 28th of October.

A. On the 28th of October Anna Stenek and her sister came in my apartment and wanted to stay there. I couldn't have any company, because I was breaking up my home and going with my sister. In the afternoon she came again.

Q. Who did? A. Anna Stenek and her sister sent the children first to play with Dolly.

Q. (*By the Master*) How do you know the sent the children? A. Because the sister told me afterwards.

MR. WALSCHEID: I ask that that be stricken out.

THE MASTER: Go ahead; what happened after that?

A. And coaxed her out in the front of the house.

MR. WALSCHEID: I ask that that be stricken out.

THE MASTER: What did they say?

A. They asked her to come to the front of the house and play hide and seek, and when she got to the front hall all at once the janitor came in and said "Mrs. Schlemm, your child is gone" and he saw her ride away with him and he stuck his fingers to his nose at me and Dolly cried out "mamma."

Q. Did you at that time see Mrs. Farrell or Mrs. Stenek? A. No, sir, I just seen Anna Stenek.

THE MASTER: Who is the other woman?

MR. WELLER: Her sister, Mrs. Farrell.

A. (Continuing) I saw Anna Stenek pass the house.

Q. And what happened; go right on and tell it all. A. That is all that happened, only I went out to the front after the janitor called me and seen him ride away.

Q. Did you cause the arrest of that woman? A. Yes I did; I had a warrant taken out for her, and the Judge down in the Police Court said he couldn't take him in because it was his child as well as mine.

Q. Did you have them arrested?

MR. WALSCHEID: I object.

THE MASTER: What is the materiality of this?

MR. WELLER: Standing alone there is no materiality of any account. You may cross-examine.

Cross-Examination by Mr. Walscheid:

Q. Mrs. Schlemm, have you been true to your marriage vows? A. Yes.

Q. Since your marriage you have not had sexual intercourse with any man? A. No.

Q. Is that right? A. That is right.

Q. You became acquainted with Mr. Schmidt through a telephone message? A. I did.

Q. And that was on the evening before he called to take you out? A. On a Saturday evening, the 23d of October.

Q. On the evening on which he did take you out? A. Yes.

Q. You hadn't met Schmidt before? A. Never.

Q. You did know Sam Detoro before? A. I did.

Q. How long had you known him? A. I don't know how long I have known him.

Q. Four or five years? A. Not quite that long.

Q. Two years? A. Maybe two years.

Q. Did you ever go with Sam Detoro alone? A. Not alone.

Q. Did you ever go out with Sam Detoro without your husband? A. Yes.

MR. WELLER: I object to this, on the ground that it is not cross-examination.

THE MASTER: Why not.

MR. WELLER: I didn't ask her anything about Sam Detoro; I didn't put any denial in at all, he put that in himself.

THE MASTER: I think it is proper cross-examination.

Q. What business is Sam Detoro in? A. If I am not mistaken in the junk dealing business.

Q. Don't you know? A. I don't know, no; he told me he was in that, but I can't say whether what he told me is true or not.

Q. Didn't he tell you where his place of business is? A. He did not.

Q. Have you ever been to his place of business? A. No, I have not.

Q. Do you know where Schmidt's saloon is? A. Yes, I do.

Q. Where is Schmidt's saloon? A. Corner of 15th and Willow avenue.

Q. Don't you know that Sam Detoro's place is directly across the street on 15th street? A. I don't.

Q. You know there is a junk-shop there? A. I don't know there is a junk-shop there.

Q. You have met Sam Detoro in Schmidt's saloon, haven't you? A. I have never met Sam Detoro in Schmidt's saloon.

Q. Have you ever met him in any other saloon? A. No.

Q. Where have you met him? A. I have met him and went with him to a saloon on the street.

Q. How often did you do that? A. On three or four different occasions.

Q. And when was the last time you did that? A. That was sometime before Labor Day.

Q. (*By the Master*) What year? A. This past year, 1915.

Q. And where was the last saloon that you went in? A. Can I correct myself? I said "a saloon;" I never went in a saloon.

Q. What was it? A. A cafe and restaurant.

Q. Where? A. Lohman's

Q. Lohman's hotel? A. The dining place of a hotel.

Q. In Union Hill? A. In Union Hill.

Q. Is that located on Lewis street? A. I don't know. It is not located on Lewis street; it is in from Lewis street.

Q. Right off the Hudson Boulevard? A. That's right.

Q. How often have you been there with him? A. Three times.

Q. Who was with you? A. Miss Louise Manfred was with me once.

Q. And who else was with you on the other occasions. A. Anna Stenek was with me on another occasion.

Q. Who else on the third occasion was with you? A. Mrs. Bamblick.

Q. When you were there with Miss Manfred what other man besides Detoro was with you? A. No one.

Q. When you were there with the others who was there? A. No one else.

Q. On each of these occasions you were there alone with him, because he was the only man? A. He was the only man.

Q. And what other drinking places have you been with Sam Detoro? A. I have been to one other place, but it was not a drinking place but a private house in Hudson Heights where they serve Italian dinners.

Q. He took you there? A. Not me, my sister and myself.

Q. Who else was there with you? A. Mrs. Cain.

Q. What other men? A. No other men.

Q. On the night of October 23d and 24th you saw Detective Spitz, you say, at Nungesser's? A. Yes.

Q. And Anna Stenek said what? A. Here comes Spitz, the detective.

Q. And then you left that place, didn't you? A. I did.

Q. Why? A. No reason at all; just because I didn't like to see him.

Q. You didn't want to see Spitz? A. No.

Q. You knew that Spitz was working for your husband, trying to get evidence? A. I didn't know anything of the kind.

Q. Didn't you have information to that effect? A. No, sir.

Q. None at all? A. No, sir.

Q. Didn't you telephone your husband that Spitz had been watching you? A. No, sir.

Q. Didn't you write him? A. No sir, I never wrote him.

Q. You didn't write him? A. No.

Q. You don't write? A. No, I don't write.

Q. What is the name of the janitor in your place there? A. In which place?

Q. The Palace Court. A. Mr. Benson.

Q. Didn't that janitor tell you that Spitz was watching you? A. No, sir.

Q. You are sure of that—and didn't he hand you Mr. Spitz's card with Mr. Schlemm's telephone number on the back of it? A. That was the janitor from 488 Park avenue.

Q. Then the janitor from 488 Park avenue told you that Spitz was on your track? A. No, he did not.

Q. What did he tell you? A. Just gave me a card.

Q. Gave you one of Spitz' cards? A. Yes, with Schlemm's name and telephone number on in Spitz' handwriting.

Q. How do you know it was in Spitz handwriting? A. I surmised it was Spitz's handwriting.

Q. Now tell us just exactly what occurred on that occasion when he gave you that card. A. Nothing at all.

Q. What is the name of this janitor? A. Mr. Lang.

Q. And is he still janitor of this place? A. He is.

Q. How did he come to hand you this card? A. Well, he says to me that he was over in the saloon and Mr. Spitz was in there, and they were drinking together, and he says Mr. Spitz pulled out a card and handed it to him and when he pulled that out this one fell out of his hand and he picked it up, and he said if it will do any good you can have it.

Q. Why should he think that obtaining a card like that would do him any good; have you any reason for that?

MR. WELLER: I object to that.

THE MASTER: Do you know of any reason?

A. I don't know of any reason.

Q. And that is all that he said to you? A. That is all.

Q. That if that card would do him any good he could have it? A. Yes.

Q. Didn't you then go to the telephone and call up Mr. Schlemm? No, sir.

Q. And didn't you tell him that he had Spitz on your track? A. No, sir.

Q. And that a man like Spitz would never catch you? A. No, sir, I never said that.

Q. But all this happened before you saw Spitz up at Nungesser's? A. All what happened?

Q. This episode about the card; in other words, that happened before you saw Spitz up at Nungesser's? A. Yes.

Q. And you knew Spitz to be a detective? A. Just by hearing things.

Q. And you knew that for a long time, didn't you? A. I did.

Q. Is Mr. Schmidt here? A. Yes, sir.

Q. In the room, is he? A. Yes, sir.

Q. Is Mr. Stites here? A. No.

Q. You didn't cause him to be subpoenaed, did you? A. No.

Q. When you got back to your house on the night of the 23d to the 24th you say it was one o'clock? A. It may have been a little after or a little before; I'm not sure.

Q. And you went into your apartment and opened the door? A. I did.

Q. And Schmidt came in with you? A. Yes.

Q. Did you tell him not to? A. I did.

Q. You told him not to but he persisted? A. He walked right in.

Q. And you didn't force him out, did you? A. No.

Q. Did you lock the door? A. No.

Q. The door was unlocked? A. When I was in the door was unlocked.

Q. You mean the door leading to your apartment was? A. Not while I was out, but I left it unlocked after I came in.

Q. How many rooms are there to that apartment? A. Three rooms and a bath and a private hall.

Q. And a bedroom? A. Bedroom, yes.

Q. And a dining-room? A. Living room.

Q. A living room, as you call it, and a kitchen and a bath? A. Yes.

Q. Did you go to bed while you were with Mr. Schmidt in the place? A. No, sir.

Q. Did you take your things off when you came in? A. Not right away.

Q. How long afterwards? A. I was in a few minutes when I asked him to go home; I wanted to go to bed after I had drank quite a few highballs with him.

Q. Is there any alcohol in that drink? A. I think so.

Q. You know so, don't you? A. Yes.

Q. What is ginger ale highball made of? A. Just ginger and some whiskey and lemon.

Q. And did you drink anything after you arrived home? A. No, sir.

Q. There was nobody else in that apartment but you and Schmidt? A. That is all.

Q. How long were you in there when you decided to go to bed? A. Ten or fifteen minutes

Q. What did you say to him? A. I asked him to go home, because I wanted to go to bed.

Q. What did he say? A. He sat out in the kitchen.

Q. What did you do? A. I went in my bedroom and undressed.

Q. Did you lock your door? A. I closed the door; I thought he was man enough not to come in.

Q. But you did undress and go to bed? A. I didn't go to bed; I opened up the bed, took the spread off and pulled down the blanket.

Q. What was it, a folding bed? A. No, plain bed with a white spread. I don't use the spread when I go to bed.

Q. You prepared the bed to sleep in with this man sitting in your kitchen? A. Yes.

Q. After you had thus prepared the bed did you go out in the kitchen again? A. No.

Q. Did he come into the bedroom? A. He walked in.

Q. And when he walked in were you undressed? A. I was in my nightdress.

Q. And then did he take his clothes off? A. I don't know; when he walked in the bedroom I went into the other room.

Q. What did you go into the other room for? A. What business did I have in there with him?

Q. What business did he have there? A. I don't know; I walked into the living room again.

Q. Did he follow you in the living-room? A. No, he stayed in the bedroom.

Q. So that you with that nightdress on went into the living room and he stayed in the bedroom? A. Yes.

Q. Did he close the door when he was in the bedroom? A. Not all the way.

Q. But he did go into the bedroom when you stayed in the living room and closed the door partly? A. Yes.

Q. The next you saw him he came into the sitting-room, didn't he? A. He was just about to come in.

Q. With his clothes off? A. I don't know; I didn't look around.

Q. Don't you know whether Schmidt had his clothes off or not? A. Not then I didn't, no.

Q. When did you first know that he had his clothes off? A. After the door was broken open.

Q. Just before the door was broken open didn't he come out into this sitting-room? A. No, I said he was just about to come out.

Q. How do you know? A. Because the door had a squeak to it every time it was moved.

Q. You just heard that door squeak and you knew that he was coming out? A. It may have been hi mcoming out and it may have been the wind.

Q. You want us to believe that story, do you? A. I don't know.

Q. Who put the lights out? A. The light was burning.

Q. (*By the Master*) In which room? A. In the living room.

Q. Was it burning in the bedroom? A. No, sir.

Q. You arrived at this apartment about one o'clock? A. A little after one.

Q. How long after one? A. Oh, a few minutes.

Q. And it took you fifteen or twenty minutes to undress? A. No, we spoke for a long while in the kitchen.

Q. Did he at any time during the time that you were in that apartment with him alone attempt to grow affectionate towards you? A. No, sir.

Q. Not at all? A. Not at all.

Q. While you were thus speaking with him were you seated? A. I sat at the side of the table and he sat at the head of the table.

Q. Were you then undressed. A. No, sir.

Q. What were you talking about? A. Well, I can't recall the conversation we had.

Q. Was he undressed. A. No, he wasn't undressed; he had his hat off and his coat over the chair.

Q. He had the coat of his suit off? A. He did not.

Q. Wasn't he sitting there in his shirtsleeves? A. No, sir.

Q. And you say he was sitting at the head of the table and you were sitting at the side of the table talking for fifteen minutes? A. I don't know how many minutes we sat there, but it was quite a long time talking.

Q. And after this fifteen minutes you went into your room and undressed? A. Yes.

Q. In the dark bedroom? A. Yes.

Q. And came out again in your nightgown? A. I did.

Q. And then he went in the dark bedroom and undressed? A. He made an attempt to go in there and I walked out.

Q. That is when you walked out? A. Yes.

Q. And you passed him? A. He went in and I slid by him.

Q. Did you say you slid by him? A. Walked right by him.

Q. And he went in there and closed the door half way and took his clothes off? A. I don't know whether he took his clothes off or not.

Q. Weren't you interested at all? A. I wasn't.

Q. You want us to understand that you had this strange man in your home with you, that you took your clothes off down to a nightdress and that he went into your private bedroom while you were in the other adjoining room? A. I do.

Q. And that you weren't interested in what he was doing? A. No.

Q. Weren't you interested in what might happen to you? A. No, I knew nothing; it was really the first time I had met the man and he couldn't get very familiar the first time I met him.

Q. They don't usually grow very familiar the first time, do they? A. I don't know.

Q. This man didn't? A. This man didn't, no.

Q. You say that he wasn't familiar; don't you consider that you were growing pretty familiar for you to take off your clothes in front of him? A. I don't think so; I told him—

Q. You didn't have a telephone in that apartment, did you? A. No, in my apartment.

Q. You had a janitor in that house? A. Yes.

Q. How many families in that house? A. Forty.

Q. And do the windows of that apartment lead right out onto the street? A. No.

Q. Where do they lead? A. Onto the back.

Q. Do you think you would have had any trouble in getting that man out of your apartment if you wanted him out? A. I don't see why.

Q. You wouldn't have had any trouble about it? A. Not if I had forced him out.

Q. Did you strike Mr. Corridon in the nose? A. I did.

Q. Did you throw a clock at your husband there that night? A. I did.

Q. Were the policemen in there? A. Yes.

Q. And did they break in the door when they first came to your place? A. Mr. Corridon and Mr. Schlemm broke in the door.

Q. Although you say that door was unlocked? A. I don't know who locked it after I went in.

Q. Nobody would be likely to? A. No.

Q. When they came in did they have a flashlight? A. Yes.

Q. Did they stand Mr. Schmidt up against the wall? A. I didn't see that.

Q. But you ran out to go upstairs? A. I ran out when Mr. Schmidt came in. There is a door leading from the private hall into the kitchen and one leading into the living room, and I saw a shadow of a man and I ran right through the private hall into the living room.

Q. You knew it wasn't Schmidt? A. Yes.

Q. Where was Schmidt then? A. In the bedroom.

Q. With you? A. I was in the kitchen when they threw the flashlight on me.

Q. In other words, the flashlight caught you in the kitchen? A. Yes.

Q. How do you know, then, that Schmidt was in the bedroom? A. Because he was there just a minute before that.

Q. Had anybody been in that bed that night? A. No; I just opened it up.

Q. It hadn't been slept in at all? A. No.

Q. So that when Schoenfeld says it looked as if it had been slept in, he was mistaken? A. I think maybe it looked that way, because I sat on the end of the bed to take off my shoes and stockings, and it may have looked that way, but nobody was in the bed at all.

Q. How was Mr. Schmidt dressed when you first noticed his appearance? A. He had his top shirt and his pants on, but no collar.

Q. That is the way you saw him? A. That is the way I saw him.

Q. And the only things he had off was his coat and is vest and his collar and tie? A. Yes.

Q. Is that right? A. That's right.

Q. He wasn't as quick in getting his clothes off as you were? A. I don't know.

Q. You knew on October 24, 1915, that your husband suspected your infidelity, didn't you. A. On October 24, 1914?

Q. Yes. A. Suspected me? I don't understand.

Q. You knew on October, 1915, that your husband suspected that you were not true to your marriage vows?

THE MASTER: You knew you were under suspicion?

A. Yes.

Q. For how long a time had you known you were under suspicion? A. I don't know.

Q. It was fully a month, wasn't it? A. Why, the night the occurrence was, on the 23d.

Q. Fully a month before that your husband suspected that you wern't leading a straight life? A. I don't know.

Q. How long before? A. I never gave a thought that he suspected me.

Q. Well, when you went out with Mr. Gabain to New York didn't he then tell you that he thought you had been untrue to him? A. No, I told him everything that happened.

Q. What did you tell him? A. Just what I said before.

Q. What did you say to him? A. About the telephone call, and he went over to find out about it there.

Q. Was that the first time that you had been out with Mr. Gabain? A. Yes.

Q. Sure of that? A. Positive.

Q. Do you know Mrs. Forberg who is here? A. Yes.

Q. Did you tell Mrs. Forberg before you went

out on that occasion that you had been receiving telephone messages from Gabain and were in the habit of going out with him? A. No, I did not.

Q. Sure of that, too? A. I am sure of it.

Q. And on this night when you went to New York how did you happen to go over there then? A. Because he telephoned up and said I could find my man there if I wanted to go with him.

Q. Who? A. Mr. Gabain.

Q. Told you what? A. He would show me where my husband is.

Q. Your husband had gone for a champagne dinner, as you put it? A. Yes, that is what my husband told me.

Q. As a matter of fact, he did go there, too, didn't he? A. No, I don't think so.

Q. What time of the day was it when you left home? A. Ten minutes of six.

Q. And you were dressed for evening? A. Yes, plain clothes I was dressed in.

Q. Not in evening clothes? A. No.

Q. And when you went out was he at home? A. He had his hat and coat ready to put on. He was getting some buttons sewed on.

Q. Who was sewing the buttons on? A. Mrs. Jennings.

Q. And you went by with a glass dish? A. Package; he didn't know what it was.

Q. And he asked you where you were going? A. Yes.

Q. And you told him to a euchre? A. Yes.

Q. Did he say anything? A. He says, "get somebody, or get a servant girl to stay with Dolly, because I am going Monday night and Tuesday

night to a meeting and Wednesday night to the Shriner's meeting."

Q. And you went out before your husband did? A. About five minutes.

Q. Where did you meet Gabain? A. Down in the Tube sitting on the bench.

Q. What did he say to you when he met you? A. Nothing at all; the train was right there and we sat in the train.

Q. What did he say to you when he got in the train? A. Nothing said, except "we will go right ahead;" we didn't talk very much.

Q. You didn't talk very much. A Very little.

Q. Did he tell you where he was going? A. He did not; he said he would show me where Mr. Schlemm was.

Q. He told you that before? A. He told me that again.

Q. And then you got out where? A. Out of the subway; I don't know where we went; I couldn't say. I just went with him.

Q. Wasn't it 23d street? A. I couldn't say.

Q. Did you walk from where you got out? A. Yes, five or ten minutes' walk.

Q. And then you came to a hotel? A. I didn't know what it was; it looked like a cafe or a restaurant. He says, we won't eat in here, and would go upstairs, and Schlemm would come in and I would see him.

Q. So when you got to this hotel you went to the restaurant? A. No, he passed the restaurant.

Q. And he hadn't suggested that you go to this hotel? A. No.

Q. And he hadn't said that you go to this place to eat? A. No.

Q. What is the name of the place? A. Amsterdam, as I seen in the papers.

Q. Then did you go through the restaurant? A. No, the hall alongside of the restaurant to the elevator.

Q. And what did Gabain do? A. He got out of the elevator and I went into the ladies' lobby.

Q. What did you see him doing? A. I didn't see him doing anything.

Q. What did he tell you he was leaving you for? A. He didn't say anything at all. I excused myself and left him.

Q. And you went into the ladies' lobby? A. I did.

Q. And you sat down there? A. I didn't .

Q. And you sat there? A. No, I went there for certain purposes.

Q. And then when you came out of the ladies' room into the main room did Mr. Gabain come back to you? A. He was standing there waiting for me to come out.

Q. And who was with him? A. Nobody.

Q. Wasn't there a man to show you to a room? A. The bellboy.

Q. Did this bellboy precede you to a room? A. Just unlocked the door.

Q. Was it on the same floor? A. Yes.

Q. And you shut yourselves into it? A. Yes, just as he walked away.

Q. Did you give Mr. Gabain the key? A. It was left in the door.

Q. And Mr. Gabain took that key out of the door? A. I don't know.

Q. Well, you went into that room? A. Yes.

Q. What was there in that room? A. A little sitting-room.

Q. What else was there in there? A. A set of portieres separating the bed from the sitting-room.

Q. Then you had a suite, consisting of a sitting-room and a bedroom. A. And a bathroom.

Q. And was there a table there? A. Yes, and he had ordered the drinks to come right up; he called the waiter right away.

Q. And the waiter took your order? A. He took our order.

Q. And did he close the door? A. No, the door was left open until the waiter came back again.

Q. And after the waiter came back did he then close the door? A. He did.

Q. Did he lock the door? A. I don't know.

Q. How long were you in that room with Gabain alone after that? A. Ten or twelve minutes.

Q. And then what happened? A. Then a knock came to the door.

Q. What did Gabain say? A. Gabain didn't say anything.

Q. What did you say? A. I says, "what is that knock?" He says, "oh well, that is nothing." By and by another knock came, and I says "why don't you open that door; is that door locked?" and he says "be quiet," and then I says "if you don't open the door I will open it myself."

Q. Did he again say "be quiet?" A. Yes, and after that I went to walk to the door and opened it.

Q. And when it was opened somebody put their foot in? A. I don't know; I didn't see that.

Q. Well, they came in? A. Yes, I saw Mr. Schlemm.

Q. Now, do you want to tell us that you had not been in that bed in that room ? A. I was not.

Q. You want to tell us that you weren't without clothes on at that time? A. I was perfectly dressed.

Q. Didn't you see Mr. Lenc there, too? A. Yes.

Q. And you had all your clothes on? A. Every piece I had on.

Q. Did Gabain also have all his clothes on? A. No.

Q. What did he have off? A. He took off his collar and tie.

Q. It seems to be a habit of his to take off his collars and ties; that is as far as they get, according to your story? A. I don't know.

Q. Well, he had his collar and tie off? A. Yes.

Q. How many drinks did you have. A. None.

Q. Not even one drink? A. The drinks were standing on the table and they hadn't been touched.

Q. Now, when he took his collar and tie off that was before the drinks came in? A. No.

Q. After the drinks came in? A. After the drinks were in.

Q. How long before they came to the door? A. Just about a minute or two.

Q. You and Gabain hadn't quarreled in that room any, had you? A. No.

Q. You were on perfectly good terms? A. Yes.

Q. Friendly? A. Not friendly.

Q. Why not friendly? A. Because I was impatient, waiting to see whether or not I was going to see Mr. Schlemm.

Q. Did you expect your husband to come into that private room? A. No, he was supposed to come right in the next room.

Q. You expected to catch him in the next room? A. Yes.

Q. And whom was he expected to be with? A. I don't know.

Q. You didn't know that? And who had told you this? A. Gabain.

Q. So that on the strength of what Gabain had told you, that your husband would be in the next room sometime during that night, you went into this private room with Gabain? A. Yes.

Q. When had Gabain first told you that your husband would be at the Amsterdam hotel? A. He didn't tell me he would be at the Amsterdam hotel.

Q. What, then, made you think that you would meet your husband at the Amsterdam hotel? A. He told me he was going to a champagne supper, and Gabain had telephoned to me and asked me if I wanted to find out where he went.

Q. So, simply because Gabain telephoned you and asked you if you wanted to know where your husband went, you thought he would show up in this place next door? A. I thought he knew where he was going. If I thought he didn't know I wouldn't have went.

Q. Isn't it a fact that when you were caught there that day, or that evening, that you didn't have any clothes on? A. No.

Q. That the bed was mussed? A. No.

Q. That Gabain was practically nude? A. No.

Q. And that you were nude? A. No.

Q. And that you ran into the bathroom of that apartment and closed the door behind you, and sat in there? A. No.

Q. Did you go into the bathroom? A. I went into the bathroom, but I didn't close the door.

Q. Weren't you undressed? A. I was not; I was perfectly dressed.

Q. Did you talk to your husband while you were in that room? A. Not a word.

Q. Did he talk to you? A. No.

Q. Just looked at you? A. Yes.

Q. And Corridon saw you? A. Yes.

Q. And Lenc saw you? A. Yes.

Q. What business is Lenc in? A. Coach business.

Q. In Union Hill. A. In Union Hill.

Q. And you have known Lenc practically all your life? A. No.

Q. How long have you known him? A. Since I married my husband.

Q. That is ten or twelve years? A. I didn't know him at the beginning—only about eight years.

Q. You left West Hoboken, you say, ten minutes to six? A. Ten minutes to six.

Q. For New York. When did you get to the Amsterdam. A. I don't know; it took me almost an hour to get down to Hoboken.

Q. You were at the Amsterdam by half past seven, weren't you? A. Oh, no.

Q. Weren't you in there by eight o'clock? A. Oh, no.

Q. Weren't you in there by nine o'clock? A. About twenty minutes after nine.

Q. Then you went directly from your house to the Amsterdam hotel. A. Not directly.

Q. Where did you stop? A. Stopped in Hoboken; we sat on the bench there—no, we went right in the train, but on the other side when we got out we walked up slowly, I expect, and stopped.

Q. Standing where? A. By the tube as we got out.

Q. What were you talking about? A. I don't remember.

Q. How long were you standing by the side of that tube over there? A. I couldn't say.

Q. Half an hour? A. Might have been, or more maybe.

Q. Did you stand any place else? A. No, that is the only place.

Q. That is the only place you stopped? A. Yes.

Q. With the exception of that stop you went directly to the Amsterdam hotel? A. No, we stopped in some place and had a drink.

Q. Where did you stop and have a drink? A. I don't know.

Q. In a saloon. A. The ladies' entrance of a saloon.

Q. And you and he sat down there and had a drink? A. Yes.

Q. What did you drink? A. Beer.

Q. What did he drink? A. Beer.

Q. How long did you stay in there? A. I don't know, I don't recollect how long we stayed; we sat talking there for awhile.

Q. And you were in this room only about twenty minutes when these people broke in on you? A. Not quite twenty minutes.

Q. Did you take any money out of the drawer that night when you left? A. Out of what drawer?

Q. At home; out of the safe in the office? A. Yes.

Q. $25; didn't you? A. Yes.

Q. What did you do with that? A. I had that home after we separated.

Q. Didn't you give it to Gabain that night? A. I gave it to Gabain on the way home.

Q. Didn't you give it to Gabain that night on the way over, so that he could pay for the room?

A. I didn't give it to Gabain so that he could pay for the room.

Q. When did you give it to him? A. I gave it to him on the way home to hire the taxi. I thought he didn't have enough money, and I said "here's $20."

Q. That was on your way home? A. Yes. He says "do you want your money back now?" and I says "no;" I will go right on home.

Q. Didn't you think from that time forward that your husband suspected you with infidelity? A. You will have to explain "infidelity" to me.

THE MASTER: Being untrue to him.

A. No; he never said anything.

Q. He never said anything to you about being untrue to him after that? A. No, sir.

Q. Didn't he start a suit against you for divorce? A. Oh, after?

Q. Yes. A. Yes.

Q. And didn't you file an answer? A. Yes.

Q. And in that answer didn't you charge him with being untrue to you? A. Yes, with Mrs. Dort —no, not with Mrs. Dort.

Q. And Mrs. Hofstetter? A. No, I don't think I did.

Q. Did you sign that paper (exhibiting paper to witness)? A. That is my handwriting.

Q. Now read it (handing paper to witness).

MR. WALSCHEID This is the answer, and I offer it in evidence, in case No. 37-709. (The same is admitted and marked Exhibit P-1)

Q. Don't you there say that he committed adultery with a woman named Hofstetter? A. Yes.

Q. Don't you also say there that he had taken Mrs. Dort to the moving picture show and had committed adultery with her? A. Yes, it says so there.

Q. It says so there, doesn't it? A. Yes, sir.

Q. Isn't it a fact that from that time forward your husband suspected you, to say the least, of being untrue to him? A. He never said anything any more.

Q. Well, he immediately separated himself from you, didn't he. A. Yes.

Q. And moved out of the house? A. Yes.

Q. And remained away from you? A. Yes.

Q. Where did he move to? A. To my knowledge, 426 Spring street.

Q. That is where his store is? A. Yes.

Q. And you remained living in the house? A. 374 West street, West Hoboken.

Q. Which he owns; that is right, isn't it? A. Yes.

Q. How far is that from the store? A. Four or five blocks.

Q. How long was he away from you—how long did he stay away from you? A. Four months.

Q. How did you come together? A. He came down and saw me after four months and stayed there sometimes two or three times a week.

Q. And made up with you? A. Yes.

Q. And did he ask you to lead a decent life after that? A. Yes.

Q. And didn't you promise you would? A. I didn't do anything different from that.

Q. Didn't you promise you would? A. No, I couldn't make any such promise.

Q. (*By the Master*) Did you say anything about living a decent life? A. No, I didn't say that.

Q. Now just try to remember: You say you didn't answer him when he asked you to lead a decent life? A. No.

Q. After he asked you that and you didn't answer him, then he took up living with you agan,i did he? A. Yes.

Q. And that was sometime in August? A. That was the last day of July.

Q. And after that you and he lived together until sometime in January, 1915. A. Yes.

Q. And didn't he say "let bygones be bygones" when he took up with you again? A He didn't say that.

Q. Didn't he ask you to? A. No.

Q. What did he say? A. He didn't say anything, but he bought a record with "let bygones be bygones" and played it.

Q. Did he play it for you? A. Yes.

Q. So that you had "bygones" set to music? A. Yes.

Q. And you knew what that meant, didn't you, that you were going to be good to each other from then henceforth? A. I was always good to him.

Q. Do you know where Boccasavva's hotel is?

Q. Where is it? A. Somewheres in Fort Lee, I think.

Q. Can you get rooms there? A. That is what I don't know.

Q. Have you ever been in any private sleeping apartments at Boccasavva's? A. No, sir.

Q. Did you ever lose a stickpin up there? A. No, sir.

Q. Did you ever lose a stickpin up there and telephone for it and go back after it two or three days afterwards? A. No, sir.

Q. You know Louise Manfred? A. Yes.

Q. Is she here? A. She is.

Q. Where is she? A. Sitting right there with a pink waist on (indicating).

Q. Did you associate much with Louise Manfred? A. Not very much.

Q. Did you go out with her? A. Yes.

Q. Did you go out with her with men? A. Yes.

Q. Since you have separated yourself from your husband under this agreement you have gone out with her with men, haven't you? A. Yes.

Q. Who are the men that you have been out with with her? A. Mr. Prior. That is the way he tells me his name is.

Q. And who else? A. I don't know the other man's name.

Q. Did Mr. Prior go out with you? A. No, sir.

Q. Did he go out with Miss Manfred or did he go with you? A. I don't know; we were all together.

Q. The four of you? A. The four of us.

Q. Is that a picture of Mr. Prior (exhibiting picture to the witness)? A. Yes.

Q. And is that a picture of the other man (showing picture to witness)? A. Yes.

Q. Do you know Mr. Ben Kelt? A. Not by name.

Q. How do you know him? A. By his looks there.

Q. Is that the other man that went out with you? A. Yes.

Q. You had such a picture? A. It may have

been a "throw-away" for election; everybody carries them—picks them up on the street.

Q. Did you pick this up on the street? A. No, this is one that was lying around the house; the children have them.

MR. WALSCHEID: I offer this in evidence.

MR WELLER: I object to it now.

THE MASTER: It may be marked for identification. (The same is marked P-2 for identification.)

Q. Where did you go with Prior and Kelt and Miss Manfred? A. There was more than Louise Manfred with us.

Q. Where did you four go? A. Four didn't go out alone. There was Mrs. Manfred, Mrs. Carneo, and Mrs. Bamblick.

Q. Did you know Kelt by the name of Kelt? A. I didn't call him by any name.

Q. You went out with him and didn't call him by any name? A. No.

Q. What did you call him? A. We were all together as Mrs. Manfred's friends.

Q. How did you address him? A. I had no business to address him, because I didn't speak personally to him.

Q. Didn't talk to him at all? A. We all spoke together.

Q. What was the time you were all out together like that? A. It was only one occasion that we went out.

Q. What date was that? A. I don't remember the date.

Q. What month was it? A. It was at the Lindke

Association; they had a picnic down Lewis street and New York avenue.

Q. Weren't you at the Commtitee of the Whitpenn Association? A. No, with Mr. Prior.

Q. Whom did you leave with from there? A. Nobody.

Q. Did you leave there in a machine? A. In a machine? Yes, from the bowling club we went right up alone.

Q. From the Bowling Club? A. Lindke Assotion.

Q. I am talking about the Whitpenn Association ball; did you go?

THE MASTER: Why don't you fix the time?

A. I didn't.

Q. Didn't you go to that ball? A. I don't know the name of it.

Q. On the 15th of September,—did you go to a ball on the 15th of September of last year at Grand View Hall in Jersey City? A. Yes.

Q. And did you there meet this man Prior and also Kelt? A. Yes, I think we did.

Q. Had you been with them that same afternoon? A. No.

Q. Where had you been that afternoon? A. Home.

Q. Are you sure? A. I'm sure.

Q. Do you know that you are under oath? You realize that? A. Mrs. Manfred was with me at my house.

Q. I know she was with you; didn't you and Miss Manfred and Prior and Kelt go to Boccasavva's hotel that afternoon and spend the afternoon there? A. The same afternoon?

Q. The afternoon of the Whitpenn ball; didn't you? A. No, I didn't go to any ball there, come to think of it; I went to a picture with Prior and Kelt; not with them but met them.

Q. At Grand View? A. Yes.

Q. On September 15th? A. I don't know the date.

Q. And you left that picnic in a machine that night, didn't you? A. Yes.

Q. And wasn't that Prior's machine? A. I don't know whose machine it was.

Q. Wasn't it the county machine? A. I don't know.

Q. Hadn't you been out that afternoon in it? A. Not in that car.

Q. In what car? A. In a borrowed car.

Q. Who was driving it? A. I don't know the name of the man.

Q. Who was in it? A. Mr. Kelt.

Q. And who else? A. I don't know the other man's name.

Q. Just you and Kelt? A. Miss Manfred, Kelt, and somebody else.

Q. Who was that somebody else? A. I don't know his name.

Q. Wasn't it Prior. A. I don't know.

Q. Where did you and Kelt and Miss Manfred go? A. To Boccasavva's and had dinner.

Q. How late did you stay there? A. About half past five or a quarter to six.

Q. What time did you go there? A. Half past two to three o'clock.

Q. What time did you leave home? A. I got up to Fort Lee at half past two or three o'clock; somewhere around there.

Q. What time did you get to Boccasavva's? A. I don't know what time we got to Boccasavva's; I don't remember.

Q. Why don't you remember? A. Because I don't.

Q. Did you see anybody register at Boccasavva's that afternoon? A. No.

Q. Did you drink much liquor there that day? A. No, just beer.

Q. And that night you came down and went to the picnic at Grand View, didn't you? A. Yes.

Q. And then you left in another machine? A. Yes.

Q. Who was in that machine with you? A. Mr. Kelt and Mr. Prior, Miss Carneo and myself.

Q. Where did you go? A. Rode up as far as Boccasavva's.

Q. And didn't you leave Miss Carneo off at her house on your way up to Boccasavva's? A. Not at her house.

Q. Where did you leave her? A. At Jefferson street.

Q. Who were with you when you left the ball? A. Prior, Kelt, Miss Carneo, Miss Manfred and myself.

Q. Five of you left the ball? A. Yes.

Q. And you left Mrs. Carneo off at Jefferson street? A. Yes.

Q. And the four of you continued to Boccasavva's? A. Yes.

Q. And you stayed there all night? A. We did not; we had two drinks and came home.

Q. What time did you get there? A. I don't know; I didn't look at the time.

Q. What time did you leave the picnic? A. Somewheres around one o'clock.

Q. And this place is up at Coytesville? A. I couldn't say.

Q. It is beyond Fort Lee village? A. I don't know.

Q. And didn't you that night lose a pin up there? A. No, I didn't.

Q. What night did you lose a pin? A. I didn't lose any pin; this is the only pin I have.

Q. Didn't you lose that, and didn't you telephone up for it the next day? A. No, I did not.

Q. And didn't you get it? A. No, I didn't; I have had the pin in my possession all the time.

Q. And didn't you go to get it afterwards at Boccasavvia's home in 33d street, Woodcliff? Have you ever been to his home in Woodcliff? A. No.

Q. You know Boccasavvia? A. I wouldn't know him if I saw him.

Q. You know where he lives? A. No, sir.

Q. Do you know that you and Miss Manfred and Prior and Kelt were registered up there that night? A. Not me. He may have had somebody else, but not me.

Q. Do you know that you were registered, one as Henry Andrews and wife, and the other couple as Ben Kelly and wife, of Newark, N. J.? A. I don't know anything about it.

Q. How long had you known Prior and Kelt? A. From the Lindke Association on; I was introduced by Miss Carneo.

Q. How long before the date of the Whitpenn picnic was it that the Lindke Association had taken place? A. I don't know; I didn't take in

so many places of pleasure as to think of them all the time.

Q. Had you known Prior and Kelt a week then? A. I don't know; I had known them at the Lindke Association.

Q. That was a picnic in the summer time? A. Yes; went there merely for bowling.

Q. Did you drink anything at the Whitpenn and Lindke picnics? A. Yes, beer.

Q. You weren't drinking ginger ale highballs, were you? A. No.

Q. Is that the only time you were to Boccasavvia's with these people? A. That is the only time.

Q. Haven't you been up there with Prior alone? A. Never.

Q. Have you ever been to any road-house with Prior alone? A. Never.

Q. Haven't you and Miss Manfred been out with Prior alone? A. Yes.

Q. Where did you go? A. 23d street and Third avenue.

Q. (*By the Master*) New York City? A. Yes.

Q. What kind of a place is that? A. Kind of a cafe and restaurant.

Q. Which corner? A. Southwest corner.

Q. What is the name of the place? A. I couldn't say.

Q. Is there any hotel there? A. I couldn't say.

Q. Is it a place that looks like the Amsterdam? A. I couldn't say; I didn't look around.

Q. Was that before you went to the Highlands? A. Yes.

Q. You did go to the Highlands this summer? A. I did.

Q. And Sam Detoro has a place down at the Highlands? A. Not to my knowledge.

Q. When was it that you went to the Highlands? A. Labor Day.

Q. Was it just before Labor Day that you and Miss Manfred and Prior went to the southwest corner of 23d street and Third avenue, New York City? A. Yes.

Q. What did you get over there? A. We went over there and sat and drank.

Q. Where did you start off from? A. Why from home.

Q. At the Palace Court? A. Yes.

Q. All three of you started from there? A. Yes.

Q. And went over to New York for a drink? A. Yes.

Q. Couldn't you get it closer by? A. No, didn't have any hankering for any drink.

Q. Didn't you at that place have sexual intercourse with Prior? A. At what place?

Q. 23d street and Third avenue? A. I didn't.

Q. And didn't Miss Manfred wait downstairs for you? A. No.

Q. And didn't he give her $10 when you and he came down, because she had been a patient little girl? A. He couldn't give her any $10, because we hadn't been upstairs, and we weren't there over a half an hour.

Q. Where did you go? A. Down to Lafayette restaurant and we had supper down there; hired a taxicab.

Q. I don't mean $10; didn't he give her $5? A.

I don't know what he gave her, but we didn't have intercourse, because we weren't up there.

Q. Didn't he give you $10 that day? A. No.

Q. Did he give you $10? A. No.

Q. And you didn't, in turn, split your $10 with the Manfred girl? A. I did not; I didn't get anything to give her anything.

Q. Did you ever tell anybody anything like that? A. No, I couldn't tell that because I didn't do it to tell them.

Q. Did you and Miss Manfred and Prior alone ever go out in a machine? A. Yes. That was the night we went to 23d street and Third avenue.

Q. I am talking now of an occasion when the machine broke down? A. I never was in any automobile when the machine broke down.

Q. You were never in a machine— A. With the exception of a punctured tire.

Q. Why, didn't you send a postal card to your husband telling him that you were out all night with a broken-down machine? A. That was a different man altogether.

Q. What man was that? A. That was Mr. Poletti.

Q. And where did you go with him that night? A. With my aunt and I.

Q. Where did you go with him that night? A. Up towards Englewood. The postal-card came from Englewood.

Q. What day did you start? A. The same day I sent the postal-card.

Q. What day of the week did you start? A. I couldn't say what day.

Q. How many days were you out? A. I didn't have any hat on, so I couldn't have been out a day.

Q. That wouldn't stop you from staying out all day? A. I don't know why it wouldn't.

Q. While on that trip you wrote a postal-card to your husband? A. I wrote it in a drugstore at Englewood.

Q. And then you were with Poletti? A. Yes, and I rode out there accidentally with him along with Mr. Schenke when he broke down.

Q. Was Poletti driving? A. He was driving.

Q. What other girls were with you? A. My aunt, Mrs. Miller, was with me.

Q. Where does she live? A. In Grantwood.

Q. And did you stay there? A. We went in a drugstore there.

Q. Did you stay at Englewood? A. No, not at all.

Q. Where did you stay? A. Went in the moving pictures, because he had to go so far that my aunt couldn't go.

Q. His machine broke down? A. No, not his machine.

Q. (*By the Master*) What machine was it? A. Mr. Schenke's machine.

Q. It was the machine that you and Poletti were riding in? A. No, that was another machine.

Q. That was right after Labor Day? A. No, way before Labor Day.

Q. Where were you right after Labor Day when you got back? A. Home.

Q. Didn't you go away and stay away at all? A. No.

Q. You didn't stay away two days then? A. No, I didn't.

Q. Sure of that? A. I'm positive.

Q. Didn't go away with a man and stay two days? A. No, I didn't.

Q. Didn't leave Union Hill then? A. No, unless that Englewood trip came after Labor Day.

Q. The only time you did stay away was the time of the Englewood occurrence? A. I didn't stay away.

Q. You came right back? A. I came right back.

Q. You never stayed away? A. Never, only just over Labor Day.

Q. Then you went down to the Highlands? A. Yes.

Q. Why did you write that postal-card from Englewood? A. (taking postal-card from counsel and examining it) Now, this is not my handwriting on the bottom here.

Q. Well, it is your card, isn't it? A. It is my handwriting here (indicating), but this is not my handwriting.

MR. SCHLEMM: That is my handwriting at the bottom.

Q. (*By the Master*) The words "Just a few kind thoughts from"—those are in your handwriting? A. Yes.

Q. Poletti was with you? A. No.

Q. Who was? A. My aunt, Mrs. Miller.

MR. WALSCHEID: I ask that the postal-card be marked for identification. (Same is marked P-2 for Identification.)

Q. It isn't true, then, that you went away on Thursday on that occasion and got back Saturday night? A. Positively not true.

Q. It is true that you went away on Thursday? A. I couldn't say what day it was, but I came home home the same day that I went.

Q. (*By the Master*) What day of the week did you go up there? A. I couldn't say what day it was.

MR. WALSCHEID: There is no dispute about this; I was under a misapprehension. Mr. Schlemm says he did write those words as a memorandum of his own. I don't want to mislead the Court.

Q. Now, while you were down at Keansburg this summer how long were you there? A. I should judge three days.

Q. And you were with him then, weren't you? A. I don't know.

Q. Don't you know that you were with him? A. I couldn't say.

Q. Didn't you communicate with your husband and tell him that you were with him? A. I don't remember.

Q. What? Didn't you communicate with your husband and tell him that a man in a saloon had overheard your husband instructing a constable down there to watch you? A. I don't remember.

Q. You wouldn't forget a thing like that, would you? A. I must have forgotten it; I can't remember it now.

Q. Do you mean to say that you would forget such a thing? A. There are so many things to remember you must forget something.

Q. You don't deny it? A. I don't deny it because I don't remember.

Q. And while you were down there at Keansburg weren't you out with Detoro? A. No.

Q. Not at all? A. Not at all.

Q. Did you visit his place. I was in his place, yes.

Q. What kind of a place has he? A. Pool parlor. They have one for ladies and one for gents.

Q. Of course, you were in the pool parlor for ladies? A. Of course.

Q. How often did you visit that place? A. Just once.

Q. Did you meet Detoro there? A. No, he wasn't in there.

Q. What did you go in there for? A. Just for the pleasure of it. There was about four or five of us in there at the time.

Q. Isn't it a fact that he went down on the Keansburg boat with you and Louise Manfred? A. No.

Q. Did she go down with you? A. She went down with me and my child.

Q. Didn't he come home with you? A. We all came home together.

Q. Who is "all?" A. A party named Mr. Conway. He had his lady friend. And Miss Manfred—

Q. And she had her gentleman friend? A. She had no friend but myself.

Q. Did you have a gentleman friend? A. I had no gentleman friend. And then there was Sam Detoro.

Q. He had no friend? A. Yes he did.

Q. Who was she? A. Some stout lady I don't know.

Q. Haven't you been going out with Detoro for the last year? A. No. I told you I went out on two or three different occasions.

Q. Have you ever been in Moos's hotel, sitting there with other men, when Detoro came in? A. No.

Q. With two women? A. I never met Detoro in Moos's.

Q. And didn't you go over to Detoro and accuse him of being untrue to you? A. No, I had no occasion to do so.

Q. And didn't you strike him? A. No.

Q. And didn't he strike you? A. That was after a girl came to me. I just happen to think of that —when he said "strike."

Q. He did strike you? A. I struck him accidentally?

Q. Well, you made his nose bleed accidentally? A. Not his nose.

Q. Knocked his teeth out? A. I didn't knock them out; I made his teeth bleed, but that was accidental.

Q. (*By the Master*) How did that happen? A. I went to put my coat on and my hand came up that way (witness indicating).

Q. And he took an accidental hit at you? A. No.

Q. He hit your cheek? A. He did not.

Q. What did he do to you? A. Nothing at all; he wasn't angry.

Q. And didn't you two go, then, into the ladies' toilet and wash off the blood? A. No, we did not.

Q. And didn't that man happen in there (counsel pointing to a man in the court-room). A. What men?

Q. (Indicating to Mr. Hanson) Stand up. Didn't you see him there? A. I didn't see him there at all.

Q. Was anyone alse with you and Sam Detoro on the occasion when you accidentally made his nose bleed? A. Anna Stenek.

Q. Who else? A. Two other ladies I didn't know.

Q. The other two ladies came in with Detoro? A. Yes.

Q. And you and Anna Stenek were sitting in Moos's when Detoro came in? A. Yes.

Q. And he sat down at another table? A. Right at the next table.

Q. And just before Detoro and his two girls came in some strange man had come in out of the saloon of Moos's and talked to you and Anna Stenek, and sat down? A. He didn't come from the saloon.

Q. Where did he come from? A. Right out of the grill room where we were.

Q. And when he came in he saw you? A. He was a friend of Anna Stenek.

Q. Did he send over his card? A. Anna Stenek threw a match case at him and he says "come over," and he says to her "I ain't seen you for an awful long while," and he treated us to a drink.

Q. You didn't know him? A. No.

Q. Never had seen him before? A. She knew him.

Q. So you three were sitting there when Sam Detoro came in with these other two girls? A. Yes.

Q. And he sits at another table? A. At the next table.

Q. And he saw you were sitting there? A. He knew we were in there.

Q. And didn't he, just as soon as he saw you, come over and say "you are not true to me"? A. No.

Q. What did he say? A. I didn't hear him say anything.

Q. What did they do then? A. All came over.

Q. Isn't it a fact that they all kept very quiet until this man whom you introduced as Smith, had gone away? A. I don't know; the man started up and went out.

Q. And then Detoro came over? A. The others came over and we were together.

Q. The other girls came over? A. Yes.

Q. Who were they? A. I never saw them before.

Q. And never saw them again afterwards? A. No.

Q. And didn't you then and there accuse Sam Detoro, in the presence of these girls, of being out with two bums? A. No, I never used that expression.

Q. Did you go to a ball at Schuetzen Park? A. Yes.

Q. Who went with you? A. Mr. Bamblick from Union Hill, his wife, Mrs. Cuneo, and Mrs. Cane.

Q. You didn't go with them? A. I did.

Q. Wasn't Louise Manfred there? A. She was with us all.

Q. You didn't mention her name? A. I didn't mention them all; I was just about to mention it.

Q. Did you meet anybody there—any man? A. Not me, no.

Q. Did you meet Prior there? A. No.

Q. Didn't you meet a man by the name of Henry Wolf there? A. Yes.

Q. And a man named Fred Bremmer? A. I don't know.

Q. A man from Hoboken by the name of Bremmer? A. I don't know him by name.

Q. Do you know anybody by that name from Union Hill? A. No.

Q. Did you leave that park in the presence of Bremmer? A. We all left together.

Q. Did you and Bremmer leave the park alone? A. No.

Q. Did you and Bremmer and the others go to Deckelmeier's saloon that night? A. We all went together.

Q. You went there, didn't you, in Union Hill? A. Yes.

Q. And did you leave Deckelmeier's saloon with Bremmer? A. I wasn't in the saloon; I was in the restaurant in the back.

Q. But you were there? A. Yes.

Q. And did you leave that place with Bremmer? A. No.

Q. Alone? A. No.

Q. And did you ride around the Boulevard with him alone? A. We rode around to go home.

Q. Well, did you—you and he? A. Not he and I, no.

Q. Who else? A. Mrs. Blamblick's niece.

Q. What time of the night was that? A. I don't recollect.

Q. You left there in a hired machine, didn't you? A. Yes.

Q. A machine that was standing in front of the door? A. No.

Q. Whose machine was it? A. Heidelberg Taxi Company's machine.

Q. Who runs that? A. Sometimes Benny Moos, J. Poletti, Anthony Sminke—

Q. That is, the Taxi Company? A. Yes.

Q. Who was in charge of the wheel that night? A. I think Benny Moos.

Q. And didn't he drive you up around the Boulevard? A. Towards his home.

Q. Who went home first? A. There was the Entrotl girl; she got in and was in there.

Q. There were some others in the car? A. Yes.

Q. And you were in there? A. Yes.

Q. Any man? A. Henry Wolf.

Q. Who else? A. I don't know the other man's name.

Q. This other man—just keep him in mind for a moment. Of that party who was left out of the machine first? A. Miss Entrotl.

Q. Who next? A. Miss Bamblick's niece.

Q. That left you in the car? A. Me and Henry Wolf and this other man.

Q. Did Henry Wolf get out? A. Yes, at the corner of Blum street.

Q. So that you and this other man were left alone? A. Yes.

Q. And didn't you ride up around the Boulevard with him? A. No, down the Boulevard towards home.

Q. Where did you live? A. Palace Court.

Q. Did you come directly over? A. Directly over, yes.

Q. Didn't you ride clean around the northern end of Hudson Boulevard with this man alone? A. No.

Q. And didn't you come home and tell Anna Stenek that you had had sexual intercourse with this man in this taxicab? A. No, I did not.

Q. What time did you get home? A. I don't know, I don't remember—somewheres around two o'clock, I think.

Q. Did you ever introduce Sam Detoro to anybody as the man who was keeping you? A. No.

Q. Did he contribute any money to your support? A. Never.

Q. Didn't he pay the rent when you moved into Palace Court? A. No.

Q. Do you know a Mr. Gousey? A. Yes.

Q. When did you first meet him? A. Over at Mrs. Bamblick's house.

MR. WELLER: Ask her when.

A. (continuing) I don't know when I met him.

Q. It was during the summer, wasn't it? A. I should judge—no, it was in the winter time some time; it wasn't in the summer.

Q. It was while you were living at Palace Court? A. No, I met him long before that.

Q. Did he ever call on you early in the morning at Palace Court? A. Yes.

Q. One or two o'clock in the morning? A. Yes.

Q. Did you let him in? A. We came home together.

Q. And you let him in? A. Not him alone.

Q. Who was with you? A. Mrs. Carneo.

Q. And didn't she leave you immediately? A. No.

Q. How long did she stay? A. We were playing the phonograph.

Q. What time in the morning was it? A. About one o'clock.

Q. How long did Mrs. Carneo stay? A. Stayed as long as he stayed.

Q. And then you say he went away? A. Both went away together.

MR. WELLER: Let me ask a question right here: Gousey is Mrs. Carneo's friend?

A. Yes.

Q. Well, if he is her friend didn't he come back to your apartment after taking Mrs. Carneo home?

Q. (*By the Master*) Is it Mrs. Carneo?
A. Yes; she is a widow.

Q. Didn't he come back? A. Not to my knowledge.

Q. Do you mean to say that he might have come back without your knowledge? A. He might have been outside of the door, but he wasn't in my place. He might have come in the night any time.

Q. Had anybody been with you on this occasion besides Mrs. Carneo? A. No.

Q. Where had you spent the evening? A. Down at Hoboken, in Duke's house.

Q. Was Mrs. Carneo with you? A. Yes, sir.

Q. Anything happen to you there at the Duke's house? A. Nothing at all.

Q. What happened to your teeth? A. Just a little mishap.

Q. What is the little mishap? A. One of my teeth broke off.

Q. Who broke it off? A. Myself. I went to pull my veil up over my hat and my hand came down and broke it off. It was hanging on a thread.

Q. False teeth? A. Yes.

Q. Oh, it was false teeth? A. Yes.

Q. Did you tell anybody about that occurrence? A. I did.

Q. Who? A. Mrs. Carneo.

Q. And when she was with you at the Duke's house? A. Yes, I told her right there when it happened.

Q. Did you tell anybody else? A. No.

Q. Not anybody else? A. Not that I can remember, only the dentist where I had it fixed.

Q. Now, the first time that Anna Stenek came into your place she was with a man? A. She was.

Q. And on that first occasion this man wanted to make up a party to go upon the Fall River boat? A. Yes.

Q. Did he talk to you about it? A. No, he spoke to Anna about it.

Q. In your presence? A. In my presence.

Q. Was he going with her? A. Yes.

Q. And he invited you to go? A. Yes.

Q. What did he say? A. Wanted to get a friend for me.

Q. What did you say? A. I said no, I couldn't take a trip like that.

Q. Did you suggest any other way? A. Without I took my child with me.

Q. If you took your child with you you could go? A. Yes, but not with any man.

Q. Well, what do you think his suggestion meant, asking you if he could get a friend to go? A. I don't know.

Q. Do you think that he suspected you would go there with the man he might suggest? A. I don't know that I can say what he thought.

Q. (*By the Court*) What did you think he meant?

A. I don't know what he meant, unless he was kind of putting up a trap. That is the only thing I can think of.

Q. And the only thing you said to him was, "I can't go unless I can take my child"? A. I says, "don't count on me, because I can't go anywheres without my child.

Q. You didn't become indignant at him that he should ask you to go on such a trip and furnish you a male friend? A. No; I says, I wouldn't take any friend that way.

Q. You wouldn't go with any friend that way? A. Nohow. How could I go with a friend I hadn't seen.

Q. Didn't you at that time agree to go, provided Sam Detoro would go? A. No, I did not.

Q. (*By the Master*) Were you angry at all over a suggestion of that kind? A. Yes, I told Anna afterwards that he had an awful lot of nerve to say such a thing.

Q. You didn't say anything to him? A. No, I didn't say anything to him.

Q. Wasn't Sam Detoro there that night? A. No.

Q. Didn't he stay there when they left? A. He

wasn't there, and if he wasn't there how could he stay there?

Q. I am just asking you, so that you will have a chance to contradict it or admit it. Isn't it a fact that he was there that night, and that he was in his shirt sleeves? And isn't it also a fact that they left you and him together until twelve, and he didn't leave the place until three o'clock? A. He never was there.

Q. Sam Detoro was never in your place? A. Not on that night.

Q. How often was he in Palace Court? A. He never was.

Q. Where else did you meet him besides Palace Court? A. I never met him in Palace Court.

Q. Do you know a man by the name of Kaler? A. No.

Q. Do you know a saloon-keeper by the name of Kaler? A. No, not Kaler.

Q. What is the name? A. I don't know.

Q. Then why do you say "not Kaler"? A. I never heard of that name "Kaler."

Q. Or Kohler? A. No.

Q. Or Kohl? A. No.

Q. Do you know any man who kept the cafe and saloon on Spring street and moved away from there to Newark? A. Yes.

Q. What is his name? A. Kalin.

Q. You don't know Kohler, or Kohl, but you do know Kalin? A. Yes.

Q. Did you ever visit his place in Newark? A. No.

Q. What is his business? A. Saloon business, I think.

Q. Did you ever call him up on the telephone? A. No.

Q. Did he come to visit your place? A. Never to visit my place.

Q. What place did he come to visit? A. He was down to visit a friend down here and he stopped in to see me.

Q. Stopped in to see you at the Palace Court? A. He was alone, yes.

Q. Who was with you? A. Anna Stenek and the child.

Q. And did you ever go out with him? A. No.

Q. To no place? A. No.

Q. Didn't you go to New York with him? A. On one occasion.

Q. Where did you go? A. To Hammerstein's theatre.

Q. Where else? A. That is all.

Q. On the way back where did you go? A. Right home.

Q. Did you tell anybody that this man wanted you to come and live with him? A. He never made that proposition to me.

THE MASTER: The question is, did you ever tell anybody?

A. No, I didn't.

Q. He didn't attempt anything like that with you? A. No.

Q. Did you ever call him up by telephone? A. No.

Q. Never called him up at all? A. Not to my recollection.

At 4:10 the further hearing is adjourned to Friday, March 10, 1916, at ten o'clock in the forenoon.

MRS. LOUISA M. SCHLEMM resumes the stand for further cross-examination by Mr. Walscheid, and testified as follows:

Q. Where did you stop when you were at the Highlands? A. At the Highlands house.

Q. And you were there three days? A. Three days.

Q. And did you see Sam Detoro while you were down there? A. I did not.

Q. Did you hire a machine and drive over to Keansburg to see him? A. We hired one between us.

Q. Between whom? A. Mrs. Cuneo, Miss Manfred, and two girls and myself.

Q. And you went over to Keansburg? A. To Mrs. Cleary's in Keansburg.

Q. And you saw Mr. Detoro while you were there? A. I did not.

Q. You say you've never been in Schmidt's saloon? A. Just once.

Q. You were there once? A. I said that.

Q. Why do you now say you were there when you said yesterday that you never were there? A. Not with Sam Detoro.

Q. But you have been in Schmidt's saloon? A. Yes, I have.

Q. And you went in Schmidt's saloon before Schmidt called on you? A. A long while before.

Q. You were there on the first of October? A. I don't remember just the date.

Q. You were there in October? A. I can't say what month.

Q. And you sat in there and drank with Schmidt? A. There were other men there.

Q. Who were the men? A. I don't know their names.

Q. And you drank with those men there? A. I sat at the table and we had a sandwich and a drink.

Q. Those men were there with you? A. They came into the back room.

Q. And sat down with you? A. Yes.

Q. And drank with you? A. Yes, one drink.

Q. And one put his arms around you? A. They did not.

Q. (*By the Master*) Was Schmidt one of those men? A. No, sir.

Q. Was Schmidt there? A. I don't know; I don't remember whether he was a bartender or not.

Q. Wasn't he dressed like a bartender? A. No, sir.

Q. Was the man that brought one of the drinks to you the one that sat at the table with you? A. No.

Q. Do you know one Henry Rockland? A. Yes.

Q. And do you know where the Heidelberg hotel is? A. Yes.

Q. And where you at this hotel? A. It is not a hotel; it is a cafe and restaurant.

Q. Were you there? A. I was.

Q. And was that during the month of October last? A. It may have been.

Q. Did you have your little daughter with you then? A. I did.

Q. And did he take you home about two o'clock in the morning? A. Yes.

Q. And did he stay in the house until four? A. No.

Q. Did he come in? A. Not at all.

Q. You want us to understand that he did not come into your apartment? A. He did not come into my apartments; he left me outside the gate.

Q. Didn't you see a man standing across the street watching you go in? A. I didn't pay any attention; I didn't look around.

Q. What time was it when you got home with Rockland? A. About half past twelve at night.

Q. Just a moment ago you said two o'clock? A. You asked me if I left with Rockland and I said yes, I left about half past twelve.

Q. And didn't you, before going home from the Heidelberg hotel, go with Rockland to Spitz's saloon? A. No.

Q. Didn't you go in the back room and sit down and drink a bottle of wine? A. No.

Q. And didn't you wrap up another bottle of wine and you and Rockland take it home with you? A. No.

Q. Didn't you take your little girl in back of Spitz's saloon? A. No.

Q. Ever take her in any saloon? A. Yes, Deckelmeier's cafe and restaurant.

Re-Direct Examination by Mr. Weller:

Q. Did your husband ever take her into a saloon? A. Yes, sir.

Q. He did? A. Yes he did.

Q. On how many occasions? A. Oh, quite a few occasions; I can't remember.

Q. Well, tell us some of the times that he took her there. A. He took me in back of Koven's restaurant and cafe—

Q. (*By the Master*) The question is whether he took your little daughter in there. A. Yes, he was the first one to take me down to Deckelmeier's and the Heidelberg hotel.

Q. Do you remember his taking you to Koven's saloon one night and leaving you there? A. Yes.

Q. When was that? A. That was in February sometime.

Q. (*By Mr. Walscheid*) What year? A. 1913.

Q. Just tell us about that.

MR. WALSCHEID: I object to that as not proper re-direct. I want to limit this somehow.

THE MASTER: I will admit it.

A. He took me in there after the bowling club; we left and went in Koven's, with Mr. and Mrs. Rodman and some others, and he left the bowling club and went down to Harry Gabain's, and there were pickles on the table, and Mr. Schlemm passed the remark—he says, "what's the matter"

MR. WALSCHEID: I object to the lady making a speech.

THE MASTER: What do you expect to prove? What is it for?

MR. WELLER: To show that this man had been conniving to bring about his wife's downfall for years.

THE MASTER: That is very general.

MR. WELLER: I know it is general; at the same time, if Your Honor please, it

is important, and it is relevant, I think, and material.

THE MASTER: Now, another divorce suit came in between.

MR. WELLER: It doesn't make any difference; that is the law on that, Your Honor.

THE MASTER: Well, what is the law?

MR. WELLER: Well, I don't like to disclose my hand now entirely.

THE MASTER: The act of adultery which is charged in the petition occurred in October, 1915. You are going into an occurrence that happened sometime in 1913, two years and a half before, to show connivance in the act of adultery which took place in 1915?

MR. WELLER: Yes.

THE MASTER: There had been between that conduct on the part of this defendant that which the husband claims amounted to adutlery and on which he based a suit for divorce. That suit was withdrawn, the parties became reconciled and they lived together again for a time. Aren't you going very far back?

MR. WELLER: I am not, Your Honor. If a man once connives regarding his wife's adultery in a way that he consents to it, he can never complain of it afterwards.

THE MASTER: Where do you get that from?

MR. WELLER: From Bishop on Marriage and Divorce.

THE MASTER: Well, I suppose it is better to let this evidence go in now, and

then in the end I can deal with it better. A motion can be made to strike it out if it isn't material.

A. Mr. Gabain came in and served us with pickles, and Mr. Schlemm passed the remark. "What is the matter with your pickle; it has got a wart on it." Harry says, "you should worry about my pickle with a wart on it." Then when we went home that night they passed the cigarettes around to the women, and he says "go ahead and smoke." Then we all left and went home, and that is all that happened that night.

Q. Do you remember when Joe Meyer was in there? A. Yes, that was a Sunday night, last March, the 29th.

Q. What year? A. 1914.

Q. Tell us about that. A. We were down to my mother's—

THE MASTER: Mr. Weller, I shall have to trust to your good sense in not taking up time with a lot of trivial incidents in this case. I don't want you to abuse the latitude I am giving you.

A. We had been down to mother's all day, and Mr. Schlemm came down in the evening, bringing Joe Meyer with him. When we left to go home he said "We will walk home and stop in some place and have a drink." We walked past quite a number of cafes until we were getting to Spring street, and stopped to Gabain's, and went in back there and had drinks, and he was half intoxicated, and he took a glass of beer and threw it down into my waist. I said "Willie, what's the matter

with you; don't you see there are people in here? What are you doing?" He says "that's all a joke." So I ordered just a few clams on the half shell—

MR. WALSCHEID: Is Your Honor allowing this on the theory that it is connivance?

THE MASTER: Mr. Weller promises to connect it up in some way with something to show connivance.

A. (continuing) I asked him when we had the clams if I could have a cup of coffee, and he said "you can stay with Joe Meyer and have your coffee and I will go home." I says "No, we will all go home." So I got up and put his hat and coat on, and I had to hurry to get my hat and coat on, and I walked with him and he walked about a block ahead all the while—

Q. (*By the Master*) When was this? A. The 29th of March, 1914.

—and that night when we got home he started to argue with me, and he took a chair and threw it at me and it just escaped a china closet and broke.

THE MASTER: What has that to do with connivance?

MR. WELLER: It proves his connivance to a certain extent.

THE MASTER: Where do you get that from?

MR. WELLER: I get it from Bishop.

THE MASTER: Let me see where you find that cruelty is connivance.

MR. WELLER: I'm not going to pursue that any further, anyway.

MR. WALSCHEID: I ask that that be stricken out.

THE MASTER: I will strike it out. I wish the witness would tell me this moment what in her mind is the difference between a cafe and a saloon.

A. A cafe always has a restaurant.

THE MASTER: So that a saloon with a restaurant is a cafe?

A. Yes.

THE MASTER: And a saloon without a restaurant is a saloon?

A. That is what I think it is.

Q. Mrs. Schlemm, on the night of the 23d of October, or the morning of the 24th, whenever it was when Mr. Schlemm left, when Mr. Stites went away and left Schmidt there was anything said about his coming back? A. Yes, when we got out of the automobile Anna Stenek stayed in the car and Mr. Stites stayed in and Mr. Schmidt got out and says, "I will stay here until you come back for me."

Q. When you told him to go home did he say anything about waiting for Stites? A. Yes.

Q. What did he say? A. "I promised Stites to wait here until he comes back for me, and if I go now when he cames back I will not be here."

Q. Where were you when the door was broken open? A. In the kitchen.

Q. Now, you spoke of Mr. Gabain saying there was someone coming over to New York with your husband; did he say that your husband was com-

ing with a man or a woman? A. He didn't say who he was coming with.

Q. What did you infer from what he said?

MR. WALSCHEID: I object to her inference.

Q. Fromwhat he told you, what did you infer? A. I inferred that he had company coming with him. The way I understood it, from his speaking, was that he had a woman with him.

Q. Who were with you to the Grand View hotel the night you spoke of?

THE MASTER: What night?

MR. WELLER: I understand she was only one night to the Grand View.

THE MASTER: The Grand View Hall picnic, or whatever it was.

A. Louise Manfred and Mrs. Carneo.

Q. Were you there more than once? A. Just once.

Q. Did you ever go down with Anna Stenek? A. Oh yes, I did.

Q. When was that? A. That was after what Mr. Walscheid called the Whitpen Ass'n; there was Louise Manfred—no, Anna Stenek wasn't there, the Cedar Club had a ball and she was there. and Mrs. Carneo and Miss Manfred was at the Whitpen ball.

Q. Where did Miss Stenek go? A. To the Cedar Club ball.

Q. Dd you ask her to go at that time or did she ask you? A. She asked me.

Q. Did she try at that time to get you to go home with a man? A. Yes.

Q. When was that Cedar Club ball, as near as you can tell? A. It was either the latter part of October or the beginning of November, 1915.

Q. Now, how many times were you at this Boccassavvia's hotel, did you say? A. Twice.

Q. And did you go into the hotel both times? A. I went in twice, and once we couldn't get in.

Q. When was the time you couldn't get in? A. It was the night I went up with Miss Manfred, and we left Mrs. Carneo off at Jefferson street and the doors were closed.

Q. Is that the time you said yesterday you had a couple of drinks there? A. Yes.

Q. How did you happen to remember that you had not been in on that occasion? A. When I got home last night I was thinking these things over and it came to my mind.

Q. Did you on either of these occasions meet your sister up there? A. No.

Q. You were asked yesterday about a time you came home from New York with Mr. Prior; where did he leave you at that time? A. At 42nd street. That was 42nd street and Third avenue, instead of 23rd street and Third avenue, if I may correct that.

Q. You said yesterday he brought you all the way home? A. No, he took us up to the ferry.

Q. And left you there? A. He got out of the taxicab and we stayed right in.

Q. Where does Mr. Poletti, you spoke of yesterday, have his garage? A. The first garage he had was on Smith street, the second he had was 133 Jefferson street.

Q. That is your mother's house, isn't it? A. That is my mother's house.

Q. You spoke of the Police Convention ball in Schuetzen park? A. I did.

Q. Was your sister at that ball? A. Yes, sir.

Q. Which sister? A. Mrs. Cain.

Q. And you said that Mrs. Carneo's niece was there also? A. Yes, Miss Gooches.

Q. What time did you leave the ball that night? A. Left close onto one o'clock.

Q. And you got home about two o'clock? A. Yes. We stopped at Deckelmeier's, first, on our way home.

Q. The whole company? A. Yes, about twelve of us.

Q. The night Mrs. Carneo and Mr. Gousey came to your house, wher did they come from? A. All three came from Hoboken, Duke's House.

Q. What is Mr. Gousey's business? A. Veiling business—veiling and ties—face veils.

Q. And is this Mrs. Carneo foreman in his place? A. Forelady in his place, and his lady friend.

Q. (*By the Master*) When you say "lady friend," what do you mean? A. The person he went out with. She always went out with him and I thought she was his best friend.

Q. You spoke of going to Hammerstein's Theatre? A. Yes.

Q. When was that? A. I can't just remember when that was, Mr. Weller.

Q. Well, as near as you can tell. A. Either in the year 1912 or 1913, I'm not sure.

Q. Who was with you at the time; I mean the occasion you spoke of to Mr. Walscheid? A. That was with Mrs. Watson and Mr. Kalin.

Q. When did you first see Schmidt, the first time in your life? A. The 23d of October, 1915.

Q. Where did you go to school? A. Union Hill.

Q. How long had you known Henry Rockland? A. No longer than three months or so.

Q. Never knew him before that? A. No, sir.

TIM M. CORRIDON, recalled on behalf of the defendant, testified as follows:

Direct Examination by Mr. Weller:

Q. I understood you to say yesterday, Mr. Corridon, that the letter I show you and which was marked D-1 for identification, was in refernce to the work that you were doing for Mr. Schlemm against his wife? A. Well, I didn't read it; I didn't say that, I said it was my handwriting.

Q. Just look at it (handing paper to witness).

THE MASTER: Does the letter on its face indicate what it is for?

A. (After reading the letter the witness answers) Yes, I wrote it.

Q. (*By the Master*) You said that yesterday; now tell us what it is about. A. It is in regards to Mr. Schlemm; he and I had been friends, and there was a little jealousy that way, and I sent him a little token of respect.

Q. And that was the token of respect? A. (No answer).

Q. Are you telling the truth about that, Mr. Corridon? A. I am telling nothing else.

THE MASTER: He is under oath, Mr. Weller.

Q. You say (counsel reading from letter marked Exhibit D-1 for identification): "I waited for you until after 6 P. M," that is, you waited for Mr. Schlemm? A. Yes, sir.

Q. "That party went back home again"; you said that? A. Yes, sir.

Q. "It is best for her to drop it for a few weeks"—what her?

THE MASTER: Who is the "her"?

A. I can't remember. I guess this was a woman he had on the case; I am not certain, I can't exactly remember, but I am certain (the witness hesitates and then continues)—oh, that was another case; excuse me.

Q. What case was it? A. A case in West Hoboken and Union Hill, a bakery woman I done some work for her. I had a man on the job and I didn't pay much attention to it myself. I can refer you to this party, this woman that I speak of here.

Q. (*By the Master*) What did that have to do with Schlemm? A. Nothing, only he gave me the job; it was through him I got the job.

Q. That is why you put in this token of respect? A. Yes.

Q. You say, "He will be on the stool of repentance for awhile" but— A. That was her husband.

Q. What was his name? A. I can't remember now, but I can later refresh my recollection.

Q. Was his name Hofstetter? A. No, sir, it was not; I am pretty certain of that. He runs a bakery, I think in Union street.

Q. And Mr. Schlemm was trying to get evidence for this woman against the baker? A. No, sir, he wasn't, I was; he didn't have nothing to do with it; he just merely sent me up there.

Q. He paid you for it, didn't he? A. He paid me for it?

Q. Yes. A. Yes, sir, I got some money off of him.

Q. Why did you get money off of him for work that you were doing for this woman? A. It seems she was an old friend of the family.

Q. Now, I want to know her name. A. I can't give you the name just now; I can give it to you later on when I look over my report.

Q. Where did she live? A. In Union street.

Q. Union street, Union Hill? A. Yes, I think it is.

Q. Whereabouts on Union street? A. Between Bergenline and New York avenes.

Q. Her name was Bernice, wasn't it, before she married her second man? A. Yes.

Q. And she was a great friend of Mr. Schlemm's? A. Not that I know of.

Q. He footed the bill? A. Yes, I got some money off of Mr. Schlemm.

Q. How much money did you get off of Mr.

Schlemm for this work? A. Well, I couldn't say exactly now. If I look over my reports I can tell you.

Q. You got over a hundred dollars, didn't you? A. I assume it is around there.

Q. And you got it all from Schlemm? A. Yes, I think I did; I am pretty certain I did.

JOSEPH F. HANSEN, sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. Weller:

Q. You are an ex-policeman of Jersey City? A. Detective sergeant, yes.

Q. How long have you known Anna Stenek? A. I believe some time in September I met her.

Q. (*By the Master*) Last year? A. 1915.

Q. You were employed by Mr. Schlemm before that time to work on this case, were you not? A. Do you want me to tell just how?

THE MASTER: You are simply to answer the questions.

A. No, I wasn't employed before that at all.

Q. When were you employed to work on the case? A. In the first part of September.

Q. How long after you were employed did you employ Anna Stenek?

MR. WALSCHEID: I object to that as immaterial.

THE MASTER: I will let him answer.

A. About three days, or four days.

Q. And she worked for you on the Schlemm case up until the 23d of October, did she? A. I believe she did.

Q. Did she ever, in your presence, see Mr. Schlemm? A. I don't think she did.

Q. You did this work for Mr. Schlemm, all of it? A. Yes, sir.

Q. Who was the young man who was with you downstairs yesterday? A. Detective from police headquarters.

Q. A young man—real young fellow? A. Fifteen or twenty.

Q. Who was the fellow that sat down in the hall on the stool yesterday? A. Mr. Schlemm.

Q. No, the fellow with the slate-colored hat on? A. Mr. Spraggins—Lawyer Spraggins.

Q. The colored man? This was a white man. A. An elevator boy there.

Q. I am not talking about the elevator boy. Who were the two men that went with you when you went away from the door downstairs?

MR. WALSCHEID: How is this material?

A. There are about seven or eight—

THE MASTER: What are you trying to get at, Mr. Weller?

MR. WALSCHEID: Tell us what you want.

MR. WELLER: I don't want you to find out.

THE MASTER: He is entitled to know.

MR. WELLER: That was the man that went away that first came to Mrs. Schlemm and asked her to take a trip on the Fall River boat.

THE MASTER: Oh, very well.

Q. Now who was he? What young man did you have working with you? A. My brother was working with me.

Q. He was downstairs on the stool here yesterday when we came down, was he not? A. He was waiting for me.

Q. And he went away with you? A. I met him and we went home together.

Q. Who was the other man that went away with you? A. I don't know, I guess it was Detective-Sergeant Fehan of the Police Headquarters.

Q. The three of you went away together—you and your brother and who else? A. I don't know who it was; I don't remember.

NO CROSS EXAMINATION.

MRS. LOUISA M. SCHLEMM, recalled in her own behalf, testified as follows:

Direct Examination by Mr. Weller:

Q. Mrs. Schlemm, you testified yesterday that the first time Anna Stenek was to your house there was a young man with her? A. Yes.

Q. And they tried to get you to make up a party to go up on the Fall River boat? A. Yes.

Q. Did you see that young man here yesterday? A. Yes, I did.

Q. Where was he? A. Downstairs in the hall.

Q. Whom was he with? A. With that young man that was just on the stand.

MISS ANNA STENEK, sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. Weller:

Q. Miss Stenek, do you remember the night you went with the young man to Mrs. Schlemm's home?

MR. WALSCHEID: I object to the question.

Q. Did you go there with a young man? A. Yes, I did.

Q. Who was that young man? A. Frank Hansen.

NO CROSS EXAMINATION.

MRS. MARY CAIN, sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. Weller:

Q. Mrs. Cain, you are a sister of Mrs. Schlemm? A. I am.

Q. Do you know where your brother-in-law William Schlemm used to keep his funeral parlors? A. Yes, 426 Spring street, West Hoboken.

Q. Will you please describe that building, if you can? A. Why, it is a store—funeral parlor, finishing room, a kitchen, and a dining room, and a small private hall.

Q. Did you ever know about a woman named Lillian Delvey? A. I did.

Q. Who was she? A. Her name was Lillian Delvey before she was married, and she lived in West Hoboken; I believe it is between Ann and Jane streets, on West.

Q. Well, your sister lived up there on Spring street, right there in the apartment upstairs, or where did they live? A. Well, they ate in the dining room, but they had apartments upstairs and slept upstairs, but they did all their cooking in the dining room and kitchen downstairs.

Q. Were you in the habit of visiting your sister while they were living there? A. Yes.

MR. WALSCHEID: When was this?

Q. The date you went there, the particular date —when was that? A. In the month of September and October, 1912. The date I don't remember. It was on a Tuesday afternoon.

Q. Were you in the habit about that time of going to see your sister? A. Yes, very often—two or three times a week.

Q. Do you remember the occasion you speak of going there? A. Yes, on a Tuesday afternoon I went to visit my sister, and I went into the front store door, and I went in on my tiptoes, as I always did to surprise my sister, and when I got in through the store, in through the funeral parlor, as I reached the finishing-room I saw Lillian Delvey on the couch with her clothes up, and Mr.

Schlemm laid on top of her committing adultery, and Charley Bosetti said—

> Q. (*By the Master*) Was he there? A. He was, in the finishing-room fixing a coffin, and William Schlemm was right on top of her. His pants was down and the rest was out of his pants. Charley says: "Hello, Mamie," and he jumps up and pulled in his personal and then put in his shirt. I says, "this is a fine how-do-you-do to catch you like this." He says, "For God's sake, don't tell Lou."

Q. Who is Lou? A. That is his wife, Mrs. Schlemm. I didn't say nothing. He says, "Will you stay for coffee," and I says "no, not in this house," and I went home.

Q. What did he say about the door, if anything? A. "Why the hell don't you keep the door bell on?"

Q. Whom did he say that to? A. To Charley Bosetti. There is a switch and you can put on the bell so that it will ring when the door is opened. That is the way I got into the store. He says, "Why the hell don't you keep the bell on the door?"

Q. And he asked you "for God's sake don't tell your sister"? A. He says, "For God's sake, don't tell Lou."

Q. What did the other party say? A. She was all flushed up and she didn't know what to say. She didn't say anything.

Cross Examination by Mr. Walscheid:

Q. Are you married? A. I am a widow.

Q. How long have you been a widow? A. I am a widow four years the second of August—I will be.

Q. Are you living with your husband? A. I was.

Q. Up until when? A. Why, until he died.

Q. When did this happen, this occurrence? A. In 1912, September or October, the date I don't remember.

Q. And you have seen your sister every day? A. No, not every day; I see her two or three times a week.

Q. And when did you first tell her about this? A. Why, I didn't tell her.

Q. When did you first tell her about it? A. First when this case came up—this case right here. That is the first I told of it.

Q. And you have always lived in West Hoboken? A. No, I have lived in Union Hill and West Hoboken. I was born in Union Hill, but I didn't live very long in West Hoboken.

Q. You have been here in North Hudson since 1912 continuously, haven't you? Yes.

Q. And you knew that there was another suit for divorce started against your sister? A. Yes.

Q. Knew all about that? A. I did.

Q. Your sister came and talked to you about that, didn't she? A. Yes.

Q. And she at that time told you what Mr. Schlemm was supposed to have done with the Hofstetter woman? A. I don't remember her telling of it.

Q. What did she tell you? A. She only told me that Will Schlemm started a suit against her.

Q. For what? A. Divorce.

Q. On what ground? A. I don't know.

Q. You don't mean to tell us she didn't tell you on what ground? A. No, because I didn't think it was any of my affairs; I had enough troubles of my own without butting into other people's affairs.

Q. Didn't she then tell you that she was supposed to have been caught with Gabain? A. No, she did not tell me.

Q. She did tell you about the Dort woman at that time, didn't she? A. No.

Q. You know about the Dort woman? A. I did not.

Q. Did you know about the Hofstetter woman? A. I knew something about the Hofstetter woman.

Q. What did you know? A. Charley Bosetti told that himself in my sister's house to my sister.

Q. Your sister was there? A. Yes.

Q. So that you heard Charley Bosetti tell your sister in your presence about the Hofstetter woman? A. Yes.

Q. And that was for the purpose of getting ready in this other divorce suit? A. Oh, no, it wasn't; that was in the first case of divorce.

Q. Then in the first case you knew about this Delvey affair? A. Yes.

Q. And Charley Bosetti told you in detail what had occurred between the Hofstetter woman and Schlemm, didn't he? A. Yes.

Q. Why didn't you at that time tell Mrs. Schlemm about the Delvey matter? A. Mr. Schlemm telephoned to my sister two or three

times almost every day and I thought they were going to patch up things, and I didn't think it was necessary for me to tell her.

Q. You didn't hear those telephone messages? A. Oh, yes, I did; for I took them myself.

Q. Where? A. Very often in the garage.

Q. Where? A. He called up the garage and he says, "Is this you, Mame?"

Q. When was this? A. Oh, the dates I couldn't remember.

Q. That was after the case was pending, wasn't it? A. No.

Q. Don't you know that your sister used the Hofstetter matter in her other divorce case? A. I don't remember; I don't know about that.

Q. And don't you know that that is what Bosetti was supposed to be telling you this stuff for? A. No, I don't remember.

Q. What do you think he was telling her that for? A. I don't know; she asked him about the Hofstetter woman.

Q. Now, getting back to what you saw, you say these funeral parlors are all on one floor, are they? A. Yes.

Q. On Spring street, West Hoboken? A. Yes.

Q. That is a busy thoroughfare, isn't it? A. Yes.

Q. Busiest street in that section? A. Yes.

Q. And it is in the busy sectoin of Spring street? A. I don't know; you may call it the busiest.

Q. You do, don't you? A. I couldn't say that, because it was so dead looking.

Q. That is too dead for you, is it? A. Yes. Of course, I was born in Union Hill and I like it better.

Q. You came in there in the afternoon? A. Yes.

Q. And you came in on your tiptoes? A. Yes.

Q. And you opened the store door? A. I did.

Q. And you walked through the store? A. Yes.

Q. And you walked into the room behind the store? A. Yes.

Q. Is that the room in which they were? A. No.

Q. The room behind that, then? A. Behind that.

Q. So that it was two doors from the street? A. Yes.

Q. Where you found them? A. Oh, no, I found them in the "finishing-up" act.

Q. They were in the dining room? A. They were.

Q. How many doors from the street is that dining room; or, in other words, how many rooms between the dining room and the street? A. The finishing room and the funeral parlor.

Q. That is two rooms? A. Yes.

Q. You had no trouble in getting into the dining room? A. No, not at all.

Q. Just walked right in? A. I didn't walk in from the dining room; I seen them from the finishing room.

Q. That is, the room next to the funeral parlor? A. Next to the funeral parlor.

Q. And that is one room removed from the street? A. Yes.

Q. So that the door from the finishing room into the dining room was open? A. They were all open—wide open.

Q. Wasthat a warm day? A. I couldn't say what kind of a day it was.

Q. What time in the afternoon was it? A. Between two and three o'clock.

Q. Right in the heat of the day? A. Yes.

Q. You say that you saw Bosetti? A. Yes.

Q. Where was he? A. Way off in the end of the finishing room.

Q. In the same room that you saw them from? A. Yes.

Q. So that you were in the same room with him? A. Yes, he was in the same room, and he says, "Hello, Mamie," and that gave them time to jump up.

Q. And you saw them anyhow? A. Oh, I did; I saw him right on top of Lillian Delvey, indeed I did.

Q. How long did you stay there? A. I stayed long enough to see this fine how-do-you-do, and then he pulled in his personal and put up his pants, and he says, "For God's sake, Mame, don't tell Lou," and I was turning to go and he said "stay for coffee," and then he called to Bosetti and said, "Why in hell don't you keep the switch on the door?"

Q. That switch is set for the bell to ring? A. Yes.

Q. You say the bell didn't ring? A. The bell didn't ring; the switch was off.

Re-Direct Examination by Mr. Weller:

Q. You said you didn't tell your sister that you had seen this; did you intend to do so? A. Yes, I went up there one afternoon to make a dress and Mrs. Schlemm was downstairs while I was making this dress while she went upstairs—

Q. (*By Mr. Walscheid*) When was this? A. I don't remember the dates; I can't give you the date.

Q. You ought to be able to tell within a year? A. No, I couldn't.

Q. How long after the time you saw them together? A. It was in the summer time.

Q. What did you say to her? A. I said to my sister Louise, "Don't you ever suspect Willie?" She says "No, go on, you're crazy." I says "Take advice from me: Keep your eyes open." She says, "Do you know anything?" I says "I didn't see anything, but just keep your eyes open."

Q. You were asked, too, something that Mr. Bosetti told; tell us about that. A. Why, I was up to my sister's house at West street, and Charley Bosetti came there, and so she asked Charley Bosetti—"Charley, now I want you to tell me something about that Hofstetter woman coming down with a wedding gown on, and Will Schlemm dared her to drop it and she dropped it on the floor and was perfectly nude; is that true?" He says, "Yes, that is true."

Q. Can you give us a diagram of how those rooms are, so that His Honor can understand; mark them out the best you can.

Q. (*By the Master*) Is the door into the finishing room on hinges? A. Yes. That is along there (witness marking plan on a sheet of paper).

Q. Now, put down, and put a figure X to tell where Bosetti was. A. Right about here (witness marking the spot indicated).

Q. Where is the dining-room? A. This is the dining room here.

Q. Where does the door go into the dining room? A. Right here (indicating).

Q. What kind of a door is it? A. One of those small doors; and this is the door that goes into the kitchen. This is a little hall and this is where the dumbwaiter is.

Q. Mark that kitchen and mark the dining room. X is where Bosetti was standing? A. Yes.

Q. Where was the couch? A. This is where it was (the witness marks on the diagram where the couch was).

Q. You came through and looked right in here (indicating on the diagram)? A. Yes.

Q. And Bosetti was over here where he could not see him? A. Yes. This was the only window that was in the room.

Q. (*By the Master*) This door leading from the finishing room into the dining room was wide open? A. All doors were wide open

MR. WELLER: I offer the diagram in evidence.

(The same is admitted and marked Exhibit D-4.)

Re-Cross Examination by Mr. Walscheid:

Q. Bosetti saw what you saw when you called his attention to it? A. No, he did not see.

Q. You didn't say a word? A. Yes, I said "This is a fine how-do-you-do to catch you."

Q. Did he hear you say that? A. Yes.

Q. And you scolded Schlemm? A. I told you what I said, "This is a fine how-do-you-do."

Q. Did you see what Mrs. Delvey did? A. No, I went right out.

Q. Didn't he get up and ask you to have some coffee? A. Both got up when he says "Hello, Mame."

Q. You say that Bosetti didn't see any of it? A. No, Bosetti didn't see it.

Q. Sure of that? A. Positively sure.

Q. Not even after you saw it? A. No.

Q. you didn't call his attention to it? A. No, I didn't call his attention to it.

Q. You weren't indignant and shout out "What are you doing here, getting on top of this woman?" A. I says, "This is a fine how-do-you-do to catch you," and he says, "For God's sake, don't tell Lou."

MRS. ENESE WATSON, sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. Weller:

Q. Where do you live? A. 418 Highpoint avenue, West Hoboken.

Q. How long have you lived there? A. I have lived there for the past nine years.

Q. You are a friend of Mr. Schlemm? A. I was a friend of the family.

Q. And you ceased to go there when? A. Well, I haven't been inside of Mrs. Schlemm's house

since the first trouble, when she went back to Mr. Schlemm.

Q. When they lived down by Mr. Schlemm's shop you went there quite often? A. Frequently; I would stop in once in a while.

Q. Do you know Mrs. Delvey? A. I have met the woman.

Q. How often have you met her? A. Not very often.

Q. Did you ever see her at Schlemm's house? A. I did.

Q. On how many occasions? A. Once when there was a birthday party, and a couple of times when she was washing.

Q. Did you ever see her there when Mrs. Schlemm was not there? A. No, sir, not to my knowledge.

Q. Do you remember an occasion of going there when Mr. Schlemm was going to stay for coffee? A. No, sir, I was not.

Q. When Mrs. Delvey was there? A. No, sir.

Q. You told Mrs. Schlemm that, didn't you? A. No, sir.

Q. Has anyone talked to you about this case? A. No, sir. Mrs. Schlemm was up to my house day before yesterday herself.

Q. Has Mr. Schlemm talked to you? A. No, sir.

Q. Didn't you tell her that you were once invited to stay for coffee when Mrs. Delvey was there, and you said "No, this is no place for me when your wife isn't at home?" A. No, sir, I don't remember saying anything of that kind.

Cross Examination by Mr. Walscheid:

Q. You belonged to this bowling club, didn't you? A. I did a few months—my husband and I.

Q. And Mrs. Schlemm belonged to it? A. She did.

Q. Did you ever see any improprieties between Mrs. Delvey and Mr. Schlemm? A. I did not.

Q. Did you go to Hammerstein's with a Mr. Kalen and Mrs. Schlemm? A. I did not.

MR. WALSCHEID: I would like to ask Mrs. Schlemm if this is the Mrs. Watson you referred to?

MRS. SCHLEMM: Yes.

Q. You did not go to Hammerstein's? A. No, I did not.

Q. When Mrs. Schlemm came to see you day before yesterday what did she want? A. She came to ask me if I remembered that occasion when I was in her house and found Mrs. Delvey with her husband, and I said I did not.

Q. Did she explain what she wanted you to remember? A. She asked me if I remembered the occasion, and I said no. She told me I did remember and I didn't want to say so, and I told her I didn't remember it.

MISS MOLLIE M. DORR, sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. Weller:

Q. Miss Dorr, where do you live? A. 414 Charles street.

Q. West Hoboken? A. Yes.

Q. Did you ever room in Mrs. Schlemm's house? A. Yes.

Q. When, as near as you can tell? A. From the last of October, 1915—no, 1914.

Q. Up to what time? A. Up to the end of January, 1915.

Q. (*By Mr. Walscheid*) You mean in her private house? A. Yes.

Q. (*By the Master*) When she was living with her husband? A. Yes.

Q. Did you ever see any trouble between them? A. I was never downstairs so much, but all I knew was that he came in intoxicated. That is all I know.

Q. (*By Mr. Walscheid*) Who came in? How often? A. Mr. Schlemm; he came in real often.

Q. Do you remember the night he went away for good? A. Yes.

Q. Tell us about that. A. When Mrs. Schlemm came she told us that she had had a quarrel with him, and Mr. Schlemm came and rang the bell and she sent the little girl down to attend the door.

Q. What time of the night was that? A. I should judge about half past two; and Dolly went down, and he said he would be back in fifteen minutes, and he closed the door, and he must have gone around to the back door, and he came in shortly after that, and Mrs. Schlemm and I heard some noise and I looked out of the window and I saw a man going down the street with a bundle, and I believe the milkman was with him; there was some man with him, I know, and the milk wagon was on the street.

Q. Did you find out the next day what he had taken away? A. Yes. Mrs. Schlemm told me he took his clothes.

Q. How long did you remain there after that? A. We remained until Mrs. Schlemm left, and that was, I believe, the end of January.

Q. Did he ever come back to the house after that? A. No, he never did, not until the day we moved, and then he came and went through the house.

Cross Examination by Mr. Walscheid:

Q. Did you move with Mrs. Schlemm? A. We did.

Q. Where did you move? A. We went with her upon Park avenue.

Q. Who is "we"? A. My sister and I.

Q. You are not married? A. No.

Q. Is your sister married? A. No.

MISS LOUISE MANFRED, sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. Weller:

Q. Where do you live? A. 725 Highpoint avenue, West Hoboken.

Q. Were you subpoenaed here by Mr. Schlemm? A. Yes.

Q. Do you remember being down last summer to the Highlands or Keansburg with Mrs. Schlemm? A. Yes.

Q. How long were you down there? A. Well, the first time I went down it was over Decoration Day, and I went down on the Fourth of July, and over Labor Day we went down to Highlands.

Q. Together? A. Together.

Q. Now, how long did you stay there on Labor Day? A .On Labor Day, three days.

Q. Where did you stay? A. At the Highland House.

Q. What is that? A. It takes in summer boarders.

Q. Did you and Mrs. Schlemm room together? A. Mrs. Schlemm, Mrs. Carneo and myself roomed together.

Q. The three of you? A. Yes.

Q. Do you remember going to New York with Mrs. Schlemm when Mr. Pryatt was along? A. I remember the occasion, but I couldn't tell the man's name.

Q. Where did you go? A. We met him at 42nd street and Third avenue, and we went into a side place there and took two drinks, and from there we walked up to the next corner, which is 42nd street and Second avenue, and he hired a taxi and

took us down to Cafe Lafayette, and we went in the side and had supper there, and we remained, I guess, until it was almost twelve.

Q. At night? A. At night, and he went out and he got the taxi, and he took us down to the West Shore ferry and remained in the taxi, and we got the boat; and on the other side Mrs. Schlemm and I went home. She transferred to the Boulevard car and I transferred to Union Hill.

Q. It has been hinted that at that time you were paid $10 to stand outside while Mrs. Schlemm was upstairs? A. I received no money from this driver or from Mrs. Schlemm; I received no money that night.

Q. Where did you stay that night? A. We were always together, we three of us.

Q. (*By the Master*) You received no money from Mr. Prior? A. Not from Mr. Prior or Mrs. Schlemm.

Q. You heard Mrs. Schlemm cross-questioned about the occasion yesterday? A. Yes.

Q. Was that the same occasion?

MR. WALSCHEID: I object to that; it is not proper examination, because we do not know what is in your mind or what is in the witness's mind.

MR. WELLER: I will withdraw it.

Q. Was that the only time you were ever with her in New York when a man was along? A. Yes, that was the only time.

Q. (*By the Master*) Why did you say in answer to a question that was put to you, that you didn't know who the man was? A. I didn't know until Mr. Weller said "Mr. Prior"; I didn't know the man's name.

Cross Examination by Mr. Walscheid:

Q. You don't know Mr. Prior? A. No, I don't.

Q. You haven't been to Boccasavvia's with Mr. Prior? A. I have been there, but I don't know the man's name.

Q. Do you go out with men whom you don't know? A. Yes.

Q. Was Mrs. Schlemm in this party? A. Yes.

Q. How many times have you been to Boccasavvia's with Mrs. Schlemm? A. Twice, and once we couldn't get in.

Q. And were the same men with you on each occasion? A. On the second occasion there was a different man.

Q. Different man for you? A. No, for Mrs. Schlemm.

Q. You had the same man on all occasions? A. I had the same man.

Q. On all occasions? A. Yes.

Q. And you don't know that man's name? A. No, I don't know his name.

Q. You have been up to Boccasavvia's three times? A. Twice we got in and once we couldn't get in.

Q. You went on all occasions with this same man? A. Yes.

Q. And you don't know his name? A. No.

Q. And you wouldn't know where to find him today? A. I wouldn't know.

Q. Did you have these two men at Boccasavvia's (showing witness picture marked P-2 for identification)? A. Well, I have only seen the men three times; but that doesn't look like him or any of them. I have only seen him three times; that doesn't resemble him.

Q. (*By Mr. Weller*) Who was with you on the first occasion when you were there? A. On the first occasion, Lou, Carneo, Mrs. Bamblick, Mr. Berlin, and two other men and a chauffeur; them three I don't know.

Q. (*By Mr. Walscheid*) You mean up to Boccasavvia's? A. Yes.

Q. (*By Mr. Weller*) On the second occasion that you were there who was there? A. Two strangers and the same man that I met on the first occasion and another man with them, but I did not know their names.

Q. Were there any other ladies with you at that time? A. Mrs. Schlemm and myself.

Q. And the third time you could not get in? A. No.

Q. You and Mrs. Schlemm went with Prior and who else? A. I don't know the man's name.

Q. Where did you go from? A. From Grand View hall.

Q. You had Mrs. Carneo on when you started? A. Only when we started, but we left her off at Jefferson street.

Q. And you went on from Jefferson street? A. Yes.

Q. (*By the Master*) Are you married or single? A. Single.

Q. Live at home? A. Yes.
Q. With your parents? A. Yes.

Q. (*By Mr. Walscheid*) Do you work for a living? A. I do; I am a saleslady.

Q. And when you started from Grand View hall you started about two o'clock in the morning? A. Oh, no, it was not as late as that.

Q. What time was it? A. Let me see; it was around twelve—about ten minutes to twelve.

Q. And this Boccasavvia's place is up in Bergen county? A. I couldn't say where it is; I know it is up that way.

Q. It is up above Fort Lee? A. Yes.

Q. On the road overlooking the Hudson river? A. I don't know.

Q. Well, it is a lonely place, isn't it? A. Not so very lonely.

Q. I don't imagine it is lonely, but there aren't many houses about there? A. I didn't look around to see if there was.

Q. Have you been there in the daytime? A. I was in the afternoon.

Q. In order to get there from Grand View you had to drive through the northerly part of Jersey City, didn't you? A. Yes.

Q. Through West Hoboken? A. Yes.

Q. Through Union Hill? A. Yes.

Q. Through West New York? A. (The witness pauses.)

Q. You know where West New York is, don't you? A. Yes, but I don't know which we went through.

Q. You know you have to go up past West New York? A. Do you? I don't know.

Q. Well, you had to pass up beyond Fort Lee, didn't you? A. Well, I don't know the place.

Q. How long did it take you to drive from Grand View up to Boccasavvia's? A. About twenty minutes or twenty-five.

Q. And you drove past Mrs. Schlemm's house —I don't mean right past the door? A. No, we did not.

Q. You didn't pass the door, but you went by Mrs. Schlemm's house? A. No, we did not.

Q. Mrs. Schlemm's house is in between Boccasavvia's and Grand View, isn't it? A. Yes.

Q. And your home is somewhere in between those two places? A. Yes.

Q. And you got up there and the place was crowded? A. Yes.

Q. And you had been with these men all the evening at Grand View? A. No.

Q. Had you danced with them? A. No.

Q. Didn't you talk with them at all? A. No.

Q. Did you have any drinks with them there? A. One drink.

Q. (*By the Master*) How did you get acquainted with these men? A. The first time we got acquainted?

Q. This wasn't the first time? A. No, this was the second time.

Q. Where had you gotten acquainted with them first? A. The first time we got acquainted with them was in a restaurant on Blum and Bergenline avenue.

Q. (*By Mr. Walscheid*) Who knew them first, you or Mrs. Schlemm? A. None of us knew them first. Mr. Berlin introduced us and Mrs. Carneo knew Mr. Berlin. It was through Mr. Berlin that we were introduced to these men.

MISS MOLLIE M. DORR, recalled on behalf of the defendant, testified as follows:

Direct Examination by Mr. Weller:

Q. Did you ever see any marks of violence on Mrs. Schlemm? A. Yes, I did.

Q. Where? On her bust.

Q. Had you heard any fighting or anything before that? A. Yes; I know they quarreled.

Q. Who quarreled? A. Mr. and Mrs. Schlemm.

Q. Whereabouts on her bust were these marks? A. (The witness indicating a short distance below the shoulder.)

Q. How large a place wat it? A. Quite a mark.

Q. Discolored mark, was it? A. Yes, it was.

MRS. CHARLOTTE RABENSTEIN, sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. Weller:

Q. Where do you live, Mrs. Rabenstein? A. 398 Germania avenue, Jersey City.

Q. Do you know Mrs. Schlemm? A. Yes.

Q. Did you ever take care of her in any sickness? A. Yes, I have taken care of her.

Q. When? A. Around the 13th of December, 1915, I believe it was.

Q. (*By the Master*) This last December?

A. No, the year before, 1914.

Q. Where did she live? A. On West street.

Q. West Hoboken? A. Yes.

Q. What ailed her? A. Well, a mis.

Q. (*By the Master*) Are you a professional nurse? A. No, I had just taken care of her mother, and she called me over.

Q. Do you remember at that time whether Mr. Schlemm came home every day or not? A. Well, he was absent a few times.

Q. How many days were you there? A. I was there for about a week.

Q. And when he would come home would he talk to his wife? A. No, he was downstairs.

Q. Did he ever bring a man home with him? A. Yes, once.

Q. Who was that man? A. I don't know his name; some relation to him, I believe; he said so.

Q. What did he say when he brought him in? A. He was intoxicated and this man brought him home and he laid on the couch downstairs.

Q. (*By the Master*) Who lay on the couch? A. Mr. Schlemm.

Q. And this man brought Schlemm home intoxicated? A. Yes.

Q. Do you know where he tried to send that man?

MR. WALSCHEID: I object to the form of the question.

THE MASTER: You had better lay a foundation for it first; you have not shown that he sent him at all.

Q. When he brought Mr. Schlemm home and Mr. Schlemm laid down on the couch, then what happened? A. He took Dolly, his daughter, and

she went upstairs to bed. That is all. I left him lay there.

Q. While that man was there did you hear him say anything to that man? A. No. I told Mr. Schlemm his wife was sick and to go up to see her, and he said he didn't want to see her, and that was the end of that, and the man went home.

Cross Examination by Mr. Walscheid:

Q. That was December, 1914? A. Yes—no, December thirteen.

Q. (*By the Master*) That is two years ago this last December? A. No, 1914; I thought you meant the day.

Q. It was December 13, 1914? A. Yes.

Q. How do you know the date? A. Because it was my birthday.

Q. How many days did you go to see Mrs. Schlemm? A. I was there for a week.

Q. For a whole week? A. Yes.

Q. Engaged by her? A. Yes; she asked me to take care of her because she didn't know who to get.

Q. And she paid you? A. Yes. I didn't want to take anything, but she handed me a few dollars.

Q. Were you there during the daytime? A. Yes, I was there day and night.

Q. You were there the full twenty-four hours? A. I was there day and night.

Q. A full week of twenty-four hours a day; is that right? A. Yes.

Q. And she was upstairs? A. She was upstairs.

Q. And during that time you saw Schlemm come in and go out? A. Yes, and she asked me if I would get the meals for Mr. Schlemm, and I said yes I would.

MRS. ANNIE WHITTLE, sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. Weller:

Q. Mr. Whittle, where do you live? A. I live at—now, do you mean?

Q. Yes. A. 331 Palisade avenue.

Q. West Hoboken? A. Yes.

Q. Do you remember an occasion being at Mrs. Schlemm's house when he threw her $10? A. I went over there one morning; I used to go over occasionally in the morning to assist Mrs. Schlemm, because she wasn't feeling good, and when I was there Mr. Schlemm came in and he walked in the dining room and took his coat off and he threw some money on the table, and he says "go empty your damn gut."

Q. About when was that? A. Well, as near as I can guess it would be the beginning of December—some time in December, I couldn't positively say.

Q. Last December? A. 1914, yes.

Q. What did she say when he did that? A. She took it up in her hands and he puts his things on and walked out, and she was crying and showed me what it was, and I saw it was a $10 bill.

Cross Examination by Mr. Walscheid:

Q. How long have you known Mrs. Schlemm? A. Well, I should say up to the present time I have known her about three years.

Q. And how often have you seen her during that time? A. Why, quite often, sir.

Q. Quite often? A. Yes; I used to go in and out of her house and assist her.

Q. Since she has lived separate and apart from her husband have you seen much of her? A. No, not much of her.

Q. Has she visited you? A. She has, about a half dozen times.

Q. And have you visited her? A. I have been down to her mother's about three times.

Q. You are a friend of her mother's, too? A. Yes.

Q. Friend of the family? A. Yes.

Q. And do you know when Mr. Schlemm brought his first divorce suit? A. Yes.

Q. You continued on friendly terms with Mrs. Schlemm after that? A. I did, sir.

Q. That didn't make any difference to you? A. Not at all.

Q. Are you married? A. Yes.

Q. Living with your husband? A. Yes.

Q. And who first called your attention to this incident? A. What incident?

Q. In December, 1914? A. Well, I used to go over there.

Q. Just who refreshed your memory about it? A. Nobody; it doesn't need refreshing.

Q. Didn't somebody come and talk to you about it? A. Not at all.

Q. Mrs. Schlemm didn't? A. No, sir.

Q. She didn't ask you whether you remembered it? A. No, sir, she did not.

Q. Never talked to you about it? A. No.

MRS. BARBARA JENNINGS, sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. Weller:

Q. Where do you live? A. 4 Eighteenth street, Weehawken, New Jersey.

Q. What do you do? A. I am janitress of the Town Hall in Weehawken.

Q. Did you ever work for Mr. and Mrs. Schlemm? A Yes.

Q. Do you work there still? A. I work for Mr. Schlemm still.

Q. Do you remember their having a quarrel one time over a woman? A. Yes, I do.

Q. Just tell us about that quarrel.

Q. (*By the Master*) When was that? A. I couldn't just remember the time.

Q. About how long ago? A. Oh, about 1914, somewheres around there.

Q. Was that after their first trouble or before?

MR. WALSCHEID: What do you mean by "their first trouble"?

MR. WELLER: The first lawsuit that has been spoken of here.

A. That I couldn't rememebr.

Q. Well, just tell us what it was. A. I was there washing and ironing this day; it was a Monday, and she went to the city to do some shopping, and she came home kind of early, and she said, "What do you think, I saw Will in the moving picture show beside a woman, and I seen him nudging her." So in the meantime he came home an dI don't know what passed between them, but the two of them started fighting, and she struck her husband first and he struck her back, and she pulled the vest off of him.

Q. What woman was that; did she mention the name? A. No, I couldn't say.

Q. Did you hear the name "Dort" mentioned? A. No, I couldn't say.

Cross Examination by Mr. Walscheids

Q. You saw a great deal of Mrs. Schlemm? A. Yes, I have.

Q. And have had many conversations with her? A. Yes, I have.

Q. And you have had convertaions with her about having children?

MR. WELLER: I object as not cross examination.

MR. WALSCHEID: I agree that it isn't; I will make her my witness.

Q. Tell us what she said about having children? Did you have a conversation about children? A. Yes.

Q. State that conversation, so far as you can recall it. A. Well, as a rule women don't generally talk about that.

Q. Well, that is the rule, but you and she did talk about it? A. We may have.

MR. WELLER: I object to your leadher.

Q. Did she tell you anything about her desire to have any more children? A. That I don't remember.

Q. Di dshe say anything to you about having abortions performed? A. No, she did not.

Q. Did she say anything to you about doing away with children? A. Not to my knowledge.

Q. What do you mean by "not to my knowledge"? A. That I don't remember.

Q. Do you remember Mrs. Schlemm receiving a telephone call when you were there? A. I do, yes, quite often.

Q. She did receive telephone messages quite often? A. Yes.

Q. Did she tell you from whom they were? A. She did not.

Q. Would she receive these messages while Mr. Schlemm was out? A. Yes.

Q. Do you remember the Gabain incident? A. Yes.

Q. Do you know whether or not she received a message at that time? A. She received a telephone message, yes, but I don't know who it was from.

Q. Did she tell you? A. No, she didn't.

Q. Did she tell you anything about it? A. No, she didn't.

Q. Did you see her go out that night? A. Yes.

Q. How was she dressed? A. The same as any other time, in her clothes.

DR. ARCHIBALD E. OLPP, sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. Weller:

MR. WALSCHEID: Might I ask the indulgence of the Court to ask Mrs. Schlemm a question at this point before this witness is examined?

THE MASTER: Call her to the stand.

MRS. LOUISA M. SCHLEMM, recalled for further cross examination, testified as follows:

Q. (By Mr. Walscheid) Mrs. Schlemm, when you left or separated from Mr. Schlemm, at the time the separation agreement was drawn, you were not pregnant by him? A. No.

Q. And since that time he has had no sexual intercourse with you? A. No. Yes, he has had since then.

Q. Where? A. 488 Park avenue.

Q. Where? A. In my apartments.

DR. ARCHIBALD E. OLPP resumes the stand and testifies as follows:

Direct Examination by Mr. Weller:

Q. You are a physician and surgeon? A. Yes, sir.

Q. Where do you live? A. 412 High street.

Q. Do you remember attending Mrs. Schlemm in December, 1914? A. I do.

Q. What was she suffering from? A. She was suffering from incomplete abortion at that time.

Cross Examination by Mr. Walscheid:

Q. Did you have any talk with her about that abortion? A. What do you mean by having any talk with her?

Q. Did she say anything about that abortion? A. She told me that she didn't care to carry the child, as Mr. Schlemm hadn't been treating her right, and she said that she was going to get rid of it. That was the conversation she had in my office some time before that.

Q. Did she tell you who had started her abortion? A. No, she didn't tell who did it; she said she was going to have it done.

Q. Did you treat her before or after? A. She came to me before that time and I treated her after.

Q. After that abortion? A. Yes.

Q. Did she tell you that Mr. Schlemm did not know anything about having the abortion treatment? A. I don't exactly recall that. She said she was going to get rid of it because Mr. Schlemm wasn't treating her right.

Q. (*By the Master*) What did you say to her? A. I told her she shouldn't do it.

Q. Have you since that time treated her? A. Yes, I have.

Q. When did you last treat her?

MR. WELLER: I object, on the ground as not cross examination.

MR. WALSCHEID: I agree that it isn't, and I will make him my own witness.

THE MASTER: When did you treat her last; you may answer.

A. In April.

Q. What part of April? A. 1915, some time between the 10th and 15th.

Q. What did you treat her for then? A. I treated her then for an incomplete abortion.

Q. Did anybody assist you? A. Yes, Dr. Klaus gave her the anesthetic.

Q. Could you tell from your treatment of her at that time about how long before that conception had taken place? A. I should judge about two and one-half months, as near as we can tell.

Q. (*By the Master*) What was the time that you treated her? A. In April, between the 10th and the 15th.

Q. Where was she living at that time? A. On Park avenue, 488.

Q. Was she then living alone? A. She was living alone, yes.

Examination by Mr. Weller:

Q. You can't tell exactly after a woman is pregnant whether that pregnancy exists before four months? A. Not unless we curate the uterus.

Q. You couldn't tell whether it was two and one-half or three and one-half along? A. No, because I didn't see the foetus.

Q. (*By the Master*) What is the greatest length of time that it could have been? A.

Oh, not more than three months, on account of the depth of the uterus.

Q. Conception had occurred not longer than three months before that? A. Yes.

Q. (*By Mr. Walscheid*) That is the possibility; now what is the average probability? A. I should judge two weeks earlier than that—two and one-half months.

Q. (*By Mr. Weller*) Yet it might have been three and one-half? A. It might; it is impossible to say exactly.

Q. Now, at the time you were asked if you didn't talk with her, did she tell you about her husband giving her $10? A. I don't remember that at all; no, I don't think so.

Q. Did she cry? A. She didn't cry when I saw her.

Q. Did she tell you that her husband had given her the name of a midwife to go to? A. No.

Q. Who paid you for that? A. Mr. Schlemm paid me by check.

Q. (*By Mr. Walscheid*) For the first? A. Yes.

Q. Who paid you for the second? A. Mrs. Schlemm paid me half of it; the other half is still coming.

THE MASTER: What is the date of the separation agreement?

MR. WELLER: The 22d of January.

THE MASTER: What is the date of the last treatment?

A. Between the 10th and 15th of April.

THE MASTER: You are sure it was not earlier than the 10th nor later than the 15th?

A. Yes.

MR. WELLER: Now, Your Honor, I shall have to ask your indulgence to telephone again to my witness.

THE MASTER: With the exception of this one witness, you rest your case?

MR. WELLER: Yes.

THE MASTER: What is your witness going to testify to?

MR. WELLER: He is going to testify to taking out Mr. Schlemm and this Dort womna and others, picking them up on the corner of Palisade Avenue and Traphagen Street, and picking up another woman in Jersey City and going down to Hoboken and stopping in a saloon, and by the time they were down to Hoobken one woman got angry and left the crowd and requested him to take her to the top of the hill and let her go down to Jersey City, which they did. Mr. Schlemm took them and this Dort woman to various places and finally to a road house up the other side of Fairview Cemetery, a house of questionable repute, and there the other men in the crowd went home. He took them home in the auto-

mobile and later in the night returned and got Mr. Schlemm.

THE Master: This is supposed to happen when?

MR. WELLER: I don't know the date.

THE MASTER: Prior to the last suit?

MR. WELLER: I don't know whether it was or not. It was before the last suit.

THE MASTER: That is the only witness you will have?

MR. WELLER: Yes.

THE MASTER: Mr. Walscheid, you can go on with your side of the case, and when that witness comes we will take his testimony.

PETITIONER'S REBUTTAL.

CHARLES G. ROSETTI, sworn on behalf of the petitioner, in rebuttal, testified as follows:

Direct Examination by Mr. Walscheid:

Q. Mr. Bosetti, you formerly worked for Mr. and Mrs. Schlemm? A. I did, sir.

Q. Do you remember the time the last suit was instituted by Mr. Schlemm? A. I remember the last suit, yes.

Q. Just prior to that time did Mrs. Schlemm come to see you? A. I don't know.

Q. Did you see her? A. I didn't see her.

Q. Did she telephone you? A. No.

Q .Just prior to that time did she ask you to make any statement in regard to a woman by the name of Hofstetter? A. Outside of the court she asked me that.

Q. I mean prior to the last suit did she ask you to make a statement in regard to a woman by the name of Mrs. Hofstetter and offer to pay you money for it? A. She did.

Q. What did she want you to swear to and what did she offer to pay you? A. Telephone call was left at Mr. Schlemm's office around 9:30 at night for me to call at her house. I went there and went in the house. She was there alone. So she says to me, "Will you do me a favor for the child's sake, to swear that you seen Mr. Schlemm having connections with Mrs. Hofstetter," and I told her I couldn't do it, because I didn't see it and wouldn't swear to nothing that I didn't see." "I will give you $25 if you will," she said, and I said I couldn't. She pleaded and pleaded for me to do it, and I told her I couldn't do it. An then she seen thatshe couldn't get me and her mother and two sisters came out of tfhe other room where they were behind the curtains.

Q. Was Mrs. Cane one of them? A. Mrs. Cane and Mrs. Rohr, her sisters.

Q. Were you here this morning when Mrs. Cane testified? A. No, I wasn't.

Q. You didn't hear Mrs. Cane testify? A. No.

Q. Were you ever in the Schlemm undertaking establishment when Mrs. Cane came in and caught Mr. Schlemm in the act of having sexual intercourse with Mrs. Delvey? A. Never.

Q. Did you ever hear of anything like that? A. I never did.

Q. Were you ever in there when she came in and you were in the finishing room, and she walked into the finishing room, and Mr. Schlemm and Mrs. Delvey were in the dining room, and you were in the corner of the finishing room where you couldn't look into the dining room, and Mrs. Cane, looking into the dining room, says, "That is a nice way to catch you," or words to that effect—"this is a nice how do you do to catch you like this? A. I never seen her, and never heard of it.

Q. And then she turned aound and walked out, although Schlemm tried to call her back and wanted her to stay for coffee? A. I never heard of it.

Q. Never heard of such a thing? A. No.

Q. You were subpoenaed here by Mrs. Schlemm? A. Yes.

Cross-examination by Mr. Weller:

Q. Mr. Bosetti, you say Mrs. Cane was there that night? A. Mrs. Cane, yes.

Q. Mrs. Schlemm? A. Yes.

Q. And Mrs. Schlemm's mother? A. Yes.

Q. And Mrs. Rohr, her other sister? A. Yes.

Q. You had spoken to them before that about the Hofstette woman, hadn't you? A. I never did.

Q. Did you not tell them and tell Mrs. Schlemm that night that Eddie Schlemm, Mr. Schlemm's brother, was there at the house, and that you were supposed to get supper for them, and in the after-

noon Mrs. Hofstetter came down; didn't you say that? A. I never said it.

Q. Didn't Mrs. Hofstetter live over this place? A. She did.

Q. Did she not come down there frequently? A. The only time that she came down was when she paid Mr. Schlemm the rent.

Q. Did you ever see her there with her wedding-gown on? A. Never.

Q. Didn't you tell Mrs. Schlemm and her sister that she came down with her wedding-gown on? A. No, sir.

Q. And didn't you say to them that when she came there she threw off this wedding dress and stood there perfectly nude? A. No, sir.

Q. Mr. Schlemm sort of brought you up, didn't he? A. I worked for Mr. Schlemm's family from the time I was nine years old and I was with him until last March.

Q. You almost feel like a brother to Mr. Schlemm? A. I don't know. Mr. Schlemm himself, the old gentleman, treated me as a son.

Q. And you live there with them at the house always, up until last March? A. No, not at the house always; I lived with the Schlemm family for about seven years and slept there.

Q. You know Mrs. Delvey? A. Yes.

Q. And you know that she came there? A. She came there to wash and scrub.

Q. She came there almost every week? A. I believe every two weeks she came there.

Q. But she came there sometimes visiting, didn't she? A. She might have come there when I was out.

Q. Didn't she come often when Mrs. Schlemm wasn't there? A. Not while I was there.

Q. You often saw Mrs. Cane there? A. Not so often.

Q. Well, how often did you see her there? A. Once or twice a month.

Q. Did you work a part of the time in the finishing-room? A. Not always in the finishing-room; I was outside to make ambulance calls.

Q. Did you ever work in the finishing-room? A. I did at times, but not long—perhaps an hour or half an hour at a time.

Q. That is quite a long room, isn't it? A. Not so long.

Q. It is longer than the room that adjoins it? A. It is longer than it is wide.

Q. You mean—— A. The width of it crosswise, but the length of it is only about eight feet.

By the Master:

Q. What is back of that finishing-room? A. The dining-room and the kitchen.

Q. And a little hallway in between? A. Little hallway in between.

Q. Where is the door from the finishing-room into the dining-room? A. There is a little hallway on the left and there is a hall on the right, but that is closed.

Q. There is a door that leads from the finishing-room into the dining-room? A. There is.

Q. Where is that? A. On the right-hand side as you go in.

Q. Right-and side? A. Yes.

By Mr. Walscheid:

Q. I wish you would make a diagram of the whole premises.

(The witness makes a diagram as requested; the same is offered and admitted in evidence and marked Exhibit C-3.)

Examination by Mr. Weller:

Q. You say you didn't work in the finishing-room all the time? A. No.

Q. Do you remembe Mrs. Cane coming there sometime when you were in the finishing-room? A. No, I don't.

Q. You don't? A. No.

Q. Are you trying to remember, Mr. Bosetti? A. I would if I could. I wasn't there as a regular thing. I might be there five minutes, and then might be out in the office.

Q. Now, you say that night Mrs. Rohr was there, and Mrs. Cane, and Mrs. Schlemm? A. Yes, and Mrs. Plaum, their mother.

Q. What did you tell them about Mrs. Hofstetter? A. I told them I didn't know anything about it.

Q. How did they get into their heads anything about the wedding-gown incident? A. I don't know.

Q. You don't know anything about that? A. No, sir.

Q. Never told them anything like that? A. No, sir.

Q. Did you ever see Mrs. Hofstetter drink with Mr. Schlemm? A. No, sir.

Q. Did you not tell these people that Mrs. Hofstetter and Mr. Schlemm sat there and drank all the afternoon? A. No, sir, I did not.

Q. Didn't you say two women came down and you had one and Mr. Schlemm had the other? A. I did not.

FRANK HANSON, sworn on behalf of the petitioner, in rebuttal, testified as follows:

Direct Examination by Mr. Walscheid:

Q. Mr. Hanson, you have a brother? A. Yes, sir.

Q. Who is in the detective business? A. Yes, sir.

Q. What is his name? A. Joe.

Q. Did you work for him on the Schlemm case? A. Yes, sir.

Q. And did you go to the apartment of Mrs. Schlemm in the Palace Court? A. Yes, sir.

Q. And were you there with Mrs. Stenek on one occasion? A. I went with Anna Stenek.

Q. And whom did you meet there on that occasion? A. Sam Detoro.

Q. And Mrs. Schlemm was there, too? A. Mrs. Schlemm; yes, sir.

Q. And was anything said at that time about a trip on the Fall River Line? A. Yes, he said it.

Q. Who is "he"? A. The young millionaire, Sam Detoro.

Q. Why do you call him the "young millionaire"? A. Because she said on account he owned a junk shop and had money.

Q. And was it said in your presence? A. Yes, sir.

Q. What did Mr. Detoro propose to do, in the presence of Mrs. Schlemm, at that time? A. (The witness pasuses.)

Q. What was the proposition that was then made? A. The proposition about the trip on the Fall River Line?

Q. Yes. What was it. A. He wanted to make a trip, and he was supposed to furnish all expenses.

Q. For whom? A. Anna tSenek and myself, and Mrs. Schlemm and Sam Detoro.

Q. And herself? A. Yes.

Q. Did you at that time make such a proposition? A. I don't see how I could; I didn't have any money.

Q. It isn't a question of how you could do it; did you do it? A. No, sir.

Q. How was Sam Detoro dressed while in that apartment that night? A. Well, I can tell you the whole thing——

Q. We don't want the whole thing. A. He had his coat and vest off and he was in his shirt sleeves, and his hat off.

Q. And what time did you leave there? A. About 12.30.

Q. Did Sam Detoro stay there? A. He stayed there after we left.

Q. Did you stay there to watch er? A. No, my brother was outside; I went home with Anna Stenek.

Q. Do you remember the date? A. No, sir, I do not.

Cross-examination by Mr. Weller:

Q. What time did you and Anna Stenek go there that night? A. We were there twice that night. The first time we went was half-past seven.

Q. What did you go there for the first time? A. We were taking a walk down to Hoboken, and Anna said, "What do you say to stopping in to see Mrs. Schlemm?"

Q. What were you going to Hoboken for? A. The same as anybody else.

Q. You were both working on the Sclemm case? A. Yes, we were both working on the Schlemm case.

Q. Andwhen was that; can you tell me exactly? A. No, sir; I can't tell you that date at all.

Q. Don't you know that that is the first time that Miss Stenek had ever been to Mrs. Schlemm's house? A. Not that I know of.

Q. And you were there at half-past seven? A. Yes, and she told us.

Q. Was Sam Detoro there? A. No, sir; he came at ten o'clock.

Q. How long did you stay there? A. What do you mean; the first time or the second time?

Q. I haven't asked you about any second time. A. About fifteen minutes. I told her I was going down to Hoboken, and she said to come back because she had her sweetheart coming.

Q. (*By the Master*) Who was that?
A. Mrs. Schlemm.

Q. So you went down to Hoboken—you and Anna Stenek? A. Yes.

Q. How long did you stay down at Hoboken? A. Why, we stayed there—we got there about seven o'clock to the house and left the house about a quarter to eight, and got down to Hoboken about eight o'clock.

Q. Where did you go in Hoboken? A. We took a walk down as far as Fourteenth Street.

Q. Did you stop in any place? A. Well, no, not as I know of.

Q. You can't remember that? A. No, sir.

Q. You haven't got a very good memory? A. I don't know that I have.

Q. You walked down to Fourteenth Street? A. Yes, sir.

Q. How long did that take you? A. Around fifteen minutes.

Q. What did you want to go down there for? A. Just for a walk before going back to the house.

Q. What time was it when you got back? A. Why, we got back—it was about around twenty-five minutes after eight, or half-past eight.

Q. You had never seen Mrs. Schlemm before? A. Never met her before.

Q. You were trying to get Mrs. Schlemm? A. Yes.

Q. And you wanted to get her out with a man if you could. A. I didn't know her.

Q. But you wanted to catch her with a man, didn't you? A. Well, that was my business; yes, sir.

Q. That is what you went there for, is it, to catch her with a man if you could?

THE MASTER: Yes or no.

A. Yes, sir.

Q. And did you and Miss tSenek talk over how it was to be done? A. No, sir, we did not.

Q. Didn't say a word about that? A. No, sir.

Q. Not a word? A. Not a word.

Q. You expected to follow her after that, didn't you? A. Well, I don't think I could have folowed her after she had seen my face.

Q. You expected to follow her? A. No, sir.

Q. Why did you go in there and let her see your face? A. Anna said to go down and see her.

Q. Is it not a fact that you went in there to induce this woman to take a trip on the Fall River boat? A. No, sir.

Q. Had no such thought in your head? A. No, sir.

Q. You thought if you could induce her to go on the Fall River boat you would catch her? A. He was the one that put the proposition up.

Q. But you knew that, didn't you? A. Well, I didn't knw whether she would go or not, but he put the proposition up.

Q. Just tell us exactly what he said. A. Why, when we come back again she said to me, she said, "Don't laugh," and she said, "I want to introduce to you Anna's friend."

Q. Who said that? A. Mrs. Schlemm.

Q. Who is he? A. Sam Detoro. She said, "He is not such a good-looking fellow, but he is a young millionaire, and he is a good fellow, and one thing, he will never go into a hotel with me, he has got so much money, and he is afraid of a man by the name of Spitz following her."

Q. How did she happen to say that? A. We were there talking.

Q. (*By the Master*) Did she call you by your first name? A. Yes, sir.

Q. Was he there when she said that? A. No, sir.

Q. He was there when you got back? A. No, sir; he didn't come until a quarter after ten. There was two knocks to the door, and she said, "There's my sweetheart now."

Q. (*By the Master*) How long had you been there then? A. Why, it must have been an hour. I went for two pints of beer.

Q. You and she and Anna tSenek had been there about an hour when this man Detoro came? A. Yes.

Q. How long did you stay after that? A. We stayed until half-past twelve.

Q. And then you went away with Anna Stenek? A. Yes.

Q. And then you came back again? A. A. No, sir; a brother of mine was outside, and I took Anna home.

Q. Where did you take her to? A. Right to her house.

Q. Where did she live at that time? A. She lived at the corner of New York avenue and Lewis Street.

Q. How long had you known her at that time? A. Why, I met her about two months on another job in Union Hill.

Q. Two months before that? A. Yes, and I hadn't seen her within a month.

Q. (*By the Master*) Was she regularly employed by your brother? A. No, she wasn't.

Q. She works off and on? A. Once in a while.

Q. You know she was working for him on that job? A. Well, yes.

Q. You knew that? A. Yes.

Q. Now, when you got in there this man knocked at the door and she said, "There's my sweetheart"? Yes.

Q. And he came in? A. Yes.

Q. And then he remained? A. Yes.

Q. What happened after that? A. Mrs. Schlemm introduced Anna Stenek to him and I introduced myself.

Q. As a millionaire? A. No, she didn't say a millionaire; she mentioned about the young millionaire he was.

Q. I thought you said on your direct examination she said "This is a young millionaire junk dealer"? A. She said that before he came in.

Q. When he came in, what did she say? A. She introduced Anna Stenek and I to him.

Q. Before he came in what did you do? A. We were talking and I went out after two pints of beer before he came.

Q. And who paid for that? A. I paid for it.

Q. How did you happen to pay for it? A. She gave me a pitcher of her and I went after it.

Q. So you went out and got the beer? A. Yes.

Q. And you drank some? A. Yes.

Q. And Anna drank some? A. Yes.

Q. And Mrs. Schlemm drank some? A. Yes.

Q. Now, what was the first word that was said about going on the Fall River trip? A. I was there, and somehow or other, he said, "How about taking a trip, Anna?"

Q. Who said that? A. Sam Detoro.

Q. (*By the Master*) He called her by her first name? A. Yes.

Q. At the time he suggested the Fall River trip? A. Yes. And he said, "What do you say about taking a trip and make up a party; we can go and leave here on a Saturday night and be back on a Monday morning."

Q. And he said he would pay for the whole business? A. Yes.

Q. And you had never seen him before? A. Never seen him before.

Q. And Anna Stenek had never seen him before? A. No.

Q. Absolute strangers? A. Yes.

Q. And then if you would go on the trip to Fall River he volunteered to pay for it? A. Yes.

Q. Just tell me his words, as near as you can, what he said. A. I don't know; it came around to the point where he said he would pay for it; I don't remember what was said in between.

Q. Just tell me what was said in between, as near as you can; I want the whole thing. A. No, I can't do that.

Q. You were to take a trip on the Fall River boat? A. Yes.

Q. Where were you going? A. We were not going to get off at all; just going to Boston and stay on the boat.

Q. Did he say that? A. Yes; leave here on a Saturday night and be back on Monday morning.

Q. Are you sure that he said that? A. Yes.

Q. That he was going to get on a Fall River boat? A. Yes.

Q. And go to Boston and stay on the boat and come back? A. Yes.

Q Don't you know that the Fall River boat doesn't go to Boston? A. I don't know where it goes.

Q. You don't know anything about it? A. No, sir.

Q. Do you now say he said that? A. Yes, he did say it.

Q. Go on a Fall River boat and go to Boston? A. I don't know; wherever the boat went.

Q. You weer anxious to catch Mrs. Schlemm? A. Yes.

Q. You wanted to catch her with Sam Detoro or anybody else? A. Yes.

Q. When he made this proposition to go to Boston, what did you say? A. I said, "All right."

Q. Did you agree when you would go? A. I was there only one night and never heard nothing any more about it, because she told Anna not to bring me back there any more, because she thought I had a big mouth and she wouldn't trust me.

Q. That is what Anna told you? A. Yes, sir.

Q. Didn't Sam say when he would take you up to Fall River? A. No, sir.

Q. What was said about her little girl? A. She said she was going to take her little girl to her mother's house.

Q. Isn't it a matter of fact that she told you that she didn't do any such things? A. No, sir.

Q. And didn't you put up the proposition? A. I didn't have the money.

Q. But if she went, Mr. Schlemm would furnish the money wouldn't he? A.I wouldn't put the proposition up to her; she might smell a rat right away.

Q. You think so? A. I imagine so.

Q. Why did you not after first meeting her, put up such a proposition when you knew that Mr. Schlemm would give you all the money you needed for the trip? A. I don't know if he would or not.

Q. He told you to spend all that was necessary to get her? A. He didn't say nothing to me like that.

Q. (*By the Master*) Who put you on the job? A. My brother gave me the job that night when I told him I was going down.

Q. What did he tell you? A. He didn't say nothing at all. He says, "Go down and buy a couple of pints, if she drinks."

Q. He told you to go down there and buy a couple of pints? A. Yes.

Q. He was trying to get her off with some man? A. I suppose he was.

Q. Why did he want you to buy her a couple of pints, young man?

MR. WALSCHEID: I object.

THE MASTER: I don't think you need to tell the Court why. I shall sustain the objection.

Q. You knew that your brother was working for Mr. Schlemm at that time? A. Yes.

Q. Now just give us those words he said, "Go down and buy a couple of pints, if she drinks"? A. Yes.

Q. And he gave you a dollar to buy it with? A. Yes, but she is the one that put the proposition up about the drinks.

THE MASTER: You haven't been asked about that.

Q. Just tell me again exactly what Sam Detoro said about going out on that Fall River trip; commence and tell what each one said; I want to know the whole thing. A. Do you want the times and everything?

Q. Yes. A. Why, he came in about a quarter after ten and she said, "There's my sweetheart, the young millionaire." He didn't ring the bell. "He always waits until ten o'clock, because the gas is out," and he came about 10.15.

Q. You mean the gas in the hall or the gas in the house? A. Yes, sir.

He went in Mrs. Schlemm's dark room when he came there? A. I am not talking about the house; I am talking about the hall; the lights were lit inside.

Q. Well, skip all that part and come down to the conversation that you had together that led up to this boat trip—what everyone said about going away on the Fall River boat. A. He first came in about 10.15. I had went for a pint of beer and when I came back he was there. They were talking, and finally he said: "What do you say,

we'll make up a little party and take a trip on the Fall River Line to Boston."

Q. I thought you said before, "What do you say, Anna?" A. I suppose he said it to us all.

Q. Didn't you say in answer to the question of His Honor that this was addressed to Anna? A. I don't remember his saying it.

Q. Didn't you say he said, "What do you say, Anna, about making up a little party for a trip?" A. Yes, he said "Anna."

Q. And he addressed this proposition to Anna Stenek? A. Yes.

Q. You say that is what he said? A. Yes.

Q. "What do you say Anna?" A. Yes, and she said, "All right, we will go."

Q. Anna said "all right"? A. Yes, "We will make up a party between us, and Frank and myself and Mrs. Schlemm and you can go some Saturday afternoon and return Monday morning."

Q. What did Anna say? A. "All right."

Q. What did you say? A. I didn't want to say too much.

Q. Well, what did you say? A. I said, "It is up to Anna, if she will go with me."

Q. What did she say to that? A. I suppose she said "All right"; I don't remember.

Q. Now, didn't she say "All right"?

MR. WALSCHEID: I object to it as immaterial.

Q. Did she say "All right"? A. I don't know whether she said, "All right" or not. She said to Sam, "All right", but I don't know whether she said "All right" to me.

Q. He didn't advise you when you would go? A. He said he would let us know.

Q. Did you tell him your name? A. He knows my name; yes sir.

Q. How long had he known your name?

Q. (*By the Master*) What did you tell him your name was? A. Harris; and I was working in the Fulton Fish Market.

Q. Did you give him your address? A. Yes, sir, I think I told him that I lived way out near the Boulevard and Fifteenth Street some place; I gave him an address.

Q. Did you give him your address out there? A. I didn't giv ehim my correct address where I lived.

Q. And your full name was Frank Harris? A. Yes.

Q. Where did you tell him you worked in the Fulton Market? A. For a party by the name of Hearn.

Q. Why were you telling all this stuff? A. I didn't only when he started to talk.

Q. You never expected to go on the Fall River boat at all, did you? A. I thought sure he would go when he made the proposition.

Q. What was your object in telling him this? A. Because if I told him my right name he would know me, because he knows my brother, Joe Hanson.

Q. Does he know your brother? A. He does.

Q. Did he know your brother before that? A. I guess my brother has worked as a detective for the city; I guess he ought to know him.

Q. He doesn't live in Jersey iCty? A. No, he lives in Hoboken.

Q. (*The Master*) Who lives in Hoboken? A. Sam Detoro.

Q. How do you know? A. That is what I hear from my brother. He has got a junk shop down in Hoboken.

Q. Is he a friend to your brother? A. I don't know how good a friend he is to my brother.

Q. Did you ever see him and your brother together? A. No, never in my life.

Q. When you were in there that night, didn't Anna ask you if you could learn to love her, or something to that effect? A. No, sir.

Q. Didn't say a word of that kind? A. No, sir.

Q. And didn't she then say to you, "If you can learn to love me, maybe you can learn to love Mrs. Schlemm"? A. No, sir.

Q. Nothing of the kind was said? A. No, sir.

By the Master:

Q. Where did you meet Anna Stenek that night? A. I didn't meet her in Hoboken.

Q. Where did you? A. At her house.

Q. Wherabouts? A. Lewis and New York avenue.

Q. You weren't at Hoboken at all? A. Yes.

Q. Whereabouts? A. Fourteenth and Washington.

Q. Where is Schmidt's saloon? A. I don't know.

Q. Never been in Schmidt's saloons? A. No, sir.

Q. You went—— A. (interrupting) Just to take a walk.

By Mr. Walscheid:

Q. First, you went to Mrs. Schlemm's? A. Yes. After that we tok a walk down there, so as not to hang around the house and to be back to meet Mr. Sam Detoro.

By Mr. Weller:

Q. Where did you meet Anna that day? A. At the house.

Q. Now, when you went down, which way did you go down; down the viaduct or down the railroad track? A. I guess we went down Park avenue around the same way as the cars run. I think we went that way.

Q. Don't you know that that goes right past Schmidt's saloon? A. I don't know nothing about Schmidt's; I don't know where it is; never had it in my mind.

By the Master:

Q. Do you know a man named Stites? A. No, sir.

WILLIAM SCHMIDT, sworn on behalf of the petitioner, in rebuttal, testified as follows:

Direct Examination by Mr. Walscheid:

Q. Mr. Schmidt, where do you live? A. 1042 Bloomfield Street.

Q. In Hoboken? A. Yes.

Q. (*By the Master*) Are you here under subpoena? A. Yes, sir.

Q. Who subpoenaed you? A. Mr. Weller.

[redacted]

Q. You were in Mrs. Schlemm's apartment on the night of the 24th of October, 1915, betweene the hours of one and three in the morning, weren't you? A. Yes, sir.

Q. Prior to that time did you know Mrs. Schlemm? A. No, sir.

Q. Had you ever seen her or heard of her? A. No, sir.

Q. Did you know Mr. Hanson? A. No, sir.

Q. Did you know the witness who was on the stand last? A. No, sir.

Q. Did you know Mr. Stites? A. Yes, sir.

Q. Did Mr. Schlemm have anything to do, so far as you know, with getting you to go to that apartment that night? A. No, sir.

Cross-examination by Mr. Weller:

Q. Do you know Sam Detoro? A. Yes, sir.

Q. How long have you known him? A. Several years.

Q. He is a frequenter of your saloon? A. Yes.

Q. Comes there almost every day? A. Yes, used to.

Q. When did he quit coming there? A. Probably six or eight months ago.

Q. Didn't he come there up until October last? A. Why, yes; I am not sure of the time when he stopped coming there; we had a little quarrel.

Q. You never knew Mrs. Schlemm until the 23d of October? A. No, sir.

Q. Never saw her until that time? A. No, sir.

Q. Never talked with her? A. No, sir.

Re-direct Examination by Mr. Walscheid:

Q. You had a quarrel with Sam Detoro about Mrs. Schlemm? A. He had a quarrel with one of the bartenders and he stopped coming into the cafe.

Q. I thought you said you had a quarrel with him? A. No, sir.

Q. He stopped coming into your saloon right after your attention to Mrs. Schlemm? A. No, sir, not right after.

Q. Do you know whether or not Mrs. Schlemm had been in your place before that or not? A. She had.

Q. And you knew Mrs. Schlemm by reputation before that? A. No, sir, not before that.

Q. Whose idea was it to go and call up Mrs. Schlemm? A. Sam Detoro's.

Q. Sam told you? A. I didn't call Mrs. Schlemm up; Sam did, and Mr. Stites answered the phone.

Q. And Sam Detoro was there when you made the appointment? A. Yes, sir.

Q. So it was made from your saloon? A. Yes, sir.

Q. And you had some conversation with Mr. Detoro then? A. Yes, sir.

Q. What was the conversation? A. Nothing; just asked me if I wanted to take a ride and call up some friend of his.

Q. Sam Detoro said that? A. Yes.

Q. And you agreed to it? A. Yes. Mr. Stites agreed to it, first of all, and I was agreeable to taking my car.

Q. And then Sam Detoro called up Mrs. Schlemm? A. That I don't recall. Of course, I was busy down there.

Q. You remember Stites going to the phone? A. Yes, sir.

Q. And you remember an appointment being made? A. Yes, sir.

Q. What, if anything, did Detoro say about that appointment?

MR. WELLER: I object to the question, on the ground that it is incompetent, irrelevant and immaterial. Detoro isn't here and he can't bind Mrs. Schlemm.

THE MASTER: Your allegation is that there was some sort of conspiracy to entrap Mrs. Schlemm with this man, and now Mr. Walscheid is bringing out the fact. I think it is competent.

Q. (Question read, to which is added by counsel) When this telephone appointment was made, what did Detoro say? A. Nothing in particular; just about the ride, that's all.

Q. Was he satisfied that you should go in the ride? A. Yes.

Q. Did he say anything about his relationship with Mrs. Schlemm? A. No, sir.

By the Master:

Q. Then you did go out on the ride—you and Mrs. Stites and Mrs. Schlemm and Miss Stenek? A. Yes.

Q. How long had you known Miss Stenek? A. Never seen her in my life.

Q. Where did you meet her? A. In Mrs. Schlemm's apartment.

Q. The first time you had seen her? A. The first time.

By Mr. Walscheid:

Q. You went out in your car when you left? A. Yes.

Q. And you came with it to Mrs. Schlemm's apartment? A. Yes.

Q. And you and Stites got out? A. Yes.

Q. (*By the Master*) What time was this? A. I don't recall the time; Stites was running the car at the time.

Q. Stites drove away? A. I did.

Q. You didn't expect Stites back that night, did you? A. I don't know.

Q. Did you take your clothes off in that apartment? A. I did.

Q. Did Mrs. Schlemm take her clothes off in that apartment? A. I don't recall that—not until later on.

Q. You know she did? A. Yes.

By Mr. Weller:

Q. That is when the detectives came? A. Yes. When I came in the apartment I simply laid down; everything was dead to the world to me.

Q. You had told Mr. Stites that you would wait there for him, had you? A. I asked him to come back with the car.

Q. And he said he would? A. He said he would, as I understood.

Q. And you were expecting him there every minute? A. Yes.

(Dr.) HENRY KLAUS, sworn on behalf of the petitioner, in rebuttal, testified as follows:

Q. You are a practicing physician, doctor? A. Yes.

Q. How long have you ben a practicing physician? A. I have been in private practice a little over a year.

Q. You know Mrs. Schlemm? A. I know Mrs. schlemm, yes.

Q. And you have treated her professionally? A. Yes.

Q. When did you last treat her professionally? A. October 12, 1915. I did not treat her professionally myself, but through another physician I had sent her.

Q. Dr. Olpp? A. Dr. Olpp.

Q. Did you, in connection with Dr. Olpp, treat her for an abortion? A. His diagnosis was incomplete abortion.

Q. What was your diagnosis? A. I had not examined Mrs. Schlemm at that time.

Q. When you treated her, what did you treat her for? A. Irregular bleeding.

Q. What do you mean by that? A. She came to me in October with the complaint that she had been bleeding irregularly since her curetting by Dr. Olpp, which was five months previous.

Q. Did you treat her in October for an incomplete abortion? A. I did not.

Q. Didn't you so state to me, that you treated her for an incomplete abortion, in the corner of that room yesterday? A. I did not.

Q. What did you state to me yesterday in relation to aobrtion; so far as this treatmnet of yours was concerned? A. I said that those symptoms she had when she came to me are similar symptoms also of abortion.

Q. Symptoms of a then incomplete abortion; didn't you state that? A. Yes.

Q. And didn't you also tell me that you didn't know whether, after she left you, she had aborted

or not? A. I said I didn't know, because I saw her only on that one occasion, but I had spoken to her probably ten days or two weeks later and asked her how she was.

Q. Never mind; I didn't ask you that. On that occasion weren't the symptoms you found in her the same symptoms that are found in incomplete abortion? A. No.

Q. Aren't those symptoms usually found in incomplete abortion? A. I can answer that in two ways.

Q. I want an answer, yes or not.

THE MASTER: I will let him explain.

A. A woman who has an abortion four months previously can have this particular type of bleeding if the curettement is not thorough and every difficulty removed, and the bleeding can continue to be irregular and the woman can have endometritis.

Q. And otherwise it is due to an incomplete abortion? A. A previous one.

Q. If it isn't due to a previous one then it is due to a new one?

THEMASTER: Either one or the other?

A. Yes.

Q. It is either due to a previous abortion which has been improperly curetted, or due to a new one? A. Yes.

Q. And Dr. Olpp and you performed the previous one? A. I had nothing to do with that.

Q. There is nothing unusual or difficult about a curettage, is there? A. No, sir.

Q. And there is no reason why Dr. Olpp could not have performed a complete and successful curettage, is there? A. No.

Q. And do you say, or do you make the claim, that Dr. Olpp did perform an imperfect or an improper curettage? A. He performed a perfect operation.

Cross-Examination by Mr. Weller:

Q. Do you think that women often bleed after this? A. Yes, they do.

Q. When Mrs. Schlemm came there to be treated she told you that she wanted you to treat her? A. Yes.

Q. And did you treat her? A. I prescribed for her medicine; that is all. Ooutside of an examination all I did for her was to prescribe medicine.

Q. How thoroughly did you examine her? A. I gave her a complete examination on the table.

Q. What did you find? A. I found that my finger was stained slightly with blood—a very slight amount.

Q. And she told you that she had been that way ever since Dr. Olpp had performed the operation on her, off and on, at intervals?

THE MASTER: Yes or no.

A. It is hard to answer that way, because it varies.

THE MASTER: The quesiton is, what did she say to you.

A. After the curettement it was irregular for three weeks; she had never had a regular period from the time she was curetted, and during the past three weeks she had been bleeding two or three days out of every week.

Q. That is what she told you? A. That is what she told me.

Recess until 2 P. M.

CHARLES LENC, sworn on behalf of the petitioner, in rebuttal, testified as follows:

Direct Examination by Mr. Walscheid:

Q. Where do you live? A. Union Hill, 125 Palisade Avenue.

Q. What is your business? A. Liveryman.

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

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

Q. How long have you known them? A. Known them for quite a few years—eight or nine years.

Q. Did you go to New York on March 30, 1914, to the Amsterdam Hotel, Mr. Lenc? A. Yes, sir.

Q. Did you go upstairs into the Amsterdam Hotel? A. Yes, sir.

Q. And di you go into a private bedroom there? A. Yes, sir.

Q. Did you see Mrs. Schlemm there? A. Yes.

Q. Who was with her? A. Well, a fellow by the name of Gabain we found in the same room.

MR. WELLER: I don't see how this is competent evidence. Mr. Walscheid brought all those things out himself. I object to it.

MR. WALSCHEID: I think it is competent for the following reasons: In the first place, on the theory that if there was connivance this is an anterior event which is not covered by that connivance and cannot be affected by it; secondly, if there has been a condonation and this woman has done wrong it has again become a cause of action by reason of her subsequent wrongful act; thirdly, to show her credibility—to affect her credibility, she having testified that she was sititng there and drinking liquor; and, fourth, to show her inclination to do wrong and to disregard morals.

MR. WELLER: If Mr. Walscheid's argument is correct, then this is a part of his main case. He asked certain questions of the defendant. She being the defendant, I did not object. And he asked a great lot of questions, and he made her his own witness for that purpose. Now he is putting on other witnesses to contradict her.

THE MASTER: Well, if your objection is only that he should put it in his main case, it is entirely within my discretion to let him put it in at the present time. If you object to it as immaterial, then you have introduced evidence, or tried to introduce evidence of connivance; you have tried to introduce evidence that Gabian took this

woman there for the purpose of having Schlemm find her therei n a compromising position, and she has been permitted to testify as to those circumstances.

MR. WELLER: Yes, but I didn't ask her a word about where she was or anything of the kind; that was brought out by Mr. Walscheid.

THE MASTER: Well, I may be wrong about it; you have got your objection on the record.

Q. Will you describe the room in which you found them? A. As we opened the door, Mr. Corrigan, I think, was the first man that went in; Mr. Schlemm after that went in, and then I went in. Mr. Gabian had one suspender hanging down, and he was putitng his suspenders up and fixing them.

Q. Where was Mrs. Schlemm? A. Mrs. Schlemm was around the corner, and I found out——

Q. (*By the Master*) Where was she when you saw her? A. In the bath-room, and I was told to go back there.

Q. How was she dressed when you first saw her? A. In a sitting positoin.

Q. Was she putting on her clothes? A. She wasn't doing anything; she was in a sitting position.

Q. How was she dressed? A. Had a wrapper on, or dress, whatever you call it.

Q. (*By the Master*) Was she dressed or wasn't she dressed? A. She had a dress on her.

Q. What kind of a dress did she have on? A. Kind of a dark dress.

Q. Did she have a street dress on? A. Sure she had a street dress on.

Q. How was the bed; what was the condition of it? A. The bed looked to me as if somebody had laid in it.

Q. How did you happen to go over there that night? A. Well, Mr. Darke called me up and told me he had a body to get over in New York and wanted me to go over there to getit.

Q. You didn't know what you were going to New York for? A. No, sir.

Q. What time did you get to the Amsterdam Hotel? A. It was about nine o'clock.

Q. How long were you outside in front of the door before you were allowed in? A. Well, that was in the hotel itself—about ten minutes—ten to twelve minutes before the proporietor.

Q. In front of the door; how long were you in front of the door before you were allowed to enter the room? A. About four or five minutes.

Q. And while you were standing in front of the door what was being done at the door? A. Mr. Corrigan told him there was a check to be paid or something and to open the door, and he didn't open the door right away, and he knocked again and told him to open the door, and then the door was opened up, and Mr. Corrigan was the first man to go in.

Cross-examination by Mr. Weller:

Q. You work for Mr. Schlemm, don't you ? A. No, sir.

Q. Did you ever work for him? A. I do work for him;yes.

Q. How often? A. Most every day.

Q. What do you do? A. Hire out coaches to him.

Q. And cart bodies for him at times? A. No, only hire out coaches to him and do his work in the line of an undertaker.

Q. So Mr .Darke called you up and he told you there was a corpse in New York—a body—to be brought over? A. Yes.

Q. And that was about what time? A. About eight o'clock.

Q. You are pretty sure about that, are you? A. Yes, sir.

Q. Which way did you go when you went down there; did you go on a car or take your wagon? A. Took the automobile.

Q. Who went with you on that automobile? A. Mr. Darke.

Q. Anybody else? A. No, sir.

Q. Where did you start from in this automobile? A. From my house, sir.

Q. Where did you first meet Mr. Schlemm ? A. First at the corner of Twenty-fourth Street and Lexington Avenue.

Q. What time of the night? A. Ten minutes to nine or nine o'clock, according to my recollection; I didn't look at the time.

Q. And when you got over there Mr. Schlemm

was there? A.Mr. Schlemm was there with Mr. Corrigan; yes.

Q. Whereabouts were they when you got there? A. Mr. Darke took me inside a saloon and we had a drink, and I looked around and saw Mr. Schlemm.

Q. That was the Amsterdam? A. No, sir, the corner of Twenty-fourth Street and Lexington Avenue, one block this side.

Q. Where did you go from there? A. Walked up to the Amsterdam Hotel.

Q. How long did you wait before you walked up there? A. I guess ten minutes elapsed between the time we got up to the Amsterdam.

Q. Did Mr. Schlemm tell you who was up there with his wife? A. No, sir.

Q. What did he say to you? A. I didn't know what he was going there for.

Q. And when you went up to the door Mr. Corrigan knocked? A. Yes, sir.

Q. Who answered, the man or the woman? A. A man inside.

Q. Where did the man stand when he answered; right by the door? A. I don't know where he was standing; he was on the other side of the door.

Q. You could tell pretty near where he was, couldn't you? A. No.

Q. Now, there were three rooms there and a bath, or two rooms and a bath? A. Only one room.

Q. You are sure of that, are you Mr. Lenc? A. Yes, sir.

Q. What kind of a room was that? A. It was a bedroom.

Q. (*By the Master*) Was it a single room or was it divided up into two roms? A. No, a single room.

Q. No portieres? A. No.

Q. Yuo don't know whether there were or not? A. Not that I seen.

Q. Was there a bed as you enter? A. Right next to the door; yes.

Q. How close to this door that you went in? A. I should say about 15 inches from the right side going into the door is where the bed started.

Q. Did you see a table in there? A. I couldn't tell you.

Q. You don't know whether there was or not? A. I do not.

Q. Wasn't there a table with two glasses on it that hadn't been drunk? A. Not that I seen.

Q. But you don't know whether there was or not? A. No, sir.

Q. You went in there expectingto get a body out? A. No, I was told just before I got in the room what it was.

Q. Who told you? A. Mr. Schlemm.

Q. What did he say to you? A. That he expected to find his wife up there in the room with somebody.

Q. Who did he say he was going to find with her? A. He didn't tell me that.

Q. Just tell us what he did say, exactly? A. Expected to find her up in this here room; that is all he did say, and they walked ahead and I was the last one that came along.

Q. What ws the number of the room? A. I couldn't tell you the number, but I can tell you

the room. It was a front room facing out toward Lexington avenue.

Q. But you don't remember the number of the room? A. No, sir.

Q. When Mr. Schlemm stopped there he asked the landlord, and he kept him down there about ten or twelve minutes? A. What do you mean?

Q. You said on your direct examination that the landlord wouldn't let you go upstairs for ten or eleven minutes? A. It took us that time from Twenty-fourth Street and Lexington, and it took the landlord about four minutes before he would give us permission to knock at the dor; he wouldn't have us break into the door.

Q. Where was the landlord, on the first floor? A. I think he was upstairs where they register their name.

Q. The register was upstairs, was it? A. Yes.

Q. What did Schlemm say to the landlord? A. I couldn't tell you what he said to him; I was too far away to listen.

Q. How do you know he wouldn't let him go upstairs? A. Because he told him to be quiet; he didn't want to have any door broke in.

Q. Did he tell him at first that he didn't want you to go up? A. No, I said he didn't want to have any door broke in and he stayed there with us.

Q. Did Schlemm say that Mr. Gabain was in there? A. He didn't tell me that before.

Q. Didn't you hear him tell the landlord that? A. No, he didn't mention any name.

Q. You heard him say his wife? A. Yes, as we walked up he told me that in the hall.

Q. He expected to catch his wife with a man? A. Yes.

Q. What man? A. He didn't tell me what man.

Q. Now you say there was only one bedroom there?

THE MASTER: That is what he said.

Q. Where was the bath-room from there? A. A little place around the side, going to this room. There was a little place around to tha left, and I asked him what that was and he told me that was the bath-room.

Q. And you say when you got up there Mrs. Schlemm was in the bath-room? A. Yes.

Q. Where was the other fellow? A. Standing in front of the bed.

Q. What kind of suspenders had he? What color were they? A. Looked to me light; I didn't examine them to see what particular color it was.

Q. Had he one on or two on? A. He had one hanging down and the other he had on his thumb to pull up.

MR. WALSCHEID: As I understand it, the only reservation in this case is Mr. Pelett; is that right, Mr. Weller?

MR. WELLER: Yes, unless you put on other witnesses.

MR. WALSCHEID: I mean so far as your direct defense is concerned?

MR. WELLER: Yes.

WILLIAM SCHLEMM, the petitioner, sworn in his own behalf, in rebuttal, testified as follows:

Direct Examination by Mr. Walscheid:

Q. Mr. Schlemm, where do you live? A. 426 Spring Street, West Hoboken.

Q. How long have you lived in West Hoboken? A. About 22 years.

Q. How old are you? A. Thirty.

Q. How old were you when you were married? A. Just going on twenty years.

Q. At that time what were you doing? A. Working in an undertaker's office.

Q. For whom? A. My father.

Q. What were you earning? A. $12 a week.

Q. How long did you continue earning $12 a week?

MR. WELLER: I object to the question as incompetent, irrelevant and immaterial.

THE MASTER: I don't know exactly why this testimony is introduced.

MR. WALSCHEID: It is introduced for the purpose of contradicting the proposition that this man was a drunkard from the time he was married.

MR. WELLER: She didn't say that; she said he had been a drunkard before he was married.

THE MASTER: I don't see how it is material.

MR. WALSCHEID: I withdraw it.

Q. Do you know Mrs. Delvey, or Miss Delvey? A. Yes, sir.

Q. Did you ever at any time commit adultery with her? A. No, sir.

Q. Did you have intercourse with Miss Delvey in your dining-room on the couch? A. No, sir, never did.

Q. Was there ever any occasion when Mrs. Cane came in—— A. No, sir.

Q. ——and caught you there? A. No, sir.

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

Q. Where did she live? A. She lived upstairs on the top floor.

Q. Do you know where she is now? A. No, sir, I do not.

Q. She isn't around here any more? A. I havent' seen her for the last eight years.

Q. And did you ever commit adultery with Mrs. Hofstetter? A. No, sir.

Q. Do you know a Mrs. Dort? A. Yes, sir.

Q. Where is she now? A. She is dead.

Q. How long has she been dead? A About a year and two months—I guess 14 months.

Q. Did you ever commit adultery with Mrs. Dort? No, sir.

Q. Mrs. Schlemm has testified that one one occasion she came in the bath-room and found you cleansing yourself, and that she handed you some cotton, and that she thought that you had some venereal disease; was there such an occurrence? A. No, sir.

Q. Had you had any sexual intercourse with your wife subsequent to the time that this separation agreement was signed? A. No, sir.

Q. (*By the Master*) When was the separation agreement? A. January 22.

Q. Was it signed on the day of its date? A. That I couldn't say.

Q. Well, how was it executed? Who executed it first? Who signed it first? A. I signed it first.

Q. And where did you sign it? A. In my office.

Q. Who saw you sign it; anybody? A. Nobody that I know of.

Q. How many copies did you sign? A. Three.

Q. And after that what did you do with it? A. I sent it up to my wife and she signed it.

Q. The three copies? A. The three copies.

Q. Then this signature, Anna E. Whittle, doesn't apply to your name; she didn't see you sign it? A. No, sir.

Q. Now, do you know whether it was signed on or about the 22d day of January?

THE MASTER: You want to show that he didn't have intercourse with his wife? Why wouldn't it be better to ask him when he had intercourse with her last?

MR. WALSCHEID: I don't know whether he can answer that. I will try it.

Q. Can you tell when you last had intercourse with your wife? A. No; might be about the first part of January—first week in January.

Q. Of the year 1915? A. 1915.

Q. At that tim ethis paper had not yet been drawn? A. No, sir.

Q. Did you know Mr. Schmidt before you met him——. A. No, sir.

Q. ——At the Palace Court? A. No, sir, never seen him before.

Q. When you went to the Amsterdam Hotel what induced you to go over there that night? A. Why, I received a telephone message.

Q. From whom? A. From Mr. Corridon, the detective I had to watch her that day, and it was about quarter-past seven—between quarter-past and half-past seven—when he telephoned to me to come right over. He says, "I have got your wife; she is in the Amsterdam Hotel, Room 18.

Q. That is what induced you to go to the Amsterdam Hotel? A. Yes, sir.

Q. Before that, had you, on that same day, telephoned Corridon that she was going out? A. I had made arrangements with M.r Coridon; I had heard that she was going out with different men, and I had made ararngements with Mr. Corridon on a Sunday morning——

Q. Preceding that? A. Yes—to have a man follow my wife. I told him that I had heard that she was going out and I wanted her followed. So he had a man and a boy following her that day. I got home about half-past five this evening. My wife was upstairs when I came in and she came down, and she was all powdered up, and she lifted up her dress and showed me her petticoat and showed me the pink ribbon. I says, "Where are you going," and she said, "To a euchre in Bayonne." I told her I hoped she would like it, be-

cause I was going to one in Newark. So with that I walked upstairs, and as I walked into the bath-room she followed me, and I had noticed that somebody had taken a bath, and I asked her who had taken a bath, and she said, "I have." I says, "That is something strange, to take a bath before going out," and she says, "No, I have been working today and got all sweated up and I had to take a bath." And when I came down she says, "Mrs. Jennings, where is that bundle; I will leave that off at Jersey City," and she says "All right" and she went out of the house and I watcher her going out, and as she got to Spring Street she started on a run, and as soon as she got to Clinton avenue she jumped right in the car, and a man and a boy was following her and lost her.

Q. What did you do? A. I went to the office and telephoned to Corridon. I says, "My wife has gone down on a car; I don't know whether she is going to Fourteenth Street or Union Hill; you go to the ferry and wait for the car." He says to me, "How was she dressed?" I says, "She has got a sort of a woollen coat with a white fur collar." So then I didn't hear any more of Croridon until a quarter after seven, when he telephoned me, "I have got your wife over here." "Who is she with?" I says. He says, "I don't know the fellow." So I told the man to take me down to the ferry quick and I will get a taxi in New York and go over. He says, "I will meet you at Twenty-fourth Street and Lexington Avenue."

Q. And you went over there? A. Yes. Corridon says, "Haven't we got a witness?" I says,

"No." "This is no good; you have got to have a witness," he says. I says, "I didn't think of that." Then I tried to find a friend of mine in New York, Mr. Stokes, and I tried to get Corbet, but couldn't find them, and I telephoned back to Darke and told him to get somebody over as quick as he could. So with that, over came Mr. Lenc.

Q. When did you telephone? A. That was about a quarter to eight.

Q. And from where did you telephone? A. From a little place right opposite the Amsterdam Hotel.

Q. Right opposite the Amsterdam oHtel? A. Yes.

Q. What time did you get to the Amsterdam Hotel? A. I got there around eight o'clock.

Q. And you telephoned immedaitely after getting in? A. Yes.

Q. What time did you finally get upstairs? A. That was about a quarter after nine.

Q. And when you got upstairs what happened? A. We went up to the door and the proprietor was there and he wouldn't let us "bust" in the door, and I said "I will pay you for it. He said, "If you are going to 'bust' in the door I won't let you get the evidence you are looking for." So we went up to the door and knocked and there was no answer. Then we knocked again and no answer. Then Mr. Coridon knocked hard the third time and a man's voice says, "Who is out there?" and Corridon says, "Come on, you have got to setlte for this bill." He says, "I have paid all this." "No, you haven't; come on, open the door." So with that he opened the dor, and he

just opened it partly—he didn't want to open the door all the way. As soon as the door was unlocked we forced it in, and ther was Gabain standing there.

Q. How was he dressed? A. He had his suspenders down; his suspenders laying on the side of his pants.

Q. His coat off? A. Coat off and top shirt off; with only his pants and his undershirt on.

Q. And wher was Mrs. Schlemm? A. She was sitting in the bath-room on the bath tub, right behind the dor. You couldn't see her if you didn't go behind the door.

Q. Did you see her there? A. I did.

Q. When you got in there what was she doing? A. Sititng on the bath tub right behind the door.

Q. How was she dressed? A. She had on a one-piece dress. In a couple of seconds she could have had it on.

Q. Was she doing anything about her clothes? A. Nothing at all; just sitting there; just stooped over this way (indicating) sitting on the bath tub.

Q. What was the condition of the bed, if there was a bed? A. Why, the bed was mussed. You could see that somebody had been laying in it.

Q. Was it uncovered? A. Oh, yes.

Q. Any drinks standing in the room? A. Two glasses standing there.

Q. Full or empty? A. I believe they were full.

Q. When had you first suspected your wife of infidelity before that—before going over to this place? A. Why, the way it was brought on; she acted in a way that she didn't seem to care for me any more nights when we were togetheri n bed,

and I knew that she was a very passionate woman, and when I wanted to have connection she would simply lay there and say, "If you want it go to it," or something like that, and this thing went on for about—oh, about a week and a half, and then one night I was lying in the dining-room on the couch and my daughter was sitting at the table with a book—I don't know whether it was a school-book or what it was—and she was talking to me and I was lying on the couch, and my wife comes in and she says to me, "I am going to the store a minute; I will come right back." She acted in such a nervous manner that I suspected she was going to telephone.

Q. What did you do? A. I knew that there was——

THE MASTER: What did you do.

A. I telephoned to Taborelli's drugstore, and as I telephoned I says, "Hlelo," and my wife answered the telephone. I hung up the receiver; I was afraid she would catch my voice.

Q. How far is Taborelli's from your place? A. Two blocks.

Q. How are the telephones up there? A. Booth telephones.

Q. And was that the nearest booth telephone in that neighborhood at that time? A. Yes.

Q. You started to telephone up there? A. Yes.

Q. And what were you going to say when you started to telephone? A. I was going to ask if he could butt in on the wire and see if she was talking to that telephone, and instead of that she

answered. So I went back again, and I says, "I am going to try it again," and I did, and she answered it again and says, "Is this Gabain?" I says, "Yes." "Is Harry there?" I says, "Hold the wire a second," and I hung up the receiver. So that night I was called down to the office and I passed her as she was coming up from the office.

Q. When you speak about the office you mean your place of business? A. Yes.

Q. How far is that? A. Three blocks.

Q. Can you tell us the date, with reference to the time, when you went to the Amsterdam Hotel —how long before? A. Oh, that was about a week before—no, it wasn't that long. Let me see; I can tell you the exact date. That was on a Friday night previous to the Monday that she was caught.

Q. She was caught on a Monday? A. Yes.

Q. And this was on a Friday? A. Yes.

Q. All right. Now, while you were going to the store or coming from the store? A. I was going to the store and I got a telephone message that there was a woman there by the name of Snyder that wanted to see me, and I went down there, and when I was going to the office she passed me.

Q. On what night was that? A. That same Friday night, and I passed her, and I says, "Hurry up home; Dolly is up there all alone." With that she blushed all over her face, but I didn't say anything to her; I went to the office, and after I got through with my business I went down to my uncle and I said to him——

Q. Never mind what you said to him. A. Well,

I telephoned to Mr. Corridon to meet at the doctor's office on a Sunday morning.

Q. From your uncles? A. Yes, and he came up there and we made an arrangement to have her followed, and then he set a boy and a man on the case. And so they followed her all that day, and on the afternoon of the 30th of March I had a funeral from the office and she and her sister, Mrs. Cane, was over in Laufenberg's music store, and I came in the office and I sent the funeral off with Mrs. Darke instead of myself, and I said to Mrs. Darke, "If my wife"——

THE MASTER: You can't tell us that.

Q. Never mind what you said to Mrs. Darke; anyhow, you were to go on that funeral yourself, were you? A. I was to go on that funeral.

Q. And instead of that you sent Mrs. Darke? A. Yes.

Q. What happened after that? A. My wife and Mrs. Cane came in the office and Mrs. Darke came walking out.

Q. (*By the Master*) This is on Monday? A. Yes, the 30th of March. Mrs. Cane said to Mrs. Darke, "Where is your toilet?"

Q. Where were you? A. I was standing behind the safe in the next room.

Q. Hiding there? A. Hiding there. I did not want my wife to know I was there. So Mrs. Cane goes to the toilet with Mrs. Darke. My wife had a key to the safe, and she went into the safe while

Mrs. Cane was at the toilet, and took some money out.

Q. Did she see you? A. She did not. She had asked Mrs. Darke if I was there, and she said "No."

Q. (*By the Master*) How do you know?

A. I was there.

Q. What was hiding you there? A. The door, and I had it partly open so that I could hear and see what was going on; and when they went out I went to the safe and counted my money and I saw that she had taken $25 out. I didn't say anything to her. I went home at half-past five and she was all ready to go out, and she told me she was going to a euchre.

Q. And then she went out? A. She went to New York.

Q. Before that time had she been in the habit of staying out late? A. She had been in the habit of going to euchres over there.

Q. And how long a time before you went to the Amsterdam Hotel had she been doing this, going to euchres? A. I would say from 1912 to about 1914.

Q. She started in 1912? A. About that time.

Q. And would she come home late from these euchres? A. Yes, sir; sometimes as late as two or three o'clock in the morning.

Q. Did you talk to her? A. I often told her, "Now, Lou, you ought not to do this; you ought not." Then when she came in I would say, "What kept you so late?" and she would reply, "The

euchre started late and by the time the game was over and they gave out the prizes it was late, and we had a few dances and it got so late."

Q. Where was she supposed to be going to these euchres? A. She was telling me she went to New York sometimes, and sometimes she went in Union Hill, and Jersey City, and Bayonne.

Q. Then after you found her in New York, did she say anything to you that night in this hotel? A. No, she didn't speak to me at all.

Q. Didn't talk to you at all? A. No, she didn't say a word.

Q. Did you talk to her? A. I walked in and said, "This is a nice how-do-you-do" and I walked out of the door and went downstairs.

Q. What next did you do after that? A. I went back to Jersey City.

Q. What next did you do? A. Then the next morning I went to see you about bringing the divorce proceedings.

Q. And having done that what next did you do? A. Well, I got out of the house.

Q. Moved out of the house? A. Yes, and stayed down in the office.

Q. How long did you stay at the office? A. Oh, until August.

Q. And between the 30th of March, 1914, and August, did you have any communications with your wife? A. She kept bothering me all the time, and calling me up, and wanted me to take her back, and I kept away from her; I didn't want to take her back, and then she pleaded and cried over the telephone.

Q. What did she say about her conduct at the Amsterdam Hotel? A. She admitted to me that she was there. I says to her, "Now, you were in that hotel," and she says, "Yes"; and you went to bed with this man without a stitch on you?" "No," she says, "I kept my undershirt and my top skirt on. I says, "What else happened there?" and she says, "He bought me drinks and he wanted me to suck him off," and she says to him, "I have been living with my husband for nine years and he has never asked me to do anything like that and I won't do it for you."

Q. How often did she call you up like that? A. Every day she bothered me about it.

Q. How did you come to take her back? A. I was up in the house at West Street and she came in there at night about eleven o'clock.

Q. Were you living back in the house then? A. I was staying there on account of the house being in an unoccupied condition and the insurance had to be covered on the house, and I had by bedroom there.

Q. She had moved out? A. Yes.

Q. And you were living there? A. Yes; and she came in about eleven o'clock and I fired her out, and when I woke up in the morning I saw her laying alongside of me. She had come back in during the night. She says to me, "You had better take me back; you can't get any divorce." I says, "No, I suppose not. I suppose you had Mrs. Whittle over here seeing you laying here." "No, I didn't," she says. She says, "I was told if I was caught sleeping with you, or you had

anything to do with me you couldn't get a divorce."

Q. Did she say who told her that? A. Simpson told her.

Q. After that had happened did you take her back that day? A. No, not that day; it was a month after that.

Q. You hadn't made up your mind then? A. No, I hadn't.

Q. And during the month after that did she call you up again? A. She kept bothering me all the time; called me up every day.

Q. How did you finally come to take her back? A. Well, it seems through her pleading, and the way she did, and she told me if I took her back she would lead a decent life. I says to her—she says to me first, "You are the only one that can help me out of the gutter; I am down, and everybody is putting me down." Well, I felt sorry for her, and I says, "I will give you another chance," but I says, "There is one thing you have got to do." "What is that?" "You have got to give up your sisters and mother." Now, I says, "I will not have you associating with them or have them coming to the house."

Q. Did you tell her why? A. Why, yes, I told her why. I says to her, "You have told me of Mrs. Rohr going out with other men"——

Q. (*By Mr. Weller*) You had said so? A. My wife.

THE MASTER: This is what he said to her.

I says, "You have said that Mrs. Rohr was found in the bath tub with another man and I won't have your sister in here because she has got syphillis."

Q. (*By Mr. Weller*) Which sister? A. Mrs. Cane.

She asked me where I got the information from and I says, "Dr. Olpp told me." So she agreed she would have nothing to do with them if I would take her back, and that she would lead a good, straight life. I told her to go down tomorrow, "I am going to be in the country."

Q. You went up in the country after you agreed to take her back? A. Yes.

Q. What was to happen when you were up in the country? A. Then she was to move back, and when I came back from the country she was up at my mother's house. She just waited there for me, I think.

Q. Had she moved the furniture back into your own house? A. Yes.

Q. Then you went to live with her in your home? A. Yes.

Q. Did you get along with her after that? A. Why, we got along nicely. I bought a machine so that I could take her out and give her a good time and take her to the seashore, until one day I had found her sister, Mrs. Rohr, walking up through Smith Street——

Q. How near is that to your home? A. The same block. Found her on the same block from my home, and I accused my wife with having her

sister there, and she says „No, she wasn't there." I says, "She must have been here." She says, "No, she wasn't." Then it went on all right, and the first thing I knew she started to get that euchre craze again, and she wanted to go out to euchres. I says to her, "You know what you promised me; you said you wouldn't go to any more euchres; you wouldn't go out only when you went out with me."

Q. (*By the Master*) When was this?

Q. About how long after you took her back? A. About four months, I guess.

Q. And then that was going on towards the winter of 1915? A. Yes, just when the euchres started to begin.

Q. What did she say when you said to her, "You promised me you woudn't go to any more euchres"? A. She says, "You can't expect me to be tied down in the house, and I wouldn't tie myself down for any man." So I was home one day and I was sitting at the table reading and she was coming out all dressed up. I says, "Where are you going?" "To a euchre." "Where is Dolly?" "Up to Mrs. Sherry's." "I see the same old racket is starting off again," I says. She says, "No; all my friends are going and I want to go." Well, she stood at the mirror putting powder on her face and fixing herself, and finally she left.

Q. Did you ask her to stay home? A. I asked her to stay home, and she said she had promised these friends that she would be there and she was

going. So about half-past twelve or one o'clock she came home. I didn't say anything to her. She got so that she didn't want to stay in the house any more—started to go out just the same as she had done before. And then I had got suspicions again that she was going out the same way as she did before, and I tried to tell her not to go, but she wouldn't listen to me.

Q. On those occasions would she come home with indications of having been drinking? A. Oh, many times. You could smell it when she got in bed. She would tell me she just took one or two drinks.

Q. Go ahead. Now, you are getting down to what season of the year? A. I am getting into November.

Q. Just go ahead and tell us from November on. A. Then the next time she went to a euchre she came down and she had a net waist on and I could see her bust right clean through this waist. I says, "Lou, where are you going tonight with a waist like that?" I says, "To a euchre?" And she says, "Yes." I says, "That don't look like a euchre party to me with that waist on," and she stood sneering at me for a moment and left and went out.

Q. Did you asked her to stay home? A. I did.

Q. How late did she stay out on this occasion? A. She came in about half-past one.

Q. Go on; what happened next after that? A. Then I kept quarrelling with her all the time because she wouldn't stay at home, and she says, "I'm not going to stay in; you can't take me out enough." I says, "My business keeps me home;

I can't go out when I want to"; but she says, "I'm not going to keep myself in."

Q. Why does your business keep you home? A. Because I have funerals and funeral services, and I am called out at night. I expxect a funeral call at any time. So she went on for a week, and she finally says: "Well, I can't stand this; if you are always going to keep quarrelling with me the best thing we can do is to separate." I says, "Ah, that is what you want? What is your idea in that; so you can go out the way you want to?" She says, "You have papers fixed up and give me so much a week and I will go and live by myself." I said no, I wonldn't do it. And then it went on again until about December, and around Christmas we were pretty good together. She stayed home all that week, and I had made her a present that week of a $250 Edison machine for Christmas.

Q. You mean one of these music machines? A. Yes.

Q. Is that the time you got the "By-gone" record? A. I suppose so.

Q. Well, go ahead. A. So I seen that she didn't want to get along with me.

MR. WELLER: I object to what he saw.

A. (continuing) She acted that way to me.

MR. WELLER: I object to that. Let him tell what she did.

Q. Go ahead and tell it as near as you can.

A. She acted as if she didn't want to live with me.

THE MASTER: That is a conclusion. What did she say and what did she do that made you believe that she didn't want to live with you?

A. Because she didn't care to have intercourse with me.

Q. Any other reasons? A. And other reasons? Yes. She didn't want to stay at home, and she wanted to go out whenever she felt like it.

Q. Any other reasons? A. No, I don't know of any other reason.

Q. Then, did you finally sign these separation papers, and if so, how did you come to do it? A. Well, I was—I can't remember the date, but I had called her up about eleven o'clock, and I says, "Lou, I am going to Newark with Mr. Multini and Mr. Heim to a dinner and I will be back at six o'clock for supper."

Q. This was eleven o'clock in the morning? A. Eleven o'clock in the morning.

Q. You called her up from the store? A. Yes. And so when I came home at six o'clock she wasn't home. I called up again about eight o'clock and she wasn't home.

Q. Where were you then? A. So I went back to Multini's, and he askedhis wife to fix up a supper for us.

Q. Just shortly before these papers were signed? A. Yes. And Mrs. Multini fixed up a supper for us, and about eleven o'clock we were sitting there and my little daughter comes in and she says, "Hello, papa." I says, "Where is mamma?" She says, "She is outside." I says,

"Tell her to come in." She came in, and she came in with a nasty disposition. I says, "Sit down, Lou." She says, "No, I won't." I saw right away she was looking for trouble, and so I says to Multini, "I am not going to stay here." I could see the trouble coming. She picked up a glass of wine and fired it at me as I went out of the side door, and she picked up a bottle of wine and hit it on the table.

Q. What was she saying? A. I didn't stay there long enough to hear. She wanted to know where I was, and I told her I was home. "You are a damn liar," she says, "you weren't home." She says, "Your supper was there." I said, "You said you would be home; where were you?" "Oh, I was down to my mother's." "Oh, that is it," I says; "sit down and have a drink," and she got nasty right away and fired it at me, and I heard her hollering something else, and I heard the bottle coming down, but I got out of it. So I walked across the street into Gessner's, and I was standing there, and she came in the side door, and she insulted Mr. Gessner.

Q. What did she say? A. She says, "Why don't you let him go home instead of keeping him here?" I says, "Here, Lou, don't start that here." I says, "You did that across the way; now go home," and she wouldn't do it, and so I walked out the door in front and she went out the side door, and I heard the glass crash.

Q. You ran away from her in Gessner's, too? A. Yes, I ran away from her. So I went down to the store.

Q. You went to the store? A. Yes.

Q. Did you stay there? A. I stayed there that night.

Q. Did you go home at all tha ntight? A. Yes, I went home and she says to me, "You have those papers drawn up; I don't want to live with you any more." I says, "If that is what you want I don't suppose we can do anything then," so I went back to the office. She came down there and she said, "I came down to see if you fixed up the papers for a separation."

THE MASTER: And I suppose the papers were then drawn?

Q. These papers were drawn in my office? A. Yes. And you read them and I sent them up to her, to give to some lawyer if she wants to and have them examined, and if they are all right she was to send them back and sign them.

Q. Did she talk to you again after that? A. Yes, she called me up on the telephone and she said she had been to Lawyer Platoff.

Q. What did she say? A. "You didn't put in there that I could commit adultery." I says, "Oh, no, I am not going to give you $25 a week to commit adultery." She says, "All right, I will sign it," but she says, "There are two other papers, ain't there?" "Yes, I will send them up to you," but instead of that she sent down for me to send them up.

MR. WALSCHEID: A letter has been marked.

MR. WELLER: I offer it in evidence.

THE MASTER: The two papers were marked for identification, D-1 and D-2; they may be considered in evidence.

Q. I call your attention to a letter marked Exhibit D-1, and ask you whether you received that letter from Mr. Corridon? A. Yes, sir, I did.

Q. In that letter Mr. Corridon says, "It is best for her to drop it for a few weeks, as he will be on the stool of repentance," and so forth. To what did he refer in that letter? A. This lady.

Q. What lady? A. Mrs. ——— oh, I can't think of her married name, but I have always known her by the name of Brunner, I think. She has a bakery in Union Hill.

Q. And she married again? A. She married again. She telephoned to me and asked me to get a man whom I had working for me on my case and bring him down there; she wanted to have a talk with him. So I says, "All right, I will do that."

MR. WELLER: I object to that now.

MR. WALSCHEID: I think that is very important now.

Q. (*By the Master*) You sent Corridon down? A. Yes, and Mr. Corridon went down there and made arrangements with her, and she says to me——

THE MASTER: Never mind what she said to you.

Q. Did she give you any money to give to Corridon? A. She gave me $20 to give to Corridon.

Q. Did you give it to Corridon? A. Yes.

Q. Did you talk about that matter from time to time? A. It was through me that he had this, and he wrote this letter to me, stating just what he did. I hadn't seen him any more.

Q. And to whom did this refer where it speaks of "he"? A. That was her husband.

Q. Whose name you don't know now? A. No. It was Liedenfield, or something like that.

Cross-examination by Mr. Weller:

Q. The letter says that "he is on the stool of repentance"; what "he"? A. That was her husband.

Q. What "stool of repentance" could he be on? A. I don't know anything about it; just what the letter says.

Q. Didn't you pay Mr. Corridon at various times a sum amounting all together to $53.50? A. Might have been on the first case—on the case that he was on with my wife, but all he got was the $20 that she gave to me to give to him.

Q. Why didn't you give that $20 to him at one time? A. Because she gave it to me to give to him.

Q. Why didn't you give it to Corridon then? A. He got it.

Q. Why did you give him $3.81 at one time, and $1.50 and so on? A. That was probably on the first case.

Q. You see the paper is dated November, don't you? A. I don't know anything about it.

Q. That was long after the first case, wasn't it?

MR. WALSCHEID: No, just going on.

Q. You had known Mrs. Brunner for years? A. She knows me better than I do her.

Q. Kindly answer my question. A. Yes.

Q. You had been stopping at her place right along? A. Yes.

Q. She wanted to get a divorce from her husband? A. So I understand.

Q. As a matter of fact, weren't you to marry her as soon as you could be free to do so? A. Why, the woman is twice as old as I am.

Q. How old is she? A. Fifty-five or sixty years old. Why, I was a little bit of a boy going into her baker shop.

Q. Is it not a fact that this woman isn't over 30 or 35? A. I say she is about 60 years old.

Q. Is this woman a red-headed woman? A. No, she is a stout woman, and dark.

THE MASTER: What is the object of all this?

Q. You know Mrs. Dort, don't you? A. Yes.

Q. She wasn't 60 years old, was she? A. No, sir, she wasn't sixty.

Q. How old was she? A. I don't know; she must have been, according to the death record, about thirty-five, I think.

Q. You buried her husband, didn't you? A. Yes, sir.

Q. Where did she live at the time you buried her husband? A. She lived uptown, 180 and some odd street; I don't know exactly.

Q. 185th Street? A. Might have been.

Q. How did she happen to come to you to bury her husband; do you know? A. Her brother's wife's aunt died; the name was Rhodenbeck, and they lived in Stevens street, West Hoboken. That is just three blocks from my place, and they had just moved over here from New York, and the aunt died, and Mr. Cook, who lived in the house, had recommended Mr. Rhodenbeck to me, so I buried his aunt, and while we were over in the cemetery Mr. Rhodenbeck says to me, "I got a brother-in-law that is pretty sick"——

Q. You needn't go into all the details; you buried him? A. I buried the aunt.

Q. Didn't you bury the husband afterwards? A. Yes, and he called me up in New York and asked me——

Q. (*By the Master*): Who called you up? A. Mr. Rhodenbeck.

Q. And you went over and buried Mr. Dort? A. Right.

Q. When was that? A. I believe that was in 1913.

Q. And from that time on you used to go up there to collect the bill? A. Never went up there.

Q. Never in your life? A. No, sir.

Q. Never told your wife anything of that kind? A. No, sir.

Q. After that time this woman moved down to West Hoboken? A. Yes, I think she did.

Q. And whereabouts in West Hoboken? A. Why, I didn't know at all where she did live.

Q. Didn't she move to Traphagen Street? A. Yes, she did.

Q. You buried her from there? A. Yes.

Q. Do you mean to say you did not know where she lived in West Hoboken? A. While she was alive? No.

Q. Do you remember the night that Joe Poletti took you and some other woman out with Mrs. Dort? A. Yes, sir.

Q. Where did you meet her? A. On Palisade Avenue.

Q. Whereabouts? A. I believe it was Hill Street and Palisade Avenue.

Q. How did she happen to know that you were going to meet her. A. She didn't happen to know I was going to meet her. I saw her and I thought she was waiting for a car.

Q. Who was in this car? A. Mr. Brunner and Mr. Metz.

Q. And you three men were in the car and being driven by Poletti when you saw this woman on Palisade Avenue? A. Yes.

Q. That was Palisade Avenue and Traphagen? A. No, sir, Hill Street.

Q. One block from Traphagen? A. Yes.

Q. And so you asked her to ride? A. I asked her if she was waiting for a car and she said she was, and was going to go down to her sister's. I says, "I am going down; I will take you along."

Q. And she got into the car? A. With her sister-in-law.

Q. What was her name? A. Mrs. Rhodenbeck.

Q. You picked up Mrs. Rhodenbeck, too? A. Yes, sir.

Q. Where did you go first? A. I went down to the courthouse.

Q. This was at night? A. In the afternoon.

Q. What time in the afternoon? A. About four o'clock.

Q. And what part of the courthouse did you go to? A. The Board of Health.

Q. Where did you go from there? A. Went back to Fairview Cemetery.

Q. Before that did you drive down the viaduct? A. Yes, we did.

Q. And did you go to Kahan's saloon? A. No, sir.

Q. Where did you stop down that way? A. A. Didn't stop down that way at all.

Q. Is it not a fact that you stopped to a saloon and you were all drinking? A. No, sir.

Q. And is it not a fact that you got into a fight over tearing the women's hats and throwing them around? A. No, sir.

Q. And didn't this sister-in-law go home from the viaduct? A. She was already home.

Q. Is it not a fact that you took her from a saloon in Hoboken with Mr. Poletti and took her up to the viaduct so that she could get a car? A. Not that I know of.

Q. You don't know anything about that? A. No.

And then didn't he come back and take you in the car? A. We were in the car.

Q. Didn't he take you from a saloon in Hoboken and take you up past Fairview Cemetery? A. Yes, sir, we went just below where the roadhouse is.

Q. Whose place was that? A. I don't remember.

Q. Pfaff's saloon? A. Yes.

Q. You stopped there? A. Yes, sir.

Q. And you stopped there how long? A. Half an hour.

Q. Is it not a fact that you stayed there until two o'clock in the morning? A. No, sir.

Q. Is it not a fact that Mr. Poletti, while you were there, took these men home, and then took you over to a woman's house and left you there, and then came away? A. No, sir.

Q. Is it not a fact that while you were riding up and down you had your arm around this woman? A. No, sir.

Q. What time did you get home that night? A. I guess about nine o'clock.

Q. Do you know what time you got home? A. Yes.

Q. You started at four o'clock? A. Yes.

Q. And went down to the courthouse? A. Yes.

Q. How long did it take to get up to Fairview? A. Oh, I guess I got up there about seven o'clock.

Q. You went to Fairview and stayed there only a half an hour and got home at nine o'clock? A. I got home at nine o'clock; yes.

Q. Is it not a fact that you tried to get another woman in the car while you were driving? A. No, sir.

Q. And the woman refused to go? A. No, sir.

Q. You saw Mrs. Dort very often while she lived on Traphagen Street? A. No, sir.

Q. Never saw her but this once? A. She used to pass the store occasionally.

Q. Where was she going? A. I don't know.

Q. Did she go back up to Pfaff's hotel? A. What do you mean?

Q. I am only talking about the one time. A. You asked me if I seen her often.

Q. On this occasion when you went to Fairview Cemetery she was along? A. Yes, sir.

Q. She went up to Fairview Cemetery? A. Yes, sir.

Q. She went up to Fairview Cemetery? A. Yes.

Q. And yet you let her sister out? A. I said I was going up there and we would be right back.

Q. What time was that that you said to her that you were going up there? A. That was when I left the courthouse.

Q. And that was four o'clock? A. No, that was around five o'clock.

Q. Around five o'clock. A. Yes, sir.

Q. You ran up there in an hour and back in an hour? A. I don't know but what it could be done on a pinch.

Q. Where did you leave her? A. At Palisade and Hill Street.

Q. You didn't take her down to Traphagen Street? A. No, sir.

Q. Why didn't you take her home? A. I didn't know where she lived. I asked her where she wanted to get off and she said, "Leave me up at Palisade avenue and Hill Street.

Q. You say that you told your wife if she associated with her sisters and mother you wouldn't have her back; is that so? A. Yes, sir.

Q. You got down on the sisters all at once, didn't you? A. I had a reason to.

Q. You did? A. Yes.

Q. You remember a birthday party at your place one time? A. Yes, sir.

Q. You remember your wife sending one of the sisters up to get a collar button? A. What?

Q. You heard what I said—collar button? A. No, sir.

Q. Is it not a fact that she sent one of the sisters up and you attacked her?

MR. WALSCHEID: What do you mean by "attack"?

Q. Grab hold of her and tried to force her to have intercourse? A. No, sir.

Q. That is not true? A. No, sir.

Q. Nothing like that happened? A. No, sir.

Q. On the 10th of February, 1913, do you remember a euchre party being there? A. No, sir.

Q. Do you remember going upstairs to dress while that party was there? A. Yes.

Q. You do? Weren't you going away somewheres to som esupper? A. No, sir.

Q. Didn't you holler to your wife to send up a collar button for you? A. Yes, sir.

Q. You remember that, do you? A. Yes.

Q. You remember that Mrs. Cane brought it up first, don't you? A. Mrs. Cane? She didn't come up at all.

Q. Don't you remember after that Mrs. Rohr came up there and you tried to have intercourse with her? A. No, sir.

Q. You were not down on her at that time, were you? A. I wasn't so well acquainted with her then.

Q. You were trying to get well acquainted with them? A. Not in the way you mean.

Q. Now, you claim that you did not have a venereal disease? A. No, sir.

Q. Did you have some trouble in that way? A. No, sir.

Q. Didn't you have Doctor Frederick doctor you? A. No, sir.

Q. And didn't you first accuse your wife with having given it to you? A. No, sir.

Q. You didn't? A. No, sir.

Q. Now, you spoke about articles of agreement; you sent them dow nto your wife by somebody? A. No, she sent the girl down for it.

Q. Didn't you first send her a carbon copy? A. Yes, she sent down for it.

Q. Whom did you send the three copies down by? A. The same girl.

Q. Now, do you remember taking this man Gabain home with you? A. Yes, sir.

Q. You and he were great friends, weren't you? A. Yes.

Q. You suspected your wife of being of weak mroals at that time, didn't you? A. No, sir.

Q. When did you first suspect her? A. A week after—well, in March.

Q. How long had you been friends with this man Gabain? A. Why, about a couple of years.

Q. Was he a married or a single man? A. Single man.

Q. And he was drunk on this particular night that you took him hom efirst? A. Yes.

Q. Why did you want to take him home drunk? A. My wife wanted it.

Q. You did it just to please your wife? A. Of course he was a friend of mine and I didn't object to it.

Q. Didn't she object to it? A. No, sir, she never did.

Q. And you took him home? A. Yes, sir.

Q. And he stayed all night? A. Yes.

Q. Did you go away and leave him there in the morning? A. No, sir, we went out together.

Q. And the second time he was there you left him there to get his breakfast?

MR. WALSCHEID: She only testified to once.

MR. WELLER: No, she testified to twice.

THT MASTER: Only once that I can remember.

Q. And you went away and left her to get breakfast for him, didn't you? A. Let me see if I can remember that.

THE MASTER: My recollection is that she testified to only one occurrence.

A. (continuing) Just the one time, I believe it was.

Q. Did you not ask her on one occasion to get breakfast for him? A. I was called out of the house early that morning, and she said, "I will get breakfast ready for Harry."

Q. And what did you say? A. I says, "All right."

Q. Now then, how long after that was it that you went to the telephone and listened to her talk

on the telephone and hear her say, "Is this Gabain"? A. That must have been a month later.

Q. And you went out on the street and met her on the street and she blushed a red color? A. Yes.

Q. Was it night? A. Yes.

Q. Did you say anything to her about what you had heard over the telephone? A. No, sir.

Q. Why not? A. Because if she was that kind of a woman I wanted to find it out and see what there was behind it.

Q. You didn't caution her at all? A. No, sir.

Q. Gabain was your friend? A. Yes.

Q. Why didn't you go and speak to Gabain about it? A. What for?

Q. You didn't want her to commit adultery? A. If she was going that way I wanted to find it out.

Q. If it was going that way you were just as well satisfied? A. No, I wasn't.

Q. Why didn't you say to her, "Keep away from Gabain"? A. I never thought there was anything that was going to bring them together that way.

Q. Why didn't you say to Gabain, "Don't you dare telephone to my wife." A. I didn't know that he had telephoned to my wife.

Q. You heard her telephoning to the saloon? A. Yes.

Q. Did you ask him what it was about? A. Who?

Q. Whom are we talking about? A. One time you are speaking about my wife and another time about him.

Q. I asked you if you asked him what the telephone message was about? A. No.

Q. You didn't think it was worth while? A. No.

Q. Now, how long after that was it that she dressed and powdered up, as you say, and showed you the pink on her skirt and so forth, after this telephone message? A. That was a few days after.

Q. Wasn't it the same day? A. No. It was not the night time that she went out.

Q. That was the afternoon that she went out? A. Yes, towards evening.

Q. You suspected where she was going? A. No.

Q. Did you not telephone to Corridon that she was going out and to put a man on the job? A. No.

Q. He is mistaken about that? I telephoned to Corridon that she was in the car coming down.

Q. Didn't you tell him that she was going to meet Gabain in the Tube? A. No, sir, never said that.

Q. Didn't say anything like that? A. No.

Q. You told him to go to the Tube, didn't you? A. No, I told him to go to the car and watch the car coming down; I didn't tell him to go to the Tube. I didn't know whether they were going to the Tube or where they were going.

Q. You don't know how he happened to go down in the Tube, then? A. Who go down?

Q. Mr. Corridon? A. No, I don't know anything about that. He said to me that he waited

until she got off the car and he followed her down to the Tube; that is what he said.

Q. Whatever he thought, if she was going out with a man you thought you would just let her go? A. Yes; I wanted to see what she was doing.

Q. Prior to that time you say you heard that she was going out with men? A. I did; yes.

Q. From whom did you hear that? A. My man in the office spoke to me first about it.

Q. What man was that? A. Mr. Darke.

Q. What man did he tell you she was going out with? A. He said to me first——

Q. Answer my question first; with what man? A. Nobody in particular.

Q. What time was it that Corridon telephoned to you that night? A. About quarter after seven.

Q. Didn't you telephone to him just as your wife left the house? A. No, I didn't telephone from the house; I had to go to the office to telephone.

Q. You telephoned from the office to him? A. Yes.

Q. What time did you telephone to him? A. About quarter to six.

Q. Just as your wife left the house? A. No, I had to walk down to the office.

Q. Just after she left the house? A. Yes.

Q. That was a quarter to six, you say? A. Yes.

Q. And then he called you up a quarter to seven? A. Quarter to seven.

Q. Where were you when he called you up; in the shop? A. No, I was down to Heidelberg's getting my supper.

Q. You didn't know you were going to be called up. A. He called up the office and they called me up.

Q. Now, you said your wife got going out nights? A. Yes, sir.

Q. You were out yourself almost every night, weren't you? A. Yes, sir.

Q. And you ha dbeen out for years almost every night? A. No, sir.

Q. Didn't you come in anywhere from nine or ten o'clock at night to six o'clock in the morning? A. No, sir.

Q. In 1915, March 2d, is it not a fact that you came in at 6.45 in the morning? A. No, I don't think so; I don't remember the date, however.

Q. You came home under the influence of liquor very often, didn't you? A. No, sir.

Q. Well, how often? A. I didn't come home under the influence of liquor. I take a drink like any other man. Never came home under the influence of liquor.

Q. Didn't you come home at 9:15 on the 3d of March under the influence of liquor? A. No, sir.

Q. And on the 4th of March didn't you come home at 1:40 at night? A. Yes, at night time.

Q. And the next night, the 5th, ta 1:45?

MR. WALSCHEID: I object to that. It is absolutely impossible for this witness to figure out dates of that kind.

Q. But you did come in at all times of the night? A. Yes, because my business brought me in at all times of the night.

Q. Not until one and two o'clock in the morning? A. Oh, yes, certainly.

Q. What, for instance, would keep you out until one or two o'clock in the morning? A. If I styed at the office until ten o'clock and a call came in and it is 11 o'clock before I got out, and it takes always two hours to a call, so that the time we get back it is one o'clock or after; and sometimes I am called out in the night time and get back early in the morning.

Q. Did you know that Mrs. Stenek was working on the case? A. I did know there was a woman on the case.

Q. When did you know that first? A. Mr. Hanson said so.

Q. And he arranged that you should pay this woman, of course? A. No, I paid Mr. Hanson and he was to pay the woman. I don't know what arrangements he made with the woman.

Q. But you paid him enough so that it would be sufficient to hire a woman? A. No, he worked for me about eight weeks and got about $45 or $50, I guess.

Q. That is all? A. That is all.

Q. And didn't you pay him $125 on the 4th of October? A. Mr. Hanson?

Q. Yes. A. That was after. He got that part of the money that was coming to him and the other part he was to get after he testified.

Q. You did pay him that on that date? A. Yes.

Q. Then why did you say— A. (interrupting) That is what I paid him while he was working on it; this was after he had finished the case.

THE MASTER: October 4th?
MR. WELLER: October 24th.

Q. You were very anxious to get a divorce? A. Well, it wasn't a divorce so much; it was the child I was looking after.

Q. You took that child into saloons and different places yourself? A. No, sir, I never took her in a saloon myself. My wife was outside of Gessner's and I was inside, and I would be waiting inside for something, and she would be at the side door and send the child in for me. That is the only saloon that my child has ever been in.

MR. WALSCHEID: So far as you knok?

Then I spoke of an instance a few minutes ago where they called her in Multini's at 11 o'clock at night. She used to go in there.

THE MASTER: Are you talking about your wife or the child?

Q. When you use the word "her" in connection with your answer to the question do you mean your wife or the child? A. I meant the wife. Of course the child was with her.

Q. Didn't you say that Dolly came to the door and said "hello, papa"? A. Yes.

Q. And that was the door of Multini's? A. Yes.

Q. And you got up and saw your wife outside? A. No, I didn't say that.

Q. You asked her to come in and have a glass of wine? A. No, I didn't say that. She sent Dolly in to see if I was there, and then I says

"Where is mamma," and she says she is outside, and I told her to tell her to come in.

Q. And you knew Dolly would come in with her? A. Yes; she had already been inside.

Q. And it was then that you got this drink for your wife? A. We were sitting there. That was the first time she was in there. We had dinner there and Mr. Multini and his wife were there.

Q. How often did you have your wife and your little daughter there? A. I don't know; I guess we had dinner there once or twice when she was there.

Q. And you sat there and ate and drank together? A. Yes.

Q. In the presence of your little daughter? A. Yes, my daughter would sit there and eat with us; he would make up a special dish for her.

Q. Well, on this particular night you ran out and went across to Gessner's? A. Yes.

Q. And your wife came, and didn't she say to Gessner "you ought to have better sense than to keep my husband here; he is a young man and you know he is drunk;" didn't she say that to him, or words to that effect? A. She came in and said something to Gessner, and when I saw her in there I started to go.

Q. What did she say to Gessner? A. She said something about my being there which I don't just remember, but just as soon as I saw her there I knew there would be trouble.

Q. And did you at that time start to throw a glass at her? A. No, sir.

Q. And didn't you throw three glasses at her from the bar? A. No, sir.

Q. And did not Gessner shut the door in her face? A. I don't know; I was going out when that thing happened.

Q. You had lost all love for your wife, hadn't you? A. Lost love for her?

Q. Yes. A. No, I wouldn't say that.

Q. When did you lose all love for her?

MR. WALSCHEID: Oh, well—

THE MASTER: I suppose that would be the most difficult question in the world to answer. How can he tell that?

Q. Now, when you went over there to the Amsterdam hotel that night you say you saw Gabain there? A. In the room.

Q. You didn't strike him? A. I went to strike him, but I couldn't get near him, because Corridon stood between us.

Q. You didn't strike him? A. I couldn't get near enough to strike him.

Q. And you never have struck him since? A. I have never seen him since.

Q. How near do you live to his saloon? A. I pass his saloon every day and haven't seen the man since the day I caught him in the Amsterdam hotel.

Q. You never sued him? A. No, he had nothing to sue for.

Q. You never had him arrested? A. No, we didn't have him arrested in New York.

Q. Now, referring to the night when your wife and her sister came in there, which I believe was on the 30th of March, you said your wife was in there and opened your safe? A. That was not in the night time.

Q. What time was that? A. In the afternoon.

Q. The 30th of March? A. Yes.

Q. And as your wife and Mrs. Cane came in Mrs. Darke was going out. A. No, Mrs. Darke was there.

Q. I thought you said they met her going out? A. No, Mrs. Darke was there. When they came in the store Mrs. Darke came out to see who came in the store.

Q. She came out to the front door? A. Yes.

Q. Your wife asked where you were? A. I had said where I was; I was going out on a funeral.

Q. Your wife didn't ask where you were? A. No.

Q. And Mrs. Cane didn't ask where you were? A. No.

Q. Did you say that on your direct examination? A. I said if they asked where I was tell them I am out.

Q. You stated that to Mrs. Darke? A. Yes.

Q. Why did you want her to tell them you were out? A. Because I knew that Corridon was following her.

Q. And you wanted to catch her? A. That is what he was out for.

Q. And you told Mrs. Darke to tell her an untruth if she or Mrs. Cane asked for you? A. Yes.

Q. Where were these euchres that your wife went to almost every day in the week? A. I don't know where they were, but I know they were scattered.

Q. It was a ladies' club she belong to? A. Oh no.

Q. She did belong to a ladies' club or to a euchre club? A. No, sir.

Q. And these were nice people that she went out to? A. I don't know who she went out with.

Q. You never tried to find out? A. She would tell me she was going to a euchre, or she was going to St. Michael's or St. Joseph's or going to the Palace Garden in New York. They were scattered all around.

Q. You remember about what your wife told you about her being in the hotel with Gabain? A. Yes.

Q. When did she tell you that? A. When she wanted me to take her back.

Q. Is it not a fact that sucking people off is what you demanded of your wife? A. No, sir.

Q. Haven't you come home drunk when there were people in the house and asked that very thing of your wife? A. A. No, sir.

Q. Is it not a fact that you asked that question in front of Mrs. Whittle in 1914 and 1915? A. In front of Mrs. Whittle?

Q. Yes. A. I never asked her anything like that.

Q. You said that after you and your wife separated she came back during the night and got in bed with you? A. Yes, sir.

Q. Came back where? A. In the big house.

Q. Where is that big house? A. West street and Smith.

Q. When you left her your wife stayed there, didn't she? A. No, she went out the front door and I went out the rear door.

Q. When you separated you left her and your wife stayed there, didn't she?

MR. WALSCHEID: When you separated.

THE MASTER: At the time of the separation agreement.

MR. WALSCHEID: Mr. Weller means after the Amsterdam hotel episode in March.

THE MASTER: After this Amsterdam hotel affair where did she go to and where did you live?

A. I lived over the store.

Q. (By the Master) And she stayed where you had been living? A. She stayed there until such time as she was ready to move.

Q. How long did she stay there; that is what I am trying to get at? A. I don't remember whether it was the first of the month or when it was.

Q. Is it not true that you slept with her up to the first of the month? A. After the agreement?

Q. Yes. A. No, sir.

Q. After you first separated? A. What are you talking about, the Gabain case?

Q. Yes. A. No, I didn't sleep with her after that time.

Q. Where was it that you found her in bed with you? A. Oh, that was in the big house.

Q. You went up there and slept with her? A. I didn't go up and sleep with her; I was staying in the house at that time and she came into the house about eleven o'clock. That is what I said.

Q. At what number? A. 374 West street.

Q. And you were staying there in the month of August? A. I don't remember what month it was.

Q. You and your wife had separated in the

month of March or about the first of April, hadn't you? A. Yes, that's right.

Q. And the first time that you slept together after that was up in the big house at 374 West street? A. Yes, sir.

MR. WALSCHEID: What do you mean by sleeping together?

MR. WELLER: He said he found her in bed with him in the morning.

A. Yes, that's right.

Q. You went up to that house and styed there all the time, didn't you? A. She moved out and I had to stay there.

Q. Where did you go on the 30th of March? A. I went to the office.

Q. And your wife stayed at 374 West street? A. Yes.

Q. How long did she stay at 374 West street? A. Until she got notice to move out from the Court. I don't know what day that was.

Q. Well, about when? A. About a month after.

Q. And then did she move away from there? A. She moved away from there.

Q. Where did she move to? A. I think she moved over to Weehawken.

Q. Did you occupy the whole house there? A. Just a room. There was nobody else in the house. I occupied just the one room for a bedroom.

Q. Where was this room you occupied? A. The rear part of the house.

Q. Upstairs? A. Yes.

Q. What floor? A. Second.

Q. And you didn't know that your wife came in there? A. Yes, I knew.

Q What time did she come in? A. About eleven o'clock.

Q. But you didn't know she got in bed? A. I knew she got in and I fired her out.

Q. You put her out of the bed or out of the house? A. Out of the house.

Q. Did you lock the door? A. Yes.

Q. How did she get in? A. She had a key.

Q. And you didn't see her come in at all? A. No.

Q. And you didn't hear her come in? A. No, sir, I didn't hear her come in the second time at all.

Q. Is it not a fact that you went to the house and found your wife there, and that you sent down for Mr. Darke down to your shop? A. Yes, that was one occasion.

Q. Did you not then send Mr. Darke out for a bottle of whiskey? A. No, sir.

Q. And did you not, after Mr. Darke went out, have intercourse with your wife? A. No, sir.

Q. And did you not then hire a taxicab and send your wife home? A. No, sir, I did not.

PETITIONER RESTS.

Monday, March 13, 1916, 9:30 A. M.

DEFENDANT'S REBUTTAL.

(Mrs.) LOUISA M. SCHLEMM recalled in her own behalf, in rebuttal, testified as follows:

Direct Examination by Mr. Weller:

Q. Mrs. Schlemm, Mr. Bosetti testified that he came into your house when you lived at 374 West street, and he met you there and your mother and both of your sisters; is that true? A. No, it is not true.

Q. Who was there at that time? A. My one sister, Mrs. Cane.

Q. How did he happen to come there at that time? A. I telephoned for him.

Q. Why did you telephone for him? A. To ask him if he had signed an affidavit in regard to having intercourse with me that Mr. Schlemm had said he signed.

Q. Mr. Schlemm told you that? A. Yes.

Q. And that is the reason you called him there that night? A. Yes.

Q. Did you ask him anything that night about Mrs. Hofstetter? A. I did.

Q. How did you happen to do that? A. Because I heard the conversation in the bowling club.

Q. What conversation was that? A. About Mrs. Hofstetter being with Mr. Schlemm.

Q. Whom did you hear that conversation between? A. Mr. Rhoden, Mr. Watson and Mr. Schlemm.

Q. Did you ask your husband what it was about? A. Yes, and he refused to tell me.

Q. And when Bosetti came there did you ask him if he knew anything about Mrs. Hofstetter? A. I did.

MR. WALSCHEID: I object.

THE MASTER: It has been answered.

Q. What did he say? A. He said Mrs. Hofstetter came down from upstairs with her lady friend and went into the finishing room and said "hello, Bill, how do you like my wedding gown?" Then he said it was dandy. Then she allowed it to drop and she staid there in the finishing room with Mr. Schlemm and the other one went into the dining room with Mr. Bosetti.

MR. WALSCHEID: I object to this. It is purely hearsay, and I move to strike it out.

THE MASTER: What do you say, Mr. Weller?

MR. WELLER: Mr. Bosetti told what took place; he said this woman sent for him, and she got him in there and wanted him to say so and so, and that he refused, and then she offered him $25 if he would say so and so.

THE MASTER: The moment she denies that that took place she goes on to tell something else which is absolutely hearsay. If it is offered as evidence against Mr. Schlemm I will admit it; but simply for the purpose of contradicting Bosetti as to what took place at that time it can have no pos-

sible effect upon this case; it is not evidence against Mr. Schlemm.

A. He said that Mr. Schlemm stayed in the finishing room with Mrs. Hofstetter and that he went in the dining room with the other woman, and when Mr. Darke came for his supper they were both in there and he couldn't get his supper ready.

THE MASTER: I will admit that for that one purpose of showing what the conversation with Bosetti was, and to show that he was not telling the truth.

Q. Did he say anything about your telling your husband? A. He said not to tell him.

Q. Did you at that time offer him $25 to swear to anything? A. No, I did not.

Q. Was anything said about $25? A. Nothing was said about any $25.

Q. Now, Frank Hanson testified that when he came to your house the first time Mrs. Stenek, or Miss Stenek, came there and that you introduced him to Sam Detoro; was Sam Detoro there that day? A. He was not.

Q. Did your sister live in the house there with you at that time? A. Right opposite, on the court.

Q. Did you introduce him as your millionaire sweetheart? A. No, sir.

Q. Was he there at all? A. He wasn't there at all.

Q. He said that Sam Detoro proposed a trip on the Fall River boat. A. He did not.

Q. How often was Hanson there that night, once or twice? A. Once.

Q. Who suggested getting beer? A. Mr. Hanson.

Q. Did you say anything about that? A. No, sir.

Q. (By the Master) You didn't object to his getting beer? A. No, I didn't.

Q. Your husband says that after the separation agreement was drawn he was in to see you; was he to see you? A. He said when he had the papers signed—I asked if he couldn't live apart a natural life, and he said he would come and visit me once in awhile.

Q. Did he come? A. Yes, sir.

Q. How often did he come? A. One week he came twice, and another week he wouldn't come, an danother week he would come maybe twice.

Q. When was it he came to your place? Where was it? A. The first time he came was at 329 Park avenue, Weehawken.

Q. Tell us about that occasion. A. he rang the door bell—it was a two-family house—and the people opened the door at four o'clock in the morning for Mr. Schlemm, and they said "you can't go upstairs, there is nobody up there, and I don't know who you are." He says "it is all right; I am Mr. Schlemm." So the man that stood by the door walked with him and the door was open and Mr. Schlemm went upstairs, and when he came up I saw the man in the room. I asked him what he wanted and he said "It is all right; it is only me." I saw he was intoxicated and I put him to bed and he slept it off. He walked downstairs again and he came up again, and he stayed there for about an hour. We had intercourse right there, and then I got tired of him and I said "I

can't go with you, you are drunk," and so he got downstairs and stayed in the hall, and he was so drunk he couldn't help himself, and so I asked them to go out and telephone to Mr. Darke and get him to come there and take him home. So by that time the milkman came in and he told him to telephone, and at that Mr. Schlemm walked out and then went to the corner of Pleasant avenue and Park avenue and laid there, and the first thing I knew he had gone and I didn't know where he went.

Q. Your husband says that after you went back to live together you commenced to show signs that you didn't care for him? A. I didn't.

Q. Did you tell him you had lost all love for him? A. I did not.

Q. He spoke about your going to the drug store to telephone one night; is that true? A. I did.

Q. When you got to the drug store did you call up Gabain's place? A. I did.

Q. Why did you do that? A. To ask him if he wanted his umbrella he left at the house.

Q. That was after he had been to the house and you got breakfast for him? A. Yes.

Q. He says you went to euchres nearly every day and came home at all hours of the night; is that true? A. No, sir.

Q. Did you ever go to euchres? A. Yes, sir.

Q. Did nice people attend these euchres? A. Always nice people.

Q. He says after you separated you called him up almost every day and wanted him to take you back? A. No, I didn't.

Q. He says you told him that he was the only

one who could help you out of the gutter; is that true? A. No, sir.

Q. What did happen? A. He called me up all the time from a saloon and sometimes from the Jefferson garage that belongs to my mother.

Q. What did he say to you? A. He asked me if I wanted him to come up to see me, or would I come up to see him. I says "I can't. I will send you a latch-key and you can come up to my office at twelve o'clock at night, and I will leave the upstairs open so you can get in with the latch-key." I says "If you want me up there why don't you take me in the daytime?" "No," he says, "I don't want people seeing you coming there at all."

Q. He says you told him if he would take you back you would lead a decent life; was anything like that said? A. I didn't say it.

Q. He says that the first night that he slept with you after this Gabain affair was when he found you in the bed with him in the morning; is that true? A. No, sir.

Q. Tell us about that. A. That was in his house at 374 West street, and I went there. It was a little after eleven when he came home. As he got to the top of the stairs Mrs. Whittle was in the hall bedroom. He got to the top of the stairs and walked into the room and he says, "What are you doing here?" I says "nothing; just come up to speak to you." Then he rang up the telephone and he got Charley Darke up and Charley Darke came in the house, and he sent him out for whiskey up to the corner saloon—I can't think of the name; it is on the corner of Spring and Smith street—and Charley Darke went up there, and

while he was gone we had intercourse. When Charley came back we had the bottle of whiskey, and he was so intoxicated that he couldn't go home in the rain, and he telephoned for a cab and the cab came up and he and Charley Darke went out on the front porch, and Charley Darke says "I will go home with you."

Q. He says that you told him that your sister was found in the bath-tub with another man, that is, Mrs. Rohr? A. I never told him.

Q. He says that when he went back with you you promised not to associate with your sisters and mother? A. I never promised him that.

Q. Did he ever ask you not to do it? A. Yes.

Q. What did you say? A. I wouldn't turn down my own mother. My mother was my best friend.

Q. He said everything went along all right between you and him until your sister Mrs. Rohr came to the house; is that so? A. Mrs. Rohr never came to the house.

Q. Did she come near the house; he saw her coming towards the house, I think he said.

A. I don't know whether he did or not, because I didn't see her myself.

Q. He said just before you separated you said you would not tie yourself down to any man; did you say that? A. No, sir.

Q. What time did you get home from these euchres? A. Sometimes 12 o'clock and sometimes 1 o'clock, just according to how far I was away from home.

Q. Did he go with you to any of them? A. Yes, to St. Paul's in Jersey City and to Christ Hospital euchre, and he went to St. Paul's at

Grand View hall, in Jersey City, and once in St. Michael's in West Hoboken.

Q. He says you didn't want to stay home any more. A. I said if he would stay home I would do so, but he couldn't expect me to stay in the house all the time alone. I went to the movies and left a note on the table where I went.

Q. Did you keep a diary that month of the time he came home? A. Just the one month I did.

Q. Is this the diary? A. That is it.

Q. Will you just tell us what time he got home?

MR. WALSCHEID: I object to that as immaterial and not proper rebuttal.

THE MASTER: What is the materiality af it?

MR. WELLER: I don't know, your Honor; possibly I may be wrong. I thought he said he did not come home late; but I guess he did not say that.

THE MASTER: Suppose he did. If he testified on an immaterial issue that gives no right to rebut.

MR. WELLER: All right; I will not press it.

Q. Now, he says you wore a net waist once where your person showed through it—I think he said your bust. A It wasn't a net waist and my bust would not show through.

Q. You say your bust did not show through it? A. No, sir.

Q. He said you told him the best thing you could do was to separate; did you say that? A.I didn't tell him; he said that to me.

Q. He says around Christmas time you were pretty good, but you did not wish to have intercourse with him. A. I never refused the man intercourse.

Q. He says you confessed to him that you had sexual intercourse with Gabain. A. I did not.

Q. He spoke of some filthy things you told him Gabain wanted you to do; did you ever tell him any such thing? A. No, sir.

Q. What about the night he says he put you out; did he put you out? A. No.

Q. The night you came up to Smith street; did he put you out that night? A. No.

Q. The night that you went away in the dark? A. That night he told me to go.

Q. He did tell you to go? A. Yes, he told me to go out and not let anybody see me there.

Q. Was that the first time you had had intercourse with him since you separated? A. Yes.

Q. Did he visit you at that time? A. Yes.

Q. How often? A. Sometimes every week and sometimes he would skip a week in between.

Q. He says after the separation papers were drawn you called him up and said it was not in the papers that would you could commit adultery? A. I didn't say anything of the kind.

Q. What did he say to you? A. He asked me to sign them, and I told him I would read them over and if they suited me I would sign them. He says "You can't help signing; it is all in your own favor; you can go where you want to and do what you want to."

Q. What else did he say? A. That is when I asked him what he would do without a woman,

and he says "Well, I will visit you after that once in awhile."

Q. What did he say about doing the same as if you were single? A. He says I was a femme sole and not married.

Q. What did he say about your going out with whom you wanted to? A. He said I could go where I wanted to, and do what I wanted to, and go with whom I wanted to; he would never sue or molest me.

Q. He told you that? A. That is what he told me.

Q. You spoke about going to Schmidt's saloon with Anna Stenek; did you go at her request? A. Yes.

Q. She asked you to go down? A. She did.

Q. How long was that before the 23d of October? A. About three weeks.

Cross-Examination by Mr. Walscheid:

Q. You say you did go out to call up Gabain's place? A. I did.

Q. Where did you start from to go and call him up? A. Right from the house.

Q. You had a telephone in the house, didn't you? A. Yes.

Q. Why didn't you use that telephone? A. I had no intention of calling him up; I went out to buy something for the house.

Q. What drug store did you go to? A. Taborelli's.

Q. That store has a telephone booth? A. Yes.

Q. You had a booth at your house, didn't you? A. No.

Q. Or at your husband's store? A. I didn't have to pass the store to go there.

Q. Where was your husband when you started for Taborelli's? A. In the house.

Q. That was when you were all dressed up? A. No.

Q. What did you say to your husband when you left? A. I said I was going out to the store, and I would come back in about ten minutes.

Q. Why was it so essential to telephone to Mr. Gabain? A. I didn't think of it until I happened to see the booth; then I thought of his umbrella and I thought I would telephone down.

Q. How long had the umbrella been in your house? A. Not very long.

Q. About a week? A. I don't know how long.

Q. Two weeks? A. Some time around there.

Q. (By the Master) You had to pay a toll at that drug store? A. Five cents.

Q. And it would have cost you anything to call him up from your own house? A. No.

Q. Why didn't you then wait until you got back to your own house if the thought struck you in the drug store? A. Because I was standing there waiting for the parcel; it was in the back being tied up.

Q. Did anybody answer you when you called up that number? A. Yes.

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

Q. You didn't recognize your husband's voice, did you? A. No—yes, I did.

Q. You did recognize it? A. Yes.

Q. Didn't you speak to Taborelli about it when you came out of the booth? A. I spoke to Cenaral.

Q. What did you ask Central for—what number? A. She says the line was busy, so it must have been someone trying to get that wire.

Q. You were surprised when you heard your husband's voice? A. No, I didn't know that it was my husband's voice directly; Central says "the line is busy; 2733 wants you."

Q. That was your husband's number? A. The house number.

Q. Central told you that after you heard your husband's voice? A. Yes.

Q. Did you persist in calling up Gabain after you heard your husband's voice? A. No, because he had it right after that.

Q. You did get Gabain, however? A. Yes.

Q. And did talk with Gabain? A. Yes.

Q. About the umbrella? A. I did.

(Mrs.) MARY CAIN recalled on behalf of the defendant, in rebuttal, testified as follows:

Direct Examination by Mr. Weller:

Q. You heard the testimony of Charles Bosetti the other day. A. I did.

Q. Do you remember his coming to 374 West street? A. Yes.

Q. Were your mother and Mrs. Rohr there? A. No. they were not there; my sister Mrs. Schlemm and myself were the only ones there in the house.

Q. Did your sister formulate any story for Mr. Bosetti to tell, or did he tell his own story? A.

He told his own story.

Q. And did you hear what your sister said to him? A. Yes, I heard it.

Q. What did she say? A. He came in the house—

MR. WALSCHEID: I object as immaterial.

MR. WELLER: Well, I will put it in this form:

Q. Did your sister offer him $25? A. No, she didn't offer him any $25—no money at all.

Q. Did he tell this story of his own free will? A. Ys.

Q. Was it the same story as your sister has repeated on the stand? A. Just exactly the same thing.

MR. WALSCHEID: I object.

THE MASTER: I will let it go in.

Q. Now, Mr. Schlemm has testified that he had no regard for you and your sister and your people; do you remember his coming to your house in 1914? A. Yes, I do.

Q. Tell us about that.

MR. WALSCHEID: I object to it as immaterial.

THE MASTER: What is the object of it?

MR. WELLER: He says he didn't want these people coming to the house.

THE MASTER: That isn't the issue we are trying.

MR. WELLER: Well, I am most through; I have only a couple more questions to ask.

THE MASTER: Well, go on.

A. It was the night of the party and Mr. Schlemm wanted a collar-button, and my sister told me to go upstairs and find a collar-button and give it to Mr. Schlemm, and I went upstairs to look for the collar-button and Mr. Schlemm grabbed hold of me and he wouldn't let me go. I told him I was going to holler if he didn't let me alone, and I had to struggle and struggle with him until I got away, and when I did yet away my clothes were all mussed up, and I came down, and I says "I can't find the collar-button." She says, it is right on the chiffonier in the drawer. I couldn't find it and so she sent my sister up.

Q. (By the Master) Did you tell your sister what he had done to you? A. No, I didn't tell her.

(Mrs.) JOSEPHINE ROHR sworn on behalf of the defendant, in rebuttal, testified as follows:

Direct Examination by Mr. Weller:

Q. Mrs. Rohr, were you at your sister's home, or Mr. Schlemm's home, February 13, 1913? A. No, sir.

Q. At that time there was a euchre party at your house? A. Yes, sir.

Q. Do you remember your sister Mrs. Schlemm

sending Mrs. Cane upstairs after a collar-button? A. Yes, sir.

Q. Did she go up? A. Yes, sir.

Q. And did she get it? A. No, sir.

Q. You went and got the collar-button then? A. Yes.

Q. What happened to you when you went upstairs? A. Why, my brother-in-law Mr. Schlemm called down to my sister and asked her if she would send somebody to the store for a collar-button, and she sent me out to the store first of all. I had to go and get the money off of him upstairs, and I got the money and I went and got the collar-button, and as I got upstairs he grabbed hold of me and threw me on the edge of the bed and I had a pair of nose pincers at the time and so he threw me over onto the end of the bed and tried to force me to have intercourse with him. I told him if he didn't let me go I would holler, and I was up there trying to fight with him and get away from him and all of a sudden I heard footsteps coming upstairs, and I says "here comes my sister now and she is coming up the stairs." Then she came up and she says "what do you call this, anyhow; what are you all excited for here?" and I said "nothing." My glasses were on the lace spread from his trying to throw me. She said "what do you call this?" He says "Josie was just sitting on the bed."

Q. Did you tell your sister at the time? A. No, sir, because there was a lot of people downstairs at the euchre that night.

Q. Do you remember last fall when Mr. Hanson came to the house on Park avenue—what number was that? A. 410.

Q. Did you live in the house? A. Yes, sir, I was in the house when Anna Stenek and Mr. Hanson came there.

Q. Where did you go? A. When I saw her coming in I said I would not stay in the house where she was, and so I went to the next room. She came in this door (indicating) and I went in this door (again indicating) and I can look out of my windows on the bed in her apartment.

Q. How long did Anna Stenek stay in that room? A. Must have been till half-past ten or eleven o'clock.

Q. Was Sam Detoro there that night? A. No, sir, he never came there that night.

Cross-Examination by Mr. Walscheid:

Q. What nights did he come? A. He has only been there once with Mrs. Carneo and my sister.

Q. Why wouldn't you stay in the house when Anna Stenek came there? A. Because she is noted to be not a good girl in the whole town.

Q. She is known all over the town as being a bad woman? A. I don't mean bad; not a lady.

Q. And you saw her in your sister's apartment? A. I did. I didn't talk to my sister all the time that she went there.

Q. You knew she was going there? A. Yes, sir.

Q. Did you call your sister's attention to the fact that she was going with an immoral woman? A. I did.

Q. And your sister kept on going with her? A. Yes.

Q. And you wouldn't talk to your sister because she was going with this immoral woman? A. No, sir.

J. Emil Walscheid—for Defendant—Rebuttal—Direct.
Joseph Poletti—for Defendant—Rebuttal—Direct.

J. EMIL WALSCHEID sworn on behalf of the defendant, in rebuttal, testified as follows:

Direct Examination by Mr. Weller:

Q. Was Joseph Poletti to your office, Mr. Walscheid, around noon last Saturday? A. I don't know Joseph Poletti and I never saw him in my life, to my knowledge.

JOSEPH POLETTI sworn on behalf on the defendant, in rebuttal, testified as follows:

Direct Examination by Mr. Weller:

Q. Where do you live? A. West New York.

Q. Whereabouts? A. 550 Hudson avenue.

Q. What is your business? A. Garage.

Q. Where is your garage business? A. Blume street, Union Hill.

Q. How long have you been in the garage business? A. Seven or eight years.

Q. Do you remember taking out Mr. Schlemm, the petitioner in this case, one night in an automobile? A. Yes, sir.

Q. When was that, as near as you can tell? A. Well, the date I don't know; a couple of years ago.

Q. What time of the year was it? A. September or October, I guess.

Q. What year was it? A. That I can't say.

Q. Was it last October or the year before? A. The year before, I think.

Q. Now, where did you take him from? A. From his office. Two gentlemen.

Q. Do you know their names? A. No, sir, I do not know exactly.

Q. What time of the night was it? A. Some time towards evening, in the afternoon.

Q. You told me the other day who the gentlemen were, did you not?

MR. WALSCHEID: I object.

MR. WELLER: This witness, if Your Honor please, is trying to be hostile.

THE MASTER: We havn't any evidence of that.

Q. (By the Master) Who were the two men? A. I don't know them.

THE MASTER: If Mr. Weller is surprised by the testimony of this witness he has a right to ask that question.

Q. Didn't you tell me it was Mr. Maas and Mr. Brenner? A. I told you I didn't know.

Q. What time of the night did you pick them up? A. Somewhere in the evening.

Q. What time was it you picked them up? A. The time I couldn't say exactly; I don't quite remember.

Q. Tell me as near as you can. A. Well, it was somewhere between four and five, I guess.

Q. Between four and five in the afternoon? A. Yes.

Q. Who hired you? A. Mr. Schlemm.

Q. What to do? A. Why, he said he wanted to go down to Jersey City.

Q. Where in Jersey City. A. Down to the court house.

Q. You know, of course, the court house closes at four o'clock.

MR. WALSCHEID: I object to that.

A. No, sir.

Q. (By the Master) Did you or did you not know? A. No, sir, I don't know.

Q. Where did you go when you started out? A. We went down to Jersey City.

Q. Well, now, you and Brenner and Maas and Schlemm went in this automobile; which way did you go? A. Right down Palisade avenue.

Q. Whom did you pick up on Palisade avenue, if anybody?

MR. WALSCHEID: I object to that as leading.

Q. Did you pick up anybody?

MR. WALSCHEID: I object to that as leading. I think the witness should be allowed to tell his story.

THE MASTER: The question is, did they pick up anybody.

A. Yes, Mr. Schlemm had a friend of his.

Q. Who was that friend? A. I don't know the name.

Q. You told me who it was. A. I did not.

Q. Where did you go then when you picked up this friend? A. Down to Jersey City.

Q. Was it a woman that you picked up? A. Yes.

Q. Whereabouts did you go in Jersey City? A. Down to the court house.

Q. Where were you Saturday afternoon, between twelve and one o'clock? A. I was home.

Q. Were you in any law office last Saturday in Union Hill? A. No, sir, I was not.

Q. Did you see Mr. Schlemm in Union Hill last Saturday? A. No, sir, I did not.

Q. When did you see him last? A. The last time was down here Thursday.

Q. Did anyone talk to you about this case? A. No, sir.

Q. Nobody at all? A. No, sir.

Q. Then you went on down in Jersey City? A. Yes.

Q. Where did you go? A. I stopped right opposite the court house.

Q. How long did you stay there? A. Oh, I don't know exactly.

Q. Did you pick up any other woman along the road? A. There were two women, yes.

Q. Where did you pick up the second woman? A. Why, in Jersey City.

Q. Whereabouts in Jersey City? A. I don't know; they got in on the way back.

Q. And they were looking for a third woman? A. Not that I know of.

Q. How long did you stay down around the court house? A. About an hour or so, I guess.

Q. How long was it?

THE MASTER: He told you.

A. It is quite some time ago and I don't remember the details.

Q. Where did you go from there? A. To Fairview Cemetery.

Q. Right directly from there? A. Yes, sir.

Q. Did you go down the viaduct to Hoboken? A. No, sir.

Q. Didn't you tell me that a policeman stopped you on the viaduct? A. No, sir.

Q. And didn't you tell me that you were really arrested and then the policeman let you go? A. No, sir.

Q. Didn't you tell me you went into Tom Kinney's place in Hoboken? A. No, sir.

Q. You realize you are under oath, don't you? I will ask you again if you didn't tell me that you went into a saloon in Hoboken? A. No, sir.

Q. And didn't you tell me that Mr. Schlemm got tearing the women's hats and thorwing them around? A. No, sir.

Q. What did you tell me about that? A. I didn't tell you anything.

Q. You didn't tell me anything? A. No, sir.

Q. You understand that you are liable to be arrested for perjury?

MR. WALSCHEID: I object to that.

Q. (By the Master) You realize you are under oath? A. Yes, sir.

Q. Now, didn't you tell me that one woman wanted to go home and you took her up to the top of the viaduct where she could get a car? A. No, sir.

Q. Didn't tell me anything like that? A. No, sir.

Q. Didn't you tell me that after you let the woman out you went back and took Mr. Schlemm and the two men up to Pfaff's saloon? A. No, sir.

Q. Or some other saloon? A. No, sir.

Q. Where did you go with them? A. I went on up to Fairview Cemetery and after that they stopped to a road house down below there.

Q. You told me it was Paff's road house? A. sir.

Q. How long did you stay there? A. A couple of hours, I guess—hour and a half, I guess.

Q. Didn't you tell me that they stayed there with Mr. Schlemm and these two men until late at night, and then the men wanted to go home and you took them home? A. No, sir.

Q. And didn't you tell me that after that you went back to that place and picked up Schlemm and Mrs. Dort? A. No, sir.

Q. What time did you get up there? A. Why, I got up there somewhere about six or half-past six.

Q. Did you tell these things that I have asked you in the presence of anybody else? A. No, sir.

Q. You didn't say any such thing? A. No, sir.

Q. Just tell me the story you did tell me, now. A. I didn't tell you anything.

MR. WALSCHEID: I object to that.

Q. Nothing at all? A. No, sir.

Q. You were not in my office, were you? A. No, sir.

Q. You were not? A. No, sir.

Q. You are sure you were not in my office? A. No, sir.

MR. WELLER: I will have him arrested inside of two hours.

MR. WALSCHEID: I object to that.

CASE CLOSED.

Exhibit D-3.

This indenture, made this 22nd day of January, in the year 1915;

Between William Schlemm, of the Town of West Hoboken, in the County of Hudson and State of New Jersey, party of the first part;

And Louisa M. Schlemm, his wife, party of the second part;

And Stephen Whittle, of West Hoboken in the County of Hudson and State of New Jersey, as trustee of and for the said Louisa M. Schlemm, wife of William Schlemm, party of the third part;

Whereas divers disputes and difficulties exist between the said party of the first part and his said wife, for which reason they have consented and agreed and hereby do consent and agree to seperate and part from each other during their natural life;

Wherefore, this indenture witnesseth, that the said party of the first part, in consideration of the premises, and in pursuance thereof, does hereby covenant, promise an dagree to and with the said trustee and also t oand with his said wife, that it shall and may be lawful for her, his said wife, at all times hereafter, to live separate and apart from him, and that he shall and will allow and permit her to reside and be in such place and places and in such family and families and with such relations, friends and other persons, and to follow and carry on such trade or business as she may from time to time choose or think fit; that he shall not or will not, at any time, sue, or suffer her to be sued for living separate and apart from him, or compel her to live with him; nor sue, molest, disturb or trouble any other persons whomsoever for receiving, entertaining or barboring her; that he will not, without he consent, visit her, or annoy-

ingly enter her house or place where she shall dwell, reside or be, or send or cause to be sent any letter or message to her; nor shall or will any time hereafter claim or demand any of her money, jewels, plate, clothing, household goods, furniture or stock-in-trade, which she may remove with her from the dwelling house, No. 374 West Street, Town of West Hoboken, aforesaid, or which she shall or may at any time hereafter have, buy or procure, or which shall be devised or given to her or that she may otherwise acquire and that she shall and may enjoy and absolutely dispose of the same as if she were a femme sole and unmarried;

And the party of the first part further agrees that he shall and will well and truly pay or cause to be paid over towards the support and maintenance of his said wife and their said child, Maria Louisa Schlemm, the sum of Twenty-five ($25.00) Dollars each week, which the said party of the second part does hereby agree to take in full satisfaction for her support and maintenance and all alimony whatsoever, and also in full satisfaction for the support and maintenance of her said child.

And the party of the first part hereby agrees that the party of the second part shall have the custody and control of the person of Maria Louisa Schlemm, their child, which the party of the second part agrees to support and maintain out of the sum of money to be paid to her as aforesaid.

And the said trustee, in consideration of the sum of One ($1.00) Dollar, to him duly paid, does covenant and agree to and with the said party of the first part to indemnify and bear him harmless of and from all debts of his said wife, contracted, or that may herafter be contracted by her or on

her account; and if the said party of the first part shall be compelled to pay such debt of debts, the said trustee hereby agrees to repay the same on demand, to the said party of the first part, with all damage and loss that he may sustain thereby.

In witness weheof, the parties hereto have hereunto set their hands and affixed their seals the day and year first above written.

Signed, Sealed and Delivered
in the presence of:

WILLIAM SCHLEMM (Seal)
LOUISA M. SCHLEMM (Seal)
STEPHEN WHITTLE (Seal)

ANNIE E. WHITTLE.

Exhibit P-1.

IN CHANCERY OF NEW JERSEY.

Between WILLIAM SCHLEMM, *Petitioner,* and LOUISA M. SCHLEMM, *Defendant.*	On Petition for Divorce. Answer.

The answer of LOUISA M. SCHLEMM, defendant, to the petition of WILLIAM SCHLEMM, petitioner:

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

2. This defendant denies that since her said marriage, and on the thirtieth day of March, nineteen hundred and fourteen, she "Committed adultery with one Harry Gabain at the Amsterdam Hotel, corner of Twenty-fifth Street and Lexington Avenue, in the City of New York, County of New York, and State of New York," as in said petition is alleged, or that she committed adultery with said person, or with any other person, at any other time or place, but to the contrary, this defendant says that she has ever faithfully observed her obligations as the wife of the petitioner.

3. This defendant admits the truth of paragraph 3 in so far as it states the residence of the petitioner and defendant, but she denies that any cause of action of any kind ever arose against the defendant.

4. This defendant admits the statement in paragraph 4 that one child was born, but denies that the defendant is an unfit person to have the custody of said child, and that the welfare of the said child requires that she should be removed from the custody of the defendant and restored to that of the petitioner, but alleges the truth to be that the said petitioner because of frequent acts of adultery and intemperance is unfit to have the custody and control of the said child, and particularly specifies as acts of adultery that the petitioner committed adultery with a woman named Hofstetter, at No. 426 Spring Street, West Hoboken, in the County of Hudson, at divers times, during the months of January, February, March, April and May in nineteen hundred and seven; and the said petitoner while under the influence of liquor was in the habit of consorting with other women, particularly a woman known as Mrs. Dort, with whom the defendant found him at a moving picture theatre in West Hoboken on the twenty-third day of March, nineteen hundred and fourteen.

The defendant prays to be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

LOUISE SCHLEMM.

ALEX. SIMPSON,
Solicitor of Defendant.

Conclusions of Advisory Master.

(Filed April 10, 1916.)

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM SCHLEMM,
Petitioner,

and

LOUISA S. SCHLEMM,
Defendant.

Heard on Petition. Answer. Cross-Petition and Answer thereto.

For Petitioner, J. EMIL WALSCHEID.
For Defendant, JOHN I. WELLER.

M. T. ROSENBERG,
Advisory Master.

This action is for a divorce a cinvulo on the ground of adultery.

2. As to the matters of recrimination charged by the defendant, there is no evidence worthy of consideration of the alleged adultery of the petitioner with Mrs. Dort or with Mrs. Hofstatter. But even if there had been, such adultery would have been barred by condonation. As to the alleged adultery with Mrs. Delvey, it rests upon the testimony of a single witness, is denied by the petitioner, as well as by the person who was said to be in the next room. The time of the alleged occurrence and the surrounding circumstances make the commission of the act of adultery ex-

tremely improbable. This charge, therefore, is not sustained.

3. The only other defence is connivance. This is the most serious of the three defences which the defendant sets us, and it deserves somewhat extensive consideration. Connivance is, of course, an affirmative defence and the burden of proof is on the defendant.

This is the second divorce case between the parties, a former suit brought by the petitioner against the defendant having been instituted on April 2, 1914. Although abandoned it has never been disposed of on the record. That suit was brought by tht defendant with one Harry Cabain, at the Amsterdam Hotel, in New York City, on March 30, 1914. During the pendency of that suit, and in August, 1914, the parties resumed cohabitation, and continued to live as husband and wife until January, 1915, at which time they entered into a separation agreement, in the usual form. The defendant set us housekeeping in an apartment in Weehawken. Her life there, and until the time of the adultery proved on October 24th, 1915, was, to say the least, of a very fast nature. There is no question that she associated with women of none two scrupulous morals; that she was in the habit of going out to balls and picnics with men, her acquaintance with whom was little more than casual, remaining out until very late hours, and that she was a frequenter of many saloons, where she drank with men, in Hudson and Bergen Counties and in the City of New York.

The petitioner, having reason to suspect the infidelity of the defendant, hired detectives and had her put under surveillance. One of his detectives,

Anna Steneck, wormed herself into the friendship of the defendant, and passed much time in her society as well as in the society of some of her male associates. On the day of the adultery in question, the defendant was called up on the telephone from the saloon in Hoboken, kept by Schmidt, the particeps criminis, by one Stites, a lawyer in Hoboken, and on his (Stites') invitation she and Anna Steneck and Stites and Schmidt went on an automobile trip, winding up, so far as she and Schmidt were concerned, at the defendant's residence, at an early hour in the morning. The defendant had called at Schmidt's saloon at least once before, but there is no evidence to connect that call with either the petitioner or his detective. There is reason to believe that she called there at that time because she was on very friendly terms with a man named Deturo, who had a junk business almost immediately opposite Schmidt's saloon, and who frequented that place.

The defendant claims that the petitioner's connivance goes back to the date of the occurrence at the Amsterdam Hotel, in March, 1914, and that having been guilty of connivance then, under the law he has connived at all her infidelity since. Of course, there is no question that connivance may be proved by circumstantial evidence, and in most cases can only be proved by circumstances. There is no direct evidence of any connivance on the part of the petitioner in March, 1914, and only a very bare inference. That inference, if it has any evidential value at all, is to a very large extent destroyed by the fact of the subsequent condonation of the petitioner, and his living with his wife after that ime. It is hardly reasonable to suppose

that if the petitioner had, in the vernacular, "put up a job" on his wife to get rid of her, that he would thereafter have resumed sohabitation with her, and it is the defendant's testimony that cohabitation was resumed at the earnest request of the petitioner. I cannot find any connivance present as early s the occurence in March, 1914.

It is further claimed that the petitioner through his agents, the detectives, encouraged the commission of the act of adultery, and if it were a fact that Anna Steneck, who was the agent of the petitioner, had entrapped the defendant into the commission of adultery, there is no question that under the case of Rademacher vs. Rademacher, 74 N. J. Eq., 570, the petitioner would be barred of any remedy. It is equally true that if the petitioner in any way consented to or aided the act of adultery, he would be barred of relief. Delany vs. Delany, 71 N. J. Eq., 246; Cane vs. Cane, 39 N. J. Eq., 148.

The law is clear that if a husband sees that his wife is about to fall, it is his duty to throw around her the necessary safeguards to prevent that fall. In the present case, there is nothing to show that the petitioner or his agents were at all responsible for the fall of the defendant. It is, to my mind clear, that if the defendant had not already committed adultery at the time of the act with Schmidt, that she was ready to do so, and that petitioner's efforts to prevent it would have been of no permanent avail. I am satisfied that she had committed adultery with Gabian on March 30, 1914, and it is not at all unlikely that in the many carousals that she herself admitted as having taken place between January and October, 1915, she had been guilty of immoral conduct. There

was nothing at all to my mind that the petitioner was called upon to do in that state of affairs. The petitioner had every right to have his wife watched to get evidence, and I find from the testimony that that was all that he did do.

Testimony, much of which seems to me now to be immaterial, was introduced into the case, to show cruelty by the defendant toward the petitioner; improper solicitation on the part of the petitioner of other women, and in particular of an abortion which the defendant claims was performed upon her under the compulsion of the petitioner. Assuming the admissibility of these facts on the question of connivance it is sufficient to say that the defendant has not established them by a preponderance of evidence. As to the alleged abortion particularly, she is contradicted by the evidence of her own admissions to the physician who treated her both before and after the operation, and who advised her against having it done.

I find, therefore, that the defendant has not established the defense of connivance, and a decree nisi for absolute divorce in favor of the petitioner will be advised.

The custody of the child of the marriage will be awarded to the petitioner, with proper provisions for access of the mother to it at convenient times. If counsel cannot agree upon the decree, I shall be glad to hear them as to its settlement, on notice.

Before the decree in this case is advised, however, the petition in the former case should be dismissed.

Conclusions on Settlement of Decree.

(Filed April 26, 1916.)

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM SCHLEMM,
Petitioner,

and

LOUISA M. SHLEMM,
Defendant.

On Motion to Settle Decree.

For Petitioner, J. EMIL WALSCHEID.
For Defendant, JOHN I. WELLER.
M. T. ROSENBERG, Advisory Master:

I have already concluded that a decree nisi should be advised in favor of the petitioner.

The decree presented to me awards the custody of the child of the marriage to the petitioner. The defendant's counsel now insists that the petitioner has disentitled himself to apply for the custody of the child by reason of the fact that the separation agreement entered into between the parties prior to the occurrence of the act of adultery by the defendant gives the custody of the child to her.

In other words, the claim is that the parties having dealt with the subject matter of the custody of their child, this Court has no power with reference thereto.

This contention is in my opinion absolutely without merit.

I am entirely satisfied that whether a decree of divorce leaves such an agreement unaffected so far as the financial relations or property rights of the parties are concerned or not, that is as to matters involving themselves only, it cannot affect the ultimate guardianship of the Chancellor over the infant children of the marriage or the power vested in him to dispose of the custody of children whose parents are separated.

To every such agreement the State as represented by the Chancellor is an implied party. In such a state of affairs, it is the duty of this Court to safeguard the interests and welfare of the child in its own interest as well as in that of society.

The present case illustrates to a marked degree the danger of a different conclusion. To enforce the provisions of the separation agreement and entrust the child—a daughter—to the custody of the defendant would in all probability be fraught with the most serious consequences to the child's future welfare. The habits and associations of the mother are such as to make her in every way an unfit companion for the child. I am entirely satisfied that the example and conversation of the mother would at the least seriously interfere with the moral education of the child and leave ever present the danger of her being led into the paths of immorality.

A separation agreement disposing of the custody of a child should, it seems to me, be enforced only when its provisions accord with the child's best interests, as the Court views them.

Considering, therefore, that the child's interests can be best subserved by giving her custody to the father, I will so advise.

The decree will contain provisions for visits by the mother at the place where the child is kept, which must be in this State.

On proper evidence of the reformation of the mother, or other circumstances, application to vary the decree may be made at any time in the future.

Decree Nisi.

(Filed May 1, 1916.)

IN CHANCERY OF NEW JERSEY.

Between WILLIAM SCHLEMM, *Petitioner,* and LOUISA S. SCHLEMM, *Defendant.*	On Petition for Divorce. Decree Nisi.

This cause coming on to be heard in the presence of J. Emil Walscheid, Esq., of counsel with the petitioner, and John I. Weller, Esq., appearing for Messrs. Weller & Lichtenstein, 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 the arguments of

counsel; from all of which it now appears satisfactorily to the Chancellor that the defendant has been guilty of the adultery charged against her in the said petition, and that at the time the cause of action for divorce therefor arose the petitioner and defendant were bona fide residents of this State, and the said petitioner has continued so to be down to the time of the commencement of this action, and it further apeparing that jurisdiction herein has been acquired by personal service of process upon the defendant within this State; and it further appearing that the defendant has not sustained the truth of the material allegations contained in her cross-petition and is not entitled to the relief therein prayed;

It is thereupon, on this 1st day of November, A. D. 1916, by his Honor, Edwin Robert 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 Legislature in such case made and provided, doth hereby order, adjudge and degree that the said petitioner, William Schlemm, and the said defendant, Louisa M. Schlemm, be divorced from the bonds of matrimony for the cause aforesaid, and the said parties, and each of them, be freed and discharged from the obligation 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 it is further ordered, adjudged and decreed, that the cross-petition filed in this cause by the defendant, be dismissed.

And it is further ordered, adjudged and decreed that the petitioner have the custody, care and education of Maria Louisa Schlemm, the infant daughter of the mariage until the further order of this Court.

E. R. WALKER,
C.

Respectfully advised.
M. T. ROSENBERG,
Advisory Master.

New Jersey Court of Errors and Appeals

WILLIAM SCHLEMM, Petitioner-Respondent, against LOUISA M. SCHLEMM, Defendant-Appellant.	On Pet. On Appeal.

This cause comes up on appeal from the Court of Chancery.

The petitioner filed his petition (page 5) in the Court of Chancery, praying for a divorce *a vinculo* on the grounds of adultery, alleged to have been committed by the defendant with one William Schmidt, at 470 Park Avenue, Weehawken, N. J., on the 24th day of October, 1915. He alleges there was one living child of said union, viz: Maria Louisa Schlemm, then 8 years old, and prays for her custody on the ground that the defendant is an unfit person to have charge of her.

The defendant filed an answer (page 15, par. 11) denying the adultery and alleging that the petitioner had been endeavoring to get rid of her, and that in February, 1914, he had connived to have her commit adultery with one Harry Gabain; that Gabain had lured her to a hotel in New York on the pretense that she would find her husband there; that the petitioner had thereafter started

New Jersey State Library

an action for divorce, but that they had resumed cohabitation as husband and wife; and that subsequently he had deserted her, and on the 22nd day of January, 1915, had had articles of separation drawn (Exhibit D-3, page 314), and induced her to sign the same; she also alleges that thereafter he connived to have her found in a compromising position with said William Schmidt.

Both charges of connivance and conspiracy were conclusively proven.

The defendant also filed a cross-petition in which she charges the petitioner with having committed adultery with Daisy Hoffstetter, Mrs. Dort and Lillie Delvy (cross-petition, page 21).

It appears from the testimony, page 79, &c., that when the parties were married and defendant was less than 20 years old (pages 80-3).

When they were married the petitioner had (80-21) been a drinking man, but he appears to have reformed. She had never drunk liquor of any kind (80-5), but after that time he again commenced drinking and took the defendant to various places where drinks were sold, and taught her to drink intoxicating beverages (80-9, &c.) (160-37). He frequently took her to his bowling club where various kinds of drinks were served and bought cocktails and other drinks for her. Mrs. Lillie Delvey also attended the meetings of this bowling club and the petitioner acted in such a familiar manner toward her that the defendant became angered at him and requested him to pay some attention to her (84-44, &c.).

He was also in the habit of taking the defendant into saloons kept by his friends (163-4) and especially one kept by his friend, the said Harry Gabain, at the corner of Spring and Elm Streets, West Hoboken, and it was there that she met said Gabain, through the petitioner (page 85). He

used suggestive language to Gabain in the presence of the defendant (163-4), and he does not deny it. On the 12th of February, 1914, Gabain went into the bowling alleys under the influence of liquor. The whole thing seems to have been pre-arranged between him and the petitioner. Gabain only lived a few blocks from the bowling alleys, but for some reason best known to himself, the petitioner, insisted on taking him home with him (page 86) instead of escorting him to his own home, or having someone else do so; petitioner accordingly took him home with him and kept him there overnight. In the morning the two men went away together. That night the petitioner did not come home for his supper, and the defendant went after him and saw him coming out of Gabain's saloon with Gabain. She asked him to come home to his supper and he promised to do so, but did not come. After waiting a reasonable time she again went out to find him, and this time saw him in Martini's saloon drinking with Gabain and a man named Charley Birmingham. Birmingham wanted to take Gabain home but the petitioner refused to allow him to do so, and took both of these men to his own home for supper, and again kept Gabain overnight. In the morning the petitioner got up and asked the defendant for a drink of water. After she got him some water he compelled her to take Gabain a drink in his bedroom. This the petitioner does not deny. He then left the house, while Gabain was still in bed, and ordered the defendant to get breakfast for him, which she afterwards did.

In March, 1914, about a month after he had stayed overnight at their house, Gabain called Mrs. Schlemm on the 'phone, and asked her if she wanted to know where her husband was going that night (page 89). She told him she knew that her

husband was going to a champagne supper in New York. Gabain told her that her husband was not going to a champagne supper, that she should get dressed and meet him in the Hudson Tube at Hoboken and he would prove to her that he was not (page 89). She accordingly met him and he took her to the Amsterdam Hotel, in New York, where he told her she would see her husband. She was found there with Gabain in a suite of rooms, consisting of a small room, an alcove bedroom, and a bath room (126-5). The testimony shows that the defendant was fully dressed (pages 45-241). Defendant says Gabain had his collar and tie off and two drinks were standing on a table in the small room (page 90). Some of the other witnesses say he had his coat off and his suspenders were hanging down, which could have been easily arranged. Timothy Corridan, who acted as Schlemm's detective, testified (page 54), that on March 30, 1914, Schlemm, the petitioner, called him on the 'phone, at his office in Hoboken, told him his wife was coming down to the tube with a man, and from that direction he went to the tube and saw Mrs. Schlemm and Gabain and from there followed them to the Amsterdam Hotel, in New York. When the defendant left home she told the petitioner she was going to Bayonne (page 250). A man and a boy had been following her that day but had lost her (251-15). She took the Union Hill car, from her home, according to the petitioner's testimony. From this car she could have changed to the Hillside car for 14th Street, Hoboken, and crossed the 23rd Street Ferry to New York; she could have changed at Palisade Avenue for the Jersey City and Bayonne or Jackson Avenue car; she could have changed at Henderson Street for the Grove Street car; she could have remained in Hoboken or could have gone by the

Barclay, Christopher or 23rd Street Ferry to New York—yet Schlemm told Corridon she would meet a man down in the tube.

On the night of October 24, 1915, William Schmidt was found in Mrs. Schlemm's home. This was also brought about by the connivance of the petitioner.

POINT I.

Petitioner connived and conspired to have defendant caught under compromising circumstances with Gabain.

The petitioner had taken Gabain home with him in an intoxicated condition two nights in succession. On the morning succeeding the second night we have the following uncontradicted testimony:

"*LOUISA M. SCHLEMM:*

(88-5) Q. Now, in the morning what did your husband do? A. He got up and asked me for a drink of water, and I went and got him a glass of water and handed it to him, and then he says 'bring Harry a drink too'; I said 'that is not for me to do, to go in while he is in bed; *he is in bed.*' He says, 'You take it in yourself,' so he goes off to business and leaves Harry Gabain in the house, and he says, 'When he gets up fix him some breakfast.' I said 'All right,' etc.

(123-5) Q. And on this night, when you went to New York, how did you happen to go over there? A. Because he telephoned up and he said I could find my man there if I wanted to go with him.

Q. Who? A. Mr. Gabain.

Q. Told you what? A. He would show me where my husband is.

(123-27) Q. And you went with a glass dish? A. A package; he didn't know what it was.

Q. And he asked you where you were going? A. Yes.

Q. And you told him you were going to a euchre? A. Yes."

"WILLIAM SCHLEMM, the petitioner:

(250-28) My wife was upstairs when I came in and she came down, and she was all powdered up, and she lifted up her dress and showed me her petticoat, and showed me the pink ribbon I says, 'where are you going' and she said, *'To a euchre in Bayonne.'* I told her I hoped she would like it, because I was going to one in Newark; * * * and when she came down she says, 'Mrs. Jennings, where is that bundle, I will leave that off at Jersey City' and she says, 'All right,' and when she went out of the house I watched her going out, and as she got to Spring Street she started to run, and as soon as she got to Clinton Avenue she jumped right in the car *and a man and a boy was following her and lost her."*

"TIMOTHY CORRIDON:

(54-9) Q. You said that you got acquainted with Mrs. Schlemm about the 30th of April, 1914? A. The 30th of March.

Q. Do you remember Mr. Schlemm telephoning to you at that time? A. Yes, sir.

Q. When he telephoned for you he told you

his wife would be there on the next car? A. Yes, sir.

Q. Told you how she was dressed? A. Yes, sir.

Q. Told you that she would be with a man and would come down in the tube? A. Yes, sir.

Q. And from that direction of Mr. Schlemm, you went down in the tube and followed her to the Amsterdam Hotel? A. Yes.

Q. That is right, is it? A. Yes.

Q. You never had seen Mrs. Schlemm until that time? A. Not that I know of."

"LOUISA SCHLEMM:

(14-6) Q. Where did you meet Gabian? A. Down in the tube, sitting on the bench."

If Schlemm and Gabain were not in a conspiracy, how could Schlemm have known she was going to Hoboken to meet a man in the tube, when she had told him she was going to Bayonne? How did he know the exact spot to which to direct Corridon?

He says he wanted to catch her.

"(279-12) Q. Did you say anything to her about what you had heard over the 'phone? A. No, sir.

Q. Why not? A. Because if she was that kind of a woman I wanted to find it out, and see what there was behind it.

Q. You didn't caution her at all? A. No, sir.

Q. Why didn't you go and speak to Gabain about it? A. What for?

Q. You didn't want her to commit adultery?

A. If she was going that way I wanted to find it out."

At this time there never had been a word of suspicion uttered against her.

As a matter of fact, the petitioner had seduced the defendant before they were married, and their first child was born only two days after their marriage. This fact does not appear in the printed record, but we believe the Court may take judicial notice of the official record of the marriage of the parties and the birth of their first child.

See Vol. 6 of the Record of marriages for Hudson County, New Jersey, in the office of the Board of Health and Vital Statistics, page 3; and Vol. 22 of the Record of Births for Hudson County, New Jersey, in the office of the Board of Health and Vital Statistics, page 17.

"Matters of which an Appellate Court may take judicial notice, need not be incorporated in the record in order to be considered."

3 Cyc., 176.

POINT II.

When William Smith was found in the defendant's home at 470 Park Avenue, Weehawken, on October 24, 1915, it was clearly by the connivance of the petitioner.

After the parties resumed living together as husband and wife, the petitioner came home intoxicated at all hours of night, assaulted and abused the petitioner and tried in every way to humiliate her

(pages 90, 91, 92 and 95). He first tried to get her to live separate from him in New York (94-9). He promised her if she would do so he would pay her $25 a week, but she refused.

He thereafter got drunk and called her and the child into Multini's saloon (94-34), where he disgraced and humiliated her by his speech and conduct (95-9). The next morning he went home at about three o'clock and removed his clothing from their home where they had been living together (96-8 and 189-1). He then had articles of separation drawn and induced her to sign them, which are marked Exhibit D3, page 314.

He thereafter hired a detective named Joseph Hansen to watch the defendant (172-22). Hansen employed his brother, Frank Hansen, and Anna Stenek to assist him, and the petitioner knew it (283-11). Joseph Hansen employed Anna Stenek about 3 days after he got the job (172-24). They were all the agents of the petitioner. Anna Stenek managed to get into the good graces of the defendant by going to a drug-store (page 98) where Mrs. Schlemm was in the habit of going every evening to telephone her husband; she introduced herself to the defendant, and pretended to have been a schoolmate of hers (98-175). The next night she visited Mrs. Schlemm's home and took with her a gentleman, namely, the said Frank Hansen (99-9). Before she and Frank Hansen went there, Joseph Hansen, the detective employed by the petitioner, gave his brother, Frank, a dollar and said to him "Maybe she drinks" (225-1, &c.). Frank Hansen proposed to her a trip to Boston on a Fall River boat and tried to induce her to get another man to go with them, he to take the said Anna Stenek and this other man to take Mrs. Schlemm (page 99), but she refused to go. Frank Hansen testified that he and Anna Stenek were there twice that night;

that they went to the home of Mrs. Schlemm at about eight o'clock in the evening and then left and walked down to Fourteenth Street, Hoboken, and then returned to her home (page 218). If they went to Hoboken on that occasion they most likely went to the saloon of William Schmidt. They walked down Park Avenue, he says, to Fourteenth Street, and Schmidt's saloon is on Fifteenth Street and Willow Avenue (111-1). Hansen pretended he could not tell where they had stopped in Hoboken (218-6).

After that time Anna Stenek visited the defendant's home every day for four weeks (99-30). When she had been going there about a week she invited Mrs. Schlemm to go with her to Hoboken, and took her down to the saloon kept by the said William Schmidt (301-16), the man who was later found in her home.

On October 23, 1915, William Schmidt had someone telephone to Mrs. Schlemm, who told her his name was Jack De Forrest, but afterward admitted that he was William Stites; he told her that he and William Schmidt wished to come up and ask her about an automobile ride (page 100). She thought it was some of her friends joking with her and told them to come on. When they arrived at her place she told them that she didn't know who they were, but as it was a cold evening, she invited them into the house. A few minutes later Anna Stenek, who had gone home for her supper, returned to the home of Mrs. Schlemm and when Mrs. Schlemm spoke to her about these men wanting to take them out on an automobile ride, she said they would go, but Mrs. Schlemm told her that she had no place to leave her child as her mother and sister were going to the "movies" that night, whereupon the said Anna Stenek said her mother and sister were also

going to the "movies" (102-11), but they would take the child up there. They then all went in an automobile to the moving-picture theatre where Anna Stenek called out a younger sister of hers, who took the Schlemm child and agreed to keep her until the following morning. Mrs. Schlemm gave her 50c. (102-12). They then rode north on the Boulevard to Nungesser's Pavilion (112-32). They sat there for a long time drinking beer and other liquors purchased by Schmidt and Stites, Anna Stenek all the time forming one of the party (102-20). They then went to the Grand View Hotel, where more liquor was consumed (102-32), after which they started home (103-4). Mrs. Schlemm requested that Anna Stenek be taken home first, but she insisted that Mrs. Schlemm should be taken home first, which was done and Schmidt was left there with her. Miss Stenek knew at that time that both Schmidt and Mrs. Schlemm were under the influence of liquor, but Stites drove away with her and left Schmidt alone with Mrs. Schlemm. Afterward Mr. Schlemm, who had evidently been informed by telephone (35-4) of the trap set by his agents, he called up Timothy Corridon, a Hoboken detective (48-15). Corridon then went to Schlemm's place of business, and Schlemm said to him, "we've got her" (56-4). They then went to Mrs. Schlemm's home where they broke in the door and found Mr. Schmidt there (49-20). When Mr. Schlemm first arrived at the house he threatened to have the defendant and Mr. Schmidt arrested, but he later on called Mr. Schmidt into the bedroom where they consulted together for a few minutes (26-36). Subsequently all of these parties, with the exception of Mrs. Schlemm, left the house together (42-31). Mr. Schmidt was fearful lest Mrs. Schlemm should come after him, and asked the police to protect him from her (70-13).

"LOUISA SCHLEMM:

(90-20) Q. And how did you and your husband live together after you went back? A. Very unhappily.

Q. What were his habits about coming home nights after you went back? A. He never came home any nights; he came home in the morning always after two or three or four.

Q. What condition would he be in when he came home? A. Intoxicated.

(91-4) Q. What did he say and what did you say; tell us all about it? A. I says while we were eating, 'Why don't you come home in the evening; you are never home,' and his reply was, 'If you don't like it, you know where the carpenter left the door.'

Q. What else did he say? A. After that he picked up a cup of coffee and threw it at me.

Q. What did you do? A. I picked up my cup and threw it down on the table and broke it.

Q. And then what happened? A. Then he got up and hit me with the flat of his hand on the back of the neck, and scratched the white of my eyes.

(91-30) Q. What did he do or compel you to do on or about the 9th day of December, 1914? A. He wanted me to go and hire a furnished room for myself and the child.

(92-1) Q. Were you pregnant? A. Yes, I was pregnant.

Q. How long had you been pregnant? A. Five months pregnant—pretty near five months.

Q. What did he say to you about that? A. Wanted me to do away with it.

Q. What did he say to you? Just tell us all about it? A. He says, you may as well do away with that; 'I will never go out with you and I won't treat you as my wife any more.' and he says, 'Here is $10,' which he threw me across the table, and he says, 'Go and empty your gut,' and he said curse words in between."

In this she is corroborated by Annie Whittle (199-12, &c.).

"Q. Had he ever said anything about your living in New York? A. Yes.

Q. When was that? A. In November.

Q. What did he say about that? A. *He said I should* hire a furnished room in the city and stay over there, and he will pay me so much a week."

Thereafter, in the early part of January, 1915, he deserted her and never returned (pages 94, 95 and 96).

"THE MASTER:

(93-17) Q. Tell us what was said about articles of separation? A. That I should go to my lawyer and have letters of separation, he didn't want to live with me, and I says, 'If any papers are drawn up you will have to do it; I won't.' "

In order to get rid of her, he agreed to give her $25 a week, as shown by the articles of separation.

"JOSEPH HANSEN:

(172-22) Q. When were you employed to work on the case? A. In the first part of September.

Q. How long after you were employed, did you employ Anna Stenick? A. About three or four days."

"LOUISA M. SCHLEMM:

(98-15) Q. Do you know Anna Stenick? A. Yes, sir.

(98-17) Q. When did you first meet her, and where, and under what circumstances? A. In the drug store at the corner of Union Street and Bergenline Avenue.

Q. Just tell the Court about that now? A. I was in the habit of calling up Mr. Schlemm every night at 6 o'clock, and I always called him up from Dietrick's drug store. As I came in there she was sitting at the table, and she looked at me and smiled, and I couldn't get in the booth because there was a man in there, and the other booth was out of order, at any rate, the door was closed. So I sat there and waited, and she says, 'Why, hello, Louisa'; I says, 'Hello, you seem to know me.' She says, 'You know I am Anna Stenick.' I said, 'I don't know you, no,' * * * she says, 'Who did you call up,' and I says, "My better half.' She says, 'What way are you going'? I said, 'Up on Bergenline Avenue; up towards Jefferson Street, home.' * * * She walked up as far as Jefferson Street and said, 'Why don't you come down and visit me sometimes.' I says, 'I don't get time, but if you want to you can come down and visit me,' and I told her where I lived, and the next night she came right down to the house with a gentleman friend. * * * A. I don't know his name, but he wanted to make arrangements that

night to take a trip on the Fall River line. He wanted me to get a friend that night or he would get one and go."

She says (page 99) that Anna Stenick came there every day for 4 weeks. She would go home for her lunch and supper and come back. The gentleman friend was Frank Hansen and he was employed by his brother, Joseph.

Mrs. Schlemm identified the young man that was at her home with Anna Stenick (16-24).

"JOSEPH HANSEN:

(174-6) Q. Now, who was he? What young man did you have working for you? A. My brother was working for me.

ANNA STENICK:

(175-9) Q. Miss Stenick, do you remember the night you went with the young man to Mrs. Schlemm's home? A. —

Q. Did you go with a young man? A. Yes, I did.

Q. Who was that young man? A. Frank Hansen.

FRANK HANSEN:

(217-12) Q. You (and Anna Stenick) were both working on Schlemm's case? A. Yes, we were both working on the Schlemm case.

(217-24) Q. How long did you stay there? A. What do you mean, the first or the second time.

Q. I haven't asked you about any second time? A. About 15 minutes.

Q. So you went down to Hoboken, you and Anna Stenick? A. Yes.

(218-6) Q. Where did you go in Hoboken? A. We took a walk down as far as Fourteenth Street.

Q. Did you stop in any place? A. Well, no, not as far as I know of.

Q. You can't remember that? A. No, sir."

This was in the immediate neighborhood of Schmidt's saloon, and there is every indication that they were making arrangements at that time to have Schmidt visit Mrs. Schlemm.

"(218-24) Q. You were trying to get Mrs. Schlemm? A. Yes.

(224-17) Q. What did he (Joseph Hansen) tell you? A. He didn't say nothing at all. He says, 'Go down and buy a couple of pints, if she drinks.'

(225-1) Q. You knew your brother was working for Mr. Schlemm at that time? A. Yes.

Q. Now, just tell us the words he said, 'Go down and buy a couple of pints if she drinks'? A. Yes.

Q. And he gave you a dollar to buy it with? A. Yes, but she is the one that put the proposition up about the drinks.

LOUISA SCHLEMM:

(301-3) Q. What did he (the petitioner) say about doing the same as if you were single? A. He says I was a *feme sole,* and not married.

Q. What did he say about your going out with whom you wanted to? A. He said I could go where I wanted to, and go with whom I wanted to.

(301-12) Q. You spoke about going to Schmidt's saloon with Anna Stenick; did you go at her request? A. Yes.

Q. She asked you to go down? A. Yes.

Q. How long was that before the 23rd of October? A. About 3 weeks."

Now, when Mrs. Schlemm and others went out on October 23rd while Anna Stenick, who was surely Schlemm's agent, was sitting by, Mrs. Schlemm was induced to drink intoxicating liquors so that she might become a prey to Schmidt.

(103-4) "So all of us went away from there and came home, and on the way we had to pass Anna Stenick's house, and I thought we could drop Anna on the way; but they said, 'No, we will take Mrs. Schlemm home first,' and they took me home first, and Mr. Schmidt gets out of the car and says, 'I will wait until you come back for us from Anna Stenick's, and Mr. Stites took Anna Stenick home. So Mr. Stites never came back after Mr. Schmidt.'

Q. And when you arrived at your house did Mr. Schmidt get out? A. Yes.

(116-1) Q. Did you take your things off when you came in? A. Not right away.

Q. How long afterward? A. I was in a few minutes, when I asked him to go home. I wanted to go to bed after I had drunk quite a few high balls with him.

WILLIAM SCHMIDT, a witness for petitioner:

(324-6) Q. Did Mrs. Schlemm take her clothes off in that apartment? A. I don't recall that—not until later on.

Q. You know she did? A. Yes.

By Mr. Weller:

Q. That is when the detectives came? A. Yes, when I came in the apartment, I simply laid down; everything was dead to the world to me."

FREDERICK SCHOENFELD, petitioner's witness, said (30-4) that he, Schlemm and Corridon arrived at Mrs. Schlemm's home at about 2 o'clock in the morning. He also said that (33-30) he started from Schlemm's place of business at 1 or quarter past 1. He said (34-28) that Schlemm told him at about 1 o'clock, *"I think we can get her to-night"*; that when Schlemm told him (35-2) he had received a telephone call.

TIMOTHY CORRIDON says (44-4) that he resided at 45 Sherman Place, Jersey City; (48-11, &c.) that he arrived at Mrs. Schlemm's home at about 2 o'clock in the morning; that he had been called out of bed by Mr. Schlemm at about 1 o'clock. He had gone all the way from Sherman Place, Jersey City, to Schlemm's place of business in West Hoboken and then walked down from there to Mrs. Schlemm's home. Schlemm told him (55-22) that he had information that the defendant was *out* with some one. The defendant says (115-15) she arrived at her home on Park Avenue, Weehawken, at a little after or a little before 1

o'clock. So far as appears, no one else was with her but Anna Steneck, Schmidt and Stites. It may be fairly inferred that Schlemm was informed by his agents, before they left Hudson Heights, that Schmidt was to be caught in the home of Mrs. Schlemm.

After the petitioner and his agents had succeeded in getting Mrs. Schlemm drunk and Schmidt to accompany her home, he prepared for the crowning event of her degradation and incidently that of their child (see page 34).

FREDERICK SCHOENFELD, a witness for the petitioner, testified (34-9):

> "Q. How did he happen to find out all of a sudden, that he was likely to get her that night? A. As much as I know he got a telephone call, I think."

Anna Stenick and his other agents were undoubtedly posting him by telephone:

> "(34-9) Q. Where was it that Schlemm went to talk with Mr. Schmidt? A. In the bedroom.
>
> "Q. Was Mrs. Schlemm there then, when he went to talk with Mr. Schmidt? A. No, sir; she was sitting in the room with the two policemen and I.
>
> "Q. How long did Mr. Schlemm stay in there talking with Mr. Schmidt? A. I should judge about five minutes.
>
> "(42-16) Q. Now, just tell us about that? A. All I heard was to lock her up.
>
> "Q. Nothing said about locking up Mr. Schmidt? A. I don't remember that.
>
> (42-30) Q. Schmidt went out with you people? A. Schmidt went out."

TIMOTHY CORRIDON, a witness for petitioner:

(60-3) "Q. How long were they (Schlemm and Schmidt) alone in the room after you left? A. Oh, they were there two minutes."

AUGUST KLASSEN, a witness for petitioner:

(66-3) "Then Mr. Schmidt and Mr. Schlemm went in the bedroom."

(66-30) Q. You walked out of the house with Mr. Schmidt? A. Yes, sir; after they had gone out. We were all together; I think we were in the rear. Mrs. Schlemm stayed there. We walked up Park Avenue with Mr. Schmidt, he asking us to stay with him until the car arrived, because he didn't want to come in contact with Mrs. Schlemm any more.

Q. He said that? A. Yes, sir.

(69-12) Q. After you went in Schmidt, Schlemm and Corridon went in the bedroom, did they? A. Yes.

Q. And they swung the door partly shut, didn't they? A. Partly, but I can't say whether it was closed tight or not.

Q. And they stayed there how long? A. A few minutes, something like one or two minutes.

(70-13) Q. Schmidt told you he wanted you to protect him from Mrs. Schlemm? A. Yes.

Q. Did he say he was afraid of her? A. He said he didn't like to meet her again."

Mrs. Schlemm says (104-11) that Schlemm took Schmidt in the bedroom and closed the door and they remained there together for eight minutes.

If this were not a pre-arranged plot why should Schlemm have held a secret conference with Schmidt? And if Schmidt did not feel that he had been the tool of Schlemm in betraying Mrs. Schlemm, why in the world was he afraid to meet her again; why was he afraid she might attack him?

(a) *The petitioner is barred by his own conduct from ever obtaining a divorce from the defendant.*

"By these decisions, it is settled that a husband who connives at, or assents to adultery by his wife with one person, shall be deemed as assenting to it with others and will not be entitled to a divorce for a subsequent act of adultery with a different person."

Hedden vs. Hedden, 21 Eq., 70.

"The distinction between the Delaney case and the one in hand is, that in the Delaney case, the acts or conduct barring divorce as connivance or consent, were such as themselves tended to bring about the act complained of, in the sense that they were in some sense, and to some extent the efficient causes of the act, and contributed thereto as cause to effect."

Lehman vs. Lehman, 78 Eq., 318.

"A husband may watch his wife without warning her of his intentions to do so, but may not actively participate in a course of action leading to her adultery, and may not himself with his eyes open, do that which may in some degree conduce to it. And if he sees

her in danger * * * and does nothing to warn or withhold her, but allows her to commit adultery, his conduct in law amounts to consent, or collusion within the divorce act, declaring that no divorce for adultery shall be decreed when it appears that the party applying consented thereto."

White vs. White, 95 Atl. Rep., 197, Court of Errors and Appeals.

This woman in the case above cited had confessed her adultery before the time of the act complained of. In the case before the Court the husband had abused and deserted the defendant; had drawn articles of separation and induced her to sign them and had told her afterward that she might go with whom she pleased and do as she pleased, the same as if she were a "feme sole."

"Articles of separation may be so framed as to constitute a license to the wife to live in adultery; and if such is their true import and the husband really meant it, he cannot have a divorce for the adultery to which he has thus consented."

Bishop on M., D. & S., §242.

(b) *The acts of the agents of the petitioner in this case were the acts of the petitioner.*

In the light of the authority we have cited, we think the decision of the Court on this part of the case should not be disturbed.

Morrison vs. Morrison, 136 Mass., 310;
Meyers vs. Meyers, 41 Barb., 114;
Hedden vs. Hedden, 21 N. J. Eq., 61;

Austin vs. Austin, 10 Connecticut, 221;
Cairns vs. Cairns, 109 Mass., 408;
Masten vs. Masten, 15 N. H., 159;
Gower vs. Gower, L. R., 2 Prob. & Div., 428.

In this last case it was held that "If a person employed by a husband to watch his wife for the purpose of obtaining evidence of her adultery brings about an act of adultery, the husband cannot obtain a decree of dissolution on the grounds of such adultery, although he may not have directed or authorized his agent to bring it about. The petitioner admitted that he had employed one Williams to watch the respondent and to obtain evidence of her adultery, but denied that he had ever instigated Williams to induce her to commit adultery or sanctioned his taking any step with that view. The evidence showed that the act of adultery upon which the petitioner relied had been brought about by the connivance of Williams. In deciding the case the Judge ordinary said: 'I think it quite possible that he, the petitioner, did not tell Williams to do what Williams appears to have done; but, at the same time, he never warned him not to do what a man of his class and character would be likely to do. * * * In that point of view the petitioner is responsible for the act of his agent.'"

Dennis vs. Dennis, 34 L. R. A., page 458.

"If the husband employs to watch his wife an agent, who with his knowledge lays temptations for her, he is in the same position as if this was done by him in person. And it appears to be the English doctrine that the effect will not be different though the agent proceed self-moved, without authority in fact from the principal in analogy to the

rule in contracts, that one who takes an advantage from an agent's unauthorized fraud is answerable for the fraud."

2 Bishop on M., D. & S., Sec. 216.

But the defendant and Schmidt both testified, as witnesses for the petitioner, that no adultery had been committed on the night in question. The petitioner's counsel himself asked the defendant whether or not she had been true to her marriage vows and she answered that she had; she said that she had never committed adultery with any man. Schmidt said he was "dead to the world," and that he took his clothes off and laid down on the lounge and did not know the petitioner had undressed herself until the detectives came in. While this is an improbable story, it may be true. The defendant was undoubtedly under the influence of intoxicating liquor, and Schmidt, the agent for Schlemm, had most likely become intoxicated himself, in inducing the defendant to drink.

> "A fact cannot be established by circumstances which are perfectly consistent with direct, uncontradicted and unimpeached testimony that the fact does not exist."

17 Cyc., 817.

POINT III.

The condition of the minds, and the lack of morals of the cross-defendant and Mrs. Dort are such as to strongly indicate guilt.

The defendant, cross-petitioner, testified that Mrs. Dort's husband died somewhere in the Bronx,

New York; that the cross-defendant, who is an undertaker, buried him (81-26); that after that time he went to the Bronx frequently to collect and would not come home until 2, 3 or 4 o'clock in the morning. After the husband had gone there 4 or 5 times to the cross-petitioner's knowledge, Mrs. Dort moved to 370 Traphagen Street, West Hoboken, in the neighborhood of Mr. Schlemm's home (82-11). In the year 1914, she caught her husband with Mrs. Dort in a moving-picture show and saw them nudging one another when she came in. When Mrs. Schlemm upbraided Mrs. Dort for being with her husband, she denied her identity and hurried away (201-15). The defendant went home and told Barbara Jennings of what she had seen, and she and her husband fought about it. This was 1914, according to Mrs. Jennings.

According to Schlemm's own testimony, after Mrs. Dort moved to West Hoboken and about the year 1915 (from the bottom of page 271 to 275), he, with two other men, who were being driven by Joe Poletti, an Italian chauffeur, picked up Mrs. Dort and her sister at Hill Street and Palisade Avenue, West Hoboken, drove down the viaduct to Hoboken, drove back to the hill and let her sister out and drove with Mrs. Dort to the Court House, Jersey City, and then back to Paff's road house out back of Faiview Cemetery; and did not reach home until 9 o'clock that night.

WILLIAM SCHLEMM, the petitioner:

(274-14). "Q. What time did you get home that night? A. I guess about 9 o'clock.

Q. Do you know what time you got home? A. Yes.

Q. You started at four o'clock? A. Yes.

Q. And you went down to the Court House? A. Yes.

Q. How long did it take you to get up to Fairview? A. Oh, I guess I got up there about seven o'clock.

Q. You went to Fairview, and stayed there only half an hour and got home at 9 o'clock? A. I got home at 9 o'clock; yes.

(373-33) Q. Whose place was that? A. I don't remember.

Q. Paff's saloon? A. Yes.

Q. You stopped there? A. Yes, sir."

This testimony, taken in connection with his confession to his wife that he had gone to Mrs. Dort's home on several occasions to collect, and the fact that at these times he did not arrive home until morning, go a long way in showing his guilt.

Although Joe Polleti perjured himself, his testimony (page 309) shows that the petitioner's conduct with Mrs. Dort cannot be reconciled with innocence.

POINT IV.

Adultery was proven to have been committed by the cross-defendant with Lillie Delvey.

The cross-petitioner testified (84-4) that Mrs. Delvey attended the bowling club of which she and her husband were members; that her husband was in the habit of fooling with her, that he would slap her on the back, put his hand down her bust; that he would grab hold of her arms, etc., and give her a tight squeeze. The cross-petitioner scolded him because of his attentions to Mrs. Delvey and his lack of attention to her. She also testified that on three or four occasions in 1912 she came home around 6 o'clock at night and found Mrs. Delvey

there. At that time (176-11), the Schlemms lived over the undertaker establishment.

About the month of October, 1912, Mary Cain, a sister of Mrs. Schlemm, went to visit her (pages 175 & 176). She had been going there quite often and was in the habit of sneaking in so as to surprise her. On the day in question she went there in the afternoon, found the door bell unconnected, walked in quietly and caught the cross-defendant on a lounge with Mrs. Delvey. She never told Mrs. Schlemm of what she had seen, until this cause came up, because she did not wish to cause trouble in the family.

Mrs. Cain gives details of just what she saw, and she stands unimpeached. She is contradicted by Schlemm, whose testimony as to Mrs. Dort shows that he is not to be believed, and also by Bosetti, but Bosetti was brought up by Schlemm's parents. Now, Mr. Bosetti says he was seldom in the finishing room, that he was out of the house most of the time. If Mrs. Cain had been telling an untruth about it she would never have mentioned Bosetti's name. Why should she have created a hostile witness?

Again, I believe Bosetti told Mrs. Schlemm about the Hoffstetter woman. If he had not she would never have known anything about the wedding gown incident.

POINT V.

The petitioner should not be given the custody of their child.

Whatever may be the shortcomings of the defendant, the petitioner is not a proper custodian of the child.

LOUISA SCHLEMM:

(160-31) "Q. Did your husband ever take her (the child) into a saloon? A. Yes, sir.

Q. He did? A. Yes, he did.

Q. On how many occasions? A. Oh, quite a few occasions; I can't remember.

WILLIAM SCHLEMM, the petitioner:

(285-14) "Q. How often did you have your wife and your little daughter there (in the saloon)? A. I don't know; I guess we had dinner once or twice when she was there.

Q. And you sat there and ate and drank together? A. Yes; my daughter would sit there and eat with us; he would make up a special dish for her."

It appears, therefore, that the petitioner was not only in the habit of getting drunk and taking drunken men home with him, but that he was in the habit of taking his little daughter into saloons where drinks were served and where he associated with drinking men. He is, therefore, no better qualified to have charge of the child than the mother.

We therefore most respectfully submit that the decree of the Court of Chancery should be reversed, and that the defendant should be given the custody of the child.

WELLER & LICHTENSTEIN,
Solicitors for Appellant.

New Jersey Court of Errors and Appeals.

WILLIAM SCHLEMM, *Petitioner-Respondent,* VS. LOUISA M. SCHLEMM, *Defendant-Appellant.*	On Petition for Divorce. On Appeal.

BRIEF FOR PETITIONER-RESPONDENT.

Statement of Facts.

The petitioner filed a petition for divorce on the ground of adultery committed by the defendant and one William Schmidt at 470 Park Avenue, Weehawken, N. J., on October 24, 1915, and for the custody of the child of their union, Maria Louisa Schlemm, eight years old, on the ground that the defendant was unfit to have charge of the child. (Case p. 5-6.)

The defendant answered, denying the adultery and alleging that the petitioner had been endeavoring to get rid of her; that in February, 1914, he had connived to have her commit adultery with one Harry Gabian; that Gabain lured her to a hotel in New York on the pretense that she would find her husband there; that the petitioner had thereafter started an action for divorce based upon the alleged adultery with said Gabain, but that said petition had not been brought to a hearing and that they had resumed cohabitation as hus-

band and wife; that subsequently petitioner had deserted her, and on the 22nd day of January, 1915, he had articles of separation drawn and had induced her to sign the same, and that thereafter and on the 24th day of October, 1915, he had connived to have her found in a compromising position with William Schmidt at 470 Park Avenue, Weehawken, N. J.

She also filed a cross-petition alleging adultery of petitioner with three women (case p. 7-13).

The petitioner in turn answered the cross-petition denying the adultery charged against him and alleged that on April 2, 1914, he had filed a petition for divorce in the Court of Chancery against defendant for adultery committed with one Harry Gabain on March 30, 1914; that defendant answered said petition denying guilt; that on August 2, 1914, he condoned the act of adultery then complained of and renewed matrimonial cohabitation with her until January 22, 1915, when he and defendant separated by agreement; that defendant at the time of renewal of matrimonial cohabitation did so with full knowledge of the alleged acts of adultery charged in her cross-petition and condoned the same. (Case p. 24-25.)

The advisory master who heard the case advised a decree in favor of the petitioner, awarding him the custody of the child, and filed the following conclusions:

> "This action is for a divorce a vinculo on the ground of adultery.
>
> "2. As to the matters of recrimination charged by the defendant, there is no evidence worthy of consideration of the alleged adultery of the petitioner with Mrs. Dort or Mrs. Hofstatter. But even if there had been, such adultery would have been

barred by condonation. As to the alleged adultery with Mrs. Delvey, it rests upon the testimony of a single witness, is denied by the petitioner, as well as by the person who was said to be in the next room. The time of the alleged occurrence and the surrounding circumstances make the commission of the act of adultery extremely improbable. This charge, therefore, is not sustained.

"3. The only other defence is connivance. This is the most serious of the three defences which the defendant sets us, and it deserves somewhat etxensive consideration. onnivance is, of course, an affirmative defence and the burden of proof is on the defendant.

"This is the second divorce case between the parties, a former suit brought by the petitioner against the defendant having been instituted on April 2, 1914. Although abandoned it has never been disposed of on the record. That suit was brought by the defendant with one Harry Gabain, at the Amsterdam Hotel, in New York City, on March 30, 1914. During the pendency of that suit, and in August, 1914, the parties resumed cohabitation, and continued to live as husband and wife until January, 1915, at which time they entered into a separation agreement, in the usual form. The defendant set up housekeeping in an apartment in Weehawken. Her life there, and until the time of the adultery proved on October 24, 1915, was, to say the least, of a very fast nature. There is no question that she associated with women of none too scrupulous morals; that she was in the habit of going out to balls and picnics with men, her ac-

quaintance with whom was little more than casual, remaining out until very late hours, and that she was a frequenter of many salons, where she drank with men, in Hudson and Bergen Counties and in the City of New York.

"The petitioner, having reason to suspect the infidelity of the defendant, hired detectives and had her put under surveillance. One of his detectives, Anna Steneck, wormed herself into the friendship of the defendant, and passed much time in her society as well as in the society of some of her male associates. On the day of the adultery in question, the defendant was called up on the telephone from the saloon in Hoboken, kept by Schmidt, the particeps criminis, by one Stites, a lawyer in Hoboken, and on his (Stites') invitation she and Anna Steneck and Stites and Schmidt went on an automobile trip, winding up, so far as she and Schmidt were concerned, at the defendant's residence, at an early hour in the morning. The defendant had called at Schmidt's saloon at least once before, but there is no evidence to connect that call with either the petitioner or his detective. There is reason to believe that she called there at that time because she was on very friendly terms with a man named Deturo, who had a junk business almost immediately opposite Schmidt's saloon, and who frequented that place.

"The defendant claims that the petitioner's connivance goes back to the date of the occurrence at the Amsterdam Hotel, in March, 1914, and that having been guilty of connivance then, under the law he has

connived at all her infidelity since. Of course, there is no question that connivance may be proved by circumstantial evidence, and in most cases can only be proved by circumstances. There is no direct evidence of any connivance on the part of the petitioner in March, 1914, and only a very bare inference. That inference, if it has any evidential value at all, is to a very large etxent destroyed by the fact of the subsequent condonation of the petitioner, and his living with his wife after that time. It is hardly reasonable to suppose that if the petitioner had, in the vernacular, 'put up a job' on his wife to get rid of her, that he would thereafter resume cohabitation with her, and it is the defendant's testimony that cohabitation was resumed at the earnest request of the petitioner. I cannot find any connivance present as early as the occurrence in March, 1914.

"It is further claimed that the petitioner through his agents, the detectives, encouraged the commission of the act of adultery, and if it were a fact that Anna tSeneck, who was the agent of the petitioner, had entrapped the defendant into the commission of adultery, there is no question that under the case of Rademacher vs. Rademacher, 74 N. J. Eq. 570, the petitioner would be barred of any remedy. It is equally true that if the petitioner in any way consented to or aided the act of adultery, he would be barred of relief. Delany vs. Delany, 71 N. J. Eq. 246; Cane vs. Cane, 39 N. J. Eq. 148.

"The law is clear that if a husband sees that his wife is about to fall it is his duty to

throw around her the necessary safeguards to prevent that fall. In the present case, there is nothing to show that the petitioner or his agents were at all responsible for the fall of the defendant. It is, to my mind, clear that if the defendant had not already committed adultery at the time of the act with Schmidt, that she was ready to do so, and that petitioner's efforts to prevent it would have been of no permanent avail. I am satisfied that she had committeed adultery with Gabain on March 30, 1914, and it is not at all unlikely that in the many carousals that she herself admitted as having taken place between January and October, 1915, she had been guilty of immoral conduct. There was nothing at all to my mind that the petitioner was called upon to do in that state of affiars. The petitioner had every right to have his wife watched to get evidence, and I find from the testimony that that was all that he did do.

"Testimony, much of which seems to me now to be immaterial, was introduced into the case to show cruelty by the defendant toward the petitioner; improper solicitation on the part of the petitioner of other women, and in particular of an abortion which the defendant claims was performed upon her under the compulsion of the petitioner. Assuming the admissibility of these facts on the question of connivance it is sufficient to say that the defendant has not established them by a preponderance of evidence. As to the alleged abortion, particularly, she is contradicted by the evidence of her own admissions to the physician who treated her

both before and after the operation, and who advised her against having it done.

"I find, therefore, that the defendant has not established the defense of connivance, and a decree nisi for absolute divorce in favor of the petitioner will be advised.

"The custody of the child of the marriage will be awarded to the petitioner, with proper provisions for access of the mother to it at convenient times. If counsel cannot agree upon the decree, I shall be glad to hear them as to its settlement, on notice.

"Before the decree in this case is advised, however, the petition in the former case should be dismissed."

"I have already concluded that a decree nisi should be advised in favor of the petitoner.

"The decree presented to me awards the custody of the child of the marriage to the petitioner. The defendant's counsel now insists that the petitioner has disentitled himself to apply for the custody of the child by reason of the fact that the separation agreement entered into between the parties prior to the occurrence of the act of adultery by the defendant gives the custody of the child to her.

"In other words, the claim is that the parties having dealt with the subject matter of the custody of their child, this Court has no power with reference thereto.

"This contention is in my opinion absolutely without merit.

"I am entirely satisfied that whether a decree of divorce leaves such an agreement unaffected so far as the financial relations or property rights of the parties are con-

cerned or not, that is as to matters involving themselves only, it cannot affect the ultimate guardianship of the Chancellor over the infant children of the marriage or the power vested in him to dispose of the custody of children whose parents are separated.

"To every such agreement the State as represented by the Chancellor is an implied party. In such a state of affairs, it is the duty of this Court to safeguard the interests and welfare of the child in its own interest as well as in that of society.

"The present case illustrates to a marked degree the danger of a different conclusion. To enforce the provisions of the separation agreement and entrust the child—a daughter—to the custody of the defendant would in all probability be fraught with the most serious consequences to the child's future welfare. The habits and associations of the mother are such as to make her in every way an unfit companion for the child. I am entirely satisfied that the example and conversation of the mother would at the least seriously interfere with the moral education of the child and leave ever present the danger of her being led into the paths of immorality.

"A separation agreement disposing of the custody of a child should, it seems to me, be enforced only when its provisions accord with the child's best interests, as the Court views them.

"Considering, therefore, that the child's interests can be best subserved by giving her custody to the father, I will so advise.

"The decree will contain provisions for

visits by the mother at the place where the child is kept, which must be in this State.

"On proper evidence of the reformation of the mother, or other circumstances, application to vary the decree may be made at any time in the future."

The defendant in her petition of appeal states three grounds of appeal, namely :

1. That the act of adultery was not proven against her.

2. That adultery, if proven against her, is the result of connivance by the petitioner.

3. That the petitioner is guilty of adultery.

(P. 3, fol. 10-30.)

The defendant in her brief argues five points or reasons for a reversal of the decree entered in this case, namely:

1. That petitioner connived and conspired to have defendant caught under compromising circumstances with Gabain.

2. That defendant connived to have William Schmidt found at defendant's home under compromising circumstances.

3. That petitioner is guilty of adultery with Mrs. Dort.

4. That petitioner is guilty of adultery with Lillie Delvey.

5. That petitioner should not be given the custody of the child.

In this brief we will deal with these reasons in the order given and will state the evidence affecting each point, if deemed necessary—as part of that argument, after first setting down a brief resume of the law on connivance as we have found it.

ARGUMENT.

The Law Governing Connivance.

Connivance in the law of divorce is the complainant's consent, express or implied, to the misconduct alleged as a ground for divorce. A *corrupt intent* on the part of the complainant that the guilty party should commit the offence is generally considered an essential element of connivance.

14 Cyc, 644.

Conivance may be implied from acts and omissions of the complainant naturally tending to bring about the other party's adultery or otherwise showing the complainant's consent thereto. However, mere negligence, folly, dullness of apprehension or indifference will not suffice to charge the complainant with connivance.

Hoar vs. *Hoar,* 3 Hagg. Eccl 137; 5 Eng. Eccl. 51 and other cases in note 66.

14 Cyc, 645.

The acts or omissions relied on to constitute the defence must be such as to show a willingness that the guilty party should commit the matrimonial offence complained of. The husband's failure to protect the wife against temptation will not relieve her from the consequences of her adultery unless he actively or passively consents thereto, and if he suspects her of the offence he may take measures to secure proof to be used by him in an action for divorce without being guilty of connivance.

14 Cyc, 645-6.

Connivance is not merely refusing to see an act of adultery, but also wilfully abstaining from tak-

ing any step to prevent adulterous intercourse which, from what passes before the husband's eyes he must reasonably expect will occur.

Gipps vs. *Gipps,* 11 H. L. Cas. 1; 10 Jur. N. S. 641.

A corrupt intent on the part of the complainant is essential.

Dennis vs. *Dennis,* 68 Conn. 186.

In this State the Court of Errors has said in *Warn* vs. *Warn,* 59 N. J. Eq. 642, that the facts necessary to constitute connivance must have a *direct* and *necessary tendency* to cause adultery to be committed; and that *corrupt intent* is the *very essence* of connivance; and that the gravity of the offence, its infrequency and the general presumption of innocence requires that this defence should be established by *direct* and *conclusive* proof.

And in *Lehman* vs. *Lehman,* 78 N. J. Eq. 316, Vice-Chancellor Emery, speaking on p. 318, says:

> "All of the cases in our courts which have considered this defence of consent or connivance have applied the doctrine to acts or conduct which were in themselves of such a character as to *cause* or *tend to bring about the crime.* * * * This statement, however, does not include all possible cases of connivance, a matter which is not within the scope of this decision—but, while giving the meaning of 'connivance' or 'consent' as it appears to be drawn from the decisions, I intend now only to decide that the watching of a suspected husband and suffering

him to avail himself of an opportunity created by himself without any previous knowledge or encouragement on the part of the wife is not a connivance or consent on her part which would bar divorce. This was the view taken by Vice-Chancellor Pitney in Brown vs. Brown, 62 N. J. Eq. 62-67 and seems to be the general, if not universal, rule in other American courts."

9 Am. & Eng. Eccl. L. (2nd Ed.) 830;
Wilson vs. *Wilson*, 154 Mass, 194;
2 Bish. Mar. & D. (6th Ed.) Sec. 9;
1 Nels. Div. & Sep. Sec. 485.

POINT I.

There was neither connivance or conspiracy to have defendant caught under compromising circumstances with Gabian.

The petitioner testified that he first began to suspect his wife because of a sudden indifference which she showed (p. 252 fol. 30, etc.,) that one night when he was lying on a couch in his dining room she excused herself and said she wanted to go "*to the store a minute*" (p. 254 fol. 10). There is a drug store with a booth telephone two blocks from the home. He telephoned this drug store to ask the proprietor to let him know if his wife used this phone (p. 254 fol. 30). Instead of the proprietor, his wife's voice came over the wire saying, "Is this Gabain?" Petitioner said, "Yes." The wife said, "Is Harry there." The husband said, "Hold the wire a second," and hung up the receiver (p. 255 fol. 1-10).

The defendant admits this occurrence and says she called up Gabain to "*ask him if he wanted his*

umbrella which he left at the house'' (p. 296 fol. 26; p. 301 fol. 20, etc). There was a telephone in her house, but no booth (p. 301 fol. 30-40).

Thereupon on a Sunday he employed William Corridon, a detective, to watch her, and the latter set a boy and a man on the case (p. 256 fol. 1-10).

On March 30, 1914, petitioner had a funeral in afternoon. Instead of going he concealed himself in the undertaking establishment when he saw his wife and her sister, Mrs. Cane, approaching, and then saw his wife abstract $25 from his safe (p. 256-7).

The defendant admits taking the money (p. 130 fol. 30). *She gave it to Gabain* (p. 131).

The petitioner had heard his wife was going out with different men (p. 250 fol. 20).

On March 30, 1914, at half-past five in the evening, petitioner was at home. Defendant came downstairs ''all powdered up'' and dressed to go out. She said she was going to a euchre in Bayonne (far from West Hoboken) (p. 250 fol. 30). Petitioner watched her after she left the house. The man and boy were following her. She ran, jumped upon a car and the man and boy lost her. Petitioner then went to his office, called Corridon at his office in Hoboken on the telephone and said: ''My wife has gone down on a car. *I don't know whether she is going to Fourteenth Street or Union Hill.. You go* to the Ferry *and wait for the car.* He then described how she was dressed and heard nothing further until quarter after seven, when Corridon telephoned him, ''I have got your wife over here.'' ''Who is she with?'' asked petitioner. ''I don't know the fellow. I will meet you at Twenty-fourth Street and Lexington Avenue (in New York City) (p. 251)'' said Corridon. Petitioner then went to New York and arrived at Twenty-fourth Street and Lexington Avenue about

a quarter to eight. Corridon then told him he needed a witness. He sent for Mr. Lenz and about a quarter after nine they finally went upstairs (in the Amsterdam Hotel) (p. 252), forced their way into a sleeping room and found Gabain and defendant. *Gabain had his suspenders down, "laying on the side of his pants," his coat off and top shirt off; only his pants and his undershirt on.* Defendant was sitting in the bathroom, on the bathtub behind the door. She had on a one-piece dress. In a couple of seconds she could have had it on. *The bed was mussed; it was uncovered,* and two full glasses were standing there (p. 253).

See also testimony of Lenz (pp. 244-246).

The defendant says as to the occurrence:

I went to New York with Mr. Gabain, because he telephoned and said I could find my man there if I wanted to go with him. He could show me where my husband was. *My husband had told me he had gone to a champagne supper.* I left home at ten minutes of six in the evening. *My husband was then at home. He asked me where I was going and I told him to a euchre* (p. 124). I met Gabain in the tube (Hudson Tube, Hoboken) sitting on a bench. The train was right there and we sat in the train. He said, "We will go right ahead." We did not talk much. He did not tell me where we were going; he said he would show me where Mr. Schlemm was. Then we got out of the subway. I don't know where we went. I could not say. I just went with him. We walked about five or ten minutes, and then we came to a place. It looked like a cafe or a restaurant He says "we won't eat in here," *and would go upstairs and Schlemm would come in and I would see him* (p. 124). Then we went into the hall alongside of the restaurant to the elevator and went up. He got out of the

elevator and I went into the ladies' lobby. I excused myself and left him. I went there for a certain purpose. When I came out he was standing there waiting for me to come out. There was a bellboy to show us a room. He unlocked the door; it was on the same floor. *We shut ourselves into it just as the bellboy walked away.* There was a little sitting room (p. 125), a set of portieres separating the bed from the sitting room, and a bathroom. There was a table there and Gabain had ordered the drinks to come right up; he had called the waiter right away. After that Gabain and I was in that room alone for 10 or twelve minutes. Then a knock came to the door. Gabain didn't say anything. I says, "What is that knock?" He says, "Oh, well, that is nothing." By and by another knock came and I says, "Why don't you open that door; is that door locked?" And he says, "Be quiet," and then I says, "If you don't open that door, I will open it myself." After that I opened the door and somebody came in and I saw Mr. Schlemm (p. 126) and Mr. Lenz. I had not been in that bed in that room and was perfectly dressed. Gabain did not have all his clothes on. He had his collar and tie off. The drinks were standing on the table and had not been touched. Gabain and I had not quarrelled in that room. We were on perfectly good terms, but not friendly because I expected my husband to come right into the next room. I expected to catch him (p. 127). I don't know whom I expected to be with him. Gabain had told me he would be there (p. 128).

When I left hom that night I took $25 out of the safe. *I gave it to Gabain on the way home* to hire the taxi. I thought he didn't have enough money, and I said, "Here's $20." *That was on*

the way home.. He says, "Do you want your *money back now,*" and *I says, "No, I will go right home"* (p. 131).

My husband then filed suit for divorce and I filed an answer. In it I charged him with adultery and being untrue to me with Mrs. Dort and Hofstetter. He also left me immediately and stayed away for four months. Then he *came back to see me and made up.* He asked me to lead a decent life, but I could not make him any such promise (p. 132). *After he asked me that I did not answer him, and then he took up living with me again,* and we lived together until January, 1915, when we separated under an agreement, and he bought a record with the title "Let By-gones be By-gones," and played it to me, and I had my by-gones set to music (case p. 133).

Defendant says she was lured to the Amsterdam Hotel through a conspiracy, of which Gabian was a part, and that the position in which she found herself on the night of March 30, 1914, was brought about by the connivance of her husband.

She makes the claim because her husband, on February 12, 1914, when Gabain, who was intoxicated and who had an $800 diamond ring and some money (how much does not appear) was about to be put to bed upon two chairs by the proprietor of a bowling alley, refused to permit this and took him to his own house to sleep (p. 86 fol. 1-20), and because she was asked next morning to give both her husband and Gabain a drink of water while they were in bed and because she was asked to make breakfast for their guest (p. 88).

There is no evidence in the case to show where Gabain lived.

The petitoiner says as to this occurrence that Gabain was drunk on the particular night that he took him to his home *because his wife wanted it*

(p. 277). But that he was also a friend of his and he did not object to taking him home; that he stayed all night and they went out together in the morning; that he had been called out of the house early that morning and that defendant had volunteered to get breakfast ready for Harry (p. 278).

Gabain was never again brought to the house (p. 88 fol. 30).

Petitioner and Gabain were both members of the same Masonic lodge (p. 88 fol. 30).

Petitioner has no recolection of the second night Gabain is supposed to stay. It was "just the one time; I believe it was," according to his testimony (p. 278 fol. 30).

There is no other evidence of any conspiracy with or connivance at what happened on March 30, 1914, at the Hotel Amsterdam, and we submit that the evidence just referred to has no probative value whatsoever on either the question of connivance or conspiracy.

Opposed to the theory of connivance and conspiracy we have the testimony of Barbara Jennings, who worked for the Schlemm family in the Spring of 1914, who testifies that Mrs. Schlemm would frequently recieve telephone messages while Mr. Schlemm was out (p. 203). The fact that defendant left her home apparently for the express purpose of telephoning to Gabain *secretly;* the fact that on March 30th she arrived at the Hotel Amsterdam not later than seven o'clock in the evening, when Corridon telephoned petitioner to come over, *and remained in a bedroom with Gabain until nine-thirty that night;* the fact that the bed was mussed and Gabain only partially dressed when discovered; *the fact that she drove home with Gabain in a taxicab after the discovery and allowed him to retain her money,* and finally the fact that the aggrieved husband, after four

months of separation, was willing to let by-gones be by-gones and took her back.

There is but one other piece of testimony which might be mentioned in connection with this occurrence:

Corridon, in response to a *leading* question, said "Yes, sir," and thus put upon the record that he had been told that defendant would be with a man and would come down to the tube. As a matter of fact, she was not with a man when she came to the tube; the man was there waiting for her. Again petitioner had seen her get on the car *alone* and consequently would not be likely to say she was with a man. Corridon is mistaken in this testimony. He testified on March 9, 1916, two years after the occurrence, without notes, and a reading of his testimony will convince that the claim he makes that his memory is bad is justified by the facts. And petitioner swears that he did not tell Corridon that his wife was with a man or was going to meet a man at the tube (p. 280 fol. 20-30).

We submit that there is no evidence whatsoever of connivance or conspiracy to have defendant caught with Gabain.

POINT II.

Petitioner did not connive to have William Schmidt found at defendant's home under compromising circumstances.

Petitioner showed that on October 24, 1915, defedant was living separate and apart from her husband in an apartment consisting of a kitchen, a sititng room, a bedroom and a bathroom at 470 Park Avenue, Weehawken, N. J. She then had the child which was living there with her. On that day about two o'clock in the morning petitioner

broke into this apartment with Detective Corridon and a friend, Frederick Schoenfeld, and found his wife with Schmidt in the bedroom. The apartment was dark when they entered; Corridon carried a flashlight, with it found the bedroom and they entered it.

When found the wife was clad in a night shirt only, while Schmidt had on his under shirt and nothing more.

The bed was mussed as if it had been used.

The child was not in the apartment nor was any one else there.

Schoenfeld testified that he went to the apartment house and arrived there about 2 A. M., and remained outside the building until a window was raised and he entered the apartment through it (p. 30 fol. 30). The apartment consisted of three rooms, one a bedroom. There he saw Mr. Schlemm, Mr. Corridon, Mrs. Schlemm and a man named Schmidt, whom he had never seen before (p. 31 fol. 1-10). Mrs. Schlemm, the defendant, was in her night gown and had nothing else on. Schmidt had on his under shirt, that's all; and the bed looked as if it was used (p. 31 fol. 20-30). There was no one else in the apartment. He went out and brought in two policemen and then heard quite a bit of conversation betwee Mr. Schlemm, Mrs. Schlemm and Mr. Coridon. Mrs. Schlemm said, "Well, you have got me again," and he (Mr. Schlemm) said: "Well, I have got you again," and Mrs. Schlemm said, "Well, I found a man I like better than I did you" (p. 32 fol. 10-30). This happened before the policemen came in. There was other talk at this time, but witness does not remember it. After he came back with the policemen Mrs. Schlemm passed the remark while she was putting on her shoes that all he (Schlemm) was after was the little one, and he was not going

to get it because she could prove he was not the father of that girl. She said this to the witness and to the two policemen (p. 32 fol. 30, p. 33 fol. 1-10). The witness had never seen Schmidt before and found out he was Schmidt from the man himself and from a card he had in his pocket. Mr. Schlemm asked defendant where the child was and she said she did not know (p. 39 fol. 20-40). After it was all over everybody except Mrs. Schlemm left the apartment, and when they got out on the street Schmidt "was creating a scene, and all this and that, and asked to be protected *so that his mother would not hear about it* (p. 41 fol. 10).

Tim M. Corridon, the detective, said he had met Mrs. Schlemm but twice, once at Amsterdam Hotel and then at Palace Court (p. 44 fol. 20). He did not know Schoenfeld. Went to Palace Court with Mr. Schlemm about two A. M. because Schlemm called him on phone while he was in bed and said he wanted him right away. This was around one o'clock. Broke into the apartment, ran to the back of the house where the bedroom is. He had flashlight. Schlemm said, "Hold up your hands" (p. 48). Mrs. Schlemm ran out of apartment dressed only in her nightgown, from the bedroom. He brought her back to the apartment and Mr. Schlemm and a man who was dressed in his under shirt were in the bedroom, and this man was pleading, saying *he was a married man and had an old mother, and it would break his mother's heart and break up his home, and all that; the notoriety would break up his home.. The bed was mussed up* (p. 49). The man was also telling Mr. Schlemm that he did not know the woman was married, and he met her only once before, and he was an innocent party. While they were all there talking Mrs. Schlemm struck Corridon in the nose and

threw a clock at Mr. Schlemm. Schlemm said, "I will take them down" and I said, "Get your clothes on, and we will take them down." Corridon said this to Mrs. Schlemm and Schmidt (p. 50). Mrs. Schlemm said to her husband, "I got no use for you." She said she did not care what he did; to go ahead; he could go as far as he liked. Sre got dressed and this man Schmidt was pleading and pleading to let him go and not to show him up. He said he had a family; he also said, "You are liable to get into the same boat yourself, or any man, that I am in" (p. 51). And then two policemen came in. Mrs. Schlemm then said, "Go ahead and arrest me; take me in; you have got me"; that is all (p. 52) and she said the child was not his; she was going to get the child and he could go as far as he liked and that she had found a man she liked better (p. 53). The witness was not on that case at that time and did not know Anna Steneck (p. 54).

August Klassen, one of the police officers, testified Schlemm said, "I want you to arrest Mrs. Schlemm and this gentleman here, "pointing to a man that he introduced as Schmidt, later on. Mr. Schmidt then turned to Mr. Schlemm and says, (p. 65) "Is it necessary to get me mixed up in this. You have got me; I'm guilty, and you have got my address and you can get me at any time you want me. Then Mr. Schlemm and Mr. Schmidt went into the bedroom. Then Mr. Schlemm, Mr. Corridon and Mr. Schmidt came out of the bedroom and Mr. Schlemm said, "It is not necessary to make the arrest, officers, but this is Mr. Schmidt. In case I call on you will you know the gentleman." Mr. Schlemm then showed us the bed. Then Mr. Schlemm, Mr. Corridon and Mr. Schoenfeld started to walk out and Mr. Schmidt and Mr.

Flood (the other officer) and myself walked out with him, after they had gone. We walked up Park Avenue with Schmidt, he asking us to stay with him until the car came because he did not want to come into contact with Mrs. Schlemm any more (p. 67). We walked as far as Park Avenue and Hywood Terrace and stood there when Mrs. Schlemm came again and got into conversation with Schmidt. She followed us up. She started to talk to Schmidt. Patrolman Flood then said, "Now, Mrs. Schlemm, the best thing for you to do is to get a separation and keep this thing quiet to save this man here Mr. Schmidt." She says, "I wouldn't, because he is after the child, and I will not give it to him because he is not the father of it." I then said. "There, Mrs. Schlemm, at the time the child was born I am sure you were good friends; how's that?" Well," she says, "there were too many of them there." Then the car came and Mr. Schmidt went on the car and I walked east on Highwood Terrace (p. 67 while Mrs. Schlemm stood there with Flood (p. 71 fol. 10).

Robert Flood, patrolman swore: "When we got in there Mr. Schlemm says, "Lock up Mr. Schmidt and Mrs. Schlemm," and then Corridon spoke up and said something to Mr. Schlemm—or Mr. Schmidt spoke first and says, "This is bad enough to be caught in a place; bad enough, without being arrested besides; you have got me right. I am just the same as any American citizen. I took a chance and you've got me, all right. You have got my name and I will appear at any time you call on me." So the three went into the room together. When Mr. Schlemm ordered us to arrest him Schmidt also said he had a good mother and a good wife. And then they came out of the room and he(Schlemm) said, "There is no occasion for

the arrest; I have got his name. You gentlemen will know him if you see him," and I said "Yes." Then Mr. Schlemm took us into the bedroom and showed us the bed. Then all went out except Mrs. Schlemm (p. 73). She came to the door and called Schmidt back. Mr. Schmidt asked Schlemm if he could go back and Schlemm said it did not make any difference. Schmidt did not go back. He said he would not go back. Then Roundsman Klassen, Schmidt and me walked up to Highwood Terrace and stopped there about a half hour. We waited for the half-past car for Mr. Schmidt. *He wanted us to stay.* Before the car came Mrs. Schlemm came along. She stepped right in front of us and spoke. Schmidt and she were talking together, but Mr. Schmidt had nothing at all to say, only it was on his mother's account and his wife's that he wanted it kept quiet. I then said to Mrs. Schlemm, "The only thing to do is to get a divorce and get it in as quiet a way as possible, so as to save this man on account of his wife and mother." She said she wanted the young one. I says, "Let him have the young one and everything will be all right" (p. 75). "No," she said. She wouldn't let the young one go because he wasn't the father of it. Mr. Klassen said, "How old is the young one now," and I think she said the *child is eight years* old. He said, "You were on pretty good terms at that time weren't you," and she says, "*No, there were too many there.*" I don't know what she meant. Then Schmidt took the car and *Mrs. Schlemm went home with the fellow that runs the saloon across the corner; he came across the street.* (p. 76).

The defendant explains the presence of Schmidt in her apartment at that time as follows:

On October 23, 1915, at seven-thirty P. M., while defendant was at home alone with her child, my

telephone rang. I answered the call and a male voice said, "I am Jack Forest." I told this Jack Forest that I knew nobody by that name; thereupon the voice said, "I will tell you; I am Lawyer Sties from Hoboken, and I am talking for Mr. Schmidt. Mr. Schmidt is right here alongside of me." I replied, "I don't know the man; how did you get this phone number?" He said from Sam Deturo. I said, "What do you want?" He said, "I want to ask you to go out for an automobile ride." I did not think it was Lawyer Stites at that time; I thought it was some friends of mine trying to play a joke. I did not know Mr. Stites and had never seen Mr. Schmidt. Mr. Deturo is a firend of mine (case p. 100).

They came up to the house about twenty minutes to eight in the evening. Over the phone I had said, "Have you an automobile with you?" and he had said "Yes." I had then replied, "If you can ride up this way, when you get in front of the house blow your horn three times and I will know who it is and will come out." I thought it was somebody fooling and when I came out it was two strangers. Mr. Stites got out of the car and told me to get in. I said, "I don't know you." He said it is merely for a little ride for a good time; we would like to have you go along. I told him I did not like to go and I said, "My friend is coming at eight o'clock and *I will ask her if she wants to go.*". I did not know it was Mr. Stites. He told me he was Mr. Stites, and so the little one (the child) came running out, and in the meantime it was kind of cold standing there, and I says, "If you want, you can step inside awhile until she comes." So Anna Steneck came and I followed her into the bathroom and I says, "Did you meet those two fellows?" She says, "No." I said, "One says he is Mr. Stites and the other one is

Mr. Schmidt. I introduced them (p. 101) and she said, "How do you do?" I had asked her in the bathroom if she wanted to go out for an automobile ride and she said she would go. I then said, "Do you want to go," and she says, "Yes." Then I didn't know what to do with the litle one. I couldn't take her to my mother's because mother and sister were gonig to the "movies." Then Miss Steneck says, "I will tell you my mother and sister are going to the ——— night," and I gave her sister fifty cents. Then we drove off; that is Anna Steneck and I, Mr. Schmidt and Mr. Stites. We got as far as Union Street when the car stopped. Mr. Schmidt came around and says, "Come on and sit in the front," and I sat in the front seat and Mr. Schmidt drove the car and Miss Steneck and Mr. Stites sat in the back seat. We drove to a place and had drinks there and *we drank nothing but celery tonic with beer in between.* Mr. Schmidt and Mr. Stites paid for those drinks. While we were there Mr. Schmidt and Anna Steneck suddenly saw Detective Spitz and Anna says, "Gee whiz; here is Detective Spitz; come on." I put on my coat and we went off and jumped in the automobile and went right around the corner to a place called the Grand View, and we stopped in there and put nickles in the piano and played music, and we were dancing in there and had some more drinks, *celery tonic, and beer* in between. Then the hotel keeper came in and asked (case p. 102) Mr. Schmidt if he wanted any rooms upstairs. "I have just two rooms," he says, "I thought you couple wanted rooms, because you are in here first," and Mr. Schmidt says "No." So all of us went away from there and came home, and on the way we had to pass Annie Steneck's home, and I thought we could drop Anna on the way, but they said. "No, we will take Mrs.

Schlemm home first," and they took me home first and Mr. Schmidt gets out of the car and says, "I will wait until you come for us from Anna Steneck's," And Mr. Stites took Anna Steneck home, but never came back after Mr. Schmidt. We got to our house a few minutes after one in the morning. Mr. Schmidt had on a light over coat; he also had a heavy coat in the automobile. *He took that out of the car and put it over his arm.* I walked in and he followed me. Around two o'clock in the morning the house was broken into (case p. 103).

I had gone out with Sam Deturo without my husband. He is in the junk business (p. 100 fol. 10). I know Schmidt's saloon is on the corner of Fifteenth Street and Willow Avenue (Hoboken) (p. 111 fol. 1). I never met Sam Deturo in Schmidt's saloon, but I have met him and went with him to a saloon on the street on three or four different occasions, sometime before Labor Day, 1915. Can I correct myself? I said saloon; I never went in a saloon. It was a cafe and a restaurant. It was Lohman's. The dining place of a hotel in Union Hill (p. 111). I was with him there three times. Miss Louise Manfred was with me once, Anna Steneck on another occasion and Mrs. Bamblick on the third. I have been to one other place with him, but it was not a drinking place; it was a private house in Hudson Heights, where they serve Italian dinners (p. 112). The janitor of 488 Park Avenue (where I had lived) gave me one of (Detective) Spitz's cards with my husband's name and telephone number on it in Spitz's hand writing (p. 113 fol. 30) and I knew Spitz to be a detective for a long time, just by hearing things (p. 115 fol. 1-10).

When I got back to my house on the night of the 23rd to the 24th of October it was one o'clock.

I went into my apartment and Schmidt came in wtih me, although I told him not to. He walked right in and I did not force him out. After I came in I left the door to the apartment unlocked. There are three rooms and a bath and a private hall, a bedroom, a living room, a kitchen and a bath (p. 115). I did not take my things off right away when I came in. I was in a few minutes when I asked him to go home. I wanted to go to bed *after I had drank quite a few highballs with him.* I know there is alcohol in that drink. *I drank nothing after I arrived at home,* and there was nobody in the apartment but Schmidt and myself. I was in there ten to fifteen minutes when I decided to go to bed and asked him to go home, because I wanted to go to bed. He sat *out in the kitchen and I went into my bedroom and undressed. I did not lock the door; I closed it. I thought he was man enough not to come in. I undressed, but did not go to bed. I opened up the bed, took the spread off and pulled down the blanket* (p. 116). *After I had thus prepared the bed he walked into the bedroom. I was in my night dress when he walked into the bedroom. I walked into the other room. He stayed in the bedroom.* The next I saw of him he was just about to come into the sitting room. I did not know if he had his clothes off. I did not look around. I first knew that he had his clothes off after the door was broken open (p. 117). The light was burning in the living room, but not in the bedroom (p. 112). *I was not interested in what he was doing, or in what might happen to me. I knew nothing; it was really the first time I had met the man, and he could not get very familiar the first time I met him* (p. 120). *I don't see why I would have had any trouble in getting him out of my apartment if I had wanted to; not if I had forced him out* (p. 120

fol. 20). The bed had not been slept in. I think, maybe, *it looked that way, because I sat on the end of the bed to take my shoes and stockings off, and it may have looked* that way, but nobody was in the bed at all (p. 121). I knew in October, 1915, that my husband suspected that I was not true to my marriage vows (p. 122).

William Schmidt was subpoenaed by defendant but was not called as a witness by her. The petitioner thereupon put him upon the stand and he testified. On the 24th of October, 1915, between the hours of one and three in the morning I was in Mrs. Schlemm's apartment. I did not know her prior to that time. I did not know Mr. Hansen (the detective employed by Schlemm) or Frank Hansen (his brother). I did know Mr. Stites. Mr. Schlemm had nothing to do, so far as I know, with getting me to that apartment that night. I knew Sam Deturo for several years (p. 230). He is a frequenter of my saloon and used to come there almost every day. He quit coming about six or eight months ago (date of testimony March 10, 1916). He came there up to October last; we had a little quarrel. Mrs. Schlemm had been in my place before October 24, 1915. It was Sam Deturo's idea to go and call up Mrs. Schlemm. Sam called her and Mr. Stites answered the phone (p. 231) and Sam Deturo was there when we made the appointment. It was made from my saloon and I had some conversation with Sam Deturo then. He just asked me if I wanted to take a ride and call up some friends of his. Mr. Stites agreed to it first of all and I was agreeable to taking my car (p.232). Deturo was satisfied that we should go on the ride and then we went on the ride—Mr. Stites, Mrs. Schlemm, Miss Steneck and I. I had never seen Miss Steneck in my life. I met her in Mrs. Schlemm's apartment; that was the first time

I saw her (p. 233). I don't know if I expected Stites back that night (after the ride). I did take off my clothes in that apartment that night. I don't recall that Mrs. Schlemm took off her clothes in that apartment, not until later on. I know she did take them off. Case p. 234.)

Joseph F. Hansen, a detective, was employed by Schlemm in September, 1915, to work on the case (p. 172). He employed Anna Steneck to work on the case and she did so until October 23, 1915. Hansen did all of the work for Schlemm and he thinks Schlemm never saw Anna Steneck in his presence (p. 173). He also had his brother (Frank Hansen) working for him on the case (p. 174).

Anna Steneck was called as a witness by defendant, but was merely asked to identify Frank Hansen as a man who had visited Mrs. Schlemm with her (p. 175).

William Schlemm, the petitioner, testified "I did not know William Schmidt before meeting him at the Palace Court" (p. 250).

Mrs. Schlemm is a woman of loose morals. If we believe her, she had been trapped in the Hotel Amsterdam with Harry Gabain by the aid of Harry Gabain and had then *ridden off in a taxicab with the man who had stolen her good name and robbed her of her honor.*

She liked being trapped.

In October, 1915, she knew that her husband suspected her, yet on the 23d day of that month she was willing to be trapped again. She probably had been trapped many times between the incident at the Amsterdam Hotel and October 23, 1915, without the knowledge of her husband. Thus, she separated from her husband on or about January 22, 1915. According to his testimony he had intercourse with her the last time about the first week in January, 1915 (p. 249 fol. 30); she admits this

(p. 204 fol. 20); then realizing the purpose of the question, contradicts herself. And Dr. Olpp swears that between April 10th and 15th, 1915 he treated her for *an incomplete abortion* of a foetus conceived about two and one-half months before (p. 206-7). She associated with women of loose morals. Read the testimony of Louise Manfred (p. 190-196).

She was in the habit of going out to balls and picnics with men whom she met frequenting public drinking places, remaining out until the small hours of the morning, and visited saloons with them in Hudson and Bergen Counties and in the City of New York. She herself so testifies (p. 136-160). She visited these places with Deturo, with Kelt, with Prior, with Poletti, with Kahlin, with Wolff, with Bonner and undoubtedly with many others.

She charges that her husband, through Anna Steneck, connived at her downfall and led her into a trap with Schmidt. Yet Anna Steneck had nothing to do with bringing about the meeting and merely accepted *Mrs. Schlemm's* invitation to accompany her upon a trip, and the presence of Anna Steneck upon this trip did not have the "*direct and necessary tendency to cause the adultery,*" which was thereafter committed, to be committed. If Anna Steneck had not been expected at the house upon the night in question, undoubtedly Louise Manfred or some other of Mrs. Schlemm's "lady friends" would have filled the foursome. There is no evidence that Anna Steneck did anything to encourage or induce the adultery, and if Mrs. Schlemm did not commit adultery and was found in a compromising position with Schmidt, it was due solely to her own conduct in permitting Schmidt to enter her apartment when

she knew nobody else was in there, *and after Anna Steneck had left to go home.*

Again, to believe Mrs. Schlemm that she was entrapped, we must believe that Schmidt was the tool of Schlemm. The fact that he is a married man; that Schlemm threatened to arrest him; that he pleaded for mercy because of his wife and good mother; that Mrs. Schlemm called him back when he was leaving; that she followed him into the street after he had left and talked with him; that he was then still worried about the notoriety and its affect upon his wife and mother, and finally that Mrs. Schlemm then went home with the saloonkeeper from across the street, all negative the idea, or the necessity of, a trap and point with irresistible force to the conclusion that Mrs. Schlemm is a woman of loose morals and was caught in the commission of a crime for which she has a peculiar penchant.

We submit that there is no evidence of a corrupt intent in the petitioner to bring about the downfall of his wife and that there is no connivance.

POINT III.

The petitioner is not guilty of adultery with Mrs. Dort.

There is no evidence whatever in this case of any wrong conduct on the part of the petitioner with Mrs. Dort.

The occurrence alleged, in which Mrs. Dort is supposed to have taken part, occurred prior to the filing of the first petition for divorce.

The defendant in her answer to the first petition alleged the matters now complained of against

Mrs. Dort as adultery on the part of Mrs. Dort with the petitioner. Thereafter the petitioner and the defendant settled their differences and resumed cohabitation. There was, therefore, clearly condonation of any of the alleged acts of adultery between Mrs. Dort and the petitoiner.

POINT IV.

The petitioner is not guilty of adultery with Lillie Delvey.

The charge of adultery against petitioner and Lillie Delvey is supported solely by the testimony of Mary Cain (p. 175-185). The occurrance is supposed to have taken place in the month of October, 1912, (p. 176).

Mrs. Cain is a sister of the defendant.

The first suit for divorce was started in March, 1914, and the petitioner and defendant remained separated thereafter until August, 1914. Mary Cain saw her sister daily during this time.

Her sister, the defendant, filed an answer alleging adultery on the part of the petitioner with Mrs. Dort and Mrs. Hofstetter, but did not say that any adultery had been committed between Lillie Delvey and petitioner.

It seems incredible to believe that Mary Cain at that time would not have informed her sister of the facts then within her knowledge in relation to the alleged adultery with Lillie Delvey.

The story told by Mary Cain is in itself improbable, and is flatly denied both by the petitioner and by the witness Bosetti, who is supposed to have been within hearing of the altercation which is supposed to have taken place between Mary Cain and petitioner immediately after the occurrence related by her (p. 209-211).

POINT V.

The petitioner is entitled to the custody of the child.

This point of defendant is not covered by the Appeal.

A reading of the testimony given by Mrs. Schlemm of the life which she leads, the language she uses, and the habits which she undoubtedly has, will show conclusively that it would be a crime to take a girl of tender years and hand her over to the custody of a mother such as Mrs. Schlemm.

CONCLUSION.

We respectfully submit that the decree appealed from should be affirmed.

J. EMIL WALSCHEID,
Of Counsel with Petitioner-Respondent.

June Term, 1917.