INDEX.

PAGE

Notice of Appeal 1
Grounds of Appeal 1
Complaint 4
Answer 7
Certificate of Surrogate 8

TESTIMONY.

FOR PLAINTIFF:

CATHERINE M. RUBENS:—

Direct 9
Cross 44
Re-Direct 61
Re-Cross 61

Recalled in rebuttal:

Direct 175
Cross 175
Re-Direct 177

HARRY J. RUBENS:—

Direct 63
Cross 66

Motion for Non-Suit 72

FOR DEFENDANT:

ETHELYN C. PARSONS:—

Direct 74

Resumes stand:

Direct 110
Cross 110

Resumes stand:

Cross 122

WILLIAM J. FERRIE:—

Direct 103
Cross 105
Re-Direct 109

PAGE

MOSES L. ZULZER:—
Direct 115
Cross 116
Re-Direct 119
Re-Cross 120

EFFIE BRAUN:—
Direct 139
Cross 141

PATRICK J. O'BRIEN:—
Direct 144
Cross 147

SAMUEL T. DICKINSON:—
Direct 152
Cross 152

SEWARD H. PARSONS:—
Direct 154
Cross 158

ETHELYN G. PARSONS:—
Direct 164
Cross 166
Re-Direct 171
Re-Cross 172

DOROTHY PARSONS:—
Direct 173
Cross 174
Re-Direct 174
Motion for direction of verdict 177
Charge 179
Plaintiff's requests 186
Defendant's requests 187
Rule for Judgment 192
Petition for Administration 193
Renunciation 194

PAGE

PLAINTIFF'S EXHIBITS:

P-2—Letter from Mrs. Parsons to Mr. Rubens. Offered in evidence at page 31; printed at 189

P-3—Slip of paper from Mrs. Parsons to Mr. Rubens. Offered in evidence at page 32; printed at 191

P-5—Letter of Feb. 18, 1919 from Mrs. Parsons to Mr. and Mrs. Rubens. Offered in evidence at page 43; printed at 191

DEFENDANT'S EXHIBIT:

D-1—Letter of Nov. 7, 1912, from Mrs. Rubens to Mrs. Parsons. Offered in evidence at page 83; printed at 188

Notice of Appeal.

(Filed December 29th, 1919).

To Messrs. Mackay & Mackay,
Attorneys of Catherine M. Rubens, Plaintiff:
Sirs:—

TAKE NOTICE that the defendant appeals to the Court of Errors and Appeals from the whole of the judgment in this cause.

Dated December 26th, 1919.

Respectfully yours,
HARTSHORNE, INSLEY & VREELAND,
Attorneys of Defendant.

Grounds of Appeal.

(Filed February 7th, 1920).

NEW JERSEY COURT OF ERRORS AND APPEALS.

CATHERINE M. RUBENS,
Plaintiff-Respondent,
vs.
ETHELYN C. PARSONS,
Defendant-Appellant.

The appellant states the following grounds of appeal:

1. The court refused to enter a judgment of non-suit against respondent.

2. The court refused to direct the verdict in favor of appellant and against respondent.

3. Because the court permitted the respondent to answer the following questions:

New Jersey State Library

"Q. What did you say to him?

"Q. Did you ask him if he attended the poker game that he said he was going to?

"Q. And what did you say to him?

"Q. Did you say anything to him about his marital duties?

"Q. And since the papers were served on him has he supported you?"

4. Because the court struck out the answers to the following questions asked the defendant:

"Q. Was any reason given for lending that money?

"Q. For the operation on his wife.

"Q. You took another mortgage, did you not, from this plaintiff's husband?

"A. I did, if I would lend them the money, everything I did was for the family."

4a. Because the court overruled the following question asked the defendant:

"Q. At the time he had been to your house had any reason ever been given to you for his wife not accompanying him?"

5. Because the court admitted in evidence a letter alleged to have been written to the respondent's husband by appellant which was marked Exhibit P-2.

6. Because the court refused to strike out the following answer made by respondent:

"A. Yes, and he asked me to sign it, and I refused to do so. Then he told me that he would leave. He threatened to leave me and leave the children."

7. Because the court refused to charge the jury as follows:

"Your verdict must be for the defendant unless there appears by a fair preponderance of the evidence that it was the defendant who pursued the plaintiff's husband un-

til she succeeded in causing him to lose his affection for his wife; and if it appears that the plaintiff's husband was the pursuer and the defendant the pursued, then your verdict must be for the defendant."

8. Because the court charged the jury as follows:

"If you find the defendant was actuated by malice against the plaintiff, you may also add to the other damages exemplary damages but the evidence must show malice; it can not be presumed."

9. Because the court charged the jury as follows:

"If you find for the defendant, it will not be necessary to consider the question of damages, but if, on the contrary, you decide for the plaintiff, you should allow her damages for her loss of support, if you find from the evidence that her husband is not supporting her on account of his loss of affection. If this loss of support is from any other cause, it cannot be included in the damages."

10. Because the court charged the jury as follows:

"If she is entitled to recover, she is also entitled to recover damages for mental anguish and injured feelings."

11. Because the court charged the jury as follows:

"In determining the damages you should use your own good judgment as sensible business men, if you find the plaintiff is entitled to a verdict."

Respectfully yours,

HARTSHORNE, INSLEY & VREELAND,

Attorneys of Appellant.

BERGEN COUNTY CIRCUIT COURT.

CATHERINE M. RUBENS, *Plaintiff,* *vs.* ETHELYN C. PARSONS, *Defendant.*	Action at Law.

Complaint.

(Filed May 28th 1919).

The plaintiff above named residing at Dumont in the County of Bergen and State of New Jersey says:

FIRST COUNT.

1. That she is now and was at all times hereinafter mentioned the lawful wife of Edward S. Rubens.

2. The defendant above named, Ethelyn C. Parsons, knowing that the plaintiff was the wife of the said Edward S. Rubens and wickedly and maliciously intending to deprive the said plaintiff of the aid, comfort, society and assistance of her said husband and of all the benefits to which she was accustomed and then had of marital consortium with the said husband of the plaintiff, on the thirty-first day of December, nineteen hundred and eleven, and every day thereafter up to and including that part of the month of May, nineteen hundred and nineteen, now past, by divers arts and devices did alienate from the plaintiff the affection of her said husband, and cause her to lose all marital consortium with her said husband, to wit, in the Borough of Manhattan, and State of New York, and at Jamaica Bay, Long Island, New York.

Complaint.

SECOND COUNT.

1. She is now and was at all times hereinafter mentioned, the lawful wife of Edward S. Rubens.

2. The defendant above named, Ethelyn C. Parsons, knowing that the plaintiff was the wife of the said Edward S. Rubens and wickedly and maliciously intending to deprive the said plaintiff of the aid, comfort, society and assistance or her said husband, and of all the benefits to which she was accustomed, and then had of marital consortium with the said husband of the plaintiff, on the twenty-first day of January, nineteen hundred and twelve, and on the eighteenth day of November, nineteen hundred and thirteen, and on each and every day between said dates, and on each and every day since November nineteen hundred and thirteen to the date hereof, by divers arts and devices did alienate from the plaintiff the affection of her said husband, and cause her to lose all marital consortium with her said husband, to wit, in the Borough of Manhattan and State of New York.

THIRD COUNT.

1. She is now and was at all times hereinafter mentioned, the lawful wife of Edward S. Rubens.

2. The defendant above named, Ethelyn C. Parsons, knowing that the plaintiff was the wife of the said Edward S. Rubens and wickedly and maliciously intending to deprive the said plaintiff of the aid, comfort, society and assistance of her said husband and of all the benefits to which she was accustomed and then had of marital consortium with the said husband of the plaintiff, on the first day of January, nineteen hundred and

eighteen and on every day thereafter, by divers arts and devices did alienate from the plaintiff the affection of her said husband, and cause her to lose all marital consortium with the said husband of the plaintiff, to wit: at West Englewood, in the County of Bergen and State of New Jersey.

FOURTH COUNT.

1. The plaintiff alleges that the said defendant, Ethelyn C. Parsons, on the thirty-first day of December, nineteen hundred and eleven, at the Hotel Preston, in the Borough of Manhattan, County and State of New York and on the twenty-first day of January, nineteen hundred and twelve at the Hotel Preston in the Borough of Manhattan, County and State of New York, and on the eighteenth day of November, nineteen hundred and thirteen at an apartment at No. 510 West 47th Street, New York City, and from Saturday to Labor Day in the year nineteen hundred and seventeen in a bungalow at Jamaica Bay, Long Island, New York, and on the first day of January, nineteen hundred and eighteen, up to and including the month of May, nineteen hundred and nineteen at West Englewood, in the County of Bergen and State of New Jersey, did seduce and carnally know the husband of the plaintiff Catherine M. Rubens.

2. In consequence of said seduction the plaintiff has lost the affection of her said husband and has been deprived of his society and assistance which she otherwise would have had, and has suffered great distress of mind.

Plaintiff demands fifty thousand dollars ($50,000.00) damages.

MACKAY & MACKAY,
Attorneys for Plaintiff.

Answer.

(Filed June 12th 1919).

BERGEN COUNTY CIRCUIT COURT.

CATHERINE M. RUBENS,
Plaintiff,
vs.
ETHELYN C. PARSONS,
Defendant.

Action at Law.

The defendant, whose place of residence is at West Englewood, in the County of Bergen and State of New Jersey, answering the complaint says:

ANSWER TO FIRST COUNT.

1. She admits the allegation of paragraph No. 1.

2. She denies the allegation of paragraph No. 2.

ANSWER TO SECOND COUNT.

1. She admits the allegation of paragraph No. 1.

2. She denies the allegation of paragraph No. 2.

ANSWER TO THIRD COUNT.

1. She admits the allegation of paragraph No. 1.

2. She denies the allegation of paragraph No. 2.

ANSWER TO FOURTH COUNT.

1. She denies the allegations of paragraphs No. 1 and No. 2.

WHEREFORE, this defendant prays that the said complaint be dismissed.

HARTSHORNE, INSLEY & VREELAND,
Attorneys for Defendant.

Certificate of Surrogate.

I, J. Blauvelt Hopper, Surrogate of the County of Bergen, do certify that on the second day of March, in the year of our Lord, one thousand nine hundred and twenty, administration of the goods and chattels, rights and credits, which were of Catherine M. Rubens, late of the County of Bergen, who died intestate, was granted by me to James W. Mercer, of the County of Bergen who is duly authorized to administer the same agreeably to law.

Witness my hand and seal of office, this second day of March, in the year of our Lord, one thousand nine hundred and twenty.

J. BLAUVELT HOPPER.

(L. S.)

Testimony.

BERGEN COUNTY CIRCUIT COURT.

CATHERINE M. RUBENS, *Plaintiff,* *vs.* ETHELYN C. PARSONS, *Defendant.*	Action at Law.

Hackensack, N. J., December 18, 1919.

BEFORE:

HON. WILLARD W. CUTLER, Judge, and Jury.

For the Plaintiff, MESSRS. MACKAY & MACKAY, William B. Mackay, Esq., of Counsel.

For the Defendant, HARTSHORNE, INSLEY & VREELAND. William E. Decker, Esq., of Counsel.

The jury was empanelled, accepted and sworn.

Mr. Mackay opened the case to the jury on behalf of the Plaintiff.

Mr. Decker opened the case to the jury on behalf of the Defendant.

CATHERINE M. RUBENS, the Plaintiff, sworn as a witness in her own behalf, testified as follows:

DIRECT EXAMINATION BY MR. MACKAY:

Q. Mrs. Rubens, where do you live? A. I live in Dumont, New Jersey.

Q. Dumont, New Jersey? A. Yes.

Q. And you are married? A. Yes.

Q. And were married when? A. In 1904.

Q. In 1904? A. 1904.

Q. To your present husband? A. Yes.

Q. And what is his name? A. Edward Stanley Rubens.

Q. And after your marriage, did you have any children as a result of the marriage? A. Yes. Two.

Q. Two children? A. Two children.

Q. And when was the first child born, do you recall? A. In January, 19—, 1905, I believe.

Q. January of 1905. And what was the name of that— A. 1906, I believe. Regina.

Q. Regina? A. Yes.

Q. She is now— A. Fourteen years old.

Q. About fourteen years of age; and any other children? A. Yes; another daughter, Grace.

Q. Grace? A. Yes.

Q. And when was she born? A. She was born in 1907.

Q. 1907? A. Yes.

Q. Do you remember the month? A. In April.

Q. In April of 1907. And during that time how did you and your husband get along? A. Why, without any trouble whatsoever.

Q. What is that? A. Without any trouble; we never had any.

Q. Without any trouble? A. None whatsoever.

Q. And up to the year 1911, how did you get along? A. Why, splendid up until then.

Q. Splendid? A. Yes.

Q. No trouble whatever? A. No.

Q. I see, and when did your trouble begin? A. When he became acquainted with Mrs. Parsons.

Q. And do you recall when that was? A. During the summer of 1911.

Q. Yes. A. I don't exactly remember what month.

Q. No, but as near as you can give it to us. Where did he meet Mrs. Parsons? A. Where did I meet Mrs. Parsons?

Q. Where did your husband meet her?

MR. DECKER: Now, if the Court please—

THE COURT: Only what you know yourself.

Q. If you know. A. Why, he became acquainted with her—

MR. DECKER: Do you know?

A. —in a printing concern.

Q. In a printing concern? A. To my knowledge.

Q. Yes. What was your husband's employment in 1911? A. What was it?

Q. Yes. A. Compositor in a printing establishment.

Q. And what printing establishment was it, do you know? A. I believe it was the Art Color, if I am not mistaken.

Q. The Art Color? A. Yes.

Q. Do you know where it was located? A. I believe in 38th Street.

Q. New York City? A. Either 38th or 39th.

Q. New York City? A. Yes, New York City; I am not quite positive whether that was the name of the concern, but that is, to the best of my knowledge.

Q. I see. And do you know where Mrs. Parsons was at that time? A. Well, I believe at the concern they met.

Q. She was working for the concern? A. Yes.

Q. At that time? A. Yes.

Q. And what is the first thing you actually know about them, if anything, in 1911? A. Why, I really was not suspicious until up to the time of December, I believe.

Q. Of what year? A. Of 1911.

Q. Yes. And what happened then to make you suspicious? What occurred? A. Well, he used to stay out a good deal at night; that is, late in the afternoon—on Saturday afternoons they were working half a day; but he, instead of coming home, why he would come late, during the week he would come home late and give me all sorts of excuses, telling me—

MR. DECKER: Now, I object if the Court please.

THE COURT: No, I do not think what he said to his wife would be competent.

THE WITNESS: Well, he asked me—

MR. MACKAY: No. Wait a minute. Well, does your Honor so rule?

THE COURT: Yes, it cannot possibly be competent, what was said to her at that time. He is not a party to the suit.

MR. MACKAY: Well, I am frank to admit that I am a little in doubt. I would like to take an exception to the ruling.

THE COURT: You may take an exception.

(RECESS).

Hackensack, N. J., December 19, 1919, 10.00 a. m.

TRIAL RESUMED.

CATHERINE M. RUBENS, the plaintiff, resumes the stand as a witness in her own behalf, and testifies as follows:

DIRECT EXAMINATION BY MR. MACKAY (Continued):

Q. You were telling us Mrs. Rubens, about trouble with your husband commencing in 1911, I think. Is that so? A. Yes.

Q. And I think I asked you how the trouble started. I will ask you that question. A. Why?

Q. Speak up loud. A. The question was when did—

Q. How did the trouble start in 1911? You said about December in 1911? A. Yes, in 1911, December, I first discovered that there were things going on between my husband and Mrs. Parsons.

Q. And what did you discover first? A. As he stayed out late at nights, and as I started to tell you last night, was explaining to me—

MR. DECKER: If the Court please, I object to any explanation that the husband made.

Q. Did you remonstrate with him? A. I did.

MR. DECKER: I object to that.

THE COURT: Why do you object to that?

MR. DECKER: On the ground that it is hearsay and incompetent.

THE COURT: This lady, I suppose, is competent to show acts of the husband showing loss of affection, what he said to her showing loss of affection; but you cannot connect what he said in connecting the defendant with it. I think that is the distinction drawn between them. I think you may show anything that was said or done by the husband that would show loss of affection towards his wife.

MR. MACKAY: Can she not testify to the acts and declarations of the other to show the loss of affection by the alienation?

THE COURT: That is what I am saying. You may do that.

MR. MACKAY: It has been held that statements made by the plaintiff's wife while she was leaving the plaintiff's house, and those which she made on her way to the house where she was stopping are admissible, as are also her reasons for leaving her husband and her refusal to return to him at the request of the defendant, made after she had arrived there. That apparently goes a little further than the statement.

THE COURT: What was the reason?

MR. MACKAY: The reason for her refusal to return might involve the defendant in the case.

THE COURT: Well, it might and might not.

MR. MACKAY: I mean if it did, it is admissible, under the decisions.

THE COURT: I think that does not go as

far as that. You can ask your question, then I will rule on it.

(Question and answer read).

MR. DECKER: I object, if the Court please.

Q. What did you say to him?

MR. DECKER: I object on the same grounds.

THE COURT: I will allow that, what she said to her husband.

MR. DECKER: Note the objection.

A. The explanation why he was staying out.

Q. An explanation as to why he was staying out? A. An explanation as to why he was staying out at nights.

Q. What was his answer?

MR. DECKER: I object on the same ground.

THE COURT: I will allow that.

A. He said that he was spending his time with his mother who was sick in the hospital at the time.

Q. Do you know as a fact whether his mother was sick in the hospital? A. She was.

Q. Do you know whether he was there? A. Well, no.

THE COURT: Only what you know yourself, madam. You cannot tell what you learned afterward.

Q. Do you know he was there or not? A. I do not.

Q. Do you know whether he spent all of his time there that he told you? A. I do not know.

Q. You do not know? A. No, not before her death.

Q. Not before her death. Well, now, when was the next occasion that you recall? A. Her death occurred, and he went out just the same New Year's Eve.

Q. What year? A. 1911, December 31st. He told me he was going to New York to a poker game, and I know that he would never play poker.

Q. Does he play, do you know?

MR. DECKER: I object to that, if the Court please.

THE COURT: Only what you know. You cannot tell what somebody else told you.

MR. MACKAY: She might know whether or not he played poker.

Q. Do you know? A. He did not.

Q. How did you know that? A. Because I went after him when he went to New York.

MR. DECKER: Are you speaking generally, or on this one occasion.

MR. MACKAY: This one occasion, December 31, 1911.

THE WITNESS: This one occasion.

Q. You went after him to New York? A. Yes.

Q. And just tell us what you did? A. He went on the seven o'clock train.

Q. From where? A. From Dumont at 7.02, I believe.

Q. What did you do, when did you leave? A. I went on the same train.

Q. With him, or without his knowledge? A. Without his knowledge. And he went across 42nd Street to Hegeman's and Times Square, and there he met Mrs. Parsons.

Q. Did you see her? A. Positively.

Q. See them both together? A. Saw them both together.

Q. Did you follow them? A. I did.

Q. Where did they go? A. They went down Fourth Avenue to 26th Street.

Q. Walking? A. Walking.

Q. What time of night was this? A. About half-past eight, or quarter of nine; I believe a quarter of nine.

Q. Just tell us where they went, where you followed them? A. They went in the Hotel Preston.

Q. Where is the Hotel Preston? A. Twenty-sixth Street and Fourth Avenue.

Q. What kind of a hotel is that? I mean, from appearance, large or small or— A. Well, it is medium, a red brick building.

Q. A red brick building. They went in there, and what did you do? A. I waited until they were in, about five minutes, and then I went in after them and asked the clerk to show me the books.

Q. The register? A. Yes.

Q. Did you look at the register? A. They were registered as John Renshaw from Ravina, N. Y.

Q. John Renshaw alone? A. And wife.

Q. Whose handwriting? A. My husband's handwriting.

Q. Did you recognize it? A. Positively.

Q. And from where, from what place, were they registered? A. From Ravina, N. Y.

Q. Ravina, N. Y.? A. Yes.

Q. And any room number? A. 72.

Q. Room No. 72? A. 72.

Q. Did you go up there? A. I did not.

Q. Did you wait there? A. I waited outside.

Q. How long? A. I waited until about a quarter after eleven.

Q. Did they come out during that time? A. They did not.

Q. Did you go away before they came out? A. I went home.

Q. What train did you get? A. The last train leaving Weehawken, twelve—a few minutes after twelve. I just exactly cannot remember the minutes.

Q. Is that the night that he told you he was going to a poker game? A. Yes.

Q. Then you arrived home about when, Mrs. Rubens? A. About a quarter of one or ten minutes of one.

Q. Did your husband come home? A. No, he did not come home that night.

Q. He did not? A. No.

Q. When did he come home? A. The next morning.

Q. What time? A. About ten minutes of eight.

Q. Did you say anything to him? A. Yes, I asked him—

MR. DECKER: Now, I object, if the Court please, to what she said to her husband or what her husband said to her.

THE COURT: What are the grounds?

MR. DECKER: On the ground that it is hearsay and incompetent.

THE COURT: Why do you think it is competent, Mr. Mackay?

MR. MACKAY: Well, I think any statement that he may have made, which was a false statement, would have a bearing on the issue and would be a part of the res gestae, and would be admissible in cases of this kind, under the case as laid down by the courts.

THE COURT: You have got two counts. You have criminal conversation, have you not, one count?

MR. MACKAY: Well, I thought, your Honor, while that may not be admissible on the one count, it is improper to exclude it on the other; and it is the duty of the Court, under the case of *Rust against Oltmer,* to instruct the jury. In 67 Atlantic Reporter, page 337, it clearly defines the law in that respect, to the effect that while it is not admissible on the one count and may be admissible on the other, it is the duty of the Court to instruct the jury in that respect.

THE COURT: How would it throw any light on the subject? I am trying to find that out. How can it throw light on the subject outside of the count for criminal conversation between the husband and wife, when she spoke to him about it? Suppose he admits it? Suppose he says, "I admit that I was there." That certainly would not be competent as showing alienation of the husband's affection. Suppose he said, "I was not there?"

MR. MACKAY: I do not think there is a distinguishing line to that extent, your Honor, because the rule is, as to the loss of affection, I think, a little broader than your Honor has stated it. In the trial cases for alienation of affection, it has been held in a number of jurisdictions that one spouse may testify to the acts and declarations of the other, tending to show the affection,—the loss of it, by the alienation.

THE COURT: That is very true.

MR. MACKAY: I think that the question

of his answer, after stating that he was going to a poker game, and she knew positively that he did not go to a poker game, and he came home the next morning—she had a right to have an explanation from him as to where he had been and what he had done—has a bearing on the case of the alienation, to see whether he told the truth or whether he did not.

THE COURT: I will sustain the objection and allow you an exception.

MR. MACKAY: I ask an exception.

THE COURT: Take your exception.

Q Did you remonstrate with your husband when he returned the next morning?

MR. DECKER: I object, if the Court please, on the same ground.

THE COURT: Yes, I will allow that.

A. Why, as I said, I asked him where he had been. He said he was playing poker.

MR. DECKER: Now, if the Court please, my objection goes to that question because the answer to the question brings out the very answer that your Honor has overruled.

THE COURT: Strike it out.

Q. Well, you did remonstrate with your husband? A. I did.

Q. Did you ask him if he attended the poker game that he said he was going to?

MR. DECKER: I object on the same ground.

THE COURT: I will allow that.

A. He said he did.

Q. Did you ask him? A. Yes.

Q. What did he say?

THE COURT: He said he did, she said.

A. He said he did.

Q. Did you remonstrate with him further? A. I didn't tell him at all that I knew of his whereabouts.

Q. You did not? A. No.

Q. You did not say anything to him at that time? A. Absolutely nothing.

Q. Now, did you still continue to live together? A. Yes.

Q. As husband and wife? A. Yes.

Q. And when is the next occurrence that you recall? A. On January 21st, 1912.

Q. 1912. That was about— A. Sunday afternoon—

Q. That was about twenty-one days later? A. Yes.

Q. What were you going to say, what day of the week it was? A. It was Sunday afternoon.

Q. Was he at home Sunday morning? A. Yes.

Q. And during part of the afternoon? A. Yes, up to two o'clock.

Q. And did he go away? A. Yes.

Q. Did you ask him where he was going? A. No.

MR. DECKER: I object, if the Court please. It has been answered.

THE COURT: Sustained.

Q. Did he state where he was going? A. No.

Q. Did you follow him? A. I did.

Q. And where did he go? A. Across 42nd Street.

Q. Did he go on the train, or how? A. Yes, he went on the train.

Q. What train, do you recall? A. 1.58, I believe.

Q. Did you go on the same train? A. Yes.

Q. Then what happened? A. My sister was with me.

Q. Is she living? A. No; she died last year.

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

Q. Where did you go? A. We went on the same train, and in 34th—in Weehawken, on the same ferry, and at 42nd Street he went in a 34th Street car, and we also; and he got off at Fourth Avenue and 34th Street and walked down to 33rd, to the subway station. There he met Mrs. Parsons, in the subway station, and together they walked down Fourth Avenue to 26th, to the Hotel Preston.

Q. Same hotel? A. Same hotel.

Q. Just continue. A. They went in, and, as before I asked for the registry, and they were again registered as John Renshaw of Ravina, N. Y., as Mr. and Mrs. John Renshaw. They were assigned to room 52.

Q. Mr. and Mrs.? A. Yes.

Q In whose handwriting? A. My husband's handwriting.

Q. Did you recognize it? Did you? A. Yes.

Q. How long did you stay there? A. Why, we stayed there until they came out.

Q. What time did they get in there, in the hotel? A. It was about a quarter of four.

Q. What time did they come out? A. About half-past six.

Q. And where did they go? A. They went over to Colazzi's in West 24th Street, a restaurant.

Q. Colazzi's? A. Yes, Colazzi's.

Q. On West 24th Street? A. Yes.

Q. What is Colazzi's? A. A restaurant.

Q. Did you go in? A. No, we waited across the street.

Q. And did you see them in there? A. Saw them go in together.

Q. Did you see them in the hotel? A. No, not —it is not a hotel; it is a restaurant.

Q. I mean restaurant. A. Yes.

Q. Did you see them in the restaurant? A. No, not from outside.

Q. Not from outside. Did you wait for them to come out? A. Yes, waited.

Q. How long were they in there? A. For about one hour.

Q. For about one hour. They came out about what time? A. About half-past seven.

Q. And where did they go? A. They went back the same way into the Hotel Preston. They came out—as they were leaving at first they came out the 26th Street entrance and went back the same way the second time.

Q. Went back into the Hotel Preston again? A. Yes.

Q. After leaving Colazzi's? A. Yes.

Q. Did you wait there? A. No—after they had gone back we did not wait at all. We went home.

Q. What time did you arrive home? A. About half-past nine.

Q. Did Mr. Rubens come home? A. Yes, he came home on the last train.

Q. When was that? A. About a quarter of one.

Q. Did you speak to him when he came home? A. I did.

Q. Did you ask him where he had been?

MR. DECKER: I object on the same ground as stated before.

THE COURT: I will sustain the objection.

MR. MACKAY: I ask an exception.

THE COURT: Take your exception.

Q. Did you remonstrate with him for being away? A. I did.

Q. And what did you say to him?

MR. DECKER: I object, if the Court please, to that conversation which is going to bring out evidence that is objectionable, on the ground of its being incompetent and hearsay.

THE COURT: I think any conversation that goes to show that he lost his affection for his wife is competent.

MR. DECKER: I understand that. She may testify, as I understand the rule, to any conversation or to any acts which will show that he lost his affection for her, but she can not testify to any conversations with him which will make evidence against this defendant by hearsay.

THE COURT: That is true.

MR. DECKER: Now, these questions, I cannot tell how they will be answered. She is liable to say anything, and while I do not want to object to a competent question, still, at the same time, I do not want to bring out testimony which will be objectionable.

(Question and answer read).

THE COURT: What she said is competent, I think. I will allow that. It cannot bind your client, what she said to her husband. Proceed.

Q. What did you say to him? A. I told him where he had been and he was very angry.

Q. What did he say?

MR. DECKER: Now, I object.

THE COURT: I will sustain that.

Q. How did his anger manifest itself? A. Why, he didn't speak to me until two days later.

Q. Did you say anything to him about his marital duties?

MR. DECKER: I object, if the Court please.

THE COURT: What she said to him, I think, is proper.

Q. What did you say to him? A. Why, he must not treat me in such a way; that I don't deserve treatment like that; I have been a true wife to him.

Q. Let us have the whole testimony, Mrs. Rubens. Do not be afraid to speak out. We want to know what you said to him. You remonstrated and you said something. Tell the story so that we can have it, when he came home. A. As I said, he was very angry. He did not speak to me for about two days.

Q. You told him where he had been, you say? A. Yes.

Q. What did you say to him? What words did you use? A. Why, I told him I had been to New York after him, and found out where he had been.

Q. Did you mention any names? A. I did.

Q. What did you say to him? A. I said that I followed him across 42nd Street and saw him meet Mrs. Parsons in the 33rd Street station and go over to the Hotel Preston, and from there to Colazzi's, and back again to the Hotel Preston. And, as I said, he was very angry, and said that, at first, "Who has been telling me, and, of course,

then I told him that I followed, and he did not say any more until about two days later, and then he told me he was very sorry it occurred.

MR. DECKER: I object, if the Court please.

THE COURT: I think what he said would not be competent about that.

Q. That was about two days later? A. Yes. He was very sorry it had occurred.

THE COURT: No, no. I do not think that is competent, what he told you about it. I will sustain the objection as far as that goes.

Q. Well, did he say whether or not he still had affection for you? A. He did, yes. He told me that I was the only woman he loved.

Q. Did he say whether or not it would happen again? A. He said, no, it would not; it was a mistake, and that he was sorry.

Q. And so you continued to live together? A. I did, because he promised to—never to allow it again.

Q. Now then, after that, what was the next occurrence that you recall? A. Mrs. Parsons came to visit us, and occasionally he would take the children along, two or three.

MR. DECKER: When was that?

THE WITNESS: Twice—but I don't know the dates, when we have been over there or when she has been over, after this occurrence.

Q. I want you to follow it down, as near as you can, after January 21, 1912. You say Mrs. Parsons came to the house? A. Yes.

Q. Where and when? A. We lived in Dumont, but I couldn't say—she has been there a number of times, so, therefore, I couldn't say exactly.

Q. Well, about. How long was it after you saw them in the Hotel Preston the last time? A. About two months after that.

Q. About two months after. Whom did she come to the house with? A. With her daughter, I believe. I am not quite positive.

Q. When did she come? A. They came in the evening with my husband.

Q. With your husband? A. Yes.

Q. Did he introduce you? A. I knew Mrs. Parsons before.

Q. You had known her before? A. Yes.

Q. And what took place at the house that evening? A. We went to a dance.

Q. All of you? A. Yes. And she went—they stayed all night and went in in the morning.

Q. With your husband? A. Yes.

Q. And her daughter? A. No, I think that—when the daughter was there he did not go in in the morning with Mrs. Parsons. It was one time alone when she was that that she went to New York in the morning with my husband.

Q. I am asking you about that particular time that you are telling us about, when he came out and went to a dance. A. They did not go in right away.

Q. What did happen? A. They went in around two o'clock to New York.

MR. DECKER: What did you say, they or she went in?

THE WITNESS: Mrs. Parsons and her daughter.

BY THE COURT:

Q. Your husband went in in the morning? A. Well, it was a holiday.

Q. Did he go in with them? A. No.

By Mr. Mackay:

Q. What was the next occurrence after that, Mrs. Rubens? A. Why, it was—a transfer mortgage took place in the meantime. He had asked me to let Mrs. Parsons assume that. It was a second mortgage on our home for $800., and he asked me to let Mrs. Parsons make the six per cent, transfer the mortgage, and he said it would make it easier for him when he would have to make the payments. Therefore it made no difference to me who held the mortgage, and I consented. The mortgage was transferred.

Q. When was that? A. I don't just remember the dates.

Q. What year? A. I mean I don't just remember the year.

Q. What was shortly around this time? A. I —no, I think it was in the summer, about three months later; four months later, perhaps. The mortgage was transferred.

Q. The mortgage was transferred? A. Yes.

Q. The amount? A. $800.

Q. That was the second mortgage? A. Yes.

Q. And when again did any trouble occur of any kind after that date? A. Why, Mrs. Parsons bought a farm in Stewartsville, New Jersey, and instead of moving on a farm, as she said she would, she took up an apartment in West 47th Street, 510.

Q. 510? A. Yes. And she would go up to the farm on Saturdays and Sundays. He visited there occasionally, and in September he told me that he had been to a doctor, and the doctor told him that his lungs were slightly weak, and he was in a weakened condition, and he ought to have a change, so he was going to the mountains. So I helped him get ready, and after he

was gone a few days he sent word that the air did not agree with him there and that he was on Mrs. Parsons' farm; and after he had been there a little while Mrs. Parsons gave up her position and went to the farm to stay there.

MR. DECKER: Are you telling what you know of your own knowledge, or hearsay?

THE WITNESS: What I know of my own knowledge.

MR. DECKER: How do you know it?

THE WITNESS: Because I know men that have been working there.

MR. DECKER: What they told you?

THE WITNESS: Yes.

THE COURT: Strike it out.

Q. Were you up there? A. No, I was not up there myself.

THE COURT: Strike that out. Of course, Mr. Mackay, you cannot put in what some men told her.

THE WITNESS: Well, my husband wrote me and told me that she was there.

Q. Did your husband tell you? A. Yes, in the letter.

MR. MACKAY: That is admissible, I think, your Honor.

THE WITNESS: And he said—

Q. Your husband was then away from home at that time for how long? A. For about six weeks.

Q. For about six weeks. Did you go to visit him? A. Not while he was away.

Q. Did he communicate with you? A. Yes.

Q. And when he came back did you live together? A. Yes.

Q. How? A. I didn't know there was anything wrong, because I thought that, as he promised before, that he—

MR. DECKER: I move to strike that out.

Q. You trusted to his promise that he had made to you? A. Yes.

Q. When he came back then you lived together as husband and wife? A. Yes.

Q. How did you get along then? A. We were only together for about two weeks when I discovered that there was still things going on between him and Mrs. Parsons.

Q. What did you discover? A. Mrs. Parsons would write letters almost every day; at least every other day.

Q. Yes. Have you those letters? A. No, I have not. I only have one.

Q. Only one. Is this the letter (handing paper to witness)? A. Yes, that is the letter.

Q. Do you know the handwriting? A. I do.

Q. Whose handwriting is it? A. Mrs. Parsons'.

Q. Do you know whose handwriting that is (opening paper)? A. Mrs. Parsons'.

Q. Her own handwriting? A. Her own handwriting.

Q. Do you know whose handwriting that is (handing slip of paper to witness)? A. Mrs. Parsons' also.

MR. MACKAY: I offer these in evidence.

MR. DECKER: Now, if the Court please, before they are admitted in evidence, I want to cross examine this plaintiff upon them.

THE COURT: Yes, you may.

By Mr. Decker:

Q. This envelope which is postmarked November 14, 1913, is addressed to Mr. Edward S. Rubens, Dumont, New Jersey, is it not? A. Yes.

Q. How did you get possession of the letter? A. I took and opened it.

Q. Where did you take it from? A. When it was sent to the house.

Q. From the Post Office authorities? A. No, when it was brought to our house.

Q. Who brought it to your house? A. The children.

Q. Who? A. One of my daughters.

Q. Where did she get it from? A. From the Post Office.

Q. And brought it to your house? A. Yes.

Q. And you took it and opened it? A. Yes.

Mr. Decker: Now, if the Court please, I object to the use of this letter on this ground. Under the Act of Congress it is made a misdemeanor for anybody, other than the person to whom mail is addressed, to open it; and I object to the use of it by this plaintiff in this case because she came into possession of it by an illegal act.

The Court: Does that make it incompetent?

Mr. Decker: It may not make it incompetent, but estops her from using it.

The Court: Where do you find any authority to base that upon?

Mr. Decker: I have no authority except the section of the Federal Statutes.

The Court: She may be amenable to the statute for violating it, but does that make it incompetent?

Mr. Decker: I understand the rule to be

that a person cannot violate the law in order to obtain evidence to use in civil suits.

By The Court:

Q. What was included in that letter, Mrs. Rubens? What was included in that envelope? A. A letter from Mrs. Parsons addressed to——

Q. Which one? A. The letter that Mr. Mackay has in his hand.

The Court: Let us find out first what was enclosed in that envelope.

By Mr. Mackay:

Q. What was enclosed in this? A. Just one letter that Mr. Mackay holds in his hand.

The Court: As far as that is concerned, I will admit them. Take your exception.

Mr. Decker: Note the exception.

Envelope marked P-1.

Letter marked P-2.

Q What was enclosed in the other letters? You said other letters were written? A. I did not read them. This is the only letter that I took to read. He destroyed all letters because I knew her handwriting. The minute it was brought in I knew it was from Mrs. Parsons.

Q. This little slip, what do you know about that (handing slip of paper to witness)? A. That was in a letter sent by Mrs. Parsons' daughter to my husband, and as he opened this letter, this little slip was folded up like this and fell out.

Q. On the floor? A. On the floor.

Q. Did you pick it up? A. I picked it up.

Q. Say anything to him about it? A. No, absolutely nothing.

Q. Whose handwriting is it? A. Mrs. Parsons'.

Q. Do you recognize it as her handwriting? A. Yes.

MR. MACKAY: I will offer it in evidence.

THE COURT: When was it received? About when was it?

THE WITNESS: On November 18th.

THE COURT: What year?

THE WITNESS: '14—1913.

Slip of paper marked P-3.

Mr. Mackay reads Exhibit P-3 to the jury.

Mr. Mackay reads Exhibits P-2 and P-3 to the jury.

Q. Now, after that, Mrs. Rubens, suppose you tell us what next happened? A. When this letter arrived from her daughter,—when this letter arrived from her daughter, when I got in possession of that slip, I went down to his place of business and waited for him, to see whether Mrs. Parsons would be there or not, whether he would go to Mrs. Parsons', and she met him outside of the building; and together they walked up Tenth Avenue—this was in 43rd Street, in 43rd Street, 43rd; the place was called the Redfields.

Q. What? A. Redfields.

Q. Redfields? A. Yes. She met him there, and together they walked up Tenth Avenue, going into a few stores, stepping into one I know was a butcher shop, and from there they went up to her apartment, to 510 West 47th Street, and went in together, while I stayed out there until about a quarter after eleven.

Q. At night? A. Yes. And then I went to the

ferry to get the last train home. He also came home on the last train, and I got in the house a few minutes after he did. Of course I told him where I had been. I accused him of the letter and all, and he said, "Well,"—

MR. DECKER: Now, I object, if the Court please.

MR. MACKAY: I think that is admissible, your Honor.

THE COURT: No, I do not think what he said would be competent.

MR. MACKAY: Suppose he said that he had lost his affection for her?

THE COURT: Well, you can ask that question and find out. The question was broad. It may bring in a lot of testimony that is not competent.

Q. Well, you accused him of it? A. Yes.

Q. Just tell us as near as you can recall, without telling what he said, what you said to him, just the words you used, as near as you can give it to use. A. I told him that he had been with Mrs. Parsons in her apartment, and he—

Q. No. Now did he say at that time whether he had lost his affection for you? A. He did.

Q. Did he? A. Yes.

Q. And in what words did he say he had lost it? A. He said that Mrs. Parsons was the only woman he cared for, that my love and affection could not be compared with a woman of Mrs. Parsons' experience, and that he hoped at some day to marry Mrs. Parsons.

Q. Now, did he stay in the house? A. He did.

Q. Did you live together? A. Not as man and wife.

Q. Do you know of any occurrence after that?

What date was that that he made that statement? A. That was November 14, 1913.

Q. 1913? A. Yes.

Q. That was— A. Right after this letter; right after this letter.

Q. This letter is postmarked November 14th. Was it right after the receipt? A. No, no, November, 18th.

Q. November 18th? A. 18th. I made a mistake in the date.

Q. Now, you did not live as husband and wife after that. Did you live in the same house? A. Yes.

Q. Did he support you? A. Partly.

Q. And the children? A. Partly.

Q. Did you have any employment? A. Why, I had people staying at my house, boarders.

Q. That brought in some money? A. Yes.

Q. And he paid the balance, was that it? A. Yes.

Q. After that what occurred that comes to your mind of any consequence? A. We lived apart; that is, not as man and wife, but in—he again had money added to the mortgage. He had money added to the mortgage.

Q. Increased the mortgage? A. Increased the mortgage.

Q. Mrs. Parsons' mortgage? A. Yes, and he asked me to sign it, and I refused to do so. Then he told me that he would leave. He threatened to leave me and leave the children.

MR. DECKER: I object to that.

THE COURT: I think that is competent. I will let that stand.

A. (Continuing) So I signed it for peace sake, and then he told me it would not be re-

corded, but it was recorded. And then in 1917 he told me—or he told the children, rather, because father was on a visit.

MR. DECKER: Now, wait; one minute.

THE COURT: Only what you know yourself, madam.

THE WITNESS: That is what I am trying to say.

THE COURT: Were you there, and did you hear this?

Q. Were you there? A. Yes.

Q. Then tell it. A. He didn't want father to know how we were living, so he gave an explanation in the room, and the children were there also, that he was going to a friend of his having a bungalow in Jamaica Bay, naming a certain man, and he was going there fishing. This was over Labor Day. And he went here, and the same party that he was supposed to—

MR. DECKER: One minute. Do you know this? Do you know this of your own knowledge, or is it what someone told you?

THE WITNESS: No; I was right there when he said it.

MR. DECKER: You said he went there.

THE WITNESS: Consequently, he took his fishing utensils and things along.

MR. DECKER: Did you see him go to Jamaica Bay?

THE WITNESS: I did not.

THE COURT: Well, proceed. He said he was going to Jamaica Bay. Then what else happened?

THE WITNESS: The friend that he was supposed to be with came to the house the Sunday before Labor Day asking for him, so I knew that he was not there, not with this party, not with this certain man.

Q. He told you he was going with a certain man fishing? A. Yes, to a certain man having a bungalow in Jamaica Bay.

Q. Who was that man? A. A man by the name of Mr. Dreyfus.

Q. After your husband left did this Mr. Dreyfus come to the house? A. Yes. He went there right from work, Saturday; right after leaving the office he went to Jamaica.

Q. So that he did not go to Mr. Dreyfus' place? A. No.

MR. DECKER: If you know.

THE WITNESS: I know that because Mr. Dreyfus was looking for him.

THE COURT: How soon after your husband left did Mr. Dreyfus come?

THE WITNESS: My husband went to work on Saturday morning, and he did not home until Monday night, and Mr. Dreyfus came on Sunday, —Sunday, between eleven and twelve.

Q. When your husband came back Monday night, did you speak to him about it? A. I did.

Q. What did you say to him? A. I told him that Mr. Dreyfus had been looking for him and he had not been with him and, consequently, I accused him of being with Mrs. Parsons, and he said—

MR. DECKER: One minute.

Q. Now, did he say anything then at that time

to show that he had no affection for you, that he had lost his affection for you? A. Yes.

Q. What did he say? A. He said he would do as he liked; he would go wherever he pleased; it made absolutely no difference to him what I would say or what I would do.

Q. This was in what year? A. 1917.

Q. What month, Mrs. Rubens? A. September.

Q. September. And when after that did you have any further trouble or occurrence of any kind? A. The following year I lost my sister, and —

Q. Was that the sister who was with you on that night? A. Yes, in 1918. And he was selling her house, telling me that a friend of his from New York was buying it. So he went down to West Englewood. My mother and another sister were staying down there after my sister's death; that is, during her illness and death, and he brought Mrs. Parsons there. She was the buyer. She wanted to buy the house.

MR. DECKER: When was this?

THE WITNESS: 1918.

MR. DECKER: What day of the month?

Q. What month? A. February, I believe.

Q. February, 1919? A. Yes.

MR. DECKER: Where was this house?

THE WITNESS: In West Englewood.

THE COURT: Proceed.

Q. This was at West Englewood, was it? A. Yes.

Q. You say that Mrs. Parsons wanted to buy a house there? A. He did not tell me Mrs. Parsons

at the time. He told me a friend of his, an acquaintance of his from New York.

Q. Did he mention any name? A. Yes, a man by the name of Dans.

Q. Dans? A. Yes.

Q. What happened in that connection? A. What is that?

Q. What happened in that connection, when he told you that a man by the name of Dans was going to buy the house? A. When he came home he told me it was Mrs. Parsons that was there, and that she was buying the house, and that my mother snubbed her and my sister refused to let her see the rooms. And, of course, he scolded me on account of it.

Q. How far is West Englewood from Dumont? A. They are two stations apart. Bergenfield is between Dumont and West Englewood; Bergenfield to Dumont.

Q. Did Mrs. Parsons buy a house at West Englewood? A. She did.

Q. When was it? A. I believe the end of February, or perhaps the first part of March.

Q. What year? A. 1918.

Q. Did she live there? A. Yes.

Q. How long? A. She is living there now.

Q. She is living there now, still. Do you know whether she still owns the house or not? A. I believe she does.

Q. Still in her name?

MR. DECKER: You do not know?

A. I am not quite sure.

Q. Were you not present in my office when your testimony was taken before trial? A. Yes.

Q. Was not Mrs. Parsons there? A. No.

Q. You did not see her? You were not present when she testified, were you? A. No.

Q. We brought it down to February, 1918. What happened since February, 1918? A. I forgot to say another part.

Q. Another occasion? A. Yes. Can I say it now?

Q. When was it? Yes. A. In December, 1917.

Q. Yes. What was it? A. Not 1917—yes, 1917.

Q. What was it? A. He offered me, that is, Mrs. Parsons, through him, offered the mortgage papers for divorce.

MR. DECKER: One minute. Was this conversation with your husband?

THE WITNESS: A conversation between my husband and myself.

Q. Showing his loss of affection for you? A. Yes.

Q. Just tell us what it was then. What did he say to you? A. He said, as soon as divorce proceedings would be started Mrs. Parsons—

MR. DECKER: He said this, the husband said it?

THE WITNESS: Yes.

MR. DECKER: I object, if the Court please, on the same ground.

THE WITNESS: Well, it was the conversation we had together. He asked me for the divorce.

MR. DECKER: I object to it as incompetent for this witness to tell what her husband told her somebody else said.

THE COURT: Yes, I think that is true. The fact that her husband asked her for a

divorce would be competent. Do you not think that is competent?

MR. DECKER: She has not said that.

THE WITNESS: I said he asked me for the divorce.

MR. DECKER: I understood you to say that he said that Mrs. Parsons wanted you to get a divorce. So I understood it.

THE WITNESS: Mrs. Parsons would give me the mortgage papers, providing that I would consent to a divorce.

MR. DECKER: Your husband said that to you?

THE WITNESS: Yes.

MR. DECKER: I ask that the jury be instructed to disregard this so far as this defendant is concerned.

THE COURT: Yes, any statement that he made about Mrs. Parsons is incompetent. What she said about beginning the divorce is competent.

MR. MACKAY: I ask an exception.

Q. What was the amount of the mortgage at that time? A. $1700.

Q. And that mortgage was to be cancelled? A. Yes.

Q. Is that it? A. Yes.

Q. The mortgage was to be cancelled on the house? A. Yes.

Q. And what house was that on? A. In the house in Dumont.

Q. Where you were living? A. The house we were living in.

Q. What did you say when your husband asked

for a divorce? A. I told him I would never consent to it.

Q. Now, is there any other occurrence you want to relate to us? A. In 1919—

THE COURT: Proceed.

A. (Continuing) In April 16, 1919, a letter came from Mrs. Parsons, addressed to my husband, and he opened it and laid it down on the table, and he said in that letter she had transferred the mortgage, or, rather, sold it—I do not know exactly which—but she was not the owner of the mortgage any more and she had nothing to do with it. So he threw down the letter and told me that he wanted absolutely nothing—they could take the house and sell it; he did not care; and that he was not going to do anything at all. When he offered me the divorce, or asked me for the divorce, he said Mrs. Parsons would compel me to submit to the divorce.

MR. DECKER: I object, if the Court please.

THE COURT: Strike that out.

THE WITNESS: He said that.

Q. When he asked you for the divorce at that time? Did he speak again about the divorce in 1919? April? A. No, this was 1918, when he made that statement, and told me that she would —that they would compel me to.

Q. No, but when the letter came? A. Two days later he said that he was tired of such a life; that the sooner we would have this thing over the better it would be.

Q. Did he say whether he had any affection for you? A. Yes, he wanted to—he wanted to have Mrs. Parsons, he loved her only.

Q. He told you that? A. Yes.

Q. That was as late as when? A. As December —that is April 16th.

Q. 1919? A. 1919.

Q. Was that the same date this letter came that you speak about? A. Yes.

Q. Have you that letter? A. I have the letter, but I believe it is not the letter that came that day.

Q. What is that? A. It is not the letter that came that day.

Q. It is not the letter? A. No.

Q. Who received that letter? A. This letter also was received by Mr. Rubens, but I found that letter afterwards and held it for in comparison of the handwriting (handing paper to counsel).

Q. That is from Mrs. Parsons, is it not? A. Yes.

Q. That relates to the mortgage? A. Yes.

Q. Is that the one you mentioned? A. No; but there is one came later than that.

Q. Addressed to whom? A. Addressed to Mr. Rubens, to my knowledge.

Q. Alone, or to both of you? A. I think to Mr. Rubens alone; I am not quite positive.

Q. Well, did you see it? A. Yes, but I—

Q. What became of it? Did you have it or did he have it? A. He laid it down. He laid it on the table for me to see, and it was laying there. I do not know whether I saved it. I did save it, but I did not really know exactly where I put it.

Q. You do not? A. No. I suppose I could really have looked it up. I did not think it was necessary.

Q. Did you look for it? A. No, I did not. I did not think it was necessary.

It does relate to the mortgage.

MR. MACKAY: I will offer that in evidence.

Marked P-4 and P-5.

Q. Do you know anything about January 1st, 1918? Did you tell us anything about January 1st, 1918, at West Englewood? A. January 1st, 1918?

Q. Do you recall any such date? A. No.

Q. Nothing on that date. Is your husband living with you today? A. Yes.

Q. In the house? A. Yes.

Q. As husband and wife? A. No.

Q. You have not lived as husband and wife? A. No.

Q. You do not have any marital relations of any kind? A. No, sir.

Q. Is he supporting you? A. He is not.

Q. Giving you any money? A. He is not.

Q. When was the last he gave you money? A. Some time in May, 1919.

Q. In May, 1919. When did you start this case? A. In May, the 1st of May, I believe. I have been to you before, but we came to the understanding in May 1st, I believe.

Q. That is, we did? A. Yes.

Q. About starting the case? A. Yes.

Q. And since the papers were served on him has he supported you? A. He has not.

MR. DECKER: I object, if the Court please. That is not competent.

THE COURT: I suppose it is competent to show the relationship between the parties.

MR. DECKER: It occurred since the suit was started.

THE COURT: I will allow that.

Q. How long before the month of May did he give you any money? A. Well, he gave me very little, just partly supporting the house.

Q. Is there anything else you wanted to state that you have omitted? A. No, only that they have been together April 17, 1919.

Q. April, when? A. 17th.

Q. April, 1919? A. Yes, 1919.

Q. Where were they together? A. They met in the 42nd Street station.

Q. Did you see them? A. Yes.

Q. What time of day was it? A. About 6.15, I believe—no; 5.15.

Q. They met where? A. They went across the ferry.

Q. They met at the ferry? A. Yes.

Q. 42nd Street? A. Yes.

Q. And where did they go? A. They rode home together. Mrs. Parsons was getting off at West Englewood, and he remained in the train. Is that the last you saw them together? A. That is the last, to my knowledge, but I have a witness that has seen him.

THE COURT: No, no.

MR. MACKAY: No. Cross examine.

CROSS EXAMINATION BY MR. DECKER:

Two papers were marked respectively D-1 for Identification and D-2 for Identification.

Q. I show you a letter dated April, 28, 1913, marked D-1 for identification, and ask you if that letter is in your handwriting and that signature is yours? A. It is.

Q. I show you another letter, dated November 7, 1912, marked D-2 for identification, and ask you if that is in your handwriting and your signature? A. It is.

Q. I show you another letter dated April 18,

1913, and ask you whose handwriting that letter is in? A. My daughter's, youngest daughter.

Q. Your youngest daughter, Grace Rubens? A. Yes.

Paper marked D-3 for Identification.

Q. Now, Mrs. Rubens, when did you get acquainted with the defendant Mrs. Parsons the first time? A. During the summer of 1911.

Q. And how did you get acquainted with her? Did your husband introduce you to her? A. He did.

Q. Where? A. In the Art Color Printing.

Q. At the Art Color Printing Company, New York? A. Yes.

Q. That was where your husband was employed? A. Yes.

Q What is your husband's business? A. Printing. He was a compositor there.

Q. You knew that Mrs. Parsons was a proof-reader, did you not? A. Yes.

Q. Now, your husband told you that he wanted you to meet Mrs. Parsons, did he not? A. He did.

Q. Did he tell you why? A. He told me that —how nice and affectionate—how sympathetic and understanding and how good she was, and he wanted me to meet her.

Q. What did you understand him to mean by saying how good she was? A. How pleasant, and all the things like that.

Q. You knew that she had loaned your husband money, did you not? A. Yes.

Q. And you knew that the money was loaned to him to pay for the services of a physician on account of your illness, did you not? A. Well—

Q. No. Answer my question, please. A. The

money was loaned. Mrs. Parsons offered the money. The money was not needed for the operation.

Q. Your husband took the money, though? A. Yes, he took the money.

Q. And you were operated on at that time? A. Yes, but—a minor operation done at home.

Q. And the money was loaned to your husband for that purpose, was it not? A. Yes.

Q. Now, your husband told you subsequently, after he got well, that Mrs. Parsons had been very kind to him, did he not? A. Yes.

Q. And he said that was the reason that he wanted you to meet her; is not that so? A. Yes.

Q. And did you meet her? A. I did.

Q. And you invited her to your house, did you not? A. Yes.

Q. And she came to your house? A. Yes.

Q. How often did she come to your house? A. Oh, I can't just remember; about, perhaps, every two or three months. I can't say how frequently.

Q. She came to your house when there was going to be a dance or entertainment at Dumont? A. Yes.

Q. She came out in the evening with your husband on the train, did she not? A. No, I do not believe she came with my husband. I believe she came alone.

Q. She went to the dance, did she not? A. Yes.

Q. You went to the dance? A. Yes.

Q. Your husband went to the dance? A. Yes.

Q. She stayed all night? A. Yes.

Q. And her daughter was with her frequently, was she not? A. Not at that time.

Q. But her daughter has been to your house with her, has she not? A. Not up to this. After that.

Q. The next morning when she went to New York, she went on the same train with your husband, did she not? A. Yes.

Q. And it was perfectly natural that she should go on the same train? A. Yes.

Q. Now, that took place during 1911, did it not? In 1912? A. Yes.

Q. In 1913? A. No, this took place 1911, I think; 1911.

Q. What about 1912? She visited your house in 1912, did she not? A. Yes, she did.

Q. She visited your house in 1913? A. Yes—no, not after 1913; not after this—in the first part of 1913 she did.

Q. But not after what? A. Not after the occurrence with the letter.

Q. And when was that? A. That was November 18th.

Q. That was in November— A. That was in November 18th.

Q. 1913? A. No, that—I do not exactly remember that day that letter came. I believe it is 19—

Q. The letter is postmarked 1914? A. 1914, yes; and 1918 was when the other letter came.

Q. You say she has not visited your house since 1913? A. She has not visited our house since this affair, the letter.

Q. Which letter do you mean, the letter of 1913 or 1918? A. The letter of 1913.

Q. Now, coming down to New Year's Eve of 1911, that was December 31, 1911, was it not? A. Yes.

Q. You say you were suspicious of your husband? A. Yes.

Q. And you started out to find out whether your suspicions were well grounded? A. Yes.

Q. What made you suspicious of your husband? A. Because he was spending the time away from home at night.

Q. Because he spent his time away from home at night. Now, you say you went on the seven o'clock train from Dumont? A. Yes.

Q. Did he know you were going on the train? A. No, he did not.

Q. Did he see you? A. No—not to my knowledge.

Q. Not to your knowledge? A. No. He didn't say he did.

Q. Is that the only reason that you think he did not see you, because he did not say so? A. He may have seen me; I don't know.

Q. There were not very many people that went down on that train from Dumont that night, were there? A. Oh, yes.

Q. How many were there? A. Oh, I don't remember that, and you know it is dark.

Q. How big a train was it? A. Why, I don't know; about four or five cars.

Q. Four or five cars? Did you ride in the same car with him? A. Yes.

Q. In the same car with him on the train? A. No, no, he went to the smoker.

Q. He went to the smoking car. Did you see him get off the train? A. Yes.

Q. Then he crossed over— A. I saw him walking up to the ferry.

Q. What? A. Saw him walking up towards the ferry.

Q. What ferry did you go over? A. The Weehawken, 42nd Street.

Q. What ferry did he go over? A. The same.

Q. And then what did he do after he got over there? A. He walked across 42nd Street to Times Square.

Q. What did you do? A. I walked after him.

Q. How far back of him were you? A. About 40 feet, 40 or 50 feet.

Q. And then what happened? A. He went in Hegeman's drugstore.

Q. In where? A. Hegeman's, Riker & Hegeman's.

Q. Where is that? A. Times Square.

Q. That is the corner of 42nd Street and Broadway, is it not? Then what happened? Did you go in the store? A. Yes. He met Mrs. Parsons.

Q. Did you go in the drug store? A. I waited until they came out.

Q. You waited outside? A. I waited. They just went in and had been in five minutes. He came out with Mrs. Parsons.

Q. He came out with Mrs. Parsons? A. Yes.

Q. How far were they from you? A. How far were they from me at the time?

Q. Yes. A. About 15 feet.

Q. Then what did they do? A. They walked across 42nd Street to Fourth Avenue.

Q. Then they went down Fourth Avenue to the Hotel Preston? A. Yes.

Q. Were you in the hotel? A. Yes.

Q How far back of them were you when they went into the hotel? A. About 30 feet.

Q. Did you go in the hotel after them? A. Yes.

Q. Walked right in after them? A. About five minutes after they were going in, about five minutes.

Q. What did you see when you went in? A. I didn't see anybody in there.

Q. You did not see anybody? A. No.

Q. How many entrances are there to that hotel? A. Two.

Q. Well then, you say you looked at the hotel register? A. Yes.

Q. And the last named register was "John Renshaw and wife of Ravina?" A. Yes.

Q. And you knew that that was your husband's name because it was the last name, did you not? A. No, I recognized his handwriting, and also the last name, because there was no one going in after them.

Q. There was no one going in after them? A. No.

Q. How did you know? A. Because I was standing right there.

Q. You said there were two entrances? A. I know, but that would not be the way, the place to go into and register, because this was in 26th Street. That is in the Fourth Avenue entrance.

Q. Now, a person could go in either of the two entrances? A. I don't know if that was the proper way to enter. I thought you have to enter in if you have to register, through the main office.

Q. Never mind what you thought. I asked you if you could not go in either of the two entrances? A. Oh, I suppose they could.

Q. You saw that Mr. John Renshaw and wife were in room 72? A. Yes.

Q. Why did you not go up to room 72? A. Why, I was alone, and I didn't care to.

Q. Where did you go then? A. I waited outside on the opposite corner.

Q. Out on the street? A. Yes.

Q. How long did you wait there? A. Until about a quarter after eleven.

Q. And they did not come out? A. They did not.

Q Now, that was New Year's Eve of 1911-1912? A. Yes.

Q. The next time you followed your husband to New York was Sunday afternoon, January 21, 1912, was it not? A. Yes.

Q. And he went in in the afternoon? A. Yes.

Q. You followed him? A. Yes.

Q. Did you go in on the train? A. Yes.

Q. Did he know you were following him? A. I don't know.

Q. Did you ride in the same car? A. No.

Q. You say you went over on the 34th Street crosstown car? A. What are you talking about, the train or car?

Q. The trolley car, when you reached New York? A. Oh, yes, in the same car.

Q. You went over on the 34th Street cross-town car? A. Car, yes.

Q. Same car with your husband? A. Yes.

Q. Your sister was with you? A. Yes.

Q. He did not know you were in the car? A. No, he didn't.

Q. He did not know you were there? A. No.

Q. Were you disguised in any way, or your sister? A. Well, I had different things on that he would not recognize so easy, and then the car was crowded, as the first car leaving the ferry is always crowded, and he went to the——

Q. You say he met Mrs. Parsons at the subway station that day? A. Yes.

Q. What part of the subway station did he meet her? A. What is that?

Q. What part of the subway station did he meet her? A. Right there at 33rd Street.

Q. And you saw them? A. I saw them come out together.

Q. You recognized her? A. I did.

Q. How was she dressed that day? A. Oh, I can't remember that. She had on a black coat, I remember.

Q. Now, that was on the 21st of January, 1912, Mrs. Parsons came to your house after that, did she not? A. Yes.

Q. Came to stay all night? A. Yes.

Q. What did you say to Mrs. Parsons about going to the Hotel Preston with your husband? A. I didn't say anything, because—

Q. Did not say anything? A. No.

MR. MACKAY: What were you going to say, "because?"

THE WITNESS: Because my husband had promised to let everything be forgot; he would never do it again; and let "bygones" be "bygones."

Q. He had promised that he would not do it again? A. Yes.

Q. And still, despite that, you entertained Mrs. Parsons at your house over night? A. Well, I did, because he said they were sorry, both sorry.

Q. Said she was sorry too? A. Said both were sorry it occurred.

Q. And despite their sorrow you entertained them over night at your house, did you not? A. Well, he asked me not to bring it up.

Q. Now, your husband in the meantime had borrowed more money from Mrs. Parsons, had he not? A. That is what time you are referring to?

Q. From between the time that he borrowed money to pay the physician's bill, when she first got acquainted with you, and down to January, 1913, he borrowed more money, did he not? A. I do not know when he borrowed it, but I know that he borrowed another hundred dollars, making it two hundred dollars nearly.

Q. Now the house that you live in in Dumont was purchased in 1909, was it not? A. Yes.

Q. And at the time it was purchased you gave a first mortgage on that house of $2500. to the Franklin Society for Homebuilding, did you not? A. Yes.

Q. And you had a second mortgage on it? A. Yes.

Q. In 1913 the second mortgage had come due, had it not? A. Yes.

Q. And your husband had to get a new second mortgage on the house, did he not, to take the place of the one that had come due? A. Yes.

Q. He went to Mrs. Parsons to see if she would not take over the second mortgage, did he not? A. I don't know whether he did or not.

Q. Well, you know she took it over, did she not? A. Yes.

Q. You knew about it at the time? A. Yes.

Q. And that second mortgage was for about eight hundred dollars? A. Yes.

Q. Now, in the latter part of 1913, or along toward the summer of 1913, you have said that your husband came to you and told you that the doctor had told him that his lungs were affected? A. Yes.

Q. Did you believe that at the time? A. I did.

Q. Do you believe it now? A. Partly.

Q. Partly. What part of it do you believe? A. Because he seems quite strong now. He has absolutely nothing the matter with him.

Q. Was he quite strong then? A. Why, I couldn't see that he was not.

Q. You say you could not see that he was not. You knew that Mrs. Parsons at that time had got a farm near Phillipsburg, New Jersey, did you not? A. Yes.

Q. And you knew your husband had helped her look after that farm? A. Yes.

Q. And you went and visited at that farm, did you not? A. I did, at the request of my husband.

Q. At the request of your husband, but you visited there, did you not? A. Yes.

Q. Took the children along? A. Yes.

Q. Stayed there three or four days, did you not? A. Three days.

Q. Was your husband with you? A. Yes, he came with Mrs. Parsons. I went there with the children and he came up with Mrs. Parsons.

Q. She was working at that time in New York, was she not? A. Yes.

Q. She always worked in New York, did she not? A. Yes, to my knowledge.

Q. And you stayed over Decoration Day? A. I did.

Q. And it was after that that your husband told you that he was sick? A. Yes.

Q. And you say you could not see anything much the matter with him, could you? A. No.

Q. He went to Mrs. Parsons' farm and stayed there five weeks? A. Yes.

Q. And he came home in September or October, 1913, did he not? A. Yes.

Q. Now, when did he come home? Was it September or October? A. October.

Q. When he got home you wrote a letter to Mrs. Parsons, did you not? A. Yes.

Q. Thanking her? A. Yes. At his request, that is, at his——

Q. You said in this letter: "In the few weeks that Mr. Rubens stayed at your home his health seems to have improved wonderfully, thanks to you and Gladys' kind attention; he must have

gained rapidly" You said that is the letter, did you not? A. Yes.

Q. And that was in 1913? A. Yes.

Q. Where was your husband working when he came home from Mrs. Parsons' farm? A. He was not working at all; he lost his position.

Q. He lost his position? A. Yes.

Q. How long was he out of a position? A. For about two or three weeks, I believe.

Q. And where did he go to work? A. At a printing concern called Redfield's.

Q. Where? A. In 43rd Street.

Q. In 43rd Street, New York? A. Yes.

Q. Was he working there on November 1[illegible], 1913? A. What is that?

Q. Was he working there on November 18, 1913? A. Yes.

Q. And that is the day you followed him with Mrs. Parsons to her apartment? A. Yes.

Q. And that was after you got the letter that is postmarked November 14th, 1913, is it not? A. What do you say?

Q. That is after you got the letter that is postmarked November 14th, 1913, is it not? A. What?

Q. That you followed him to Mrs. Parsons' apartment? A. After the letter, yes. That was November 18th, the letter that her daughter sent that day.

Q. Do you not know that Mrs. Parsons had given up her apartment in New York and had gone to live on the farm? A. She did not give up her apartment.

Q. You say she did not? A. She did not.

Q. How long did she keep it? A. I do not know how long she kept it, but I know she had it during her stay and while she was there at the farm.

Q. Do you not know that in the fall of 1913 she had given up the apartment and went to live on the farm for good? A. Not then.

Q. When did she do that? A. I do not know when she gave it up.

Q. You know she did it, do you not? A. Yes, later on, but I have no idea when she gave up the apartment. All I know is when they went still there together she still had the apartment.

Q. You followed your husband to the apartment on November 18th, did you not? A. Yes.

Q. Did Mrs. Parsons go to your house after that date? A. She did not.

Q. She has never visited your house? A. No.

Q. Have you ever seen her? A. Occasionally.

Q. What do you mean by occasionally? A. Since I am going to business I see her occasionally in the mornings. I have never seen her since—that is, in the meantime I had never seen her.

Q. How many letters did your husband get from Mrs. Parsons? A. I didn't count them. I couldn't say.

Q. He got a number, did he not? A. What is that?

Q. He got a number of letters from Mrs. Parsons? A. Oh, he got them on different occasions.

Q. Came to your house? A. Yes.

Q. Did you ever get any of those letters? A. Sir?

Q. Did you ever get any of those letters? A. No.

Q. Why? A. I didn't try.

Q. Why didn't you try? Because I did not know there was anything wrong.

Q. You say you did not know that there was anything wrong? A. Up to the time between

after he had made the promise and 1913, I didn't know that there was anything wrong, and any letter or anything came to him from Mrs. Parsons I never opened or never questioned.

Q. Now, in 1914, in December, 1914, you gave another mortgage to Mrs. Parsons, did you not? for $1700, on your property? A. Yes.

Q. Had your husband started in business at that time? A. Yes. She had loaned him $500 to start in business.

Q. You know that she loaned him money to start in business with, do you not? A. Yes, I know. I know that.

Q. And that mortgage was given to secure the amount of money that she loaned him to start in business with and the amount of the other mortgage of $800., was it not? A. Yes.

Q. You signed that mortgage? A. I did, because he forced me to.

Q. And there is no doubt in your mind that your husband owed her that money, is there? A. Yes.

Q. There is? A. No, I know that he owed her that money.

Q. You know that he owed her that money? A. Yes.

Q. Now, your sister lived in West Englewood, did she not? A. Yes.

Q. She owned a house there, did she not? A. Yes.

Q. And when did she die? A. In January, 1918.

Q. In January, 1918. And your husband was the executor named in her will, was he not? A. Yes.

Q. He had control of the property? A. Yes.

Q. And you knew he was trying to sell the property, did you not? A. Yes.

Q. And he told you that he sold it to Mrs. Parsons, did he not?

MR. MACKAY: How is this relevant?

A. He did not say that at all.

THE COURT: You went into the question of the sale.

MR. DECKER: You opened it up by your direct examination. I do not suppose it is relevant.

THE COURT: I think the cross examination so far is competent.

(Question read).

THE WITNESS: Yes.

Q. Now, you knew that Mrs. Parsons went to live at West Englewood? A. Yes.

Q. And you know when she went to live there? A. I believe some time in March.

Q. Of 1918? March of 1918? A. Yes.

Q. You knew she worked in New York? A. Yes.

Q. And you knew that the only way of her getting to New York was to ride down in the train, did you not? A. Yes.

Q. And that is the way your husband goes to work? A. Yes.

Q. That is the way they used to go home nights? A. Yes.

Q. You say that your husband left a letter so that you could see it, a letter from Mrs. Parsons, stating that the mortgage she had sold, the second mortgage that she held on your house, and that it would have to be paid when it fell due, do you not? A. Yes.

Q. When did you see that letter? A. I saw that April 16th.

Q. April 16th, 1919? A. April 15th, I believe —I do not know if it was April 15th or April 16th, but I know I saw Mrs. Parsons on April 16th.

Q. Now, you went to see Mrs. Parsons, did you not? A. I did.

Q. Where did you see her? A. In the Park of West Englewood.

Q. In the West Englewood Park? A. Yes.

Q. Right at the railroad station? A. Yes.

Q. You went to see her the same day that you got the letter, that you saw the letter? A. I saw the letter, yes, in the morning.

Q. I did not hear that. A. I saw the letter in the morning of April 16th.

Q. You went to see her that night? A. Yes.

Q. You waited for the train to come in with Mrs. Parsons on her way home? A. Yes.

Q. First you went to her house, did you not? A. Yes.

Q. They told you she was not home? A. Yes.

Q. Then you walked over to the station? A. Yes.

Q. It was a rainy night, was it not? A. (No answer).

Q. Did you see Mrs. Parsons' son at the station? A. Yes.

Q. You talked with Mrs. Parsons? A. Yes.

Q. You told Mrs. Parsons that she would have to get that mortgage back, did you not? What did you tell her then? A. I asked her couldn't she please hold the mortgage a little longer until we would be more able to get money to pay it.

Q. What did she say to that? A. She said it was out of her hands.

Q. What else did you say to her? A. I asked her to leave my husband alone.

Q. You asked her what? A. To leave my husband alone; let me have the father of my children.

Q. What did she say to that? A. She said that what was going on between myself and my husband was absolutely nothing to do with her, that I had my husband, and that was all.

Q. That what was going on between yourself and your husband had nothing to do with her? A. Yes.

Q. That you had your husband? A. Yes.

Q. And that was all? A. That was all I could ask for.

Q. That was all you wanted, was it not? A. I wanted his affection. I didn't want just a man in name only.

Q. What else did you say to her? A. I told her if she would not give him up I would start proceedings.

Q. Start what proceedings? A. Suit for alienation.

Q. What did she say to that? A. I could do as I liked, or something to that effect, or because that I was misled it was no reason that I should wreck her life. Those were the words she said to me.

Q. You told her if she did not get that mortgage back you were going to sue her, did you not? A. I did not say that at all.

Q. What did you say? A. I asked her wouldn't she please hold the mortgage a little longer.

Q. Then what did she say? A. Then I asked her to leave my husband alone.

Q. What did leaving your husband alone have to do with the mortgage? A. For the simple reason—this was the next shot fired at me after I refused the divorce. This was the next thing, the next action to compel me to divorce him.

Q. You had refused the divorce some time before that, had you not? A. Yes.

Q. Now, you subsequently paid that mortgage, did you not? A. He didn't do it—not right away. It was left until the last minute.

Q. He paid it this month, did he not? A. Yes. And he paid it because he thought he could sell the house for more than what the house would be sold for in case of foreclosure, and therefore he made me come down and sign the papers so he could sell the house, telling he was going to sell it himself.

RE-DIRECT EXAMINATION BY MR. MACKAY:

Q. You say you are now going to business? A. Yes.

Q. What are you doing? A. Operator on ladies' lingerie.

Q. You are employed there, are you? A. Yes.

Q. At a salary? A. Yes.

Q. What are you earning? A. $25.

Q. A week? A. Yes.

Q. Do you still have the two children? A. Yes.

Q. And you did not bring them down with you, did you? A. No.

Q. You have not had them in court at all? A. I have not. I did not like to, unless it was absolutely necessary. I didn't like to bring them into it.

Q. You are supporting them? A. I am.

RE-CROSS EXAMINATION BY MR. DECKER:

Q. How long have you been working? A. Since August, 1919.

Q. Did you ever work before? A. Not away from home.

Q. Not away from home. You have worked at home, haven't you? A. I have. I have had boarders right along.

Q. You have always had boarders, have you not? A. Yes, to help support.

Q. Before Mrs. Parsons got acquainted with your husband you had boarders? A. No, but I had a sister living with me, and she was at the time paying me two dollars a week board.

Q. Helped to support your house? A. Well, two dollars.

Q. Did your husband ever make enough money to support your house? A. He did.

Q. When? A. Before this trouble occurred.

Q. Before what trouble? A. With Mrs. Parsons.

Q. Before what date? A. Why, up to 1911.

Q. Up until 1911 he made plenty of money, did he not? A. Oh, no, I did not say that.

Q. How much did he make up until 1911? A. How?

Q. How much did he make up until 1911? A. $21. a week.

Q. How much has he made since 1911? A. Why, he is going in business for a good many years.

Q. In business for himself, is he not? A. Yes.

HARRY J. RUBENS, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. MACKAY:

Q. Are you related to the plaintiff in this case? A. Brother-in-law.

Q. Brother-in-law? A. Yes, sir.

Q. Do you remember when your brother Edward S. Rubens was married? A. Yes, sir; year of 1904.

Q. Do you remember after the year 1911 seeing Mr. Rubens with Mrs. Parsons? A. Yes, sir; I have.

Q. When is the first you remember? A. I remember before that. I worked across the street from Mr. Rubens in the Federal Printing Company, previous to 1911.

Q. How long before? A. Well, several months.

Q. During the same year? A. Yes, sir.

Q. You worked across the street, you say? A. Yes, sir.

Q. Where did your brother work? A. At the Art Color Printing Company.

Q. And where did Mrs. Parsons work? A. At the Art Color Printing Company.

Q. At the same place? A. Yes, sir.

Q. Did you see them go out there then? A. No, sir; I used to go up there during lunch period and see them eating lunch together.

Q. Whereabouts? A. At the Art Color Printing Company.

Q. And after 1911, have you seen them together? A. Yes, sir; I have.

Q. What was the first you recall? A. About six years ago I worked in a printing house in

42nd Street, and the business I work in we need plenty of light, and I used to work right near the window. It was a store. And I used to see my brother and Mrs. Parsons pass the window occasionally, well, probably every other night, sometimes; couldn't help from seeing them.

Q. Going where? A. Going toward 42nd Street ferry.

Q. 42nd Street ferry? A. Yes, sir.

Q. Did you ever see them dining together at any time? A. No, sir, not outside the lunch period.

Q. The lunch period? A. Yes, sir.

Q. And that was as you have just told us? A. Yes, sir.

Q. Did you ever see them together any other place? A. Yes, sir, I did, at a ball, about four years ago.

Q. Whereabouts was that? A. At Arcadia Hall in Brooklyn.

Q. Were you there? A. Yes, sir.

Q. Was Mr. Edward S. Rubens there? A. Yes, sir.

Q. And Mrs. Parsons? A. Yes, sir.

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

Q. Did you have someone with you? A. I was with a party; quite a large crowd.

Q. Did you leave before your brother or after? A. I left before my brother.

Q. Was he still there when you left? A. Yes, sir.

Q. With Mrs. Parsons? A. Yes, sir. He was sitting at some table with her.

Q. Was Mrs. Rubens there? A. No, sir.

Q. She was not there? A. No, sir.

Q. About when was this, you say? A. About four years ago.

Q. 1915? A. About 1915 or 1916. I can't just recollect.

Q. What time did you leave that dance? A. About 12.30.

Q. 12.30? A. Yes, sir.

Q. And they were still there? A. Yes, sir.

Q. Any other time you recall? A. Yes, sir. While in the army I would come and visit my brother on my way to another brother's house in Brooklyn, and he asked me if I cared to see Mrs. Parsons, and I thought I would because Mrs. Parsons always seemed so sociable, and he took me up there, while I was in uniform.

Q. Who did? A. My brother.

Q. Edward S.? A. Yes, sir.

Q. The husband of Mrs. Rubens? A. Husband of Mrs. Rubens.

Q. Took you up to Mrs. Parsons' house? A. Yes.

Q. Where was that? A. In Adelphi Street, Brooklyn.

Q. When? A. That was about two years ago; three years ago in January, I should judge,—two years ago in January.

Q. Any other occasion? A. Yes, sir. Last May, I think it was, I had gone downtown on an errand, and I was starting for my brother at the time, and I made an early train, and I was sitting in the ferry house, reading the paper and waiting for the boat to come in; and I got absorbed in the paper and did not notice the time, —heard the gong ring for the boat to leave, and I jumped up, and just as I was running for the boat I saw my brother with Mrs. Parsons getting on the boat.

MR. DECKER: When was this?

THE WITNESS: Last May.

Q. When was this, in the morning or evening? A. In the evening.

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

Q. Did you cross over? A. Yes, sir, I run up —I had not seen Mrs. Parsons in two years, and I run up to her, and the reception was so cool, why, I didn't think I was wanted, and my brother said he would see me later in the train.

Q. Were they walking very close together when you saw them? A. He was assisting her up the gang-plank on the ferryboat.

Q. Had a hold of her arm? A. Yes, sir.

Q. That is the only— A. That was the last time I seen them.

CROSS EXAMINATION BY MR. DECKER:

Q. Now, in May of this year, when you saw Mrs. Parsons, the defendant, with your brother, where were they? A. Getting on a ferryboat.

Q. What ferryboat? A. 42nd Street Weehawken.

Q. Were they in Weehawken or in New York? A. In New York.

Q. They were coming to Weehawken? A. Going to Weehawken.

Q. You spoke to them? A. Yes, sir.

Q. Who else was with them besides your brother? A. They were alone.

MR. MACKAY: What is that?

THE WITNESS: They were alone.

Q. Nobody else with them? A. No, sir.

Q. You are sure of that? A. Yes, sir.

Q. In January, 1918, you went to Mrs. Parsons' house in Adelphi Street in Brooklyn, did you not? A. Yes, sir.

Q. Who was there? A. Her daughter.

Q. Who else? A. That was all I remember. Of course, I was there twice at the time.

Q. What? A. I was there twice. Once just her daughter was there, another time.

Q. Just tell us what happened when you got there? A. I walked in there, was received very nicely; we sat in the parlor, and her daughter played the piano, made everything sociable; that was all; just a sociable visit.

Q. Your brother was with you? A. Yes, sir.

Q. And he was treated decently, was he not? A. Yes, sir.

Q. How long did you stay? A. Oh, I should judge about an hour or an hour and a half.

Q. Then you went away with your brother? A. Yes, sir.

Q. He did not stay after you left, did he? A. No, sir.

Q. Now, what was there unusual about your brother's visit to Mrs. Parsons' house in Adelphi Street in January, 1918?

MR. MACKAY: I object to that question. It calls for a conclusion.

THE COURT: You may tell us what happened there.

A. Nothing unusual, nothing to cause suspicion on my part.

Q. It was just an ordinary visit to friends and you were treated decently? A. Yes, sir.

Q. Now, how did you come to go to Arcadia Hall four years ago? A. I am a compositor myself, and I was working for the Federal Printing Company.

Q. Will you not speak a little louder? I do not know whether the jury can hear you, but I know

I cannot. A. I was a compositor myself, and it was an affair of the Typographical Union No. 6, and I received a ticket to go there, and a party of boys I traveled with were all going, and we went in a party.

Q. And you went there with the party? A. Yes, sir.

Q. Did your brother go with Mrs. Parsons? A. I don't know.

Q. What? A. I don't know.

Q. Did you see anybody else with her besides your brother? A. They were with a party.

Q. They were with a party? A. Yes, sir.

Q. Your brother is a member of that Union, is he not? A. He was not at that time.

Q. Well, he is in the trade that that union deals with, is he not? A. Yes, sir.

Q. Do you know whether Mrs. Parsons is a member of that union? A. Well, proof-readers have to, in order to work in a union place, have to belong to the union.

Q. This was a ball that was given by the union? A. Yes, sir.

Q. And most of the members of the union were there, were they not? A. Yes, sir.

Q. Well now, tell what there was unusual in Mrs. Parsons' conduct toward your brother that evening? A. I did not take particular notice of them, but when I found it was 12:30, I knew my brother had lost the last train, and I called him, and he was in conversation with somebody, and he was sitting next to Mrs. Parsons, and Mrs. Parsons seen me, and she seen me, heard me call him, and she attracted his attention, and I asked him—

Q. What do you mean, attracted his attention?

A. She touched his arm and told him I wanted him.

Q. Then what? A. He come over to me, and I asked him where he was going to stay that night.

Q. Now, you say during 1913 you saw Mrs. Parsons and your brother pass the window of your place of employment, going toward the 42nd Street ferry. Where was your place of employment? A. Between Ninth and Tenth Avenue.

Q. On what street? A. 42nd Street.

Q. On what side of the street? A. On the downtown side of the street.

Q. What floor in the building did you work on? A. On the street floor, ground floor.

Q. What time of day would you see them go by? A. Oh, about 5.30 or quarter of six.

Q. Did you ever see them go by at any other time of the day? A. No, sir.

Q. They were going home from work, were they not? A. Yes, sir.

Q. Your brother was going home? A. Yes, sir.

Q. Mrs. Parsons was going home? A. To the best of my knowledge.

Q. What? A. To the best of my knowledge.

Q. You saw a good many other people go by the window each night, did you not? A. Yes, sir.

Q. You saw other people from the Art Color Company go by the window? A. Yes, sir.

Q. And anybody that used the 42nd Street ferry went by that window? A. Yes, sir.

Q. And anybody that lived above 42nd Street on the west side went by that window, did they not? A. Yes, sir.

Q. How often did you see them go by the win-

dow together? A. Well, every now and then; you can't say every night.

Q. What? A. I can't say every night.

Q. You say that you saw them eat lunch together during 1911? A. Yes, sir.

Q. Where were they eating lunch together? A. At Mrs. Parsons' table, where she used to read proofs.

Q. In the Art Color Company? A. Yes, sir.

Q. Whom else did you see eating lunch there? A. Just my brother and Mrs. Parsons.

Q. Nobody else? A. Yes, sir, other men, but not at that table.

Q. Other men were eating lunch? Where were they eating lunch? A. Around the frames.

Q. What do you mean by frames? A. That is a table that the compositor works on.

Q. How often did you see them eating lunch together? A. I couldn't say. Nearly every time I went up there they were eating together.

Q. How often did you go up there? A. Quite often.

Q. I do not hear you. A. Quite often.

Q. What do you mean by quite often? A. I never stopped to count them.

Q. Suppose you stop now and tell us how many times you went up there? A. That would be impossible.

Q. Were they always at this table? A. Yes, sir.

Q. Nobody else was at the table eating lunch? A. Well, probably, occasionally, I might see a young lady there that used to hold copy.

Q. Eating at the same table? A. Yes, sir.

Q. Then there would be three at the table eating lunch? A. Yes, sir.

Q. You, of course, thought that was unusual,

did you not? A. No, it never occurred to me. I was too young at the time.

Q. How big a room was this? A. Quite a large room.

Q. Is it not a common practice in the printing trade, for the people who are employed in the trade, to take their lunch to work with them and eat their lunch during the noon hour? A. No more than any other trade.

Q. Well, it is so in the printing trade, is it not? A. What is that?

Q. It is so in the printing trade, is it not? A. It all depends on the man's stomach, whether he can take a cold dinner or a hot one.

Q. A good many of them can take a cold dinner, can they not? A. I am an exception. I like a hot one.

Q. You have seen a good many take a cold dinner, have you not? A. Yes, sir.

Q. And you have seen people eat lunch in your place of employment, have you not? A. Yes, sir.

Q. And other places of employment? A. Yes, sir.

Q. And you have seen men and women sitting around eating lunch that were employed there? A. Yes, sir.

Q. Where do you live? A. 110 East 117th Street.

Q. In New York? A. Yes, sir.

Q. You do not live with your brother? A. No, sir.

MR. DECKER: That is all.

MR. MACKAY: That is our case, your Honor.

THE COURT: Proceed with the defense.

MR. DECKER: Now, if the Court please,

I want to move for non-suit. According to the case of *McKenna vs. Algeo,* decided by the Supreme Court in 1892, there are two elements that must be proved in an action of this kind. First, the plaintiff must show not ony that she lost her husband's affections, but she must show that it was the defendant who was responsible for the loss of her husband's affections. Now, I submit to the Court that neither of those elements have been proved in this case at this time.

The proof is this. The only three things which she has testified to that are out of the ordinary are these: On New Year's Eve of 1911, December 31, 1911, she says that she saw the defendant and her husband walk down the street and walk into this particular hotel, and that at some time later she went in there, and that she saw a name, not her husband's name, on the register; and the same thing happened a month later; and subsequently she says she saw them go to an apartment house.

The proof that she has given, if it were in a divorce case, could never sustain any petition for divorce. The mere fact that a man and woman go into a building together, or a hotel, or whatever it may be, is not sufficient proof of the charge that they have alleged in their complaint. Aside from that, the conduct of these parties toward each other has been nothing more than the conduct of people who are acquainted, one treating the other decently when they get the opportunity to do so.

THE COURT: I do not think you are entitled to a non-suit. But, Mr. Mackay, what

is there for which you can hold your fourth count, criminal conversation? The evidence cannot be from the wife. You must take that out. Is there anything?

MR. MACKAY: No, I do not think there is, your Honor, to be perfectly frank. While of course the evidence in a case of this kind is not the same kind of evidence that is required for a divorce suit, any more than the evidence in this case to prove residence is similar to that required in a divorce suit, I do think that the fourth count of criminal conversation, that is, the charge of adultery, which I think is the fourth count, should be eliminated, and the action based on the first, second, and third counts, and that part of the fourth count which may apply to the alienation of affections.

THE COURT: I shall let it go to the jury on the question of the alienation of affections alone. There is nothing in the other to go to the jury.

MR. DECKER: Note my exception.

THE COURT: Yes, take your exception. I agree with you as to the law, but I think there are enough facts for the jury to pass upon.

ETHELYN C. PARSONS, the defendant, called as a witness in her own behalf, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. DECKER:

Q. Mrs. Parsons, where do you live? A. 22 Ogden Avenue, West Englewood, New Jersey.

Q. How long have you lived there? A. Since March 28th, 1918.

Q. Where did you live before that? A. 236 Adelphi Street, Brooklyn.

Q. How long did you live at Adelphi Street, Brooklyn? A. Four years.

Q. Where did you live before that? A. At a farm in Stewartsville on the outskirts of Phillipsburg, New Jersey.

Q. For how long? A. Well, something over a year.

Q. Where did you live before that? A. Rockville Center, Long Island.

Q. And before that? A. Degraw Street, Brooklyn.

Q. And before that? A. Before that we had a few furnished rooms on St. Felix Street that we went to in 1910, when my husband died.

Q. Where were you when your husband died? A. In Jacksonville, Florida.

Q. You came to New York? A. About December 1st, 1910.

Q. You went to work in New York? A. I went to work in the Art Color Printing Company, West 39th Street, on December 12th, 1910.

Q. Have you worked there ever since? A. With the exception of about a year.

Q. You worked for the Art Color Printing Company today, now? A. Yes.

Q. And there is where you got acquainted with this plaintiff's husband, is it not? A. Yes, sir.

Q. When did you get acquainted with him? A. Well, he was employed in the printing establishment when I went there, but, of course, they were all strangers to me.

Q. How did you come to get acquainted with him? A. Through his bringing proofs in the office for us and my reading the proofs in our proof room.

Q. What happened after you got acquainted with him? A. Nothing happened at first.

Q. Did you ever loan him any money? A. Yes. I don't know how long that was after I went there, but I noticed that he looked very sad and very downhearted, and I asked him what was the matter, and he said his wife was very sick and an operation was necessary, and the doctor—

MR. MACKAY: Is this admissible, your Honor? I want to enter my objection to it.

THE COURT: What do you say to that?

MR. DECKER: I do not say anything.

THE COURT: I do not think it is.

Q. You loaned him money, did you? A. I loaned him $200. for an operation.

Q. Now, Mrs. Parsons, do not relate any conversation that you had with Mr. Rubens, unless you can tell what happened between you and him, or you can tell any conversation you might have had with Mrs. Rubens. A. Very well.

Q. You say you loaned him $200. And when was that? A. It was in 1911.

Q. What happened after that? A. He wanted another hundred.

Q. You let him have it? A. I let him have it.

Q. When was that? A. During the following week.

Q. The same year? A. Yes, right after I lent him the first hundred.

Q. Was any reason given for lending that money? A. For the operation on his wife.

MR. MACKAY: I object.

THE COURT: Was there an operation?

THE WITNESS: That was the reason.

MR. MACKAY: I ask that it be stricken out.

MR. DECKER: I think this woman has a right to give an explanation of her conduct toward the man and the reasons that prompted her to do things. Of course it is an unusual thing for a woman to lend money to a man, but a woman who is charged with taking his affections has a right to explain why she loaned him that money in defense to the charge.

THE COURT: You have already shown the reason for his request for it.

MR. DECKER: I think she can go a step further than his request, because if she cannot, it could be said against her that here is a woman who gave money to the man, and that is proof that she had more than a passing interest in him.

MR. MACKAY: Well, counsel cannot blow hot and cold. If he objects to testimony that I offer on the ground that it is hearsay, between husband and wife, and now wants to—

THE COURT: I am going to sustain your objection. You need not argue further.

Q. Did you ever visit this lady at her home? A. I did.

Q. When did you get acquainted with her? A. In 1911.

Q. Who introduced you to her? A. She came to the Art Color to meet her husband.

Q. He introduced you to her? A. He brought her into our proof room and introduced her to Miss Fox, my copyholder, and myself. Mrs. Rubens sat there in the chair and to wait for her husband to be finished with his day's work, and then they went out together.

Q. What part of 1911 was it that this happened? A. It must have been the early part.

Q. Did you ever visit her at her home? A. I did.

Q. When was your first visit? A. I think it was that summer.

Q. And how did you come to go there, to her home? A. I was invited to go.

Q. By whom? A. By Mrs. Rubens.

Q. By Mrs. Rubens? A. By Mrs. Rubens.

Q. You went to her home? A. I did.

Q. Did you go alone? A. I did that time.

Q. And how did you go there? By what means did you go there? A. Went on the West Shore train. I don't recollect.

Q. Did you go alone? A. I did.

Q. How long did you stay? A. The day. I went in the morning—

Q. Did you stay over night? A. I did not.

Q. When did you go there again? A. My daughter and I went out to a dance, Washington's Birthday, following.

Q. Of 1911? A. That would be 1912.

Q. Did you stay there over night? A. I did.

Q. Your daughter was with you? A. Yes.

Q. How did you come to go there that time? A. That was a masquerade.

Q. How did you come to go there? Were you invited? A. No. To the best of my recollection we were invited to go by Mrs. Rubens through her husband.

MR. MACKAY: Through her husband?

THE WITNESS: Through her husband.

Q. You mean the husband extended the invitation to you? A. Yes, to my daughter and myself.

Q. When you got there did you talk to Mrs. Rubens? A. They had gone already to the hall. We went to her house, my daughter and I. Her mother was there.

Q. Did she speak to you? A. Yes. Then we went over to the hall.

Q. Now, when was that? A. That was Washington's Birthday, 1912.

Q. You have heard the plaintiff testify that on December 31st, 1911, New Year's Eve, you met her husband at Hegeman's drug store in Times Square, New York, walked with him down 42nd Street, turned down Fourth Avenue to a hotel named Hotel Preston, and that he went in the hotel and procured a room there, and you occupied room No. 72 with him that night. Is that true or not? A. It is not true.

Q. Do you know where you were on December 31, 1911? A. I do.

Q. Where were you? A. I was in Rockville Center.

Q. Long Island? A. Long Island.

Q. Where were you in Rockville Center, Long Island? A. We were—I was visiting friends by the name of Brown.

Q. What time did you get there? A. My sister, who is now deceased, my son, my daughter

and myself went from DeGraw Street, Brooklyn, to Rockville Center by trolley. We arrived there about 1:30, to dinner.

Q. What day was it; 1.30 of what date? A. This was the last day of December.

Q. 1911? A. 1911. We were there to dinner We spent the afternoon and the night, and the next day, until afternoon, and then we went back home.

Q. You have heard this plaintiff testify that on the afternoon of January 21st, 1912, you met her husband in the subway station at 33rd Street, New York, and accompanied him to the Hotel Preston where you occupied room No. 52 with him, from about a quarter of four until half-past six; that you came out from the hallway with him at half-past six and returned to the hotel at half-past seven, and stayed there during the evening. Is that true or not? A. It is not true.

Q. Do you know where you were January 21st, 1912? A. I do.

Q. What day is January 21st, 1912? A. Sunday.

Q. But is it your birthday? A. That is my birthday.

Q. Where were you on January 21st, 1912? A. I was living in DeGraw Street, Brooklyn, with my family; my sister, my son, my daughter, and myself, and a friend of ours, William J. Ferrie of Brooklyn, an old family friend, called at the house in the afternoon. We were in the habit of celebrating his birthday, which was in August, and my birthday, which was in January, on January 21st, by going somewhere or doing something. This time being my birthday, he came to the house in the middle of the afternoon; I would say perhaps around three o'clock or four, and

suggested that we go to New York, and I said, "Why not wait until—"

Q. No, no, never mind conversation. Just tell where you went?

THE COURT: What did you do?

A. We didn't wait for tea, but I got ready. We went to New York in the subway to 28th Street. We left the subway and went to White's restaurant. That is around—it was then around 28th Street, and had our supper. Then we went and bought tickets for the Metropolitan Concert, and it was too early for the concert, so we took a walk around, and when it was time, we went to the Metropolitan and stayed through the evening. When the concert was over we went back home to my home in DeGraw Street. Then Mr. Ferrie went to his home.

Q. What time did you leave Mr. Ferrie that night? A. Perhaps—I believe the opera was over around eleven. It possibly took us an hour to get home.

Q. So it was about midnight? A. About that.

Q. Now, Mrs. Parsons, during the year 1912, you bought a farm near Phillipsburg, New Jersey did you not? A. I did.

Q. When did you buy that farm, what time during the year? A. I bought it late in the Fall of 1912.

Q. Late in the fall of 19' what? A. 1912.

Q. This plaintiff's husband helped you find that farm, did he not? A. He did—not that farm.

Q. He helped you look for a farm, did he not? A. Yes.

Q. Did the plaintiff know it? A. Yes.

Q. I show you a letter dated November 7th, 1912, and ask you if that letter you received from the plaintiff (handing letter to witness)? A. I did.

MR. DECKER: Now, if the Court please, I want to offer this in evidence at this time.

MR. MACKAY: No objection.

Paper marked D-2.

Q. Who went to live on your farm, you or your family? A. My family went first.

Q. Whom do you mean by your family? A. My sister, my son, my daughter.

Q. When did they go to live on the farm? A. First of January, 1913.

Q. And did they work the farm? A. They did.

Q. You stayed in New York and worked at your trade, did you not? A. I stayed in New York on 47th Street and worked at my trade, except the week-ends; I went home for the week-ends.

Q. You would go to the farm during week-ends? A. Yes.

Q. Did this plaintiff, Mrs. Rubens, ever visit you at the farm? A. Mrs. Rubens?

Q. Yes. A. She did.

Q. When did she go there? A. Over Decoration Day, 1913.

Q. How long was she there? A. About three days.

Q. Were her children there? A. Yes.

Q. Her husband there? A. Yes.

Q. You have invited them to go to the farm? A. Yes.

Q. Now, subsequently, her husband was at the farm, was he not? A. Yes.

Q. How long was he there? A. Five weeks.

Q. Was she with him? A. No.

Q. Will you tell how he came to be at the farm five weeks during 1913? A. Yes. His health became greatly impaired. I could see him failing,

and every one could see him failing every day. He got to look very bad, like almost a walking corpse. He was so bad that over in the Federal Printing Company where he worked they took up a subscription for him and said he might as well have the money now as to have it in flowers a little later on. So he said his doctor had ordered him to go away, that his lungs were affected, and that he had no place to go, and no money to go with to pay his board anywhere. He looked so bad that my sympathies were aroused, and I suggested that he go out on the farm in Phillipsburg where my children were, which he did.

Q. Did he say anything about his wife going with him? A. Not with him, but it was with her consent.

MR. MACKAY: No, no.

MR. DECKER: No. I did not—

MR. MACKAY: You know better than that.

MR. DECKER: I ask the witness if Mr. Rubens said anything to her.

Q. Did you say anything to Mr. Rubens about his wife accompanying him to the farm for five weeks?

MR. MACKAY: I do not think that is admissible. Anyway, I object to it.

THE COURT: No. I will sustain your objection.

Q. He went to the farm, did he not? A. He did.

Q. And how often did you go to the farm while he was there? A. I went the week-ends.

Q. What do you mean by the week-ends? A. I would go out on Saturday afternoon, or evening, and return Sunday evening.

Q. What time did you get there Saturday afternoon or evening? A. Well, yes, during the Saturday afternoon, when we were having Saturday half holidays I went as early as I could, and we reached there perhaps about three or four o'clock. But when we did not have the Saturday afternoon I would not get there until ten o'clock in the evening.

Q. Now, you were there Saturday evenings and Sundays when he was there? A. I was.

Q. How did you spend your Saturday evenings and Sundays during his five week period? A. Well, I usually had plenty around the house to occupy me when I got home, and in the evening we had our music. And we had our neighbors. We usually had neighbors in Saturday evening, or else we went to see them, because it was the only evening that I had home.

Q. What did Mr. Rubens do during this period? A. Joined in.

Q. Now, he came back to the city after he had been there five weeks. Was his health restored? A. Very much so. He was in such a weak condition when he went there that he couldn't do anything but lay out in the hammock under the tree and sleep. The fresh air and the fresh eggs and the milk that he had restored him.

Q. After he came back you got this letter marked Exhibit D-1 for identification? A. While he was there.

Q. While he was there? A. While he was there I received that letter.

MR. DECKER: I want to offer it in evidence now. Is there any objection?

MR. MACKAY: No.

Paper marked D-1.

Q. You have been very friendly with the plaintiff's husband and this plaintiff, have you not? A. I have.

Q. They had children, did they not? A. Yes.

Q. Children frequently visited you, did they not? A. Yes.

Q. Where would they visit you? A. They visited us in DeGraw Street with their father and mother, in Rockville Center with their father and mother, in Adelphi Street with their father, and West 47th Street with their father, and in Adelphi Street.

Q. This plaintiff visited you, did she? A. She did.

Q. Now, coming down to the month of November, 1913. Do you remember the 18th day of November, 1913? A. I do.

Q. Will you tell us what happened on that day?

MR. MACKAY: What date?

MR. DECKER: November 18th, 1913.

A. I left my home in Phillipsburg, in New Jersey, took the train to New York. When I arrived in New York, about noon, I telephoned Mr. Rubens at his office that I was in town and would like to see him. I waited at the Brooklyn Bridge, at the entrance, and he came down there, and we stood and talked there at the entrance of the Brooklyn Bridge for perhaps twenty or twenty-five minutes. Then he had to go back to the office.

Q. Well, what was the talk about?

MR. MACKAY: I object.

A. About the family.

MR. MACKAY: I object.

A. And things in general.

THE COURT: I think the general subject of the conversation is competent, the general subject of the conversation.

MR. MACKAY: Oh, the general statements he made, but not now to go into this—

MR. DECKER: I am not going to.

MR. MACKAY: You did.

MR. DECKER: I asked her what it was about, and she said the family.

MR. MACKAY: You got it in a nice way.

Q. What time did you leave him, what time of day? A. He left me there about a quarter of one.

Q. In the afternoon? A. At noon time, yes, afternoon.

Q. At the Brooklyn Bridge? A. Yes.

Q. Then where did you go? A. I went down to 45 Rose Street, New York.

Q. What is 45 Rose Street? A. S. L. Parsons & Company.

Q. What is S. L. Parsons & Company? A. That is the firm my husband was a partner in, and he sold his interest.

Q. What did you go to S. L. Parsons & Company for? A. Why, to see his partner.

Q. Who is his partner? A. Mr. M. L. Zulzer.

Q. Did you see him? A. I did not. He was out. I left word that I would call later in the afternoon, because I wished to see him particularly.

Q. And you did go back later in the afternoon? A. I did.

Q. What did you do during that interval? A. Then I went up to West 47th Street. I wish to state here that I left 47th Street on October 16th.

MR. MACKAY: That is not the question, your Honor.

Q. When did you leave the apartment on West 47th Street for good? A. I left there on October 16th.

Q. What year? A. (No answer).

Q. Have you got anything that will recall the date to you? A. Yes, there on my papers.

Q. Which package are they in? A. It is a blue slip in that book.

MR. MACKAY: Can you not remember it without that, Mrs. Parsons?

THE WITNESS: Well, I could if I stopped to think, probably, but—

MR. MACKAY: I think we ought to have it if she can remember it without it, if she stops to think.

THE COURT: Yes, if she can remember without memorandum, of course.

Q. The date I want to know is the date you gave up the apartment on West 47th Street. Where did you go to live from the apartment? A. It was 1913.

Q. Where did you go to live from there? A. I went back to the farm in Phillipsburg on that date.

Q. Did you go to live on the farm permanently then? A. I supposed so, at that time.

Q. You had given up your employment, had you? A. Yes, but I left a few pieces of furniture there in care of the janitor, and asked him to send it to the storage, because I packed up hastily and wanted to get away home that night, so I left them in his care, and he was to send them

to storage for me; and subsequently I learned that janitors had been changed, and everything was still remaining there, these few pieces, and I had to go down on this November 18th to see about that furniture, getting it away from there.

Q. What time of day did you go there? A. Around one or half-past.

Q. How long did you stay? A. I stayed until nearly three.

Q. Then where did you go? A. Then I went back to 45 Rose Street.

Q. Whom did you see there? A. I saw there Mr. Zulzer and his partner, Mr. O'Brien, in a consultation.

Q. Did you transact your business with them? A. I did.

Q. What time did you leave there? A. I left there about—We left there about four o'clock, the three of us, and we went to the World restaurant and had something to eat.

Q. Where is the World restaurant? A. World Building.

Q. That is downtown, New York? A. Yes.

Q. What time did you leave the World restaurant? A. About five o'clock.

Q. Where did you go then? A. Mr. Zulzer went home, and Mr. O'Brien accompanied me over to the Central Railroad of New Jersey. We crossed the ferry. He went all the way with me because I was going—

Q. Where were you going? A. I was going home to Phillipsburg.

Q. Did you get on the train? A. I did.

Q. What time of day did you get on the train? A. Somewhere between five and six. I do not remember just how long.

Q. I did not hear that. A. Between five and six o'clock.

Q. Did you go to Phillipsburg? A. I did.

Q. You have heard this plaintiff testify that she saw you meet her husband and accompany him to an apartment, West 47th Street, stay there during the evening on that day. Is that true or not? A. It is not true.

Q. Now, Mrs. Parsons, prior to that date you had taken a mortgage on the Rubens property at Dumont, had you not? A. I did.

Q. Will you tell the circumstances, showing how you got that mortgage, or why you got that mortgage? A. I held a second mortgage of $775. on the home.

Q. I am speaking now of that mortgage. A. Yes.

Q. How did you get that mortgage? A. That one mortgage, $775.

Q. That $775. mortgage. I can't tell you what Mr. Rubens said. They were desirous of paying that mortgage off, and Mr. Russell, who held it, he was in need of ready money, and if that mortgage could be paid just then they could get a reduction, and that balance would pay some other bill that they were anxious to pay, and by my taking it over it enabled them to do that.

Q. How much of a reduction did they get? A. $75.

Q. Did you ever talk to this lady about that? A. Why, it was at her home when the transaction occurred.

Q. Was she there? A. Yes; her sister was witness to it.

Q. Was her husband there? A. Yes.

Q. What was said at that time in the presence of this plaintiff? When was this, Mrs. Parsons? A. I can't tell the date when that occurred. I have forgotten.

Q. What year was it in? A. That is it, I don't know; 1913 or 1914; I don't know.

Q. Who were present at the plaintiff's home when this mortgage was made out? A. The plaintiff, her husband, her sister Elizabeth, the two children, and her mother.

Q. Were you there? A. I was there. The papers were signed there in their home.

Q. Now, what was said? What was said at the time? Who induced you to take that mortgage? You may state any conversation that took place at that time in the presence of this plaintiff. A. Why, I don't recall any. Afterwards she said, aside, and said, "This is a great relief."

Q. Who said that? A. Mrs. Rubens.

Q. Whom did she say it to? A. She said it in general, in the parlor.

Q. Now, later on after taking that $800. mortgage, you loaned more money? A. $775.

Q. After this $775. mortgage you loaned more money to this lady's husband, did you not? A. I did.

Q. Did you loan him money to go in business with? A. I did.

Q. How much did you lend him? A. I think it was $600.

Q. When was that? A. That was in 1914.

Q. Do you know whether the plaintiff had knowledge of that or not? A. I presume she had.

Q. You do not know? A. I was told that she had, but I do not know.

Q. Not what you were told. A. That is all I can say.

Q. You took another mortgage, did you not, from this plaintiff's husband? A. I did. I would loan them the money. Everything I did was for the family.

MR. MACKAY: Now, I object and ask that that be stricken out.

THE WITNESS: It is true.

MR. MACKAY: You were not asked that question at all.

THE COURT: Strike it out.

Q. You took a second mortgage, did you not, from this plaintiff's husband? A. I did.

Q. What was the amount of that mortgage? A. $1700. It was incorporating all their bills to me, including the first and the other mortgage that I held. That was to cover that other mortgage and all the other bills they owed me, making it one lump sum, $1700.

Q. Do you remember the date that mortgage was taken off? A. Am I allowed to look?

THE COURT: Can you not remember without looking, madam?

THE WITNESS: It was in 1914, but I do not recall the date. These things are so far back, it is hard to remember.

THE COURT: Proceed.

THE WITNESS: August, 1914.

Q. The mortgage of record is dated December 14th, 1914, and recorded July 3, 1915, given to secure the payment of $1700. in five years after August 11th, 1914. Is that the mortgage? A. That is the one.

Q. Now, you said that that mortgage had incorporated in it all of the indebtedness due you from this plaintiff's husband up until that day? A. Yes.

Q. That included the amount of money you loaned him to go into business with? A. Yes.

Q. Now, subsequently to the taking of this mortgage, you bought a piece of property in West Englewood, did you not? A. I did.

Q. Whom did you buy it from? A. William Picary.

Q. Who is William Picary? A. Brother-in-law of Mrs. Rubens.

Q. What did Mr. Rubens, the plaintiff's husband, have to do with the transaction? A. He was executor of Mrs. Picary's will.

Q. Who was Mrs. Picary? A. Mrs. Rubens' sister.

Q. And the transaction for the sale of the property was had with the plaintiff's husband, was it not? A. Yes.

Q. When did you take title to the property, if you recall? A. April 6, 1918.

Q. You went to live in the house on what day? A. I went to live in the house on March 28th, 1918.

Q. You have lived there since? A. I have.

Q. Whom have you lived with? A. My daughter, mostly; part of the time with my son and daughter-in-law—and daughter.

Q. Has the plaintiff's husband visited you in West Englewood at your house? A. Not since the close of the transaction.

Q. When was that? A. But once.

Q. I did not hear you. A. Not since the close of the transaction on April 6th, but once, and that was a couple of nights afterwards.

Q. Where was the transaction closed on April 6th, 1918? A. At my home in West Englewood.

Q. Who were there? A. Mr. Rose, who drew up the papers, Mr. Picary, Mr. Rubens, my daughter and myself.

Q. How long did they stay? A. They had to come three times.

Q. Was Mrs. Rubens with them each time? A. He insisted upon being there as executor.

Q. As what? A. Executor.

Q. Did he stay after they went? A. He did not.

Q. What about his visit after the transaction was closed? What was the occasion for that visit? A. He got off the train—well, I can't say that he got off the train—he came to our house just before nine o'clock, about five minutes of nine, asking if Mr. Picary was there. He wanted to see him. And he had been over across the track where he boarded.

Q. Was this in the morning? A. In the evening. And he had not returned yet from business to his boarding house. He thought he might have stopped up at our house, so he came up there to inquire.

MR. MACKAY: I object to all this.

THE WITNESS: That is what he asked.

MR. MACKAY: I know he asks you a lot of things, but I have to object to them.

Q. How long did he stay? A. About twenty or twenty-five minutes. He went back to the train.

Q. What was the occasion of his visit? A. He wanted to find Mr. Picary.

Q. Did you invite him to come to your house? A. No, positively no.

Q. He stayed twenty or twenty-five minutes? A. Waiting for the train to come in. It gets in about twenty-five or half-past nine.

Q. Then where did he go? A. He went back to the train to find Mr. Picary.

Q. Did you see him again? A. Never, not then.

Q. Not that night? A. No.

Q. You have seen him since then, have you not? A. Not until after these proceedings.

Q. You had a talk with this lady here, did you not? A. I did.

Q. Where was it? A. At the park, at West Englewood station.

Q. When was it? A. April 16th, 1919.

Q. What time of day? A. Around six o'clock, possiby; I was just coming home from business; six or half-past.

Q. You came home from New York? A. I did.

Q. Got off the train? A. I did.

Q. Where did you meet the plaintiff? A. Right on the walk in the park.

Q. Was anybody with you? A. Not with me. My son came down with an umbrella, thinking I had left mine home to meet me and he had just joined me when we turned and met Mrs. Rubens.

Q. Did you stop and talk with her? A. She asked me if she might have a few minutes' conversation with me, and I excused myself to my son and turned to her.

RECESS.

AFTER RECESS.

ETHELYN C. PARSONS, the defendant, resumes the stand and testifies as follows:

DIRECT EXAMINATION BY MR. DECKER (Continued):

Q. Now, Mrs. Parsons, you had come down to the point where you met the plaintiff at the West Englewood railroad station on the 16th of April, 1919? A. Yes.

Q. And you said that she had spoken to you and you had excused yourself to your son, and you stayed there and had a talk with her. Will you state what she said to you and what you said

to her, as near as you can recall it now? A. I will.

Q. Speak loudly, if you please. A. Mrs. Rubens said to me, "Why did you sell the mortgage on our home?" I said, "Why, I had a right to sell that mortgage." She said, "You didn't have a right to sell that mortgage." I said, "The West Englewood Home Company seemed to think I had a right, because they bought it." She said, "You should not have done so." I said, "Why? It comes due in August. It does not make any difference whether you pay it to me or to someone else, does it?" She said, "Yes, it does." I said, "Why?" She said, "Because we are not able to pay it." She said, "You should have held it and waited." I said, "I waited for the interest for almost five years. You have paid none on it. I thought I had a right to sell it." She said, "You should have kept it until we were able to pay it." She said, "You will have to get that mortgage back." I said, "I can't get it back." She said, "You must." I said, "In the first place, I don't think the West Englewood Home Company would sell it back to me. In the second place, I haven't the money to buy it back." She said, "You must get it back and hold it until we are able to pay it." And she said, "If you don't, I will bring suit." I said, "What do you mean, bring suit?" She said, "How would a little alienation suit please you?" I said, "Why, what do you mean?" "Just what I say." Well, I said, "How can you say that?" She said, "You know you are in love with my husband." I said, "I am not in love with your husband." She said, "Oh, yes, you are." "I am not." "And he is in love with you." "He is not in love with me." She said, "Oh, yes, he is; you can't tell me that." I said, "I do tell you that, be-

cause it is true." And I said, "You are welcome to your Jew husband; I do not want him." She said, "Ha, ha, who told you that?" I said, "Your brother-in-law, Mr. Picary, told me that." She said, "Don't you know you can't believe anything he says?" I said, "I do not know anything about it." She said, "Well, you will get that mortgage back and hold it until we can pay it, or I will bring suit. I will give you a few days to think it over, and if I don't hear from you, you will hear from me." She said, "Think it over." And she left me and went to the station, and I went home.

Q. Now, the plaintiff has testified that she saw you in the company of her husband since that date. Will you explain how you happened to be in his company? A. Yes. After Mrs. Rubens threatened to bring suit, the next day I telephoned her husband at his office and asked him if he knew—

MR. MACKAY: No.

THE WITNESS: I have to answer.

Q. You telephoned to her husband? A. To know if he knew what she was doing.

Q. Wait a minute. As a result of that telephone conversation did you meet him? A. I met him at the 42nd Street ferry that evening.

Q. In New York? A. In New York.

Q. You had a conversation with him? A. We crossed the ferry and went up on the train, and I talked to him about it.

Q. One minute, not what you told him. Did you talk with him? A. I did.

MR. DECKER: Now, if the Court please, at this time this witness should be permitted to tell what she said to this woman's husband and what the woman's husband said to her.

THE COURT: Why do you change the rule?

MR. DECKER: Because we are put in an entirely different position. The suit is started on the theory that this defendant has used some enticement or some allurement, and by reason of it she has taken the affections of this husband from her. Now, I still say that it is not competent for her to testify, for the plaintiff to testify to any conversation between her husband, except to show the lack of affection between them, because she cannot bind this defendant by anything her husband said. The husband was not the agent of this defendant for the purpose of saying anything to the wife, but now the situation has changed around. She has testified that on certain occasions she saw the husband in the company of this defendant. Now, I submit that we have a right to show why this defendant was in the company of the plaintiff's husband.

THE COURT: You may do that, but I do not think that authorizes you to detail a conversation between them.

Q. Will you tell what your purpose was in making the appointment to meet this plaintiff's husband at the 42nd Street ferry on the date you have mentioned? A. I will.

MR. MACKAY: I object to that as irrelevant.

THE COURT: I will allow that.

MR. MACKAY: I ask an exception.

THE COURT: Take your exception.

A. To know if he were a party to that.

Q. To what? A. To her bringing suit against me.

Q. You had a conversation with him? A. I did.

Q. And he was on his way home that night? A. Yes.

Q. Now, in going to your home from work—in going to your work, you frequently rode on the same train with this plaintiff's husband, did you not? A. I may have.

Q. Did you make a practice of riding with him every morning and night? A. I did not.

Q. Can you recall how frequently you went with him to the city and came home from the city with him on the same train? A. From West Englewood?

Q. Yes. A. I never went down to the city with him.

Q. When you met him on the train were your meetings prearranged? A. Coming back from New York?

Q. Either going to New York or coming from New York? A. I went out with him once after that in the evening.

Q. After what? A. After this time I just spoke of.

Q. Where did you go to? A. I went to the 42nd Street—on the train from Weehawken to West Englewood.

Q. Where did you meet him? A. In the ferry house.

Q. What time did you meet him? A. Between half-past five and six.

Q. You went on the same train with him? A. Yes. His brother was there, and I had a friend with me.

Q. Now, his brother has testified that he met you with this plaintiff's husband at the 42nd Street ferry station in May, 1919, and that he

went up to speak to you, and your greeting was so cool that he went away. A. What did he expect?

Q. Will you tell what occurred when you met him there? Who were with you? A. I was with a gentleman from the office, who was going out to spend the evening with us, Mr. Wright.

Q. Who was the gentleman? A. Charles Henry Wright, a proofreader.

Q. When did you meet this plaintiff's husband? A. In the ferry house at 42nd Street.

Q. Did you meet him by appointment? A. Yes.

Q. And you went out on the train together? A. Yes.

Q. Where did you get off the train? A. He got in the smoker, and I went on and joined my friend and got in the other train, in the other car.

Q. Where did you get off the train? A. West Englewood.

Q. It has been testified here by the plaintiff's brother-in-law that he saw you eat lunch with the plaintiff's husband during the year 1911, at the Art Color Printing Company in New York. Is that a fact? A. Yes.

Q. Where did you eat lunch? A. On our desk; it is a long table.

Q. Was there anybody else there? A. Plenty.

Q. Besides the plaintiff's husband? A. Yes, there were.

Q. How many were there? A. I didn't count them, but those who did not go out to lunch ate their lunch in that room.

Q. Was it the practice of persons employed in that company who carried their lunch to work with them to eat it in that room? A. It was.

MR. MACKAY: I object to it as immaterial.

THE COURT: I think what they did is relevant.

MR. MACKAY: What the practice was?

MR. DECKER: Well, the custom, either the custom or practice.

THE COURT: I will allow that.

MR. MACKAY: Exception.

A. (Continued) They did, anyway.

Q. Did you eat your lunch with this plaintiff's husband by a prearranged appointment? A. I did not. He ate his lunch at that table before I went there.

Q. Did he work for the Art Color Printing Company before you worked for them? A. He did.

Q. When you went to work you followed the practice that had been established—

MR. MACKAY: I object.

THE COURT: Yes, that is leading.

Q. Now, this same witness, Harry J. Rubens, has testified that during 1913 he saw you and his brother pass the window together, pass the window of the building on 42nd Street, where he was employed, on your way to the 42nd Street ferry. Is that so? A. He may have seen me. I can't say whether he did or not, but I did go down there.

MR. MACKAY: No. I object.

Q. Did you ever walk along 42nd Street?

THE COURT: Do you object to that?

MR. MACKAY: I object to any voluntary statements after she has answered the question, your Honor.

THE COURT: No, I will allow that.

A. I don't know whether the man saw me or not.

Q. Did you ever walk along 42nd Street towards 42nd Street ferry with this plaintiff's husband? A. I did.

Q. And how frequently did you do that? A. Infrequently.

Q. What was the occasion for doing that? A. I was going home. That was my way of going home.

Q. Where was he going? A. He was going down to the ferry.

Q. Did any other employees of the Art Color Printing Company walk along in 42nd Street? A. They did.

Q. Did any of them ever walk along with you and the plaintiff's husband? A. They did.

Q. The persons who went to the 42nd Street ferry house walked along this street together, did they? A. They did, some times.

Q. Was the walking along the street, along 42nd Street, in the evening, after you had left work, with this plaintiff's husband prearranged? A. It was not. Those who happened to be starting down the certain way, toward the office door, were right together, whether it was one or two or three. It did not matter.

Q. What time did your office stop work there? A. Five o'clock.

Q. Everybody leave? A. When they could get washed and ready and get out.

Q. This same witness, Harry Rubens, has testified that four years ago he saw you at the Arcadia Hall in Brooklyn with the plaintiff's husband. Will you tell when that was? What were you doing there? A. I can. It was the occasion of

the No. 6 Typographical Union Ball, annual ball.

Q. Are you a member of that union? A. Yes.

Q. Is the plaintiff's husband a member of it? A. He was at that time.

Q. And is this witness, Harry Rubens, a member of it? A. I don't know.

Q. Pretty much everybody that is in the printing trade in New York is a member of it, is he not? A. They have to be.

Q. Go ahead. A. My daughter and myself attended that ball with one of the men in our office. It was a stormy night, and he came to the house in a taxicab and took us up there. It is away uptown in Brooklyn. We went there with him on his invitation.

Q. Whose invitation? A. His name is James Drew.

Q. You do not mean the plaintiff's husband? A. No.

Q. Go ahead. A. This gentleman in the office, his name is James Drew. He invited us to go to this ball, and we went in his company on his invitation in the taxi that he hired. We attended that ball and a number of the others from our table were there also, and we formed a party. Mrs. Rubens joined us with his brother, and he was with us part of the time and part not—and not part of the time. We danced together, all of us. We stayed there until five o'clock in the morning, or nearly five, all the party. When we came away we came away in a body, and the whole party saw us home, and then left us at our home, and went on. I don't know where they went after that.

Q. Now, this witness has testified that when it came late in the evening he realized that his brother, the plaintiff's husband, was not going

home that night. Do you know where the plaintiff's husband stayed that night? A. He stayed there at the hall with everybody else until five o'clock.

Q. Where did he stay after five o'clock? A. I do not know as to after they left our doorway. Mr. Drew saw us home, and several—four of the other men, gentlemen, coming down with them in the party, were coming down that way. They saw us to our door, and nobody came in but my daughter and myself. The others went on in to the party, and where they went I don't know; Adelphi Street.

Q. Now, it has been testified by this plaintiff that her husband came to her and represented to her that you had said that you wanted her husband and herself to be divorced, so that you could marry him. Did you ever make any such statement to this plaintiff's husband? A. I did not.

Q. Did you ever have any intention of marrying him? A. Never.

Q. Did you ever use any enticement or allurement to get him away from his wife? A. Never

MR. MACKAY: I object to that. That is too broad.

THE COURT: That is what you are charging, is it not?

MR. MACKAY: Yes, but I think that is too broad a question, is it not?

THE COURT: No, I think not. That is what you charge; she may deny it.

MR. MACKAY: It only calls for a conclusion, does it not?

THE COURT: I think it is proper.

MR. MACKAY: I ask an exception.

THE COURT: Take your exception.

(Answer read).

MR. MACKAY: I objected at the same time she answered, your Honor.

THE COURT: Yes, you may take your exception.

MR. MACKAY: Put the answer in after the objection.

Q. Did you ever make any threat to sell or foreclose the mortgage that you held on the house of the plaintiff's husband unless she permitted him to obtain a divorce? A. I did not.

Q. Did you ever talk to him at all about divorce? A. I did not.

Q. He has visited your house, has he not? A. He has.

Q. At the time he had been to your house had any reason ever been given to you for his wife's not accompanying him? A. His wife was always invited.

MR. MACKAY: I object to any reasons he gave.

THE COURT: You object to that question?

MR. MACKAY: I object to any reason the husband gave.

THE COURT: Yes, I will sustain your objection.

(Witness withdrawn).

WILLIAM J. FERRIE, called as a witness on behalf of the defendant, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. DECKER:

Q. Where do you live, Mr. Ferrie? A. In Brooklyn.

Q. Do you know Mrs. Parsons, the defendant in this case? A. I do.

Q. How long have you known her? A. Thirty years.

Q. Are you in the printing trade? A. Yes.

Q. Her husband was in the printing trade, was he not? A. Yes, sir.

Q. And she was in the printing trade before her marriage, was she not? A. Yes.

Q. And she has been in the printing trade since the death of her husband, has she not? A. Yes.

Q. Do you recall the 21st of January, 1912? A. Yes.

Q. What day of the week was it? A. Sunday.

Q. Did you see the defendant on that day? A. I did.

Q. Where did you see her? A. At her house.

Q. Where? A. DeGraw Street.

Q. In Brooklyn? A. In Brooklyn.

Q. What time of the day did you see her there? A. Almost four o'clock.

Q. In the afternoon? A. Yes.

Q. Tell what happened after four o'clock in the afternoon? A. I suggested to her that we go to the opera, that is, the opera, concert, that night. She said, "I have not had anything to eat yet."

MR. MACKAY: Do not detail the conversation.

Q. Do not relate any conversation, Mr. Ferrie, and just tell what you did and what she did? A. Well, we went to New York, to White's restaurant. From there we went up and bought the tickets. Then it was too early. We took a walk around until the concert opened, about 8.15. At 8.15 we returned to the opera house, and got out about ten minutes to eleven. Then we walked up to Times Square, took the subway over to

Brooklyn, and got over there about half-past eleven. Then we walked from Atlantic Avenue to the house. It was probably ten minutes' walk. And I went upstairs with her, up to the—up to her rooms, and stayed about five minutes, and said a few words to her sister, and then went home.

Q. You went to the Sunday night concert at the Metropolitan Opera House, New York? A. Yes.

Q. What was the occasion for your going with her on January 21st, 1912? A. Well, in the first place, it was her birthday.

Q. Yes. A. And in the second, it was—a Russian violinist was there, Zymbalist.

Q. Had you ever gone with her on her birthday before? A. Yes.

Q. Had she ever gone with you on your birthday? A. On my birthday?

Q. Yes. A. We always went on an excursion on my birthday.

Q. When does your birthday come? A. On the 15th of August.

Q. So that you were with her continuously from about four o'clock in the afternoon of January 21st until midnight? A. Yes.

Q. And midnight you left her at her home in Brooklyn? A. Yes.

CROSS EXAMINATION BY MR. MACKAY:

Q. You say you have known her for thirty years, Mr. Ferrie? A. Yes, sir.

Q. And when was the first time that you took her out on her birthday? A. Well, I can't recall that, you see. I used to take her out when her husband was alive.

Q. When was the first year that you took her

out? A. It does not always follow that we went out every time. Sometimes we had a party in the house.

Q. When was the first year that you met her on her birthday? A. Oh, that would be going too far back.

Q. Whether you took her out or not. Take your time and answer the question, whether you have to go far back or not. A. I could not go way back to the first time. That would be too long. I could not remember any instance thirty years.

Q. Did you take her out the first year you met her? A. Yes.

Q. The first year you met her? A. Yes.

Q. Do you recall what year you did meet her? A. Well, it was about 1888.

Q. 1888. And that first year that you met her you took her out, did you? A. Yes.

Q. On her birthday? A. Well, I would not state that.

Q. But you called there? A. Yes.

Q. Called at the house? A. Yes.

Q. And so on each year? A. Oh, no, it does not follow, because the only time we could take her out would be the time she would be living in the city.

Q. So you could not say about '89, '90, '91, '02, or '03, up to 1900? A. Oh, no.

Q. You could not? A. No, because nearly half the time she did not live in the city.

Q. So that you did not take her out every birthday? A. Oh, no.

Q. You did not call on her every birthday? A. Well, unless there was something to interfere, I did. Suppose I had to work that night, I did not call. The same thing held good in regard to my birthday. If it happened through the week, we

went on excursions, on excursions following it, did not take it this particular day; but this particular time it happened to fall on this day.

Q. So you did not always take her out on your birthday, did you? A. Well, no.

Q. But you made it a point, if on your birthday you were busy working, you would take her out the following Saturday or Sunday? A. Yes.

Q. Or call on her? A. Yes.

Q. I suppose that happened a good many years in succession, did it not, when the birthday happened on Monday or Tuesday or Wednesday? Is not that correct? A. Correct.

Q. And you did not work evenings? A. Yes.

Q. Did you? A. Yes, worked evenings.

Q. You worked nights? A. Yes.

Q. Do you work every night? A. Well, I worked every night this year.

Q. I mean in past years. A. Oh, yes, I have done a great deal of night work.

Q. What hours do you have? A. Well, the hours are supposed to end at five o'clock, but in the publishing line, when you have got forms to press, you have a day's work, while if it is monthly, probably two weeks almost every night.

Q. Almost every night for two weeks? A. Almost every night for two weeks, anyway, yes.

Q. Then the rest of the nights you are off? A. Yes, in the other two weeks in the month.

Q. Where did you take her on January 21st, 1910? A. She was not living in the city then.

Q. Where was she living? A. I think she was down in Florida then.

Q. In Florida? A. Yes. She was not in the city, anyway.

Q. What? A. She was not in the city.

Q. Then you did not take her out that time

three or four days later? A. I told you that I did not take her out.

Q. Answer my question. Did you? A. Give me the question again.

Q. You did not take her out three or four days later that year? A. No.

Q. You are sure she was in Florida? Are you? A. Well, I received letters from her husband and her from there.

Q. At that time? A. Yes, 1910.

Q. January 21st? A. Oh, no.

Q. In January? A. Oh, well, I couldn't say that.

Q. You could not say that? A. No.

Q. So 1910 you are not positive about, are you? A. In what way am I not positive?

Q. Well, as to just where she was or what she was doing? A. At that time they were living at Patchogue, in 1910. Her husband took sick. Now, I do not know just what time they went down there.

Q. So you are not sure whether you met her or not that year? A. 1910?

Q. Yes. A. I didn't meet her that year, no.

Q. You did not? A. No.

Q. In January 21, 1911, where did you meet her? A. I don't remember.

Q. You don't remember? A. No.

Q. In January 21, 1913, where did you meet her? A. Oh, wait a minute, now; January, 1911. No, we didn't go anywhere that year.

Q. On January 21st, 1914, where did you go? A. She was not in the city then.

Q. Where was she? A. Well, she was in Stewartsville, or some of those places where she lived.

Q. How do you know that? A. Because she

used to take the train then. She lived in New York at this time then.

Q. What is that? A. She lived in New York, I think, in 1914.

Q. Did you say she lived in Stewartsville? A. She was living in 47th Street, but the family were living in Stewartsville.

Q. I am speaking about her, not the family. She was living in New York that year then? A. Yes.

Q. Well, where did you go? A. I didn't go any place that year.

Q. You did not go any place that year with her? A. No.

Q. 1915? A. No.

Q. January 21st, do you recall that? A. No. I have not gone any place lately with her.

Q. Do you recall that year? A. Which, 1915?

Q. Yes. A. Now, wait until I see. No, I cannot recall it.

Q. Can you recall it? A. No.

Q. Can you recall January 21st, 1916? A. No.

Q. 1917? A. No.

RE-DIRECT EXAMINATION BY MR. DECKER:

Q. Mr. Ferrie, where was Mrs. Parsons living on the day you took her to the Metropolitan Opera House? A. At DeGraw Street.

Q. Do you know the number? A. I don't know the number.

Q. DeGraw Street in Brooklyn? A. Yes.

Q. You went to the house and met her there and you know she was living there? A. Oh, yes.

Q. That was on her birthday in 1912? A. That is so.

RE-CROSS EXAMINATION BY MR. MACKAY:

Q. And that is the only year you do remember distinctly? A. Well, I stated at the start.

Q. Well now, state now at the finish. That is the only date you do remember distinctly? A. Well, as a matter of fact, it is the only one I remember distinctly.

Q. Yes, surely.

ETHELYN C. PARSONS, the defendant, resumes the stand, and testifies as follows:

DIRECT EXAMINATION BY MR. DECKER (Continued):

Q. When did you go to live on DeGraw Street in Brooklyn? A. Spring of 1914.

Q. How long did you stay there? A. About a year.

CROSS EXAMINATION BY MR. MACKAY:

Q. You are living where at the present time, Mrs. Parsons? A. West Englewood, New Jersey.

Q. And have lived there since when? A. March 28th, 1918.

Q. And you bought that house? A. I did.

Q. On what day? A. What date?

Q. Yes. A. The deal was closed on April 6th, 1918.

Q. Did you purchase the place in your own name? A. I did.

Q. Do you still own it? A. I do not.

MR. DECKER: I object, if the Court please. That is not in issue in this case.

THE COURT: Whether she owns it now or not, I do not see that it has anything to do with this case.

MR. MACKAY: It may have some bearing, your Honor, if she made a disposition of it just about the time the suit was instituted.

THE COURT: It has nothing to do with this case.

MR. MACKAY: It may on the res gestae. It has been gone into on direct examination. I think I have a right to cross examine on it.

THE COURT: No, I think not.

MR. MACKAY: She was asked if she was still living there. She was asked if it was her home. She said yes. I have a right to cross examine and find out if she still owns it; if she does not own it yet, when she disposed of it. I do not see anything irrelevant about it, your Honor. It is clearly cross examination.

THE COURT: You may ask her if she owned it.

Q. Do you still own it? A. I do not.
Q. When did you sell it?

MR. DECKER: I object to this, if the Court please.

MR. MACKAY: That is the question I asked, your Honor. I think it is perfectly proper.

THE COURT: I am going to sustain the objection. It makes no difference when she sold it.

MR. MACKAY: I take an exception.

THE COURT: Take your exception. It has nothing to do with this issue.

MR. MACKAY: I think it has very much.

THE COURT: Take your exception.

MR. MACKAY: I have a right to go into the financial standing.

THE COURT: Oh, no; that is just exactly what you have not a right to do.

MR. MACKAY: I think I have.

THE COURT: Well, take your exception.

Q. You met Mr. Rubens, you say, when, Mrs. Parsons? A. For the first time?

Q. Yes. A. In 1910.

Q. And he was working at this place before you came there, as I understand it? A. He was.

Q. Had you been working there prior to that time? A. No.

Q. That was the first you ever came to that place? A. December 12th, 1910.

Q. And you worked there in the same building? A. I did.

Q. Nearby? Were your places of work nearby each other? A. On the same floor, but not near.

Q. When you speak of the first floor of the building, was it on the first floor? A. One flight up.

Q. What was the extent of the building, the first floor, in the way or rooms? A. The composing room was one large room. There were some presses between the composing room and our proof room. The proprietor's office joined our proof room, connected by a single door.

Q. Which room was Mr. Rubens in? A. In the composing room on the other side of the loft.

Q. That was how far away from where you were located? A. I can't tell you in feet. I have no idea about feet.

Q. Well, some distance away? A. Yes.

Q. When you ate your lunch with him, was

that in your room or in his room? A. It was in the proof room.

Q. Was that the room you worked in? A. It was.

Q. Did you take your lunch with you to the office? A. I did.

Q. Did he take his lunch with him? A. He bought it.

Q. He bought it? A. Sent out for it.

Q. And brought it in? A. He did.

Q. Did that happen every day? A. Usually.

Q. From 1910 on? A. Yes.

Q. And he did not eat that in the room in which he worked? A. In the office in 39th Street. He ate in the proof room, together with several of the other men. They hung their hats and coats in our room, and those who had their lunch, several of them ate their lunch in our room; Miss Fox also. That was my copyholder. And when the men came in they came in there and hung up their hats and coats, and stayed in there and chatted until it was time to go to work.

Q. So that he would send out for his lunch and have it brought in and sit near you? A. Not near me.

Q. No? A. Across the long table. He sat on the side where Miss Fox sat.

Q. I see, right directly opposite? A. I sat on the other side of the table.

Q. Directly opposite to you? A. No, he sat at the lower end, and I sat up there (indicating).

Q. That happened up until what time? A. That happened until we moved over in the other building on 38th Street, directly back of the Pictorial Building.

Q. When was that? A. That was about in—I think that was 1912, in the spring.

Q. In the spring of 1912? A. I think so.

Q. I understood you to say that on January 1st, or December 31st, 1911, rather, you were not—

THE WITNESS: I wanted to know if I might interrupt you, if Mr. Zulzer could be sworn and be excused. He is in a hurry to get back to New York. Would that be permissible?

MR. MACKAY: She is talking to you.

MR. DECKER: Well, with your consent.

MR. MACKAY: If you ask for it, I am willing.

MR. DECKER: If the Court please, we are in a peculiar position. We have three or four men here who have been here for three days, waiting for this case to come on, and just now they are getting fidgety, and they want to know if they can testify and get away.

THE COURT: The Court will allow you to do it.

MR. DECKER: With Mr. Mackay's permission, I will call them.

MR. MACKAY: They are not under subpoena, are they?

MR. DECKER: No.

MR. MACKAY: They came voluntarily?

MR. DECKER: Yes.

MR. MACKAY: All right.

(Witness withdrawn).

Moses L. Zulzer—Direct.

MOSES L. ZULZER, called as a witness on behalf of the defendant, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. DECKER:

Q. Where do you live? A. Freeport, Long Island.

Q. What is your occupation? A. Printer.

Q. How long have you known Mrs. Parsons, the defendant in this case? A. About twenty to twenty-five years.

Q. Were you ever in business with her husband? A. I was.

Q. Have you talked with her recently concerning the 18th of November, 1913? A. Yes, sir.

Q. Do you recall that date? A. I do, sir.

Q. Will you tell what happened on that day? A. During the afternoon Mrs. Parsons came in. I was in conference with my then, or present, partner, Mr. O'Brien, and we were about through discussing some important questions in regard to our establishment, when Mrs. Parsons entered the place. She made some inquiries of me.

Q. Do not state the conversation. Just tell what happened? A. We discussed the various things for short time, and realizing that Mrs. Parsons had to go back to Phillipsburg, we suggested we go out and have some tea. We went to the World Building, leaving our office about four o'clock in the afternoon, and departed from there about five.

Q. You departed from where? A. From the World Building.

Q. Where did you go? A. I took the subway to the Long Island Railroad station and left Mrs. Parsons with Mr. O'Brien at about five o'clock.

Q. At the World Building? A. The World Building.

Q. Downtown, New York? A. Downtown, New York.

Q. How do you know that happened on the 18th of November, 1913? A. In our regular monthly meetings, we were discussing the possibility of the development of the business of the establishment, and it was specifically on that day when we determined to enlarge that place; and in making reference to that, I verified the date and also the incident.

Q. How did you verify the date? A. By the fact that on that day we determined to make a purchase aggregating quite considerable money for us, and it represented the turning point in our commercial enterprise.

Q. Where was that determination recorded? A. On out books in the office, on our minute books.

Q. What books? A. On our minute books.

Q. And that meeting took place on the same day that Mrs. Parsons came to your office? A. Yes, sir.

Q. And you have examined your minute books recently? A. I have, sir.

Q. What date do they show the meeting took place? A. November 18th, 1913.

CROSS EXAMINATION BY MR. MACKAY:

Q. Mrs. Parsons is connected with the firm, is she? A. Not at the present time, sir.

Q. She was then? A. Mrs. Parsons' husband was, yes.

Q. What is that? A. Mrs. Parsons' husband was, yes.

Q. She was after her husband's death, had an interest in the firm? A. No, sir.

Q. She did not on November 18th, 1913? A. No, sir.

Q. Had no interest in the firm? A. No, sir.

Q. No connection with it? A. No.

Q. So she did not attend this meeting which meant the successful turning point of the corporate business? A. No, sir.

Q. And it must have been a very, very important meeting? A. It was an important meeting, yes, sir.

Q. And it must have been important to you, because you had an interest in the corporate business? A. Yes, sir.

Q. And of interest to your partners, or fellow-stockholders? A. Yes, sir.

Q. How many are there of you? A. There are four of us. It is a closed corporation; Mr. O'Brien and his wife, and myself and my wife.

Q. And you were all there that day, the four of you? A. No, not the four of us. The two ladies were there by proxy.

Q. What is that? A. The two ladies were there by proxy.

Q. By proxy. You and Mr. O'Brien did this important business? A. Yes, sir.

Q. So important, you say, that it was the turning point in your affairs? A. Yes, sir.

Q. Pretty well wrapped up in the thing, were you not? A. We had about closed out—well, we had closed our discussion at the time Mrs. Parsons came in.

Q. And your mind was pretty well filled up with it? A. Yes, sir.

Q. And yet you recall very distinctly that Mrs. Parsons came and you took tea with her? A. Yes, sir.

Q. Did you take tea with her after that? A. No, sir.

Q. Or before that? A. No, sir.

Q. You do not recall at all? You do not recall—— A. You mean from the commercial office, from the office in New York?

Q. Yes. A. No, sir.

Q. Had she called on you before that? A. Oh, yes, sir.

Q. When? When did she call previous to November 18th, 1913? A. Well, I can't recall the dates, because they had no bearing on any specific thing that would bring it to my recollection.

Q. No bearing whatever? A. No, sir.

Q. The mere fact that she happened to be there would not concern you one bit? A. Why, there was always something to discuss, or something she brought in, because I had known the family so long, and that was perhaps the justification for coming in.

Q. Is it not a fact that you verified this because the witness told you about this lawsuit? A. Simply to refresh my memory about it.

Q. Did she not tell you about the lawsuit? A. Yes, sir.

Q. And wanted you as a witness? A. Yes, sir.

Q. And wanted your testimony? A. Yes, sir.

Q. You came out here voluntarily to give it? A. Yes, sir.

Q. You are an old, close friend of twenty or twenty-five years' standing? A. Yes, sir.

Q. And very much interested? A. Yes, sir.

Q. So that you could not give any other date that she called to see you? A. I couldn't give any specific date; no, sir.

Q. Have you ever been out with her? A. Yes, sir.

Q. To tea? A. No, sir.

Q. To dinner? A. To her house, yes, sir.

Q. Out to dinner other than her house? A. Yes.

Q. When? A. I can't give you any specific date.

Q. No date? A. When her husband was with me in business, we went out very frequently; I might say twice a month.

Q. With the husband? A. Yes.

Q. And with her after her husband's death? A. I can't recall that.

Q. You cannot recall any time? A. No.

Q. No dates? A. No.

Q. Any month? A. No, sir.

Q. Nothing. That is all.

RE-DIRECT EXAMINATION BY MR. DECKER:

Q. Do you remember the particular business that brought her to your office on this day? A. While her busband and I were in partnership, he received some certain stocks, some certain certificates of stock for certain mechanical improvements that he made on a type-setting machine. The demonstration of that improvement was made in our office. For his services that stock was offered to him. Mrs. Parsons came in that day with these certificates of stock, and asked me whether they had— —

MR. MACKAY: No; not what she asked you.

Q. What was her purpose in coming into the office? A. Did I know whether that corporate body was still in existence, and whether the certificates of stock had any value.

Q. What is there that connects that with the business, the other business that you transacted

on that day? A. After Mr. Parsons' death, the business went down considerably, and for two years we had to struggle. In 1913 conditions changed so materially that I found it necessary to increase the establishment considerably, and in defining my position to my present stockholders, or to the then stockholders at that time, I was urging them to increase the establishment; and this was the culmination of all my suggestions that brought about that meeting.

RE-CROSS EXAMINATION BY MR. MACKAY:

Q. What were these certificates of stock? A. It was in some type-casting affair that is applied to the Mergenthaler Linotype.

Q. What was the name of the corporation? A. Some type bar association, some type bar casting company.

Q. Do you remember the name? A. I do not.

Q. Were you interested in it? A. No, sir.

Q. Did you have stock in it? A. No, sir.

Q. Mr. Parsons had stock in it? A. Mr. Parsons alone, yes.

Q. When did he get that stock? A. He got the stock in, I think it was, 1910. I knew that all the while, for the reason that he was giving his time to this while he was still a partner of mine. I say 1910 without—well, from memory.

Q. Mrs. Parsons did not come to you for three years afterwards? A. Oh, no. I saw Mrs. Parsons every—

Q. I mean about this stock? A. About that stock, yes, sir.

Q. Three years? A. Yes, sir.

Q. Three years after her husband died? A. About the stock you mean?

Q. Yes. A. Yes, sir. She did not come until that time.

Q. What is that? A. She did not come to see me about the stock until that time.

Q. Three years afterward? A. Yes.

Q. Just on that particular date when the plaintiff said Mr. Reubens was with her? A. It was on November 18th, 1913 that Mrs. Parsons showed me that certificate of stock.

Q. You are positive of that, but you cannot recall any other dates? A. I can't recall specifically the dates, no.

Q. That is the only date— A. That is the only date, because—

Q. —of anything you know connected with Mrs. Parsons that you can give a specific date on, is it not? A. Yes, sir.

Q. And so fully and so complete? A. Yes, sir.

Q. Almost hour for hour, you know just what happened do you not? A. I do, yes.

Q. But any other meeting with her is indefinite and out of your mind? A. No, sir, not out of my mind.

Q. Practically? A. No, sir.

Q. So far as dates are concerned? A. So far as dates and hours are concerned, yes.

Q. You could not give any dates and hours and years? A. Not on general—if something specific were asked me, I perhaps could.

Q. There is nothing specific you have in mind or know about? A. As applying to this case?

Q. As applying to Mrs. Parsons, meeting her and taking her out to dinner as you did on this particular occasion? A. No.

ETHELYN C. PARSONS, the defendant, resumes the stand, and testifies as follows:

CROSS EXAMINATION BY MR. MACKAY: (Continued)

Q. (Question read) I understood you to say that on January 1st, or December 31st, 1911, rather, you were not (question continued) at the Hotel Preston? A. I was not.

Q. Do you know where the Hotel Preston is located? A. I have heard in the testimony it was 26th Street, I think. I have never seen that hotel.

Q. You have never been to that hotel? A. I have not.

Q. Have you heard of Colazzi's restaurant? A. Yes.

Q. You have been there? A. Yes.

Q. You have been there with Mr. Reubens? A. Yes.

Q. And you have had dinner there with him? A. Yes.

Q. Do you remember when it was? A. Right after he went in business for himself.

Q. When was that? A. That might have been in 1914 or 1915. I am not sure now. My daughter was with me.

Q. Your daughter was with you? A. (Nodding in the affirmative.)

Q. Do you remember the month? A. No.

Q. You do not remember the date? A. No, I do not.

Q. Do you remember the hour that you went there? A. It was in the evening, but I can't recall the hour.

Q. Do you remember the place? A. Yes.

Q. Do you remember how long you stayed there

with him? A. Perhaps an hour or more. We had dinner there.

Q. It is rather faint in your memory? A. An hour or an hour and a half, about something like that. I am not exactly sure.

Q. Was that prearranged? A. Yes.

Q. And when was that arranged? A. I don't know. He wanted to celebrate his going in business.

Q. Do not volunteer. I am asking you questions, Mrs. Parsons. Was it arranged that day or prior to the day that you went there? A. I don't know.

Q. You do not remember? A. No, I do not remember.

Q. You simply remember being there? A. I remember being there.

Q. And you think it was in 1915 or 1914? A. I do not know.

Q. You do not remember the year? A. No.

Q. Was it the only time you were ever at that restaurant with him? A. Yes.

Q. Were you ever at that restaurant with him any other time? A. Not that I recall now.

Q. What do you mean, not that you recall? A. I have been at that restaurant with so many of our friends that it is hard to differentiate.

Q. I see. You have been there very often then? A. Quite frequently. When our friends come down from the country, we take them there.

Q. So that it was so many times that the matter of going with Mr. Reubens did not make any impression on your mind? A. No.

Q. Did it? And on December 31st, 1911, you say you did not even see Mr. Reubens that day at all? A. I did not.

Q. And when Mrs. Reubens says she knows you,

you believe that is so, do you not? A. (No answer.)

Q. Do you believe she knew your face and your form on December 31st, 1911? A. She might have thought it was I.

Q. Do you think she knew your face and form? A. I can't say.

Q. Do you think perhaps Mr. Rubens was with some woman and that it was some woman that looked like you but was not you? Is that it? A. I can't say.

Q. On January 21st, 1912, you say you were not at the Hotel Preston? A. I was not.

Q. And when Mrs. Rubens said that she recognized you and recognized Mr. Rubens, do you think she knew you? A. I don't know whether she did or not.

Q. Do you think she made a mistake? A. She may have.

Q. Do you think she made a mistake when her husband admitted that he had been with her?

MR. DECKER: I object to that, if the Court please.

A. I do not know what her husband said.

THE COURT: What is the objection?

MR. DECKER: There is no proof that there was any conversation.

MR. MACKAY: That was the effect of it.

THE COURT: That is not a competent question to ask her.

MR. DECKER: I do not recall any evidence of that kind at all, that he admitted he was with Mrs. Parsons.

MR. MACKAY: Of course he did, and she said he admitted that he was with her and

he was sorry, and he was through with her and would not do it again. Do you remember that?

MR. DECKER: I do not. That is not in the record in this case.

MR. MACKAY: Does your Honor remember it?

THE COURT: She said that he said he had done wrong and would not do it again, something of that kind, but she did not say what.

MR. MACKAY: I beg your Honor's pardon

THE COURT: I rule it out, what she said about somebody else, when she was making that statement.

MR. MACKAY: What she said about remonstrating with her husband was not ruled out.

THE COURT: No, remonstrating with her husband, but what he said to her about somebody else was not competent.

MR. DECKER: The testimony was that he said, "I am sorry," and then the Court stopped her. There is no such testimony of any admission made by him at all.

MR. MACKAY: Well, I am willing to leave it to the jury. If they remember it, all right; if they do not, all right.

THE COURT: Well, if it is in, the Court is going to tell the jury they cannot consider it. She has no right to make any statement in the absence of this lady that would tend to bind her.

Q. Now, Mrs. Parsons, on December 31st 1911. you were living where? A. DeGraw Street. Brooklyn.

Q. DeGraw Street, Brooklyn? A. 510.

Q. And that is the date you said this gentleman came—you said you went somewhere that day, did you not? You went to Rockville Center? A. I did.

Q. To whose home? A. To the home of friends, named Brown.

Q. Mr. Brown? A. Mr. and Mrs. Brown.

Q. Mr. and Mrs. George Brown. You went there with your daughter? A. My sister, my daughter, my son, and myself.

Q. And you did not see Mr. Rubens at all that day? A. I did not.

Q. What date prior to December 31st did you see him? A. See Mr. Rubens?

Q. Yes. A. Why, I probably saw him in the office each working day.

Q. Had you been out with him prior to that time at all? A. No.

Q. Nowhere? A. No.

Q. On no occasion? A. (No answer).

Q. Had he called to see you? A. No.

Q. He had not? A. No.

Q. He had not called at your home prior to December 31st, 1911? A. No, not that I can recall now. It is a long while ago to remember anything.

Q. Yes, but you seem to remember December 31st so clearly and so plainly? A. Yes.

Q. Do you not— A. Because it was New Year's time.

Q. And that is a long time ago, is it not? A. Yes.

Q. And that you have down in perfect detail, have you not? A. If you had asked—

Q. Have you not? A. Yes, because I have had to look it up.

Q. Yes, you had to look up this day specially;

is that it? A. I could look up other dates specially and find out where I was, too, but I have not had occasion to.

Q. Well, do you think you could remember if Mr. Rubens had called at your house prior to this particular day that you have so well in mind? A. If there was anything special in connection with his calling on me.

Q. Do you recall him calling? A. I do not recall him coming.

Q. You do not remember? A. No, I do not rcall his coming there.

Q. And after December 31st 1911, do you remember him coming to see you? A. Yes. He called at the house.

Q. How often? A. He called there one Sunday afternoon with Mrs. Rubens and the two children.

Q. That is very nice. When was that? A. I don't know what date it was.

Q. What month? A. I don't know.

Q. What year? A. It was after that; probably the next year.

Q. 1912? A. It might have been.

Q. Do you remember him calling alone without the wife and children? A. Yes, I think I do.

Q. Yes. And when was that? A. I do not know when it was. I just have a faint recollection of his being there one evening.

Q. One evening? A. Yes.

Q. Weekday or Sunday? A. It was Sunday, because my niece was there.

Q. Was it Sunday evening? A. Yes, late in the afternoon.

Q. Called alone? A. Yes.

Q. How long did he stay? A. I think he stayed to tea.

Q. Yes. That would be about six o'clock? A. About six.

Q. And stayed after that? A. A short while.

Q. How long? A. I don't know how long he stayed. He went home early. My sister was there—

Q. I did not ask you that. A. And my niece.

Q. I did not ask you that. A. All right.

Q. You went home early? A. Yes.

Q. What do you call early? A. Well, I call until ten o'clock early.

Q. Then he went home some time before ten? A. Between six and ten.

Q. And when again did he call to see you, alone? A. I can't answer you in that way. You must ask me specific times, and then I can tell you.

Q. Do you recall any other time in 1912, in the entire year, that he called to see you? A. He came out to Rockville Center, I believe, in 1912, on a Sunday. Mrs. Rubens and the children were with him that time, and they spent the day with us, going home after tea.

Q. That you remember? A. Yes; we walked to Lynnbrook to get the train.

Q. Now, will you tell me when in 1912 he was there alone? A. I can't tell you when that was.

Q. You cannot tell? A. No.

Q. We will take 1913. That is getting a little nearer. Can you tell us when in 1913 he called to see you, alone? A. 1913 is when he was out on the farm.

Q. He was out on your farm in 1913? A. Yes.

Q. When was it he went on the farm; what month? A. September.

Q. In September? A. Well, between January and September.

Q. Did he call to see you alone before he went on the farm? A. It is very hard to answer you the way you ask me the questions.

Q. I am giving you a wide latitude. A. It is too wide; it is so wide that I can't confine myself to anything in particular. Ask me some dates, and I can tell you.

Q. I am giving you every date in the year from January to September, and I am not holding you down to January 2nd, 3rd, or 4th, or 5th. A. I wish you would; I could tell you better.

Q. You ought to be able to tell me anyway, if you know. A. If you would let me start and tell you what I can tell, I could do it.

Q. I am asking you now a simple question. Do you recall when in 1913 he called to see you, between January and September, alone?

MR. DECKER: Do you mean when he was alone or when Mrs. Parsons was alone?

MR. MACKAY: When he went alone to see her.

A. He called at the 47th Street apartment.

Q. In 1913? A. Am I allowed to look at my notes?

THE COURT: No. He is asking you what you remember.

Q. Where did you live in 1913, between January and September? A. 47tth Street, New York.

Q. 510 West 47th Street? A. Yes.

Q. And you say he called there? A. He called there five times that I can remember; that is all.

Q. Between what dates between January and September? A. Well, I lived there from about the first of the year 1913 until October, 16th—no, 1912, that must have been, until October 16th, 1913.

Q. And these five times that he called, they were before he went on the farm, was it? Is that your recollection? A. No, not the whole five. He came there shortly after I took the apartment. I was—I had two rooms right near the head of the stairs, and it was a public place.

Q. I am not asking you that. A. Well, if you will let me tell you, I will explain.

Q. I would rather have you answer my questions now. I know your lawyer will let you talk all you want, but I would prefer to have you answer just my questions. A. What is the question, please?

Q. Were the five times that you say he called in 1913 prior to September, to the time that he went on the farm? A. Twice were.

Q. Twice were before he went on the farm— A. The one time, I am not sure just when that was, but twice was afterwards.

Q. And twice were after he came back from the farm? A. Yes.

Q. And he was up at the farm how long? A. Five weeks.

Q. And you were up there week-ends? A. Yes.

Q. Is that correct? A. Yes. You do not let me tell you why he came, and that is not fair.

THE COURT: Your counsel will ask you that.

MR. MACKAY: Your lawyer will take good care of you. He will take good care of you; you are still protected.

Q. You say in the year 1913, before he went on the farm, he looked like a walking corpse; is that correct? A. When he went on the farm, he did.

Q. Before you took him to the farm he looked like a walking corpse? A. I didn't take him to the farm.

Q. Well, before he went there at your request, or on your invitation? A. He was taken sick and looked very bad.

Q. And when was that? A. That was in September, 1913.

Q. So that he was very sick in September, 1913? A. Yes.

Q. And looked very bad? A. He did.

Q. Did you know anything about his weight? A. No.

Q. Did you know whether he was a heavy man, or slight, or slender? A. He was a slender man.

Q. Did he appear to lose a great deal of weight? A. He did.

Q. In September, 1913? A. Yes.

Q. You were in the office every day during the year 1913, were you? A. Yes, I presume so.

Q. He was there working every day, was he? A. Yes.

Q. You had an opportunity to observe him every day? A. I could have.

Q. Did you? A. I had the opportunity.

Q. And you did see him? A. I saw him come in and out with his proofs, to the desk.

Q. You kept your distance, of course; you kept away from him so as not to be too near? A. Of course.

Q. And you saw he was getting thinner? A. Yes.

Q. And much thinner? A. Yes.

Q. Is that right? A. Yes.

Q. Becoming very emaciated? A. He looked very bad.

Q. Very bad? A. Yes.

Q. So he went to your farm to recuperate? A. He did.

Q. And he was there five weeks? A. He was.

Q. And you said Mrs. Rubens was there three days? A. The Decoration previous to that.

Q. What? A. She was there Decoration time, previous to this.

Q. Decoration time, previous? A. Yes.

Q. Was she not there during the five weeks? A. No.

Q. She was not there at all? A. She was not there.

Q. And, other than the week-ends, were you there? A. I was home about one week before he went away. I went home on the 16th of October.

Q. Wht do you mean by going home? A. To Phillipsburg, to the farm.

Q. You went there on the 16th of October? A. Yes.

Q. And stayed there for a week? A. Oh, I stayed on.

Q. You stayed on? A. (Witness nods head in the affirmative).

Q. Was Mr. Rubens there that week? A. Yes.

Q. That full week? A. He was there.

Q. And prior to that time—what date did Mr. Rubens go there? A. I can't tell you what day of the month it was; I don't remember.

Q. You do not remember the day? A. No, but I know when he left there.

Q. Do you know how he got up there? A. No.

Q. Do you not know who went up with him? A. No; I don't remember that.

Q. Did he go alone, do you know? A. I do not know, Mr. Mackay.

Q. You do not know? A. No.

Q. That you could not tell? A. No; I do not recall that.

Q. You do not recall the date even? A. No. Mrs. Rubens might know, but I don't.

Q. Or the week? A. No; I don't know that.

Q. How did you figure the five weeks? A. Because I remember we counted them. It was five weeks that he was there.

Q. But you do not remember what you counted from, do you? A. Not now, no; we did know then.

Q. But the day he left was when, what date? A. He left on the 1st day of November.

Q. On the 1st day of November, 1913? A. He wanted to be home for the election.

Q. And that was the last full week—no, that was not the week that you were there steadily? You were there the week of October 16th, as I understand it; is that right? A. I was there from October 16th, on.

Q. Right to November 1st? A. Yes.

Q. Steadily? A. Yes.

Q. Well, that was about two weeks, was it not? A. Well, it might have been. I went home on that date and stayed home right along after that.

Q. Well, then, Mr. Rubens was there that two weeks? A. He was there until the 1st day of November.

Q. From October 16th? A. Yes.

Q. And prior to that time? A. I said about a week.

Q. Then, as I understand it, to get it clear, from October 16th to November 1st, you and Mr. Rubens were there steadily on the farm, day after day? A. With others.

Q. Very true. But you were there? A. We were.

Q. And Mr. Rubens was there? A. We were.

Q. And did he leave there on November 1st? A. He did.

Q. Did you leave there on November 1st? A. Yes.

Q. You stayed there? A. I stayed there.

Q. He went home alone? A. He did.

Q. During those two weeks his wife was not there? A. No.

Q. Nor his children? A. No.

Q. Did he appear to be in good health after that? A. He went away in excellent health.

Q. Excellent health. So that on November 18th, 1913, he was in good health, eighteen days later? A. I don't know. He seemed to be, when I saw him at the bridge.

Q. Did he call to see you that night? A. What night?

Q. November 18th? A. He did not.

Q. You are positive of that? A. Positive.

Q. That is a long time ago, is it not? A. Yes.

Q. Very long time ago? A. Yes.

Q. But you remember that very distinctly? A. I do.

Q. Do you not? A. I do.

Q. You do not remember what you did on November 10th, 1913, or the 11th, 12th, do you? A. I could remember in general what I did.

Q. Could you? A. Yes.

Q. You remember you went to work; is that it? A. I was working around on the farm at home.

Q. Mr. Harry Rubens said that he used to see you going to the ferry with Mr. Edward Rubens about four years ago. Did you hear that testimony? A. Four years ago, is that?

Q. I think that is what he said. A. 1914.

Q. 1914, I think he said, five years ago. Did you hear it? A. I heard it.

Q. And I think you said that you did go down

to the ferry with other people; is that correct? A. Sometimes. Sometimes I walked down 42nd Street with Mr. Rubens alone; I was going home.

Q. You were on your way home? A. Yes.

Q. Where were you going to? A. To 47th Street.

Q. To 47th Street? A. Yes.

Q. What were you doing, walking to the ferry? A. No; I walked down 42nd Street to Tenth Avenue, up Tenth Avenue to 42nd Street, and around the corner to my home.

Q. So that you would just walk a short distance, is that right? A. I would walk down to Tenth Avenue; Mr. Rubens would go on to the ferry, I suppose.

Q. I questioned you, Mrs. Parsons, before trial, and I asked you this question, "Did you ever go into the Hotel Preston with Mr. Rubens?" and you said "Not to my knowledge or belief". Do you remember that? A. No.

Q. Do you remember making that answer? A. No.

Q. Now, I ask you the same question. Did you you ever go into the Hotel Preston with Mr. Rubens? And what is your answer? A. I never did.

Q. I asked you the question, Mrs. Parsons, "Did you ever meet him at the 33rd Street subway in New York?" and you answered, "I do not remember". Do you recall that? A. Possibly I did.

Q. What is your answer now? A. I never did

Q. You never did? A. I never did.

Q. You change your answer then; is that it? A. Possibly.

Q. Is that correct? You change it? A. There is not much difference.

Q. There is not much difference? A. (Witness shakes head in the negative).

Q. Did you ever meet him at any subway station, I asked you then, and you said, "Not to my recollection". What is your answer to-day?

10 A. The same.

Q. The same. Not to your recollection? A. (Witness nods head in the affirmative.)

Q. Do you also say you do not remember? A. I say that I can't ever recall doing so.

Q. Do you swear that you never did? A. Not to my knowledge, I believe.

Q. You were asked the question "Do you remember Mr. Rubens coming out to you one time, immediately after January 21st, 1912, and telling

20 you about some argument he had with his wife about his going out with you?" What is your answer to that?

MR. DECKER: Are you asking this question, or are you asking it for the purpose of contradicting her?

MR. MACKAY: I am asking it now as a question.

A. I do not know anything about their private affairs.

30 Q. Is that your answer? A. Yes.

Q. When was the last time that Mrs. Rubens came to see you, other than this time you spoke about at the railroad station? A. I think the farm was the last time.

Q. And that was in 1913? A. Yes, Decoration time. Mrs. Rubens and the children called on me at the office, a social call, but I can't say when it was, so I can't tell you.

Q. When was it you lived at Adelphi Street?

40 A. From April 1st, 1914, until March 28th, 1918.

Q. And how many times did he visit you at Adelphi Street? A. Several times. I couldn't say how many.

Q. How many times at 47th Street? A. Five times.

Q. At Jamaica Bay? A. Twice.

Q. At the farm, any other than the five weeks he was there, did he visit you? A. I don't remember any other time.

Q. You do not remember it? A. I do not recall any other time.

Q. What? A. I do not recall any other time.

Q. You do not recall any? A. No.

Q. If he had, would you remember it? A. I might have. I might. If there was anything in connection with it to make it memorable, I would.

Q. Did you have to go to any other restaurants that Colazzi's with Mr. Rubens? A. No.

Q. You say no? A. No.

Q. Positively no? A. Yes.

Q. Do you remember you were asked that question "What other restaurant were you at besides Colazzi's?" You said, "I don't remember any". A. Well, that is the same, is it not?

Q. Well is it? Is that your answer, that it is the same? A. Yes.

Q. When I said "You were at other restaurants" you said "Not to my recollection." Is that just the same? A. (Witness nods head in the affirmative.)

Q. You say now, positively no? A. I will say not to my recollection.

Q. No. You will keep that same answer? A. Yes.

Q. You do not want to say positively no? A. I would if I could.

MR. DECKER: If the Court please, I object to this digging at the witness.

THE COURT: It is cross examination. He has a right to find out. Proceed.

Q. This is your handwriting, is it not? (Showing paper to witness.) A. Well, it looks like it.

Q. You know your own handwriting, do you not? A. It looks like my writing.

Q. Are you in doubt about it? A. I would not swear that it was.

Q. You would not say? A. No.

Q. Is that your handwriting (showing paper to witness)? "Mr. Edward S. Rubens, Dumont, New Jersey"? A. Well, it looks something like it, but I couldn't swear that it was my handwriting.

Q. You are in doubt about it, are you? A. Yes; I would not say positively that it is.

Q. You are in doubt about both of these, are you? A. Yes; I will say yes.

Q. You will say you are in doubt? A. I couldn't swear to anybody's writing.

Q. No. Can you swear to that? A. No; it looks like my writing.

Q. It looks like yours? A. It looks like it.

Q. Well, I will show you another one. Is this your handwriting? (Showing paper to witness.) A. That looks like it.

Q. That is just the same as the other, is it not? A. It looks the same.

Q. Is that your writing? A. It looks like it.

Q. That is the same as the other? A. It looks so. Some of it looks more alike than others.

Q. Is that your signature? A. That is the way I usually sign it.

Q. Do you know your own signature when you see it? A. It looks like my signature.

Q. Are you in doubt about it? A. I couldn't swear to it.

Q. Could you not? A. No; I couldn't swear to anybody's unless I saw them write it.

EFFIE BRAUN, called as a witness on behalf of the defendant, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. DECKER:

Q. Where do you live? A. Where do I live now, at the present time?

Q. Yes. A. 1832 73rd Street, Brooklyn.

Q. Did you live in Rockville Center, Long Island? A. I did.

Q. Speak a little louder, please, and speak in that direction (indicating toward jury). A. I did.

Q. Do you know Mrs. Parsons, the defendant in this case? A. I have for about fifteen years.

Q. About fifteen years? A. Yes.

Q. Do you recall December 31st, 1911? A. I certainly can.

Q. Now, where were you on that day? A. I was home, in my own home.

Q. Where was your home? A. In Woodsen Ridge Avenue, Rockville Center.

Q. Long Island? A. Yes.

Q. Did you see Mrs. Parsons on that day? A. I did. I saw Mrs. Parsons.

Q. When did you first see her? A. She arrived at my home about 1.30 in the afternoon, with her son and daughter and her sister.

Q. Tell what happened from 1:30 on? A. What is that?

Q. Tell what happened from 1:30 in the after-

noon on? A. Well, do you mean on that day, or previous?

Q. On December 31st, 1911. A. Well, I was kind of downhearted and trying to cheer mysef up, and Mrs. Parsons came out. They knew I was downhearted, because I had just lost my father on the 21st of November, and it was the first holiday I had spent in my own home, as previous to that I had always been at my father's home; and I was very downhearted; and I know I was very glad when I saw them get off the trolley at the door and come into the house.

Q. And that was about half-past one on the afternoon of December 31st, 1911? A. Yes, sir, it was just half-past one, because the trolleys ran on the half hour.

Q. Who was with Mrs. Parsons? A. Her son and her daughter and her sister.

Q. What did they do when they got off the trolley? A. Well, they came in the house, and we greeted each other, and very glad to see each other and I believe I started to get dinner ready and give them some refreshments.

Q. The evening of that day was New Year's Eve, was it not A. Yes, sir.

Q. Did they stay over night? A. Yes, sir.

Q. The four of them? A. Yes, sir.

Q. And did they stay the next day? A. They stayed until late in the afternoon.

Q. Until late in the afternoon of New Year's Day? A. Of New Year's Day.

Q. And then they went home? A. Yes, they went home—at least, they got on the trolley. I suppose they did go home.

CROSS EXAMINATION BY MR. MACKAY:

Q. You remember that very distinctly? A. What is that?

Q. You remember that very distinctly? A. I certainly will remember those holidays if I live to be a hundred.

Q. It is just like a story book, is it not? A. What is that?

Q. It is just like a story book; you have it down so thoroughly? A. Well, I am sure it was an event in that year, that first year we had her out; that I never will forget.

Q. But he died in November? A. I know that, but you must take into consideration that I had never spent a Christmas in my own home.

Q. They did not come to see you, though, for over a month later, did they? A. No—they did come out right after that, I know, and she moved in Rockville Center by coming out to see me. Mrs. Parsons fell in—went around with my husband and saw some houses, and that is how she moved to Rockville Center.

Q. Were they out to see you after that? A. After that and before that.

Q. After your father's death? A. Yes.

Q. How many times? A. Well, to my knowledge, I think, a couple of times before they moved there.

Q. No; but before December 31st, how many times? A. Well, I did not see Mrs. Parsons, I don't think, but twice. I was down to DeGraw Street one evening, one afternoon, and stayed there and had tea, saw her there; but I do not think she had been out; but her sister had been out twice before that.

Q. Her sister? A. Her sister.

Q. But she was not out to see you? A. Mrs. Parsons was not, not to my knowledge.

Q. That is what I said. Mrs. Parsons did not come to see you—— A. She did come to see me.

Q. ——until December 31st? A. No; of course not.

Q. Which was over a month, or a month and a half, was it not, after your loss? A. Well, it was—from November 21st until December 31st; it was just a month.

Q. Did you continue to live in that place after that? A. What is that?

Q. Did you continue to live in the same place? A. I continued to live there, yes, sir.

Q. Could you tell us what happened the following year? A. I can. You mean the following year, the next New Year's?

Q. Yes. A. I certainly can.

Q. December 31st? A. Yes.

Q. Let us hear it, now? A. Well, that was the following Christmas after that. They lived in Rockville Center, and I got Mr. Horton to come up and help me trim my tree for me. Let me see. The following Christmas and the next New Year's. I don't know whether they were out or not, I can't say. But they were in the town.

Q. That you do not remember? A. Because there was nothing to impress it upon my memory as much as the other.

Q. The only reason you remember the other is on account of your father; is that it? A. Because I can remember those holidays so plain. I can remember other things besides Mrs. Parsons' coming out. I can recall lots of things that happened just around that time.

Q. Can you tell what happened on December

31st, 1915? A. Nothing pertaining to Mrs. Parsons. I was in my father's home celebrating New Year's that time.

Q. You just believe you were at home; is that it? A. Yes; that is because I was in my own home this year. It was the first year I ever celebrated there.

Q. My question was that you know from December 31st, or New Year's Eve, you were at home is that it? A. Not in my own home. I was always in my father's home.

Q. Yes; but after 1911? A. After that?

Q. Yes. A. After that I have always been in my own home, because I had no father's home to go to.

Q. And I say that you remember very well that you were in your home? A. Certainly, because that was the first year I was in.

Q. And exactly what you did, everything you did, you have not that in mind, have you? A. Everything I did on that date?

Q. Yes. Each year, year after year? A. Since then I can recall, and before that I can recall things. But it is not pertaining to Mrs. Parsons, because Mrs. Parsons was not acquainted with my father's people.

Q. When had you seen Mrs. Parsons before December 31st, 1911? A. When did I see her before that?

Q. Yes. A. I saw her in her home down in De-Graw Street.

Q. When? A. Well, I can't just recall the day, but it was after by father's death.

Q. And when before your father's death did you see her? A. I do not know how many times I have seen her before that. I can't say, because we have been seeing each other off and on for the

last fifteen years; but I can't recall just the days that I did see her, or the dates.

Q. You are an old friend of hers? A. I am an old friend of her sister's.

Q. Not related in any way? A. Not related at all.

Q. Just an old, close friend? A. Just an old friend.

Q. For fifteen years? A. Yes.

Q. Taken a great deal of interest in her, have you? A. Yes, certainly have. I have seen her children grow up, and I am like an aunt to them.

Q. You are not subpoenaed here? You came voluntarily? A. I was not forced to come.

Q. What is that? A. I was not forced to come.

Q. You came to help her out? A. I came when she recalled to my mind if I could help her any. That was all.

Q. She told you about the case and about the trouble? A. Well, she did not naturally tell me; I heard it through others.

Q. Did she not speak to you about it? A. Personally, she did; yes.

PATRICK J. O'BRIEN, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DECKER:

Q. Where do you live, Mr. O'Brien? A. 146 Dean Street, Brooklyn.

Q. Do you know Mrs. Parsons, the defendant in this case? A. Yes, sir.

Q. How long have you known her? A. Oh, perhaps ten or twelve years, personally.

Q. Did you know her husband? A. Yes, sir.

Q. Were you in business with him? A. No, sir.

Q. Whom are you in business with now? A. Mr. Zulzer.

Q. How long have you bee in business with him? A. Perhaps eleven years.

Q. How long? A. Perhaps eleven years; about eleven years.

Q. Do you recall the 18th of November, 1913? A. Yes, sir.

Q. What happened recently to make you recall that date. Did anybody speak to you about it? A. Oh, yes.

Q. Who? A. Well, Mr. Zulzer and the Parsons people interested in this case.

Q. Mrs. Parsons? A. And Mrs. Parsons, in particular.

Q. Do you remember seeing her on that day? A. Yes, sir.

Q. Now, tell what happened, where you saw her, and what happened? A. Well, Mr. Zulzer and I had a business conference, as he described on that day, and it was rather important for us. We had been doing relatively small business, and Mr. Zulzer advised purchasing more machinery; and on that day we discussed the matter, and we decided to buy more, I think type-setting machines —more machinery, and I think they were type-setting machines; and on account of the importance of that day, I remember it distinctly—the importance of the action taken that day in our printing house.

Q. Well, what happened? Where did you see Mrs. Parsons? A. Well, about the time we finished our conference Mrs. Parsons came in.

Q. What time was that? A. Why, I guess it was about half-past three in the afternoon.

Q. In the afternoon? A. Half-past three in the afternoon, yes, sir.

Q. Then what happened? A. Well, Mr. Zulzer and I and Mrs. Parsons, we went out to the World Restaurant.

Q. What did she come to see you about? A. I think she came to see Mr. Zulzer.

Q. Do you know what she came to see him about? A. Only——

MR. MACKAY: I object.

THE COURT: I think it is immaterial as it stands now.

Q. Tell what happened then? A. Mr. Zulzer, Mrs. Parsons and I went to the World restaurant, in the World Building, and he had dinner there—and shall I go on from there?

THE COURT: Yes. Tell what happened.

A. (Continuing.) And after dinner, which might have taken an hour, Mr. Zulzer left us, saying that he was going to his home in Freeport. Mrs. Parsons had a suitcase and several other packages, smaller packages, and I agreed—that is, I offered to go with her, down to the ferry, to carry her suitcase, help her carry the packages. I went down to the ferry with her, and over the ferry, and saw her on the train. She said she was going——

MR. MACKAY: Never mind what she said.

THE COURT: What train did you see her on; what railroad?

THE WITNESS: The Central Railroad of New Jersey.

Q. Where was the train going to? A. Phillipsburg.

Q. What time of day was that? A. I estimate

it closely to six o'clock, from the time it took us to eat, you know.

Q. When did you say you saw her? A. When I first met her?

Q. Yes. A. Half-past three in the afternoon.

Q. Were you with her continuously until she got on the train? A. Yes, sir.

Q. And your partner, Zulzer, was with her part of the time? A. Mr. Zulzer left us on the street in front of the World Building.

Q. What time? A. Well, I should say that was about half-past four. I allowed an hour to eat, anyway. I am only estimating, that.

Q. What have you done to verify this date? A. We have looked up our minutes, and we——

Q. What minutes do you mean? A. The minutes of the corporation, meeting minutes, the director's meeting. And it was on that day that we decided to buy the printing machinery. It meant a whole lot to us, and for that reason it is memorable.

Q. Do the minutes show that? A. Yes.

Q. And that is the same day you saw Mrs. Parsons? A. Yes, sir.

CROSS EXAMINATION BY MR. MACKAY:

Q. Do the minutes show Mrs. Parsons was there? A. No, sir.

Q. There is no mention of her name? A. No, sir.

Q. No. Not a thing? A. Her name? She was a visitor. She don't belong to the company. She came in as we were holding the meeting; therefore her name was not entered in the minutes.

Q. You were all wrapped up in the company? A. We had to finish our meeting.

Q. You were all wrapped up in the business of the company? A. Very much; very much interested.

Q. And your gentleman or partner friend; that was interested in the business with you, said it was the turning point in your career. Was it not? A. That was the most important meeting we ever had.

Q. You did not have any time to think of women; you were thinking of business? A. We had finished our business at the meeting.

Q. You had finished early, had you? A. Sir?

Q. You finished early? A. We had discussed that matter before, but at that meeting we determined to go ahead a little, and grow, do something.

Q. You know that on November 18th you had quite an important meeting, do you not? A. Yes, sir.

Q. And you know you took minutes of the meeting, of what occurred? A. Mr. Zulzer looked after those things.

Q. And you were there at the meeting? A. Yes, sir.

Q. You know that there is nothing on the minutes concerning Mrs. Parsons? A. We did not enter her name in the minutes.

Q. No? A. It is not from that that I recollect it, no.

Q. Do you recall that sometime in 1913 you took tea with her? A. I recall that it was on that day, yes sir, as that meeting was finished.

Q. Had you ever seen her before that? A. Yes; I knew Mrs. Parsons, personally.

Q. Had you called on her before that? A. No, sir.

Q. Had she called on you before that? A. She

did not call on me then. She came up to see Mr. Zulzer at our office, and I happened to be in there at the meeting.

Q. You just happened to be there? A. I came there at the meeting, and she came in to meet us. I happened to be there. I mean she did not come to meet me.

Q. She did not come to meet you? A. Not that I know of. I do not know that she expected to see me.

Q. But you took her around yourself, took her to dinner? A. Yes, sir.

Q. And took her to the train across the ferry? A. Yes, sir. She was the wife of my old partner.

Q. And helped her on the train? A. Yes, sir.

Q. When had you done that before, previous to that? A. Never had met her there before.

Q. Never had done that before? A. I never had the opportunity before.

Q. Did not know her? A. Never had the opportunity to carry her grip through the street to the ferry before.

Q. Never had met her before? A. Oh, yes; had met her before.

Q. Had met her before? A. Yes. I said I was personally acquainted with her.

Q. That was the only opportunity you ever had. Did you ever have one after that, of meeting her? A. I met her many times this year—not, not since that.

Q. Did you go to dinner with her? A. During this year I have had dinner with her.

Q. During this year? A. Not this year; during the past; since January 21st. I have met her often.

Q. Well, prior to that time? A. No, sir.

Q. You had not met her or gone to dinner

New Jersey State Library

with her? She had not been down to your office? A. I have seen her in the office before.

Q. After November 18th, 1913, when did she comedown toyour office again? A. Not at all, as I know of.

Q. Not at all. Not at any time? A. I say, not while I was there. I am only—I am not there a great deal.

Q. How much are you there? A. I am what might be called a silent partner. I am the treasurer of the company, and I come in occasionally and consult with Mr. Zulzer.

Q. Slide in and slide out; is that it? A. I am the treasurer, and I sign the checks with Mr. Zulzer; and he is the office manager, and all the business, and details of the business we left with Mr. Zulzer.

Q. Do you not have any other important meeting in your career? A. When anything of importance comes up we have meetings.

Q. You have other important meetings, do you not? A. Yes; oh, yes.

Q. You have minutes of them? A. Mr. Zulzer keeps the minutes; yes, sir.

Q. You attend the meetings, do you not? A. When I am notified of the meeting I come over there.

Q. Have you not had other meetings just as important as this one of November 18th? A. Well, we have had two or three important meetings, yes, sir.

Q. Yes. Very important, have you not? A. Well, we have had, perhaps, one other meeting that was equally as important, when we decided——

Q. When was that? A. That was two years ago ;I think the 25th of October.

Q. 25th of October? A. Two years ago, yes. Then we decided to grow more, and we did grow more. We bought more machinery then.

Q. Was the importance of this meeting that you were buying the machinery; was that all? A. No, it was—Mr. Zulzer had to have my consent and the consent of the stockholders to purchase this machinery. The purchase of that machinery was very important to us.

Q. That was your wives', was it not? A. My wife's consent and his wife's consent. Mr. Zulzer said it was a corporation composed of four people.

Q. There was not any danger of getting your wives' consent? A. That was by proxy.

Q. Mr. Zulzer was of proxy for his wife? A. Yes, sir.

Q. So there were just you two attending to a little business? A. What we agree on is—

Q. Buying machinery; is that it? A. Yes.

Q. And you had a little meeting to buy machinery; is that it; ordered it bought? A. We had a meeting at which Mr. Zulzer, the president of the company, was authorized to buy what we call considerable machinery; that is, it was a great deal to us.

Q. What do you call considerably machinery? A. Well, machinery that woud cost a considerable amount of money.

Q. What do you mean by considerable? A. Well, in this case it was about five or six thousand dollars.

Q. Five or six thousand dollars worth of machinery? A. Yes; that was a whole lot for us.

Q. You and Mr. Zulzer did that? With your wife's proxies? A. Yes.

Q. Have you bought any machinery since? A. Yes, sir.

Q. Lots of it? A. Well, we made one other purchase, as I told you, on the 25th of October—that is, two years ago this past October. Those are the memorable meetings in our career.

SAMUEL T. DICKINSON, called as a witness on behalf of the defendant, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. DECKER:

Q. Where do you live? A. 112 South Elliott Place, Brooklyn.

Q. How long have you known Mrs. Parsons? A. About two years.

Q. Where did she live when you got acquainted with her first? A. I have forgotten the name of the street—in Brooklyn.

Q. In Brooklyn? A. In Brooklyn. I have forgotten the name of the street.

Q. She moved from there to West Englewood? A. Yes, sir.

Q Now, during the past two years— A. It was Adelphi Street, Brooklyn.

Q. Adelphi Street? A. Yes, sir.

Q. During the past two years that you have known her, you have been quite a frequent visitor at her house, have you not? A. Yes, sir, I have.

Q. How frequently? A. Two or three times a week.

Q. Have you ever seen this lady's husband, Mr. Reubens, at her house? A. Never have, sir.

CROSS EXAMINATION BY MR. MACKAY:

Q. You called two or three times a week? A. Yes, sir.

Q. In the past two years? A. Yes, sir.

Q. That was while she was living in Brooklyn or Englewood? A. A portion of the time she was living in Brooklyn, and a portion of the time in Englewood.

Q. What particular nights did you call? A. Usually there on Saturday afternoons; often spent Sunday.

Q. Saturday and Sunday? A. Sunday—Tuesdays.

Q. And Wednesdays? A. No, sir.

Q. Not Wednesday? A. Sometimes, but generally Tuesdays and Thursdays.

Q. Tuesdays and Thursdays? A. Yes, sir.

Q. You said two or three times a week. Now are you giving us three or four? A. I would say two or three times a week, yes, sir. I can say—you asked me for the particular days. I am usually there on Saturdays.

Q. And Sundays? A. On Sundays, yes, sir.

Q. Is that always or occasionally? A. That is not always, but generally.

Q. By generally you mean quite often? A. Pretty nearly every week, sir.

Q. Pretty nearly every week? A. Yes, sir.

Q. And on Tuesdays and Thursdays? A. Tuesdays and Thursdays; sometimes Tuesdays, sometimes Thursdays.

Q. If you come on Tuesday you do not go on Thursday; is that it? A. That is the idea.

Q. And vice-versa? A. Sometimes.

Q. That makes the three times? A. Yes, sir.

SEWARD H. PARSONS, called as a witness on behalf of the defendant, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. DECKER:

Q. You are the son of Mrs. Parsons who is the defendant in this case, are you not? A. I am.

Q. How old are you now? A. Twenty-four.

Q. Did you ever see Mr. Reubens, the husband of the plaintiff in this suit? A. I have.

Q. When did you first see him? A. In 1911.

Q. And where? A. At the house in DeGraw Street.

Q. At the house where you lived? A. In DeGraw Street.

Q. How did he come to get to your house in DeGraw Street? Do you know? A. How did he come there?

Q. What was the reason for going there? A. Just merely a friend.

Q. And how often did he visit that house? A. I saw him about twice.

Q. At the DeGraw Street house? A. (Witness nods head in the affirmative.)

Q. What was the occasion for his visiting your house? A. Just the same as any of our friends; just a social call.

Q. Got a number of friends? A. Quite a few.

Q. And they step in frequently? A. Occasionally.

Q. Did he ever stay late during the evening? A. About ten o'clock.

Q. Did you ever go anywhere with Mr. Reubens, the husband of this plaintiff? A. I have. I did.

Q. Where did you go? A. To his home in Dumont.

Q. When? A. In the Fall of 1911.

Q. What was the purpose of your going there? A. For going hunting.

Q. Did you meet his wife? A. I did.

Q. The lady sitting here? A. Yes.

Q. Did she say anything to you about any relationship that was existing between her husband and your mother? A. Nothing whatever.

Q. How did she treat you? A. Very nicely.

Q. Did she anything to you about her husband's going to your mother's house? A. Not at all.

Q. Did you say anything to her about it? A. Not a word.

Q. Now, do you know whether this lady, the plaintiff in this suit, was ever at your mother's house? A. I do.

Q. Did you ever see her there? A. I did.

Q. When? A. In Adelphi Street.

Q. When was that? A. Why, I think, in 1914.

Q. And was she then alone? A. With her two children and Mr. Reubens.

Q. Did she say anything at that time about having her husband going out with your mother? A. She did not.

Q. Or visiting your mother at her house? A. she did not.

Q. Or going to your mother's house? A. She did not.

Q. What did she say? A. Nothing, only in the ordinary conversation.

Q. You went to live on a farm in Phillipsburg, did you not? A. I did.

Q. When did you go there? A. When?

Q. Yes. A. In 1913.

Q. How long did you stay? A. I believe about a year.

Q. You were there all the time, were you not? A. I was.

Q. You worked on the farm? A. I did.

Q. Was Mr. Reubens at that farm? A. He was.

Q. How often was he there? A. Once, as I remember.

Q. When was that? A. Around September, I think.

Q. How long did he stay? A. About five weeks.

Q. What was the reason for his going there? A. That his health was poor.

Q. What did he do while he was there? A. Didn't do anything; just lay around.

Q. What happened to his health? A. Gradually came up to normal.

Q. Now, during that time your mother was there at the farm, was she not? A. During weekends.

Q. Was Mrs. Reubens ever at that farm? A. She was.

Q. When was she there? A. Decoration,—the Decoration before this, five weeks, Mr. Reubens was there.

Q. How long was she there? A. About three days.

Q. Were her children with her? A. They were.

Q. Was your mother there at the time? A. She was.

Q. Now, when did you leave the farm? A. Either late in 1913 or the late part of 1914. I forget now, which. I don't just remember.

Q. How frequently did you see Mr. Reubens after that? A. I do not remember seeing him, only a couple of times on the train after that.

Q. When was that? A. Well, I was commuting from West Englewood to New York.

Q. When did you see Mrs. Reubens after you left the farm? A. About the same way, on the train or in the ferry house. I forget now just which.

Q. Ever talk to them? A. No.

Q. Do you recall Mrs. Reubens' talking to your mother? A. I do.

Q. When was that? A. On the 16th day of April.

Q. What year? A. 1919.

Q. Where was the conversation? A. In the park, this side of the station.

Q. At West Englewood? A. At West Englewood.

Q. Who were present? A. Mrs. Reubens, my mother, and I.

Q. Did you hear all the conversation? A. Not all.

Q. What did you hear? A. I heard her say—

Q. Whom do you mean by her? A. Mrs. Reubens. —that to get the mortgage back and hold it until she could pay it. Then I did not hear any more for a short stretch. And then I heard her say, if she did not get the mortgage back and she lost her home that she would spoil my mother's.

Q. That she would what? A. She would spoil my mother's home.

Q. Now, during the times that Mr. Reubens has been at your mother's house, when you were there, what have been the actions and conduct of your mother toward him? A. No more than toward any other friend.

Q. Have you ever seen her use any enticement or allurement to alienate him from his wife?

MR. MACKAY: I object to that, your Honor.

THE COURT: I think that calls for too much of a conclusion. He may say what she has done, what he saw her do. He stands in a different position from the party that is

charged. The party that is charged may deny it specifically.

MR. DECKER: I will withdraw the question. That is all.

CROSS EXAMINATION BY MR. MACKAY:

Q. You say you went to Dumont in the Fall of 1911? A. Fall of 1911, yes.

Q. How old were you then? Somebody is trying to tell you back here; I do not know who it is. A. (No answer.)

Q. Can you not figure it out? A. Somewhere around 16 or 17.

Q. You are how old now? A. 24.

Q. And what do you call the Fall? A. November; hunting season; November 15th, I think it is; 10th or 15th; I forget now which.

Q. Is that the date you were there? A. That was the opening day.

Q. Was that the date you were there? Are you trying to give us the exact date? A. Well, about that time; I do not know; it was a couple of days after the season opened, or just exactly the date.

Q. But you are sure it was not in December, 1911? A. Sure of that.

Q. When were you up there after November 11th? A. I was never there after that.

Q. And you saw Mr. Reubens at your mother's home in DeGraw Street? A. I did.

Q. That was in what year? A. 1911.

Q. The same year? A. The same year. Same year.

Q. Was that before you went to Dumont? A. Just before that.

Q. Just before you went up? A. Just before, I am positive.

Q. Your mother had Mr. Reubens there twice? A. Yes, came of his own accord.

Q. What is that? A. Came of his own accord, just as a friend.

Q. Nobody forced him to come there? A. No, sir.

Q. And he was not forced out of the house either? A. Not at all.

Q. Made welcome? A. Welcome is right.

Q. When did you move away from DeGraw Street? A. I think in 1913, if I am not mistaken.

Q. Did you live in DeGraw Street from 1911 to 1913? A. I don't just remember.

Q. Do you not know when you moved away from DeGraw Street? A. Not exactly.

Q. About?

THE COURT: Can you tell us when you moved away from DeGraw Street?

THE WITNESS: Not exactly, no.

Q. About? A. I think it was in 1912, if I am not mistaken.

Q. In 1912? A. I am not positive, though.

Q. In the Spring or Summer? A. I think it was the Spring.

Q. Winter or Fall? A. I think it was in the Spring, around in April.

Q. Around in April, 1912? A. Yes.

Q. You moved from DeGraw Street? A. Yes.

Q. To Long Island? A. To Long Island.

Q. How many times did Mr. Reubens come there? A. I do not know.

Q. Were you there? A. I was.

Q. Were you working or going to school at the time? A. Working.

Q. How long did you live in Rockville Center? A. About a year.

Q. That would be until about the Spring of 1913? A. Well, it was not quite a year.

Q. No? A. It was in the Winter that we moved.

Q. Did Mr. Reubens come there at all? A. Not as I know of.

Q. Not once? A. I didn't see him, no.

Q. Do you mean you do not want to say whether he did or did not? A. Well, I don't know; I didn't see him.

Q. You would not say he was not there? A. No sir, because I didn't see him.

Q. From Rockville Center, where did you move to? A. To Stewartsville, New Jersey.

Q. Up to the farm? A. To the farm.

Q. That was in the Spring of 1913? A. I am almost sure it was, yes.

Q. Now, when Mr. Reubens was up there for the five weeks, during that time his wife was not there? A. No.

Q. Not at all? A. No.

Q. Now, you were asked if your mother came up there during those five weeks, and you said week-ends? A. Week-ends.

Q. Well, you also intended to say that she was there from October 16th to November 1st? Was she not, steadily? A. I don't think I said that.

Q. Well, was she? A. I am not positive of those dates, no. I know she was home towards the latter part.

Q. For a couple of weeks? A. A week or eight or nine days; something like that; before Mr. Reubens went back.

Q. So that she was there steadily—A. For about nine—eight or nine days, yes, before Mr. Reubens left the farm to go home.

Q. Why do you say eight or nine? Are you

positive it is eight or nine? A. No. That is why I am not positive.

Q. Do you mean it is over eight or nine? A I am not sure; somewhere in that vicinity.

Q. Do you mean to say it was not ten or twelve, or fourteen? A. No.

Q. Are you positive it was not? A. It was not over two weeks; I know that.

Q. It was not over two weeks? A. No.

Q. That would be fourteen days? A. I know it would.

Q. Then it might have been fourteen days; is that what you mean? A. It was not two weeks.

Q. It was not two weeks? A. No, not a full two weeks.

Q. You do not want to be exact about it, do you? A. No, I don't, because I do not remember just exactly.

Q. But you do know it was sometime? A. I do know that.

Q. And prior to that time that she was there steadily and Mr. Reubens was there steadily, she was there for the week-ends; is that it? A. For the week-ends; that is it.

Q. So that for about three weeks she was there week-ends, and two weeks she was there steadily? A. About that, yes.

Q. You were there working the farm? A. I was there working the farm, yes..

Q. Out during the day working in there? A. Well, yes, out and in.

Q. What were you doing? A. All kinds of work; it takes you in and out.

Q. Who else was helping you to run it? A. Nobody.

Q. Just yourself alone? A. Just myself.

Q. Were you living alone? A. I was; my sister, my aunt, and I.

Q. Is not your sister anybody? A. Well, us three.

Q. That is what I mean— A. Not alone no. I was running the farm alone.

Q. With their help? A. With their help, of course.

Q. Your sister and your aunt you say? A. My aunt, yes; my mother's sister.

Q. What kind of a farm was that? A. A small eighty-acre farm.

Q. A house, building? A. House, barn, outbuildings.

Q. What size house? A. What is that?

Q. What size house? A. Oh, I imagine nine or ten rooms. You can figure from there; fair size.

Q. Plenty of room A. Yes.

Q. Now, you say you did not hear all the conversation at West Englewood station, then? A. Not all of it, no, sir.

Q. And the reason you did not hear it was because your mother walked away from you? A. Not at all.

Q. Well, she said she did? A. No.

Q. Did you not hear her? A. Well, she stepped a few feet, and then I walked a few feet more, but I was within ear shot.

Q. Is it not a fact she sent you home? A. No, she did not send me home.

Q. Did she not tell you they were waiting for the supper things? A. That is all right; she did not send me home.

Q. She did not tell you that? A. She said they were waiting for the supper things, but I did not go home.

Q. You did not go home? A. No, not right away.

Q. You walked away? A. A very short dist-

ance; ten or twelve feet; something like that

Q. As you walked away and they walked away from you, you could not hear what was said in the beginning? A. Not all the conversation, no. It was only when the voices were raised that I could catch words, and I caught those few words that I mentioned.

Q. Had they been talking sometime before you heard anything? A. A few minutes, yes.

Q. A few minutes? A. Yes.

Q. And the first thing you heard was what? A. "You get back that mortgage and hold it until we can pay for it", or "until I can—" "we can pay for it", or something like that. I forget just the last few words—or "hold it until we can pay it". And then I did not hear anything for a few seconds. And then I caught this other.

Q. What was it? A. That "if you make me lose my home, I will spoil yours".

Q. "If you make me lose—" who said that? A. Mrs. Reubens.

Q. "If you make me lose my home, I will" what? A. "Spoil yours."

Q. "Spoil"? A. Or lose it, one or the other.

Q. "I will spoil yours"? A. Put it "spoil". That is what I remember.

Q. Well, which is correct? A. "Spoil".

Q. What? A. Put down "spoil".

Q. Are you sure that is right? A. Sure.

Q. You are in doubt about it A. No. I am in doubt about the other word.

Q. Why did you say "lose"? A. It is "spoil", the word I want down there.

Q. Well, is that right? A. That is right.

Q. You are positive of that? A. Positive it is right.

Q. Did you hear your mother testify? A. I did.

Q. She did not say "spoil"? A. Well, I said "spoil".

Q. Is she wrong? A. That is what I heard, what I told you.

Q. Is she wrong?

MR. DECKER: I object, if the Court please.

THE COURT: What this man heard of the conversation he has stated. It is for the jury to say.

Q. What was it, "I will spoil" what? A. "I will spoil yours".

Q. "I will spoil yours"? A. Meaning her home.

Q. You did not know what they meant, did you? A. Well, it was enough that I knew what was meant.

Q. You are drawing on your imagination, are you not? A. No.

Q. Of course you are the son? A. When she spoke of mortgages—

Q. You are the son of Mrs. Parsons, are you not? A. Yes.

MR. MACKAY: That is all.

Adjourned to Monday, December 22nd, 1919, at 10:00 a. m.

Hackensack, N. J., December 22, 1919.
10:00 o'clock A. M.

ETHELYN G. PARSONS, called as a witness on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DECKER:

Q. You are a daughter of Mrs. Parsons, the defendant in this case? A. I am.

Q. And how old are you? A. 22.

Q. Are you acquainted with Edward S. Reubens? A. I am.

Q. When did you first see him? A. In DeGraw Street, Brooklyn.

Q. Won't you speak a little louder? A. In DeGraw Street, Brooklyn.

Q. And how did you come to get acquainted with him? A. Well, he came to the house one evening, and I was introduced to him.

Q. And how long ago was that? A. That was in 1911.

Q. Now from that time to the present time you have lived with your mother in the same house, have you not? A. I have.

Q. And during that time how frequently has Edward S. Reubens visited your mother's house? A. I can think of six times.

Q. How did he come to go to your mother's house, do you know? A. He came of his own free will.

Q. How long would he stay? A. He generally came in around mealtime in the evening, and went home on an early evening train.

Q. What was the conduct of your mother toward him on his visits to your house? A. Just the same as any other friend of ours.

Q. You lived on the farm near Phillipsburg? A. I did.

Q. Did you not, while your mother had the farm? A. I did.

Q. And he was there for some five weeks? A. He was.

Q. Was your mother there all the time? A. No, she was not.

Q. How frequently was she there? A. She was there week-ends until the latter part of October.

Q. Do you know the occasion for him staying at your mother's farm for five weeks? A. Yes. He came there because he was sick.

Q. Well, was he sick? A. He was in a very weakened condition when he came out, to me.

Q. Do you know whether his wife knew that he was there? A. I do.

Q. Did you ever talk to his wife about his visit to the farm subsequently? A. No.

Q. Did you ever visit the house of Edward S. Reubens? A. I did.

Q. And how frequently? A. I was there once, I believe.

Q. And where is his house? A. In Dumont, New Jersey.

Q. And who were you with? A. My mother.

Q. And how did you come to go there? A. We were invited out to a masquerade dance on Washington's birthday eve.

Q. And was his wife there? A. She was.

Q. How were you treated? A. Very nicely.

Q. Do you remember when that was? What Washington's birthday? A. It seems to me it was 1912; I am not positive about that.

MR. DECKER: Cross examine.

CROSS-EXAMINATION BY MR. MACKAY:

Q. When was it in 1911 that Mr. Reubens first came to your mother's home? A. Why, I don't just remember. I think it was the first part of the year; I am not just sure.

Q. In the early part of 1911? A. Yes.

Q. Would you say in January, or later? A. Well, I am not positive.

Q. You couldn't give us the date? A. No.

Q. You couldn't give us the month? A. No.

Q. Did you let him in the house? A. Yes, I opened the door.

Q. You opened the door for him? A. Yes.

Q. And did you open the door for him to go home that night? A. Well, we were all there; he went out of the door alone.

Q. Did you open the door for him to go home that night? A. Not that I remember.

Q. No. You let him in, but you didn't let him out? A. Yes, but I remember when he went away.

Q. I didn't ask you that. Do you remember the hour he went away? A. He went to catch the nine—nine o'clock train.

Q. The nine o'clock train? A. Yes.

Q. Nine o'clock from where? A. From Weehawken.

Q. What hour was it he arrived at the house that you let him in? A. Well, it must have been about half past five, I guess, or quarter to six; somewhere around there.

Q. Did he stay for supper? A. He did.

Q. That was the first he had called there, was it? A. Yes.

Q. And did he call again at DeGraw Street? A. Yes, he called once with the children.

Q. When was that? A. That was, oh, perhaps two or three weeks later.

Q. Two or three weeks later? A. Yes.

Q. And do you know what time he called? A. He brought them on a Sunday afternoon.

Q. Yes. Did you let him in? A. Well, mother and I let him in together.

Q. Oh, you both opened the door? A. Yes.

Q. Both let him out? A. Yes.

Q. What time did he go out that night? A. He got the five minutes of nine train because he didn't want to get home late with the children.

Q. And when did he call again at that same house? A. I do not remember his being there again.

Q. That is the last you recall? A. Yes.

Q. And when did you move away from that house? A. We moved away from there—let me see—it must have been in April of 1912.

Q. April 1912? A. Yes, sir.

Q. And where did you move to? A. Rockville Center, Long Island.

Q. And did Mr. Reubens call there? A. He called once with Mrs. Reubens and the two children.

Q. Yes. And when was that? A. That was in the summer time.

Q. Of 1912? A. Yes.

Q. Did he call again after that? A. Not that I recall.

Q. Now, how long did you live there? A. We lived there until late in the Fall.

Q. Of 1912? A. Of 1912.

Q. And then where did you move to? A. We moved to a farm in Uniontown just outside of Stewartsville.

Q. And how long did you live on the farm? A. About a year.

Q. And what date did Mr. Reubens come up there to the farm? A. 1913.

Q. What date? A. You mean when he was sick?

Q. Well, he did come up more than once? A. Well, he and Mrs. Reubens and the two children were there on Labor Day of that year.

Q. Labor Day or Decoration Day? A. I mean Decoration Day.

Q. That was in May, 1913? A. May, 1913.

Q. And what day did he come up in the fall when he came alone? A. It was the latter part of September.

Q. Yes. Do you remember the date? A. No, I do not.

Q. And he came alone? A. He came alone.

Q. And he stayed there five weeks? A. Five weeks.

Q. And during that time his wife was not there? A. No.

Q. And his children weren't there? A. No.

Q. And your mother came home week-ends? A. She did.

Q. And until what date? A. Until—oh, the latter part of October; perhaps the last week.

Q. October 16th, wasn't it? A. Yes, October 16th.

Q. Is that when she got her vacation? A. There wasn't any vacation; she came home.

Q. Oh, she came home to live there? A. Yes.

Q. And she did live there steadily from October 16th until Mr. Reubens left? A. She did.

Q. Didn't she? A. And on—yes.

Q. Steadily every day? A. She did.

Q. She didn't go in to business then, did she? A. No, she did not.

Q. And when again did Mr. Reubens visit your mother after that? A. He came to the house with his brother Harry when we lived on Adelphi Street.

Q. Brooklyn? A. In Brooklyn.

Q. That was later? A. That was in 1914.

Q. That was in 1914? A. Yes.

Q. And when again did he come? A. He brought the children to see us there.

Q. 1914? A. 1914.

Q. And do you recall any other times? A. No, I do not.

Q. Those are the only times you recall? A. That is the only time I recall.

Q. Did you live at the apartment at 510 West 47th Street? A. I visited my mother there for a week.

Q. Weren't you living there? A. No.

Q. You weren't living there with your mother? A. I was not.

Q. When did your mother move to 510 West 47th Street? A. I think she moved there when we moved out to the farm.

Q. And when was that? A. That was in 1913.

Q. And how long did she keep that apartment? A. I don't know. Until October 16 she kept the apartment.

Q. Did she give it up on October 16th? A. To my belief, she did.

Q. You are not sure? A. I am not sure.

Q. You don't know whether she went back there again or not? A. She went back there later to see about her furniture.

Q. Well, did you go with her? A. I did not.

Q. Do you know whether she went back there and lived there? A. She did not.

Q. Do you know? A. I do know.

Q. Where did she live then after she came back from the farm? A. She lived with us in Adelphi Street.

Q. In Adelphi Street, Brooklyn? A. Yes.

Q. And how long did you live there? A. Four years.

Q. And during that time did Mr. Reubens call? A. I told you once.

Q. In Adelphi Street? A. Yes.

Q. That was after 1914? A. 1914.

Q. Just once? A. No. He came twice; once with his brother Harry, and once with the two children.

Q. Those are the only two times that you know that he came? A. The only two times.

MR. MACKAY: That is all, I guess.

RE-DIRECT EXAMINATION BY MR. DECKER:

Q. When your mother went to the farm during the middle of October, 1913, she went there to live, didn't she? A. The latter part of October.

MR. MACKAY: I object to leading the witness.

Q. Well, for what purpose did your mother go to the farm during October of 1913? A. Why, she came home to see us.

Q. And how long did she stay? A. Why, when she came out week-ends, if she got off early, if it was during the time of the year when they had Saturday afternoons off, she got home about three o'clock; and if she didn't get the afternoon off, why, she got home around ten o'clock in the evening.

Q. Well, I am speaking about the period after the middle of October, 1913, when you said she returned to the farm. A. Yes.

Q. How long did she stay there then? A. Why, she was there from the 16th on.

Q. Until when? A. Well, until we moved to Adelphi Street.

Q. And when was that? A. We moved there in April, 1914.

Q. And did she live at the farm during that period? A. Yes.

Q. Every day? A. Yes.

Q. Do you know whether she worked during that time? A. She did not, because she was home with us.

MR. DECKER: That is all.

RE-CROSS EXAMINATION BY MR. MACKAY:

Q. Didn't Mr. Rubens com up to the farm on July 14th? A. I do not remember.

Q. You don't remember? A. No.

Q. Why do you say that? A. Well; I don't.

Q. Well, you know he was up there in July? A. Who said I said he was there in July?

Q. Wasn't he there in July? A. Not that I remember, no.

Q. Would you know if he was there? A. Well, I don't know whether he was there or not. I don't remember.

Q. Well, wouldn't you know if he was there? A. Well, if he was such a particular friend, I might.

Q. Yes; just think a minute and tell us was he there during the week of July 4th? A. I don't know.

Q. Wasn't he there alone during that week? A I tell you I don't know whether he was there or not.

Q. You were there during that week? A. Yes. I was there on the farm all the time.

Q. Steadily? A. Yes; steadily.

Q. And you would know if he came up there? A. Well; I don't remember when he was there.

Q. You remember him coming up on Decoration Day, Mr. Rubens and Mrs. Rubens, don't you? A. Well, why shouldn't I if they all came?

Q. Yes. Now, don't you remember whether he came alone or not in the month of July, during the week of July 4th? A. No; I do not.

Q. Well, what do you mean, you do not remember, or you do not know? A. I don't remember whether he was there or not.

Q. Would you say under oath that he wasn't there? A. No, I would not say, because I don't remember whether he was or not.

MR. MACKAY: That is all.
MR. DECKER: That is all.

DOROTHY PARSONS, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DECKER:

Q. Will you tell how you are related to the defendant in this case? A. I am the daughter-in-law.

Q. And you are the wife of her son? A. Yes.

Q. Do you know Edward S. Rubens? A. I do not think I would recognize him.

Q. Have you ever seen him? A. I saw him once.

Q. And when was that? A. That was in December, 1917.

Q. Where? A. At my mother-in-law's home in Adelphi Street.

Q. Will you tell what happened on that day with reference to him? A. He came there with his brother, and there was a smaller child with them; I don't remember who he was now. They were there about a half an hour, I believe.

Q. What was the conduct of the defendant toward him? A. The same toward any friend that called.

Q. Have you ever seen him since? A. No; I haven't.

MR. DECKER: Cross examine.

CROSS EXAMINATION BY MR. MACKAY:

Q. You say you don't know him very well? A. I don't think I would recognize him, no.

Q. You didn't live at the time at home, did you? A. No.

Q. No, you didn't live there? A. No.

Q. You don't know whether he visited 510 West 47th Street? A. I didn't know the family then.

Q. No, and you didn't know anything about Stewartsville and the farm, did you? A. No.

MR. MACKAY: That is all.

MR. DECKER: That is all. Oh, just step back a minute.

RE-DIRECT EXAMINATION BY MR. DECKER:

Q. Did you ever live at the house of the defendant at West Englewood, New Jersey? A. Yes, I lived there from December 22, 1918, until August the 12th, 1919.

Q. During that period did you ever see Edward S. Rubens? A. No; I didn't.

Q. Were you at the house every day? A. Every day, but one week; the week of Decoration Day.

Q. And were you there every evening? A. Yes.

Q. Did you ever see Edward S. Rubens at that house? A. I did not.

Q. Can you state that he wasn't at the defendant's house at that period, while you were there? A. Yes; I can state that, that he was not.

MR. DECKER: That is all. Defendant rests.

THE COURT: Anything further?

MR. MACKAY: I just want to ask Mrs. Rubens one or two questions. Just take the stand.

CATHERINE M. RUBENS, the plaintiff, recalled as a witness in rebuttal, testified as follows:

DIRECT EXAMINATION BY MR. MACKAY:

Q. Mrs. Rubens, did your husband go to Stewartsville to the farm the week of July 4th? A. He did.

Q. He was there for a week? A. Yes.

Q. Alone? A. Alone.

Q. And that was what year? A. That was the year 1913.

Q. There for a full week, was he? A. A full week.

Q. You heard what Mrs. Parsons said the conversation was at the West Englewood Station? A. Yes.

Q. That night? A. Yes.

Q. Was that so or not? A. No, it was not.

Q. It was not. You heard the statement the son made which was a little different? A. I did.

Q. Was that so or not? A. It was not.

MR. MACKAY: That is all.

CROSS EXAMINATION BY MR. DECKER:

Q What was the conversation at the West Englewood station? A. Why, the conversation at the West Englewood station was, as I went down and asked Mrs. Parsons was it possible for her to hold the mortgage a little longer, and she said no, it was out of her hand. So I asked her would she please leave my husband alone; that she was in love with my husband, and she said that she was not. So I told her if she would not that I would bring suit, and she told me that

because I was miserable, it was no reason that I should ruin her life.

Q. Now, what did you say about bringing suit?

MR. MACKAY: I object to that as not rebuttal.

THE COURT: Oh, I will allow that question; part of the conversation; proceed.

A. Why, as I said to her, that I would bring suit unless she would give up my husband.

Q. Bring suit for what? A. For alienation of affections.

Q. Well now, where is the difference between your statement and the statement that Mrs. Parsons made? A. Why, she said that I told her she must give up the—or she must hold the mortgage; she must take it back and I certainly did not say anything of the kind.

Q. What did you say? A. I said—I asked her would she please—was it possible, and she said it was out of her hands.

Q. You asked her first to get the mortgage back, didn't you? A. I asked her would she—could she hold it a little longer; yes.

Q. And she said she could not? A. Yes, and then I asked——

Q. And then you told her to leave your husband alone? A. Yes.

Q. And she said that she wasn't interested in your husband, didn't she? A. She said it was only a passing fancy.

Q. And then you told her you were going to bring suit, didn't you? A. She said it was absolutely nothing to her, what was going on between my husband and myself; it was nothing to her, and therefore I don't suppose she cared.

Q. Is that the first time you told her to leave your husband alone? A. That is the first, I told you.

Q. Why didn't you tell her that several years ago? A. Well, it wasn't necessary, because my husband had promised to let by-gones be by-gones and I wouldn't be the one to bring up things like that if it wasn't called for.

Q. When did he promise that? A. After the occision in 26th Street, the Hotel Preston.

Q. And did he ever promise that again? A. He did not; no.

Q. Well, that was in 1911, wasn't it? A. 1912.

Q. Well, why didn't you begin your suit then? A. Because he told me he was not in love with her any more.

Q. Yes. A. He told me that he didn't love her.

Q. And you believed that, didn't you? A. I did; yes.

Q. And you waited until this transfer of the mortgage in 1919 to begin the suit, didn't you? A. Yes.

MR. DECKER: That is all.

THE WITNESS: Well.

MR. DECKER: You have answered the question; that is all.

RE-DIRECT EXAMINATION BY MR. MACKAY:

Q. You started the suit in May of 1919? A. I did.

MR. MACKAY: That is all.

MR. DECKER: Now, if the Court please, I want to make a motion for the direction of a verdict for the defendant on the ground that the testimony does not show that this

defendant in any way enticed the affections —enticed the husband of the plaintiff from her, or in any way alienate his affections.

On the further ground that there is nothing in the testimony to show that this plaintiff has lost the affections of her husband.

And, on the further ground that whatever may have occurred, did occur with the consent of this plaintiff.

The Supreme Court has said that one of the elements which must be proved in a case of this kind is that the alienation must be without the plaintiff's consent.

Now, for the purpose of this motion, assuming that everything that this plaintiff has said is true, we have a case of this kind: The defendant, according to her tetsimony, met the plaintiff in 1911 and again in 1912 and in 1913, knowing, according to her story, that they were going to the apartment for that same purpose; this plaintiff stood by and let them go and said nothing. Subsequently invited the plaintiff to her home, entertained her there, visited the defendant's home. Now, the consent don't have to be a consent in so many words. The consent can be implied by the conduct, and that is the ground of my motion.

THE COURT: I will refuse your motion and allow you an exception. I think there is a question of fact to go to the jury. Proceed to sum it up.

Counsel argued case to Jury.

Charge.

CUTLER, J.

Gentlemen of the Jury. The plaintiff in this case is a married woman and alleges in her complaint that the defendant alienated the affections of her husband and had criminal conversation with him. The defendant denies both these charges. There is no evidence that tends to establish criminal conversation except that of the plaintiff, and as the Statute of this State expressly provides that a husband or wife cannot give evidence for or against the other in an action for criminal conversation, except to prove marriage, that claim has been abandoned by the plaintiff, and a non-suit is granted so far as that claim is concerned, so that the question for you to determine is, did this defendant alienate the affection of the plaintiff's husband?

The plaintiff lived with her husband as man and wife and had two children. The husband was in the printing business, and in 1911 was employed in New York City. The defendant is a widow with two children. Her husband having died in Florida in 1910, as I recall, she came to New York City and found employment as a proofreader in the same establishment where the plaintiff's husband was then working. Prior to that time the parties were absolute strangers. The defendant and plaintiff's husband became acquainted, and about that time the plaintiff became sick and an operation was deemed necessary. The plaintiff's husband borrowed from this defendant $100, and it was used for that purpose, and shortly afterwards another $100 was borrowed by this plaintiff's husband from this de-

fendant. After the plaintiff's recovery, she met the defendant, who was then living in Brooklyn, and visited her on several occasions. On one of these visits, she was accompanied by her husband and her two children, and spent two or three days there. That was while the defendant was living on a farm near Phillipsburg in this State. The defendant and her daughter visited the plaintiff at her house on one occasion, and attended a masquerade ball. The defendant and the plaintiff's husband continued to work in the same establishment. They ate their lunch at times in the same room and at the same table with other employes. Occasionally they walked down 42nd Street together to 10th Avenue, where they parted company, he going on to his train, she going to her apartment.

The defendant secured a farm near Phillipsburg on which her sister and her children lived while she continued to work in New York, spending week-ends at the farm. Sometime later the plaintiff's husband became sick and he went out to the defendant's farm and stayed there for five or six weeks during the time the defendant spent her week-ends at the farm, and also spent the last ten days or two weeks that the defendant was at the farm, at that farm.

The plaintiff's home had a second mortgage upon it which came due, and the mortgagee, offering to make a deduction of $75 if it was paid promptly, the defendant took an assignment of it, and allowed the plaintiff's husband, or the plaintiff, to have the benefit of that $75. Afterwards the plaintiff's husband lost his position and wanted to start business for himself, and the defendant loaned him $600 and received a mortgage for $1,700 on the plaintiff's home, which was the

amount of money then due the defendant, and included the money loaned and the second mortgage which she held by an assignment.

The defendant bought a house in this County and moved there with her family. The defendant and the plaintiff's husband attended a ball given by the Printer's Union, but the evidence does not show that they went to the ball together, although they were together during the evening.

Last April the defendant sold her mortgage, and so notified the plaintiff's husband, and a conversation took place at the station between the plaintiff and the defendant, and after this, this suit was brought.

The above facts that I have mentioned are not, as I understand them, disputed, but you are the sole judges of what the evidence has been, and you must decide what the witnesses have sworn to and not be governed by the Court's remembrance of it. There are, however, many disputed facts in this case, and those you will have to decide.

The plaintiff says that she followed her husband to New York on the afternoon of December 31st, 1911, and saw him meet the defendant and go with her to a hotel. The defendant denies this and says that she went out of the City on the afternoon of that day with her two children and her sister to visit some friends and did not return until the afternoon of the following day, and produces a gentleman and his wife who testify that the defendant and her party came to their house that day and spent the night. Both the stories of the plaintiff and the defendant cannot be true as to what took place on that day. It is for you to say which one is telling the truth, or which story you will believe.

Charge.

The plaintiff says that on the 21st day of January following, she again followed her husband to New York and saw him meet the defendant and go with him to the same hotel. You will remember, gentlemen, the particulars of that transaction as detailed by the plaintiff. The defendant denies this and says that it was her birthday, as I recall the evidence, and a friend of the family took her to dinner in New York and then to a concert, and it was nearly midnight when they arrived at her home, and both these stories cannot be true; and you are to say what is the true state of affairs.

There is other evidence that is conflicting, and you are the judges of what the evidence has been and the credibility of the witnesses.

The plaintiff must establish her case by a fair preponderance of the evidence before she is entitled to a verdict. She must satisfy you not only that she has lost her husband's affection, but that it was taken from her by this defendant. If the plaintiff had lost her husband's affection, she cannot recover if, after such loss, the husband bestowed them upon the defendant; neither can she recover if the husband bestows his affection on the defendant without any wrongful act on the part of the defendant. This action is based on the wrongful act of the defendant, and not the wrongful act of the husband. In other words, before the plaintiff can recover, you must be satisfied from the evidence that the defendant has, by her wrongful conduct, alienated the affection of the plaintiff's husband from her. You should not only consider the evidence of the witnesses, but also the letters that were written and have been offered in evidence and the conduct of the parties. If the plaintiff consented to the acts

constituting and contributing to the injury now complained of, it is a bar to the recovery at this time.

If you find for the defendant, it will not be necessary to consider the question of damages, but if, on the contrary, you decide for the plaintiff, you should allow her damages for her loss of support, if you find from the evidence that her husband is not supporting her on account of his loss of affection. If this loss of support is from any other cause, it cannot be included in the damages.

In this connection you will recall the fact that the plaintiff testifies that she had boarders before this occurrence. The plaintiff and defendant are living in the same house, but not as husband and wife. If this is due to the loss of affection for her, she is entitled to damages for loss of consortium. If the plaintiff has lost her affection for her husband because of jealousy, or for any other cause, and is not for that reason living with her husband, she cannot recover for her loss of affection, for this action is brought by her against this defendant for the defendant's wrongful act in alienating her husband's affection from her.

If she is entitled to recover, she is also entitled to recover damages for mental anguish and injured feelings. If you find the defendant was actuated by malice against the plaintiff, you may also add to the other damages exemplary damages, but the evidence must show malice; it cannot be presumed.

In determining the damages you should use your own good judgment os sensible business men, if you find the plaintiff is entitled to a verdict.

Charge.

There has been a motion to non-suit and a motion to direct a verdict, both of which have been refused by the Court, but that is, however, no indication of what you should do or how you should decide the case. That was only the decision of the Court that this is a fact case to be determined by you and not determined by the Court. You must not rely on counsel's statement of what the evidence has been, but you must use your own judgment in remembering what has been testified to and the weight that you will give to these various witnesses. Consider the case carefully. If you find the defendant has alienated the affections of the plaintiff's husband, give her a verdict for damages computed in the way and manner I have indicated. If you find the plaintiff has not satisfied you by a fair preponderance of the evidence that the defendant has alienated her husband's affection, your verdict should be a verdict for the defendant.

If you are satisfied that the plaintiff has shown by a fair preponderance of the testimony that she has lost the affection of her husband and that it was due to the acts of the defendant, then there should be a verdict for the plaintiff.

Two. The wife may recover as damages the loss of support and loss of consortium. I so charge.

Three. I refuse to charge otherwise than I have charged.

Fourth. I refuse to charge.

Fifth. The amount of damages depends upon the circumstances of the particular case. I so charge you, gentlemen.

Sixth. I refuse to charge otherwise than I have charged.

Seventh. I charge as modified. The jury is entitled to consider declarations made by the husband to his wife, showing loss of his affection for her.

And defendant's requests:

Before there can be a verdict for the plaintiff, you must be satisfied by a fair preponderance of the evidence of two things: First, that the plaintiff has lost the affection of her husband; and, second, that it was the defendant who caused the plaintiff to lose her husband's affection.

The second request I refuse to charge otherwise than I have charged.

Three. If it appears that the plaintiff's husband has voluntarily given his affections to the defendant and that the latter has done nothing to win such affection, then your verdict must be for the defendant. I so charge.

Four. Before you can render a verdict for the plaintiff, you must be satisfied that the plaintiff has not consented to the conduct of the defendant which she alleges alienated her husband's affection, and her consent to such conduct need not be an openly expressed consent; it may be implied from her actions and conduct. I so charge you, gentlemen.

Now, take the case. Remember that it is to be decide from the evidence that you have heard on the witness stand. Not from anything that you may have learned outside of this court-room

Swear an officer and let the jury retire.

(The jury retired.)

MR. DECKER: Will you note my exceptions to the one you refused, number two, and that part of the charge that begins: "If you find the defendant was actuated by malice, &c".

THE COURT: Yes.

MR. DECKER: Will you note down there an exception to that part of the charge which deals with the question of damages, and also with the statements made by the plaintiff's husband to the plaintiff.

THE COURT: Yes.

MR. MACKAY: I want to take exception to the Court's refusal to charge numbers three, four and six, and exception to the number seven as modified—refusal to charge it as requested.

I also except to the charge of the Court in charging the requests number three and four of the defendant.

THE COURT: Yes.

Plaintiff's Requests.

THE PLAINTIFF'S REQUESTS TO CHARGE AS ORIGINALLY SUBMITTED TO THE COURT ARE AS FOLLOW:—

1. If the jury are satisfied that the plaintiff has shown by a fair preponderance of the testimony that she has lost the affection of her husband and that it was due to the acts of the defendant, then there should be a verdict for the plaintiff.

2. The wife may recover as damages the loss of support and lost of consortium.

3. The wife may recover damages for mental anguish, and for injury to her character.

4. The rank and condition of the defendant may be considered in assessing damages.

5. The amount of damages depends upon the circumstances of the particular case.

6. The loss of service is an element of damages, and it does not depend upon actual separation of

the parties, but may be based upon the lessening in value or efficacy of the services, even though the wife continues to perform them.

7. The jury is entitled to consider declarations made by the husband to his wife to show the wrongful interference of the defendant and the attempt to induce a separation.

Defendant's Requests.

THE DEFENDANT'S REQUESTS TO CHARGE AS ORIGINALLY SUBMITTED TO THE COURT ARE AS FOLLOWS:—

1. Before there can be a verdict for the plaintiff, you must be satisfied by a fair preponderance of the evidence of two things: First, that the plaintiff has lost the affections of her husband; and second; that it was the defendant who caused the plaintiff to lose her husband's affections.

McKenna vs. Alygeo, 51 At. Rep., 936.

2. Your verdict must be for the defendant unless there appears by a fair preponderance of the evidence that it was the defendant who pursued the plaintiff's husband until she succeeded in causing him to lose his affection for his wife; if it appears that the plaintiff's husband was the pursuer and the defendant the pursued, then your verdict must be for the defendant.

Stewart vs. Haggerty, 96 At. Rep., 1099, Penn. case.

3. If if appears that the plaintiff's husband has voluntarily given his affections to the defendant and that the latter has done nothing to win such affections, then your verdict must be for the defendant.

4. Before you can render a verdict for the plaintiff, you must be satisfied that the plaintiff has not consented to the conduct of the defendant which she alleges alienated her husband's affection, and her consent to such conduct need not be an openly expressed consent; it may be implied from her actions and conduct.

Defendant's Exhibit 1.

Dumont, Nov. 7, 1912.

Dear Mrs. Parsons:

In answer to your delightfull letter must say that I am really glad my husband wase of some service to you. I think I can understand how you appreciate the help of a man you can trust in a case lik that. I wase rather lonesome in spite of my folks being with me.

You know after your once married you dont seem to have the same feeling for them and I therefore misset him very much.

Regina and Grace join me in love to you and your famely and have often wondert wy you never came out to see ous this summer.

The result of the election you all know and as the old saying is the cant keep a god man down.

May this letter reach you all in the best of health and thanking you for your nice letter.

Kindest regards from mother and sisters and kisses from Regina a Grace

Your loving friend

CATHERINE RUBENS.

Plaintiff's Exhibit 2.

Friday Morning.

My own Darling:

Two weeks tomorrow since you withdrew your bodily presence from us; but your spiritual presence is all over the place. It never seems to me that you are traveling around New York or other places, or living your home life with your family there in Dumont. To me you are in the next room, just about to come in, or out-doors. When Gladys plays the music I dance with you as of yore; we talk of you continually everything we do has a reminder of you. I know your thoughts are often with me for I can feel them. You are seldom out of my thoughts. There is ever the consciousness of you deep down and I commune with you and live my life with you even though distance separates us. Dear One, I pray you may soon secure a good position outside the printing business. Oh, I pay God to bless you for you deserve it. I am unable to help you in any way now except with my love. That you have as you know. It is useless for me to say to you "don't worry" for no doubt you are getting anxious for your family. It is always darkest just before dawn, darling, so things will shape out all right very soon. They must. Don't get discouraged, dearest.

Gladys is still in bed and Horton is milking. Dear Little Girl! She has it easy now that her Muvver is home. I let her sleep until she gets up of her own accord. The men did not come to help husk yesterday as the Piersons are carting and sprinkling lime over their clover fields. That is twice they have disappointed us, but we will get there all right by ourselves. I shall place no

dependence on what Mrs. Stella says any more. I had Horton buy a box of cigars for the men, and that money could have been used to better advantage. However, it is sprinkling now and threatens to be a rainy day. We called on Mrs. Charles Pierson yesterday and she was out, which seldom happens with her, she so rarely goes out. Edgar was here last evening. Loo was out Wednesday to supper and Horton had to drive her all the way in to town as they missed the trolley and it was very cold but moonlight. Ruth is to have a whole bevy of girls at her house tomorrow to dinner and spend the day and Gladys will join them. They will have a good time. Expect Willie tomorrow. I have a bin of potatoes in the barn to sort, then my outside work is finished. There will be a *dance* here next Friday night at De Hart's on Harry Rush's place—they are leaving there, a farewell jubilee. Expect to have fun for I laugh so at the description of these dances. Then the next night is the chicken and waffle supper. Some doings. Mrs. F. yesterday showed me a check for $50 which Mr. F. got for two days' election work. No more of that if he is appointed letter carrier. Dear, be careful about destroying my letters; they might cause trouble. This is dangerous you know. Please write often and I will to you, my best beloved. Look into my heart and read all I dare not write to you, with love,

Your Sweetheart.

Plaintiff's Exhibit 3.

Dear Friend:

I expect to go to Gotham on Tuesday, tomorrow. Come up to the apartment after business.

C.

Plaintiff's Exhibit 5.

February 18, 1919.

Mr. and Mrs. Edward S. Rubens,
Dumont, N. J.

The second mortgage of $1700 which I hold upon your Dumont property together with interest at 6% for the period of the mortgage, five years, which has been allowed to run, payable at the expiration of the term instead of the usual semi-annual payments expires and becomes due, as you are aware, on August 11th this year, 1919.

Because of a contract which I have already entered into which obligates me to pay over this entire sum on the date of the expiration of your mortgage and interest, I am giving you this notice of practically six months to enable you to be prepared to meet your obligation at the legal time.

An early reply relative to the matter in question will be appreciated by

Yours truly,

E. C. Parsons,

22 Ogden Ave.,
West Englewood, N. J.

Rule for Judgment.

BERGEN COUNTY CIRCUIT COURT.

CATHERINE M. RUBENS,
Plaintiff,
vs.
ETHELYN C. PARSONS,
Defendant.

Rule for Judgment.

This action having been tried before Judge Willard W. Cutler with a jury in the presence of the respective parties on December 18, 19 and 20, 1919, and the jury having returned a verdict in favor of the plaintiff for Six Thousand Dollars ($6,000.00) damages.

It is ordered that judgment final be entered in favor of the plaintiff and against the defendant for the sum of Six Thousand Dollars ($6,000.00) and the plaintiff's costs to be taxed.

Rule entered December 24, 1919.

On motion of
MACKAY & MACKAY,
Attorneys for Plaintiff.

Dam.	$6,000.00
Costs	47.31
	$6,047.31

Petition for Administration.

BERGEN COUNTY SURROGATE'S OFFICE.

In the Matter of the Administration of the Goods, Chattels and Credits of

CATHERINE M. RUBENS,

Deceased.

To J. BLAUVELT HOPPER, Surrogate of the County of Bergen:

The Petition of James W. Mercer of the Village of Hackensack in the County of Bergen, and State of New Jersey, respectfully showeth, that he is applying for administration on the estate of Catherine M. Rubens, late resident of the Borough of Dumont in the County of Bergen and State of New Jersey, who departed this life intestate at Dumont, N. J., on the 3rd day of February in the year of our Lord one thousand nine hundred and twenty. That your Petitioner, after diligent search, has not been able to discover that said deceased left any Last Will and Testament; and the value of the personal property of which said deceased died possessed, as near as your Petitioner can ascertain, does not exceed the sum of $6,300. That the said deceased left kindred entitled to said estate, whose names and places of residence are as follows:

Edward S. Rubens, husband, Dumont, N. J.

Regina Rubens, daughter, Dumont, N. J., 15 years.

Grace Rubens, daughter, Dumont, N. J., 13 years.

Only heirs at law and next of kin of full age, except as stated.

And your Petitioner prays that Letters of Administration of the goods, chattels and credits of said deceased may be granted to him in pursuance of the statute in such cases made and provided.

Dated Hackensack, March 2nd, 1920.

JAMES W. MERCER.

BERGEN COUNTY, ss.: James W. Mercer, the above named petitioner, of full age, being duly sworn, on his oath, saith that the foregoing Petition is in all things correct and true, of his own knowledge and belief.

JAMES W. MERCER.

Sworn to before me this second day of March A. D. 1920.

J. BLAUVELT HOPPER,
Surrogate.

Renunciation.

TO ALL WHOM IT MAY CONCERN:

WHEREAS, Catherine M. Rubens, late of the Borough of Dumont, in the County of Bergen and State of New Jersey, died intestate on the 3rd day of February A. D. 1920, leaving heirs and next of kin entitled to have administration of her effects.

NOW KNOW YE, That I, Edward S. Rubens, husband of said deceased, hereby renounce all right and claim to administration of the goods and chattels of the said Catherine M. Rubens, and hereby request that administration upon the said estate be granted to James W. Mercer.

Renunciation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this second day of March, in the year of our Lord one thousand nine hundred and twenty.

EDWARD S. RUBENS.

Signed, Sealed and Delivered in Presence of

CLYDE A. BOGERT.

STATE OF NEW JERSEY, Bergen County, SS.:

BE IT REMEMBERED, That on this second day of March in the year of our Lord nineteen hundred and twenty before me, the subscriber, personally appeared Edward S. Rubens, who, I am satisfied, is the grantor in the within RENUNCIATION named, and who executed the same; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

CLYDE A. BOGERT,
Deputy Surrogate.

22 JUN.T. 1920

New Jersey Court of Errors and Appeals.

JAMES W. MERCER, Administrator of Catherine M. Rubens, deceased,

Respondent,

vs.

ETHELYN C. PARSONS,

Appellant.

BRIEF FOR APPELLANT.

This appeal is from the judgment of the Bergen County Circuit Court entered December 24th, 1919, for Catherine M. Rubens and against appellant; the jury having assessed damages against appellant in the sum of $6,000 (p. 192).

Statement of Facts.

Since the entry of the judgment and on February 3rd, 1920, Catherine M. Rubens died a resident of Bergen County, New Jersey, intestate, and leaving as her next of kin her husband, Edward S. Rubens, and two infant children. The husband, Edward S. Rubens, renounced administration in favor of James W. Mercer, the latter being appointed administrator (p. 193-194-195).

The complaint sets out four causes of action as follows:

FIRST COUNT.

That the appellant knowing that Edward S. Rubens was the husband of the decedent on December 31st, 1911 and every day thereafter until

the month of May, 1919, alienated from decedent the affections of her said husband, Edward S. Rubens, in the Borough of Manhattan in the State of New York and at Jamaica Bay in the State of New York.

SECOND COUNT.

That the appellant knowing that Edward S. Rubens was the husband of the decedent on January 21st, 1912 and on November 18th, 1913 and each day between said dates and every day since November, 1913 alienated from decedent the affections of her husband in the Borough of Manhattan and State of New York.

THIRD COUNT.

That appellant alienated from decedent the affections of her said husband on January 1st, 1918 and every day thereafter at West Englewood, in the County of Bergen and State of New Jersey.

FOURTH COUNT.

That appellant on December 31st, 1911 and January 21st, 1912 and November 18th, 1913 in New York City and from Saturday to Labor Day in the year 1917 at Jamaica Bay and from January 1st, 1918 until May, 1919 at West Englewood in the State of New Jersey, seduced and carnally knew the said Edward S. Rubens, husband of decedent.

Damages were laid in the sum of $50,000 (pp. 4, 5 & 6).

The answer denied the allegations of the complaint (p. 7).

Catherine M. Rubens, the decedent, testified she married Edward S. Rubens in 1904; that there were two children of the marriage; that

until the year 1911 she got along splendid with her husband (p. 10, line 13); that her husband was employed in the printing business in 1911 (p. 10, line 35); that her husband began to stay out late at night during 1911 (p. 12, line 34); that his explanation to decedent was that he was spending his time with his sick mother and that decedent knew that his mother was sick and in the hospital (p. 14, line 27); that on December 31st, 1911 her husband told her he was going to a poker game in New York (p. 15, line 9); that he left Dumont, New Jersey, (where the parties lived) in the evening of that day (p. 15, line 30); that decedent followed him on the same train without his knowledge (p. 15, line 35); that decedent saw him meet appellant on Forty-second Street in New York (p. 15, line 37); that decedent followed them to the Hotel Preston (p. 16, line 13); that decedent's husband and appellant went into the Hotel Preston and after a wait of about five minutes decedent followed them in and went to the Clerk and examined the Register and saw in handwriting which decedent testified was her husband's, the names "John Renshaw and wife" and noted that they occupied Room No. 72 (p. 16, lines 27-40); that decedent waited outside the Hotel Preston until 11:15 P. M. and then went back to the West Shore Railroad Ferry and took the train to her home in Dumont, New Jersey (p. 16, line 40); that decedent's husband came home the next morning (p. 17, line 20); that decedent's husband told her in answer to her question that he had attended a poker game (p. 19, line 31); that she said nothing further to him (p. 20, line 9) and that decedent and her husband continued to live together as husband and wife without any objection on her part (p. 20, line 13); that on Sunday afternoon, January 21st, 1912, decedent's husband started from Du-

mont for New York and she followed him without his knowledge together with her sister (p. 20, line 38); that decedent and her sister got on the same train at Dumont, crossed on the same ferry-boat and rode on the same Thirty-fourth Street cross-town trolley car in New York City with decedent's husband and without his knowledge (p. 21, line 13); that she saw her husband meet the appellant and saw them go to the Hotel Preston together and as she did before examined the Register and saw the same name in the same handwriting registered (p. 21, line 13); that decedent's husband and appellant went into the hotel at 3:45 in the afternoon; decedent and her sister remained outside until 6:30 when she finally saw appellant and her husband come out of the hotel at that time and followed them to a restaurant where they ate their dinner, stood outside of the restaurant while they ate their dinner, saw them go back to the hotel at 7:30 and then decedent returned to her home in Dumont, New Jersey, and her husband came home about midnight of that day (p. 21, line 20 to p. 22, line 40); that when decedent on her husband's return told him where he had been he became angry and about two days later said that he was sorry (p. 25, line 12); that afterwards appellant came to visit decedent at her home in Dumont (p. 25, line 24); that appellant remained at decedent's home over night after attending a dance with decedent and decedent's husband and appellant's daughter (p. 26, lines 11-30); that appellant subsequently purchased a farm in New Jersey and decedent's husband became ill; that decedent's husband went to the farm and was away from home for about six weeks apparently with decedent's consent though surely with her knowledge (p. 27, line 40); that afterwards decedent came into posses-

sion of the letters which are printed as exhibits 2 and 3 (pp. 189-191); that after coming into possession of one letter decedent went to her husband's place of business in New York and saw him meet appellant (p. 32, line 20) and saw them go to an apartment on West Forty-seventh Street and they stayed there until about eleven o'clock (p. 32, line 34) and upon her husband's return to his home said he had lost all affection for her and that appellant was the only woman he cared for (p. 33, line 30), but that was on November 14th, 1913 (p. 34, line 2); that after that decedent and her husband did not live together as husband and wife but that he continued to support her; that in 1918 decedent's husband as the Executor of an estate, sold a house in West Englewood to appellant (p. 37, line 17); appellant sometime before that loaned money to decedent's husband to pay off a mortgage which was on their dwelling house in Dumont and as security for that loan had taken a second mortgage; that her husband talked to her about getting a divorce (p. 41, line 30); that she found a letter addressed from appellant to her husband on April 16th, 1919 (p. 41, line 10) stating that appellant had transferred the mortgage she held on the dwelling house of decedent's husband; that decedent's husband continued to live in the same house with her and was living there on the day of the trial of the case (p. 43, line 12).

On cross examination decedent testified that in 1911 appellant who was employed at the same place of business with decedent's husband, loaned to decedent's husband a sum of money to pay a physician's bill contracted because of the illness of decedent (p. 45, line 37); that decedent's husband told her that he wanted her to meet appellant (p. 45, line 25); that decedent invited ap-

pellant to her home (p. 46, line 20) and was entertained at decedent's home perhaps every two or three months (p. 46, line 24); decedent testified that she went to New York on December 31st, 1911 and saw her husband meet appellant and saw them go to the Hotel Preston and that she waited outside until 11:15 that evening (p. 50, line 36); she saw her husband and appellant go to the same place on January 21st, 1912 and that *afterwards she entertained the appellant at her home and said nothing whatever to the appellant concerning her conduct with decedent's husband* (p. 52, line 15); that afterwards her husband borrowed more money from appellant (p. 52, line 38); that there was a second mortgage on their home which came due in 1913 (p. 53, line 11); that appellant took over the second mortgage with the knowledge of decedent (p. 53, line 20); during the latter part of 1913 her husband's lungs were affected (p. 53, line 29); that at that time decedent knew appellant had a farm in the country; that decedent had visited the farm and stayed for several days (p. 54, line 13); that decedent's husband went to the farm of appellant and stayed there for five weeks with her knowledge (p. 54, line 27); that on his return decedent wrote a letter of thanks to appellant (p. 54, line 36); that decedent's husband had got a great many letters from appellant (p. 56, line 30); decedent had never taken the trouble to look at any of the letters except the two that are printed as Exhibits 2 and 3 (p. 56, line 33); that in 1914 appellant loaned $500 to decedent's husband to start him in business and the mortgage was given to secure that amount of money (p. 57, line 9-20); that on April 16th, 1919 (suit was commenced May 28th, 1919) decedent after receiving a letter from appellant stating that

appellant had sold her mortgage on the house of decedent and her husband went to see appellant and met her at the railroad station at West Englewood and asked appellant to hold the mortgage a little longer and also asked her to let her husband alone and that if she would not she would start a suit for alienation of affection (p. 59, line 10 to page 60, line 40).

Harry J. Rubens, a brother of decedent's husband, testified he was employed in the same place of business with his brother for a time and subsequently in another place in the vicinity; that he had seen his brother walk along the street with appellant after they left their employment and when they were going in the direction of their respective homes and with a number of other employees at the same place of business; that he had seen them eat their lunch together in the room wherein the employees of the printing plant ate their lunch and that he had attended a ball given by the Printer's Labor Union and had seen decedent's husband with the same group of people in which was the appellant.

At the close of the plaintiff's case the appellant moved for a non-suit on the ground that there was no proof to show that appellant was responsible for the loss of her husband's affections; also on the ground that there was nothing in the testimony to sustain the fourth count. A non-suit was granted as to the cause of action embraced in the fourth count of complaint but was refused as to the other ground.

In defense the appellant testified that she went to work in 1910, in the same printing establishment where decedent's husband was employed (p. 74, line 34); loaned decedent's husband two hundred dollars ($200) in 1911, let him have another one hundred dollars ($100) during the fol

lowing week (p. 75, line 36) to pay for a surgical operation on decedent (p. 76, line 3); that she was introduced to decedent in 1911 by the latter's husband (p. 77, line 9); was invited to decedent's home by decedent (p. 77, line 21); stayed over night; and made a number of visits thereafter on decedent's invitation; appellant denied that she had met decedent's husband on December 31st, 1911, and went to the Hotel Preston with him and testified that on that day and the following day was at Rockville Center, Long Island with friends (p. 78, line 30); appellant also denied that she went with decedent's husband to the Hotel Preston on January 21st, 1912 and testified that on that day which was her birthday she was at her house in Brooklyn with her family and an old friend, William J. Ferrie and later in the day they attended a concert in New York (p. 79, line 30); that on November 18th, 1913, appellant did not accompany decedent's husband to an apartment and spend the evening with him, but interviewed two business associates of her late husband and returned to her home in the country during the latter part of the day (Case p. 84, line 25 to p. 88, line 10); that she had purchased a second mortgage on decedent's home at the latter's request and gave her the benefit of the bargain she had made (Case p. 88, line 20); and later loaned more money to decedent and the latter's husband (Case p. 89, line, 21); that in 1918 appellant purchased a house in West Englewood from decedent's husband who was executor of an estate (p. 91, line 20); that decedent met appellant on April 16th 1919, at the West Englewood station (Case p 93, line 33); decedent inquired why appellant had sold the mortgage on decedent's home and being told that by appellant that the latter had a right to sell it said that appellant must get it

back and hold it until decedent and her husband could pay it and that unless appellant did so the latter would bring suit for alienation of the affections of the latter's husband (Case p. 94, line 3 to p. 95, line 16).

William J. Ferrie testified he had known appellant many years and that it had been their custom to go to an entertainment on appellant's birthday which came on the twenty-first day of January, and go on a picnic on his birthday which came during the summer. That he spent January 21st, 1912 (which was Sunday) at appellant's home in Brooklyn.

Moses L. Sulzer testified that he had known the appellant over twenty years; that he was a business associate of her husband; that he recalled November 18th, 1913, and that during the afternoon of that day appellant came to his office and was in conference with him and his present partner; that he had left the appellant with O'Brien at five o'clock in the afternoon on that day (p. 115, line 20).

Patrick J. O'Brien testified that he was in conference with appellant and Zulzer on the afternoon of November 18th, 1913 (p. 145, line 23); that after Zulzer left he went with her to the station of the Central Railroad of New Jersey in Jersey City, and about six o'clock saw her on a train bound for Phillipsburg, New Jersey (p. 146, line 30). Both Zulzer and O'Brien identified the date by reference to minutes of a corporate meeting that was held on that same day.

Effie Braun testified that on December 31st, 1911, appellant reached her home in Rockville Center, Long Island, about half past one in the afternoon and visited her there until late the next day (p. 139, line 35); the witness identified the date as being the first New Years after the

death of her (the witness's) father (p. 140, line 10).

Samuel T. Dickinson testified that during the two years preceding the trial of the case he had visited the appellant's daughter at appellant's home two and sometimes three times a week, and have never seen the husband of decedent at appellant's home (p. 152, line 29).

Seward H. Parsons, a son of appellant, testified that he had known the husband of decedent since 1911 (p. 154, line 115); that during 1913 decedent had visited the farm of appellant and stayed over Decoration Day (p. 156, line 20); he corroborated testimony of appellant concerning conversation at the railroad station at West Englewood, between appellant and decedent a short time before the commencement of this suit (p. 157, line 20).

Ethelyn G. Parsons, daughter of appellant, testified that husband of decedent had visited appellant very infrequently; that her mother had treated him as she treated any friend (p. 165, line 20); that she had visited the decedent's home upon invitation of decedent (p. 166, line 17).

Dorothy Parsons, daughter-in-law of appellant, testified that she had been present when husband of decedent visited her mother-in-law's home; that the conduct of appellant was her usual conduct toward her friends (p. 173, line 33).

Argument.

I.

The Court should have ordered a nonsuit or directed a verdict for the appellant on the ground that there was no evidence that appellant had enticed plaintiff-decedent's husband and caused him to lose his affection for her, and that plaintiff-decedent consented to the alleged misconduct of her husband with appellant.

For convenience we shall discuss together under this heading the first and second grounds of the appeal.

The gist of this action is the loss of consortium, the aid, comfort, society and assistance of deceased plaintiff's husband. Before she could recover damages for such loss the burden of proof was on her to show (1) that appellant wrongfully and wilfully attempted to alienate her husband's affections and deprive decedent of his society; (2) that the attempt was successful; and (3) that decedent did not consent.

Milewski vs. Kurty, 77 N. J. L. 132;
McKenna vs. Algeo, 51 Atl. 936.

We submit that the testimony above set forth does not show any loss of affection on the part of decedent's husband; that decedent herself testified (p. 43, line 12) that at the time of the trial she and her husband were still living together in the same house; and that there is no evidence to show that his conduct toward her was in any way different after 1910 (when he met appellant) than before that time.

Plaintiff-decedent failed to prove that the al-

leged loss of affection was caused by the enticements or allurements of the appellant. It is well settled that where a spouse voluntarily gives his or her affections to another, the latter doing nothing wrongfully to win such affections, there is no ground for action, and that it must affirmatively appear that the defendant was the seducer and enticer.

McKenna vs. Algeo, 51 Atl. 936; 21 Cyc., p. 1621 and cases cited; 16 L. R. A. (N. S.) and cases cited.

In the case of *Buchanan vs. Foster,* 23 N. Y. App. Div. 542, it was held that mere proof of abandonment and that the husband maintained improper relations with defendant is not sufficient. There has been offered in evidence by plaintiff-decedent three letters purported to have been written to her husband by the appellant, marked respectively Exhibits P-2, P-3 and P-5. These three letters are the only evidence offered by the plaintiff to prove that the appellant seduced and enticed her husband, and that, by her enticements and allurements, she won his affection. But how could this be? According to plaintiff's own testimony (p. 30, line 10 to p. 31, line 40) her husband never received these communications, at least those marked Exhibit P-2 and P-3, and consequently they could not have caused any loss of affection. That the letter marked Exhibit P-5 could have produced such a result is out of the question, as a reading of it will clearly show that it is addressed to both plaintiff-decedent and her husband and merely advises them of the transfer of a mortgage which the appellant held on their property. It is respectfully submitted that there was absolutely no proof of this essential element of the tort al-

leged to have been committed by the appellant that warranted the Court in submitting the case to the jury.

The law is also well settled that there can be no recovery where the plaintiff has consented to the act or acts complained of.

Milewski vs. Kurtz, 77 N. J. L. 132; 21 Cyc. p. 1619 and cases cited.

Plaintiff's testimony showed that despite her knowledge of the misconduct, which she alleges was committed by her husband and the appellant, she continued to live with her husband (p. 43, line 12) and even invited and entertained the appellant at her own home and said nothing whatever to the appellant concerning her alleged misconduct and relations with her husband (p. 52, line 15). In fact, no testimony was adduced that any cause for complaint ever existed so far as plaintiff-decedent's demeanor or friendship indicated until appellant's refusal to carry the mortgage she had carried for 5 years, without the payment of even the interest, for a further indefinite time, although needing this money for the purchase of her own home (fols. p. 59, line 30 to p. 60, line 30; p. 94, line 4 et seq.).

In the case of *Von Olinda vs. Hall,* 88 Hun, 452, 34 N. Y. Supp. 777, which is a case where the facts are very similar to the present case, it was held by the Court that the plaintiff had no cause of action when she did not object to the presence of the defendant nor request him to return home. The Court's attention is also directed to a letter marked Exhibit D written by plaintiff-decedent to the appellant after her husband had returned from appellant's farm. It seems quite clear that the plaintiff-decedent, by her conduct and actions, approved and consented

to the friendship of her husband and the appellant.

For these reasons we submit therefore that there should have been a non-suit or a direction of a verdict for the appellant.

This is the crux of the case and shows the reasons which impelled plaintiff-decedent to bring this action.

II.

Errors of the Court in admitting and excluding evidence.

Under this heading we will include the third, fourth, fourth A, fifth and sixth grounds of the appeal.

The Court permitted plaintiff-decedent to answer the following questions over the objection of counsel for the appellant:

"Q. What did you say to him? (p. 14, line 10).

"Q. Did you ask him if he attended the poker game that he said he was going to? (p. 17, line 25; p. 19, line 33).

"Q. And what did you say to him? (p. 23, line 13).

"Q. Did you say anything to him about his marital duties? (p. 24, line 12).

"Q. And since the papers were served on him has he supported you?" (p. 43, line 29).

It is respectfully submitted that all of the above questions are incompetent, irrelevant and immaterial, and that in permitting them to be answered the defendant's case was materially prejudiced.

The Court struck out the answers to the following questions asked the defendant:

"Q. Was any reason given for lending that money? (p. 76, line 8). A. For the operation on his wife (p. 76, line 9).

"Q. You took another mortgage, did you not, from this plaintiff's husband? (p. 89, line 37). A. I did, if I would lend them the money, everything I did was for the family" (p. 89, line 40).

It is respectfully submitted that evidence given by the defendant in the above answers is relevant, competent and material, and that appellant's case was greatly prejudiced in that they were stricken out.

The Court overruled the following question asked the defendant:

"Q. At the time he had been to your house had any reason ever been given to you for his wife not accompanying him?" (p. 103, line 20).

It is respectfully submitted that the above question is competent, relevant and material, and that appellant's case was very much prejudiced in that said question was overruled.

The Court admitted over objection of counsel for appellant a letter alleged to have been written by the appellant to the respondent, which was marked Exhibit P-2. Plaintiff under cross examination admitted that this letter was addressed to her husband and that she had taken and opened it in violation of Sec. 194 of the Federal Criminal Code. It is elementary law that a Court of Justice will not suffer anyone, guilty of a criminal act to make use of his criminal conduct to obtain relief. We submit that this letter should not have been received in evidence, and that appellant's case was materially prejudiced thereby.

The Court refused to strike out the following answer:

"A. Yes, and he asked me to sign it, and I refused to do so. Then he told me that he

would leave. He threatened to leave me and leave the children."

It is respectfully submitted that the evidence given by the above answer is incompetent, irrelevant and immaterial, and that appellant's case was materially prejudiced thereby.

III.

Errors of the Court in charging the jury and in refusing to charge as requested by appellant.

Under this heading we will include the seventh, eighth, ninth, tenth and eleventh grounds of appeal.

The Court refused to charge the jury as requested for the appellant as follows:

> "Your verdict must be for the defendant unless there appears by a fair preponderance of the evidence that it was the defendant who pursued the plaintiff's husband until she succeeded in causing him to lose his affection for his wife; and if it appears that the plaintiff's husband was the pursuer and the defendant the pursued, then your verdict must be for the defendant."

It is respectfully submitted that the request of appellant's counsel to so charge the jury was a proper one, and that the Court should have so charged the jury.

The Court charged the jury as follows:

> "If you find the defendant was actuated by malice against the plaintiff, you may also add to the other damage exemplary damages but the evidence must show malice, it can not be presumed."

It is respectfully submitted that there is no evidence whatever in this case that warrants the above charge or would warrant the jury in find-

ing that there had been malice on the part of the appellant, but on the contrary, the evidence clearly indicates that this is a spite case, maliciously instituted by plaintiff-decedent because appellant would no longer carry the mortgage on her home. This portion of the Court's charge to the jury as to malice was also misleading in that the Court failed to instruct or explain to the jury what, as a matter of law, constitutes malice. We respectfully submit that this part of the Court's charge to the jury was of great and material prejudice to the appellant and that the Court should not have so charged.

The Court charged the jury as follows:

> "If she is entitled to recover, she is also entitled to recover damages for mental anguish and injured feelings."

We submit that there is no evidence whatever that would warrant the jury in allowing for mental anguish and injured feelings in estimating damages, and that in so charging, the appellant's case was greatly and materially prejudiced. Other portions of the charge are manifestly erroneous.

We respectfully submit that for the reasons above set forth the verdict against the appellant should be set aside.

Respectfully submitted,

HARTSHORNE, INSLEY & VREELAND,
Attorneys of Defendant-Appellant.